

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 26th July, 2018

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

[The Deputy Speaker (Sen. (Prof.) Kindiki) in the Chair]

PRAYER

PAPER LAID

REPORT OF THE SELECT COMMITTEE ON THE SOLAI DAM TRAGEDY

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Thursday, 26th July, 2017-

The Report of the Select Committee on the Solai Dam Tragedy laid on the Table of the Senate on Thursday, 26th July, 2018.

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

NOTICE OF MOTION

NOTING OF REPORT OF THE SELECT COMMITTEE ON THE SOLAI DAM TRAGEDY

Sen. Mutula Kilonzo Jnr.: Mr Deputy Speaker, Sir, I beg to give notice of the following Motion-

THAT this House notes the Report of the Select Committee on the Solai Dam Tragedy laid on the Table of the Senate on Thursday, 26th July, 2018.

STATEMENTS

BUSINESS FOR THE WEEK COMMENCING TUESDAY, 31ST JULY, 2018

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Sen. Dullo: Mr. Deputy Speaker, Sir, I wish to read the Statement on the business of the Senate for the coming week. Pursuant to Standing Order 46(2) (c), I hereby present to the Senate, the business of the House for the week commencing Tuesday, 31st July, 2018.

The Senate Business Committee (SBC) will meet on Tuesday, 31st July, 2018 to schedule the business of the Senate for the week. Subject to further direction by the SBC, the Senate will on Tuesday continue with consideration of business that will not be concluded in today's Order Paper, and any other business scheduled.

On Wednesday, 1st August, 2018 and Thursday, 2nd August, 2018, the Senate will consider business that will not be concluded on Tuesday and any other business scheduled by the SBC.

Hon. Senators, the following Bills are at Second Reading stage-

- (1) The Local Content Bill (Senate Bills No. 10 of 2018);
- (2) The Physical Planning Bill (National Assembly Bills No. 34 of 2017);
- (3) The Retirement Benefits (Deputy President and Designated State Officers) (Amendment) Bill (Senate Bills No. 2 of 2018);
- (4) The County Statistics Bill (Senate Bills No. 9 of 2018);
- (5) The Salaries and Remuneration Commission (Amendment) Bill (Senate Bills No. 12 of 2018);
- (6) The Irrigation Bill (National Assembly Bills No. 46 of 2017); and,
- (7) The Kenya Roads Bill (National Assembly Bills No. 47 of 2017).

Hon. Senators, you will notice that four of the Bills mentioned above are in today's Order Paper and are due for Division. I request that you avail yourselves, so that the House can proceed to Division on the Bills.

There are also Bills due for Committee of the Whole that the SBC will schedule accordingly. They are-

- (1) The Food Security Bill (Senate Bills No. 12 of 2017);
- (2) The County Boundaries Bill (Senate Bills No. 6 of 2017);
- (3) The County Governments Retirement Scheme Bill (Senate Bills No.6 of 2018);
- (4) The Office of the County Printer Bill (Senate Bills No. 7 of 2018);
- (5) The Office of the County Attorney Bill (Senate Bills No. 3 of 2018);
- (6) The Public Participation Bill (Senate Bills No. 4 of 2018); and,
- (7) The Disaster Risk Management Bill (Senate Bills No. 8 of 2018).

Additionally, there are a number of Motions touching on various issues, key among them being the reports of the County Public Accounts and Investments Committee (CPAIC) on the accounts of various counties, which the SBC will consider and schedule accordingly.

Mr. Deputy Speaker, Sir, I thank you and hereby lay the statement on the Table of the House.

(Sen. Dullo laid the document on the Table)

EVICION OF PEOPLE FROM THE MAU
FOREST COMPLEX

Sen. Kwamboka: Mr. Deputy Speaker, Sir, pursuant to Standing Order No. 46(2) (a), I rise to make a Statement on an issue of general topical concern regarding the recent cases of evictions of persons who had encroached the Mau Forest Complex.

Mr. Deputy Speaker, Sir, Kenya's closed canopy forest cover currently stands at approximately 1.7 per cent of the country's total land area. This is low compared to other African countries, with an average 9.3 per cent and the world with an average of 21.4 per cent. Most of the closed canopy forests in Kenya are mountain forests and are the nation's water towers. Among the most important is the Mau Forest Complex.

Mr. Deputy Speaker, Sir, in the past, as a nation, we had a great tradition of environmental conservation, which taught us to respect nature and take cognisance of the fact that all forms of life; human, animal and plant, are closely interlinked and that disturbance in one gives rise to an imbalance on the others. However, over the last decades, there has been extensive degradation of the Mau Forest Complex as a result of encroachment, excisions and illegal forest resources extraction. This degradation is a major threat to water resources, biodiversity and livelihoods of forest dependent communities. If allowed to continue, it will lead to conflicts over these resources and land, political interference, weak law enforcement, limited management capacities of mandated institutions and inadequate governance systems account in part for the wanton degradation.

Mr. Deputy Speaker, Sir, the Mau Forest Complex forms the largest closed canopy forest ecosystem of Kenya, as large as the forests of Mt. Kenya and the Aberdares combined. Being one of the five water towers in Kenya and the single most important water catchment in the Rift Valley and Western Kenya, it is a natural asset of national importance. Its forest provides vital ecological services to the country in terms of water storage, river flow regulation, flood mitigation, recharge of ground water, reduced soil erosion and siltation. Through these ecological services, the Mau Forest Complex supports the economic activities in the Rift Valley and Western parts of the country, including energy, tourism, agriculture and industries. The Mau Forest Complex is particularly important for two of the three largest foreign currency earners, that is, tea and tourism.

Mr. Deputy Speaker, Sir, it is, therefore, important to conserve the Mau Forest Complex as it supports the livelihood of millions of people in the Rift Valley and Western Kenya. For instance, in the tea sector, approximately 35,000 jobs and the livelihoods of more than 50,000 small farmers, who support more than 430,000 dependants, benefit from ecology of the Mau Forest Complex. In addition, the Mau Forest Complex is the home of a minority group of indigenous forest dwellers, the Ogiek. Many communities living in the immediate surroundings of the forest depend extensively on the forest, while the urban dwellers also depend extensively on the Mau Forest Complex, mainly for water supply.

Mr. Deputy Speaker, Sir, over the last 15 years, the Mau Forest Complex has lost over 107,000 hectares, representing approximately 25 per cent of its forest cover due to

encroachment, ill planned and irregular settlement, as well as illegal forest resources extraction. This led to the formation of a taskforce on the conservation of the Mau Forest Complex in 2009, which made several recommendations on the management and conservation of forests throughout the country.

While I support the evictions of the persons who have encroached the forest, we urge the Government to ensure that the evictions in the Mau Forest Complex are done in a humane manner. I also urge the Government to amicably solve the stalemate surrounding the eviction of Kibera residents, on the stretch of land destined as a road reserve, as more than 30,000 livelihoods are involved.

Mr. Deputy Speaker, Sir, I, therefore, wish to draw the attention of the Senate on this matter and appeal to the national Government, through the Ministry of Environment and Forestry, to intervene and take necessary action in safeguarding the Mau Forest Complex and all the other forests in the country and also to initiate measures aimed at increasing the forest coverage area in the country.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. You have actually exceeded your five minutes. Next time you bring a Statement under Standing Order No.46(2), you should restrict yourself to the 10 minutes.

Any other Statement?

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

The Deputy Speaker Sen. (Prof.) Kindiki): What is out of order, Sen. Seneta?

Sen. Seneta: Mr. Deputy Speaker, Sir, I wish to add my voice to the Statement. I have requested---

The Deputy Speaker (Sen. (Prof.) Kindiki): Under what Standing Order?

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

The Deputy Speaker (Sen. (Prof.) Kindiki): What is out of order, Sen. Olekina?

Sen. Olekina: Mr. Deputy Speaker, Sir, this issue of Mau Forest is not just a petty issue. It is an issue that requires the attention of this House.

The Deputy Speaker Sen. (Prof.) Kindiki): What is your point of order?

Sen. Olekina: There is nothing which is out of order.

The Deputy Speaker (Sen. (Prof.) Kindiki): Then why did you rise on a point of order?

Sen. Olekina: Mr. Deputy Speaker, Sir, I rose on an intervention. With all due respect, I do not want to argue back and forth. I am requesting that you allow us to discuss this issue of national importance.

The Deputy Speaker (Sen. (Prof.) Kindiki): If you want to discuss an issue of national importance, the Standing Orders are very clear on what you need to do.

Sen. Olekina: On a point of order, Mr. Deputy Speaker, Sir. We cannot have double standards in this House. Yesterday, the Senate Majority Leader brought an issue which was affecting this House. The issue of Mau Forest is something which is very important. So, I am seeking your indulgence to allow Members of this House to be able to comment on the issue.

The Deputy Speaker Sen. (Prof.) Kindiki): Order, Sen. Olekina! You are treading on very dangerous ground. When you start talking about double standards, you might find yourself outside the Standing Orders.

Hon. Senators, the Chair has discretion depending on circumstances, sometimes to allow interventions. That discretion may be exercised otherwise.

Sen. Olekina, that notwithstanding, if a matter is important such as this one, I would advise that you proceed and seek an Adjournment Motion. That is the easiest way to deal with a matter of national importance and it is anticipated in the Standing Orders. So, let us not go out of the Standing Orders. I have said---

(Sen. Mutula Kilonzo Jnr. stood up in his place)

What is it, Sen. Mutula Kilonzo Jnr.?

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, we need your wisdom in this matter; some element of Solomonic wisdom. The minute you certify that a matter is either of concern or national interest, under Standing Order No.46(2)(a) your discretion then to allow this to be a matter of topical concern, you cannot then limit it to the Senator who has read the Statement.

I am guided under Standing Order No.47 that the makers of this Standing Orders, which included yourself only excluded comments under Personal Statements under Standing Order No. 47. Therefore, since this discretion has not been exercised before, it has been understood and maybe wrongly, and perhaps that is why you must make a ruling, that any Statement under Standing Order No.46(2)(a) that has been made on the Floor of the Senate since we changed the format of Statements, there have been comments. Even the ones that---

The Deputy Speaker Sen. (Prof.) Kindiki: Order, Sen. Mutula Kilonzo Jnr. Resume your seat.

First and foremost, Standing Order No.46 does not fall within the category as identified by Sen. Olekina. It does not deal with matters of urgent or national importance. It deals with matters of topical concern. That is neither urgent nor national but they are topical. There are many things which can be topical. Topical means they are being talked about. I am not making a determination on this particular issue of Mau Forest. Topical issues are not necessarily urgent neither are they of national importance. However, they could be topical. I am not making a determination on the Mau Forest issue.

Two, at the end of that Standing Order No.46, a Senator making a Statement is restricted to not more than 10 minutes. You heard me tell Sen. Kwamboka that she used 12 minutes and 46 seconds which was outside the Standing Orders, but with the indulgence of the Chair.

Hon. Senators, that is the position. Secondly, you have heard me say repeatedly - not once not twice - that the reason why this House put an embargo on Statements is because a significant amount of time is being spent on Statements at the expense of other items on the Order Paper. We need to use our legislative resources, including time resources, extremely prudently.

Having said that, I will encourage Sen. Olekina and other Senators if they feel this is an urgent matter of national importance, to apply the Standing Orders and the Speaker will be considerate. Mr. Speaker also lives in this country; he does not live elsewhere.

Sen. Mutula Kilonzo Jnr.: On a point of order, Mr. Deputy Speaker, Sir. In view of your comments on this, we are a House of traditions, order and precedence; what you have done today in terms of directions will affect business in future in terms of Standing Order No.46(2)(a). For purposes of that discretion that will be exercised, I would request that for purposes of the Mau Complex Statement issued by Sen. Kwamboka, a reasoned ruling be delivered on the circumstances on the discretion that this matter is not topical or does not require any comments even from the Senator who comes from that area. This will ensure that in future when somebody brings a Statement we know that the discretion will be left to the Speaker---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator. What are you seeking?

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, I am seeking that you issue a reasoned ruling at a later date on the discretion you have exercised both for the Mau Forest Complex issue and for posterity. This is because what you have done is something we have not done before. Since I sit in the Senate Business Committee (SBC) where we plan business of the House, this matter has not come up. So, we, as leadership, are caught unawares by your ruling. Therefore, it is important not for this one, but for any other matter that will come up so that we can inform our constituents---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator Mutula Kilonzo Jnr.! Take a seat.

What is it, Leader of Majority?

The Senate Leader of Majority (Sen. Murkomen): Mr. Deputy Speaker, Sir, I want to acknowledge that your ruling was reasoned. First of all, let me declare my interest: I was very eager to make some comments on this issue raised by Sen. Kwamboka even if it was for two minutes.

Is Sen. Mutula Kilonzo Jnr. in order to challenge the Chair continuously and to even allude to the fact that your ruling is not reasoned? Does it mean that in order for a ruling to be reasoned it must be written?

I heard you, as a professor, make a very reasoned ruling. The only thing I would beg is for your indulgence, for us to make a few comments on this important Statement. But your ruling is so reasoned.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Mutula Kilonzo Jnr.! You are grossly out of order and you know what that means. At no time has there been an issue under what Standing Orders Sen. Kwamboka brought the Statement to the House. That was not the issue.

Two, the issue of urgent matters of national importance was raised by Sen. Olekina. He is the one who said this matter is urgent and is of national importance. The Chair accordingly advised that if that is the characterization by Sen. Olekina, the way to approach it is not in the way of Sen. Kwamboka today. It is in the way of seeking---

(Sen. Olekina stood up in his place)

Order, Sen. Olekina!

Sen. Mutula Kilonzo Jnr. , that is a dangerous route. The earlier you abandon it the better for you. Therefore, having listened carefully and notwithstanding what I have said in the last few minutes, we still have to use our parliamentary time wisely. We have a lot of items on the agenda. I am very strict when it comes to one item taking over the entire day. The reason why yesterday I indulged Senators was because the issues which were being raised were actually about the very existence of this House. Therefore, I thought you needed time. Otherwise, there are other options and avenues to discuss the Mau issue. I am not in any way trying to say it is a small issue. I will allow two minutes only for the Senator of Narok---

Sen. Malalah: On a point of order, Mr. Deputy Speaker, Sir. The matter of the Mau Forest Complex is a national issue. The Mau Forest does not affect Narok alone. We need enough time. If we had three hours to talk about the Senate yesterday, we should have 10 hours to talk about Mau. I think it is our right---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Malalah! Therefore, I will allow only two minutes to the Senator for Narok County, where the latest incidents took place; and one other Senator who---

(Laughter)

I have not said who that other Senator is.

Hon. Senators: We know!

(Several Senators consulted loudly)

The Deputy Speaker (Sen. (Prof.) Kindiki): You do not know; you cannot read the mind of the Deputy Speaker.

Sen. Olekina, I will add you one more minute so that you now have three minutes. Let us get over this. Strictly use three minutes and limit yourself to the issues at hand.

Sen. Olekina: Thank you, Mr. Deputy Speaker, Sir, for the three minutes. I will try to be very brief. From the outset, I am not standing here because of my personal interests. I know that I have a duty, as a human being, to leave this world a better place than I found it. The issue of the Mau does not only affect the Maasais. We are the ones who are heavily affected, but it actually affects a lot of other people, all the way to Egypt.

Mr. Deputy Speaker, Sir, our rivers are drying because of impunity and complicity. We can no longer stand that. Many people hide behind the issue of compensation, yet the Constitution is alive. I know that some people are talking about the compensation, which I am completely against.

Mr. Deputy Speaker, Sir, I long for the time when I could go to the river, drink clean water and shower. I long for that time when heavy rains would come and there would be no floods. I long for the time when everybody would grow their food from January to January. However, that time is no longer there because of our own selfish human activities.

Mr. Deputy Speaker, Sir, this Constitution is very alive because Article 40(6) clearly limits the right to property. I know that a lot of people talk about compensation.

However, if you acquired land illegally, there is no reason you should be compensated. Chapter 26 of the Land Act is also very clear that you cannot try to get something out of an illegality.

Mr. Deputy Speaker, Sir, Kenyans out there ought to remember that the Mau Forest is what is feeding this country. This is not only limited to the Mau Forest; the Aberdares and Mt. Kenya National parks are other issues of conservation. We are lying to people that we are conserving our environment, yet we are destroying it. Kenyans, this House and Parliament ought to rise up. A report was tabled in Parliament, which was very clear on the boundaries. However, there is this nonsense of the cutline; there is nothing like a cutline! A cutline is complicity and corruption. These are people who want to make a right out of something wrong.

Mr. Deputy Speaker, Sir, we have records. Everybody knows the first adjudication of the Mau Complex was in 1976. We need to go back and look at those records. There are 23 blocks, but the one which is heavily affected is the Maasai Mau, where we have people who are dying.

Mr. Deputy Speaker, Sir, I request that this matter be discussed here because we cannot be spending taxpayers' money to investigate and report just for them to come and collect dust. Shame on us if we continue doing that!

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well.

Proceed, Sen. Outa.

