

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 1st October, 2014

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

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

PRAYERS

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION OF STUDENTS FROM KAHURO
GIRLS SECONDARY SCHOOL, MURANG'A COUNTY

The Speaker (Hon. Ethuro): Hon. Senators, I wish to recognise the presence of students from Kahuro Girls Secondary School, Murang'a County who are seated in the public gallery. As you know the tradition of receiving and welcoming visitors to our Parliament is one long tradition and one that we shall endeavour to uphold. On behalf of the Senate and on my own behalf, I extend a warm welcome to the students and wish them a happy and fruitful visit. I hope you will appreciate them in the normal way.

(Applause)

PAPERS LAID

Sen. Kembi-Gitura: Mr. Speaker, Sir, I am sure you will allow me to say how pleased I am to have a school from Murang'a coming to visit the Senate for learning purposes. I hope they are going to learn something important. I would like them to feel welcome.

REPORTS OF THE ACP-EU JPA MEETINGS
FOR 2013 AND 2014

I beg to lay the following two Papers on the Table:-

A Report of the ACP-EU Joint Parliamentary Assembly Meetings held in 2013.

A Report of 35th Session of ACP Parliamentary Assembly and the 27th Session of the ACP-EU Joint Parliamentary Assembly held in Strasbourg, France from 12th to 19th March, 2013.

(Sen. Kembi-Gitura laid the documents on the Table)

NOTICES OF MOTIONS

ADOPTION OF REPORTS OF THE ACP-EU JPA
MEETINGS FOR 2013 AND 2014

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

THAT, the Senate adopts the Reports of the ACP-EU Joint Parliamentary Assembly Meetings held in 2013; the 35th Session of ACP Parliamentary Assembly and the 27th Session of the ACP-EU Joint Parliamentary Assembly held in Strasbourg, France from 12th to 19th March, 2014 laid on the Table of the Senate on Wednesday, 1st October, 2014.

INQUIRY INTO WRANGLES AT ISIOLO COUNTY ASSEMBLY
BY THE COMMITTEE ON DEVOLVED GOVERNMENT

Sen. Mohamud: On behalf of Senator Dullo, I beg to give notice of the following Motion:-

THAT, aware that Isiolo County is one of the 47 county governments established by the Constitution of Kenya; cognizant of the fact that a county government comprises of the county executive and county assembly; further aware that on 4th June, 2014, Isiolo county assembly resolved to impeach their Speaker; noting that on 16th June, 2014 the High Court of Kenya sitting in Meru reinstated the Speaker of Isiolo County Assembly temporarily; further noting that Isiolo County Assembly appealed against the said decision of the High Court, an appeal which has since been declined, concerned that the working relationship between the Speaker and most Members of the County Assembly of Isiolo has deteriorated, adversely affecting the assembly in the discharge of its

statutory mandate; noting that pursuant to Article 96(1) of the Constitution of Kenya; the Senate represents counties and serves to represent the interest of the counties and their government, the Senate directs the Sessional Committee on Devolved Government to expeditiously inquire into the matter with a view to solving the wrangles in the county assembly and report within three weeks.

STATEMENTS

DISQUALIFICATION OF MISS GLADYS C. TARUS FROM THE NPS, KDF AND KWS RECRUITMENTS

The Speaker (Hon. Ethuro): The Chairperson, Standing Committee on National Security and Foreign Relations.

Sen. Haji: Mr. Speaker, Sir, the Statement is on the disqualification of Miss Gladys C. Tarus from police recruitment.

On 5th August, 2014, Sen. Kittony requested for a Statement on the disqualification of Miss Gladys Chepkwony Tarus from the recent police recruitment and other previous recruitments by the Kenya Defence Forces (KDF) and the Kenya Wildlife Services (KWS). The Senator sought to be informed on:-

(i) the grounds under which Ms. Tarus was dismissed from the KDF training camp in 2010 even after having been recruited and given a force number and a commendation at Moi Barracks in Eldoret.

(ii) why the KDF failed to take her back during the subsequent recruitment even after promising to do so.

(iii) the details of the case that was cited by the KWS during 2011 recruitment as pending before the KDF and the reason why she could not be recruited by KWS.

(iv) the result of medical tests taken during the recent recruitment of police officers and the reason why she was deemed medically unfit; the copy of the same result.

Mr. Speaker, Sir, I wish to state as follows:-

The military recruitment exercise has specific requirements for recruiting---

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

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

Sen. Obure: Mr. Speaker, Sir, I rise to seek some guidance. We have established a tradition here that when a Statement is given, the person who sought it should be present. I do not know whether it is a tradition that is firmly premised or are we varying it now?

The Speaker (Hon. Ethuro): Are you in a position to deliver the responsible Senator?

Sen. Obure: I could try and look for her.

The Speaker (Hon. Ethuro): Why can you not do so then approach the Chair with the results.

Mr. Chairman, you can hold on as we take other Statements hoping that the Member will come.

Sen. Haji: Much obliged, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): For the benefit of Sen. Obure and others, it is a privilege to be allowed that, because there is nothing stopping us from proceeding. Therefore, Members should not abuse that privilege.

Sen. Wangari.

DESTRUCTION OF INSULIN MEANT FOR
CHILDREN WITH DIABETES

Sen. Wangari: Mr. Speaker, Sir, I rise to seek a Statement from the Chairperson of the Standing Committee on Health concerning the destruction of medical supplies, that is, insulin at the Kenyatta National Hospital (KNH) that was meant to benefit children living with diabetes type II. In the Statement, the Chairperson should explain:-

(i) whether there are enough stocks of insulin in the country and at KNH now that the batch that was to be used from November, 2014, has been declared unsafe for human consumption and subsequently destroyed;

(ii) the justification by the Ministry of Health and the Kenya Revenue Authority (KRA) to have the drugs removed from the cold room and subsequently destroyed;

(iii) why KRA imposed tax on the consignment despite evidence that it was a donation meant for public use in the national referral hospital.

(iv) the steps the Ministry of Health is taking to ensure that future donations including those of Anti-Retrovirals (ARVs), vaccines and medications for diseases like Ebola are not subjected to such controversies.

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

The Speaker (Hon. Ethuro): What is it Sen. (Dr.) Machage?

Sen. (Dr.) Machage: Mr. Speaker, Sir, if you may allow, could you agree that in the Statement sought, an apology be made by the KRA to Kenyans and particularly to patients with diabetes for that kind of callous conduct on a donated drug to these needy people?

Sen. Kembi-Gitura: Mr. Speaker, Sir, I also wanted to ride on that Statement if you allow me because it shows callousness, recklessness and something beyond mere negligence.

I would like to know what action has been taken or will be taken against the officer in KRA who caused that donation to be destroyed due to that callousness.

Sen. Hargura: Mr. Speaker, Sir, there is a part which the Member seeking the Statement did not touch. Kenya Airports Authority (KAA) is asking for charges to be

paid for storage of drugs which were destroyed. That should also be included. Why is it that KAA is asking for storage charges when they have already made that drug unusable?

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, further to that, it looks like there is a problem especially when you look at the way the Ministry of Health is refusing to accept donations and support from willing donors from abroad. A case in mind is on Saturday last week. There are some missionaries who usually come after every five years with medical equipment to the northern part of Kenya. This time round, they were detained at the airport and up to now their medical equipment has not been released. Could the Chairman tell us whether things have changed in regard to donations?

The Speaker (Hon.Ethuro): Sen. Sang.

Sen. Sang: Mr. Speaker Sir, it is just another rider to the same question. There is a donor in this country called Shoe for Africa who are building one of the biggest children hospital in Kenya at the Moi Teaching and Referral Hospital. This donor has been slapped with VAT by the Treasury and yet this is purely a donation to support this country. Therefore, we keep asking why the Government should impose such kind of a tax on a partner who is willing to support this country. Right now some of the works going on have stalled because Ksh.60 million or so has been held by the Kenya Revenue Authority (KRA) for the same reasons.

Could we get some clarifications as the Chairperson responds to the questions being raised by Sen. Wangari?

The Speaker (Hon. Ethuro): Sen. (Prof.) Lesan. I guess you are responding.

Sen. (Prof.) Lesan: Yes Mr. Speaker Sir. Thank you, Mr. Speaker Sir, I ---

The Speaker (Hon.Ethuro): Let us get the last one from Sen. Mositet unless he is on another matter.

Sen. Mositet: Mr. Speaker Sir, regarding what Sen. Sang was requesting, he is raising issues to do with taxes and I thought that, that one should really be on another Standing Committee maybe Finance, Commerce and Budget and not on Health.

The Speaker (Hon.Ethuro): Order! Then you should have risen on a point of order not as a request. You are completely out of order.

Proceed, Sen. (Prof.) Lesan!

Sen. (Prof.) Lesan: Thank you, Mr. Speaker Sir. I rise on behalf of the Chairperson of the Committee on Health, Sen. Kutu who is not here. Before making a commitment on when to give the answer, I concur with the sentiments of the other Senators as regards the issue of medicines because this directly affects the lives of Kenyan citizens.

The question is very extensive as it touches on two or three ministries as regards the role of KRA, the standards of this country and the Ministry of Health.

I request to be given three weeks to respond to this issue that has been raised which is a significant issue that we must give a satisfactory answer to, emanating from across the ministries.

Thank you.

The Speaker (Hon.Ethuro): You asked for what duration?

Sen. (Prof.) Lesan: Three weeks.

The Speaker (Hon.Ethuro): It is so ordered. What is it, Sen. Elachi?

CONFLICT OF MANDATE AMONG CONSTITUTIONAL
COMMISSIONS

Sen. Elachi: Thank you Mr. Speaker Sir, I rise to seek a Statement from the Chairperson of the Standing Committee on Legal Affairs and Human Rights. In the Statement, I would like the Chairperson to state why there is conflict of mandate among commissions and what the Attorney-General is doing as the Legal Principal Advisor to the Government; first, to ensure that the mandates do not overlap; to explain whether he is aware that the Chairpersons of the Commissions are the ones running the institutions, thereby, rendering the CEOs irrelevant and making them seem like they are not performing; third, to state whether the mandate of the National Human Rights and Equality Commission conflicts with that of the Gender Commission; fourth, to explain whether the Attorney-General (AG) is aware that the Gender Commission is not serving its main purpose and most of the functions are within the Ministry of Devolution and Planning, yet it has been impossible for the Secretariat to run the Commission due the overlapping of duties and; finally, to state what measures the AG is going to put in place to ensure smooth running of the said commissions.

Thank you.

The Speaker (Hon.Ethuro): Where is the Chairperson? Sen. Sang!

Sen. Sang: Mr. Speaker Sir, we seek two weeks to be able to respond to this Statement.

The Speaker (Hon. Ethuro): In two weeks' time. Before Sen. Haji's Statement, there was a Statement by the Committee on Information and Technology. Sen. Njoroge!

Sen. Njoroge: Mr. Speaker Sir, maybe I should take the advantage as we await the Member. I wanted some clarity from you, Mr. Speaker, whether this House can be in a position to summon judges of the High Court to appear before the Senate.

The Speaker (Hon.Ethuro): What did you say Sen. Njoroge?

Sen. Njoroge: Mr. Speaker Sir, I am disturbed. I wonder whether the Senate has powers to summon judges over anything, like any other Kenyan.

The Speaker (Hon. Ethuro): Now where is that one coming from?

(Laughter)

We are still on Statements Sen. Njoroge. Is there any Member from the Committee on Information and Technology? Sen. Prof. Lesan!

Sen. (Prof.) Lesan: Thank you, Mr. Speaker, Sir. As a Member of the Committee on ICT, we are yet to discuss on this Statement which has been presented. I am sure it is one of the ones lined up to be discussed and probably be presented in the next session when the Chairman comes back from Mexico where he has been for the last few days. I will raise this again in the Committee so that we can have an answer ready perhaps in the next one or two weeks.

The Speaker (Hon. Ethuro): Senator, there is a Committee of the House and it has a Membership. If one Member travels, that should not stall the work of the Committee. I think you owe it to this House. In any case, when it is listed it means that you had already promised as a Committee when you will respond to the Statement. You are not telling us what happened before; you are telling us about the future. Sen. Lesan!

Sen. (Prof.) Lesan: Mr. Speaker, Sir, I accept the sentiments, but this is a new committee that was formed recently. We are getting into positions and we have been discussing a lot of these things especially with regard to the new legislation to do with Information Communication Technology (ICT). This is one of those issues that I said have been mentioned in the Committee but it has not been discussed. I am sure we are going to work very hard on this and give an answer within the week.

Thank you.

The Speaker (Hon. Ethuro): We are giving you one week.

Sen. Haji, you may now proceed.

