

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 26th September, 2013

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

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

PRAYERS

QUORUM CALL AT COMMENCEMENT OF SITTING

The Deputy Speaker (Sen. Kembi-Gitura): Let us determine the quorum.

The Clerk of Senate (Mr. Nyegenye): Mr. Deputy Speaker, Sir, we have 21 Senators in the House. Therefore, we have a quorum.

The Deputy Speaker (Sen. Kembi-Gitura): Okay. Let us proceed with the business on the Order Paper.

PETITION

REPORT ON PETITION BY NURSES AND DOCTORS ON TRANSFER OF PERSONNEL EMOLUMENTS TO COUNTY GOVERNMENTS

Sen. (Dr.) Kuti: Mr. Deputy Speaker, Sir, I would like to lay on the Table of this House the petition by the nurses and clinical officers for the devolution of the responsibility for personnel emoluments to county governments as requested by Sen. (Dr.) Khalwale on 24th July, 2013.

Mr. Deputy Speaker, Sir, the Standing Committee on Health, Labour and Social Welfare was constituted on Thursday, 25th April, 2013 during the first session of the Eleventh Parliament pursuant to provisions of Standing Order No.117. The Committee executes its mandates in accordance with the provisions of Standing Order No. 206 and the Second Schedule from which it draws its mandate.

Mr. Deputy Speaker, Sir, the Standing Committee Members are as follows:-

Sen. (Dr.) Kuti - Chairman

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Sen. Kittony - Vice-Chairman
Sen. Onchwangi
Sen. Nyakieriga
Sen. ole Ntutu
Sen. Abdirahman
Sen. (Dr.) Machage and,
Sen. Madzayo.

Mr. Deputy Speaker, Sir, I wish to present the following report referred to the Committee by the Senate on 24th July, 2013 on the devolution of the responsibility of personal emoluments for nurses and clinical officers to county governments as requested by Sen. (Dr.) Khalwale.

In accordance with Standing Order No. 224, the Standing Committee on Health, Labour and Social Welfare, on Tuesday 5th August, 2013 deliberated on the nurses and clinical officers' petition laid on the Table of the House by Sen. (Dr.) Khalwale on 25th July, 2013. After lengthy deliberation, the Committee resolved that the Cabinet Secretary for Health was best placed to answer the petition as the Ministry was devolving its services. Consequently, the Committee wrote to the Ministry of Health on the subject matter. The reply on the petition was received on Thursday, 19th September, 2013 and the Committee deliberated on it the same day. The Committee in its meeting held on Thursday, 19th September, 2013 deliberated on the submission from the Cabinet Secretary for Health and observed as follows:-

(i) The county governments had not met the requirement for drawing devolved funds from the National Treasury and also had not acquired the necessary capacity to process payments. This had caused delays in payment of salaries in July, 2013.

(Loud consultations)

Mr. Speaker, Sir, the deliberations by hon. Senators are a little bit too high.

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, could we, please, consult in lower tones. You can consult, but do it in a manner that the Member can be heard.

Sen. (Dr.) Kuti: Mr. Deputy Speaker, Sir.

(ii) The Transition Authority (TA) brokered the arrangement for personal emoluments; that they will be retained at the national level for a minimum of six months or until the counties develop systems to handle payroll issues. The TA will ensure that capacity to manage payment of emoluments and to supervise delivery of health services is developed at the counties within the transition period. The Ministry of Health will pay emoluments to health workers up to December, 2013.

(iii) Individual counties will be in charge of their own health workforce.

The Committee adopted submission of the petition from the Cabinet Secretary for Health with minor amendments arising from the concerns that the devolution of staff

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emolument services will have an impact of both tying staff in the counties where they are currently employed or cause mass migration of health personnel to other counties that are apparently well endowed. This may raise staff motivation issues.

Mr. Deputy Speaker, Sir, I am glad that Sen. (Prof.) Lonyangapuo is looking and listening attentively because some of these counties do not have health staff or health professionals from their own counties. Sen. Billow should also pay attention to this because many medical staff in Mandera County are from other counties. We need to device a system which will make sure that when these emoluments are sent to the counties, they benefit people working in those counties. Some of them may not want to stay in Wajir, Pokot or Turkana because, maybe, they come from Murang'a, Meru or the upper part of the country. These are the facts because most nurses and other professionals come from these counties.

We have decided to allay the concerns and fears of the Ministry. They said that they feared some of the staff may demand to be transferred to their own counties after the emoluments have been devolved. So, as a Committee, we sat and realised that to overcome this challenge, we needed to give those counties which do not have their own staff a blanket commitment that these staff stay there for at least five years. In those five years, the staff can decide whether they want to continue staying or not. Should they decide to leave and maybe leave enmass and, therefore, create deficiency of staff in those counties, then we should give them the five years to ensure that they develop capacity, train their staff to avoid the shortage after the expiry of the five years.

With those comments, we adopted this petition and I am now laying it on the Table of the House. If there are any comments, the Standing Orders allow about 20 minutes of debate.

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

Sen. (Dr.) Khalwale: On a point of order, Mr. Deputy Speaker, Sir. This was my petition. The doctors and nurses petitioned this Senate through me and I want to thank---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, I wish to refer you to Standing Order No. 224(2). A petitioner brought a petition through you, I committed it to the relevant Committee and a report has been brought. The Standing Order No. 224(2) says clearly that no debate in relation to the report shall be allowed. So, the report has been laid on the Table. So, no debate or report shall be allowed, but the Speaker may in exceptional circumstances allow comments or observations in relation to the petition for not more than 20 minutes. So, it is not a right. The next thing that will happen within 15 days is that the report will be send to the petitioner. So, I have no application before me, for anybody to make any comments on the report of the Committee.

Sen. (Dr.) Khalwale: On a point of order, Mr. Deputy Speaker, Sir. In accordance with that Standing Order which allows that we make a comment, I want to

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request that I be allowed to acknowledge the excellent work that has been done by this Committee because this petition was made through me.

Dr. Okuti is my junior colleague in medicine---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, do you wish to make any comments on what Sen. (Dr.) Kuti has said?

Sen. (Dr.) Khalwale: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Okay, but you cannot debate. So, you should make an application that you wish to comment on the report of the petition and then state the exceptional circumstances; then I have to make a decision on whether or not to allow debate on it.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, the exceptional circumstances are that the Chair of the Committee has given a ceiling of six months and I want to be allowed to make a comment in view of that ceiling.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, because you are the one who brought the petition, I will allow you five minutes to make a comment on it.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, thank you so much. This is such a critical issue. I am glad that the Chairman is also a doctor of medicine like me, although he is my junior. Given that the Government has given a ceiling of six months, I would like the assurance from the Chairman of the Committee that the same Government, if they find that within six months, various counties or all the counties are not able to meet this particular requirement, they would give an extension. Otherwise, we run a real risk of all doctors and all nurses preferring to work in counties like Nairobi, Nakuru, Mombasa, Kakamega and Kiambu and the other far-flung counties would run into real problems.

I thank the Chair and I would like that reassurance.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Kuti, would you like to give a response to that very briefly?

Sen. (Dr.) Kuti: Mr. Deputy Speaker, Sir, it looks like my colleague in medicine did not listen to what I said. In fact, the provision has been given by the TA that until December, 2013, emoluments will be coming from the national Treasury. After that, it is those counties that have put in place the capacity to manage payrolls that will be devolved the functions of managing the payrolls of their health staff. After evaluation, for those counties which will not have come up with that, the services and emoluments will be coming from the national Government. So, it will not be a one off situation.

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, I assume there is nobody else who wishes to comment on that issue, so we proceed to the next order.

Sen. (Dr.) Khalwale: On a point of order, Mr. Deputy Speaker, Sir. Before we leave this particular order, last week, the Chair of the Committee on Agriculture, Land and Natural Resources told the Senate that he was going to respond on the important issue of COMESA safeguard measures that are currently protecting sugar farming in the sugar zones of the country. He was responding to a request for a Statement which I had raised three months ago. Today is the last day of the week---

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The Deputy Speaker (Sen. Kembi-Gitura): Are we at the correct position? We are now dealing with petitions.

Sen. (Dr.) Khalwale: Are we not on Statements?

The Deputy Speaker (Sen. Kembi-Gitura): We are not.

Sen. (Dr.) Khalwale: With due respect, I withdraw.

NOTICE OF MOTION

IMPROVEMENT OF TERMS OF SERVICE FOR MCAs/COUNTY PUBLIC SERVICE BOARDS

Sen. Kipchumba: Mr. Deputy Speaker, Sir, I beg to give notice of Motion to the Department of Devolution and Planning.

THAT, concerned that currently, Members of the County Assemblies (MCAs) and members of the County Public Service Boards are not adequately remunerated resulting in demoralization and disillusionment amongst the MCAs and the inability of county public service boards to attract and retain qualified personnel; concerned further that consultation with the Salaries and Remuneration Commission (SRC) on the matter has failed to yield any concession; aware that all county assemblies have, for a second time, adjourned indefinitely in order to press for improved terms; concerned that the trend will have adverse effects on devolution and service delivery in counties as envisaged in Article 174 of the Constitution; the Senate calls upon SRC to speed up the process of job evaluation for MCAs and Members of the County Public Service Boards to ensure that adequate remuneration and other terms of service are offered to them.

STATEMENTS

BUSINESS FOR THE WEEK COMMENCING 1ST OCTOBER, 2013

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I rise to issue a Statement on the Business of the Senate for the week commencing 1st October, 2013 pursuant to the provisions of Standing Order No.43(2).

Mr. Deputy Speaker, Sir, hon. Senators, pursuant to the provisions of Standing Order No. 43(2), this is to present the Senate Business for the coming week:-

Tuesday, 1st October, 2013, the Rules and Business Committee (RBC) will meet at 12.00 p.m. to schedule business for the Senate for the week commencing 1st October,

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2013. The Senate will continue on that day with the business on today's Order Paper that will not have been concluded.

Wednesday, 2nd October, 2013 in the morning, the Senate will continue with business not concluded on Tuesday 1st October, 2013; the Senate will also commence debate on a Motion by Sen. Kipchumba on remuneration and terms and conditions of service for MCAs and county public service boards.

In the afternoon on Wednesday, the Senate will continue with business not concluded on Tuesday and Wednesday morning, including a Motion by Sen. Kagwe regarding the connection of county headquarters to the fibre optic national network. The Senate will also commence debate on a Motion to adopt the report of the Standing Committee on Finance, Commerce and Economic Affairs on the irregular alteration to the Budget Estimates for Turkana County for Fiscal Year, 2013/2014.

On Thursday, 3rd October, 2013, the Senate will continue with business not concluded on Wednesday afternoon.

Mr. Deputy Speaker, Sir, I hereby lay this Statement on the Table.

(Sen. (Prof.) Kindiki laid the Statement on the Table)

Sen. (Dr.) Khalwale: On a point of order, Mr. Deputy Speaker, Sir. Thank you for the indulgence.

The Statement that has just been made by the Senate Majority Leader brings to light something that is starting to disturb me. The business that goes on in the RBC, how much do you try to pursue the various submissions that Members of this Senate have made? I have made submissions for three Bills; we have the Bill on the Flags and Emblems which has gone through the First Reading, but we are yet to hear when it will go through the Second Reading. I have a Bill on the seat of county governments. I also have another Bill on the amendment of the Political Parties Act, in respect of funding to political parties. It is important that as we tackle these important Motions, the RBC, gives us also an opportunity for us to move on to the next level of dealing with Bills so that they can become Acts of Parliament of the Senate of the Republic of Kenya.

The Deputy Speaker (Sen. Kembi-Gitura): Do you want to respond?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, thank you because the point of order was raised specifically with regard to the Statement that was made by the Senate Majority Leader.

I want to say that in accordance with the Standing Orders, the prioritization of business is the reserve of the RBC collectively as opposed to any particular person. It is for that reason that this is a Committee that is bipartisan and all parties are included just to make sure that no side is disadvantaged.

I want to agree with the Senator for Kakamega County in the sense that there has been a bit of slow movement, especially with regard to Bills. Regarding the first Bill that he mentioned; the National Flags and Emblems (Amendment) Bill, to the best of my

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knowledge, this is one of the Bills that were subject to discussion between this House and the National Assembly when a similar Bill was introduced in the National Assembly addressing the same subject matter. Therefore, it was felt that Article 110 which mandates a determination in such cases as to which House that Bill should go should be initiated. So, we can only remind the House that, perhaps, that is a Bill that requires urgent conclusion, but it is now the subject of Article 110 process.

Mr. Deputy Speaker, Sir, the other thing is actually to say that you can direct or guide this House whether it is in order to, for example, if I have submitted business as the Senate Majority Leader or an individual senator, or Senate Minority Leader, is there a way in which we can petition or maybe make the Rules and Business Committee see the urgency of some of these things? I say this because personally, I am a victim of Sen. (Dr.) Khalwale's predicament, notwithstanding that I am Leader of Majority. I submitted a long time ago the KEMSA (Amendment) Bill, 2013. Right now, we are staring at a crisis because we have health facilities, except national and referral hospitals, which are actually under county governments. However, the county governments have no capacity to procure, distribute and store drugs and vaccines. There is no legal framework to facilitate a national agency like KEMSA to service county governments within the law. So, I have introduced an amendment Bill to the KEMSA Act. But up to now, it is still somewhere in the system.

So, with due respect and without compromising my membership or the entire work of the RBC, there is need for some way of prioritization, especially to consider Bills as more urgent business than Motions. Again, the mandate is collectively vested on the RBC and unless the Speaker guides, I am not aware of a way in which an individual person who has submitted business before the Committee can urge or petition, where there is a delay.

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, with all respect to the Chair and to the Senate Majority Leader, I am concerned with his Statement. Would I be in order to seek further clarification because his statement implies that the RBC is unable to prioritize Business in this House?