Sen. Outa: Thank you, Mr. Deputy Speaker, Sir. The Mau Forest issue is of national concern and it is time that we must address it, once and for all. The Mau Forest has affected us – rice farmers of West Kano – because previously, we used to have a lot of water in Lake Victoria. However, since people invaded and encroached on the Mau, we do not receive sufficient water each year to do rice production. That is why when other people are talking about compensating the illegal people who moved into Mau and destroyed it, we want to encourage the Government to move in immediately, remove all those people and return them to where they came from.

Mr. Deputy Speaker, Sir, if we entertain this cutline, we will then be entertaining and trying to please Kenyans to continue living in impunity. This impunity is what we need to correct. I know that there was a time when the former Prime Minister of the Republic of Kenya – who is now the People's President – tried to address the issue of the Mau Forest Complex, but they politicized it. It has now turned round and the Mau Forest is fighting back.

Mr. Deputy Speaker, Sir, I encourage the President of the Republic of Kenya not to listen to anybody. He should do the right thing and save Kenyans.

(Applause)

This should be done like yesterday. I know that other people are saying that we need to compensate the evictees; and that these are human rights issues. When can we entertain human rights, yet our environment is being destroyed? Many people from my county were evicted from Naivasha during the post-election violence and they have never been

compensated up to today. Why are we talking about compensating others who are destroying our environment?

Please, His Excellency Uhuru Kenyatta, use all the powers you have been given by the people of Kenya to save us from these people who are destroying our environment. If there are people who want to claim that the Mau is theirs, the Mau used to belong to the Maasai and the Ogiek. Those are the people who we can say that they could have a cutline. Otherwise, any other person cannot have a cutline in the land of Mau.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Proceed, Sen. (Prof.) Kamar. You have three minutes.

Sen. (Prof.) Kamar: Thank you, Mr. Deputy Speaker, Sir, for giving me an opportunity. First, I take this opportunity to thank Sen. Kwamboka, for making this very important Statement. This is an issue that is alive with us today.

Mr. Deputy Speaker, Sir, I was in the Tenth Parliament. That is the time my colleague has referred to, when the then Prime Minister was asked to solve the issue of the Mau. I also happened to be an Assistant Minister for Environment and Forestry at the time. There are issues that need to be separated. I hope that all of us believe in environmental conservation. I am a soil and water conservationist and I believe that water sources must be protected in this country. I agree that it is not only Mau, but we also have Mt. Kenya Forest, the Aberdares, Mt. Elgon and other areas which have also been affected. There are policies that have come out, which the Ministry, as the custodian of the environment, has. However, we need to look at these issues and ask ourselves, as Kenyans, where we are failing our people.

Today, Mr. Deputy Speaker, Sir, I have received another Petition from Internally Displaced Persons (IDPs) of Uasin Gishu County. In their petition, they lament that 68 were approved, but only 44 of them were paid. I ask myself where we went wrong. This is because we have the data right, we have calculated, we know how many people are in the Mau; we know how many were there legally and illegally. Why do we not address these issues? In the Tenth Parliament, we were very clear about what a cutline was. The former Prime Minister talked about the cutline and that is how we understood that there is something called a cutline. We are now blaming indigenous people who do not understand the vocabulary "cutline." However, the issue of the cutline came up through a task force that was under the Prime Minister at that time. We need to look at it and ask ourselves why there was a cut line to begin with. Was it because of mistakes that we had done in the past? Was it because of things that were done wrongly or rightfully? Whatever that report has, we may need to revisit it.

Mr. Deputy Speaker, Sir, I am calling on the Committee on Lands, Environment and Natural Resources to look at the report that came out at that time. This is because one mistake made was that the people were not sorted out at the time. It is just the way the IDPs were not sorted out, where even the IDPs of Kisumu were not sorted out. How come we are not completing issues? We need to complete issues such that when we have decided that we are going to compensate people, let us compensate them if we think that is the right way to go.

Mr. Deputy Speaker, Sir, the issue is that we are bulking a lot of things, and then when the people react, we go and deal with them politically. We need to remove the politics and soberly tell ourselves that these people sold land legally. We know very well that there were ranchers who sold out their land. If you trace the titles back, as we looked at them in the Tenth Parliament---

The Deputy Speaker (Sen. (Prof.) Kindiki): Your time is up, Sen. (Prof.) Kamar. Proceed, Sen. Malalah.

Sen. Malalah: Thank you Mr. Deputy Speaker, Sir. I was wondering why you were not---

(Sen. Murkomen spoke off record)

Sen. Malalah: Mr. Deputy Speaker, Sir, I am the Deputy Senate Minority Leader and have time. Therefore, Sen. Murkomen---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator. Can you stop shouting across the aisle?

Sen. Malalah: Mr. Deputy Speaker, Sir, I want to remind this House that the issue of the Mau Forest is not new to this nation. I want to remind them that between 1984 and 1986, former President Moi evicted people from the Mau.

(Sen. Malalah's microphone went off)

The Deputy Speaker (Sen. (Prof.) Kindiki): I am sure that the three minutes are not over.

Sen. Malalah: Mr. Deputy Speaker, Sir, money has been poured to finish me.

(Laughter)

Mr. Deputy Speaker, Sir, in 1984 President Moi evicted people from the Mau. He had a vision for this country and it is absurd that 30 years later, some leaders are sitting down to tell us that the people who settled in Mau should not be evicted or should be compensated. I want to remind this House that the same President set up a commission of inquiry that was chaired by Ole Ntutu in 1989. They came up with resolutions and a clear line, which has been ignored up to now.

I want to remind this House that in 2001, 65,000 acres was hived off to settle the Ogiek. Those are the people who deserved to be compensated and get land in the Mau area. The people's President, the Rt. Hon. Raila Amollo Odinga, set up a Commission in 2005, whose resolutions have been ignored. The Mau issue affects many people and not just a community. The issue of compensation should not arise. You cannot encroach on a forest and demand compensation. If there are people who deserve compensation in this country, it is the Solai Dam tragedy victims and the people who were clobbered during the "Resist Movement." People who encroach on our natural resource should not be compensated. I would even suggest that we compensate the Kibera people because they

are homeless and need somewhere to settle, but people who encroach on our forests do not deserve to be compensated.

(An hon. Senator spoke off record)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! I am trying to figure out; I heard one Senator shouting about time from my right. I thought that you still had a few seconds.

Sen. Malalah: Mr. Deputy Speaker, Sir, I wonder why Sen. Murkomen is unsettled, when I am raising matters of national importance. I want to tell this House that we are the defenders of the common *mwananchi*. The common *mwananchi* is not defined to be a *mwananchi* of a certain community. We are protecting the climate of this country.

It was absurd to see Hon. Members of this House going to the Mau Forest to incite the public against our Government. I am surprised that when the Government makes a decision to evict people, some people who are not in Government go there to incite members of the public. I want to warn those individuals that we shall not tolerate such incitement; we shall stand by the Government to evict people from the Mau, so that we can protect that forest.

Thank you, Mr. Deputy Speaker, Sir.

Sen. Cheruiyot: Thank you, Mr. Deputy Speaker, Sir. Whenever the Senators speak, they say that they defend the common *mwananchi*. I am wondering if one famous Mr. Rai is a common *mwananchi*.

(Laughter)

The issue of---

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

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it, Sen. Malalah?

Sen. Malalah: Mr. Deputy Speaker, Sir, I think that the hon. Senator for Kericho is out of order by implying that---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! It is not upon you to decide of who is out of order. You should ask, in form of a question, whether he is in order.

Sen. Malalah: Mr. Deputy Speaker, Sir, I had not finished my statement---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator.

Sen. Malalah: Mr. Deputy Speaker, Sir, let me start.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Malalah resume your seat. It is not the business of finishing or not. You started by saying that the Senator for Kericho is out of order. That is not your territory.

You can now proceed as guided.

Sen. Malalah: I am well guided, Mr. Deputy Speaker, Sir. Is the Senator in order to say that a Member of this House protected one Rai as a common *mwananchi*? Could he elaborate on that issue or withdraw that statement immediately or we shall eject him out of this House?

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! You are making things worse, Sen. Malalah. Have you also arrogated yourself powers to eject people from this Chamber? You have no role or mandate on how a Senator gets ejected. We do not eject Senators from the Chamber; we ask them to withdraw from the Chamber. So, you can only be a victim of such withdrawal.

The Senate Majority Leader (Sen. Murkomen): On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Senate Majority Leader, Sen. Malalah is on a point of order.

(An hon. Senator spoke off record)

Order! Can Sen. Malalah raise his point of order first? What is out of order?

Sen. Malalah: Mr. Deputy Speaker, Sir, I was surprised by the manner in which the hon. Senator claimed that a Member of this House was protecting the interest of a common *mwanaanchi* called Rai. Let him substantiate his statement or withdraw.

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it, Senate Majority Leader?

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, is Sen. Malalah in order to arrogate himself the responsibility of defender of one Rai, when Sen. Cheruiyot never mentioned any Senator. Is there a link between Sen. Malalah and the person called Rai or on what basis did he stand up to raise the point of order? I am asking this because he was the only one who was unsettled by the mention of the name "Mr. Rai."

Sen. Cheruiyot: Mr. Deputy Speaker, Sir, I want to proceed.

The Deputy Speaker (Sen. (Prof.) Kindiki): No. You have to respond to the issue raised by Sen. Malalah.

Sen. Cheruiyot: Mr. Deputy Speaker, Sir, on the issue raised by Sen. Malalah, I mentioned Rai, but did not specify which Rai. It could be Rai the watchman in the estate where I live. Secondly and most importantly, I did not mention any particular Senator, but as Chinua Achebe once said: "When dry bones are mentioned, the old get unsettled." So, when we mention Rai, friends of Rai are bound to respond. I want to confirm to Sen. Malalah that I was not talking about Mr. Rai his friend, if that can relax him.

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Cheruiyot! Finish your contribution. You have two more minutes.

Sen. Cheruiyot: Mr. Deputy Speaker, Sir, I had not spoken. I had begun for ten seconds when I was interrupted---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator!

Sen. Cheruiyot: Mr. Deputy Speaker, Sir, okay two minutes is enough. We cannot do justice to the issue of Mau Forest by limiting ourselves to three minutes as Senators when we want to speak. Before rising to the Floor of this House to speak about Mau Forest, I would like to urge my colleagues to read the report written by one brilliant

son of this country, Mr. Hassan Noor on the Mau Forest. After reading that report, there will be more light than smoke in this House when addressing the issues.

Mr. Deputy Speaker, Sir, we are being given long lectures about conservation. I come from the county with the longest boundary of the Mau Forest. We have conserved our forests. Therefore, we have no challenge to understand what compensation entails. However, we are speaking about the violation of human rights. Individuals living in their private land are being evicted by a County Commissioner who is so enthusiastic in his work. One wonders whether he is serving the Government of Kenya or not. If so, he would have known that two years ago, I was at the very place where he was evicting people with the President, seeking for votes from them. There is a Government road and public schools which were built using public resources. Therefore, that place cannot overnight turn to become a forest.

Mau Forest is not about a community, it does not belong to any community. It belongs---

Sen. Olekina: On a point of information, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Cheruiyot! Would you like to be informed by Sen. Olekina?

Sen. Cheruiyot: Mr. Deputy Speaker, Sir, it matters who is informing me. If it Sen. Olekina---

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order. Sen. Cheruiyot! You need to maintain order. Would you like to be informed by Sen. Olekina?

Sen. Cheruiyot: Mr. Deputy Speaker, Sir, on anything, but not conservation.

Sen. Olekina: Mr. Deputy Speaker, Sir, as I inform my good friend and Senator for Kericho County, it is important that this House takes note that there were three reports. Therefore, we cannot limit ourselves to one report by Mr. Hassan Noor. We have a report by Mr. Sambu, Hon. Ole Ntutu and the former Prime Minister's taskforce, respectively. Let us address Mau Forest issues with the seriousness they deserve.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Cheruiyot, conclude your contribution as our time is pertinent.

Sen. Cheruiyot: Mr. Deputy Speaker, Sir, at that time, Sen. Olekina was out of the country. Probably that is why he does not know the Prime Minister's report is known as the Hassan Noor Report.

I did not say that we should not look at other reports. I only said we take time to read that particular report. That is simple English. It does not mean that we do not read the rest of reports on Mau Forest. We, as a House, can appraise ourselves with the issues raised in those reports. We can have a sober discussion because we all want a beautiful country.

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, the Mau Forest issue is very important for the country. To the contrary, the debate that has been going on is to portray Mau Forest as a Narok issue. Mau Forest is in Bomet, Kericho, Nakuru and Narok counties. It is an important eco-system just like Cherangany

Hills, Mt. Kenya and Mt. Elgon. It is important that we are sober in the debate on the issue of the Mau Forest.

I am one person who has been in Mau Forest two times in the last one week, on the Narok South Constituency side. I have tremendous respect for the environment. Despite the fact that I grew up in the forest, I accepted to move out of Embobut Forest voluntarily without compensation. It is something we have debated in the last Parliament. In fact, I do not think there is any other Senator who can claim the kind of legitimacy that I have on conservation and protection of our environment. This is because of the kind of sacrifice I made for a place where I was born and called home to just give way, so that we can protect our environment and that people in the lower side on the Turkana side can continue having water and irrigation.

Mr. Deputy Speaker, Sir, I was shocked by the brutalities, violation of human rights and destruction of property that I witnessed in Mau Forest. Article 43 of the Constitution has been violated wantonly. I wonder why and I ask myself: “Why is it that the Senator for Narok County would chose to defend one issue in his county against the other? I watched him last night saying that those people should go where they came from. If this conversation of where people came from continued we would never have a nation.

The actual conversation we should be having is that there are people. There are 4,000 children who are not in school because ten schools have been closed. If you are the Senate Majority Leader who works for the Government and campaigned for President Uhuru Kenyatta to be the President of this Republic speaking in the manner in which I am doing, it is because of the pain that people go through.

I know that when I was a young boy, we lost many children who would have been like Sen. Murkomen in Embobut Forest because people slept in the Forest. I personally know that there are many people who would have been Senators and lawyers like me, but they never made it because their education was disturbed by the same way of evicting people. We cannot just sit here and pretend to be leaders, calling ourselves the defenders of the weak and we do not stand firm to defend the weak whether they are in Narok County, Embobut or Kakamega County.

I can see my time up. However, I know you gave Sen. Malalah two more minutes because he is the Senate Minority Leader. So, I ask for three more minutes, being the Senate Majority Leader.

The Deputy Speaker (Sen. (Prof.) Kindiki): I am not aware that Sen. Malalah is the Senate Minority Leader.

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, he is the Senate Deputy Minority Leader and for now he the Acting Minority Leader now that the Senate Minority Leader is not around.

The Deputy Speaker (Sen. (Prof.) Kindiki): I am not aware of that as well. However, have your two minutes, we need to close this discussion.

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, that is why I saw Sen. Malalah passionately defending the Kabras Sugar factory, although Senator Cheruiyot could be defending Mau Forest evictees for other reasons. Sen. Malalah did so, as he told me, because there are small scale farmers who supply sugar

cane to that factory. Every issue that affects Senators in this House is unique to the people they represent.

I saw some Senators who even have absolutely no recollection of where Mau Forest is in the map of Kenya, but only hear about it. They grew up in the suburbs of Nairobi. They never slept in shanties like myself trying to give me a lecture of how to be respectful to the leadership of this country just because I raised issues that affect this nation.

Mr. Deputy Speaker, Sir, I know President Uhuru Kenyatta and the Deputy President, Hon. William Ruto and their passion for the poor and the weak people. I would be decorated another medal in this country by the President maybe by the end of this year for bringing this debate to the Republic of Kenya, so that the issues that are related to violation of human rights *vis-à-vis* conservation of the Forest can be on the table of national conversation for the benefit of our people and this country.

I, therefore, urge Senators here that we are the solution. I report that since I raised that issue with the Government, the burning of houses has ceased. The exception is today where there is a little recurrence. The official position of the Government is that the burning of houses ceased until the cutline is determined and whether there is a violation of the cutline.

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

The Deputy Speaker (Sen. (Prof.) Kindiki): What is out of order Sen. Olekina?

Sen. Olekina: Mr. Deputy Speaker, Sir, I know this matter is very emotive. Is it in order for the Senate Majority Leader to suggest that the current Government where he is the Senate Majority Leader is violating human rights? Can he substantiate that? Can he bring it to this House for us to see that violation of human rights? One cannot stand here and say that this Government is violating human rights. Bring it here and let it be factual. The world is watching and we cannot be taken back. This is a country that has agreed to move forward.

The Deputy Speaker (Sen. (Prof.) Kindiki): What is your point of order Sen. Olekina?

Sen. Olekina: Mr. Deputy Speaker, Sir, it is out of order for him to impute ill motives against this Government.

The Deputy Speaker (Sen. (Prof.) Kindiki): Under what Standing Order?

Sen. Olekina: Mr. Deputy Speaker, Sir, I could even say Standing Order No.1.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order. Sen. Murkomen, please conclude your remarks.