DISQUALIFICATION OF MISS GLADYS C. TARUS FROM
THE NPS, KDF AND KWS RECRUITMENTS

Sen. Haji: Mr. Speaker, Sir, on 5th August, 2014, Sen. Kittony requested for a Statement on the disqualification of Miss Gladys C. Tarus from the police recruitment and other previous recruitments by the Kenya Defense Forces (KDF) and the Kenya Wildlife Service (KWS). The Senator sought to be informed of the following:-

(1) The grounds under which Miss Tarus was dismissed from the KDF training camp in 2010, even after having been recruited and given a Force number and a commendation at Moi Barracks in Eldoret.

(2) Why the KDF failed to take her back during the subsequent recruitment even after promising to do so.

(3) The details of the case that was started by the KWS during the 2011 recruitment exercise as pending before the KDF and the reason why she could not be recruited by KWS.

(4) The result of the medical test taken during the recent recruitment of police officers and the reason why she was deemed medically unfit and a copy of the same results.

Mr. Speaker, Sir, I wish to state as follows:-

The military recruitment exercise has specific requirements for recruiting potential candidates. Among them, a woman candidate must not be pregnant at the time of enlisting and during training. Thus, potential candidates are screened for pregnancy using an immunological test where presence of some hormone is checked for in their urine.

Mr. Speaker, Sir, Gladys Tarus underwent the initial medical exams at Kabarnet District Hospital including pregnancy test which was then negative besides other military qualification tests and she was deemed a successful candidate. Thus she was issued with a calling letter to report to the Recruits Training School (RTS) on 25th October, 2010.

Upon reporting, the candidates are required to undergo further medical and military competency tests. However, Gladys' pregnancy test indicated that she was pregnant. She was duly informed of the results and thus no longer qualified for the military placement.

However, on her own volition, Gladys went to Eldoret town to conduct a repeat of the pregnancy test and later went back to RTS with documents that were suggesting that she was not pregnant. The doctors thus resolved to do a repeat of the pregnancy test but the procedure was discontinued when she was found to have vaginal bleeding. Since her earlier pregnancy test had indicated that she was pregnant and upon further clinical examination, she was found to have vaginal bleeding, she was declared unfit for military training.

The Ministry of Defense does not keep records of potential recruits at the recruitment centres, unless the candidate is actually recruited. Thus the Ministry is unable to confirm whether or not Gladys presented herself at the recruitment centre during subsequent recruitment exercises.

Mr. Speaker, Sir, contrary to the Senator's sentiments, the KWS team that conducted recruitment in Kabarnet did not have prior information about Gladys or her previous engagement experience with the KDF. She was treated equally with other candidates. Unfortunately, the candidate did not make it to the final stage of the exercise and was therefore unsuccessful. The exercise was fair and transparent. Gladys did not lodge a complaint with KWS against the exercise, which implies that she was satisfied.

Mr. Speaker, Sir, lastly, it is true that Gladys Tarus presented herself at Kabarnet recruitment centre with an interest to be recruited into the police service. She presented the requested documents to the returning officer, including a Kenya Certificate of Secondary Education (KCSE) certificate with a mean Grade C. She was further subjected to a 4 Kilometer physical road race, where she attained position one. However, she was found unfit to join the police service following the outcome of the medical report.

Nevertheless, the Ministry is not competent to commend or produce the medical report which is confidential. As such, a copy of the same cannot be produced without a court order or written consent of the candidate.

The Speaker (Hon. Ethuro): Sen. Kittony.

Sen. Kittony: Mr. Speaker, Sir, thank you for giving me the chance again to stand on behalf of this innocent Kenyan. I am not satisfied with the answer given. I wish to request for further information because I had the privilege of personally meeting this

young Kenyan and I do not think she has been given a fair answer. I would like to request for more time, if I am in order. I know that we would not want to do an exhibit, but the innocent Kenyan girl is even willing to write her own statement to state exactly what happened.

We really need to have fairness in all our dealings and fair decisions made on behalf of innocent Kenyans who are unable to speak for themselves. This is one of the very rare cases and if you put yourself into her position, it is a very sympathetic case. Personally as the originator of this Statement, I am not satisfied with the answer given to us this afternoon.

The Speaker (Hon. Ethuro): Sen. Haji.

Sen. Haji: Mr. Speaker, Sir, the answer was very elaborate and every issue that was raised by my sister, Sen. Kittony was given due consideration. I do not think she is justified to say that she is not satisfied with the answers given. If the lady in question wants to make statements, there are institutions like the National Police Service Commission (NPSC) where she can go and do so. The police will then conduct an investigation and advise her accordingly. She can also go to the Ombudsman to complain. I am sure her complaint will be taken into account and the people concerned will be asked to respond.

The Speaker (Hon. Ethuro): Sen. Wangari.

Sen. Wangari: Mr. Speaker, Sir, I rise to seek a further clarification on the same issue. I have heard what Sen. Haji has said about the military having their own rules and criteria for recruitment, but at the same time, we also have the Bill of Rights in our Constitution and I would like to get a clarification. At what point do we apply the Bill of Rights and say that you cannot be discriminated against based on your sex, pregnancy, age or whatever it is?

Mr. Speaker, Sir, I am also very concerned because this is a very special case. First of all, the test of pregnancy was negative and then the girl was actually given a Force number and told to report to RTS. It is only elephants which have a gestation period of 645 days while for a human being, it is nine months. I have actually seen the lady personally and she is no longer pregnant.

I would like to know if there is any special consideration after that, considering that she had already been assigned a Force number and told to report to RTS. Does she need to go through the recruitment process again or can the admission letter be enforceable?

The Speaker (Hon. Ethuro): First, Sen. Kittony, I want to agree with the Chairman.

(Sen. Kittony stood up in her place)

Order, Senator! You can only seek clarifications on the basis that you are not satisfied. You also need to explain what aspects you are not satisfied with. You need to seek clarifications on those aspects. You are only lucky that Sen. Wangari salvaged your

Statement because I would have terminated it there. I also want to agree with the Chairman that there are other institutions that can help you in that regard. Probably that is the line to pursue.

Sen. Haji: Mr. Speaker, Sir, the Bill of Rights was respected. Examinations were done at the Kabarnet District Hospital but we cannot tell whether the people who did it were qualified. The second examination was done by military medical officers who have the necessary equipment and it is at that stage that this lady was found to be pregnant.

The question of discrimination does not exist because the lives of the girl and the child she is carrying are very important. Trainees go through very vigorous exercises. Sometimes men even collapse and die. Therefore, it is not in order to risk their lives.

Sen. (Dr.) Machage: Mr. Speaker Sir, the reply by the Chair is of scientific interest. The accuracy of many tests is that there is a 1 per cent negative chance. Is it in order that the second test by the Government was considered to be 100 per cent correct and yet they did not give a chance to this lady? The lady Senator has seen her more than nine times after the exercise was concluded and has confirmed to this House that visually, she is not pregnant.

Sen. Haji: Mr. Speaker, Sir, the hon. Senator should not put certain words into my mouth. It was said that she was bleeding. Something else could have happened and that answers everything else that you are saying.

The Speaker (Hon. Ethuro): Hon. Senators, let us proceed to the next order.

BILLS

First Readings

THE COUNTY HALL OF FAME BILL,
SENATE BILL NO.33 OF 2014

THE NATURAL RESOURCES (BENEFITS SHARING)
BILL, SENATE BILL NO.34 OF 2014

*(Orders for First Readings read - Read the First
Time and ordered to be referred to the relevant
Departmental Committees)*

Second Reading

THE NATIONAL HONOURS (AMENDMENT) BILL
(SENATE BILL NO. 16 OF 2014)

(Sen. Wako on 23.09.2014)

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(Resumption of Debate interrupted on 30.09.2014)

The Speaker (Hon. Ethuro): Order, hon. Members. This Bill has come for the purpose of voting. Therefore, we will conduct electronic voting. Let the Bell be rung for two minutes.

(The Division Bell was rung)

The Speaker (Hon. Ethuro): Order! Order, Senators! I think we are now ready to take the vote. Please, log in. Are you ready? Draw the Bar and close the door. We are going to vote on the two; Orders No.10 and 11. We will start with Order No.10 for one minute each. Are we ready? Of course, the assisted voters; you know where to look for assistance.

Let us commence the voting.

DIVISION

ELECTRONIC VOTING

THE NATIONAL HONOURS (AMENDMENT)
BILL (SENATE BILL NO.16 OF 2014)

*(Question put and the Senate proceeded to
vote by County delegations)*

AYES: Sen. Abdirahman, Wajir County; Sen. Elachi, Nairobi County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Karaba, Kirinyaga County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Ndiema, Trans Nzoia County; Sen. Njoroge, Nakuru County; Sen. Obure, Kisii County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Wetangula, Bungoma County and Sen. (Dr.) Zani, Kwale County.

NOES: Nil

The Speaker (Hon. Ethuro): Order, Senators! The results of the Division are as follows:-

AYES: 24

NOES: Nil

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ABSTENTIONS: Nil.

The “Ayes” have it.

(Question carried by 24 votes to Nil)

(The Bill was read a Second Time and committed to a Committee of the Whole tomorrow)

Second Reading

THE COUNTY ASSEMBLY POWERS AND
PRIVILEGES BILL (SENATE BILL NO.11 OF 2014)

(Sen. (Prof.) Kindiki on 25.9.2014)

(Resumption of Debate interrupted on 30.9.2014)

The Speaker (hon. Ethuro): Order! Order! Let us log in. We will proceed and vote for one minute.

(The Senators proceeded to vote)

DIVISION

ELECTRONIC VOTING

(Question put and the Senate proceeded to vote by County delegations)

AYES: Sen. Abdirahman, Wajir County; Sen. Elachi, Nairobi County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. Karaba, Kirinyaga County; Sen. Kembu-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Ndiema, Trans Nzoia County; Sen. Njoroge, Nakuru County; Sen. Obure, Kisii County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Wetangula, Bungoma County and Sen. (Dr.) Zani, Kwale County.

NOES: Nil

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The Speaker (Hon. Ethuro): Order, Senators! The results of the Division are as follows:-

AYES: 25

NOES: Nil

ABSTENTIONS: Nil.

The “Ayes” have it.

(Question carried by 25 votes to Nil)

(The Bill was read a Second Time and committed to a Committee of the Whole tomorrow)

(The Bar was drawn and the door opened)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION OF STUDENTS FROM
BLESSED HANDS HIGH SCHOOL, KIAMBU COUNTY

The Speaker (Hon. Ethuro): Hon. Senators, again, we have a school visiting. It is Blessed Hands High School from Kiambu County.

They are students of history from Form One to Form Four. Let us appreciate them.

(Applause)

POINT OF ORDER

THE DECISION BY THE COURT OF APPEAL TO
REINSTATE MARTIN WAMBORA AS THE
GOVERNOR OF EMBU COUNTY

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. I would like to raise and issue which is of serious national importance. It concerns a report which is all over the country; that the Court of Appeal yesterday in Nyeri decided to reinstate Martin Nyaga Wambora as the Governor of Embu.

Mr. Speaker, Sir, it is important to set the record straight; that, that is an erroneous report. This is because as Kenyans will remember, there were two impeachments that were brought to this House. One was on Valentine’s Day, 14th February, 2014, where this House unanimously voted to impeach the Governor of Embu, but he went to the High Court and it provided the roadmap of carrying out impeachment procedures. Yesterday,

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the Court of Appeal reversed that old decision. You must remember that after the County Assembly corrected the anomaly which was raised by the National Assembly and went through the required procedure, this House on 13th May, 2014 again impeached the Governor of Embu.

Therefore, the correct position – I have the judgement here – is that what the Court of Appeal did was to decide on an old impeachment that had been overtaken by events but the Governor of Embu, Governor Martin Nyaga Wambora, stands impeached. It will be erroneous to mislead the nation that, that Governor has been reinstated to office.

Be that as it may, even as the Court of Appeal was making that decision, I feel that this House needs to know that there are many erroneous pronouncements that have been made by the Court of Appeal. First of all, in such a weighty matter, the strength of the judgment, the pronouncement by the court, the research and reasoning is nothing compared to what the High Court ruled. I am sorry to say this, but this is a little bit shallow. If you notice, it is only 41 pages. Most of the pages are recitals of what already happened, what time and how it happened. But even as they did that, the courts are also going overboard.

In paragraph 41, the court attempted to say:-

“We are of the view that collective responsibility is a policy, governance and accountability concept and not principle of personal liability or individual culpability.”

Mr. Speaker, Sir, the courts were trying to say that if anything goes wrong in a county, the management of that county, despite the fact that the Constitution says that there is a CEO, no one should be held accountable. The courts were even attempting to imagine that impeachment is equivalent to criminal liability; it is like a criminal trial. This is not the case. During past impeachments, this House over and over again has gone through all these procedures. In fact, the courts even went further to say that the court can have the power to sit over collection of evidence again and preside over the impeachment procedure as though it never happened in a county assembly or the Senate. It is very fallacious and pedestrian to think that our courts are meant to be presided over by people who are reform minded.