The Deputy Speaker (Sen. Kembi-Gitura): Can we, first of all, dispose of Sen. (Dr.) Machage's point of order?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, with all due respect to the Senator for Migori County, I did not say that the RBC was unable to prioritize. I said two things; one, the mandate to determine which Business comes to the Floor of the House is given to the RBC, which is bipartisan and all parties are represented therein. But the second point I made is that, perhaps, we need some clarification in terms of the Standing Orders and practices as to whether there is a way in which people, parties or individual Senators who have submitted Business for consideration can petition where, for example, it is in their opinion that there is a delay of some of these things. But at the moment, I am not aware whether there is any requirement on the RBC to prioritize Business using any known criteria. I think in this time when we

are reviewing our standing orders, there should be some guidelines so that, that Committee can prioritize, in my opinion, certain matters which are urgent. Secondly, in my own opinion, if we have to be productive in this House, we are better off prioritizing and passing more Bills than Motions because of their legislative effect.

The Deputy Speaker (Sen. Kembi-Gitura): Order, hon. Members! We must bring this matter to a close. I will allow the last point of order by Sen. (Dr.) Khalwale; let it be short, please.

Sen. (Dr.) Khalwale: Thank you, Mr. Deputy Speaker, Sir. Indeed, I want to thank the Senate Leader of the Majority who is my junior in age and experience in legislative matters---

The Deputy Speaker (Sen. Kembi-Gitura): Is that relevant to your point of order?

Sen. (Dr.) Khalwale: Yes, Mr. Deputy Speaker, Sir. It is relevant to this extent; that in the Tenth Parliament, the House Business Committee (HBC) was a preserve of the Executive. But with benefit of hindsight, we then amended the standing orders so that Members of the Opposition would have representation on the HBC, which has become in this particular Senate, the RBC. The reason was that Members of that Committee from the Executive were only fast-tracking Government Business and ignoring private Members' Business. So, the reason we have Members of the Opposition on this Committee today, with all due respect to the Senate Leader of Majority, is so as to be sensitive to private Members Motions. Therefore, it would be wrong for the Senate Majority Leader to mislead this House and the nation that a Motion can take precedence to a Bill. The Senate and the National Assembly were deliberately formed for legislation. It is the Bill that will give life to new Acts of Parliament. Therefore, if the RBC is not giving precedence to Bills, it means, with all due respect, that the RBC is sleeping on the job. Bring the Bills; we want to enact laws.

The Deputy Speaker (Sen. Kembi-Gitura): I do not want this to become argumentative because that was not a point of order in the first instance; that was an argument. We can bring this matter to a close and proceed to other Business. We must move on, on these issues.

What is it, Sen. (Prof.) Kithure?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you, Mr. Deputy Speaker, Sir. First, Sen. (Dr.) Khalwale is my senior in age, but he is my junior in this House. That position must be reaffirmed all the time.

Secondly, Mr. Deputy Speaker, Sir, I did not at any point say that Motions should supersede Bills. In fact, I said on the contrary; I said that Bills should be prioritized.

Lastly, in terms of the way forward, the most important thing is what solutions we are offering. I speak now as just one of the Members of the RBC. Going forward, I think the secretariat and the Clerk should even be able to disclose to Members ahead of time what Motions and Bills have been submitted. Currently, we go there and we just get a file of what the Speaker has determined. So, that is why I said there is a way in which we can

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make this better so that we can, also as individual Members, take individual responsibility for fast-tracking some of the things which, in our opinion, are more urgent than others. But Bills, of course, are better placed to come before Motions.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Next Order. Are we still on Statements?

Yes, what is it, Sen. Billow Kerrow?

MILITIA ATTACK ON GOVERNMENT
OFFICES IN MANDERA TOWN

Sen. Billow: Thank you, Mr. Deputy Speaker, Sir. I seek a Statement from the Chair of the Committee on National Security and Foreign Relations on an incident that happened last night. Last night at around 2.30 a.m., there was an attack on an Administration Police (AP) and District Officer's (DOs) Headquarters in Mandera Town by a heavily armed militia, where they used heavy artillery to destroy the entire DOs office, which was completely demolished. The administration chief's office was also demolished, one AP officer was killed and four of them were badly injured. Up to seven vehicles that were packed in the compound of that office were also destroyed completely.

Mr. Deputy Speaker, Sir, that is right in the heart of the township. This is not the first incident in the last three months. This is the fifth incident. You will remember that only two months ago, they also attacked the police canteen in the police lines in Mandera Police Station where they killed somebody. Since then, there have been several attacks on AP offices. The road between Arabia and Mandera Town has completely been taken over by militia from across the border.

Therefore, Mr. Deputy Speaker, Sir, I seek a Statement from the Chairman of the Committee on the following areas.

(1) What action has the Government taken since this incident and, in particular, whether the Government has arrested any suspect with regards to this and the previous incidents?

(2) Whether this incident is linked to the terror attack at Westgate Mall because of the fact that at the same time last night, there was also an attack in Wajir, in which some people were also killed. The suspected bandits are people we believe are part of the *Al Shabaab* who are coming across the border in Somalia.

(3) Lastly, if the hon. Senator can also give us the measures that the Government will put in place to deal with the deteriorating security situation in Mandera and those regions in particular because of these escalated attacks by this group.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Yusuf Haji, this Statement is directed to you.

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

What is it, Sen. (Dr.) Khalwale?

Just a minute, Sen. Haji.

Sen. (Dr.) Khalwale: On a point of order, Mr. Deputy Speaker, Sir. Indeed, my sympathies to the people of Mandera and Wajir counties who went through this last night. But could the Chairman also further come with an answer that will confirm whether the National Intelligence Service (NIS) gave them prior intelligence on the---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. (Dr.) Khalwale! Are you supplementing the statement sought by Sen. Billow?

Sen. (Dr.) Khalwale: Yes, I am, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Is that a point of order, Sen. (Dr.) Khalwale?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir---

The Deputy Speaker (Sen. Kembi-Gitura): Order! I think we need to do things correctly because Sen. Billow gave thought to the Statement he is seeking. I am sure he knows exactly what it is he wants to do. So, what I would suggest you to do is that you should wait until that Statement is given and then you can make supplementary comments on it.

Sen. (Dr.) Khalwale: Thank you, Mr. Deputy Speaker, Sir. With due respect and, please, for your indulgence, I was requesting in advance that he comes with more information on this very critical issue because it is already in the public domain that even at the Westgate, the NIS had already given intelligence. So, we want to be sure that in the instance of Wajir and Mandera incidents, the NIS had given intelligence and the police, once again, slept on the job. They did not take action. He should come up with that information because it is important.

The Deputy Speaker (Sen. Kembi-Gitura): But what I said still stands; that you are now raising supplementary issues.

Sen. Haji, can you, please, tell us when you will give the Statement?

Sen. Haji: Mr. Deputy Speaker, Sir, while I send my condolences and sympathy to the people of Mandera and Wajir counties, I want to state that, as we all know, *Al Shabaab* had vowed that they were going to revenge against Kenya. My suspicion is that their raid in Kenya was outside the sector which is being looked after by the Kenya Defense Forces (KDF). Maybe when I am going to give the answer on Tuesday, next week, I will try to address that issue also because I very strongly feel that the KDF can go and finish these people. However, because it is not in their sector, they are not able to go to Mandera, Wajir and other places. So, we will see how we can go about this in order to put these things to an end.

The Deputy Speaker (Sen. Kembi-Gitura): Very well! Tuesday, next week.

Sen. Billow Kerrow, are you seeking another Statement?

Sen. Billow: Mr. Deputy Speaker, Sir, yes; there is an answer to a previous statement sought by the Senator for West Pokot that I wanted to give.

The Deputy Speaker (Sen. Kembi-Gitura): Okay; let us start with Sen. (Prof.) Anyang'-Nyong'o first.

INSECURITY ALONG THE BORDER OF
NANDI/KISUMU COUNTIES

Sen. (Prof.) Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, like my colleague, Sen. Billow Kerrow, I stand to seek a Statement from the Chairman in charge of National Security and Foreign Relations regarding incidents of insecurity along the Nandi/Kisumu County border in the area where we find Songo, Chemelil and Kopere residential and farming places.

Mr. Deputy Speaker, Sir, over the last couple of months, there have been skirmishes in this border area where heads of cattle have been raided; sometimes both ways, and lives have been lost. At least, four people were killed not too long ago and no investigation has been done to establish who did it. These skirmishes have continued.

Mr. Deputy Speaker, Sir, I would like to know:-

(1) What action the Government is taking to use Government security agencies such as the Anti-Stock Theft Unit (ASTU) and the AP to reinforce the work done by the regular police, who have been overwhelmed; to ensure that peace and security exists in the area.

(2) Whether the Government can give us an updated report on those who have been killed and the cattle stolen? What compensation can be given to those adversely affected?

(3) What investigations have been done to establish those who have been killed and the safety of their families? And, finally,

(4) To what extent the Government is taking action to ensure that my neighbour, Sen. Sang, myself and other leaders can sit together at this border so that there can be an understanding of a lasting peace between these two communities, which for a long time have lived peacefully together?

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Billow Kerrow, first of all, for Senator---

(Off record)

That is also directed at Sen. Yusuf Haji. Can you, first of all, respond and tell us when you will give us that Statement?

Sen. Haji: Mr. Speaker, Sir, I will try to give this Statement on Thursday. But in the meantime, I want to appeal, as my brother, Sen. (Prof.) Anyang'-Nyong'o, is saying;

that the leaders of that area should quickly sit together and discuss how to resolve the differences among the communities there.

The Deputy Speaker (Sen. Kembi-Gitura): Very well! Thursday it is. Proceed, Sen. Billow.

IMPLEMENTATION STATUS OF VISION 2030

Sen. Billow: Thank you, Mr. Deputy Speaker, Sir. On Thursday, 11th July, 2013, Sen. (Prof.) John Lonyangapuo of West Pokot County requested for a statement relating to the implementation status of Vision 2030 as follows.

He wanted to know the implementation progress of Vision 2030, the gains achieved so far, noting that the Medium Term Plan (MTP) has ended, the plans for the future and whether the Government was committed to its implementation or whether it would be revised. The response we obtained from the Ministry of Devolution and Planning is as follows.

Vision 2030 is the country's long term development blueprint that aims to transform Kenya into a newly industrialized, globally competitive and prosperous middle income nation with a high quality of life to all its citizens by 2030.

Vision 2030 is being implemented through a series of successive five year Medium Term Plans (MTPs). The first MTP should have been achieved between 2008/2012. With regard to the first MTP period, the Government has published four annual progress reports on its implementation. This Financial Year, 2013/2014, the Government will prepare an end term progress report on the implementation of the first MTP.

The first MTP of 2008/2012 of Vision 2030 made many considerable achievements including:-

- (a) In the initial period of the MTP, a number of projects aimed at national healing and reconciliation following the post election violence were implemented.
- (b) Enrolment in early childhood increased by 40 per cent from between 1.7 million to 2 million in 2008 to 2.4 million in 2012.
- (c) The transition rate from primary to secondary education increased from 64 per cent to 77 per cent by 2012.
- (d) The number of students enrolling for university education increased by 103 per cent from 118,239 in 2008 to 240,551 in 2012.
- (e) A total of 2,200 kilometres of road were constructed during this MTP exceeding the target of 1,500 kilometres.
- (f) The free undersea sub marine fibre optic networks linking Kenya to the global internet networks were completed, including 5,500 kilometres of terrestrial fibre optic network.
- (g) The total installed capacity for generation of electricity increased by 22 per cent.

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(h) The Judicial and Police Reforms is something Senators are familiar with. They were carried out during this period, including the reforms in the Independent Electoral and Boundaries Commission (IEBC).

(i) The Constitution of Kenya, 2010 was also promulgated during this period.

There are also other key flagship projects that have commenced, which I will not go into detail. For example, the Lamu-South Sudan- Ethiopia Transport (LAPPSET) Project was also part of it. There is also the railway project from Mombasa to Kisumu whose finances have been obtained. We will commence this soon. There is also the commuter railway within Nairobi City which has partly been completed. Other achievements are the terminals at the Jomo Kenyatta International Airport (JKIA), the new berth at Kenya Ports Authority (KPA), among other things. Most of this information is available in the website.

Regarding future plans, I would like to note that the Government is in the final stages of preparing the second MTP of Vision 2030 which identifies key policy actions, reforms as well as programmes and projects that the Government intends to implement in the period 2013 to 2017. After the official launch of the second MTP, a sessional paper will be prepared and tabled in Parliament for validation and endorsement. This launch of the second MTP was to happen last week, but was adjourned due to crisis.

Lastly, the Government tabled Vision 2030 before the Tenth Parliament last year in November, 2012 as a sessional paper. After the Debate, the blueprint was passed as Sessional Paper No.10 of 2012 making Kenya Vision 2030 the official long term development framework for the country. As indicated in the implementation framework, it will be implemented in five-year medium term development cycles which provide the required avenue for taking cognizance of any new development in socio-economic environment or any other pertinent changes; hence, the blue print will not be revised. For example, the second MTP, the 2013 to 2017 one, has added oil and minerals sector in the economic pillar. The national values and ethics and climate and disaster management are in the foundations of the other pillars. That is the response to the hon. Senator.

Sen. (Prof.) Lonyangapuo: Mr. Deputy Speaker, Sir, I stand to thank my colleague and the Government for the response that has been given. However, there are some aspects that did not come out clearly, especially with regard to the first medium term plan which was supposed to be for five years and which ended last year.

In Vision 2030, Industrialisation was supposed to be the key driver if we were to move from a Third World Country to a Middle Income Economy by 2030. Some key development agendas were supposed to have been done. For example, agro-based industries were supposed to be set up in Kisumu, Eldoret and Nakuru within the first five years. I did not hear that from the report. On the contrary, some industries have closed in Eldoret, for example, Corn Products Kenya Limited (CPC) which was a very huge employer and consumer of farm products. It no longer works. Some products are not also used, for example, Rupa in Eldoret among others. The situation is the same in Nakuru. There was supposed to be a huge retail building in Kiambu---

The Deputy Speaker (Sen. Kembi-Gitura): What clarification are you seeking?

Sen. (Prof.) Lonyangapuo: Mr. Deputy Speaker, Sir, I seek to know why the targets envisaged were not achieved. Lastly, now that we have counties operating under a devolved system of Government, I had asked whether there are plans to have 47 small units of the Vision 2030, so that these issues are addressed and, in the process, ensure that the Vision is anchored in every county.