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, Article 43 of the Constitution provides the right to education. About 4,000 children are out of school because ten schools have been closed in Narok South Constituency. That is a violation of human rights. Article 43 of the Constitution provides the right to housing. Many of the people have had their houses burnt and they are sleeping outside. That is a violation of human rights. That is the question we are raising. That is why I used the word “*wakora*” in Mau. You will always find certain wrong people in the Government who do wrong things. That mode of evicting people from the Mau Forest and violating their rights is wrong. It is the same when we have “*wakora*” stealing public money. We

prosecute people for corruption, but that does not mean that the whole Government is corrupt or that everyone in the country is violating human rights. We must find the actors who are bringing shame to the great Republic of Kenya; who, at a time like this, they can still evict people in the manner which I witnessed in the Mau Forest.

Be that as it may, Mr. Deputy Speaker, Sir, I am reporting to this House that we have been assured, as leaders, that remedial action is being taken by the relevant Ministry's leadership so that our people can go back to their homes and our forests can be conserved for this and future generations.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senators! When this Statement was issued by Sen. Kwamboka, I advised that given the exchanges that we have seen in the recent days in and out of this Chamber, there are better ways of spending more time so that you can ventilate on this issue, other than through the Statement. However, I was persuaded – although in a not-so-appropriate manner – to allow debate on it by Sen. Mutula Kilonzo Jnr. and Sen. Olekina.

(Laughter)

Senators, please, when you want to say something, just say it without trying to drag the Speaker into the debate. The Speaker does not take part in the debate. Therefore, do not try to bring the Speaker into the debate. Just say that you want more time and explain yourself. Do not start shouting across the aisle and, occasionally, attempt to shout at the Speaker.

(Laughter)

That will not be entertained. You cannot intimidate the Speaker. We are umpires and we are here to make sure that the tax that Kenyans pay to keep us here is used well. Having said that, Senators, nothing prevents Sen. Kwamboka or any other Senator from seeking other ways of articulating this issue differently.

Hon. Senators, that marks the end of this discussion and the end of that Order on Statements because we have other Business which we must deal with today. That is the order from this side.

Let us move on to the next Order.

Order, Senators! I see that we have certain items on the Order Paper that we cannot transact now. Leaders of Majority and Minority, can you confirm whether we can transact the Divisions in Orders No. 8,9,10 and 11?

Sen. Mutula Kilonzo Jnr.: We cannot, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Accordingly, I direct that we defer the items on Orders No. 8, 9, 10, and 11 on the Order Paper.

BILLS*Second Reading*

THE RETIREMENT BENEFITS (DEPUTY PRESIDENT AND
DESIGNATED STATE OFFICERS) (AMENDMENT) BILL
(SENATE BILLS NO.2 OF 2018)

(Bill Deferred)

Second Reading

THE COUNTY STATISTICS BILL (SENATE
BILLS NO. 9 OF 2018)

(Bill Deferred)

Second Reading

THE SALARIES AND REMUNERATION COMMISSION
(AMENDMENT) BILL (SENATE BILLS NO. 12 OF 2018)

(Bill Deferred)

Second Reading

THE IRRIGATION BILL (NATIONAL ASSEMBLY
BILLS NO.46 OF 2017)

(Bills deferred)

Next Order.

Second Reading

THE PHYSICAL PLANNING BILL (NATIONAL
ASSEMBLY BILLS NO.34 OF 2017)

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, I beg to move that the Physical Planning Bill (National Assembly Bills No.34 of 2017) be read a Second Time.

Mr. Deputy Speaker, Sir, this is a very important Bill that touches on an important aspect in our Constitution. The objective of this Bill is to provide for the

planning, use and regulation on development of land. The Bill seeks to repeal the Physical Planning Act, No.6 of 1996.

Mr. Deputy Speaker, Sir, the Constitution provides for the functions of the national and county governments. As I said yesterday, it is on that basis that the Constitution provides for functions between the National Assembly and the Senate. Article 110 of the Constitution says that all Bills concerning counties must come to this House. Part 1 of the Fourth Schedule of the Constitution provides that the planning function is a function of the national Government, whereas Part 2 also provides that planning is a function of county governments. For that reason, planning is a concurrent function and, therefore, it is expected that physical planning can be done by both national and county governments.

Mr. Deputy Speaker, Sir, the Constitution also provides that once the new Constitution came into effect, it was necessary for Parliament to amend all laws to be in conformity with the Constitution. This is one of those legislations which are meant to bring the old Physical Planning Act, No.6 of 1996 in conformity with the Constitution of Kenya, 2010.

Mr. Deputy Speaker, Sir, Article 66(1) of the Constitution provides that-

“The State may regulate the use of any land, or any interest in or right over any land, in the interest of defence, public safety, public order, public morality, public health, or land use planning.”

Article 66(2) goes ahead to provide that-

“Parliament shall enact legislation ensuring that investments in property benefit local communities and their economies.”

These are two very important provisions of the Constitution that give a background against which the Physical Planning Bill is being enacted. The Bill will spell out how land will be used, how land and interest in land will be shared for purposes of public safety, public defence, public order, public morality and land use planning.

Mr. Deputy Speaker, Sir, the Bill has the following objectives. One, it makes provision on the preparation and implementation of physical plans at all levels of Government, so that all physical plans being prepared by the counties and the national Government will be regulated by this Bill. Two, it provides for the administration and management of physical planning in Kenya. This means that each entity in the national and county governments will be responsible for administering matters of physical planning and land use. Three, it provides for the procedures and standards for the development, control and regulation of physical planning and land use. This includes standards that are required, the control mechanisms and so on and so forth. It also provides for the control and regulation and control of land use and physical planning between the two levels of government and also between counties themselves. It provides for dispute resolution on matters related to physical planning as well as for the functions of and relationships among planning authorities, including between the national and county governments.

Mr. Deputy Speaker, Sir, it is important to continue emphasising, for purposes of auditing by the Senate, that the Inter-County Physical Development Plan (ICPDP) is critical. If you read the basis for the enactment of this law, which is in Article 66 of the

Constitution, it makes it clear that it is the State that has the responsibility for planning. That planning must cut across; it cannot just be within a county itself. There can be planning in one county that can affect planning in another county. Therefore, it was necessary that physical plans be approved at one centre. There is need to have uniformity in the nation and ensure national development objectives, including matters like defence. The national Government has the responsibility to also provide regulation of public morality. We do not want Sen. Malalah and the people of Kakamega County to convert, for example, Muliro Gardens from what it is supposed to be, to something that can possibly go against public morality. That is why if you leave it to County "X" alone, it might infringe on the interest of the nation, because that interest and morality of the nation is protected. I can see that Sen. Malalah bemused by the famous Muliro Garden story that has now attracted so many tourists to Kakamega County.

Mr. Deputy Speaker, Sir, apart from the objectives of the Bill, this Bill establishes physical planning institutions. The first one is the National Physical Planning Consultative Forum (NPPCF). This forum is established in Clause 5 of the Bill and it comprises of the Cabinet Secretary (CS), in the time being responsible for matters of physical planning at the national level, the National Director of Physical Planning at the national level and the chairperson of the relevant committee of the Council of Governors (CoG).

I know that the existing intergovernmental entity that brings together various counties is the CoG. However, I have been thinking that given the technical nature of these issues, perhaps, there will come a time that the CoG, in future, might be expanded to have various departments that bring together the various counties on representation of issues. Be it as it may, the chairperson of the relevant committee of the CoG is a member of this institution.

As stated in Clause 5 (e) to (r), The National Physical Planning Consultative Forum shall also comprise of-

- (e) one County Executive Committee Member from each County being a member responsible for physical planning, environment, or infrastructure;
- (f) the Cabinet Secretary, for the time being, responsible for matters related to economic planning;
- (g) the Cabinet Secretary, for the time being, responsible for matters related to environment;
- (h) the Cabinet Secretary, for the time being, responsible for matters related to roads and infrastructure;
- (i) the Cabinet Secretary, for the time being, responsible for matters of social and community development;
- (j) the Cabinet Secretary, for the time being, responsible for matters related to culture;
- (k) the Cabinet Secretary, for the time being, responsible for matters of defence;
- (l) a person nominated by the Kenya Institute of Planners;
- (m) a person nominated by the Institution of Surveyors of Kenya;
- (n) a person nominated by the Architectural Association of Kenya;

- (o) a person nominated by an association representing the private sector in Kenya, as shall be determined by the Cabinet Secretary;
- (p) a person nominated by a registered body representing a national association of residents;
- (q) a person nominated by the National Council for Persons with Disability; and
- (r) any person co-opted by the Forum for that person's special skills, interest and knowledge."

Mr. Deputy Speaker, Sir, the main purpose of this institution as indicated in Clause 6 is to-

- “(a) provide a forum for consultation on the national physical development plan;
- (b) promote effective coordination and integration of physical development planning and sector planning;
- (c) advise on the mobilization of adequate resources for the preparation and implementation of physical development plans and strategies; and,
- (d) consider national security and advice on strategic physical development projects of national, inter-county, county, or transnational importance.”

Mr. Deputy Speaker, Sir, if there is a body that, by virtue of its composition, has a huge representation of county governments that we have ever passed in this House is this National Physical Planning Consultative Forum. This is because, if we have 47 County Executive Committee (CEC) Members seating there and the person in charge of the committee involved in matters of planning from the CoG; we have 48 persons, to start with, that are representing county governments. I have no doubt that this is one of the few national committees, forums, entities or institutions that we are approving that has the highest number of parties involved being county people. This is commendable.

Mr. Deputy Speaker, Sir, the second thing is in relation to the National Land Commission (NLC). The NLC also has a responsibility as far as the physical planning is concerned. In line with Article 66 of the Constitution, their job is to monitor and oversight physical planning in Kenya. To give effect to the provisions of the Constitution, the NLC must oversight all those physical plans that are going to be prepared.

The other roles of the NLC are to publish and publicise reports on the status of land use planning in Kenya, develop monitoring framework and formulate oversight parameters relating to physical planning and encourage the use of traditional dispute resolution mechanisms in land use and planning. These are very important issues.

The NLC, as an institution, is extremely important in matters of planning, land use and particularly, protecting the interests of the public, especially as per the Constitution as far as public land is concerned. As such, they have a role to play, under the Act, to ensure that matters of land planning are achieved in the right manner.

Mr. Deputy Speaker, Sir, the responsibility of the CS responsible for physical planning at the national Government, in line with the existing laws and the Constitution, shall be-

(a) formulating a national policy on physical planning.

The policy matters even in the Fourth Schedule of the Constitution are left to the national Government.

(b) Issuing in the Gazette policy statements, guidelines and circulars on aspects of physical planning.

Once the policies are in place, then they are the ones to give policy statements that will guide the country on matters of planning.

(c) approval of national physical development plans.

That is, the national physical development plans.

(d) To coordinate the national and county levels of planning. It is a coordination role which is in the office of the Cabinet Secretary, on behalf of the national Government.

There is also a role of the CEC Members at the county level. The Bill provides that CEC Members responsible for physical planning and that department in the county will be responsible for, first, formulating a county policy on physical planning. That policy is expected to mirror the national policy, because the national Government has a responsibility to provide policy direction.

The other role is to monitor and oversee technical physical planning functions at the county level. Lastly, is to promote the integration of county physical planning functions and sectorial planning levels.

There are other physical planning offices that are established under the law, which include the National Director of Physical Planning (NDPP), whose key function is to advise the national Government. It is an institution within the Ministry that is responsible for planning that advises the national Government on strategic planning matters that impact the whole country.

At the county level, the Bill establishes the Offices of County Director of Physical Planning, whose role is to advise the county governments on physical planning matters. These offices already exist; it is only that they must be given the force of the law, pursuant to the establishment of a new constitutional order.

Mr. Deputy Speaker, Sir, physical development plans are also provided for. The types of physical development plans that are provided for by the Bill are in Part III of the Bill. We have four kinds of physical development plans. The first one is the National Physical Development Plan, which the Bill provides that its formulation is done under the office of the Cabinet Secretary responsible for planning and the National Director of Physical Planning.

The plan is meant to define strategic policies for the determination of the general direction and trends of physical development and sectorial development in Kenya and provide a framework for the use and development of land. It is meant to cover an implementation period of 20 years, but it may be reviewed after 10 years on need basis. This is to ensure that we have long-term plans that can give investors and the people of this country, who are investing in various areas, ample time to know where the country is going for an ample period of 20 years.

We also have the Inter-County Joint Physical Development Plans. These are plans that bring together two or more counties. It can be formulated by an Inter-County Joint Physical Planning Development Committee, which comprises the County Executive

Committee (CEC) members from the various counties, who come together and agree on one inter-county physical plan. This can be the situation in, for example, counties like Elgeyo-Marakwet, West Pokot and Baringo which share the Kerio Valley region. It will be easy for them to have an inter-county development plan and agree on the things that they want to do.

Mr. Deputy Speaker, Sir, at the county level, there is the County Physical Development Plan (CPDP) that provides for the physical development framework for the county. Then, we have the Local Physical Development Plan (LPDP) which is meant for a city, municipality, town or a classified urban area within the specific counties. The plan will provide for the zoning of an urban area, regulation of land use and development and the operationalisation of the integrated city or urban development plan. Some of these things are already captured. The Bill must be read together with the provisions of the Urban Areas and Cities Act that already provides for the need for urban planning and the integration between the urban plans, county plans and also the departments responsible at the county level.

There are many things that I would want to say about physical planning but if I say all of them, what will Sen. Mutula Kilonzo Jnr. say? We must give opportunity to as many Members as possible. However, it is important to note that all these issues are meant to deal with matters of special planning areas which allow counties to declare special planning areas that are unique for development on environmental issues. We are debating about the Mau Forest Complex and a county can declare a special area for purposes of planning for forest conservation. For example, Embobut Forest is a special area for Elgeyo-Marakwet County and it can be unique for environmental potential or challenges. The area could be suitable for intensive and special development activities; may be creation of a new town.

Development of an area significantly affects the immediate locality. For example, in Elgeyo Marakwet County, Tullow Oil is exploring oil at a place called Chepsigot and the Kerio Valley. If it is declared that enough oil has been discovered there - I am told the potential is higher than even for Ngamia 1 - Elgeyo-Marakwet County and Kerio Valley will change. This will mean that Elgeyo-Marakwet County might quickly have to declare that area as a special planning area for purposes of capturing new development that may take place in that area. It is also meant to guide implementation of strategic national projects or guide the management of internally shared resources.

Mr. Deputy Speaker, Sir, the Bill also provides for development control which is restriction on development of buildings and land, generally requiring developers to get development permission from various departments of either national or county governments. It also makes it an offence for one to carry out certain developments without the permission that is required. It provides for counties to levy fees for purposes of approvals for various developments. It gives the Cabinet Secretary (CS) the power to give policy directions from those issues of development in controlled areas, as it may be. This law can be enforced. It gives powers to the planning authorities to enforce it by giving notice to an owner, occupier or agent whose development does not comply with the provisions of the Bill. It also provides for alternative dispute resolutions on conflicts related to land planning.

These are very important issues and I urge Members of this great House to work together. There might be areas that may need improvement. We need to propose them, so that we capture them and ensure that we have a beautiful Bill that will be forwarded for presidential assent and for the benefit of the people of Kenya.

Let me repeat what I said yesterday. Once again, I am proud of the work that we are doing in this House, our commitment and fidelity to the Constitution and the desire for us to deliver on the mandate given. If we continue working as a team and focus on the issues - I have seen many Members come up with Private Members Bills and also with the Government Bills - we shall deliver a lot. As we canvassed yesterday, it will be in vain if Members will make weighty contributions here and then our Bills stall somewhere. I believe that your Office can now act on the proposals we gave yesterday, so that the process of enactment of Bills can move expeditiously and in a manner that will ensure that Senators feel energized to continue coming up with and drafting more Bills for the benefit of this country.

Mr. Deputy Speaker, Sir, I beg to move and ask Sen. Dullo to second.

(Interruption of debate on Bill)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM ST. AUGUSTINE MURUTO
PRIMARY SCHOOL, NANDI COUNTY

The Deputy Speaker (Sen. (Prof.) Kindiki): Hon. Senators, I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from St. Augustine Muruto Primary School in Nandi County.

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and my own behalf, I wish them a fruitful visit.

Thank you.

(Applause)

What is it Sen. Cherargei?

Sen. Cherargei: Thank you, Mr. Deputy Speaker, Sir. I take this opportunity to welcome our good pupils from Muruto Primary School in Kabiyet, Mosop sub-county, Nandi County led by Mr. Rotich. I welcome them to the National Assembly and the Senate and wish them a fruitful engagement, so that they may learn. We are proud of them. I challenge them that courtesy of being here, they should be inspired to perform to their best in the coming national examinations for this season.

We wish you well and pray for you. We are proud of you and hope that when you go back, you will perform to your best especially after this visit to the Senate; knowing that the Senate is the great custodian of devolution in this country. May this be

inspirational. You are the present and future leaders that we need in this country. I extend a warm welcome, on behalf of all of us. I know we will interact later.

Thank you.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you.

Sen. Dullo, proceed.