The reason I raised this issue is for you and your able leadership of this House to be cognizant of the fact that such erroneous judgements must not take precedent in this country and must never be the basis for future engagements in our country. Therefore, this House must be able to appeal this decision to the Court of Appeal.

Mr. Speaker, Sir, I can see you are a little bit restless but I will only make one other point. The judgment did not look at the proceedings of the Senate. Had the judges spent time to get the weighty submissions that took place in this House on 14th February, 2014, perhaps they would have benefited a little bit to appreciate that the impeachment of a Governor is a recall of a Senator. It is a process of governance; it is not a criminal liability. It is a process of political accountability and as such, the Constitution says that if you are the CEO, you must be held liable.

My fear is that if we continue operating in a country where those who have money will not be held accountable, it will be impossible if this trend continues, to impeach any Governor as long as they continue having money and the courts behave in the manner they are behaving.

In my own opinion, we are seeing a return of the old days where if you wanted a right judgment, you went to the right lawyer, so that he could go to the right court in order for you to get the right judgment. The reason we fought for judicial independence is to get accountability and justice for the people of Kenya. But if those who have money can have their way by delaying court rulings or using the right lawyers, this country will not continue.

Mr. Speaker, Sir, this House must continue standing for accountability and ensure that this country gets value for the taxes that are paid. If the trend that the courts are setting continues, it will be impossible in our lifetime and even the lives to come, to impeach any President because they are telling us that, that President must be criminally liable for something so that they can be held accountable. Impeachment is a process of holding political leaders accountable for things they have done, they ought to do or for things their people who are working ought to do because they are the final accountability institution.

What about a Governor who just sits there and sees the County Executive Committee (CEC) members do whatever they want to do and does nothing about it, if we have to say that one has to be directly criminally viable?

Mr. Speaker, Sir, going forward, this House must engage the Supreme Court of Kenya. Let Justice Willy Mutunga tell us, when he was fighting on the other side, as a civil society and human rights crusader, was this the kind of Judiciary they wanted when it comes to accountability? Therefore, this judgment must be taken to the Supreme Court by the systems of this Senate so that finally, we can tell the people of Kenya that the Supreme Court which is the final institution in the interpretation of the Constitution has confirmed that impeachment of any public officer is an impossibility in our lifetime as long as those who have money will have their way.

Finally, in another judgment which was delivered at the same time by the Court of Appeal, they are attempting to say that a county assembly presiding over an impeachment process of accountability of a county, a Speaker of that county assembly should be held accountable and sentenced and that a Member of the County Assembly (MCA) should be held in contempt for presiding over county assembly proceedings. Who is safe? They will go for the Speaker of the county assembly, they will come for your head, Mr. Speaker. They will go for an MCA in Embu County and come for the head of Sen. Murkomen. This House must stand to fight for the institutions of governance in this country that are meant to assure Kenyans that their taxes are being used for the right reason. If we do not do that, we, as a country are condemned to poverty, corruption, mismanagement and anarchy.

If judges continue issuing judgements like this one, they will lock the systems in the counties. If you lock pressure in one place, for example, if you lock a *sufuria* that has boiling water, the water will just push the lid out of that *sufuria*. Our counties are likely to burst if the Judiciary is going to be rigid in the manner it is going to interpret the Constitution.

Thank you.

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

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

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, the matter raised by the Chairperson of the Committee on Devolved Government is very important. I beg that you indulge me as the Chairperson of the County Public and Investment Committee to comment on this matter by saying as follows.

That the same Martin Wambora buoyed by the gymnastics that he has been involved in court has been moving in public fora threatening to sue the Chairperson of the County Public Accounts and Investments Committee for having stated that this Senate does not recognize him, having impeached him.

I want to use this opportunity to set the record clear, that the decision to impeach Martin Wambora was taken by this House. Therefore, I could not have, as a Chair of a Committee reintroduced Martin Wambora into these precincts of Parliament and proceedings of this Senate without the same Senate which removed him, having vacated that position. I, therefore, wish to use this opportunity to ask Wambora, if he so wishes to sue me, I would gladly face him in court because I would be defending the Senate that I was elected to.

Secondly, members of the public might not be knowing that all county governments do not have attorney-generals. So, as Martin Wambora was defending his interests in court, the County Government of Embu had nobody to represent it in court. In fact, the only people who were in court were Martin Wambora with his personal interest and the county assembly. But because of the absence of county attorney-general's under our structure, the interests of the County Government of Embu have remained unstated. I, therefore, want to challenge the Attorney-General of the national Government, in view of the fact that the two governments are interrelated, to take this opportunity and be the one defending the county governments in court until such a time that we get attorney-general's for the county governments. This is very important.

In my mind, in the absence of attorney-general's for the county governments, probably the funds governors are using to foot the bills for these legal processes are from the county government. Who will protect us? This is just furtherance of corruption.

Mr. Speaker, Sir, the final point is that I want us to understand that the impeachment of Mr. Wambora was not a measure of our love or lack of love for him and his government. We were simply driven by the fact that we were exercising oversight and there were obvious cases of corruption.

If we cannot fight corruption, then why was the Senate given the oversight responsibility? So that the public can see how difficult it is to fight corruption, you can see that monies acquired from corrupt practices by Governors are being used to defend them from being oversighted for corruption.

So that members of the public can know the sacrifices that leaders in history have made to fight corruption in their country, allow me to tell members of the public what happened in Ghana. In Ghana, a young boy of 32 years, Rt. Lieutenant Jerry Rawlings, hated corruption. He, therefore, overturned the Government and when he took over, he tried to execute three former Presidents. He executed Members of the Supreme Court of Ghana in Accra Stadium at 1.00 O'clock and some senior military officers, in broad daylight.

If we want to move our country forward and free it from corruption, we have to make a conscious decision to deal with people like Wambora and others whom I know are on the way – let me not anticipate debate – for this exercise.

Thank you.

Sen. Okong'o: Thank you, Mr. Speaker, Sir. I also take this opportunity to comment on the issues raised by the two Chairpersons. It is sad for some of us who come from the legal background to look at a 42 page judgment and after you go through it, you find that it lacks merit.

The courts of this country have a role, as we do, to defend this Constitution. However, what happens if the same courts violate the same Constitution? I concur 100 per cent with the sentiments of Sen. Murkomen. The citizens of this country are watching. They are watching the events unfold. As Sen. Murkomen put it, when the boiling point surpasses, we may not salvage anything. It is very important for us, as legislators, to move to another level of the court to see and challenge the verdict of the Kerugoya court of appeal and many other rulings.

In established jurisdictions, it is very rare for an arm of Government to eject another arm of Government as we have witnessed in this country for the past five months. Men and women of repute in this country must stand up and fight within the legal realms so that when history is written, some of us appear in the annals.

Sen. Njoroge: Mr. Speaker, Sir, I am a bit disturbed. I believe the judges or courts refer to laws whenever they come up with decisions. These laws originate from Parliament. The Judiciary does not make laws. The laws are made by this House or by Parliament. I am wondering about Article 125 of the Constitution and believe that everybody in this Republic can be summoned by this House. I wonder why we cannot attempt to summon the three judges. I stand to be corrected if there is any reference in the Constitution where judges are exempted from being summoned by this Senate as required by Article 125.

Time has come for us to keenly explore and see whether we can deal with judges. There are no two ways about it. We are dealing with reformists but not judges. The judges have declared war against the Senate.

The Speaker (Hon. Ethuro): Order, Sen. Njoroge. You can talk about the issue but you cannot start discussing the judges. The Standing Orders are very clear. If you are accusing judges of not interpreting the Constitution properly, then you should be extremely careful. You can also be considered as one who does not read his Standing Orders properly.

Sen. Njoroge: Thank you, Mr. Speaker, Sir. I stand to be corrected. I still go back to my earlier concern that this is the time that this House can explore the Constitution we have well. This is especially with reference to Article 125, to see if there is anything we can do so that we summon judges.

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. At times, as legislators, it behooves us not to cry like babies when we have the onus of writing the law bestowed upon us. The Constitution, as it is, has shown its own loopholes not only in the relationship of the three arms of Government but also in the functioning of Parliament itself. We have a situation where the National Assembly has passed an Act to allow the Executive to participate and answer Questions in the Chamber of the House. This is a situation that was not envisaged by the Constitution. This shows the laxity, loopholes and the thin line that needs to be built. Yes, this is a good Constitution. A wasp may be a very big insect, but when you look at its waist, you will see that it is very thin. You need a very small pair of scissors to cut it. This is exactly what is happening to the Constitution we have now.

Let us not bury our heads in the sand and refuse to remember what the two proponents of the referendum that passed this Constitution wanted; the “noes” and the “ayes”, the “oranges” and the “bananas” or the “reds” and the “greens.” One arm wanted to amend the Constitution before it was passed, while another arm said that it was better to pass it then amend it later. This amounts to the same thing; both arms had seen a deficiency and a problem in the Constitution we were voting for.

Mr. Speaker, Sir, it is unfortunate that this issue has been politicized. This has completely pushed the relevant message from people so that they do not look at the Constitution objectively. We should look at the lines we want to amend including the powers which the Judiciary is arrogating itself over the Legislature.

Thank you.

The Speaker (Hon. Ethuro): Order, Senators! It is a point of order and I think it has been ventilated sufficiently enough. We do not have to turn it into a debate knowing the kind of concerns we also have and that we will try to reach to each arm of Government so that we can all move in one direction.

What is your point of order, Sen. Sang? Is it on this same issue?

Sen. Sang: Mr. Speaker, Sir, I rise on a point of order relating to an issue that we discussed yesterday within the proceedings of yesterday’s debate. The Chair then ruled that he was recalling the HANSARD to clarify certain allegations that were made by Sen. (Dr.) Khalwale. The Chair then ruled that he was going to re-look into the issue this afternoon. So, I am just asking whether that direction will be given.

The Speaker (Hon. Ethuro): Order, Sen. Sang! If you had just been a bit patient, you saw me with this document and I was to respond to it. Since you seem to have either read my mind and acted faster - I was actually on my feet - I thought that there is another matter that you wanted to raise.

Hon. Senators, I have the following communication to make as promised yesterday on the allegations made by Sen. (Dr.) Khalwale on the conduct of the Senator for Nandi County, Sen. Sang.

COMMUNICATION FROM THE CHAIR

ALLEGATIONS MADE BY SEN. (DR.) KHALWALE ON THE CONDUCT OF SENATOR SANG

The Speaker (Hon. Ethuro): Hon. Senators, as you may be aware, yesterday, Tuesday, 30th September, 2014, during the debate on the Second Reading of the County Assemblies Powers and Privileges Bill, 2014, the Senator for Kakamega, Sen. (Dr.) Khalwale, rose on a point of order alleging that the Senator for Nandi County, Sen. Stephen Sang, had misled the House by saying, and I quote:-

"The proponents of the referendum are lying to the MCAs that we are amending the Constitution for their welfare."

In the process, Sen. (Dr.) Khalwale also cast aspersions on Sen. Sang by asking, and I quote:-

"Is that the reason why he attacked the Personal Assistant (PA) of the Governor?"

Rising on a point of Order, the Senator for Elgeyo-Marakwet, Sen. Kipchumba Murkomen, sought to have Sen. (Dr.) Khalwale substantiate or withdraw the assertion that Sen. Sang had attacked the PA to the Governor. The matter was also canvassed by various Senators including Sen. Hassan Omar, Sen. Billow Kerrow, Sen. Yusuf Haji and Sen. Moses Wetangula. Sen. Moses Wetangula, who is also the Senate Minority Leader, in support of Sen. (Dr.) Khalwale's argument, further alleged that; and I quote:-

"If I was Sen. (Dr.) Khalwale, I would have said that Sen. Sang superintended the assault on the Personal Assistant of the Governor of Nandi County. We saw this in the media."

When further challenged to substantiate, Sen. (Dr.) Khalwale indicated that he could not be expected to substantiate the obvious and went further on to say; and I quote:-

"At that occasion, the senior-most leader there, in my view, was the Senator. Since we, as leaders, inspire our youth; by virtue of his presence the Senator for Nandi inspired the youth through the speeches that were made, then it follows, without contradiction that this might have contributed to what provoked the youth. Since I did not call him a goon, criminal or crook, then I have nothing to apologize for".

Having considered the matter and perused through the HANSARD and pursuant to Standing Order 91 of the Senate Standing Orders, I find Sen. (Dr.) Khalwale to have been out of order. Consequently, I now direct the Senator for Kakamega, Sen. (Dr.) Khalwale, to withdraw his comments and apologize to Sen. Sang.

I thank you.

Proceed, Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. I thank you for your communication. In view of the aforesaid, I wish to take this early opportunity to reassure my young brother, Sen. Sang, that he is none of the things that my statement might have implied. Therefore, I withdraw and apologize unreservedly to him and the people in my neighbouring county of Nandi.

Thank you.