Sen. Kajwang: Thank you Mr. Deputy Speaker, Sir. When I heard the Chairman talk about enrolment in primary schools and other social issues, I thought that he was talking about the Millennium Development Goals (MDGs). Of course, the MDGs are part of the bigger Vision 2030. However, I did not hear him mention in the first MTP which ended in 2012, what we achieved in relation to what we intended to achieve by 10 per cent, 20 per cent or 30 per cent. It is only then that we can know that we are making progress.

He mentioned, of course, the railway which has not even commenced. He also talked about LAPPSET which is still a vision, among other things. However, there are many flagship projects which should have been flagged off as already complete by 2012. So, to what extent can we say we have achieved what we set out to achieve?

Sen. Billow: Mr. Deputy Speaker, Sir, the Senator for West Pokot County sought clarification on the industries. I agree with him that in the economic pillar, manufacturing or industrial development is among the six sectors targeted. The other five include; tourism, agriculture and so forth. Vision 2030 focuses on the long term development of all these sectors.

Basically, the key ingredients that go into these sectors are what have been focused on. For example, industrial development is not about addressing whether a particular factory is running, has been shut down or is still operating. This is a question of developing the human capacity required for industrial take off. I think the Government has put in a lot of focus especially in the area of setting up technical and vocational institutions. Forty-five of them have been put up across the country to try and develop up to one million artisans who can participate in the industrial development of this country.

The second major issue in industrial development is how to be globally competitive in terms of the cost of production. The focus has been to try and develop energy so as to try and bring down the cost of energy. This focuses on infrastructure so that roads and other infrastructure are developed so that the cost of production comes down and, industries and factories in this country become globally competitive.

I agree that specific industries have been facing challenges which are largely in the areas of inputs and international competition which has affected the development of the specific industries. That is the focus in terms of building the foundation for industrial development which is still the focus of the Vision.

The second point he raised was whether Vision 2030 can be fabricated in the 47 counties. That will be the decision of the respective county governments. I am sure each county government is mandated, by law, to develop their own development plans and

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policies. Whatever plans and policies counties develop as their blue prints for development should dovetail into the national Vision 2030. That is the point that the Senator raised which we appreciate.

The second point by Sen. Kajwang on the percentages achieved; if you look at all the pillars; economic, social and political, you will see that there are many targets that have been laid down. I do not think it was possible to go through, in this response, all the achievements and put a percentage across the board. As I said, in my last point, that in 2013, at the end of this year, the Government will prepare an end term progress report on the first medium term. That is when we will look at all the sectors and pillars and see how much has been achieved.

For instance, in some pillars like the political one, when we achieved the Constitution, the promulgation of the Constitution becomes a 100 per cent achievement. However, if you look at other areas, we may not have achieved 100 per cent, but about 30 per cent or 80 per cent. Judicial reforms could be at 80 per cent. When you look at university students' enrolment, you will see that this had gone up by 103 per cent over what had been targeted. So, this varies from target to target. However, after the end of year report is finalised at the end of this financial year, the hon. Senator will get a response in detail for each of those sectors.

ALLOTMENT OF MASONGALENI SETTLEMENT SCHEME

The Senator for Makueni (Sen. Mutula Kilonzo Jnr.): Thank you, Mr. Deputy Speaker, Sir, for recognizing me. I rise to request for two Statements. The first one is from the Chairperson of the Standing Committee on Agriculture, Land and Natural Resources. The Statement relates to the allotment of Masongaleni Settlement Scheme in Kibwezi East Constituency, Makueni.

Mr. Deputy Speaker, Sir, these people were relocated from the Kyulu Hills more than 15 years ago, allocated land and then given letters of allotment. This has turned out to be a nightmare for them. In the Statement, I would like the Chairperson of the Committee to state the following:-

- (a) the number of persons issued with the allotment letters;
- (b) the size of land allotted to each person;
- (c) whether there is a database for the persons issued with allotment letters;
- (d) whether survey and subdivision of the said land has been carried out and beacons placed; and,
- (e) the reasons for the delay in the issuance of title deeds.

CONTRACT FOR CONSTRUCTION OF
MAKUTANO-KIKIMA TOWER ROAD

Mr. Deputy Speaker, Sir, allow me also to make a request to the Chairperson of the Standing Committee on Energy, Roads and Transportation. The Statement relates to a contract for the construction of Makutano-Kikima Tower Road D517.

Mr. Deputy Speaker, Sir, you will appreciate that this contract was awarded way before the construction of the Thika Superhighway, but as I speak, this road is still incomplete. I would like the Chairperson of the Committee to address the following:-

(a) state whether he is aware that the contract for the construction was awarded to Victory Construction Company at a sum of Kshs1,895,094,559.84 and a contract period for 24 months, starting from 12th September, 2007 and lapsing on 13th September, 2009;

(b) explain why six years later the work is incomplete, yet it should have been completed within two years;

(c) state how much money has been paid so far for the work that has been completed and whether there has been an allocation this financial year;

(d) explain why the contractor has left the site, yet the work is far from being completed;

(e) state how long it would take for the portion that is not completed, in particular, Kikima Market and Kyambalasi-Makutano Junction.

Mr. Deputy Speaker, Sir, allow me to lay the request for the Statement on the Table.

(Sen. Mutula Kilonzo Jnr. laid the document on the Table)

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senators! Sen. Mutula Kilonzo Junior has sought two Statements. Of course, it would have been one by one, but that was his Maiden Speech also. So, it was not in my place to want to interrupt him. I want to congratulate you, once again, on your election.

Chairperson of the Committee on Agriculture, Land and Natural Resources, when can we have an answer to the first question?

Senate Majority Leader, the Chairman of the Committee on Agriculture, Land and Natural Resources is not here. Maybe you can help us to know when Sen. Mutula Kilonzo Junior will get his answer.

The Senate Majority Leader (Sen. (Prof.) Kindiki): In two weeks, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Is that okay, Senator?

Sen. Mutula Kilonzo Jnr: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you. He has sought the Statement from the Chairman of the Standing Committee on Energy, Roads and Transportation. Is he here?

Again, Senate Majority Leader!

The Senate Majority Leader (Sen. (Prof.) Kindiki): Two weeks also, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Is that fine, Senator?

Sen. Mutula Kilonzo Jnr: Yes, Mr. Deputy Speaker, Sir.

STATUS OF THE OLDER PERSONS CASH
TRANSFER PROGRAMME

Sen. (Dr.) Kuti: Mr. Deputy Speaker, Sir, I stand to give a Statement, as sought by the distinguished Senator for Pokot, Sen. (Prof.) Lonyangapuo.

Mr. Deputy Speaker, Sir, in his Statement, he sought to know the progress of the cash transfer to the elderly people. In particular, he wanted to know when the full rollout will happen.

Mr. Deputy Speaker, Sir, I wish to answer as follows. The Older Persons Cash Transfer Programme was initiated in the Financial Year 2006/2007, as a social protection strategy in Kenya. In 2007, it started in three districts, Busia, Nyando and Thika as a pilot project. It covered 100 households per district and Kshs1,000 was paid to each household. The programme targeted older persons with disabilities and those with deteriorating health conditions. The Government allocated about Kshs4 million towards that pilot programme.

Mr. Deputy Speaker, Sir, in 2009, the Government gave additional funding of Kshs550 million and it was scaled up to cover 44 districts. The transfer was increased from Kshs1,000 per beneficiary to Kshs1,500. Each implementing district targeted about 750 older persons of 65 years and above. In Financial Year 2010/2011, the Older Persons Cash Transfer Programme got an allocation of about Kshs530 million, which was increased to Kshs1 billion in the Financial Year 2011/2012. At this point, the programme was scaled up to cover the 210 constituencies, with each constituency targeting 23 households.

Mr. Deputy Speaker, Sir, in the Financial Year 2012/2013, the allocation was further increased to Kshs1.5 billion. This prompted targeting of an additional 150 beneficiary households per constituency. In the current year, 2013/2014, the allocation is now Kshs2.85 billion. The amount per beneficiary has remained at Kshs2,000 per month and is disbursed monthly through the Postal Corporation of Kenya. Currently, the programme is targeting the approach of using the constituency as the geographical and administrative entry point for the identification of beneficiaries. In this regard, the Older Persons Cash Transfer Programme now covers 290 constituencies in this country. The number of beneficiaries ranges at a minimum of 173 to 750 households per constituency.

Mr. Deputy Speaker, Sir, the mainstreaming and sustainability measures in place to support the Older Persons Cash Transfer Programme are two-fold. One is the policy level intervention, through the overall mandate of the ageing held in the department. The

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National Policy on Older Persons and Ageing has now been reviewed and aligned to the Kenya Constitution (2010) and is awaiting stakeholder validation before being presented to the Cabinet. The implementation of this policy promotes care for the elderly citizens in Kenya, by proposing establishment of a National Advisory Council of Older Persons and Ageing; and mainstreaming older persons' concerns in all developmental issues.

Mr. Deputy Speaker, Sir, at the programme level, strategies have been put in place that ensures that individual beneficiary households are supported once the targeted beneficiary exits the programme through provision of cash stipends for a period of six months or three subsequent payments. Capacity building activities for beneficiaries and their caregivers to support income generating activities are also continually undertaken by officers, both at the district and national levels. In the current financial year, beneficiaries are now being encouraged and supported to form beneficiary welfare groups, through which any form of psychosocial support, along with other linkages by other stakeholders at community level, will be channeled going forward.

Mr. Deputy Speaker, Sir, I beg to lay the Statement on the Table.

(Sen. (Dr.) Kuti laid the Statement on the Table)

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Prof.) Lonyangapuo, this is your Statement. Do you want to seek a clarification?

Sen. (Prof.) Lonyangapuo: Mr. Deputy Speaker, Sir, I want to thank my colleague for giving us a very detailed presentation.

Mr. Deputy Speaker, Sir, I do not know whether you are in the same category as me. Anytime I go to the county and hold a meeting, all the old people in that meeting stand and ask: "When will we be paid our stipend that the Government approved?" They show you an example of one of them who gets this money and looks healthier than the rest. I think that this programme is very healthy because it is like we are caring for the people who mattered most when they were young. For this reason, I want to seek more clarification as to when we are rolling out this programme fully in all the constituencies. Sen. (Dr.) Kuti has talked about constituencies. However, I am talking about districts, locations, sub-locations and villages. These are the people who walk with the history of the Republic of Kenya. If we can continue being with them for a long time in this world, the better. Could we know when this can be done, so that I can have a very good answer to tell these citizens whenever I go home?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Kuti, I am sure that you are noting them down.

Sen. G.G. Kariuki: Mr. Deputy Speaker, Sir, I hope that the Chair is listening because this is a very serious matter. Although we are not going to ask the Chairman for the names, would he be able to lay on the Table the Statement, qualifying all what he has said, so that it can be followed? As things are today, it is very difficult to agree with the Statement that the Chairman has just read. This is because in some constituencies, that

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thing has never been heard of. People ask almost everytime: “We want to know the amount of money budgeted for that purpose.” Immediately, how much money has been given to a constituency? As has been happening before, everybody would tell you that, that money was just kept somewhere to be “eaten” by men and women in high offices.

Sen. Kagwe: Mr. Deputy Speaker, Sir, I will go a bit further than my colleague, Sen. G.G Kariuki, and ask whether, indeed, is it not possible to give the names of the actual beneficiaries, constituency by constituency, because they are not many? As my colleague has just said, I have only heard questions, but not met an old man or lady who is actually getting this money and yet, in the report, you will see people from Nyeri, Mukurueini and so on. For the benefit of this House, would it be possible for the Chairman to table the names of the actual beneficiaries, at least, county by county, so that even a chief can be told to check whether people in his area are getting this amount of money? So, if you had tabled sub-location by sub-location, it would be very satisfying.

Sen. Karaba: Mr. Deputy Speaker, Sir, I am of the view that, that is more of fiction than reality. I am not sure whether what we have been given by the Chairman is true because in my county, leave alone the constituency, that programme is not there. Even when I was a Member of Parliament that programme was not there in my constituency. It has never been there. Maybe it exists in some few selected areas. If there is such existence, that programme should be scrapped, because we are made to appear like we are the people who are getting the money and yet, it is not forthcoming. So, the names should be tabled here, by age, so that we can get to know who is supposed to get and who gets it. This is because there could be some corruption which is involved in this aspect. This is something very serious that should be followed up.

Sen. Musila: Mr. Deputy Speaker, Sir, you heard the Chairman say that right now, the Government is disbursing Kshs2.6 billion. By all standards, that is a lot of money. If I were to give an example of Kitui County, that money does not exist. If it does, it is only, perhaps, to a small area. The Ministry has always said that it is a pilot scheme. For how long is this pilot scheme going to go on when our people are sinking in poverty? We want him to tell us when he will lay the list that has been requested on the table so that we can take our pages and go to the counties and go and ascertain whether it is true that these people are receiving this money.

Sen. Kajwang: Mr. Deputy Speaker, Sir, first, I would like to ask the Chairman to speak to the Cabinet Secretary and his staff to change the name from “older people” because that is not very definitive and say “senior citizens”. That would be a more kind word.

However, at least I can confess - but I am not sure whether it is this programme - that in one location in my former Mbita Constituency, there were some old people above 65years in one sub-location who were getting this stipend. Whenever I go to another sub-location they ask me why people from that sub-location are getting and not theirs. When you go to another Constituency, it is also just one sub-location or another. It was

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supposedly a poverty pocket kind of thing. Could he explain to us whether now it has moved from poverty pockets to broadly 750 persons and how they identified them?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I want to thank the Government for continuing this programme that was started by the Government of President Kibaki. The Chairman has told us that this programme has been rolled out to all the 290 constituencies. I am appalled because in Kakamega County, this programme does not exist in Nabakholo Constituency, Mumias West Constituency, Ileho Division of Shinyalu Constituency, Idakho North of Ikolomani Constituency and so on and so forth.

Could we give the Chairman time to come and lay on the table of the House the exact detailed list of beneficiaries, constituency by constituency, so that we can be sure that this noble programme has now not been subjected to the rock and roll of corruption that exists in Kenya? With the benefit of hindsight, we now know that elements of the former Provincial Administration are used in identifying beneficiaries. Could the Chairman also tell us whether this is the reason some of the beneficiaries are “ghosts” in Ikolomani South, a place called Eregi, where Sen. Kajwang’s wife comes from? There are beneficiaries who actually do not receive the funds. It is important that we do not rush these things so that the proper detail is laid out and we involve the Members of Parliament with the Constituencies Development Fund Committees (CDFC) because they are connected in all the constituencies. We should also involve Members of the County Assemblies in identifying these people, so that the right people benefit.