(Resumption of debate on Bill)

Sen. Dullo: Thank you, Mr. Deputy Speaker, Sir. I wish to second this Bill. I believe this Bill will sort out most of the issues affecting our country and counties. It is long overdue because land is an emotive issue and without proper legislation in place, we will have a lot of problems.

First and foremost, this Bill provides for planning, use, regulation and development of land. What we have noticed in most counties is that proper planning and development of land is not done properly. It is normally done in an *ad hoc* manner without proper consultation especially in terms of the areas that are set aside for proper use in our country. I believe once we have this law, these factors that affect our country will be sorted out.

I come from Isiolo County where land used to be under the county council and now the national Government can just take away land from the community or allocate it to individuals without consulting the locals. Such cases will be sorted out by this law. Currently in Isiolo, we have about three or four individuals who claim ownership of one piece of land because of allocation issues and conflict of interest between the national Government and our county government. Once we have the county executive committees on board, they will formulate county policy planning that will guide the counties in terms of how land will be utilised. I believe this is important for our country.

The county executive committee will also monitor and oversee technical physical planning functions at the county level because it used to be a one man show where anybody could wake up and carry out that particular function. Fortunately, this law will sort out these issues which are critical in our counties.

[The Deputy Speaker (Sen. (Prof.) Kindiki) left the Chair]

[The Temporary Speaker (Sen. (Prof.) Kamar) in the Chair]

Madam Temporary Speaker, the Bill also provides for other offices within the county such as the County Director for Physical Planning whose role will be advisory to the county government on physical planning matters. That will also ensure our problems are sorted out.

I want to talk about the Inter-County Joint Physical Development Plan (ICPDP). We have been having a lot of problems especially in counties with boundary disputes where issues have not been sorted out properly because there is no proper legislation in place. Once we have the ICPDP, it will be possible to liaise across counties to sort out our issues and plan for our counties properly.

For example, there is a boundary dispute between Isiolo and Meru counties. Once we have this particular legislation in place, then it will be possible for counties to sort out disputes or even plan on how land will be utilised. It is clearly stated how the inter-county physical planning should be done. The plan is supposed to be adopted by relevant county assemblies and that is important because it gives mandate for counties to manage and govern their affairs.

Another thing I want to speak to is the issue of county physical planning. This Bill mandates each county to prepare a county physical planning development plan every 10 years. This is not provided for in the current legislation. This will guide most of the counties because there are changes and the demand for land is also going up. If physical plans for counties are reviewed, then it will help counties to have proper use of land.

In this Bill, one of the functions of the county physical development plan will be to provide an overall physical development framework for the county and guide rural development settlement. If you go to most of the counties, you will find that there is no proper planning in place because people are building houses on drainages and even on road reserves. Once we have this in place, it will help counties to sort out the issues. Where I come from, whenever it rains, we have problems with the drainage and most of the places are flooded. If we have proper framework and planning in place, then our counties will be guided.

The Bill also provides for the Local Physical Development Plan (LPDP) whereby a county government will be required to prepare a development plan for each city, municipality or town and classified urban areas within the respective county. The plan will, among other things, provide for zoning urban renewal or development areas.

Recently, in most counties, governors were running around establishing municipalities and urban areas without proper public participation and explanation on whether the municipalities and cities are important to the counties. I am grateful to this Bill because it provides for public participation in terms of how cities and municipalities will be established. Public participation is critical in terms of our constitutional provision.

The other issue I want to speak to is the special planning areas. This law will give county governments powers to declare special areas within the counties. This is critical because you will find that people settle in areas that are meant for development or public utilities and sometimes after development it is hard to evict them from those areas. Once we have this legislation in place, it will sort out our challenges and demarcate areas meant for development.

I also want to talk about development control where individuals will be required to apply for authorization for development purposes. In other areas people do not care. They do not apply for authorization, for example, if they want to establish a hotel or residential place. They just come up with their own plans. This Bill will sort out most of these issues because it seeks to restrict the development of buildings and land. It also requires developers to get development permission from the relevant planning authorities before undertaking any development. This is very important because the plan has to be approved. It also makes it an offence to carry out development without obtaining permission.

Madam Temporary Speaker, we have had cases where people in this country are putting up buildings without permission or without putting in place proper mechanisms, and they end killing people. This will be sorted out once we pass this Bill, because it provides for the offences punishable by levying of a fine not exceeding Kshs500,000 or imprisonment for not more than two months, or both. This is also very important in punishing those who default the provisions of this Bill.

Madam Temporary Speaker, the Bill provides for exemption of certain institutions from requesting for permission. These include the Kenya Defense Forces (KDF) and national security installations. You will sometimes find members of the public fighting with Government institutions or the Ministry of Defence over land. A good example is in Isiolo, where we have issues between the military and members of public on how land is acquired. Once we pass the Bill, we will sort out the challenges that we have been facing as a country.

Madam Temporary Speaker, the Bill gives planning authorities the power to enforce notices on owner-occupiers and agent developers for property whose development does not comply with the provisions of the Bill on development permissions. This is a critical point that will help us to ensure that people comply with the standards required. In addition, the Bill also provides for dispute resolution mechanisms, where issues are sorted out amicably. A Physical Planning Liaison Committee will also be established under this Bill to hear appeals against decisions of the planning authorities. An appeal mechanism has been put in place as provided for within this Bill.

Madam Temporary Speaker, the Bill also provides for delegated powers, where the Cabinet Secretary responsible for physical planning has powers to make regulations necessary for the operationalization of this Bill, once it becomes an Act. This is very critical because unless we have a regulation in place, we cannot then operationalize this Bill.

Madam Temporary Speaker, my boss, the Majority Leader, has done a lot of justice in terms of enumerating what is provided for in each provision of this Bill and, therefore, I will stop here.

I beg to second.

Thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. (Prof.) Kamar): Thank you, Senator.

(Question Proposed)

The Temporary Speaker (Sen. (Prof.) Kamar): What is your point of order, Sen. M. Kajwang'?

Sen. M. Kajwang': Madam Temporary Speaker, the Bill whose question you have just proposed was before this House during the Eleventh Parliament, and it was subject to a lot of debate and amendments. I note that it has come back in a similar format and with similar content and, as such, it stands the risk of rejection.

Madam Temporary Speaker, my point of order arises from Standing Order No.134, which gives us the procedure for committal of Bills to Committees and public

participation. If you read it, it says that, that happens after the First Reading but before the Second Reading. Therefore, before the Second Reading, there is an assumption that the Bill ought to have gone to a Committee. Going further to Standing Order No.137, the expectation is that when the Bill has been sent to a Committee, the Committee shall report back to the House. Standing Order 137(1) states that-

“Whenever a Bill is referred to a Standing Committee, the Chairperson of the Committee, the vice chairperson or a Senator designated by the Committee to which the Bill is committed, shall present the Committee’s report to the Senate within thirty calendar days of such committal.”

Similarly, Standing Order 137(2) states that-

“Upon presentation of the report under paragraph (1) or if the Committee’s report is not presented when it becomes due, the Bill shall be ordered to be read a Second Time and committed to the Committee of the Whole on such day as the Senate Business Committee shall, in consultation with the Senator who introduced the Bill, appoint.”

Madam Temporary Speaker, the import of what I am bringing up is that the consideration of a committee, public participation and reporting back to the House are critical steps before the Second Reading. The reason why “shall” is used and not “may” in Standing Order No.137 is because it is not optional for the Committee to report back. It is expected that the Committee shall report back within 30 days. It is upon those 30 days, in Standing Order 137(2)---

The Temporary Speaker (Sen. (Prof.) Kamar): Order, Sen. M. Kajwang! I can see that another point of order has been raised. However, before that, I am happy that the Senate Majority Leader is here so that he can respond your point of order---

Sen. M. Kajwang’: Could I prosecute the point order first---?

The Temporary Speaker (Sen. (Prof.) Kamar): Are you ready for it?

Sen. M. Kajwang’: I am on a point of order.

The Temporary Speaker (Sen. (Prof.) Kamar): Yes, finish your point of order.

Sen. M. Kajwang’: Thank you, Madam Temporary Speaker. My point of order relates to the manner in which we want to process this Bill. This Bill was committed to a Committee, which I believe it is the Committee on Lands, Environment and Natural Resources. The Committee has not reported back to the House and they have not told us why they have not done so. This is not a simple Bill; it is one that talks about matters that are regulated by professionals. People go to school to become Physical Planners, and we do not want this Senate to undertake a debate that will be pedestrian and uniformed. That is why the committees are given the mandate and power to scrutinize Bills and bring reports to the House.

Madam Temporary speaker, it is not the first time that this House has reflected on these provisions of the Standing Orders---

The Temporary Speaker (Sen. (Prof.) Kamar): Your point has been noted.

Sen. M. Kajwang’: Madam Temporary Speaker, I humbly beg that you allow me to finalize.

(An hon. Senator spoke off record)

I am not debating. Allow me, through the Chair, to---

The Temporary Speaker (Sen. (Prof.) Kamar): Order, Sen. M. Kajwang'. I was giving you time, because I wanted to understand the direction that you are taking us; but I think we have got the point.

Sen. M. Kajwang': Madam Temporary Speaker, I have not even said the direction that I will be requesting the Chair to take.

The Temporary Speaker (Sen. (Prof.) Kamar): Then you should have used your time during debate to take us that far. We wanted to know what is out of order in the debate which is about to commence because you rose on a point of order.

Sen. M. Kajwang': Madam Temporary Speaker, we cannot debate this matter until we have addressed the issues I am raising under Standing Orders, No.s 1, 134 and 137. Allow me to state why I am referring to Standing Order 1. The Ward Equalization Fund Bill was brought before this House for debate earlier. However, because it had significant issues, the House made a resolution to await the report of the Committee before we could proceed with the matter. This is not a simple matter. If we rush it because it has come from the National Assembly or because the leadership has got certain instructions to pass the Bill, we are then going to throw away the baby with the bath water.

The Temporary Speaker (Sen. (Prof.) Kamar): Order, Senator. We have got your point. The reference to the Equalization Fund is known to us, the Speaker and the clerks. We, therefore, know which reference you are talking about. Therefore, allow us to ventilate and give you direction shortly.

I can see another intervention from Sen. Mutula Kilonzo Jnr., Let us hear him out before I allow the Majority Leader.

*(The Temporary Speaker (Sen. (Prof.) Kamar
consulted the Clerks-at-the-Table)*

Sen. Mutula Kilonzo Jnr.: Madam Temporary Speaker, I need your attention.

From the Bill tracker that is on our very nice gadgets in front of us, the Physical Planning Bill was committed to the Committee on Lands, Environment and Natural Resources on 16th May, 2018. The 30 days lapsed on 15th June, 2018 and today is 26th July, 2018. We have Members of the Committee here, including Sen. Sylvia Kasanga. It is important that we know from the Committee what the position is because, as Sen. M. Kajwang rightly points out, there was a substantive issue raised in the last Session on the Physical Planning Bill. Before we begin the debate, those issues must come to our attention. There is a reason that Standing Order is there. If it has been waived for whatever reason, that information should be given to Senators, so that we move from an informed position. It will enable us not to contradict the Committee or waste time here, yet they will totally amend it or tell us that we do not need to debate it. That position must be made clear.

Thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. (Prof.) Kamar): Thank you. In fact, I was starting to wonder whether you were on a point of information and who you were informing. You stood on a point of order, but started informing us.

Hon. Senators, the argument that has been brought forward by Sen. Mutula Kilonzo Jnr. was the answer that I was to give to Sen. M. Kajwang. It is true that the First Reading of this Bill was done in May. When a First Reading has taken place, it is expected that the relevant Committee will report back within 30 days, if it indeed goes out to do its work.

When the Bill appeared on the Order Paper, we expected the Chairperson and all the Members of the Committee to be here, to inform us if at all they have done anything. The Bill has been on the Order Paper since Tuesday, but they do not seem to have a report. That is the assumption from this point. If they have a report, the House has a right to go to the Second Reading. We expect Members to propose whatever they have. We cannot stop debate of a Bill that is already the property of the House, if a Committee fails to do what is required of it within 30 days.

I will now ask the Senate Majority Leader to make a few clarifications, now that I have responded to that.

The Senate Majority Leader (Sen. Murkomen): Madam Temporary Speaker, is it in order for me to request you to give two minutes to Sen. Sylvia Kasanga, who is a Member of the Committee, to inform us before I make my final comments?

The Temporary Speaker (Sen. (Prof.) Kamar): Sen. Kasanga has already requested to speak, anyway. She has not asked for an intervention, but to contribute to the debate. I do not know why you want me to force her to intervene, yet she has not requested for it.

Sen. Kasanga, are you requesting for an intervention or you want to contribute to the debate, because you are lined up?

Sen. Kasanga: Madam Temporary Speaker, I made a mistake by pressing the wrong button. I want to make a point of intervention and information as well, if allowed.

The Temporary Speaker (Sen. (Prof.) Kamar): That is okay. Proceed with your intervention.

Sen. Kasanga: Thank you, Madam Temporary Speaker. Indeed, I am a Member of the Committee on Lands, Environment and Natural Resources. This particular Bill has raised a lot of interest from the public. We had public participation, but up until yesterday we were still getting submissions from various stakeholders and professionals in the industry.

Madam Temporary Speaker, we had a meeting today and we were going over all the recommendations that have been made; they are quite a number. Our Chairperson is not here because he has been unwell for the last two weeks. If it is possible, I request that we be allowed to table a draft of what we have received from the stakeholders. It will be more useful to the House than going with it as it is right now. There are quite a number of amendments that have been proposed by the various professionals.

Madam Temporary Speaker, that is what I can say for now.

The Temporary Speaker (Sen. (Prof.) Kamar): Notwithstanding, as a Committee, you have failed the House because 30 days lapsed in June.

I will now ask the Senate Majority Leader to make his comments.

The Senate Majority Leader (Sen. Murkomen): Madam Temporary Speaker, I have been waiting for the Committee to complete its work for the last three months. In fact, the Committee is one-and-a-half months late. Even if it is about extension, it is unfortunate that they have not delivered to the required standards.

I have no problem with adjourning the debate up to Tuesday, so that Members can read the report and make informed debate. However, let us remind ourselves that we have proceeded in the past and waited for the Committee to come with amendments. This should not be the practice; it should not be mandatory for somebody's Bill to be left in abeyance. Assuming that it was a Private Member's Bill and a Committee sits with it for this period of time and the Member is just waiting---

Mr. Temporary Speaker, Sir, since it is a Government Bill, I have no problem if we can have another one week for the Committee to complete its report. If we can adjourn it to Tuesday, 6th August, 2018, Members will be ready to debate it without further reference to the Committee.

Sen. Malalah: On a point of order, Madam Temporary Speaker.

The Temporary Speaker (Sen. (Prof.) Kamar): Sen. Malalah, what is your point of order?

Sen. Malalah: Thank you, Madam Temporary Speaker. I join the Senate Majority Leader in suggesting that we adjourn this debate, but we must do it procedurally. Standing Order No.54 provides that a Motion to adjourn debate can be moved without notice. Therefore, it is my humble submission that I move a Motion to adjourn this debate, because we do not have enough information pertaining to this Bill. Again, it is in the interest of this House to get a report from the Committee.

The other day, we were bashed by the National Assembly for not transacting business that affects counties. In our Order Paper today, we have Motions to discuss the financial operations of Kajiado County---

The Temporary Speaker (Sen. (Prof.) Kamar): Order, Sen. Malalah. You are now straying completely. You are giving us other reasons than why you want an adjournment. We want you to give the reasons you want an adjournment. However, if you have other reasons to bring some Orders forward, that is manipulating the Chair. Are you done?

Sen. Malalah: Madam Temporary Speaker, I stand guided.

The Temporary Speaker (Sen. (Prof.) Kamar): Proceed.

PROCEDURAL MOTION

ADJOURNMENT OF DEBATE ON THE PHYSICAL PLANNING BILL (NATIONAL ASSEMBLY BILLS NO.34 OF 2017)

Sen. Malalah: Madam Temporary Speaker, pursuant to Standing Order No. 99 (1), I beg to move that debate on The Physical Planning Bill (National Assembly Bills No.34 of 2017 be now adjourned until further notice.

I call upon Sen. Olekina to second.

Sen. Olekina: Madam Temporary Speaker, I rise to second the proposal by my good friend, Sen. Malalah, for the following reasons. It is imperative that when we are dealing with issues that touch on counties, we should do so from an informed position. The tabling of the report by the Committee will illuminate to us all issues that people are concerned with about physical planning in this country.

With those few remarks, Madam Temporary Speaker, I beg to second.

*(Question, that Debate on the
Bill be now adjourned, proposed)*

The Temporary Speaker (Sen. (Prof.) Kamar): Hon. Members, now that it has been done procedurally under Standing Order No.99 (1), I will put the question that the debate on the Physical Planning (National Assembly Bills No.34 of 2017), be now adjourned.

*(Question, that Debate on the Bill be now
adjourned, put and agreed to)*

Sen. Mutula Kilonzo (Jnr.): On a point of Order, Madam Temporary Speaker. On the comments made by the Majority Leader---

The Temporary Speaker (Sen. (Prof.) Kamar): Sen. Mutula Kilonzo Jnr., are you taking us back?