(Applause)

The Speaker (Hon. Ethuro): Well done! There is always honour in apologizing.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION OF STUDENTS FROM DRIVE-IN PRIMARY SCHOOL, NAIROBI COUNTY

The Speaker (Hon. Ethuro): Order, Senators! Before we call the next Order, let us also acknowledge the presence of Drive-In Primary School from Nairobi County in the galleries. There are 66 pupils and three teachers. Let us also appreciate them.

(Applause)

Next Order!

MOTIONS

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

THAT, aware that learners with special needs and disabilities in Kenya are faced with serious challenges including inadequate educational institutions, facilities and specialized teachers to cover all levels of learning; noting that the UN Convention on the Rights of Persons with Disabilities became part of Kenyan law in 2008; appreciating that Article 54 (1) (b) of the Constitution gives persons with disabilities the right to

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

(Sen. Karaba on 24.9.2014)

(Resumption of Debate interrupted on 24.9.2014)

The Speaker (Hon. Ethuro): Sen. Godliver Omondi was the one on the Floor the last time the Motion was in the House. I do not see her here, which means we can entertain other contributors. I wish to acknowledge Sen. Martha Wangari.

Sen. Wangari: Thank you, Mr. Speaker, Sir. The right to education is something that is actually enshrined in our Constitution and, many times, we actually forget that we have a special needs group that needs special attention. I, therefore, rise to support this Motion by Sen. Karaba, as the Chairperson of the Committee on Education, Information and Technology.

Those who know Sen. Karaba's history are aware that he is very passionate about education; he has been a teacher and he has been a head teacher. So, we cannot actually compete with the love he has for education. However, not all people who work in the education sector are really considerate of the needs of every child. So, I still want to congratulate him for that.

Mr. Speaker, Sir, the new Constitution – it is not very new – and the drafters took very keen interest in bringing up the marginalized groups of our community to where others have been. That means that the girls, the people from the marginalized communities and, more importantly, the people living with disabilities have been brought to enjoy the same rights to every service like any other person. In any case, even in this Senate, for the first time we have people with disabilities represented in Parliament. The same is true for the county assemblies.

Mr. Speaker, Sir, the foundation that education builds cannot be over-emphasized. We have seen cases of children with disabilities being tied down in their homes. We saw in the media one child that actually had to undergo amputation of one of her limbs. Why did that have to happen? This is because the parents thought that she was a curse and, therefore, she was chained to actually make sure that she does not go anywhere.

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Just recently, we had a case of a child born with albinism in one of the coastal counties.

That child was really suffering and one nominated Member of the National Assembly, hon. Isaac Mwaura, intervened as a person who has lived the life that, that child was living. He actually took the child to a school of people with disabilities in Thika. But how many people get this attention? How many children can we read about their stories in the newspapers? Therefore, the mainstreaming of people with disabilities is not something that we should even be debating about, because it is a medical condition.

Sen. Njoroge here can actually be a testimony. He was born a very able child, but before five years, *Polio* struck and he had to use crutches. Anyone of us can get such a child. Anyone can have a neighbour in such a condition.

Mr. Speaker, Sir, as the Senate which represents the counties where these children actually live, we should lead from the front and ensure that we are able to actually mainstream these children into schools. If we do not do that, we will continue being hopeless. In fact, I was reading the newspapers today about the crime rate amongst the youth which has almost doubled because they are idle. We cannot add to that hopelessness. Counties have been empowered, under the Schedule that gives the counties and national Government their respective roles. We know that the Early Childhood Development Education (ECDE) is under the counties, but it is still not done as we would like it. In fact, you will find counties without ECD classes and even teachers, which is very unfortunate. We must, therefore, support Sen. Karaba's Motion which seeks to ensure that we have a special dedicated institution.

I know the Thika School for the Blind, but how many people can afford that school? Can we get a blind girl from Kwale or boy from Kilifi to school in the Thika School for the Blind, knowing that the cost is very high?

As we consider education in the counties, this issue should be considered alongside the training and deployment of teachers.

Mr. Speaker, Sir, we must have people that these children can look up to. Even in the hiring of teachers, we must have an allocation for people with disabilities, because they are there. Being deaf or blind should not stop someone from being a teacher. So, even in terms of recruitment of teachers, we should give these children hope and show them that their life has not come to an end.

I support this Motion and actually urge all the county governments to take education very seriously and make sure that the children who are suffering are actually taken on board. We need to have an institution for children with special needs in every county. At the same time, in terms of criminality, the law must be very strict on people who actually go out of their way, including parents, to make these children suffer. There are cases of children who are locked up with goats and cows. We cannot just sit and let it happen. The law must be applied and those who propagate nonsense in terms of saying that it is witchcraft must be taken through the judicial process and punished severely. This will ensure that we deal with this problem. I beg to support the Motion.

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

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

Sen. Musila: Thank you, Mr. Temporary Speaker, Sir, for the opportunity. From the outset, I want to congratulate Sen. Karaba who is also---

(Loud consultations)

The Temporary Speaker (Sen. (Dr.) Machage): Order! Order, Sen. Sang and Sen. Khalwale. Converse and consult in low tones.

Proceed, Sen. Musila.

Sen. Musila: Thank you, Mr. Temporary Speaker, Sir, for that protection.

Mr. Temporary Speaker, Sir, I want to congratulate my dear friend and brother, Sen. Karaba, who is also the Chair of the Committee on Education, for bringing this forthright Motion. For the last 50 years, we have actually given lip-service to children with special needs when it comes to education or, for that matter, anything else. We have few institutions catering for children with disabilities, particularly primary schools.

(Loud consultations)

I am unable to proceed.

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Murkomen! You are one of the Members of this Committee.

Continue.

Sen. Musila: Mr. Temporary Speaker, Sir, the two Senators crossed the Floor to come to our side just to disrupt us, but I am glad that they have left.

Mr. Temporary Speaker, Sir, I was interrupted while making a point which I consider very important. During the last 50 years we have paid lip-service to this matter of children or even people with disabilities. I acknowledge that we have made certain efforts, but when we talk about education for children with disabilities, we have not gone very far. Many primary schools have areas where children with disabilities can be accommodated. When you go to those schools which have incorporated classes for children with disabilities, you will be shocked to learn that they are living under the mercy of well wishers. The Government has not given adequate funds to every child with disability in those schools.

I know for certain two schools where the head teacher had to come to us to ask for food, for the children with disabilities in order for them to continue with learning. I know for a fact that even when the Ministry says that they have taken over those classes, they

do not deploy teachers, as Sen. Wangari has said. Also, they do not provide those schools with money per child, as it is supposed to be. Therefore, this Motion is so timely that, if implemented, it is going to ensure that there is no discrimination because these children are the same. It is only that some are disabled and it is not their wish. We should not, therefore, neglect them.

Mr. Temporary Speaker, Sir, the bigger question that arises is that most of the institutions take these children up to Standard Eight, but they are not taken thereafter, except, perhaps to the School for the Blind that continues up to university level. Most children with disabilities end up only getting primary school education. Nothing happens to support the progression of these children to Form One and onwards. We sort of think that they are not capable and their education ends at primary school level.

I suppose that this mainstreaming of institutions is not just for primary education in accordance with the Primary Education Act. It must go up to the furthest that the child can go. At the moment, most of these children are very difficult and they are only taken to school for the convenience of parents and not for their future. I am appealing for a situation where once a child with disabilities goes to Standard One, regardless of the nature of the disabilities, unless they are completely unable to proceed because of mental or other faculties, they should be allowed to continue until their full potential is exploited. They should be afforded an opportunity to study up to where their potential ends.

Mr. Temporary Speaker, Sir, I am reminded that last week, my chief drew my attention to a situation where a child studying at the Thika School for the Blind was unable to proceed with learning because she lacked the Braille. When I got the details of the child, I called the Thika School for the Blind and I said I wanted to know how the child was studying so that I could be motivated to purchase the Braille. You will be amazed that this child, of a single mother, came position three out of 21 in the class. According to the Principal of the school, this child is of the rating of Grade B. If this child is provided with the Braille, this child will not be a Grade B plus child, but a Grade A child. Therefore, these children have huge potential only that we are not exploiting it. I urge that the national Government and the county governments ensure that children, wherever they are, are taken care of and given the opportunity to study.

Members will be shocked to know that the Thika School for the blind was started during the colonial times; maybe 52 years ago. Have we ever thought of the number of schools we would have needed in order to accommodate the many blind children out there? I support that every county should have an institution for children to take care of the various disabilities. We should have a school for the blind, mentally handicapped, the deaf and any other disability that we know of. We must ensure that we have these institutions which will cater for these children.

Mr. Temporary Speaker, Sir, before I end my contribution, I want to remind the Chairperson of the Committee on Education that as of today, the headteachers have not released certificates of KCSE students in accordance with the law despite the fact that none other than the Deputy President and myself have been appealing to teachers to

release these certificates. I urge the Chairperson to use his influence, having previously been the Chairperson of the Headmasters Association, to tell them to release these certificates.

I also appeal to my colleague Senators that as I bring an amendment to the Kenya National Examination Council Act to require that certificates are sent directly to the students, that I will get the support from them.

With those remarks, I beg to support.

The Temporary Speaker (Sen. (Dr.) Machage): I just wonder what the former Chairperson of the Headmasters Association will do if these matters have already reached the attention of the Head of State. Let us appeal to the Head of State to act on these matters.

Sen. Musila: Much obliged, Mr. Temporary, Speaker, Sir.

Sen. (Prof.) Lonyangapuo: Mr. Temporary Speaker, Sir, I want to join my colleagues in thanking and congratulating Sen. Karaba, the teacher, for thinking and coming up with this Motion. He has always talked about education matters in this country. In this Motion, he is looking at a special group of people who are in our midst but have not been given due attention previously. With the United Nations Convention on Rights of Persons with Disability (UNCRPD) it means that all over the world, particularly in the developed countries, people have always put emphasis on how another human being, who is having some disability, is assisted and enabled for that matter, to access education like any other person that is upright.

Article 54(1) (b) of the Constitution gives persons with disability the right to access educational institutions and facilities that are integrated in society. The Constitution also provides free and compulsory basic education to every child. It is a pity that we only talk about very few institutions in this Republic that takes care of people with special needs. We keep quoting the Thika School for the Blind. I do not know which other institution we can talk about other than that one because that is the only institution almost everybody knows.

Since we now have 47 counties and a staggering population of over 42 million Kenyans, in fact, we are now moving towards a population of 50 million and we have a huge number of our citizens who are in need of these facilities. It is prudent that we come up with a law to address these issues. Although we are discussing this Motion, I would like to ask Sen. Karaba that we move it further to come up with a law that will compel every county to build schools that will take care of these special citizens more so in every sub-county.

The people who require these services in West Pokot County, for example, are very many. We have one school, the Kapenguria School for the Blind. We have many students there and the institution is strictly for the blind. What about the other children that have other challenges as well? Just as we are building primary and secondary schools, what does it cost if we have an institution to take care of the disabled in every

sub county? For example, we should have one school that deals with children with disability in every sub-county.

In my county, we have about 500 primary schools and there are four sub-counties. If my county government and the national Government just concentrated on having four schools for the disabled, out of the 500 schools, this would make a lot of sense because we will be able to take care of these children. There are over 82 secondary schools in my county. Suppose we did the same and have about four schools, we will make progress. We should do this across the counties. This way, we will never leave anybody unattended to or unable to access education.

Mr. Temporary Speaker, Sir, you note that people living with disability can attend school at whatever age in their life. This will not limit them from going to school. You will recall the story of the old man; the late Maruge, in Eldoret who went to primary school at the age of 84 years. We have a number of people living with disability who are less than 40 years who may be in a position to still go to school. As a result of having this basic education and having specialized skills, they can easily become productive in society. If you visit major towns in Kenya, you will find very qualified tailors and shoe makers. Some of these people are living with disability but they have been trained in certain institutions. We should come up with quality schools that take such people through basic education and also add skills at the school level so that when they acquire the skills they are able to earn a living out of the skills they learn. This will be good for the counties. We have not paid attention. As a Senator and an educationist, I urge the Committee on Education, spearheaded by Sen. Karaba to sit with the officials from Ministry of Education.

Mr. Temporary Speaker, Sir, I know we have one institution of learning where some of our teachers go for special training. This is the Kenya Institute of Special Education (KISE). This institution is the only one in the whole Republic. However, it is not good for us to just single out one institution offering special training to some of our teachers. It is possible for us to have such an institution in each of the former eight provinces. I know a number of primary school teachers who have gone to train in this institution. After they graduate, they can assist children with special needs in their schools. We should avail special facilities and equipment to aid learning in those schools. For instance, we could avail wheelchairs and Braille.

Mr. Temporary Speaker, Sir, as I speak now, some schools have computers and other equipment.