Sen. (Dr.) Kuti: Mr. Deputy Speaker, Sir, I appreciate the concerns by distinguished Senators. I think this is a very noble programme. It is true the leaders should be involved and should know whether the targeted people are actually getting this money.

With regard to Sen. (Prof.) Lonyangapuo’s question on the full implementation, as I had stated earlier, according to the Statement that I read, Kshs2.685 billion has been disbursed this financial year to 290 constituencies. It is important that the hon. Senators also do further interrogation to find more information. Sometimes this process is undertaken through the Ministry of Social Service---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Kuti, as the Chairman of the Committee, you have clearly heard the concerns of the Senators and you also represent a county with constituencies. They have raised very legitimate issues. If you think the issues they have raised are legitimate, is it possible for you to comply with the request that the Senators have made? It does appear like not so many people are benefiting.

Sen. (Dr.) Kuti: Mr. Deputy Speaker, Sir, I would like to, first, address the issues raised so that everybody is aware of what I am required to deliver. First, they requested that I give a full implementation report, how people are identified and the specific names of the beneficiaries per constituency. Sen. Kajwang also suggested that we change the name to “senior citizens”, which I will discuss with the Ministry and also the

involvement of the former Provincial Administration. I owe it to the House to produce this information.

When I was a Member of Parliament for Isiolo North, I almost lost my seat because we have two constituencies in Isiolo County, but this programme was only implemented in Isiolo South and not in Isiolo North. Even to make matters worse, I was a Cabinet Minister of the Government. Everybody would ask why this money was going to Isiolo South and not Isiolo North and yet, I was in Government. It was a big war for me to fight whereas at that time it was at the piloting stage.

Mr. Deputy Speaker, Sir, I would like to assure the House that I will get those details. Secondly, I will also get information on how corruption, which is a matter of concern to all of us, is being tackled. I will also go ahead to find out the members of the committee that sits to vet. I will also try to find out whether elected leaders are part of that committee. If not, they should be included.

Thank you.

The Deputy Speaker (Sen. Kembi-Gitura): You did not indicate how soon you can give that further enhanced report.

Sen. (Dr.) Kuti: Mr. Deputy Speaker, Sir, since this is a countrywide report involving counties, districts, locations and even sub-locations, I will seek ample time; maybe about two months.

Hon. Senators: Oh no!

The Deputy Speaker (Sen. Kembi-Gitura): Order, hon. Senators! Sen. (Dr.) Khalwale said that we better not rush this issue so that we can get it right and I agree with him. However, on the other hand, this is a very sensitive issue and it is affecting all of us in the country. Since the records are there, although it is a countrywide situation, it is imperative that we get that information in a structured way. It is important for us to know the people benefiting and how they are selected. It is also important to know, when one beneficiary dies, does it go to his or her estate? Does it continue to benefit the household or is it diverted to another deserving person? I think that is very important information. But two months is a long period. Could you try it for one month in the first instance?

Sen. (Dr.) Kuti: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you very much. We need a very comprehensive report on that issue. The issues which have been raised by the Senators are very important and they affect all of us.

Sen. (Dr.) Kuti: Mr. Deputy Speaker, Sir, in the event of death of a beneficiary, I had stated in the Statement that three consecutive stipends are sent and then it is stopped.

The Deputy Speaker (Sen. Kembi-Gitura): Let us have that report in 30 days. We shall appreciate very much. That settles those interventions.

COMMUNICATION FROM THE CHAIR**ELECTION OF SENATOR TO PRESIDE OVER SITTING PURSUANT TO
STANDING ORDER No.18 AND ARTICLE 107(1) OF THE CONSTITUTION**

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, before we go to the next Order, I would like to make a brief Statement. As you are aware, the Speaker of the Senate is away on official duty. He will be away for about ten days or so. I am around as the Deputy Speaker, but we have the Chairman's Panel of two persons; Sen. Ongoro and Sen. Murkomen who are also out of the country. In short, I am alone in this duty in that specific area.

I will propose this and I have proposed it before; that it is not feasible that one person can be on the Chair continuously for all the period of the sitting. The Constitution and the Standing Orders are clear. If you look at Standing Order No.18 and also Article 107(2) of the Constitution, they provide for a situation where the Speaker and the Deputy Speaker are not available to perform their duties. I am available, but I may want to step out of the Chamber. In that case, we must have somebody who will stand in as a Temporary Speaker, not in the Speaker's Panel because that has been filled as per the Standing Orders, but somebody who will be a Temporary Speaker for the purposes of that day. We have even done it before.

My proposal is that even today we need to elect a Temporary Speaker under Article 107 of the Constitution and under Standing Order No.18, so that in case I have to be out of here, there is no impasse in the House and the business continues. As all of you are aware, there can never be a vacuum in the proceedings of the House. So, we shall do an election of an interim Temporary Speaker who will assist me today. On Tuesday and until the Chairman's Panel is here again, we shall follow the same procedure.

If that is acceptable, the Senate Majority Leader can help us to proceed on that matter.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Billow Kerrow, is it on the same issue?

Sen. Billow: Mr. Deputy Speaker, Sir, I am privy to some discussions that the hon. Senator for Migori, being the only Senator with a lot of white hair on his head which is a sign of many years--- We propose that he holds the fort briefly.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): What is it, Sen. (Dr.) Machage?

Sen. (Dr.) Machage: On a point of order, Mr. Deputy Speaker, Sir. I accept.

(Applause)

But as I accept, I would want you to protect me from a very "young boy" in the name of the Senator for Kakamega---

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(Laughter and applause)

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Machage, before you accept---

(Loud consultations)

Order, Sen. (Dr.) Machage! Thank you for the intimation. You are going to tell us who you want to be protected against, but you have to follow the procedure.

Hon. Members, Sen. (Dr.) Machage has been proposed and seconded. I will now put the Question.

Hon. Senators: Yes.

(Question, that Sen. (Dr.) Machage be elected to preside over the sitting, put and agreed to)

Sen. Kajwang: On a point of order, Mr. Deputy Speaker, Sir. Now that Sen. (Dr.) Machage will be acting as the Temporary Speaker, he can now protect himself against Sen. (Dr.) Khalwale.

(Laughter)

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

Sen. (Dr.) Machage, do you want to grace your position or are you satisfied?

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, it is an honour to have that delegation by the Members of this House. I accept it. I will not protect myself from Sen. (Dr.) Khalwale because he has silently apologized to me.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you very much.

Let us move on to the next Order.

MOTIONS

RELOCATION OF THE SENATE PLENARY SITTINGS FROM KICC TO COUNTY HALL

THAT, noting that the Senate held its first sitting on 28th of March, 2013 at the Amphitheatre of the Kenyatta International Conference Centre (KICC); aware that the Senate has been holding its sittings at Shimba Hills Room at the KICC; noting that the Shimba Hills room is not

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suitable for the deliberations of the Senate; aware that the Parliamentary Service Commission is mandated to provide services and facilities to ensure the efficient and effective functioning of Parliament; cognizant that the Rules and Business Committee visited the debating chamber at the County Hall on Wednesday 25th September, 2013 and found it ready for occupation; the Senate resolves to move its sittings to the County Hall Chamber with effect from Tuesday, 15th October, 2013.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Members! If you look at your Order Paper, you will see that Order No.8 is a Motion by the Senate Leader of the Majority. It is a Motion to do with the relocation of this House from Shimba Hills where we have been operating from to the new Chamber at County Hall. But the Senate Majority Leader has intimated to me and requested me to allow him to suspend this Motion. This is because he would like to do some further consultations on the matter. The issue still stands, but he would like to do some further consultations and I have acceded to his request that we should suspend Motion No.8 for now. We can discuss it next week, as the need shall arise.

(Motion deferred)

So, we can now proceed to the next Order.

ADOPTION OF REPORT ON COUNTY GOVERNMENT CASH
DISBURSEMENT SCHEDULE FOR FISCAL YEAR 2013/2014

THAT, pursuant to the provisions of Section 17(7) of the Public Finance Management Act, the Senate adopts the report of the Standing Committee on Finance, Commerce and Economic Affairs on the County Government Cash Disbursement Schedule for Fiscal Year 2013/2014.

(Sen. Kagwe, on behalf of Sen. Billow, on 25.9.2013)

(Resumption of debate interrupted on 25.9.2013)

The Deputy Speaker (Sen. Kembi-Gitura): This is a Motion by the Chairperson of the Finance Committee and Economic Affairs Committee. It is a resumption of debate.

Sen. Kagwe: On a point of order, Mr. Deputy Speaker, Sir. I moved the Motion on behalf of the Chairman at the time. Basically what had happened is that the Motion had been moved and seconded, but the Question had not been proposed as you were leaving.

The Deputy Speaker (Sen. Kembi-Gitura): Take your seat, Sen. Kagwe.

(Question proposed)

Sen. Billow: Thank you, Mr. Deputy Speaker, Sir. This is a legal responsibility of this House and as the Motion says, the law is very clear. Section 17 of the Public Financial Management Act Public Finance Management (PFM) Act as amended by the County Allocation of Revenue Act requires that schedule. If I can actually read Section 7(5), for the benefit of the Members, it says: “Each county government’s allocation shall be transferred to the respective county revenue fund in accordance with the payment schedule gazetted by the Cabinet Secretary in terms of Section 17 of the PFM Act, provided that the Transition Authority has gazetted for transfer the functions to be financed by those allocations.”

Mr. Deputy Speaker, Sir, Section 17 of the PFM Act was also amended by this Act in Section 14 of the Act as follows:-

“The national Treasury shall at the beginning of every month and in any event, not later than the 15th day of the commencement of the month, disburse monies to the county governments for the expenditure of the following month.”

So, Mr. Deputy Speaker, Sir, the important thing to note here is that whatever county government’s money has been allocated, the Kshs290 billion sharable revenue which has been allocated through this County Allocation of Revenue Act, must be disbursed by the Treasury to the county revenue fund. There has to be a payment schedule. That payment schedule is what is determined by this Act. That, on a monthly basis, the national Treasury must transfer the respective monies for the counties to the county revenue funds. In so doing, therefore, they are required to prepare a schedule that shows how that money will be distributed, county by county, and for which month; and the respective amounts.

Mr. Deputy Speaker, Sir, a schedule has been prepared to that effect. That is the schedule that is being tabled before this House. Hon. Members can get copies if it because it has not been attached to the Order Paper. I can see very clearly that what we see on this disbursement schedule, we, as Members of this Committee, are satisfied that it meets the requirements as required by law. What is important here is that the County Allocation of Revenue Act was passed at the end of August. So, the first allocation, therefore, was actually made in the last week of that month. Therefore, the schedule is very clear; it starts from August for 12 months. The money for each of the counties will be spread over 12 months, starting from August this year all the way to June. By June, all the money that has been allocated for each of the counties should have been transferred to the respective county revenue funds.

Mr. Deputy Speaker, Sir, if you look at the schedule for the month of August, for example, the amount being transferred is Kshs16,150,000,000 for the 47 counties. If you look at this month, the amount that should have been transferred comes to Kshs16,150,000,000 also. In other words, the money is actually now going. The only thing I can say for sure is that, one, the Act came in a bit late. Second, there is an

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amendment that I think most of the counties are making which they are required to make by the Controller of Budget before the end of this month. This is because their budgets were prepared in a manner that did not comply with the PFM Act and other regulations of finance. So, that is the way it goes on and on.

So, Mr. Deputy Speaker, Sir, what is important to note are the notes which are down there. The cash disbursement schedule is based on the revenue performance trends of the national Government. You will see, for example, in the month of October, it is Kshs19 billion which is being transferred yet last month, it was Kshs16 billion which was transferred, and so forth.

Mr. Deputy Speaker, Sir, the second point to note again is that the schedule has factored in months when the revenue performance is good to compensate for months when the revenue performance was poor. I think we all know that the national revenue depends on the revenues that are collected by the Kenya Revenue Authority (KRA). Therefore, you will find that during the months when revenues are good, for example, January, it will be 19 billion all the way to February and so forth.

The third point, again, which is important to note on the schedule, is that some of the payments for the county governments, like salaries for the devolved functions is estimated at Kshs4.5 billion per month for the months of July, August and September. This will actually be paid by the national Government in an arrangement that was agreed upon by the two levels of governments at the summit.

So, Mr. Deputy Speaker, Sir, generally what is important to note is that the Schedule requires that the national Treasury disburses these funds as the Act says at the beginning of every month, but not later than the 15th of that month for monies to get into the following month. In other words, the money that is being disbursed now is not actually for this month. It is for next month so that they can actually plan, so that they do not get into a situation of debts and so forth.

Mr. Deputy Speaker, Sir, this is the first time that the Senate is approving this schedule which is for disbursement of funds to the counties. Therefore, it is a very important responsibility of this House. It is one of the clear mandates in the PFM Act that the Senate has to look at this schedule to see whether it complies with the Act and to ensure it makes it easy for the cash to flow to the county governments.

Mr. Deputy Speaker, Sir, it has been agreed in discussions that we have had recently with the national Treasury and even with the county executives. All of them were here with the Chairman of the Budget and Appropriations Committees of the county governments. It has been agreed that the monthly disbursement would be preferred to a quarterly system that the national Government uses to disburse money from the Exchequer. That would make it easier to avoid delays. This is because in a quarterly system, the kind of money delays that arise mean that sometimes you will not be able to plan your projects on a month to month basis, and you end up facing delays and, therefore, additional costs. In that regard, I think the county governments have said it is generally an agreeable way.

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

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

Mr. Temporary Speaker, Sir, the second thing which is very important and which we need to note is that counties must plan. If you do not plan to use your money properly, you will get into a situation where you will run out of that money and you will end up with some of your projects and activities not being financed. For example, if you look at this schedule just as an example, the Equitable Share that the County of Nyeri will get is Kshs3.2 billion. So, for the month of August, they will get Kshs276 million, and Kshs276 million in September. So, the county government must plan for the month of September for the Kshs276 million. Obviously, they have an annual budget. Therefore, they have to plan to ensure that they plan their budgets and activities in such a way that they know which one will be done this month, and the one for next month, so that they do not get into a situation where, at the end of the year, they do not understand what happened to their money.