Sen. Mutula Kilonzo (Jnr.): No, Madam Temporary Speaker. It is on general direction on what you have said. I sought your intervention, as you have adjourned. The matter is over. However, there is an issue that I would like to raise.

The Temporary Speaker (Sen. (Prof.) Kamar): Hon. Senator, but not on the same. We have been told about the Bill and the Committee insists on the reasons why we are adjourning it. So, do not guide them unless you want to be a friend of the Committee, you can visit them.

Sen. Mutula Kilonzo (Jnr.): Madam Temporary Speaker, it is a direction on the Standing Orders. If the Standing Orders direct a committee to table a report within 30 days and the report is not tabled within 30 days, there must be a default for purposes of movers of Bills. It cannot be that a delay becomes usual business and a complaint from the Senate Majority Leader because there is a Liaison Committee.

There must be direction because this will become the order of the day and it will affect Government and private Members business. What is a Senator supposed to do if the 30 days lapse and there is no report? That is general direction, not necessarily for this Bill, which we have agreed to adjourn under Standing Order No.99. What exactly is supposed to happen? It cannot be business as usual. We are being accused by the National Assembly of sitting on matters that concern counties and that are brought to our attention. These are some of the things that we must speak to.

The Temporary Speaker (Sen. (Prof.) Kamar): Hon. Senators, procedurally, we were not supposed to have accepted any comment on this. Your comments should have come before adjournment so that we move to the next order. Notwithstanding is the fact

that what I told the Committee has been recorded in the HANSARD. They have failed disastrously by being late, not just by a day or three days, but being late by a month is extremely serious in this House.

So, I will repeat, for the sake of Sen. Mutula Kilonzo Jnr. who did not hear earlier. The Committee has failed this House and we are telling them that this will not be allowed in future. You are being saved by Members who would like to know what is in your report. Actually, you have failed. So, Sen. Kasanga, please tell your Chairman that the House is not amused by this kind of behaviour and we should not allow it in future. This is not only about this Committee, but for all other committees. To have 30 days is a long time for a committee to do public hearing and to come here with a report. We cannot allow more than what the Standing Orders would allow.

I will close that and move to the next order.

Proceed, Sen. M. Kajwang’.

MOTION

ADOPTION OF CPAIC REPORT ON FINANCIAL OPERATIONS OF KAJIADO COUNTY EXECUTIVE FOR FY 2013/2014

Sen. M. Kajwang’: Thank you, Madam Temporary Speaker. I beg to move the following Motion-

THAT, this House adopts the Report of the Sessional Committee on County Public Accounts and Investments on the inquiry into the financial operations of Kajiado County Executive for the Financial Year 2013/2014 (1st July, 2013 – 30th June, 2014), that was laid on the Table of the House on Thursday, 10th May, 2018.

The County Public Accounts and Investments Committee (CPAIC) is the avenue through which the Senate carries out its mandate that is captured in Article 96 (3) of the Constitution. An effort was made to lay this report on the Table of the House in the Eleventh Parliament and a Motion was moved to adopt the report. However, the term of the Eleventh Parliament lapsed before the House could adopt this Report. As a result, this House has not successfully adopted any of the reports of the County Public Accounts and Investments Committee. That means that the reports or findings of the Auditor-General have not been adopted by the House since the advent of devolution.

Madam Temporary Speaker, that puts the House in quite some tricky light. Despite all the work that Senators do day and night, to conduct or to carry out oversight over public funds that have been sent to counties, this House is yet to pronounce itself. Today, we have an opportunity to look at the report of Kajiado County, pronounce ourselves and confirm to the world that this House is serious about its oversight duty.

We have had a discussion with the leadership of the House on how to treat the reports of the Auditor-General dating back to 2013/2014. This is because the Motion that I am moving relates to the Auditor-General’s Report for the very first year of devolution. You acknowledge that we are in 2018, and so we would be looking at a report that analyses financial operations that were carried out more than four years ago. As a

Committee, we have said that we want to be more proactive in the matters that we bring to this House.

Going forward, Madam Temporary Speaker, there are 47 counties and the Committee will be expected to table 47 reports. Therefore, the Committee is considering developing a single report which we are calling the Fiduciary Risk Analysis Report. The Fiduciary Risk Analysis Report will summarize the key issues arising out of the 47 counties. Therefore, we will table one report before the House that will give us an opportunity to discuss the state of affairs in 47 counties through one single Motion instead of bringing 47 different Motions. We believe this will allow us to deal with the 2013/2014 and 2014/2015 financial years and fast track the work of the Committee so that we can be looking at more current issues.

On the report of Kajiado County for the Financial Year, 2013/2014, the Committee largely relied on the report of the Auditor-General and the Controller of Budget as key instruments for its export scrutiny of the county governments' budgets. Following the submission of the report of the Auditor-General on the Financial Operations of Kajiado County Executive for the Financial Year 2013/2014, the report was laid on the Table of the House on 30th June, 2015 and it stood committed to the Sessional Committee on County public Accounts and Investments. The Governor for Kajiado County was invited to the Committee's meetings held on 29th September, 2015 and on 2nd October, 2015 where the Committee considered and concluded its investigations on the report of the Auditor-General under review. The CPAIC of the Twelfth Parliament resolved, at its sittings held on 13th March, 2018, to table the report as adopted by the previous Committee.

Madam Temporary Speaker, it is important to note that as the Chair of the CPAIC of the Twelfth Parliament, what I am tabling is work that has been inherited from the CPAIC of the Eleventh Parliament. This report has been issued pursuant to the requirements of Articles 96 (3) and 229(8) of the Constitution of Kenya and the Senate Standing Order No.203. When the Committee made certain recommendations, they took into account the challenges that counties faced during the nascent days, particularly during the Financial Year 2013/2014, which was the first full financial year during devolution. The Committee was further guided by the mandate of the Senate, pursuant to provisions of the Constitution and of the Standing Orders. In addition, this report documents the observations and recommendations of the Committee on each audit query which is divided into four parts. The Members could refer to the report that was laid on the Table on 30th June, 2015. To be much more useful, Ipad gadgets are before us and it is possible that Members can look at the report of the Auditor-General which is found in the Auditor-General's website. You will see the key issues that were raised in that audit.

Finally, Madam Temporary Speaker, there are two more issues that I will talk about; the general observations and recommendations and then I will conclude.

The Committee observed that the County Executive of Kajiado failed to attract the services of competent personnel for various cadres, including specialists in land matters, engineering and finance. The finance department and, by extension, the procurement department lacked the requisite personnel to manage the finance docket.

The second observation is that county government vehicles were used without any regulations governing the movements beyond the normal working hours. This may result in misuse of county government vehicles by officers for personal engagements. The third observation is that the county government, on several occasions, did not follow the procurement rules and regulations in sourcing for goods and services. If you look at the detailed report laid on the Table of the House, it points out those specific instances.

Madam Temporary Speaker, the fourth observation is that, the handing and taking over of assets and liabilities at the onset of the county government system was mishandled. This was occasioned by poorly maintained records on assets and liabilities. This is an issue that has continued to follow counties, irrespective of the fact that we had the Transition Authority (TA), the Inter-Governmental Relations Technical Committee (IGRTC) and the County Assets and Liability Verification Committees (CALCs). This is an issue that was observed in Kajiado County in the first year, but it is still alive in many of the counties.

The fifth observation, was that the county lacked planning and prioritization of projects. In a sample of projects examined by the auditor, planning and execution was done without due regard to value addition to the lives of the taxpayers. This was exhibited by the fact that projects were planned and executed in such a manner that only a portion of the entire project is completed, arguably for the purpose of spreading development to all the corners of the county. However, since the funds available were limited, the county ended up with the proliferation of so many incomplete projects which have no value to the community they were supposed to serve.

Madam Temporary Speaker, the fifth observation was that the local authority had their own scheme of service and grading scale that was different from the national Government's scheme and grading. This created discrepancies in paying of allowances to officers. The seventh observation is that at the time of audit, the county lacked internal audit control systems coupled with weak Information Communication Technology (ICT) systems.

The final observation Madam Temporary Speaker, is that there was an audit on the expired drugs at the Kajiado Level Four Hospital. Although health functions had not been devolved at the time, it was unfortunate that such matters would recur under the management of the county government.

Madam Temporary Speaker, the recommendations of the Committee are captured in the report as laid before the House. We have made recommendations for every observation on how to enhance capacity in finance, procurement and in internal audit departments. We have also made recommendations on how to develop a policy to regulate the usage of county motor vehicles; how the County Public Service Board (CPSB) should liaise with the Salaries and Remuneration Commission (SRC) to come up with a flexible plan and policy to enable the county governments to attract specialized and skilled personnel.

The Committee also recommends that although the issue of handing over of assets and liabilities was a dominant challenge across all counties, the county government should conclude its listing and verification of assets and liabilities, including pending bills through the interagency committee spearheaded by the IGRTC.

Madam Temporary Speaker, the Committee also recommends that project implementation in the county should be staggered and spread in phases so that budgets are spread across financial years, where necessary. The county should also harmonize and develop a human resource policy that will enable the county to resolve the matter of allowances, and the SRC should be involved in that. The Committee also recommends that the county institutes mechanisms to ensure recruitment and placement of staff in accordance to skill and capacity. The Committee also recommends the strengthening of internal audit units.

Finally, the Committee faced certain challenges during the period under review. These included the actualization of Article 96(3) without linkage with the Public Finance Management Act and County Governments Act. Another challenge was the court injunctions on the Senate and its Committees. Consequently, I am glad to report to the House that some of the governors who went to court to challenge the mandate of the Senate to review the Auditor-General's reports have since made a complete turnaround.

For example, only this week, Governor Oparanya who is on record as having gone to court, appeared before the County Public Accounts and Investment Committee (CPAIC). We, therefore, hope that the court battles that we saw in the first few years of devolution shall be brought to a close.

Madam Temporary Speaker, the other challenge was the role of the Committee *vis-à-vis* the County Assembly Public Accounts Committees. This is a matter that is still alive. I understand that there is a matter that is in court to try and alienate where the Senate starts and where the county assembly ends. There was also debate on who should appear before the Committee; whether it should be the governor or the accounting officers. This was settled by the High Court, which made it clear that governors, as Chief Executive Officers, have a duty to appear before Senate. The work of the Committee was delayed for more than ten months due to court cases that barred the Committee's power to summon witnesses.

Madam Temporary Speaker, we also noted that that the Office of the Auditor-General is not adequately funded to carry out its mandate. The Committee proposed amendments to the law to actualize the provisions of the Constitution on the powers of Parliament and its Committees to summon, compel attendance and production of documents by witnesses. This led to certain amendments to the Parliamentary Powers and Privileges Act which now gives Parliament and its Committees very clear-cut guidelines and powers with regard to summons of witnesses.

Finally, the Committee recommends an oversight structure that enables individual Senators to effectively carry out their oversight role in their counties. A lot of the issues that the Committee shall be reporting to the House are those that could have been dealt with if there was a proactive oversight mechanism where the Senator is engaged. That is the reason we attempted to establish the County Oversight Monitoring and Evaluation Fund, which has fallen into headwinds.

Madam Temporary Speaker, I wish to move that the House adopts the Motion on the adoption of the CPAIC Report on the Financial Operations of Kajiado County Executive for the Financial Year 2013/2014.

I request Sen. Olekina, who is a Member of the Committee, to second the Motion.

Thank you.

The Temporary Speaker (Sen. (Prof.) Kamar): Thank you, Senator and Chair of the Committee.

Proceed, Sen. Olekina.

Sen. Olekina: Thank you, Madam Temporary Speaker. I rise to Second the Motion that this House adopts the Report of the CPAIC on the inquiry into the financial operations of Kajiado County Executive for the Financial Year 2013/2014.

One of the biggest challenges that we face in this Committee is adapting a report whose investigations were carried out by a previous House. But in the tradition of this House, I believe that the men and women who sat in this House and in this Committee then are men and women of integrity who are able to ensure that a fiduciary duty is observed in each and every county.

Madam Temporary Speaker, as I Second this Motion, I note clearly that there are issues that can easily be resolved by a resolution of this House to ensure that we can expedite the process of looking at audit queries of the Financial Year 2013/2014. It is shameful that we are in 2018 and yet we are still looking at the reports of Financial Year 2013/2014. I want to report to this House that our Committee is working diligently on a daily basis to ensure that we expedite and resolve these audit questions.

Madam Temporary Speaker, from the outset, I wish to note that the former governor of Kajiado appeared before the Committee and responded to a majority of the questions raised by the auditor. I note with a lot of concern the issue of building capacity in counties. I hope that in subsequent years, this county will enhance capacity so that we can ensure a full fiduciary obligation. It is imperative that county governments, particularly governors, ensure that they can account for the resources they are entrusted with by taxpayers through the Division of Revenue Act from this House.

Madam Temporary Speaker, our recommendations contain overall recommendations which cut across all counties. The issue noted in this Report as being common in every county is on building of capacity. I wish that the Senator for Kajiado was here, so that he can look at this report and follow through to ensure that the county government enhances the skills available for their staff. Doing that is what will help to close all the loopholes and ensure that fiduciary duty.

On the issue of assets and liabilities, the Committee observed that the Auditor-General raised questions on the issue of outstanding debts, which is an issue that we can clear in this Committee to ensure that all counties are up to date with regard to assets and liabilities. This is because we have the defunct county councils and the new county governments taking over debts, some of which cannot be verified. It is an issue that cuts across. It was started by the Transition Authority and another intergovernmental body came in place to resolve this matter once and for all, in order for us to proceed further and ensure that the money which is sent to the county government is not used to pay debts or do services that could have been done previously.

I would want to ask the Senator for Kajiado County to look at the management's response and further see what the auditor's remarks were in terms of the outstanding debts. When the Committee was looking at this matter, several observations were made, which are clearly noted in this Report. It is imperative that this House looks into that.

When we do that, we can give recommendations for best practices, when we go back to our own counties.

On the issue of imprests and procurement, we would like to encourage county governments to take best practices, particularly, from this House. When you are given an imprest, it is important for you to surrender it. We should not be looking at issues of imprest in our Committees. The issue of outstanding imprest and temporary imprest was raised by the auditors in 2013 with regard to Kajiado. The Auditor-General informed the Committee that the audit query had subsequently been resolved, which means that after the auditor had issued an advance recommendation; he had to follow through and the county government was able to surrender the imprest. We do not need to have that query in the auditor's observation.

The Report is very clear and once the Senators take time to look at it, they will be able to differentiate between the overall recommendation and the specific recommendation given by the Committee for us to follow up. In future, we will be able to tell whether the Auditor-General's recommendation *vis-a-vis* the Committee's recommendation and the management response for the subsequent year--- It is something which recurs. It will become very problematic if an issue that was raised in 2013/2014 is raised again in 2014/2015.

I also want to note one area that is of concern. It is the issue of unsupported payments and vouchers. We do understand that the counties had a lot of issues with the Integrated Financial Management Information System (IFMIS). I do hope that the issue has now been resolved or it is in a stage where we can ensure that every payment that is made by the county government goes through a proper procurement process which should be captured in the IFMIS system.

With regard to Kajiado, in the Financial Year 2013/2014, like I earlier on said, I note that most of the issues that had been raised by the Auditor-General in his audit report had been resolved. With regard to the ones that had not been resolved, there were recommendations that had been set up by the Committee. Some of them had to do with the issue of human resource. When the Auditor-General raised this concern, the Committee observed that the management had taken appropriate steps to regularize the staff placement according to skills and necessity and a draft human resource policy was at an advanced stage. Saying that it was at an advanced stage does not mean that this had been done. It will be imperative for the Senator for Kajiado to follow up, so as to ensure that the people who are working in Kajiado can help that county save resources.

The other thing that was of concern was the internal audit committees. This issue cuts across most of the counties. It is imperative that every county sets up an internal audit committee for them to deal with all these issues. It is wrong for the Committee of the Senate to be looking at petty things that can be resolved there.

When we invite the governors, we do not just want them to appear. We want to ensure that the money that is sent to the counties is based on actual revenue that is being collected by this Government. In fact, my biggest pet peeve is looking at things that happened ages ago. The issue of postmortem will not help this country. It is important for us to interrogate and come up with proper recommendation on current matters. It is a shame that we are still looking at issues of 2013/2014.

I want to encourage the Governors out there that the Constitution is very clear. One of the biggest problems that we have in this country – it is an issue of democracy - is where everyone has a right to go to court at every given time, hence delaying the work of a committee for ten months. Eventually, you still have to appear before that Committee because the law is very clear. I think this happens when people understand and interpret things the way they want.

The judiciary ought to be looking and sorting out matters that have to do with fiduciary risk. They should look at them and determine whether this is a matter that can be determined by a court. There is no point of a court entertaining a long process. I know that the due process of the law is important and must be followed, but when it comes to a fiduciary risk, we must ask very important questions.