The Ministry of Education has identified some schools to benefit from modern technology. They are now supplying them with computers. We are told that the Jubilee Government will give every class one child a laptop. Why can we not also equip the other groups of people with specialized equipment, so that they train, adopt and add value to the Kenyan economy?

Mr. Temporary Speaker, Sir, in my county, we have Keringet Primary School which has committed itself to assist people living with disabilities. However, owing to

lack of funds and recognition by the Ministry of Education, those children suffer a lot. For example, at times, it is teachers who volunteer to buy maize to feed them. Other times, they sleep hungry. They end up sleeping in classrooms and cannot concentrate in their studies. What a pity that we do not pay attention to people living with disabilities in our society?

Mr. Temporary Speaker, Sir, another issue which is a hindrance to the wellbeing of these people living with disabilities is the cultural beliefs in our communities. Some families hide them because they think they are bad omen. They are left in the houses. With the new dispensation, I believe the county governments should dedicate a department in the Ministry of Education. They should have a directorate under their governments to deal with people living with disabilities. Just as they have a directorate dealing with Early Childhood Development Education (ECDE), they should also place this one at a high level.

Mr. Temporary Speaker, Sir, the directorate should hire people who have gone through the necessary levels of learning in different disabilities so that we have people to look up to as an example. I have an example of this. There is a fellow in my county who has no legs. He went to study at the Eldoret Polytechnic. Owing to the energy and determination he had, he completed his certificate and diploma course. The Eldoret Polytechnic was very moved by this action. This man was very mature, aged over 40 years. The college employed him as a librarian.

Mr. Temporary Speaker, Sir, if such people were brought to counties as examples to run directorates and departments in charge of education, then we would drive our point home. This situation is true because at times you may be pushing somebody who is upright and normal, but may not understand the challenges that people living with disabilities undergo.

Mr. Temporary Speaker, Sir, when we were talking the other day, in this House, about open distance learning which has been attempted since 1963 in this country, we said that the people who are mandated to run this programme went to class for a face to face teaching. You cannot tell somebody who has gone through face to face teaching to run a programme that he has not undergone. They will kill it in a way because they do not know it.

Similarly, Mr. Temporary Speaker, Sir, I want to drive a point forward. In order to drive issues of disability prominently, we should promote people who have either gone through this education system or those who are living with disability and have the ability and capability to run some of these programmes.

Mr. Temporary Speaker, Sir, it is time as we come up with this new law, I propose that we try to have it in place during this time when we are implementing devolution so that in the next two to three years we have a law in place. When county governments start running around and coming up with programmes that they think they can deliver, this is one of those which can come in handy for the people of Kenya.

Mr. Temporary Speaker, Sir, I concur that if the Ministry of Education has documents that are stored in the national Government and materials that are related to establishing institutions for people living with disability, they should copy and send the material to every county government. The county governments should have such materials in their library so that as they begin to carry out development of these colleges and schools, it is easy for them to do so.

I support this Motion and request Sen. Karaba to move fast in coming up with a law. I support.

Sen. Ndiema: Thank you, Mr. Speaker, Sir. I join in thanking Sen. Karaba for being the voice of persons who have been neglected for a long time.

Our Constitution talks about certain rights and freedoms that have to be enjoyed. Unless certain measures are undertaken by the Government to ensure proper education and support for the disabled children, I am sorry that these freedoms and rights will be elusive and will not be enjoyed by this section of our population.

Mr. Speaker, Sir, for a long time, our education system has not mainstreamed matters of education of the disabled. Unfortunately, this has continued up to today, as I talk. The few educational institutions that this country has had some religious foreign support; that is missionaries, churches and other religious institutions. As we all know, these institutions are limited in terms of resources. Sometimes, they get the resources, but at times, they do not. These variations affect the children in those institutions. Unfortunately, the Government seems to have assumed that the responsibility for taking care of people living with disabilities is not a Government function, but of religious institutions.

Mr. Temporary Speaker, Sir, it is time we followed our Constitution to the letter and ensured that the disabled are mainstreamed. As I am speaking now, there is confusion as to whether the responsibility of educating disabled children or running these institutions lies with the county governments or the national Government. I am aware that there are schools in my county which have sections for the disabled. When they recently had extra curriculum activities such as music festival, drama and so forth, some time they are not facilitated.

I remember some children in my county did very well and they were selected to go to Mombasa for music competition. However, nobody wanted to facilitate them to go to Mombasa. They do not know where to go to for facilitation. They have come to me personally and we referred them to the Ministry concerned, who think it is not their responsibility. The county government thinks that primary education is the responsibility of the national Government because it is not a devolved function. I think those two levels of governments must work in consultation and in collaboration. They should come up with a policy and even legislative proposals as to who is responsible for construction of facilities, provision of equipment, teachers and also even the funding and facilitation of the extra curriculum activities for these students.

Mr. Temporary Speaker, Sir, some disability require that children do not travel to their homes on a day-to-day. This is because maybe they are blind or they are disabled in their limbs. Therefore, it would take them so long to travel to and fro. So, some institutions have started boarding wings to accommodate those children. In my county, there is a school called Birunda Primary School where the deaf, dumb and disabled pupils learn with the others, but they are forced to stay in the school. If you look at the facilities there, they are not up to the required standards. They are far below the accepted standards. First of all, there is no food. Therefore, parents or well wishers have to donate food on a day-to-day basis. There is no budgetary provision at all from any institution; not even at all from the Government.

Teachers in that school are overworked because other than teaching, they have to take care of the disabled pupils day and night. These teachers are few; there is no extra remuneration in terms of extraneous duty allowance or even overtime allowance for these teachers. In my view, these are really angels because they assist those children living with disabilities in a very professional manner. Sen. (Prof.) Lonyangapuo has just said that some of them even take food from their granaries to go and support these children.

Mr. Temporary Speaker, Sir, it is high time that the Government took this responsibility. We have talked about provision of laptops to pupils in primary schools. That is a good idea. However, we should make sure that these ones get at least the basic facilities. For example, we could supply them with the Braille machines, the hearing aids and the wheel chairs for.

It is a shame that there is a large population of young people who cannot move freely and we are doing nothing about it. They have to crawl to get to their educational institutions and back to their homes. If we just allocated, say perhaps, 1 per cent of our national budget to support these people, the situation would not be the same. For example, a wheelchair is something that we can buy today and it can take up to five years before we replace it. These are areas we should look into. It was timely that this Motion has come before the Senate.

Mr. Temporary Speaker, Sir, medical attention to these children with disabilities is a challenge. While they may have the primary disability because of the manner in which they walk, crawl and handle, they are exposed to the elements of contamination and so on. They are subjected to a lot of suffering, constant diseases and so on, and so forth. We do not seem to be taking any step to ensure that they have medical attention in these institutions. They do not even have nurses or ambulances to rush them to hospitals when they have problems.

Mr. Temporary Speaker, Sir, some of them also develop psychological problems because of this neglect. You may be disabled in your limbs, but because of the neglect in society, you are not taken care of psychologically too. If they were to express their bitterness, you would really get to know that they are suffering. In addition, the families of the disabled also are really suffering. Unfortunately, in most cases, misfortunes for the parents of the disabled children do not come singly. You may have a first born child who

is disabled, the second born also is disabled and the same fate is repeated for the third and, probably, the fourth born, leaving the parents psychologically tortured and financially crippled. They are not able to fend for and take care of these children.

Mr. Temporary Speaker, Sir, when issues of bursaries come in, it seems like we are only looking at who deserves a bursary, but no specific portion, percentage or quota of that bursary has been reserved for parents with disabled children. The same thing is true with the Constituencies Development Fund (CDF), which is a good programme. We have built so many schools using the CDF, but unfortunately, CDF programmes have not targeted providing facilities for the disabled children. It is high time that when we make regulations as to how the CDF should be used or how county funds are used, a certain percentage should be ring-fenced to ensure that facilities are provided to enable children living with disabilities to lead a good life as near as possible to their counterparts who are able.

Mr. Temporary Speaker, Sir, the Constitution provides for the rights of every child. Therefore, I would encourage my friend, Sen. Karaba, perhaps, in the near future, to come up with a Bill that will entrench the rights of the disabled in the Constitution. I believe with such a Bill, parents who take care of disabled children can get some assistance from the Government.

With those few remarks, Mr. Temporary Speaker, Sir, I beg to support.

Sen. Njoroge: Thank you, Mr. Temporary Speaker, Sir. I support this Motion and thank the Mover. This Motion makes some of us feel appreciated by other Senators in this House. I am touched to realize that Sen. Karaba and other Senators have great love for persons living with disabilities. I also take this opportunity to thank our leaders and the Clerk of this House for giving Members living with disabilities in this House support whenever needed. That kind of love is what could have made Sen. Karaba to think of coming up with such a beautiful Motion, which will really benefit persons living with disabilities.

Mr. Temporary Speaker, Sir, from the experience that I have, three quarters of parents who have children living with disabilities, are very poor. Persons with disabilities by nature are expensive to take care of, especially in terms of movement. As I speak, some of the children are taken from one region to another in search of schools for persons living with disabilities. Sometimes, it becomes a challenge and parents are not even able to transport their children living with disabilities to other regions in search of better schools to accommodate them.

Mr. Temporary Speaker, Sir, as I support this Motion, I would also like to appeal to the county governments and national Government to make sure that every person living with disability is facilitated with equipment for movement. This is because without the equipment, I believe that even attending school is a challenge. We have so many children and persons with disabilities who are in their 40s who cannot even come out of their houses. Sometimes, it is not even the wish of parents to lock up their children living with disabilities in their houses. It is simply because sometimes they do not have

equipment. A parent with a child living with disabilities cannot carry that child to school on a day to day basis. Remember that the parents have a duty also to look after the other children.

Mr. Temporary Speaker, Sir, I am happy because the Government has taken some initiatives regarding people living with disabilities. At one time, we were never considered in matters like procurement and tendering. Government tenders were just left to be enjoyed by the mighty. But today, we are able to enjoy that facility. The Government has reserved 30 per cent of the tenders for women and youth. I am also happy because the President has promised to launch a campaign to ensure that each person living with disability is facilitated with equipment to enable them move freely.

Mr. Temporary Speaker, Sir, I would urge the Senators to support and pass this Motion by Sen. Karaba. This will really give hope to parents and persons living with disabilities in the counties. I also ask the Governors to make sure that they come up with a department which will be responsible for moving around the counties to identify homesteads with people living with disabilities.

Mr. Temporary Speaker, Sir, with those few remarks, I beg to support the Motion and pray that other Senators will support it.

Sen. Wamatangi: Mr. Temporary Speaker, Sir, I rise to support the Motion and congratulate Sen. Karaba, like my colleagues have done, for highlighting to the society and community this very important and sensitive issue. This is a matter of society and community which has hitherto remained a matter that would rather be left behind closed doors.

Mr. Temporary Speaker, Sir, one of the greatest burdens and suffering of living with disability is stigmatization. This is even more painful than the pain that one feels, probably, from the difficulty in mobility.

This is as a result of the very fact that when those people have for a very long time been seen as different in the society. For example, they are not supposed to eat where we eat or feel the way we feel. In some communities when somebody on a wheelchair gets married in a marriage ceremony, people will feel uncomfortable about it. I dare say that the first step that we, as a country and people, need to do to deal with this problem is to change our attitude. Immediately we change our attitude and how we look at disabled people, then we can start to make meaningful progress.

We can ask ourselves some few questions. How have we in the past treated and adjusted ourselves to accommodate these people? For example, in the whole of Nairobi City how many public parking slots are reserved specifically for somebody with disabilities? Also, staircases or lifts in most of our public buildings were not friendly to people living with disabilities, until recently when that provision was made. In that case, I would want to thank Parliament. This has remained an issue that has got to be sorted out by the person living with the disabilities. But I think that the greatest culprit in terms of this issue is public transport.

Mr. Temporary Speaker, Sir, imagine a person in Kenya with a disability who has take a *matatu* from the city centre to an estate where he or she lives. Across hundreds of thousands of public transporters, you will find that there is hardly a single one who will think that: "There is a probability there is a person with disability who might want to use this vehicle that I have put for public transport." If you put all those considerations in perspective, then you will realise that we, as a people, have had a very negative attitude and approach towards dealing and solving this issue of people living with disability.

Recently, Mr. Temporary Speaker, Sir, as has been said by some of my colleagues, we have watched on television and read in newspapers about how children who have both parents surviving, have been locked and chained in houses like goats and cows because they are disabled. However, I wish to mention that in society we also have some heroes who are worth praising because of the way they have dealt with matters of the disabled. There was a lady from Nandi County who was aired prominently in one of the local television channels. This lady has made it her business to go around the entire Nandi County and into every home enquiring on who has got disabled children they have locked in their homes because they are unable to deal with them.

She started an institution and engaged all these children in self motivating and invigorating activities. These children can now enjoy self pride. Those kinds of heroes require recognition, so that we can have more of them. As we move specifically to look at matters like education, we can then carry along more of such people.