Mr. Temporary Speaker, Sir, the county treasuries are the ones responsible for managing finances because once money goes into the County Revenue Fund (CRF) it gets transferred, on application, by the Controller of Budget to the respective operational accounts of the vote holders. Every Ministry has a vote. The county assemblies have a vote. The money gets into the operational accounts. That is a matter that the Controller of Budget has a responsibility over. All these departments have to apply and the Controller of Budget has to look at their budgets and requisition. If they meet the requirements, she appropriately transfers money so that they start spending.

The county governments can, therefore, begin working. For a long time - six months - we have been talking about functions. The functions have now been gazetted. Resources for this financial year have started going down. Therefore, county governments will have no excuse for not working. County governments have no excuse not to show development projects and to start undertaking development activities which can be examined by people on the ground. It is time that the public and the residents of the counties started seeing activities in terms of service delivery by county governments. In other words, the clock has started ticking for them. It is time that county governments started delivering.

This is about accountability and prudent spending. The money they will get will not be enough for all the activities that they want to undertake. So, this is a question of being prudent or utilising money for the activities that are most needed by the residents of county governments. The question of accountability becomes very important. Kenyans have already started - last month and this month, when counties started getting their monies - to look at accountability. Will county governments be different from the previous national government Ministries we have been seeing? Are hospitals going to be

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run differently? Will we see drugs and workers on duty? They will look at agriculture and all other sectors. Now that they have resources and have engaged their staff and the management that is required, they must start to show results.

I want to talk about two critical areas that need to be emphasized. One is on the area of procurement. One of the things that Kenyans are concerned about is devolving corruption to the counties. It is incumbent upon the county assemblies--- in particular, those that have a responsibility to oversight county governments and ensure that there is accountability by county executives. It is important that we apply the Public Procurement and Disposal Regulations for county governments which were issued in March this year, which offer advice on how procurement should be done by the county governments.

A county assembly is a procurement unit. County executives are also procurement units and there are tender committees, among other things. It is important that they comply with the law. Procurement is one of the areas where this country has lost a lot of money. We do not want to have the same problems in the county governments.

I beg to support.

Sen. (Dr.) Khalwale: Thank you, Mr. Temporary Speaker, Sir. I want to support this Motion and register only one small concern. The Chairman of the Committee could have helped us by analysing these figures a little bit. When you look at each respective county, you do not see why a county is given a particular amount in a particular month. At the very best, when you look at it, this seems to be done arbitrarily. I will give you an example of my own county of Kakamega.

We are being told that for the month of August, Kakamega received Kshs553 million which is the equitable share and Kshs26.4 million for level five hospitals. When you move on to the following month, you will see that the same allocation is repeated. In the next month, this figure jumps to Kshs651 million and the level five hospitals amount goes to Kshs31 million. The following month, the figure goes down. The figure goes up and comes down. Is it possible that the Government is spending money arbitrarily? We need to interrogate them next time, in the Committee, so that they justify.

Sen. Billow: On a point of order, Mr. Temporary Speaker, Sir. I think the hon. Member was, probably, not paying attention. The schedule indicates that the disbursement is based on the revenue performance rates of the national Treasury. So, in months when the revenue is high, for instance, October when it will be Kshs19 billion, then the portion for your county will be more. This differs from month to month and I explained why. I went through it.

Sen. (Dr.) Khalwale: Mr. Temporary Deputy Speaker, Sir, I was in when the Chairman was eloquently explaining this point. However, my concern is the issue of corruption. The Government does not collect money, keep it in an account and then spend it. The Government spends as it collects. So, where is this assumption that in the month of October, the Government will collect so much money coming from? These assumptions are the ones that have left opaque areas in our financial management of our

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public funds that has given room for corruption. But having raised this, I believe that the Committee will remain alert.

I support and would like to make the following general remarks.

Hon. Senators, I want us to remember that before these funds went to the counties, counties had some money. Now that the money has gone there, time has reached for us to ask how much money was there and how much governors have been spending. I have three allocations in mind. The first one is that as soon as governors went into office, they found on the accounts of former urban and county councils some funds. Some of the governors went on and bought four-wheel drives and attempted to renovate offices and so on. We need to interrogate, in each county, how much money governors found in these accounts.

The second issue is that the former Ministry of Local Government had made an allocation for the period up to the end of June 2013. We should know how that amount of money was used in each county. This money was previously allocated to the county by the former Ministry of Local Government. This could be the money that explains why certain things have been bought and why certain renovations have been made. The last allocation was the start up funds from the Transition Authority (TA). We must also know how much money this was so that we make a sum total and oversight it. We should ask for the accounts of the money and make sure that it has not been abused.

The second point I want to speak to in support of this Motion is that we must teach all our governors and emphasise to all members of county assemblies and the entire leadership that they should do not sit in Laikipia, Kirinyaga, Kakamega and Siaya and wait for this money. We would not like to see this money paying remunerations to senior officers who have gone to those areas. However, we want to see revenue collections improve. I expect rich counties like Kiambu, Kakamega, Nairobi, Mombasa and Narok to realise a lot of revenue. We will not be doing our job if we allow governors to sit and wait for the block cheque from Nairobi at the end or the beginning of the month. They should also complement this with increased revenue collection.

Mr. Temporary Speaker, Sir, so that I am not seen to be in the realm of theory, I realized that Kakamega was a rich county. I do not mean that the poverty levels are very low. No, they are high. However, I am speaking to the potential. I would like to see a situation where the Governor of Kakamega takes advantage of the tourism potential of Kakamega County. Kakamega County has the only remaining tropical forest in this country. That forest is there if it will not be abused. It attracts tourists every week. I would like to see that money converted to revenue that will improve the way of life of the people of Kakamega.

You all know the famous bull fighting of the people of Kakamega. This can attract not only Senators, but also other Members of Parliament, local tourists and the international community. The potential of Kakamega County in terms of agriculture is there for all to see. We produce 80 per cent of all the sugar that is consumed in this

country. Why can we not collect revenue at source? We grow plenty of maize, specifically in Lukuyani and Lugari constituencies.

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Khalwale, do not move away from the Motion. I hope you know that we are discussing the Adoption of a Report of a Committee on County Cash Disbursement. Do not go out of it.

Sen. (Dr.) Khalwale: Thank you, Mr. Temporary Speaker. Indeed, it was in that context that we do not want to allow county governments to just sit at home waiting for this block cheque from Nairobi and do nothing. We would like to encourage them to raise money.

Narok County should be one of the richest counties in this country. It was the bad management from Nairobi that did not allow the potential of Narok to be realised. This is why we must push them, as the Senate, and ensure that our role is not just limited to revenue division and revenue allocation.

Finally, now that we have successfully divided revenue, allocated it and are even passing this schedule, I would like to urge my colleagues, Members of the Senate, not to sleep on our laurels. We must go a step further. We must join Members of County Assemblies (MCA) in ensuring that this money does not end up being subjected to devolution of corruption from Nairobi to devolution of corruption at the county governments.

We all know that petty corruption has been going on in the counties since time immemorial. It is the grand corruption that takes place in Nairobi that has been missing in the counties. So, if we do not stand up, together with MCAs, to fight corruption in the expenditure of devolved funds, then devolution will fail. We would not like to see this happen.

I beg to support.

The Temporary Speaker (Sen. (Dr.) Machage): You can continue. You had 30 minutes. If you have anything to add, you can continue.

Sen. Dr. Khalwale: Thank you for that afterthought. Since you are my senior in medicine, I saw you looking at me and I became nervous. Now that you have made me comfortable, I will not continue, but will remember, next year, when I will be a Speaker to---

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

Sen. (Prof.) Lesan: Thank you, Mr. Temporary Speaker, Sir. First, I would like to thank the Chairman of the Committee on Finance, Commerce and Economic Affairs for the report they have brought to the House which I think will drive the process of disbursing funds to the counties. I support the Motion from the onset. I also want to use the Floor of the House to issue a warning to those mandated to handle finances. The issue of money is a very risky affair, particularly whether it is at a personal or at a Government level. I, therefore, wish to use the Floor the House to ask that the Committee on Finance, Commerce and Economic Affairs, headed by the Chairman, continues to be alert and the watchdog on behalf of the Senate, where money is concerned in the counties.

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Mr. Temporary Speaker, Sir, we are aware that the Senate does not have a very elaborate way in which we can oversee the use of funds in the counties. Therefore, we want to urge that the Committee on Finance, Commerce and Economic Affairs be the vehicle which we are going to use to oversight utilization of funds in the counties. This Committee should continue to be active and assist us to oversee these funds.

Mr. Temporary Speaker, Sir, the Public Finance Management Act is, perhaps, the most elaborate and detailed Act that I have seen in the entire laws of this country. I think that this is an area which the Senate can use to monitor the funds, by insisting that the Public Finance Management Act be implemented to the letter. I would want, therefore, to use the Floor of this House to warn the governors, that if we implement the Public Finance Management Act to the letter, there is a risk that some of the governors will be behind bars by the end of five years. We will have no regrets about that, because we are so concerned about the success of this process called devolution, which we have started. We would not want to lose it for some misdemeanor or action by some officer who has been dealing with this. Therefore, this House will insist that the Public Finance Management Act be applied to the letter when it comes to safeguarding the funds to be used in the counties, even if it means holding responsible some of the officers who are dealing with this.

Mr. Temporary Speaker, Sir, the “ministers” for finance in most counties are the most culpable individuals. This is because, first of all, they are doing these things for the first time. Secondly, there are new processes which are coming in for the application of the use of the funds, for example, the Integrated Financial Management Information System (IFMIS). It is a system that we are going to apply and use. It is new for everybody including those “ministers” for finance. It is, therefore, important that the executive committee members in charge of finance, who are going to be in charge of these funds in the counties, read thoroughly the Public Finance Management Act, which actually stipulates in a section which I cannot quote now, that even if you are given verbal orders by the governor and you spend the monies for the county without following the law, it is the executive committee member in charge of finance who will go to jail. So, it is very important that we give these warnings right away from the Senate here; that these monies are going to be looked at very thoroughly using the laws that exist in the land.

Mr. Temporary Speaker, Sir, I commend the governors and also the officers who are going to assist dutifully and honestly and with due respect for the state and public, apply the monies correctly. If we do that, we will succeed with devolution.

Mr. Temporary Speaker, Sir, with those remarks, I beg to support this Motion.

Sen. G. G. Kariuki: Mr. Temporary Speaker, Sir, the mandate given to this Committee is quite clear to us; that they have the responsibility to do the job that the Chairman has just presented to us. It is important that they have done this job successfully and we now have a Report that we can adopt. This is a credit to the Committee.

Mr. Temporary Speaker, Sir, however, as we adopt the Report, we have to make some few statements; that those who are going to receive the money should understand that money is a very serious commodity. Everyone needs to be extremely careful when using this money, because in a few months to come, we shall come down here again, to pass another disbursement Motion. Before that is done, we want this Committee to be sure that they will have all the information about the activities of the county governments and how they spend their money. At the same time, they should know how much money was there. This time we can forgive the Committee and not demand that they tell us how much money was found by the new system in the Kakamega account. This is because it is a very important matter. I tried sometime ago, before this Committee brought this Report. In the process, the Committee was finding it a bit hard for us to challenge. But I want to tell the Committee that this is a very serious matter and if we are not careful, we are going to devolve corruption in this country. In fact, it was easier in some cases to talk about corruption at high levels. This time, we are going to find this snake called corruption in our hometowns. Therefore, we need to be extremely careful, and this is the responsibility of this Committee.

Mr. Temporary Speaker, Sir, if there is a Committee which is going to make devolution work, it is this Committee headed by my friend, Sen. Billow Kerrow. But if we are to fail, they will be responsible for the failure of the devolved government. For example, if Laikipia County is going to receive about Kshs3 billion--- Before the money is disbursed, and the county government has been active, we need to know where they got the money in order to be active. That means that they had a lot of money somewhere, and it needs to be reported here in terms of all the counties individually. The Committee must demand – or we are going to demand through a Motion – to know how much money was found under the new dispensation, for example, in the Kakamega County Council or Siaya County Council account. This is because there is some misconception by some county representatives that they will be sitting there and expecting money to come from the headquarters. I hear that we were not able to make it mandatory that your money will be released if you are able to contribute a certain percentage. If you have 30 per cent in your county or depending on your income capability, you have to raise a certain amount of money from the county and people to be able to get the other disbursement. But we cannot just sit here and decide that this Kshs210 billion will go to counties and then, divide this money “anyhow” because there are some who will benefit more than the others.

Mr. Temporary Speaker, Sir, the way the criteria for disbursing the money was determined was not very clear, because there are some counties which are marginalized. For example, Laikipia borders Samburu and Baringo. It is not the people of Laikipia who decided on those boundaries. It was just a decision which was taken somewhere for administrative purposes. Now we are using these administrative purposes for economic consideration. So, I think that the time has come to inform and direct the county governments accordingly. Otherwise, we will be here just to disburse the money because

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the Senate is following what the law says. Actually, they are not requesting us to give them money. It is mandatory and constitutional that they should receive this money. So, they can tell us also: "You cannot praise yourselves that you are doing anything for us, because it is a constitutional requirement that you have to send this money to us." That way, we will be put in a corner.

We should be able to know that this money is being spent wisely. The county assemblies should understand that they will be held responsible for whatever is happening. These issues of having ministers for finance and permanent secretaries, as they call themselves, are nowhere in our Constitution. What we have in the county are county executive officers. I heard a Senator here referring to them as ministers. We need to guide the county governments, regarding who they are and what they should be. We also have to understand that it is a new dispensation and be up to date in terms of what is happening. We have to learn a lot as well.

Mr. Temporary Speaker, Sir, earlier on, we were talking about money for the old people. The county governments need to be given this kind of money to distribute. I want to congratulate the Mover of the Motion, once again, and send a warning to that Committee that this nation depends on it. Therefore, if it does not perform well, then we are due for failure.