I second the proposal by the Chairperson of the Committee that this House looks at reports from regions. This is a matter that we discussed in the Senate Business Committee. Today we are discussing the report of Kajiado County. Tomorrow it will be Narok County and the next day another county. It will take a very long time before this House debates, considers and adopts the reports. I will pursue this matter again in the Senate Business Committee so as to ensure that we have all these issues. I want to be looking at the reports of the Financial Year 2017/2018, but not 2013/2014.

With those few remarks, I beg to second.

(Question proposed)

The Temporary Speaker (Sen. (Prof.) Kamar): Hon. Senators, I do not see a request to debate. Where is the Chairperson of the Committee?

(Sen. M. Kajwang' approached the Chair)

Let us have Sen. M. Kajwang'.

Sen. M. Kajwang': Madam Temporary Speaker, pursuant to Standing Order No. 55(3), I beg that the putting of the question be deferred to another day.

The Temporary Speaker (Sen. (Prof.) Kamar: It is so ordered.

(Putting of the question on the Motion deferred)

Next Order!

MOTION

ADOPTION OF CPAIC REPORT ON FINANCIAL OPERATIONS OF NAROK COUNTY EXECUTIVE FOR FY 2013/2014

Sen. M. Kajwang': Madam Temporary Speaker, I beg to move the following Motion:

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THAT this House adopts the Report of the Sessional Committee on County Public Accounts and Investments on the Inquiry into the Financial Operations of Narok County Executive for the Financial Year 2013/2014 (1st July, 2013 – 30th June, 2014) laid on the Table of the House on Thursday, 10th May, 2018.

Madam Temporary Speaker, the Report on the financial operations of Narok County Executive for this period was tabled on 30th June, 2014 and stood committed to the Sessional Committee on County Public Accounts and Investments (CPAIC). The Committee held three meetings with the Narok County Executive of Wednesday 3rd August, 2016 and Monday 19th September, 2016, where it considered and concluded its investigations on the report. The Committee adopted the Report on 5th April, 2017.

Madam Temporary Speaker, we can see that the report of a single county will take the Committee close to three sittings. We have 47 counties; meaning that there are 47 county executives and 47 county assemblies. If on average each of those reports takes two meetings, you can imagine how long it will take the CPAIC to conclude its considerations. That is the reason, in addition to what we had proposed earlier to submit a single report to the House, we have gone further and engaged the Auditor-General. This is because we believe that the Senate could engage itself in issues that are of policy and interest to devolution.

We have told the Auditor-General that we must start doing performance audits, which should be brought to the House. We must also start doing special audits. Then the county operation audits should be dealt with by the county assemblies. The number of audit reports that the Committee gets every year is almost 47x4, since each county generates an average of four audit reports. Therefore, as we go forward, we believe that it will get better.

In arriving at the recommendations in this Report, the Committee took into account the challenges faced by counties during the early days of devolution. It invited the Governor for Narok County, in his capacity as the Chief Executive Officer (CEO) of the county government, pursuant to Article 179(4) of the Constitution. That is a position that has also been reinforced and confirmed by the courts of law.

There were certain general observations. You will realize, as we table these reports, that some of the observations cut across the different counties. That is why it is possible to do one report that summarises the issues that have come up for that year.

The first observation was that counties were providing documentation at the end of the audit period. We have said, as a Committee, that we must strictly enforce the provisions of the Public Audit Act. Sections 31 and 62 make it an offence for any officer at the county level not to provide documents required by the Auditor-General within a reasonable timeframe. Going forward, the Committee is enforcing that. We have even considered pursuing conviction of public officers at the counties.

Secondly, imprest management cuts across all counties. The Committee recommends strict enforcement of Public Finance Management (PFM) regulations. These regulations for county governments have very detailed guidelines on how imprest should be managed and also who takes responsibility if it is mismanaged. The third observation

was on the competence of staff and it cuts across all counties during the first year of devolution.

The fourth one was that procurement laws were not adhered to. This, again, cuts across all counties. Since this was the first year of procurement, a lot of thinking was of the Central Government. Even the matrixes that came alongside regulations that came along the Public Procurement and Disposal of Assets Act had not been internalized by the county governments. Therefore, there was a lot of breach of the Public Procurement Act. The Committee is saying that there must be individual responsibility where there are breaches of the Act.

The fifth observation was lack of internal control systems and Information Communication Technology (ICT); a problem cutting across all counties. The sixth observation, in the case of Narok County, was a high wage bill.

The Committee noted that Narok County has a significant own-source revenue stream, which is Maasai Mara Game Reserve. The Committee also noted with concern that there seemed not to have been a detailed audit into the own-source revenue streams for Narok County. We are aware that the matter has been taken to court and there is a ruling that says that the Senate has no role in auditing or querying own-source revenue.

We, as a Committee take the position that all the monies that form the budget of a county are subject to oversight and audit by the Senate.

With those remarks, I beg to move and request Sen. Faki, who is also a Member of the Committee, to second the Motion.

Sen. Faki: Thank you, Madam Temporary Speaker. I second this Report. The Committee made seven broad recommendations that cut across all the counties. The first recommendation was that the county government should professionalize the finance, procurement and internal audit department for efficiency, effectiveness and proper management of county government resources, as well as accountability and transparency in the management of public funds. This can be achieved through the recruitment of qualified chief finance officers and other officers with financial and procurement related qualifications.

Madam Temporary Speaker, if you go through the Report, most of the audit queries touch on procurement and use of public funds by the Narok County Government. The County Public Service Board, in conjunction with the Salaries and Remuneration Commission, should come up with a flexible plan and policy that will enable the county governments to attract specialised and skilled personnel. This has been a problem across all the counties because most of the specialized personnel are located in the major towns and are not willing to go to the rural counties to do this work.

The Committee further recommended that the county institutes a mechanism to ensure recruitment and placement of staff in accordance with the skills and capacity. Most of the county assembly staff were inherited from the previous county councils and municipalities, which did not attract many qualified personnel.

Four, the Committee recommends that the county institutes a mechanism to ensure that recruitment and placement of staff is in accordance with their skills and capacity. Five, the Committee recommends that the internal audit units be strengthened and widened to include evaluating and reporting on internal controls applicable to high

risk areas on a quarterly basis. Most of the county governments had not instituted audit committees which should have considered areas of concern in terms of management of finances of the counties.

Six, the Committee recommends that the County Government should come up with austerity measures to address the escalating wage bill. This is because majority of the staff acquired were not commensurate with the skills required in the County Government. This, therefore, meant that the County Government ended up with a bloated workforce that was not of assistance to the County Government.

Lastly, the county governments should develop a document management policy to enable the County to manage their resources to the best of their abilities so that the residents of the County of Narok can enjoy better services.

I beg to second.

(Question proposed)

Proceed, Sen. Olekina.

Sen. Olekina: Madam Temporary Speaker, I rise pursuant to Standing Order 55(3). I beg that the putting of the question be deferred to another day.

The Temporary Speaker (Sen. (Prof.) Kamar): Very well. Thank you, Senator. It is so ordered.

(Putting of the Question on the Motion deferred)

Next Order.

MOTION

ADOPTION OF CPAIC REPORT ON FINANCIAL OPERATIONS OF TURKANA COUNTY EXECUTIVE FOR FY 2013/2014

The Temporary Speaker (Sen. (Prof.) Kamar): Yes, Sen. M. Kajwang’.

Sen. M. Kajwang’: Thank you, Madam Temporary Speaker.

I beg to move the following Motion-

THAT, this House adopts the Report of the Sessional Committee on the County Public Accounts and Investments on the inquiry into the financial operations of the Turkana County Executive for the Financial Year 2013/2014 (1st July 2013 - 30th June, 2014) laid on the Table of the House on Thursday, 10th May, 2018.

Madam Temporary Speaker, the Report of the Auditor-General for Turkana County for the Financial Year 2013/2014 was laid on the Table of this House on 30th June, 2015, and it stood committed to the CPAIC. This date is important because the first Senate started sitting in 2013, and it was only in June, 2015, when the first report of Turkana County was brought to the House for the first full year of devolution. Sometimes people ask what the previous Senate was doing. However, you could clearly see that the

Auditor-General's reports did not come to the House on day one; they came almost two years later.

Madam Temporary Speaker, the Governor for Turkana County was invited for investigatory meetings. Interestingly, six meetings were held in the case of Turkana. The meetings were held on the 1st, 2nd, 23rd, 24th September, 2015; and 9th October, 2015. This also included a meeting held in Turkana County on the 9th of October, 2015. Those are the six meetings that the Committee held to consider the Report of one county.

Once again, as you had said, if it takes six meetings to consider one report, you can imagine if you were to multiply that by the 47 reports for the county executives, and again by 47 reports for the county assemblies. The Report of the Committee was adopted at a meeting held from 3rd to 5th of February, 2016.

Madam Temporary Speaker, the Governor for Turkana County was invited to respond to queries in his capacity as the Chief Executive Officer (CEO). The Report that was laid on the Table of the House on 10th May, 2018, contains the detailed observations and recommendations. If I may highlight some of the observations, it was established that the County Executive Committee (CEC) member in charge of finance and the Chief Officer for finance did not have academic or working experience on financial matters.

We have the Public Finance Management (PFM) Act and Financial Reporting Standards and therefore, when your Chief Officer and the CEC for finance have no experience on financial matters, that is a recipe for disaster. The Committee has, therefore, made certain recommendations on capacity building and recruitment of competent staff.

Madam Temporary Speaker, it was also noted that the executive failed to attract the services of competent personnel for various cadres, including specialists on land matters, engineering and finance. We will remember that Turkana County is one part of the country, which prior to devolution, felt that Nairobi was Kenya; and that Turkana was not Kenya. This could then explain why, in the first years of devolution, professionals were hesitant to go to Turkana County. However, I am informed that matters have since changed and that the county currently attracts professionals because it offers good terms of service.

The third observation was that the County did not follow procurement rules and regulations in sourcing for goods and services. That is not surprising because the Chief Officer and the CEC Member for finance did not have the requisite experience. On various occasions, the county Government made down-payments of up to 50 per cent to suppliers before goods and services were delivered or provided, which was in clear breach of the Public Finance Management Act.

Similarly, we noted that the procurement and finance departments lacking personnel and the county government had difficulty attracting specialized skilled workers like engineers.

Madam Temporary Speaker, the seventh observation is that there was under-absorption of the budget. The Turkana County Government Ministry of Lands, Urban & Physical Planning did not utilize its allocation to the tune of Kshs151 million, meaning that it did not utilize 87.5 per cent of its allocation. Therefore, when you have a

department that has money but it does not utilize it, it means that the citizens of that county are starved of services.

There are those who thought that in the first years of devolution, Turkana County was not in a position to absorb the tens of billions of shillings that were allocated to it. Finally, it was observed that the County Government vehicles were used without any regulations governing the movements beyond the normal working hours.

Madam Temporary Speaker, I also want to note that in the audit reports of 2013/2014, the Auditor-General, to a great extent, did not express an opinion. He undertook an audit of operations of the county governments rather than an audit of the financial statements of the county governments. Therefore, for Turkana County, it will not be possible for us to say that the Auditor-General gave a qualified or unqualified opinion because he did not report on that in the Audit Report of 2013/2014. It is only in the audit reports for 2014/2015 that he was consistent and gave an opinion for each county that was audited.

Madam Temporary Speaker, the recommendations from the Auditor-General and the Committee should help us to improve operations in Turkana County. If we were to do this close to the year that the events happened, it would have been of greater value to the people of Turkana County.

Madam Temporary Speaker, I, therefore, wish to move that the House adopts the Motion on the adoption of the Report of the CPAIC on the financial operations of Turkana County Executive for the Financial Year 2013/2014. I request Sen. (Prof.) Sam Onger, a Member of the Committee, to second the Motion.

Thank you.

The Temporary Speaker (Sen. (Prof.) Kamar): Thank you, Senator.

Proceed, Sen. (Prof.) Onger.

Sen. (Prof.) Onger: Thank you, Madam Temporary Speaker. I rise to second this Motion on Turkana County. It is quite glaring that one of the biggest problems that the counties, particularly, the marginalised ones have, come across is the capacity of getting competent officials and officers to occupy very critical departments in order to move the agenda of development forward. You could see that even at the highest level of a County Executive Committee (CEC) Member not having academic qualifications and competencies required to direct the financial management of that county, was one of the biggest drawbacks that were experienced in Turkana County.

Madam Temporary Speaker, do not forget that one of the biggest beneficiaries of the Equalization Fund is Turkana County. In fact, it tops on the list. When you find a county not being able to utilise all the resources at their command, it then becomes very difficult to bring that county to the level of other counties. That is why they were getting these extra funds, so that they can get to that level. We noted this gap that has been very clearly pronounced by the Chairperson of the Sessional Committee on County Public Accounts and Investment, of which I am a Member.

One of the things that can bring some of these counties out of their woods is being able to get competent personnel such as engineers, doctors and other professionals that will man some of the critical service points and areas. It is very sad that the finance and procurement departments lack the requisite capacity to direct how procurement

should be done. When you get somebody walking into a shop and paying upfront of 50 per cent using resources that belong to the public without even much query, it is only by God's act that maybe these goods were delivered in good faith.

However, if you checked the records of the Local Purchase Orders (LPOs) that were given out, it is quite clear in the report of the auditor that, fortunately, some of the items did happen to appear in the records. Therefore, there was a measure of honesty for those who handled those things by accounting for those goods even when they had been paid with 50 per cent upfront. If you got cunning suppliers, they would pocket the 50 per cent, walk away and pretend that they were never paid.

What is the import of this? The import of this is that the Transitional Authority (TA), which had the mandate to build capacity in these counties was unable to do so expeditiously. You can now appreciate why it became very difficult to account for and put on record assets and liabilities. One of the things that you see throughout all these counties, as we have been able to examine some of these records, is that there are accumulated arrears of payments that have now become a huge pending bill of more than Kshs99 billion. At the end of the day, the Auditor-General, the Committee itself and this House must pronounce themselves on the way forward on the question of the pending bills. That is as a result of things not being done in an orderly fashion.

One of the recommendations that must come out is the question of being able to employ, in Turkana County--- I hope that as we look at the books of accounts of the Financial Year 2015/2016 and subsequently, up to the latest accounts, we will see that there will be effectiveness and proper management of county governments' resources through a competent employment of the CEC Member in charge of finance as well as procurement.

The Commission on Revenue Allocation (CRA) should urgently come up with a policy to regulate revenue allocation and use of motor vehicles. These were very badly misused. That should be another way. One of the impediments of attracting good and professional cadre was as a result of disparities in salaries. This is a hardship area where somebody would think ten times before they can accept any appointment. One of the recommendations that came out from this is that the CRA, along with the Salaries and Remuneration Commission (SRC), should come up with a flexible – I think that is the word to use – plan and policy that will enable the county governments to attract these personnel who can manage the resources of that county.

Madam Temporary Speaker, Turkana County is one of the most resourced counties with underground resources that need to be exploited. If they do so, they will raise our Gross Domestic Product (GDP) to a very magnificent level. Therefore, we need to help them to come up with very competent individuals, who can subscribe to very effective management of that county. If we go this direction, all the counties will do well.

Madam Temporary Speaker, with those few remarks, I second this Motion on the accounts of Turkana County Executive for the Financial Year 2013/2014.

(Question proposed)

The Temporary Speaker (Sen. (Prof.) Kamar): Proceed, Sen. Olekina.

Sen. Olekina: Thank you, Madam Temporary Speaker. Pursuant to Standing Order No. 55(3), I beg that the putting of the question on the Motion be deferred to another day.

Thank you.

The Temporary Speaker (Sen. (Prof.) Kamar): Thank you, Senator. It is so ordered.

(Putting of the question on the Motion deferred)

Next Order!

MOTIONS

ADOPTION OF REPORT ON THE FIRST EXTRAORDINARY SESSION OF THE FP-ICGLR IN KINSHASA, DRC

THAT, this House adopts the Report of the proceedings of the First Extraordinary Session of the Plenary Assembly of the Forum of Parliaments of Member States of the International Conference on the Great Lakes Region (FPICGLR) held in Kinshasa, Democratic Republic of Congo from 19th – 20th March, 2018, laid on the Table of the Senate on Tuesday, 15th May, 2018.

The Temporary Speaker (Sen. (Prof.) Kamar): I do not see Sen. Poghisio in the House. As was said yesterday, it is really upon Members to be in the House when their Motions are in the Order Paper. This should be communicated to him.

I will, therefore, defer this Motion to another day.

(Motion deferred)

Next Order!

FRAMEWORK TO PERMANENTLY ADDRESS EFFECTS OF FLOODS

THAT, aware that several days of heavy rains recently have caused severe flooding in many parts of the country, resulting in multiple deaths and devastating damage to property and infrastructure;

NOTING with concern that, whenever Kenya experiences periods of severe drought, torrential rains usually follow;

CONCERNED that year in year out, the challenge of floods continues to recur, leading to loss of human and animal life, displacement of people and wanton destruction of property;

COGNIZANT that the number of Kenyans needing emergency food aid as a result of displacement caused by the current floods continues

to rise by the day and that the floods have also washed away many bridges and destroyed roads in many parts of Kenya;

ALSO CONCERNED that no effective measures, such as improved storm water harvesting, proper drainage infrastructure and preventing the destruction of riparian reserves and natural water courses, to mitigate and/or provide a lasting solution to the menace of flooding, have been taken;

NOW THEREFORE, the Senate calls upon the National Government to develop a lasting framework to permanently address the challenge of effects of floods by, among other things.