Sometime back as I was having a cup of tea in a hotel, I was approached by a couple who had come to this country from one of the foreign countries. They told me: "We have been informed that you are a Senator and we would want you to assist us." I asked them: "How would you like me to assist you?" They told me: "For almost six months, we have been struggling. We brought in a container of wheel chairs, other gadgets and equipment which we intended to donate to institutions such as churches and assist people with disability. We have struggled at the port and the Ministry trying to secure the release of these goods because they have been detained at the Port of Mombasa. We have been asked to pay so much money in demurrage and storage."

I must say, with a straight face to our authorities, that it is time to be sensitive about such matters. It is unacceptable that some people could be touched when they are thousands of miles away from this country in Australia and Canada and see that there are people they need to assist in a country like ours. When they arrive, at our Port, Kenyans like us, will say that because of bureaucracy or red tape, these people cannot be helped. What happens eventually? Those items are either auctioned. If they are auctioned, who will buy them? When they are bought, where will they go? Probably, they will be given to other people with disability, but what is the rationale? Unless those matters are addressed, we will remain and can be marked an insensitive society.

Mr. Temporary Speaker, Sir, I believe that if we are to address the problem of the increment of the number of people with disability, we must go to the source. We must address the factors that are causing the number of people living with disability to increase

and the reason we have to deal with the same problem continually. If you look at the streets of Nairobi now, any evening as you drive home, if you pass through Uhuru Highway, the people you will find begging, 90 per cent of them will be people with disability, save for a few street families. We need to ask ourselves: Are we doing what we should be doing if the only relief or means of an income for a person with disability living in the capital city of Nairobi will be to go to the streets to beg? This is why we must look at our conscience, as a country, and say that we need to address this matter, once and for all.

Recently, we had a major campaign that was run in this country. I am sure we all remember it; the “Bring Zack Home” Campaign. A disabled person, straight from the spinal injury hospital, took a wheel chair and wheeled himself all the way to South Africa. His purpose was to sensitise society to be more engaged and conscience of the problems of people living with disability. However, this was also to prick us so that we may ask: “For us to address issues of people with disability; do they have to wheel themselves to South Africa and other nations continuously for our conscience to register that we need to do something?”

Mr. Temporary Speaker, Sir, I have said all these things to bring a simple point home. What has been brought to the Floor of this House by Sen. Karaba is a matter that concerns all of us. It is an issue that must be dealt by all of us comprehensively. This is to make sure that when one goes to a learning institution, if one is starting a private school or somebody has been put to be in charge of schools, even if they are public schools, amongst the issues that must be addressed are: How do we deal with the people of this community who have disability and who, according to our Constitution, have a right to be a part of those institutions?

If, for example, we did a random check in our schools in this country, you will hardly find any school that has any facilities intended to address the plight of the disabled. For example, you may find that classrooms are clogged with desks, but there is no consideration that there could be a young child who will come to that school on a wheel chair. There will be absolutely no consideration in an entire curriculum, including all the equipment and facilities being brought to a school, that, for example, there could be blind children. This is a way for a community to kill itself if, as they say: If my brother’s problems are not my problems, then we cease to exist as a community.

Mr. Temporary Speaker, Sir, in summary, indeed, all is not lost. Nowadays, we have physically challenged Senators who sit in this House. It was unheard of, earlier, in our Parliamentary system and other systems for people with disabilities to be considered for positions of leadership. So, we cannot say that all is lost. However, we must do more.

I want to drive this point home; that, people with disabilities can rise to any position of leadership and even in their personal achievements; for example, to become the best performing athletes. We have seen and read stories about Pistorius from South Africa. We have people like our own, Wanyoike.

Mr. Temporary Speaker, Sir, during the marathons in this country, we see disabled people coming out in large numbers to participate and to bring out the spirit of competitiveness. They participate in wheelchair races. People with disabilities, as long as they are given the opportunity, can excel right from inception when they go to school up to when they have their own families. They even flourish in businesses and professions. They can be a normal part of this society. We only need to be willing to help them.

With those words, I want to congratulate and laud my colleague, Sen. Karaba, because we will not always find such a Motion here.

Sen. Hargura: Thank you, Mr. Temporary Speaker, Sir. I would like to thank Sen. Karaba for coming up with this very timely Motion. We are called upon to be our brother's keepers and to take care of these communities which have, for a long time been disadvantaged owing to their physical conditions. When you talk about people with disabilities, we are not talking about a small number. There are more than 3 million Kenyans who experience one form of disability or another; be it sight, physical, hearing or mental. We have a proportionate size of this community which experiences this. If we do not have systems to take care of them, then we will be locking out a sizable part of the community who, when given the opportunity, would contribute even better than some of us in building of the nation.

Mr. Temporary Speaker, Sir, we see them and we live with them. The experience we have is that whenever they are given the opportunity; in terms of education, they perform better than children with able bodies who go around playing. They concentrate on their studies more than the able bodied children. Therefore, we get better professionals when we give them opportunities.

As it is right now, these children are disadvantaged not only physically, but culturally. You will find that they are locked out of community activities. You will find cases of children being locked in their houses and parents not wanting to expose them. At times, this is not because of their culture as it has been said. This can also be because some parents are poor. Therefore, they find it difficult to look after these children and fend for them.

This is a timely Motion. It requires the county and the national governments to take immediate measures to mainstream education training for learners with special needs and disabilities by establishing. We must equip, at least, one institution for children with disabilities and special needs in every county.

As it is, these children are spread throughout the country. However, the institutions are very rare. Most of the time, they are run by Non-Governmental Organisations (NGOs). I know that the nearest institution for the deaf in my county, Isiolo, is run by a church. There is no Government institution. We, as a Government, owe people living with disabilities. It is necessary that we provide these institutions. When we talk about institutions for people living with disabilities, we are not talking about any other school. These institutions require special consideration in construction.

Mr. Temporary Speaker, Sir, the architecture should be that it is accessible to these children. They require special facilities like wheelchairs for those who are physically challenged. They need to have hearing aids and braille for the blind. This is an institution that the county or national Government has to invest in and ensure that it is run properly.

More often than not, the parents of such children cannot afford their upkeep. This is an institution that the Government has to fully equip and run. We must bring it to the attention of our Government that we owe members of this society the necessary facilitation like any other member of the society.

When they are old enough, they should participate fully in the development of this nation. We have seen those who have accessed this facilitation becoming better citizens than some of us who are able. We should ensure that this kind of Motion does not just end up as a Motion. I urge the Mover of this Motion to come up with a Bill so that we have an Act which can be implemented by the county and national governments so that we come up with these facilities.

Mr. Temporary Speaker, Sir, two to three years ago, we had the national Government engaging in the construction of centres of excellence, model markets among other things. However, no one thought of this kind of facilities. Had it been thought about at that time, then we would have seen it as an area where we have lagged behind. This is, probably, an indictment on us which shows how much we think about the less fortunate members of our society.

When came up with a model primary school, a centre of excellence secondary school and a health centre and a fresh produce market, nobody thought of an education institution for people with disabilities. It is high time that we woke up and took care of this sizable population so that we are seen to be mindful of all the citizenry in this country.

Mr. Temporary Speaker, Sir, I support this Motion. I hope that it will translate into an Act that can be enforced so that these institutions are established and it does not end as a Motion.

Sen. Mositet: Thank you Mr. Temporary Chairman, Sir.

The Temporary Speaker (Sen. (Dr.) Machage: Can you address me appropriately?

Sen. Mositet: Sorry, Mr. Temporary Speaker, Sir. You deserve more respect than that.

I stand to contribute to this good Motion by my brother. From the outset, I want to thank Sen. Karaba. Towards the beginning of this year, he assisted one girl who had performed very well in my county. This girl was taken into a local public school. The girl was from a rural area and from a family which did not know that education is good. Let me report today that the girl is doing very well at the Kenya High School. During last term, she was leading in her class despite the fact that she had scored 390 marks in her KCPE. The Senator assisted and she is doing very well.

Mr. Temporary Speaker, Sir, this Motion is urging the national and county governments to take immediate measures to mainstream education and training for learners with special needs and disabilities by establishing and equipping at least one institution for children with special needs and disabilities in every county. You will realize that in our Constitution, special education is preferably a matter which was left for the national Government. That is why the Senator is urging both the national Government and the county governments to come up to assist, aid and make sure we have training institutions which are well equipped to cater for the special needs and those with disabilities.

Mr. Temporary Speaker, Sir, it is true, just as what other Senators said, that we have this notion that those with disabilities or those who have those needs are people who are poor or that they are people in our society who stay in another life. No! These are Kenyans and we must show them love. We must embrace them because they live with us; they are our brothers and our children.

Mr. Temporary Speaker, Sir, we, as legislators, must make sure that we come up with laws, like what our brother is asking us to do. That is why many of the Senators are urging him to go an extra mile and come up with a Bill. We want to come up with institutions which will make them live comfortable life. We want to see them socializing with those who are physically fit. This is the only way they can stay with their parents, brothers and feel that love. This will enable them to equally contribute to the economy of this country just like those of us who are not living with any disability.

Mr. Temporary Speaker, Sir, the laws we have provide that we must take care to make sure that, at least, if it is the houses, buildings or the structures. They are compatible and compliant to ensure that the disabled can access them without any problems and to address their issues. You will be shocked that in many of our primary schools which have classrooms for pupils with those special needs, the pupils are just on the floor. It is usually just a classroom with a roof, four walls and a door without special attention to the needs of these children. We should ask ourselves how comfortable these children are in classrooms. Are there materials pinned on the walls?

Mr. Temporary Speaker, Sir, you will realize that most of the children with special needs are normally very good in art work. However, you will be shocked to find that in the classrooms which have already been provided, there are no materials to support art work at all. You will also find that it is only one teacher who is normally provided to take care of those children. It is the same teacher who will be teaching them. It is the same teacher who will try to support them as they go and address calls of nature. It is the same teacher who assists them to feed and address all their necessary needs. So, as the Senator says, those institutions must be equipped properly and staffed them with enough personnel who will provide the training. We should ensure they have enough trained teachers and lecturers.

Mr. Temporary Speaker, Sir, I will even ask the Chairperson of the Committee on Education to come up with a schedule of how they will visit these schools that we have in

the counties. You will be shocked to find that there are no toilets for these children with special needs. You will be shocked that these children go crawling to the pit latrines. They do not have somebody to assist them. When they come out, there is no water to wash their hands. They crawl back to the classroom to be taught by the only one teacher. Sen. Karaba wants us to equip these institutions. Can we make sure that these children have structures which can make them comfortable when they are training? They must feel part and parcel of this society just like any other Kenyan.

Mr. Temporary Speaker, Sir, you will also realize that we do not have any public transport which takes care of those people with disabilities. I will not dwell much on that because one Senator spoken about it. Suffice to say, today, if anyone with a wheelchair wants to come to Nairobi from the rural areas, there is no single bus with a special door to be used by people using wheelchairs. These vehicles do not have somewhere specially designed for them to place their wheelchairs. I think we should not allow this to continue because this is segregating against them. I do not think it will be good to leave it just like that.

We should make sure that all public transport vehicles provide some zones which are purely for the disabled, who are our brothers and sisters.

We want them to feel the society minds about them. We should also be proud of them. I know we are politicians and when it comes to the time of voting, we do not look at who is voting, but we ask “who has the vote?” It is very good that somebody had brought to our attention that we have over 3 million of the disabled voters. So, we need to consider them also by giving them what they deserve.

Mr. Temporary Speaker, Sir, in my county, there is a football club for the deaf. They play football very well. In fact, currently, I think they could be the best in some of the zones. So, these people have some special talents which we need to nurture. I urge during commemoration days for the people living with disabilities, we, as leaders, from both grassroots and national levels come out in large numbers to support them. For example, it will be commemorated on 13th December, 2014. I urge that we support them by attending this important day for them. We can also support them by talking about their needs and showing them our love.

Mr. Temporary Speaker, Sir, I notice that we have been talking about setting aside 30 per cent of the jobs for the disabled, women and youth. I would suggest that we go even further and set aside exclusive positions for the disabled at the county and national levels. However, we are doing very well. At least, in the Senate and the National Assembly, for example, we have nominated Members. They are serving very well and articulating issues affecting the *wananchi* and this nation. I thank His Excellency the President for appointing a Principal Secretary and other senior officials living with disabilities. We need to continue with this and show that these people also have the same potential as those who are physically fit.

Mr. Temporary Speaker, Sir, the teachers who teach children with special needs and disabilities are also special in one way or another. It is a calling and I would suggest

that these teachers be given an extra token of appreciation because they are doing a good job.

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

The Temporary Speaker (Sen. (Dr.) Machage): Very well. Since there are no more Members who are interested in contributing, I now call upon the Mover to reply.