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

Sen. Obure: Thank you very much, Mr. Temporary Speaker, Sir, for giving me the opportunity to make very few remarks on this. First, I want to congratulate you on your election as the Temporary Speaker, today. I am sure that you are equal to the task and I wish you well.

Mr. Temporary Speaker, Sir, I want to thank the Standing Committee on Finance, Commerce and Economic Affairs for the good work that they are doing. My position is that I would have wished to see more money sent to the counties. Because in the counties, that is where the majority of Kenyans live, that is where the bulk of our challenges lie and I have always believed that we should send more resources to the counties so that they can create a positive impact in helping *wananchi* to reduce the prevailing poverty levels.

Mr. Temporary Speaker, I have noticed from the Schedule here that we are talking about distribution of resources from the month of August all the way to the month of June. That means that July is left out. I do not know whether there is a good explanation for that because we are talking about 11 months when we know that we have 12 months in every financial year. So, I would like to know what happened to the July allocation.

At last, we are actualizing devolution. In fact, we have come to the stage where our expectations are now beginning to be fulfilled and the fact that we are now approving this Schedule of disbursement of funds to the counties is sufficient proof that we have now embraced the philosophy of devolution. Now that money has begun to flow to the counties on a monthly basis - and I personally support the idea of sending money to the

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counties on a monthly basis because they can now predict and know how much is coming every month. They can then organize themselves to start utilizing the money when it comes. Therefore, there is great need for the counties to plan ahead so that they can utilize this money. From my personal experience, I know that it is not easy. Sometimes we have seen institutions given money and they are not able to absorb that money. So, I am asking the County Governments to make their plans in such a manner that when the money becomes available, it is utilized for the benefit of the residents of the counties.

Mr. Temporary Speaker, Sir, this flow of funds to the counties now comes with a lot of expectations. Now that devolution is with us, we expect it to have an impact on our lives. So, that is the main challenge. We must really apply this money in a manner that will make a difference to the lives of the people in the counties. People want to see a difference from the way we have done it in the past. In the past, funds have not been reaching the grassroots. They have also not been used properly. I hope that this time round, *wananchi* will see a difference. The difference they expect is really improvement in efficiency levels in our operations and in the way our services are delivered. That is what people want to see. People want to see health facilities operating effectively. They want to see medicines available in hospitals so that they can get relief at the hospitals. They want to see better roads and clean water. This is the whole purpose why people voted so overwhelmingly for devolution because at the county level, they understand the challenges they face on a day to day basis.

Equally important is that these resources must be felt everywhere in our counties. The resources should reach all the constituencies and wards so that the people who reside in those places feel the impact and know that their county governments are taking charge of their welfare and that they are concerned about helping them to improve their quality of life. It is also important to stress the issue which has been raised here; the question of accountability. County governments must be accountable to the people for these resources. The people must be involved in deciding their priorities in order to improve their welfare. So, the issue of accountability is important, and I am standing here to urge particularly Members of the county assemblies to make sure that they call the county executive to account. They should make sure that they are involved in overseeing the Executive so that we can get maximum benefits from these resources. There is indeed need because most of our counties have a huge potential which must be tapped to generate more funds to our coffers at the counties.

Mr. Temporary Speaker, Sir, we know that we get additional funds from licensing charges and fees at the market places, rents, lease agreements on use of county property and royalties in some instances. All these are additional sources but I am suggesting to them that as much as we need additional funds for our county governments, the county executive should be careful not to burden *wananchi* too much. The people who pay for these licenses are very ordinary people, for example, *boda boda* riders who are often very over-burdened.

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I know in my own area, motorbike riders have to pay Kshs20 everyday to be allowed to operate within the townships. Sometimes they even pay more. If you calculate that, you will find that a *boda boda* person will have to pay Kshs7, 200 every year in order to operate. We know that even some of the big shops in Nairobi do not pay that much for licenses to enable them operate. So, we should not overburden these poor people. Even though we know we need this money, but it is also targeted to uplift the standard of life of these people. I urge that we be considerate and understand that these people are facing huge challenges. We should try and enable them to operate and live comfortably.

I am very optimistic because I know that although we have not got as much resources as we would have expected going down to the counties, they will have an impact on the counties and perhaps a greater impact than what we were used to before. I am requesting the county executives to use this money properly in order to make sure that the people we represent see some positive impact in their lives.

I beg to support.

Sen. Mositet: Thank you for allowing me to support this Report. For sure, I just want to remind the Senate that from the time we were elected to date, *wananchi* at the ground have been asking what is happening because they have not seen any development taking place. I do believe a lot has been happening; trying to put things in order and for us to pass this Report, we are making a statement that the national Treasury will gazette that Schedule so that everybody knows that in a particular month, this county expects this amount of money.

I thank my Committee, and I know that provision of making the disbursements monthly was actually adopted by the Committee. To me, that is one of the best things; that the counties at any one time will not feel that they do not have enough funds. Mine is just to say that this is the time to make sure that the county governors and the county executives plan for the entire period up to next year to make sure that all the development programmes that they had already budgeted for and passed by the respective county assemblies are given priority so that every time the money is disbursed, it is not just in the accounts but they will just find the projects going on and there will be no interruptions. So, if it is procurement, they should make sure that they do a transparent and open procurement.

Mr. Temporary Speaker, Sir, just as the other Senators have said, we will not want to see a situation where we only talk about corruption at the national Government and yet in the devolved system, people do not get services in the counties simply because the executive is not transparent. The money should go to whatever use it had been budgeted for. This is now the time the county assemblies will have work in overseeing the utilization of resources. They should be able to know how the projects they had passed in their assemblies are performing. The committees in charge of those particular departments will start to be very busy trying to see to it that those projects are going on.

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I support the Report and I feel that it is a big achievement for this Committee. I know that after this Report is passed, it will be gazetted and disbursements will continue. We do not expect a situation where money used to be disbursed and then simply because of time, it could not be used. With this programme, with the best management of the governors and the executive, we expect all the monies to have been utilized before the next financial year. I hope the national Treasury will make disbursements as per the schedule.

I beg to support.

Sen. Karaba: Thank you very much, Mr. Temporary Speaker, Sir. Like my other colleagues, I also wish you the best of luck in your new position.

Mr. Temporary Speaker, Sir, this report is, indeed, good given that the Members of the Committee are known to us and we know them as very thorough people; they did a good job. For them to table such a report, it is not a mean achievement. I would, therefore, first of all, congratulate and wish them luck also as they continue perusing more into this Report.

Mr. Temporary Speaker, Sir, sometimes we get lost. When we were here last, Mr. Chairman, you remember we discussed the finances of the counties, and it is like the formula which was used then is differing with what is already tabled here. I remember like, for example, in Kirinyaga, the amount of money which was supposed to be given out from the national Treasury was Kshs2.75 billion but, now, I can get only Kshs2.5 billion. The variance in that figure is yet to be explained so that we can know whether there are some functions which are not yet devolved to the county or whether that money will also be released at an opportune time.

Sen. Mositet: On a point of order, Mr. Temporary Speaker, Sir. Since I am a Member and the Vice-Chairperson of the Committee, maybe, I just need to explain that shortfall you are talking about.

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Mositet, this will be done at the stage where you are replying.

Sen. Mositet: I am much obliged, Mr. Temporary Speaker, Sir.

Sen. Kagwe: What we are discussing is the sharable revenue.

Sen. Karaba: Thank you very much, Mr. Temporary Speaker, Sir. It has also been noted that there is a discrepancy between the figures that were discussed here earlier and the figures that are already tabled here in the Report. The discrepancy is a concern to me and also to others who are curious after looking at the figures.

Mr. Temporary Speaker, Sir, the amount which has been released is monthly, and this is September. Noting that we have the earlier months, which is April, May, June, July and August, we are yet to be told exactly how the county governments are going to cope with that deficit which is, therefore, three or four months. We are yet to know how the devolved labor force from the national Government to the counties – which I hear, I am told and we have also proved elsewhere that the central Government has also transferred quite a number of people to the counties – and they have also transferred the liabilities

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against them in the form of salaries. These counties are finding it very difficult to pay their salaries because some of these salaries have been hefty.

For some of these people who have been devolved to the counties, we are yet to prove whether they have been declared redundant in the central Government and are not very efficient in the counties and are, therefore, a liability. I was of the opinion that some census should have been carried out so that the quality of the labor force which was transferred to the counties was to be assessed first to find out whether they are useful or not. If they were not useful in the central Government, they should not have been transferred to the counties because the counties, as we speak now, are becoming like the pay masters. This is because every other month, the money which is released to the counties – about 75 per cent – will go to the recurrent expenditure in the form of personal emoluments. That will spell doom to some of the counties that would have started their projects early enough, and some these projects may even need more money than what is being released per month.

I, therefore, would have expected the Committee to revise this schedule and come up with another report to encourage those counties which would be spending their money more appropriately so that those counties which will be accounting for the money spent at any other given month can be encouraged by being given more money even on a quarterly basis. Because the moment a project is started and it costs more than the money being given per month minus the salaries, that project, towards the end, might not even be viable or might not be completed because of the shortage of funds.

The other thing, Mr. Temporary Speaker, Sir, that we need to consider here and which the Committee should also look into is the procurement procedures that we have countrywide. It is very hard for any county or for any project to be started without the appropriate procurement procedures and systems being followed. When it comes to awarding of tenders, bidding and then procuring, it can take a whole year and by the time that is over, the amount of money which was supposed to be given out from the central Government might not even be available and the project, therefore, will stall. These are some of the things that we need to consider as we release these funds so that the counties will not suffer.

Mr. Temporary Speaker, Sir, as we were going round with my Committee on Education, Information and Technology, we realized that some counties are doing very well, and they are happy that devolution has come at the right time. We noted that some of the counties have even doubled the collection of revenue compared to what it used to be before when there were local governments. For example, we noted that Mombasa County was collecting almost Kshs2 billion per month. If such counties can collect such a high amount of revenue, these are then the counties that should be considered for being efficient and they should, therefore, be given more money so that they can continue financing the projects that are already in place. This is the kind of encouragement that should be given to the counties that seem to be serious in enacting development. That way, we are going to have more counties coming up with projects which will, later on,

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generate enough revenue, a part of which will go to the national Government for reallocation in future.

So, Mr. Temporary Speaker, Sir, I need to be convinced that the disbursement schedule, as much as we are going to support it, is going to cater for the physical development that we need to have in the country. We need to know whether each county will spend the amount of money given on development projects or whether most of that money will be go towards recurrent expenditure for payment of salaries, because that is what, indeed, will happen.

I was with my Members of the County Assembly (MCAs) on Tuesday and I was able to address them. The greatest problem that they had was that as much as the budget of the county was released and it was already there to be tabled, it was not possible to account for the development projects that have already been initiated in the county. All the amount of money counties collect, together with more than half of what they receive will go to the devolved labour force in the Ministry of Health, Ministry of Agriculture and also the labour that they have inherited from the disbanded municipalities and municipal councils that are already within the county governments. So, much of this would have been discussed by the Committee so that we get to know which county is capable of using the amount of money which is devolved, and which are the other counties which cannot manage. Although this is a good procedure because if it is true that some counties are not able to use this amount, then in future, that amount should not be released to those counties. So, this is a checking system which can be used as a deterrent against those counties which cannot afford to generate enough revenue.

Mr. Temporary Speaker, Sir, it is also important to note that not all counties are the same; some counties are very good in terms of production; some of them are marginalized and some have already discovered minerals that were not there before. You will be surprised to know that even the ones which were at one time marginalized – I do not know what kind of a miracle has come about – have discovered enormous resources of minerals. Of course, once these minerals are sold, they will generate a lot of revenue, earn foreign exchange and this will now lead to the national kitty increasing, hence the amount in the allocation increasing. So, we need to encourage those counties which are potentially rich and counties that can produce enough revenue so that they are given more money to continue generating more. Of course, the more they generate, the more even the other marginalized counties will receive, not even in the same month, but also in future.

With this, Mr. Temporary Speaker, Sir, I take note of my county, which is a great producer of rice, tea and also coffee, not to mention even horticulture. Once those crops are marketed properly, a lot of revenue will be generated, and this is the reason I am saying that we need to encourage farmers to continue generating more produce. That is the reason why they should be given more money so that the more they generate; the more, of course, they contribute to the national revenue collection kitty which will be allocated to other counties which are not able to produce the same. The same, of course,

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will go to those counties which are marginalized; those counties which cannot afford will get more of the equalization funds than those which will have much to contribute.

Alongside that, Mr. Temporary Speaker, Sir, it is also important to consider the infrastructure. The already existing infrastructure should be improved and we should also construct new ones, so that we can reach out to those productive areas which can generate more revenue. Because without that revenue, which later on will be converted to foreign exchange, then we are thinking of only collection without thinking about production, and we need to take care of the production areas because it is those areas which will, in the end, give us more funds to be allocated to other counties.

I, therefore, would ask the Committee to look into that aspect as I beg to support the report.

Thank you, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Tiolo Ndiema.

Sen. Ndiema: Thank you, Mr. Temporary Speaker, Sir. I stand to support this Motion. In doing so, I want to say that the system whereby the counties get their allocations on a monthly basis is laudable, especially because the counties do not have any other sources of money to spend if we were to stagger it on the basis of quarters. The counties do not have the facilities to borrow on a short-term basis to even meet the basic expenditures like salaries. So, I want to thank the Committee for agreeing to that system of payment.

Mr. Temporary Speaker, Sir, looking at the figures, what we see is that the funds which have been allocated are not adequate, but we have to do with what is there. In some counties, they may have to really spend a lot on payment of salaries, and the little that is left will go to other recurrent expenditure items leaving very little for development. So, in view of the inadequacy of finances, it is incumbent upon the counties to really plan properly from the outset as to how they will spend the money for all the months within that financial year.

Mr. Speaker, Sir, the revenue that has been allocated, being inadequate, has to be supported by the revenue that is raised locally within the county. The two go together. I think the Committee should look at ways in which a similar report on how revenue will be generated can be availed to the Senate so that we see how they will manage their expenditure. I have mentioned that salaries will be a major item of expenditure. As we are aware, there is supposed to be an audit to see the level and type of labour we require for the devolved governments. It is important that this exercise is completed at the earliest possible time so that the human element is properly factored.