- 1) Developing and enforcing regulations for preventing the obstruction of riparian reserves and natural water courses; and
- 2) Preventing and regulating the construction of informal settlements and ensuring prevention of construction on low lying areas and flood plains.

And further that the relevant government agency to execute this task submits a report to the Senate within three months of the adoption of this Motion.

The Temporary Speaker (Sen. (Prof.) Kamar): I also do not see Sen. Dullo. As was said yesterday, and as I have just said, the Motion will be deferred to a date that will be set by the Senate Business Committee.

(Motion deferred)

Next Order!

THE STATUS OF EDUCATION IN NORTHERN KENYA

THAT, AWARE that Article 43 (f) of the Constitution of Kenya stipulates that every person has the right to education, and Article 53(1)(b) provides that every child has the right to free and compulsory basic education;

ALSO, AWARE that education is a basic need and a tool for intellectual empowerment and social-political development;

FURTHER AWARE that education is a shared function between the National and the County levels of Government with the National Government being responsible for Primary, secondary and Higher education while the County Government is responsible for pre-primary education, village polytechnics and home craft centres;

COGNISANT that both levels of Government complement each other in promoting sustainable education;

CONCERNED that the intake, uptake and quality of education in the Northern Kenya have adversely been affected owing to discrepancies

in public resources allocation, insecurity, skewed staffing and teacher training in the region;

FURTHER CONCERNED that both the school completion rate and the national examination outcomes in region are poor and that the number of students from Northern Kenya who qualify for core courses in universities, colleges, technical schools and village polytechnics is minimal compared to other parts of the country;

NOTING WITH CONCERN that due to insecurity and other related concerns, the Teachers Service Commission (TSC) which is the body responsible for the employment and deployment of teachers, has in the recent past, taken steps to transfer non-local teachers from the northern region of Kenya to other parts of the country;

CONCERNED THAT, the transfers have led to shortage of skilled teachers which has been a major cause of the dismal performance in examinations in schools in the region;

NOW THEREFORE, the Senate resolves to task the Standing Committee on Education to conduct an inquiry into the challenges facing the education sector in Northern Kenya with a view to:

(1) Evaluating the effect of the teacher transfers from the region and recommending to the Ministry of Education, policy measures to address the challenge;

(2) Evaluating the status of the education infrastructure in the region and proposing solutions to mitigate the current and looming challenges;

(3) Proposing mechanisms for enhanced resource allocation at both levels of government to facilitate improved education facilities; and

(4) Assessing school intake compared completion levels in the region in order to ascertain the impact of the challenges facing the schools and how these disadvantages the region compared to other parts of Kenya and proposing ways of addressing the challenges.

And that the Committee submits a report to the Senate within three months of adoption of this Motion by the Senate.

The Temporary Speaker (Sen. (Prof.) Kamar): Hon. Senators, again, I do not see Sen. (Dr.) Ali. This Motion falls under the same category. These are Senators who should have been in the House because it was communicated to them.

For that reason, the Motion is deferred to a date to be set by the Senate Business Committee.

(Motion deferred)

Next Order!

MOTION**MANAGEMENT OF CONSTRUCTION CONTRACTORS**

Sen. Kasanga: Madam Temporary Speaker, I beg to move the Motion on Management of Construction contractors-

THAT, AWARE that Section 15 of the National Construction Authority (NCA) Act prescribes the requirements for registration as a contractor;

ALSO, AWARE that Section 18 of the Act mandates the NCA Board to accredit firms incorporated outside Kenya to carry out construction works in Kenya for a prescribed period;

CONCERNED that a large number of registered local contractors cannot perform up to the expected standard leading to collapsed buildings, poor county roads and infrastructure and incomplete contracts;

APPRECIATING that there are still a good number of local contractors that has demonstrated capacity to perform and deliver projects as required;

DEEPLY CONCERNED that foreign contractors are now engaging in projects that local contractors have equal capacity and skill to perform, especially in the counties;

RECOGNIZING THAT there is need to grow our local industries by giving job opportunities to Kenyan citizens and building their technical capacities;

NOW, THEREFORE, the Senate calls upon the Government through the NCA to:

(1) Conduct a fresh registration drive of all building and infrastructure contractors in order to weed out all non-performing ones and to identify those who demonstrate compliance;

(2) Enforce strict oversight on foreign contractors and institute a mechanism to handle complaints raised against contractors;

(3) Ensure that foreign contractors are only awarded contracts that local contractors cannot handle and require them to include technology transfer to locals; and,

(4) Require both local and foreign contractors to undertake corporate social responsibility activities in the counties where they operate.

Madam Temporary Speaker, I raised this Motion quite a while ago although it has come a bit late, in my opinion. Certain events have occurred that have superseded the intention of this Motion, but in a positive way. This is because there has been conversation around foreign contractors and foreigners doing work that local contractors or citizens can do.

Part of this was in that spirit; that we want to look out for what Kenyans can do and also uplift those who are not being seen because there are some who are doing the work and are not able and yet there are local ones who can do it.

When it comes to building and infrastructure, the issue of local contractors has been in question a lot. With all the collapsed infrastructure and buildings, there is always the question around our own local capacities. However, the fact remains that we have those who do not perform and those who do. It is important that the Government through NCA weeds out all those who do not perform and have those who perform be empowered through NCA, which is also their mandate to train and uplift our local contractors.

Madam Temporary Speaker, the spirit of this Motion was to bring that up. The reason why I brought it at the time was because I had raised a Statement in the House to NCA, asking various questions including tabling the number of foreign contractors in the construction industry. They did so and there are quite a number of them. Another question was on jobs that the Government had given to foreign contractors.

I think that is where eyebrows were raised because you find foreign contractors working in counties. In one instance, you find a foreign contractor doing construction work worth Kshs151 million in Kisumu County. I believe our local contractors are able to do that work. The question that came to my mind was; did these foreign contractors come specifically to construct a primary school in Kisumu County?

It turns out that when foreign contractors are given licenses, it is because they come to do something specific and that has been clear according to NCA. The question now remains; when they finish doing the specific work that they came to do, what should happen? Why is it that we are seeing foreign contractors in counties doing our work? When a foreign contractor finishes what it is that they were tasked to do, which is because Kenyans cannot do it, they are supposed to be decommissioned, deregistered and to exit. However, we have seen many foreign contractors getting very comfortable within the country.

My problem is that, they are doing work that our local contractors can do. The question is; why is it that that they are favoured over the local contractors, yet we have a body called NCA that is supposed to train our local contractors and lift their capacity, so that we do not have to keep having foreign contractors coming? So, since NCA had highlighted that it does happen, then comes the reason why we need a full review of the registration drive.

In my questioning during the Statement, I also asked if foreign contractors are mandated to carry out Corporate Social Responsibility (CSR) and technology transfer. The NCA confirmed that it is not mandated in the contracts as they come into the country to do the work. My feeling is that any foreign contractor coming has a duty to transfer that technology and also perform CSR because the size of projects that they come to do are large.

We are in a country which is still grappling with basic needs. I raised this Motion because I want the Senate to mandate the Government that foreign contractors have to participate in CSR. In fact, it has to be part of the contracts on the deliverables and so is technology transfer. Why should we keep asking contractors to come and do things that we should be able to do? Once they have brought in something that we do not know, we

are supposed to learn so that our local contractors can be further empowered. So, this has to be stated in the contracts for the foreign contractors. They have to demonstrate it as well. There has to be a mechanism that NCA has to adopt that ensures that technology transfer and CSR are done.

Madam Temporary Speaker, it is unfortunate that you have a big contractor coming in to do a project like the Standard Gauge Railway (SGR) and there is no nursery school, clinic, hospital or something that they give along the way of this huge contract. How else are we supposed to benefit besides the infrastructure? I believe that they are supposed to do this alongside technology transfer. We should have one or two technical colleges being given somebody from that country which has won the contract to train some of the local selected contractors. That way, we do not all the time have to depend on foreign contractors who come to do jobs that we should be able to do.

Several positive things have happened after I raised this Statement. The question around foreigners doing what Kenyans have capacity to do, has been raised here. However, we need to give a clear way forward. So, one of my proposals, of course, is when NCA conducts a new, fresh registration drive, several things will happen. One, we should be able to weed out all non-performing contractors because this is also another big issue in counties where we have unfinished roads and collapsing buildings.

Every contractor has to present their performance to whichever CEC in the different counties for them to have a new registration certificate. When we do this, we begin to weed out those who do not finish work because we still have instances where a contractor has never finished a road but is still getting new contracts. This should not be the case. Ideally, if you do not complete a road project, you should not get a new contract. We also have instances of contractors who finish their roads and do it very well. These ones should be given new certificates so that they continue getting new jobs. So, we weed out all those and if possible, it should even be declared publicly that these ones have been deregistered.

When we do the same for the foreign contractors, we should not seek foreign contractors to do secondary or primary schools in counties. That is just wrong and should not be the case. We want any foreign contractor who has been commissioned to do something specific, once it is done and they have done their CSR and technology transfer, they should be decommissioned and leave because by then, some Kenyans will have learnt this new technology. They can be the ones to take up the new projects and jobs.

Madam Temporary Speaker, a good thing that NCA has done after I had raised this Statement is that there is now a draft construction policy that is going around amongst the professionals for their input and comments. I have perused through the policy and one of the things that they would like is a mechanism for dealing with disputes and complaints, which is another question that I had asked. They had confirmed that they do not have a mechanism to deal with complaints. There is a gap because everyone has issues with contractors but where do they raise their complaints? There seems to be no mechanism on where we can report contractors who are not performing. So, one is to deregister them but two, going forward, NCA needs to institute a mechanism. They have addressed it in their policy which is a positive thing. So, I am looking forward to it but

beyond their policy is to insist and protect the local contractors which is one thing that we have to push for as a House.

This is one thing that we have to push for as a House. We also have to push for monitoring of contractors at the county level. We need to have a clear monitoring mechanism because there is so much happening in the counties and therefore monitoring becomes a key issue. We still have serious gaps because you saw how infrastructure failed because of the floods. Part of it has to do with quality.

Although my Motion may have been superseded by events, in my opinion, there is still something that the National Construction Authority (NCA) needs to do. I would like question to be raised to them and I urge Senators to support me on this one because it is still a critical issue in the country.

The NCA handles critical part of our infrastructure but our building and construction is still a challenge in many ways in terms of capacity building yet it has the authority. It is their mandate to build capacity to uplift our local contractors and make sure that there is growth of the sector and the industry.

Madam Temporary Speaker, as I wind up, I would like to ask Sen. Mutula Kilonzo Jnr. to second the Motion.

The Temporary Speaker (Sen. (Prof.) Kamar): Sen. Kasanga, when you moved the Motion, did you state that a number of issues are overtaken by events?

Sen. Kasanga: Madam Temporary Speaker, what I said is that the conversation around the fact that we have a lot of foreigners doing work that locals can do has already been discussed here in the House but the Motion is still alive.

The Temporary Speaker (Sen. (Prof.) Kamar): Okay. Let us have Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Madam Temporary Speaker, this is alive and I would like to support this Motion. Sen. Kasanga may not be aware that the Institution of Engineers of Kenya (IEK) has issued a notice to do a protest because of what appears to be favouring of foreign contractors over our local engineers who are capable of doing work. I do not think, from the discussions that have been going on, that this matter has been given the emphasis that it should.

Recently, the Senate Majority Leader said something that I found extremely curious. He said that Kenyans demand for Chinese contractors because local contractors have no capacity to do some of the jobs that they are called upon to do. Although I never got the opportunity to challenge him, the interesting thing is that about half of the contracts, including those for roads---

He mentioned some of the projects in the Rift Valley. The engineers, the people who actually do the drawings and, the people who issue the certificates are Kenyans and so there is no question that the people who ultimately certify that Ngong Road was done properly by Japanese or Chinese are Kenyans. Therefore, there is no question of capacity because the person who supervises the work is a Kenyan.

When the President of this Republic was in Makueni in January, 2015 to launch a portion of the Standard Gauge Railway (SGR) from Kibwezi to Nairobi, we had a serious discussion about transfer of skills. It pained me to know that although the sleepers – sleepers are concrete slabs that are put on top of the rail – were being done in a place

called Kathekani in Kibwezi, our local people in Kibwezi were not trained how to do those sleepers and because entirely everything for the SGR was imported, even small bolts and nuts were also being fixed by the Chinese.

It is strange that Kenyans were doing menial jobs such as pushing wheelbarrows or carrying sand and nothing else. By the time the SGR passed through 170 kilometres of Makueni County, not a single Kenyan could do technical jobs that they ought to do. Why would we allow something like that as a country when we promised to create one million jobs in this country?

In other jurisdictions like India, foreign companies cannot trade without having a partner who has 51 per cent shares in that company. Foreign contractors and foreign companies hold the minority shares. We have allowed these people to take over our businesses.

For Sen. Kasanga, under Section 22 of the NCA Act, there is a provision for complaint against contractors. The sort of fiasco that we experienced with the NCA regarding the issue of Solai Dam almost moved us to tears. A person from Rift Valley went and looked at the dam. He reported that the dam was constructed in 1980 and it was because of the rain that it collapsed. That is what he said in his report which he signed and gave to the NCA and they approved it. These are some of things that Kenyans do that give rise to the notion that we must hire the Chinese to do simple and menial jobs which should not be done by them.

Sen. Kasanga is right about the registration of foreign contractors. When we register foreign contractors, we must, as a nation, tell them that they must partner with local contractors. The jobs must be bid for by Kenyan contractors, so that the expertise being brought by the Chinese or contractors from other nations can only be for value addition. That is the way the country should work.

I said in this platform that work permits under Class D are for people who offer technical services not available by Kenyans. For the SGR, you will find carpenters, masons and even cooks who are Chinese. This country is not only lost but we need prayers.

This morning I got a call from somebody, through Sen. Olekina, complaining about foreign contractors. What is even worse is that other than giving them jobs, they mistreat Kenyans and terminate them unfairly. They are not subjected to law and they behave as if they have become the law. That is modern day slavery in this country. The purpose of registering foreign contractors is to determine their expertise and the type of companies they want to bring.

Sen. Kasanga never mentioned that foreigners come to Kenya as tourists. They go to Sen. Olekina's county as tourists to see the migration of the wildebeests and all of a sudden in the process they get work permits. When their tourists' visas are over, they go back to their countries and get other tourists visas and come back and continue working in Kenya. What a country! I am embarrassed to be a Kenyan. So, it is not only the issues of registration and compliance that need to be addressed.

I never mentioned to Sen. Kasanga that in the Public Procurement and Asset Disposal Bill, I successfully moved an amendment that will see a contractor blacklisted for not performing. Those days when we used to have cowboy contractors are long gone.

We would give them a slap on the wrist, pay them Kshs400 million, tell them that we will never give them another contract and ask them to go home. That should not be the case. They should be blacklisted for collecting money from the public coffers and not performing. There should be no excuse. This country has got one of the best technical people.

Can I surprise you, Madam Temporary Speaker? I met a young man in Japan who comes from your county. He left Kenya and went to Japan to study architecture at the age of 18. He is now 37 years old, he has become a Japanese national and he is not only an architect, but he is also in charge of disaster management in Tokyo, Japan. Why are we talking about the lack of expertise?

I have met many young men who went to Japan on scholarships and they are now technical people. Therefore, it is not for the lack of expertise that we are registering foreign contractors, but because, for some strange reasons, this has become an avenue for kickbacks. Sen. Kasanga is being her usual self; nice and polite. This has become an avenue for people to get 10 percent commissions, because these people are coming with finances. They have free money, which they are dropping here like manna from heaven. They are actually doing it as if money is running out of fashion. They have money to construct roads quickly.

That is why, I must laud the President of this Republic, His Excellency Uhuru Kenyatta. May God give him wisdom and age for cancelling new projects, because he understood the problem.

(Applause)

The problem was that foreign contactors were coming through the back door, entering into contracts and Memorandums of Understanding (MoUs) with Cabinet Secretaries (CSs) and others, so that they get the 10 percent commission. I pity the tenderpreneurs of this Republic; they must be thinking that President Uhuru Kenyatta became Paul from Saul. They are going to miss the money which they have been getting from the funny things they have been doing. I feel sorry for them!

(Laughter)

Therefore, Madam Temporary Speaker, this Issue is much wider than the registration of these foreign contractors. We ended up baptizing the National Construction Authority (NCA) as the ‘National ongoing Construction’ in the *ad hoc* Committee for the Solai tragedy. They are just a registration organisation; they are not a regulator. In fact, some of the things that Sen. Kasanga has raised here must find themselves in law. When we put these people to task, they brought reports, coloured photographs with graphs, yet the first report they gave us was one page. When we put the NCA to task, they performed their duties.