Sen. Karaba: Thank you very much, Mr. Temporary Speaker, Sir. This is a very emotional Motion. It is very interesting in the sense that we are talking about children with special needs.

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

The Temporary Speaker (Sen. (Dr.) Machage): Who do you want to inform?

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I would like to inform the Senator for Kirinyaga.

The Temporary Speaker (Sen. (Dr.) Machage): Do you accept to be informed?

Sen. Karaba: It is okay, Mr. Temporary Speaker, Sir.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, because of the special significance of this Motion, as he has said, I just want to inform him that a disabled man, who has done so much for the welfare of disabled people in this country, the late Anjere, died and we shall be burying him the day after tomorrow. Probably, this House in recognition of what he did, would want to join us in sending our condolences to the family and friends of Mr. Anjere, a disabled man who was the chair of people living with disability. He is from Khwisero in Kakamega.

The Temporary Speaker (Sen. (Dr.) Machage): Very well. I hope that you are now informed.

Sen. Karaba: Mr. Temporary Speaker, Sir, we send our condolences to the family, relatives and friends of the late Anjere.

Mr. Temporary Speaker, Sir, this Motion is very significant as far as access to education is concerned. We have noted from the various speakers that there is need to have these children taught, just like anybody else. We have also heard that there is need to have special trainees and trainers, so that they can handle this special area.

Mr. Temporary Speaker, Sir, it is also important to note that we have a very significant number of pupils living with disabilities in Kenya. We have about three million. This is a very significant number. If it is not attended to, we would even be cursed by the Almighty. Therefore, I ask the Government to go by the spirit of this Motion and move with speed to save the situation.

Mr. Temporary Speaker, Sir, the situation is glaring and saddening. As we sit here to enjoy the life that we have been given by the Almighty, there are some who cannot. I am talking from experience because I have been to some of these institutions. There are children who cannot think. Some of them cannot speak, sit, co-ordinate or even take notice of any danger. It is as bad as that.

We need to have special teachers who can handle these children. There are parents who would not even pronounce that they have such children, because to them

they are a bother. Some think that it is a curse and the moment they declare that they have such children, they will be the laughing stock of the society. This is a stigma that we must remove. It can only be done by us. We need to recognize that there is need for us to be closer to these people, so that we can extend love to them.

Mr. Temporary Speaker, Sir, we have heard how difficult it is for these children to access the special institutions. Some of them cannot walk. They must be taken to the toilet by the teachers. Therefore, the teacher/student ratio should be one to two. It is not the normal school situation, where the ratio is one to 40. These teachers need to be given special salaries, because they handle special cases. The Teachers Service Commission (TSC) also needs to employ and post dedicated teachers to these schools. In developed countries, children living with disabilities are really treated well. They are not hidden. They are visited regularly by senior officials, including Senators.

We can also dedicate a day, for example, to observe a day for special cases. These are the areas that we need to think about.

Mr. Temporary Speaker, Sir, we also need to think about the curriculum because it is not defined. These children mostly do handcraft. There is no time they will be told: "Now that you have reached Class Eight, you need to join a secondary school." This is an area which is not known by many people. There is need for the counties and the country to investigate and come up with a way in which they can handle these needs. Therefore, I laud and thank all Members who have spoken in support of this Motion. I hope that the moment this Motion is passed, I will develop it into a Bill with the assistance of my committee. When this Bill comes before this House, I urge Members to support it, so that we are seen as a society which is not running away from its realities, but one that is concerned about children with disability. We should further be seen to be treating these children according to the United Nations Charter.

I beg to move.

The Temporary Speaker (Sen. (Dr.) Machage): In my opinion, this is not a county matter. I will, therefore, proceed to put the question.

(Question put and agreed to)

Next Order!

MOTIONS

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

THAT, the Senate adopts the Reports of the Standing Committee
on Education, Information and Technology on Retreats with County

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

(Sen. Kagwe on 16.7.2014)

(Resumption of debate interrupted on 16.7.2014)

The Temporary Speaker (Sen. (Dr.) Machage): Order, Senators! This Motion is deferred to another day.

(Motion deferred)

ESTABLISHMENT OF NATIONAL AIDS CONTROL
COUNCIL OFFICES IN ALL COUNTIES

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

The Temporary Speaker (Sen. (Dr.) Machage): Order, Senators! This Motion is also deferred to another day.

(Motion deferred)

MEASURES TO AVERT LOOMING BREAKDOWN
OF HEALTH SERVICES IN COUNTIES OVER
MEDICAL PRACTITIONERS' CONCERNS

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

THAT, aware that health services have been devolved in accordance with the Fourth Schedule to the Constitution and that medical doctors and other health practitioners in the public sector have been transferred or are being transferred to the counties; concerned that there is an acute shortage of medical professionals, especially consultants, in the counties, and particularly in rural counties;

further concerned that public health personnel, particularly doctors, are apprehensive that their terms of service, including training, pension, remuneration, professional advancement and welfare are not assured and as a result are seeking for employment in private medical institutions in urban centres; cognizant of the grave danger their departure poses to the health sector; the Senate calls upon the National and County Governments to urgently address the concerns of medical practitioners to avert the looming breakdown of health services in counties.

Mr. Temporary Speaker, Sir, I want to thank you for giving me this opportunity to move this Motion which has been outstanding for several months. Finally, it is before the House. It is touching on a very important subject, the health of our people. Health is a basic right under Article 26(1) of our Constitution which states that:

“Every person has a right to life.”

Therefore, non-availability of health services is prejudicial to this right. Further, Article 43(1)(a) is even more explicit in that it says:-

“Every person has the right—

- (a) to the highest attainable standard of health, which includes the right to health care services, including reproductive health care;”

Mr. Temporary Speaker, Sir, in being faithful to the Constitution we must, therefore, ensure that residents of Kenya, regardless of where they are living, access affordable and proper medical services. We are aware that many statements of intent and high standing policies on health have been articulated from time to time, but the health services in this country remain below standard. Our health institutions continue suffering from lack of adequate facilities, including even the basic ones like accommodation where patients in most hospitals are sharing beds. There is also lack of equipment including diagnostic equipment. Many patients have had to travel long distances to be diagnosed. Sometimes they have had to travel abroad using a lot of foreign exchange and impoverishing their families. Some have had to sell everything they have, including land to be able to save members of their families.

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

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

Mr. Temporary Speaker, Sir, one of the glaring shortages is in terms of personnel. Health institutions are not properly manned to the level that is acceptable even at international standards. For example, currently, the country faces a dire shortage of medical personnel particularly doctors and nurses. There is a shortage of 20,000 doctors and about 50,000 nurses in this country. Kenya faces a significant shortage of physicians. We only have 4,500 in the entire country according to the World Health Organisation (WHO), while a country like the USA boasts of 26 physicians per 10,000 people. Kenya has just one doctor per 10,000 people. This is a ratio that is below the average in Africa. The situation is even worse when you go to the rural areas considering that 50 per cent of physicians in this country practice in Nairobi.

Mr. Temporary Speaker, Sir, there are about 1,000 physicians who work in the public sector which serves the marginalised Kenyans. In addition, Kenya has got the highest rate of migrating doctors in the world with 51 per cent leaving the country to work elsewhere according to the studies done in the year 2,000.

Further, the migration of trained health workers from the public sector to higher paying positions in the private sector has made the retention of health workers more challenging. Most of our county hospitals, as I speak today, do not have the category of doctors we refer to as consultants. Health is one of the functions that have been devolved. However, we wish that this situation was reversed. If devolution is not handled properly, the services may deteriorate. I say this because of a number of factors.

First, the inadequate financial allocation to the counties will affect the level of health services, and particularly personnel. It should be noted that, as I speak, as it were, when health matters were organised at the national Government, 14.8 per cent of the health budget came from donors. This seems not to be going down to the counties now that we have devolution. Counties rely mainly on meager resources and may not have adequate funds to allocate to the health sector. That is a danger because remuneration of health workers will be affected.

Mr. Temporary Speaker, Sir, there are many issues making health workers worried today. Health workers are worried whether with limited resources; counties will manage to retain them. They are worried whether counties will promote them when they are due for promotion considering that opportunities at the county level for promotion are limited.

Mr. Temporary Speaker, Sir, you cannot be a Director of Medical Services (DMS) at the county level. How does a medical doctor in the county eventually rise to that level of a DMS, among other posts? Will counties give them the necessary further training, this being an expensive exercise that counties cannot afford. Training of doctors

is very important. They have to be refreshed because technology changes from day to day and they have to be updated.

Mr. Temporary Speaker, Sir, the worry here is that there are different priorities for the county governments and training for medical practitioners may not be adequate. Their being employed by counties will limit their transferability to other counties for experience and welfare. Being retained in a hardship area which is, perhaps, not your home, for a long time without being transferred will certainly affect somebody's performance. This may even force a practitioner to exit the public service all together.

There should be a guarantee that those who are employed in the counties can stay there for a number of years and move on to other areas, so as to benefit from training because diseases vary from place to place. Doctors need vast experience. There are different diseases that affect people living in the highlands and lowlands. Doctors need to get all-round experience to become effective.

Lastly, Mr. Temporary Speaker, Sir, doctors are not sure that their pensions are guaranteed. Indeed, these are genuine fears that need to be addressed by both levels of Government. While devolution of health services is a constitutional requirement, the management of professionals in the health sector needs to have some element of national approach, but not just county approach.

Mr. Speaker, Sir, the Constitution envisaged a situation like this. There may be circumstances where a function of one level of Government, according to the Constitution, can best be performed by the other level upon agreement. Under Section 187 of the Constitution, both levels of Government can agree. This is the approach that I want to recommend. I do not want to say that all functions of health services should be at the national level. However, there are certain aspects, particularly the issue of personnel that can remain at the national level. Arrangements can be made so that doctors go to counties in terms of secondment. They should be employees of the national Government, but can be seconded to the county governments for day to day operations.

Mr. Temporary Speaker, Sir, if we are to address this issue in that manner, we will ensure that health services do not suffer at all. This is an urgent matter because, as I speak today, most hospitals, like the Kitale District Hospital do not have consultants in the vital areas. There is dire shortage. While we may be thinking of providing services in all areas, it would appear that we are looking at the physical facilities only, but forgetting the real issues. Most counties today have procured ambulances.

Mr. Temporary Speaker, Sir, almost every county has ambulances. However, why do we need ambulances because even when they reach hospitals, you will find there are no adequate doctors and nurses? There are no drugs and medicine. The diet that is available is not suitable for patients. This is an urgent and grave matter that should be addressed as urgently as possible to ensure that medical personnel welfare is catered for so that they effectively and have the moral to attend to patients as it is expected of them.

With those few remarks, I beg to move and request Sen. (Dr.) Khalwale to second.

The Temporary Speaker (Sen. Murkomen): Proceed, Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I rise to second the Motion, that the Senate calls upon the national and county Governments to urgently address the concerns of medical practitioners to avert the looming breakdown of health services in counties, as moved by Sen. Ndiema.

Mr. Temporary Speaker, Sir, as I support this particular Motion, I really want to have warm words for Sen. Ndiema maybe because I want to acknowledge the fact that he is a father of a doctor of medicine; a young junior colleague of mine and, probably, because his daughter is a doctor. Sen. Ndiema seems to be speaking from a position of knowledge and also with a way of a pinch. As they say, it is the wearer who knows where the shoe pinches. I, therefore, want to thank Sen. Ndiema.

Mr. Temporary Speaker, Sir, I will be very brief. I want to really try to dissect what the intention of this Constitution was. The Constitution seems not to have been entirely clear. Maybe, Chair, because you were part of the drafting process at one stage, when you will be contributing later on in the day or tomorrow, you might shed some light on this. In the Fourth Schedule, the Constitution tells us in Part 2, Section 2, that county health services are devolved. When you look at these county health services that are devolved, the Constitution goes further and says that:-

“County health services, including, in particular—

- (a) county health facilities and pharmacies;
- (b) ambulance services;
- (c) promotion of primary health care;
- (d) licensing and control of undertakings that sell food to the public;
- (e) veterinary services (excluding regulation of the profession);
- (f) cemeteries, funeral parlours and crematoria; and
- (g) refuse removal, refuse dumps and solid waste disposal.”

Mr. Temporary Speaker, Sir, this is what is devolved. Listening to this English, it does not include management of the human resources. It does not. So, for some strange reason, having said that we are devolving health, the country seems to have also assumed that the drafters wanted the human resource to be devolved. That is the elephant in the room.

Mr. Temporary Speaker, Sir, I just want to repeat this part, so that Senators are with me. The Constitution says:-

“County health services, including, in particular—

- (a) county health facilities and pharmacies;

Is that clear?

Then, in Part 1, Section 28, the Constitution goes further and says that the health policy will be under the national Government. In Section 28, it says that the national health referral facilities are under the national Government.