Since resources for expenditure are limited, counties should plan and spend prudently. They should avoid rushing to over commit themselves in contracts which are way beyond their resources as per the Schedule. They should also look at the pending bills or the liabilities which are there. It is very important for the committee to look at the liabilities with a view of ensuring that these resources are protected against claims of pending bills because some pending bills are way beyond these allocations.

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Prudent expenditure requires that we have offices of integrity with people who can manage the finances. I am referring to the executive. Are they well trained with regard to the Public Finance Management Act? They should be taken for training on how to manage and control finances. Equally, procurement units should be manned by competent people of integrity who know what to order, at what time and in what quantities so that they do not overstock what is not necessary. The procurement should not be done as it has happened previously, in a haphazard manner so that at the end of the year, you see a rush of procurement activities, trying to clear the funds that are available. Procurement should begin right away so that we do not have last minutes expenditures.

The Committee, in its oversight role, should require on a monthly basis to get reports from the counties on how they are spending their money so that we notice early enough counties that are not spending as required. There is allocation of funds for the executive and for the county assembly. These are independent units. The county assemblies should oversight funds allocated to the executive. We should, therefore, avoid a situation where county assembly funds are managed in a manner that will tempt the executive to oversight the assembly. That will not be the right way. The assemblies should prudently spend. In this respect, members of county assemblies should be aware that finances are limited and should be spent within the budgeted provisions.

The public have a lot of expectations from the devolved system of government. The expectations they have are not about how many people have been employed in the county governments. People want to see roads, health services, revival of cattle dips, better roads for their produce to reach the market and availability of medicine in our health centres. It is, therefore, important that emphasis is placed on expenditure in this area of development. I noticed that in counties, particularly in my county of Trans Nzoia, the biggest expenditure will arise from the district hospital. This is a very expensive exercise. It would have been a relief if that was taken up separately.

In other counties, you will find that hospitals have been taken care of separately. Perhaps, in the next financial year, we should consider giving Level 4 hospitals proportionate allocations as to Level 5 hospitals to relieve those counties that have Level 4 hospitals from using their normal allocations to meet their hospital expenditure.

With those few remarks, I support.

The Temporary Speaker (Sen. (Dr.) Machage): Since there is no one else interested in contributing to this Motion, I will call upon the Mover to reply.

(Sen. Billow stood up in his place)

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Billow, I thought Sen. Kagwe is the one who moved the Motion and he is the one who should respond.

Sen. Billow: Mr. Temporary Speaker, this is a report of the Committee on Finance, Commerce and Economic Affairs committee. I was the one who was supposed

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to move it but since I was away, I requested one of the Members, Sen. Kagwe, to move the Motion.

The Temporary Speaker (Sen. (Dr.) Machage): I will use my discretion as the Speaker under Standing Order No.1 to allow Sen. Billow to reply.

Sen. Billow: Thank you, Mr. Temporary Speaker, Sir. You have made a good ruling using the powers conferred on you by the Standing Orders.

I want to take this chance to thank all Senators who have contributed to this Motion and given their views. There are a number of issues we have raised and I want to respond to some of them very specifically. I want to draw the attention of Senators to Section 17(7) of the Public Finance Management Act which provides that the national Treasury shall prepare its schedule for cash disbursement in consultation with the Inter-Governmental Budget and Economic Council.

We, as the Senate, are required by the Public Finance Management Act to consider our report, but more importantly, to approve the County Governments Cash Disbursement Schedule for the fiscal year 2013/2014. That is the essence of this Motion.

Senators have raised a number of pertinent points particularly with regard to accountability by county governments. County governments need to be transparent and to utilise money prudently, avoid wastage and enhance efficiency. All those things are very critical. The issue of corruption with regard to procurement is important. On the issue of revenue collection that Senators have raised, county governments are not only supposed to be dependent on revenue allocated to them. They are also supposed to raise their own revenue.

If you look at the budgets of the respective counties, there is revenue from local sources which is factored in. That revenue must be collected and utilized according to the Public Finance Management Act. We are supposed to plan for the monies that will be disbursed by this Schedule plus what they will collect from local sources. In both of them, it is required that they have a monthly inflow budget of how much money is coming from the national Treasury. From the local sources, they should have a schedule of what is budgeted from their resources so that they know what to expect. On that basis, they should then plan their expenditure.

Mr. Temporary Speaker, Sir, the second thing to note is that this Schedule starts from the month of August, but the financial year starts from July and runs up to June. The County Allocation of Revenue Act, upon which this Schedule is based, came into effect in August, since the Act was passed in late August. So, the money for the month of July has been spread over the rest of the 11 months. So, when you look at how much money, for example, a particular county is supposed to get, instead of dividing it over 12 months, it is divided over 11 months. So it is provided for in this Schedule between the month of August and June next year, so that all the money then must have been released to the counties.

Mr. Temporary Speaker, Sir, the third thing, which I think is important and Members have raised it, is that the national Treasury is required by law to comply with

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this Schedule. This is because if it is duly adopted by the Senate, it must be complied with. It is part of the law. It is a legal requirement that the national Treasury must comply with. Therefore, whatever amount of money has been indicated for each county government must be released, latest, by the 15th of each month for the money relating to the following month. For example, if money for October has not gone into your county by 15th September, it is a matter that you can raise and the national Treasury has to explain, because that is the law and requirement.

This is to ensure that counties can carry out their operations, and their services do not stop. In that regard, therefore, county governments are required to prepare very good operational expenditure budgets. If that is not done properly and itemized in detail, then they will not be able to plan for the money properly, and that is our concern. We do not want to see counties, in their first year of operation, shutting down hospitals because they have run out of medicine, or in the first year of operations, having strikes because they are not able to pay salaries for their workers.

Mr. Temporary Speaker, Sir, all these can happen if they are not able to plan. That would really work against the whole concept of devolution, for which the county governors and governments have really been agitating. But as a Senate that has a mandate, under Article 96 of the Constitution, to look after the interests of the county governments, it is our responsibility to ensure--- In this regard, the Controller of Budget has the responsibility in law to look at each of those budgets and ensure that they comply with the law.

In this regard – and I am sure that Members are aware - there is a report that was tabled here last week from the Controller of Budget. These reports will come quarterly. In other words, every quarter, the Senate will get a copy of the report by the Controller of Budget that will look at the utilization of the money that has been disbursed by each county. That is something which will be tabled here. The first report for the quarter ending 30th June, has been tabled in this House and will probably be debated in the coming weeks. So, the next quarter for the month ending October must be with us at the end of the following month. So, I think that those reports will give us an insight into how the counties are utilizing their money.

Mr. Temporary Speaker, Sir, there is an important point that we need to mention when we talk of counties planning prudently in their operational budgets. If you look at how some counties have done their budgets, especially for development, it leaves a lot to be desired. They have spread the money too thinly, over thousands of small projects across all the wards, to the extent that a particular county may have to carry out 2,000 or 3,000 little projects of a Kshs1 million or Kshs2 million each. This presents challenges, both in terms of allocating the money across and also in terms of optimizing the utilization of the money. That is one of the challenges that I think the Senators, in their mandate of oversight, will be looking at when we get those reports from the Controller of Budget. Therefore, this schedule is very important because it helps the counties to plan their inflows.

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Mr. Temporary Speaker, Sir, at the same time, the report is of great significance to the county assemblies. This is because they know how much money is going to the county executives, so that they also look forward to the reports from the Controller of Budget, because they also get all those reports. But more importantly since they exercise oversight over the county governments routinely as required by law, they must look at how that money is utilized. Therefore, there is no worry at all as far as our Committee is concerned, that money will be available. As far as we are concerned, based on this Schedule, the national Treasury will be sending money to the counties. I think that the main concern of everyone in this country has been whether this Government will be committed to sending money to the counties. I think that this schedule is a clear indication. I know that the first one has gone and the money will be going that way every month. So, it is now up to the county governments to plan.

Mr. Temporary Speaker, Sir, my good friend, Sen. Karaba, did mention that counties are just payroll masters. But, in fact, when you look at the schedule and the notes in it done by the national Treasury, on the payroll, it gives very different facts on that. The facts are that the issue of the payroll for the months of August, September and October was agreed at the Summit between the county governments and national Government. It was agreed that the national Government will continue paying salaries for those three months, to allow the county governments to prepare to take over the payroll. So, when you look at it, the payroll that will be paid by the national Government, on behalf of the county governments per month, comes to actually Kshs4.5 billion. The Kshs4.5 billion for 47 counties will really not come to more than Kshs100 million, on average. So, when you look at the month of August and September, the amount of money being sent to the counties is Kshs16.1 billion. So, out of that Kshs16.1 billion only about Kshs4.5 billion will be payroll.

The Temporary Speaker (Sen. (Dr.) Machage): While still on that point, maybe it is appropriate for you to reply to Sen. Karaba's question as to why the allocation for his county was reduced by Kshs2 million. Also, reply to Sen. Obure's question as to why July is not appearing.

Sen. Billow: Mr. Temporary Speaker, Sir, I will respond to both. The point that I am raising here is that the payroll is about Kshs4.5 billion, out of the Kshs16 billion. So, actually, it is not the entire amount. In addition, the Kshs4.5 billion is salaries that the national Government would have paid if it was running this Government. In other words, there is money that has always come from the local authorities, which are now managed by the county governments. That money has always paid for the salaries and payroll requirements of the local authorities that were there. So, there should actually be no significant expenditure on payroll over and above the amounts that are indicated as Kshs4.5 billion per month. So, for the three months, it will be done.

Mr. Temporary Speaker, Sir, regarding the questions raised for the month of July, I think I explained earlier. If you look at the schedule, it runs from August to June, which is 11 months. This is because the County Allocation of Revenue Act, on which the

Schedule is based, was passed in late August. As a matter of fact, it was around 13th August or so. That is the reason the month of July is not there. But the money for the 12 months is spread over the 11 months. In other words, the money for July has been spread over the remaining 11 months. So, I think that it was done to comply with the Act.

Mr. Temporary Speaker, Sir, the second point raised by Sen. Karaba as to why the amounts are different is because the amounts shown on the Schedule is the shareable equitable share. That is the amount which is being shared out. This is the Kshs190 billion and does not include the Kshs16.5 billion for the donor funding and Kshs3.4 billion for the Level 5 hospitals. These ones are shown separately. If you look at the Schedule, the second last row shows the Level 5 hospitals provision for each of the months. The total is actually Kshs3.4 billion and is spread out for each of the months, because not all the counties have got Level 5. But the actual details of what each county is supposed to get are available in the Act.

Mr. Temporary Speaker, Sir, regarding the Kshs16 billion for the conditional grant on projects, I think that it does not fall in the budgets of the county governments. I think that there is an agreement that this is the amount that the national Government will spend on behalf of each county, through an agreement that they will get into, with respect to specific projects that have been funded by donors. So, this is only the equitable share and that is why the figure is different from what is in the Act.

Mr. Temporary Speaker, Sir, I want to thank the Members for their very valuable contributions on this Schedule. I think that we all need to be vigilant, especially as Senators, because of the responsibility that we have in ensuring that the national Treasury complies with this.

Mr. Temporary Speaker, Sir, in conclusion, I want to request your indulgence to defer putting the question on this Motion to Wednesday 2nd October at 2.30 p.m., because this is a Motion that affects counties and at this stage, we may not have the requisite number to conduct the vote.

Mr. Temporary Speaker, Sir, I beg to move.

The Temporary Speaker (Sen. (Dr.) Machage): Thank you, Sen. Billow. Indeed, I hope that you are quoting Standing Order No.51 (3), which allows us to defer the putting of the question to the following day. The following day for our purposes is supposed to be Tuesday, but as we have made it a tradition in this House, I will use Standing Order No.1. I will use my discretion and order that the voting be done on Wednesday afternoon.

(Putting of the question on the Motion was deferred)

Next Order!

Sen. Mositet: Mr. Temporary Speaker, Sir, looking at the number of Senators that we have in the House and the time that is remaining, I would like to request that I be allowed to move this Motion---

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The Temporary Speaker (Sen. (Dr.) Machage): Order, Senator! You have enough time as far as I am concerned. It is only 5.45 p.m.
Go on!

TRANSFER OF ALL KERRA FUNCTIONS
TO COUNTY GOVERNMENTS

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

THAT, aware that Fourth Schedule of the Constitution assigns the responsibility of construction and operation of national trunk roads to the national Government and that county transport, including county roads are the responsibility of the county governments; acknowledging that the Kenya Rural Roads Authority (KeRRA) is mandated under the Kenya Roads Act (2007) to administer funds for the development, rehabilitation and maintenance of roads in constituencies, which are roads within counties and which fall under Class D category and below; cognizant of the fact that there are already established KeRRA structures in each of Kenya's 47 counties; the Senate urges the national Government to transfer all functions of KeRRA to the county governments in order to ensure faster and more efficient delivery of services.

Mr. Temporary Speaker, Sir, as per the Fourth Schedule of our Constitution, the national Government is mandated to maintain and construct national trunk roads. From my understanding, as an engineer and somebody who has worked for the Civil Service of this country, these are roads which traverse across the country moving from maybe one county to another county or connecting the former provinces which we used to know when we had the eight provinces. Those are roads like the Mombasa Road, the Great North Road which traverses all the way from South Africa, passing through many countries, through Kajiado, Athi River Nairobi, up to Ethiopia. We also have those roads which connect the former districts which are now counties. These are roads which connect, for example, a district like Kajiado to a road connecting Machakos to Makueni or a road serving Thika, Murang'a and Nyeri. These are Class C Roads and Class B roads. Those are the national trunk roads.

Mr. Temporary Speaker, Sir, still under the Fourth Schedule, the counties are mandated to do the construction and maintenance of county roads. The county roads, to my understanding, are roads which serve the entire county and those which are within the county. These are roads which connect the market centres and the constituencies. The Class D roads fall under this category. They are 25 metres in width and these are roads you will find serving the constituencies. Currently, constituencies have been transformed into districts. These are roads which are well known by all the leaders.

We also have Class E roads which are normally 20 metres in width and they also serve within the constituencies. There are also other Class E roads which connect centres

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within the constituencies. In my county, for example, there is a road from Embul Bul to Ongata Rongai which is a Class E road. The road between Ongata Rongai and Kitengela is also a Class E road. We also have many other roads which are not classified. These are roads which are nine metres in width. Most of these roads are known to the leadership and the people of the counties. To me, these are the county roads.