The report that I tabled today for the Solai Dam Tragedy has four well done executive reports by the NCA. This is only because we put them to task, terminated their proceedings and told them to wait for our report. That threat got them to work. Therefore,

the idea in this Motion must be in law so that the NCA should not be a conveyer belt for what has been the ‘fourth republic of Kenya.’ This is the corrupt state called Kenya, which has no independence, no person or governor and it is formless. That is the avenue that the foreign contractors have used.

Lastly, Madam Temporary Speaker, even if we were to license foreign contractors – because we cannot divorce ourselves from the global village we are in – we must make it very stringent for them to operate in Kenya. We must make it difficult, and even then, we must tell them that they must return to this country what Sen. Kasanga ably put as the transfer of skills. They must create real employment and not casual labour which can be created by county governments. We need expertise; we want to see people like the Kenyan gentleman I met in Japan, who we can take pride in.

We do not want to see Chinese, Japanese, British or any other people who, at the end of the day, take off and there is no benefit of having to register those people for anything that we do. We must take pride in this country by saying that we must sell Kenya to Kenyans. I do not know what happened to Brand Kenya, but we must wake them up from their deep slumber. This is one of those issues that Brand Kenya should be doing, other than just selling Maasai Mara, Mombasa beach, Zanzibar and those other things.

Thank you.

I beg to support.

(Question Proposed)

Sen. (Prof.) Ongeri: Thank you, Madam Temporary Speaker. This Motion has come at the right time. The NCA was established expressly to regulate, streamline and build capacity in the building and construction industry. The long and short of this is that they were given the mandate to take on board many skilled Kenyans and to improve on their skills so as to help in the building industry.

Madam Temporary Speaker, you will appreciate that you and I spent endless time to ensure the creation of competent vocational, technical training institutes of technology to impact professional training in various cadres of the building and infrastructure industries. However, these young men and women who have been trained in those institutions are lacking jobs.

[The Deputy Speaker (Sen. (Prof.) Kamar) left the Chair]

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

We now have major construction companies coming from foreign countries with semi-knocked down kits from their own countries, which means that more than 90 per cent of whatever loans they are giving us is sent back to their countries of origin. Therefore, the country does not benefit; all we see is a service that does not build capacity for the young people who went through the vocational and technical training institutes, institutes of technology, national polytechnics and universities that have mounted courses on

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infrastructure and engineering professionals. Therefore, the National Construction Authority (NCA) was set up to regulate this industry.

Section 17 of the National Construction Authority Act empowers the NCA to register these organisations. If you check what they have done, they have only created a portal where contractors come in. I do not know whether they ever do onsite inspection on the competencies of those contractors. Contractors fill forms, go through the six stages and then click on the level of renewal. Once everything is filled in satisfactorily, they get a certificate that they are contractors who can carry out the responsibilities of taking care of the infrastructure, most of which are buildings where ordinary Kenyans stay. No wonder we are seeing buildings collapse because of the lack of certain elements that needs to be put in place in order to make the local contractors competitive.

So, whereas we are fighting for their existence to carry out the projects, we are also asking them to build professional capacity to handle certain levels of jobs that go out for tender. They also must liaise between themselves and financial institutions, so that they can build financial capacity. The NCA, to a certain measure, should help them to do so.

Madam Temporary Speaker, the third element, which I have seen throughout, is the ethical considerations of contractors. Where they are supposed to reinforce buildings, they are putting fragile structures. For instance, instead of putting heavy steel on buildings that require columns and steel, they are using fragile steel. So, as soon as they reach the second floor, the weight of concrete bends the steel and we get calamities and disasters. In case of minor seismic earthquakes - not of high Richter scales - these buildings are bound to collapse.

As I drove along the Mai-Mahiu-Narok Road, when we had a fault line emanating from Longonot, I saw buildings that had been ripped open because they were not done to standard. However, the earthquake that brought that kind of condition was heavier. Interestingly, Section 22 of the National Construction Authority Act empowers the board to inquire into the conduct of a contractor on its initiative. We expect that some of these multinational companies come into the country with ethical considerations. However, they have thrown ethics through the window. They have also brought alongside with them other operators of kiosks, so that they are able to access and resource on items which have been imported from foreign countries. Therefore, a local contractor has no chance whatsoever to do anything useful.

When I was the Minister for Local Government, we had the *El Nino* rains that caused many potholes in this City and many other towns. For example, Kenyatta Avenue had huge potholes. We came up with the Kenyan Urban Transport Programme, which was funded by the World Bank. They insisted on certain criteria that had to be met. I put my foot down and spoke to the Director of the World Bank. I said that I wanted to see our local contractors involved in the remodeling of the road, in a manner that would hold them to account if they are not able to do a good job. Kenyatta Avenue was resurfaced for only Kshs25 million. I remember the local contractor telling me that this road would last many years without potholes on it. That is when I decided to put the water fountain so that it could cool the nerves of drivers. I am glad that it still exists.

Madam Temporary Speaker, I have inspected that road, including yesterday, because I knew that, at some stage, I must contribute to this Motion. That road is intact and it only cost Kshs25 million. If we were to do the same road, it would run into billions of shillings. So, inviting foreign companies to participate in the local construction of roads and buildings has exaggerated the prices almost tenfold. The effect of it is that Kenyans are being drained financially. The remedy to this is that we should be in a position to empower the NCA to do a complete appraisal of their Act. Let them go back and look at this generous Act that gave them so much authority and leeway to train. They should call upon the National Treasury and the Government to give them enough resources.

I respect the professional cadre which is in NCA, led by the current Acting Managing Director of the Kenya Ports of Authority (KPA) Architect, Dr. Manduku. He is a fine young man who has done a good job. I am sure that he will do a good job in the KPA.

One of the impediments that we are seeing quite clearly is the fact that Kenyans, who are able to do a good job, are not capacitated to do the right thing at the right time. They are starved of professionalism because they are not allowed to work as apprentice in some of these big multinationals. These Kenyans are not allowed to participate in the contracts that are running in this country, which are in billions of shillings. They are not allowed to even peep and see what is happening.

The other day, I saw that ordinary people are being chased away and discriminated against in terms of how much they can do and get paid. Therefore, the Kenyan contractor and professional worker is a frustrated person. This is dangerous because the minute workers are frustrated, the management runs into difficulties.

Madam Temporary Speaker, my take on this matter is that both the Cabinet, the National Assembly, the Senate and the construction industry must now rise to the occasion. We should ask ourselves how we can elevate an ordinary Kenyan to perform tasks that are hitherto being performed by other groups who are not from this country. I have no intention of discriminating anybody. The foreign companies are welcome, but they must operate within the ethical lines. They must also give us value for money that we desire in this country. However, what they are doing is telling us, "Hold on, when we are done, you come in."

One of the biggest worries that I have today is that at the conclusion of this Standard Gauge Railway (SGR) – I hear it is a contract of up to 2018 – how many Kenyans will have an opportunity to even do a simple line repair when there is some problem with the railway line? None. Yet, they are the ones who are doing the donkey work.

Therefore, we have come up with a Motion that we will now need to take seriously as Senate and be able to look at the National Construction Authority (NCA) Act and see whether it can be reinforced. Also, we will look at other professional bodies that are involved with tendering and procurement and see how we can reinforce all these bodies so that a Kenyan can thrive in his own environment. If we deprive him of that environment, then we are creating a miserable Kenyan and when a Kenyan is miserable he will create miserable problems.

With those few remarks, I support this Motion.

Sen. Cherargei: Thank you, Madam Temporary Speaker. I can see the Senate Leader of Minority is happy and this means that we are doing well. I know Sen. Olekina has been having a lot of issues saying that he is in Government, but I emphasize that he is in the opposition. So, he should be careful on other issues of national importance. I rise to thank and support Sen. Kasanga. I am happy because there has been an issue to do with foreign contractors. Last week, we were discussing so many issues concerning the racism that workers of African descent in the SGR face, and so I agree that we must protect them.

We should adopt “Brand Kenya” because we are outsourcing mega projects and the complaints that we are receiving from SGR is that they do not have technological transfer. So, how can they build the capacity of our local contractors if all the serious government and private projects are outsourced? So, as a country, we are headed for capital flight.

The other day, I was watching a documentary on Al Jazeera and they were showing the former spokesperson of Economic Community of West African States (ECOWAS), a consultant from China and a consultant from the United Kingdom (UK). I realized that Africa is headed to “modern day slavery” because of over-reliance on heavy borrowing. The person from Senegal was saying that Senegal has borrowed heavily from China and other big tigers from the east. They have borrowed over 80 trillion. That is why we have the President of China touring Africa.

As Africans, we do not like anything with strings attached and the aid that we have been getting from the western countries has strings attached. They want to look at our human rights records, issue index, democracy, the gender rights, equality rights, communal rights, marginal rights and others. It was sad watching that documentary because it seems in Africa, we have totally outsourced all serious projects at the expense of developing our countries. Besides, the people who finance most of the key projects in Africa are people who do not care about human rights. In fact, the other day it surfaced that even our business people who go to China and Japan are subjected to racial discrimination.

Madam Temporary Speaker, I agree with Sen. Mutula Kilonzo Jnr., that “Brand Kenya” must take its rightful place. The reason the sugar industry is being destroyed in this country is because of such unethical conduct. The reason why anything that is made in Kenya is being destroyed is because of the public perception that anything foreign is better or superior. This is the reason why we have a problem of foreign contractors. I agree that we have cowboy contractors in this country, but they are genuine. They are tenderpreneurs. It is not an offence in this country to get 10 per cent commission, even as lawyers in our practice we get commission. However, it should not be a precursor to make sure corruption spirals out of control.

I can dare all of us today that the phones we use, the clothes we wear and the pens we use most likely are all imported because we suffer from inferiority complex – plain and simple. This is the reason why if I bring a contractor from Kakamega County where Sen. Malalah comes from, you will not trust that person, even if he is a mason or a carpenter with over 50 years experience. However, if you get a Chinese who is a prisoner

and who lacks the basic carpentry skills, you will trust him more because of the colour of the skin. Therefore, we are not being racially discriminated because other people are bad, but because we have low self-esteem.

Madam Temporary Speaker, Sir, as the Chairman of the Justice, Legal Affairs and Human Rights Committee and as a Member of the Committee on Labour and Social Welfare, we have received many petitions. County governments have over Kshs100 billion of pending bills for contractors. Interestingly, some of the contractors are foreigners, although the object and spirit of devolution was to ensure that we devolve resources to ensure development across our villages. This is sad because I have seen foreign contractors who have been given jobs.

I applaud Sen. Kasanga for this Motion because most of the foreign contractors are not involved in corporate responsibility. A foreign contractor would come with fellow foreigners who are employed as junior staff to hold the green lights as the vehicles pass. It is very sad for this country.

(Loud consultations)

Sen. Olekina, I have serious issues with the handshake in this country and I ask for protection from Madam Temporary Speaker. The issue I am talking about should be taken with the seriousness that it deserves, the same way the Mau Forest issue is taken seriously. So, you need to hold your horses. When I submit, you get a lot of information that will enrich your engagement in this House

Madam Temporary Speaker, we have the NCA Act, procurement laws and Anti-corruption laws. We must revisit these laws because the NCA has failed us and, therefore, we should relook at how we approve contractors. The people who we send to be our foreign envoys in China, Japan and the Asian Tigers, must be vetted properly. In addition, we must relook at the issue of approving foreign contractors which has been left with the envoys abroad. This is why when the foreign contractors are sent to the country, they always have approval. We must rectify this. We must have standards as a country. If you are coming as a foreign contractor, you must sign a serious agreement.

If you are coming in as a foreign contractor, you must sign serious agreements, which include provision of Corporate Social Responsibility (CSR), adhering to labour laws, ensuring that you follow procurement laws and many others.

Madam Temporary Speaker, we want to enrich this discussion respectfully because of my colleagues who have serious “Solomonic” wisdom. I support this Motion and we will do whatever is possible to ensure that we build Kenya for Kenyans. Let us do everything to show that we support Kenya for Kenyans; including “Brand Kenya”. That is the way to go so that we do not have to rely heavily on foreign things or foreign contractors.

I beg to support.

Thank you.

Sen. Malalah: Thank you, Madam Temporary Speaker. First, I stand to support Sen. Kasanga because she was putting on in an organized manner, unlike the last time

when she appeared in this House. I, therefore, beg to support her fully because she was smartly dressed.

(Laughter)

Above all, I support her because of the content of her Motion, which seeks to protect the local contractors.

Madam Temporary Speaker, I would like to take a different approach when doing my submission on this matter. Article 96 of our Constitution clearly states the core role of the Senate, which is to represent counties and the interest of their governments. Our attention should, therefore, be to contribute on this Motion while focussing on counties because we are the defenders of our counties. Therefore, as we contribute to this Motion, I would like us to draw our attention to counties and have the definition of who is a local contractor from a county perspective and set up.

Madam Temporary Speaker, the issue of foreign contractors being favoured in the award of contracts at the national level has been devolved down to the counties. You will find that counties like Kakamega, Bungoma, Busia and Vihiga receive a lot of money from the national Government. However, half or three quarters of that money goes to contractors who do not reside within those counties.

Madam Temporary Speaker, Article 174(d) of the Constitution is very clear that one of the objects of the devolved government are—

“to recognize the right of communities to manage their own affairs and to further their development”

It is important to note that devolution was meant to help local communities in the counties. It is, therefore, absurd for Kakamega County to receive Kshs10 billion and award Kshs5 billion worth of contracts to people who do not reside within Kakamega.

Madam Temporary Speaker, my definition of who is a local in a county setup is any person who resides and votes in that county. You might be a Kikuyu or a Maasai but you reside in Kakamega County and, as such, we shall consider you as locals. We are not tribalizing counties, but we are saying that we must enhance the spirit of devolution. Our Constitution envisaged a situation where a lot of resources were clustered at the national level, and that is why we fought for the new Constitution so that monies can be devolved downwards. It is sad that local contractors in counties are not being given attention. Governors have decided to make friendship with friends outside the counties so that they can get their 10 percent; truth be told.

I want to support Sen. Mutula Kilonzo Jnr., who said that they do not believe in their locals because they know that when you ask for 10 percent from a local, that local contractor will discuss you in the nearest bar. Therefore, it is comfortable for them to contract foreign contractors outside their counties.

Madam Temporary Speaker, in 2005 when I was a Member of the County Assembly representing Mahiakalo Ward in Kakamega, I came up with a Bill called Kakamega County Equity and Equalization Bill. That Bill envisioned that 70 percent of the resources of Kakamega County be it employment or contracts must be retained in our

county. This in essence means that for us to achieve economic stimulus and to grow our economy in Kakamega, the money devolved to Kakamega must circulate in Kakamega.

For example, if you give a contract worth Kshs200 million to the brother to Sen. Olekina, it means the profit that will be earned from the contract will be taken to Narok. That money will build houses in Narok. That money will employ the people of Narok. That money will enhance and grow the economy of Narok and not Kakamega County.

Madam Temporary Speaker, in the interest of time, because my brother Sen. Olekina wants to contribute, I would want to go to my valedictory remarks. It is incumbent upon county governments to build capacity and confidence in their local contractors. This is what I propose: First, we must encourage the culture of paying local contractors on time. Most of the local contractors do not have the financial muscle to have their money being held in the county coffers for more than six months. We have seen situations whereby somebody did a road in 2014 but he has not been paid to date.

I would introduce a formula called FIFO – First-In, First-Out. The first person to be given a contract should be the first person to be paid. Secondly, the county government should partner with financial institutions like banks to advance local contractors and build capacity of local contractors so that they can undertake projects within the counties. Thirdly, county governments should organize capacity building workshops in partnership with MCAs to build capacity with the local contractors. Lastly, we need transparency to the extent that it is bad for one contractor to be given 10 contracts in a year and another contractor being given one or none in a year.

That is my humble submission and I stand here to support Sen. Kasanga on this noble cause. We want this matter to be legislated and inscribed in legislation that will cushion our local contractors so that we can stimulate our economy.

Thank you.

Sen. Olekina: Madam Temporary Speaker, I note that I only have a few seconds, but I will try and tackle a few issues.

Thank you for giving me this opportunity. I rise to support the Motion by Sen. Kasanga. It is very important that we look at the whole Act in terms of management of the contractors in this country. My approach is very different. We have to amend this Act. The Act is very clear. We have to change the Act so that we create certain classes of jobs to ensure that we do not lock out local contractors.

Madam Temporary Speaker, it is imperative that we have an audit of all international contractors. This issue of international contractors is just an issue where we politicians and the elite, team up to find a way to make quick money for nothing. There is something the Chinese call a “finder’s fee”. There is the Exim Bank.

I commend the President of this country for stopping any new projects. People used to make money using these projects in such a way that they would become brokers for the Chinese because they know the Chinese have a lot of money. They would form some briefcase companies---

The Temporary Speaker (Sen. Pareno): Sen. Olekina, you have a balance of 13 minutes when debate resumes.

ADJOURNMENT

The Temporary Speaker (Sen. Pareno): Hon. Senators, it is now 6.30 p.m., time to interrupt the business of the Senate. The Senate, therefore, stands adjourned to Tuesday, 31st July, 2018, at 2.30 p.m.

The Senate rose at 6.30 p.m.