Again, under the national Government, the functions that remain there, nobody is talking about the doctors, nurses and paramedics. So, where are we? It is not mentioned which functions are devolved to the county governments and which ones remains at the national Government. Where are we? We then go back to Section 187 which says that where a function is not expressly provided for in this Constitution as belonging to one level of Government or the other, that function is assumed to be with the national Government.

Mr. Temporary Speaker, Sir, I am, therefore, asserting here that we have misinterpreted the Constitution as far as health is concerned. The Director of Medical Services and the Attorney-General of Kenya should sit together with the Principal Secretary in charge of the critical Ministry of Health Services and realign the human resources such. Since the human resource aspect is not provided for in this Constitution, it should be managed by the national Government. The moment we do that, all these noises you are hearing about strikes in Kakamega, Makueni, Kirinyaga; threats to lay down tools in Laikipia and all other hospitals, will come to an end.

Mr. Temporary Speaker, Sir, how do you expect a doctor to progress, as ably put by my colleague, Sen. ole Ndiema? A doctor wants to grow from an intern in the wards to a head of department in the hospital; go on to become a medical superintendent in that hospital and grow to be a medical officer in charge of a sub-county, county and eventually become the Director of Media Services and many other ranks which are there. We have the regional gynecologist, regional surgeon, physician and so on. Our young colleagues want to grow.

Therefore, as the Government addresses this Motion – and I hope that they will listen to these submissions that we are making – they should admit that the drafters of the Constitution were actually mainly legal minds. Whatever other groups put in, they got their agenda into the Constitution based on only two principles. Either, the drafters respected you, the group that was going to make a presentation was making a very passionate presentation or President Kibaki and Raila Odinga feared that if they did not include the concerns of that particular group, they would vote “No.” This is how the Teachers Service Commission (TSC) ended up being a fully-fledged commission. If there is any other consideration, what reason would you have for allowing teachers to have the TSC and deny doctors, nurses and paramedics from having a health services commission? This is the reality.

Had we created the health services commission, today that commission would be taking care of all the human resources issues like transfers, salaries, promotions, allowances and so on. But now because it is not there, a highly qualified doctor--- Maybe you do not like the alternative Press, but there is a compelling article in *the Citizen* newspapers, the alternative press. I am not quoting the Press, but just suggesting---

The Temporary Speaker (Sen. Murkomen): What do you mean by alternative press? Is it the gutter press?

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I do not like using the words “gutter press.” I read both the gutter press and regular press, because they all have information which is useful.

Mr. Temporary Speaker, Sir, there is a compelling article which, on this Motion, I will ask the Mover to read. It is written by a specialized nurse working in the Intensive Care Unit (ICU) or Renal Unit at the Jaramogi Oginga Odinga Regional Referral Hospital in Kisumu. She says that when she went for an interview to become a nurse in the County Government of Kisumu, she went a Member of the County Assembly (MCA) from her ward and village who was interviewing her. She has got a very compelling and persuasive case of why MCAs should have better qualifications. She felt that she was too qualified for the MCAs to vet her.

Mr. Temporary Speaker, Sir, I have looked into the eyeball of a Governor – I will not disclose his name - and he told me: “I have no problem in my hospitals because we five doctors. When we asked them for employment, they refused and went away. I quickly got 11 others and so, I replaced five doctors with 11 doctors.” The poor Governor does not know that those five doctors who went were medical specialists. So, he is replacing medical specialists in his county with general practitioners. It means that the quality of healthcare in that particular area is not good.

This is the time for us to work together. I will work with Sen. ole Ndiema on this issue. I know Sen. (Dr.) Machage and other doctor colleagues who are here will do the same. We must come up with a proper law that will make sure that we create a commission that will not be a constitutional one with expensive demands, one that is non-constitutional like the Ethics and Anti Corruption (EACC).

This is a commission that does not have the weight of constitutionality. This is so that the welfare of all our doctors can be taken care of by that particular commission. Since the referendum is succeeding anyway, this could be one of the referendum questions. Instead of doing the dangerous thing that I have seen the National Assembly doing – dangerous in the sense Members of the National Assembly are exposing their ignorance, with all due respect, am not saying a particular Member and, therefore, you can allow me to go away with that statement. They are saying they now want to take away health services from the counties to the national Government. That would be unconstitutional. Secondly, they do not have the power. It is this House which has that kind of power, if we so chose.

That Motion is actually there. I believe it has been read for the first time. That Motion should not be allowed. It is this House that will come and say: “According to the Constitution, the national Government, as in Article 187 can ask the County Government of Elgeyo-Marakwet, for example, that: Are you ready to recede the health function?” The County Government of Elgeyo-Marakwet may say: “We are not ready for whatever reasons, can you manage it for us.” But you might find that the County Government of Kiambu is ready. Why take away that function from them?

I want to give you a case study of the County Government of Kakamega. I was appalled two weeks ago when I walked into the county. I found that there was a team from the Transition Authority (TA) which had come to ask the County Government to release Kakamega Level Five Hospital back to the Government. We would like the TA and the Government to understand that if the County Government of Kakamega is unable to manage the Level Five hospital, we are the ones who will write to them and tell them: "Please, under the Constitution, can you kindly take over this hospital for us, we will ask for it when we are ready."

For God's sake, for 50 years, the Kakamega Provincial General Hospital has been religiously ignored by successive governments. Even when President Kibaki was in office, because of the overwhelming support he got in that region in 2002 and he felt nostalgic and that he owed something to Michael Kijana Wamalwa, he came and laid a foundation stone for improvement of services worth Kshs84 million. The furthest it went was a plaque that was erected to the effect that President Kibaki was kicking off those renovations. They never took place. Sen. Murkomen, one of these days, I will invite, courtesy of your extended facilities of choppers, so that we go with you to Kakamega you see this for yourself.

A great provincial hospital is still surviving in structures which were either built through cost sharing or built courtesy of the Government of Finland for the reason that Finland had a water project in Kakamega County. In the process they saw the reality of the terrible state of health services in the provincial general hospital or the wananchi themselves built the wards through harambee. Otherwise, what the Government built is what the colonial government built there. I have been in the medical practice in Kakamega for three years. The same structures where military officers used to seek for services is where our people are still being treated from. The devolved Government has now come. Before I go far, the highest we used to get from the national Government, was Kshs14 million to Kshs16 million per year to help in the running of that hospital.

During the last financial year, we took there Kshs350 million, thanks to devolution. So you want to take us back to the national Government where we shall be given Kshs14 million to Kshs16 million and lose Kshs350 million this financial year, because of the mischief of the Lower House, where they cut down the conditional allocation to Level 5 hospitals, we have now taken there Kshs206 million. As a result of this, we are now set and have gone into an agreement with donor friends. We are now converting the former Provincial General Hospital into a teaching and referral hospital, attached to the Medical School of the Masinde Muliro University of Kakamega.

Mr. Temporary Speaker, Sir, the Governor is a distinguished financial expert and the Senator is a man whose Curriculum Vitae, you only get to by simply touching the button on *Google* and you will see that he is not deficient in any way in matters of health. Why would some funny person in the TA not consult us and want to belittle us by taking away the hospital from us, so that we continue dying the way we always do?

Mr. Temporary Speaker Sir, this case that I am describing is not even different from Nyeri County. Nyeri County has just gotten the first reasonable hospital in the second term of President Mwai Kibaki. I think that the Senators who come from that region know the Othaya District Hospital. It is a very good hospital, although it is not yet complete. Let people run their facilities. So, matters of infrastructure and running of health facilities should be left in the hands of the county government, but medical personnel should be managed from Nairobi centrally.

Mr. Temporary Speaker, Sir, I want to speak on the issue of ambulances, and maybe we might have to take a position as Senate. There is a group calling itself Red Cross, but when you dissect it further, it is not entirely Red Cross. They are hopping from county to county. They tell the Governor that they want him to hire ambulances. So, for the hired ambulance, they give you some Oxygen cylinders, a mask, a bed and a driver. They also tell our Governors that they will be paying Kshs.600,000 per month for that ambulance. It is happening in many counties, Kakamega County, included. In Kakamega, the county government has gone into a contract of hiring six ambulances, where they pay Kshs3.6 million per month. In ten months, that is Kshs36 million. In a one full financial year, that is a whopping Kshs43.2 million. Why would an intelligent financial expert not choose to spend half of that money on buying his own ambulances? A fully-fledged and properly built ambulance costs anything between Ksh4 million and Kshs5 million. Why would you not buy your own ambulances, employ drivers, create employment and run a credible service? So, this character called Red Cross is actually fleecing the county governments in pretext that they are doing them a favour. They are riding on the ignorance of some of the leaders of some of the counties.

I want to congratulate some of the counties that have seen the complexity of this matter of running the health sector. Take for example, the County Government of Busia, which has hired Dr. Maurice Siminyu, who was a class ahead of me at the medical school. Before going to run that hospital, he was the Provincial Medical Officer/Surgeon of Coast General Hospital. He has now gone to Busia. There is absolutely no problem because a professional is behind the driving wheel. What do you find in Kakamega? You will find that they have taken that docket and given it to a primary school teacher as the County Executive Committee (CEC) Member in charge of health. She is completely lost. Therefore, we want governors all over to recognize professionalism. This is extremely important.

In Busia County, you cannot get these kinds of things of somebody cheating that you can hire ambulances and what have you, because the professional is there and he knows the difference and what to do.

Mr. Temporary Speaker, Sir, we have to speak these things to them if devolution must succeed. Devolution is not going to succeed because Sen. (Dr.) Khalwale and his colleagues in County Public Accounts in Investment Committee (CPAC) are asking questions of oversight. We are also going to fail if after money has been put to good use is not followed up to find out whether there was value for that money. In this case, for

example, where money is being taken to hire ambulances, there is no value for money. If you had bought your own ambulances, then there is a lot of value for money.

Mr. Temporary Speaker, Sir, I also would like to take this opportunity to congratulate the following professionals who have donated their free services to our County in Kakamega. They include: - Prof. Chunge, who was my lecturer in the department of parasitology at the medical school. He has moved and closed down his medical practice in Nairobi and gone to Kakamega. He said that he will be there for two years and he will not ask for a salary, but make his contribution in order to stabilize the health sector. The second is my classmate and circumcision age mate, Prof. Khainga, who is a surgeon. He has also accepted to be the chair of the County Medical Board for free. Thirdly, Prof. Khwatenge, who was my classmate at medical school, has accepted to be the dean of the faculty of medicine at Masinde Muliro University of Science and Technology. The last one is Dr. Ayaya, who was two years ahead of me in medical school, and currently teaching and also a physician at Moi University Medical School, has accepted to move and be the principal of the medical school at Masinde Muliro University of Science and Technology.

I must say these things because the people of Kakamega County do not know some of the support we are enjoying from patriotic local sons. We seem to understand that there is some degree of reluctance on the leadership. With all the due respect, to the school of medicine at Moi University because most of the professors there come from my side, they are afraid that if they release them, then their medical school will be affected. That is not true because doctors are beyond that. I am glad that the deputy Vice Chancellor at Masinde Muliro University of Science and Technology is from your place and we are proud of him. We would like him to prevail upon his colleagues on the other side that doctors are doctors without frontiers.

With those many remarks, I support and thank Sen. Ndiema.

(Question Proposed)

The Temporary Speaker (Sen. Murkomen): Sen. Mositet, you have about four minutes. Once they are over, you can continue tomorrow.

Sen. Mositet: Mr. Temporary Speaker, Sir, from the outset, let me thank the Mover of the Motion for recognising the important role that medics play in our country. Devolution is sweet and good. If you look at our Constitution you will find that health services were fully devolved. However, I do not think that the personnel or the human resource were supposed to be devolved. The Commission for the Implementation of the Constitution (CIC) or the TA should have assisted us in this. This is one area which I do not think we have handled well and this Senate, through this Motion, can contribute a lot and ensure we do not have the brain drain we are seeing.

Mr. Temporary Speaker, Sir, we will not see the intellectuals we have just sitting and not working. We will not see the moral of those who are training to be doctors going

down. As you know, it is not every child who aspires to be a doctor because it is a calling. Very special brains are attracted to this and those who have performed very well. If those who are practicing or those who are already in the profession are not enjoying it, then we will kill the career that is internationally recognised. It is one of the careers that is pegged on life and which most of our children would like to pursue.

Mr. Temporary Speaker, Sir, I do not know whether all counties are just like some that we know. However, you will be shocked that when boards started employing the staff at the counties, those who were given the mandate to head the departments of health are not professionals. So, you will be shocked to find a teacher heading that department. The so called---

The Temporary Speaker (Sen. Murkomen): Order, Sen. Mositet! You still have a balance of six minutes. You will continue from there tomorrow.

ADJOURNMENT

The Temporary Speaker (Sen. Murkomen): Hon. Senators, it is now time for the interruption of business. The Senate, therefore, stands adjourned until tomorrow, Thursday, 2nd October, 2014, at 2.30 p.m.

The Senate rose at 6.30 p. m.