It is good to know how the Ministry of Roads used to operate before the enactment of the current Constitution. There existed the District Roads Officers who used to maintain and do the construction of all roads within those former districts which currently are our counties. At that time, those officers used to be answerable to the Provincial Engineers who used to make sure that all the districts within that province were under those officers. We also used to have the Chief Engineer Roads who used to own all the roads in the country. Through an Act of Parliament in 2007, road construction and maintenance was transferred to various authorities. That is how the Kenya National Highways Authority (KeNHA) which specializes in maintaining and constructing the national trunk roads; the Class A, B and C, came into being. Then there is also the Kenya Urban Roads Authority (KURA) which maintains those roads which are within the cities and municipalities. Up to now, the same authorities are still in place. There is also KeRRA which was mandated to maintain and construct the county roads. Every county has a regional manager in the management structure of KeRRA. This regional manager has officers in every constituency called Roads Officers. KeRRA is mainly in charge of Class E, D and unclassified roads.

Mr. Temporary Speaker, Sir, as per the Constitution, those roads are under the management of the counties. The leadership of the counties knows which roads need to be done. They know which roads to give priority. The regional managers of KeRRA have a databank of all the roads. They know how many kilometres, for example, of Class E, D and unclassified roads exist in a particular constituency. The unclassified roads keep on coming up on a daily basis. Since the structure of KeRRA is within the counties, it is easier to pay attention to the roads than before when they had to report to Nairobi. A regional manager, for example, for Kajiado made a request for the road connecting Oltepesi up to Nadile which is just 30 kilometres to be done and that request has taken more than three years. In fact, there is even a dispensary along that road which was destroyed by floods.

We should devolve KeRRA and collapse all the functions to the county government. These functions can be done by the executive officer in charge of infrastructure at the county. All counties must not make their requests to Nairobi whereas those are roads which are known. Just before the budgets were done in most of the counties – the Senators can bear me witness – governors promised to tarmac a number of roads within their counties. They can only do that if we allow the county leadership to do those roads. I think this Motion is timely and will pave way for development.

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Mr. Temporary Speaker, Sir, if you asked the ordinary *mwananchi* what kind of development they are expecting, one of the major developments they will talk about is roads. That is why if you asked any Kenyan what the last Government did for the country, they would tell you that it is the Thika Superhighway. In some counties, there are people who have never seen a tarmac road or a grader in their areas. This House should pass this Motion so that our counties can realize the development we promised them.

I beg to move and call upon Sen. Obure, who was a Cabinet Minister when the Kenya Roads Act (2007) was implemented - he was the Minister in charge of infrastructure - to second this Motion.

Sen. Obure: Thank you, Mr. Temporary Speaker, Sir, for the opportunity to second this Motion. I want to start by congratulating my friend, the Senator for Kajiado County, for the interest he has taken in issues of infrastructure and particularly the initiative he has taken to bring this Motion here.

Roads are very important to us and in fact, the performance of county governments will largely be measured by how many roads they construct and how many roads they will be able to rehabilitate and how effectively they will maintain the entire network of county roads or all those roads falling within their jurisdiction. I say so because a large majority of our counties – in fact, all of our counties throughout the Republic – transportation by road is perhaps the only means available which enables people to earn a livelihood.

Mr. Temporary Speaker, Sir, many of our counties are dominated by farmers and farming is the main occupation in the majority of our counties. People go out to the field, they cultivate their land and they produce products. These products must reach the markets in order for farmers to earn something. In order to reach the markets, they need roads. Business people in our respective counties are able to move goods to the markets or to reach places to provide services using roads. They want to visit markets; they want to access and reach markets even beyond the boundaries of their own counties, and all that is done through roads. Movement by *wananchi* themselves – *wananchi* themselves become mobile using roads; they have to visit markets, schools, churches; they want to visit their own relatives and even connect with their own friends, and all that movement is facilitated through roads. Therefore, it is right to say that a good road network facilitates mobility and communication on the part of *wananchi* wherever they live in our counties.

Mr. Temporary Speaker, Sir, I take the example of my own county, Kisii, which is an economy that very largely depends on small-scale agriculture. Agriculture, therefore, is the mainstay of the economy in my county. Kisii is very heavily populated; we are talking about an average population of 800 to 900 people per square kilometer. Therefore, they have small little farms, and for them to sustain that population there; to enable that population to move around and earn a livelihood, you need roads. In fact, roads are a prerequisite for any meaningful development. Tea and coffee farmers; banana

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producers in my county; people extracting soapstone, people engaged in the production of fruits and sugar cane; all these fellows and their farms are located in very rough terrain. Therefore, they have to get this produce out of these farms, put it on the road in order to move it to the market, where they sell their produce in order to get earnings. This is the way they live. It is, therefore, important and paramount to enable these people to continue living by providing a good road network. That is why I am saying that the performance of county governments will largely be measured by the quality of roads they are able to develop and maintain through rehabilitation and regular maintenance. This is a very important subject. These rural roads will transform our way of life and they will lead us to a better quality of life. That is what I believe.

In the year 2008, I was privileged to serve in an acting capacity as the Minister for Roads. We were together in the Ministry of Roads. At that time, management of our roads was very haphazard. People did not know who exactly was responsible for what. You will recall that we took advantage of the law that had been passed in 2007, the Kenya Roads Act, to try and streamline the operations of the roads sector. That is when we came up with the establishment of the three road Authorities. These are the Kenya Highways Authority (KeNHA) whose responsibility is the major trunk roads which were ably described by the Mover, Eng. Mositet. We also came up with the Kenya Urban Roads Authority (KURA) whose responsibility was to develop and to maintain roads within cities, municipalities and other towns.

The third Authority we established was the Kenya Rural Roads Authority (KeRRA) which would take responsibility for the large network of roads in rural Kenya. We know that there were initial teething problems. However, the three road Authorities have been in operation for five years. Some of them have done very well. They have taken off in every respect. They have developed their own capacity, they have structures but more importantly are present in all our counties. They have access to equipment and in every respect, they are operational and have done an excellent job in my assessment.

However, in 2010, Kenyans adopted a new Constitution which is now fully operational and embraced. It is guiding our lives in this country. During that exercise, Kenyans decided that roads would, in fact, be divided into two categories. One would be described as the national roads and that would be a function of the national Government. The other category would be described as county roads and the function of maintaining, rehabilitating, developing and all that would be the work of the county government. That is what the Constitution says. This means, therefore, that both these two bodies KURA and KeRRA must play different roles. They can no longer take responsibility for roads in the counties because that responsibility belongs to the county governments. That is the truth, according to our Constitution. Therefore, it is incumbent upon us, as leaders, to define the new roles for these two institutions. We need to amend the Kenya Roads Act, 2007, so that it conforms to the provisions of the current Constitution. We must begin to undertake that, as legislators in both Houses.

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Mr. Temporary Speaker, Sir, it is important that we really look at it that way. We must redefine the roles of both the Kenya Urban Roads Authority (KURA) and the Kenya Rural Roads Authority (KeRRA). However, I feel that there is also need for us to recognize the fact that these two institutions, for the last five years, have been able to build the necessary capacity. They now have experts and professionals in the form of civil engineers, structural engineers, economists, researchers, planners, cost analysts and people who carry out designs for roads and bridges. They also have staff who have acquired considerable expertise in the management of contracts and even procurement of road works. All these professionals are domiciled within these two roads authorities. They cannot be ignored because those are powerful professions and this country needs them.

Mr. Temporary Speaker, Sir, on the other hand, the county governments which are now supposed to take over the function of roads, as presently constituted, do not have the capacity necessary to develop and maintain roads within their own jurisdiction. What we see in the majority of the counties is that they have been able to appoint one person, who is a member of the executive at the county level, and has been told that he or she will take responsibility for roads. It does not have any other staff. Very soon, some of the counties will be appointing a civil servant or somebody---

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Obure! Your time is up.

Sen. Obure: Mr. Temporary Speaker, Sir, I support the proposal by my friend that the two institutions should work strictly and become answerable to the county governments, even as we use their expertise to link up with the national Government.

Mr. Temporary Speaker, Sir, I beg to second.

(Question proposed)

Sen. Karaba: Mr. Temporary Speaker, Sir, it is a wonderful time for us this evening to contribute to this useful and timely Motion which has been moved by Sen. Mositet.

Construction, maintenance, classification and even re-classification of roads is a very important aspect of development in any country which is serious, and I hope Kenya is one of them. What is interesting to note is that we do not know who is in charge of roads development in KeNHA, KeRRA, KURA *et cetera*. We do not really know what happens because of the poor infrastructure that we continue to witness in the development of the road network in Kenya. I am saying so because I happened to have sought a Ministerial Statement from this House about a road in my county which for the last three to four years has been under construction but has never been completed. Every year, there is some allocation of funds to that road in the Budget, but nothing seems to be happening.

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Mr. Temporary Speaker, Sir, we need not blame the Government *per se*, but the people who have been entrusted with the maintenance of this infrastructure. Are they honest to themselves? Are the engineers in the Ministry of Roads honest people? What happens is that after a road has been completed, after two months, potholes start to develop on it. They start to have potholes which are dangerous holes on the roads. That is happening on our roads. I wonder whether the consultant engineers are usually on the roads to make sure that they are properly done. Do we have serious people managing our roads?

If you visit Dubai and see how they construct their roads, a layer of tar is almost two feet from the surface whereas in Kenya, it is very thin. Within a month or so heavy trucks cannot be allowed to use those roads and yet they are meant to use those roads. The road is rendered useless. These are the type of roads we have in Kenya yet a lot of money is going towards construction. I know a lot of money goes to waste through cartels which are organized by the same engineers who are in charge of the roads. They are the ones who determine who gets the contract and which engineer's company should be awarded the tender. They even determine who should be the consultant and the supervisor. They have formed their own companies to oversee the construction. These are the same companies which will do the construction and the money is shared after the completion of that construction.

That is the agony of the onlookers, and these are the residents of each county; the 47 counties that are under question and which are covered by the Motion.

So this Motion, Mr. Temporary Speaker, Sir, is going to address the pathetic conditions of roads in Kenya. When you hear of accidents where people have died somewhere; or you hear that the road has been cut off by floods or the bridge has collapsed somewhere; or it is impossible even to take examination papers to a certain village in Wajir, or that examinations have leaked in north eastern, it is because of this kind of infrastructure. The development of roads in Kenya is pathetic and it is not because of lack of knowledge. It is because of proper, well orchestrated, careful allocation of this money only to be looted towards the end, hence poor road construction.

Mr. Temporary Speaker, Sir, we have areas which produce very important cash crops, and these are the same cash crops which earn us a lot of foreign exchange. Like we have heard from my friend, Sen. Obure, we have areas like Kisii, whose roads need to be tarmacked. That is the only way you can get coffee and tea transported from Kisii either to the market or to the factories. There is no way you can get tea processed in Kirinyaga if the roads are not all-weather roads. Otherwise, if we do not process tea, what else will we do with that crop? It will rot and then after that, there will be loss of revenue, which is translated as loss of foreign exchange and then poverty of the county will come in. So, what amount of money do we give out to those counties which are said to be marginalized?

This is what we are saying; that we need a policy – and this Motion is geared towards that – of road development where we maintain or where we will ask questions on

the ground as to who is responsible for this kind of mess and who was there. If we can give the work of road construction to people who are known even by the county managers in the name of local administration and the counties, and if this process was to be devolved to the counties, I am sure we are going to have better road construction than we have always had. There is a lot of bureaucracy and redtape in terms of getting the funds released from the Ministry. You go there and you are told that there are no funds, and when there are funds, you are told about it when it is already December and January, when they are about to prepare another budget for March. When you get it and you go to the office in March, you are told that they are preparing the budget for the following year. So, you find that there will be no money. But when the money is released, it is given to those engineers who will be there only for looting in order to line up their pockets. So, these are things that we need to discourage, and this Motion is moving towards that direction so that those people who will be given construction works are known to be people who know exactly what to do.

Mr. Temporary Speaker, Sir, we also have some other roads which are given to somebody who is, say, a friend to a serious senior politician and in the end, we have poor road construction. I condemn that kind of cartel.

With those few remarks, I support.

Sen. Ndiema: Thank you Mr. Temporary Speaker. I stand to support this Motion. I would like to thank the Engineer Senator for bringing this important Motion. Road transport is key to any development that we seek to achieve and more specifically in the rural areas.

I believe that all of us, while we were campaigning; the major issue that the public wanted us to address was roads. We promised that when we get here and since there is devolution, the roads would be fixed. As I speak, the roads in the counties leave a lot to be desired.

In Trans Nzoia County, we are almost harvesting. There have been a lot of rains and we thank God for that. We thank God for the rains and wonder how we will deliver our produce to the markets. We may resort to donkeys and even so, they are not as efficient. Lack of roads translates to poor returns. Whichever trader takes the produce must meet the cost of the produce. Since the buyers know that you are unable to access the market, they lower the market price which subsequently leads to low production and scarcity of food in the country. This also compels us to use our scarce resources to import the same.

Our Constitution recognized that there was need to address the issue of roads at two levels. The major national trunk roads should be the responsibility of the national Government while the rural roads should be the responsibility of county governments. That is already in the constitution. We know that previously, efforts had been made to address the same problem which brought about the formation of some authorities including the Kenya Rural Roads Authority (KeRRA). This was for the same purpose.

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However, rural roads are now a function of the county governments. So, when we speak, we know that, certainly, what KeRRA is doing is a function of the county governments.

Ever since the formation of KeRRA, there has been some progress. We do not want to condemn what they have done. However, in the previous two to three years of its formation, they did not do much. I have noticed that in my county, this year, they seem to be doing something.

On the other side, we have county governments which have the mandate but may not have the funds and capacity.

ADJOURNMENT

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Ndiema, you will have five minutes to contribute when the Motion appears next on the Order Paper.

It is now 6.30 p.m. It is time for interruption of business. The Senate stands adjourned until, Tuesday, 1st October, 2013 at 2.30 pm.

The Senate rose at 6.30 p.m.