

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 15th May, 2018

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

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

PRAYER

COMMUNICATIONS FROM THE CHAIR

CONSULTATIVE MEETING WITH CRA ON DRAFT POLICY ON MARGINALIZED AREAS

The Speaker (Hon. Lusaka): Hon. Senators, Article 215 of the Constitution of Kenya establishes the Commission on Revenue Allocation (CRA). The principle function of the CRA is to make recommendations concerning the basis for the equitable sharing of revenue raised nationally, between the national and county governments. Additionally, the commission determines, publishes and regularly reviews the policy in which it sets out the criteria by which marginalized areas are identified.

Hon. Senators, by a letter received in the office of the Clerk of the Senate Ref. No.CRA/CSO/P&S 2 Volume 223 dated 15th March, 2018; the CRA invites the Senate to a consultative meeting to deliberate on the Draft Second Generation Policy Identifying Marginalized Areas in Kenya.

The meeting is scheduled to be held on Thursday 17th May, 2018 at the Senate Chamber from 8.30 a.m. to 10.00 a.m. Hon. Senators may wish to note that this meeting was scheduled to be held at an earlier date, but was postponed to enable the commission hold discussions with the Senate Standing Committee on Finance and Budget first. All Hon. Senators are encouraged to attend and participate in the deliberations.

Kindly also note that immediately after the meeting with the CRA, we shall meet with the Liaison Group (Health Insurance Brokers) on medical scheme issues.

I thank you.

VISITING DELEGATION FROM SINGANI GIRLS HIGH
SCHOOL, MACHAKOS COUNTY

The Speaker (Hon. Lusaka): Hon. Senators, I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from Singani Girls High School in Machakos 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.

I thank you.

(Applause)

CONSIDERED RULING

PROCESSING OF STATEMENTS IN THE SENATE

Hon. Senators, I have a further communication to make.

As the hon. Senators will recall, at the sitting of Thursday, 10th May, 2018, during the Order on Statements, Sen. M. Kajwang' rose on a point of order, stating that he had observed that since Senate resumed its sittings from the recess on 8th May, 2018, whenever the Order on Statements was read, the Speaker had been calling out the names of the Chairpersons responsible for issuing the statements listed on the Order Paper, but the Chairpersons had not responded and neither the Chairpersons nor their Members had given any indication on when the statements would be issued.

Sen. M Kajwang' urged the Speaker to take action on Chairpersons and to give strict notice on them in order to ensure that they issued all scheduled statements.

Sen. Wambua also rose on a point of order in support of the matters raised by Sen. M Kajwang'. Sen. Wambua stated that he too had observed the trend on each day on the Order Paper, a long list of statements that were due for issue were set out, but at the end of the day, only two or three Chairpersons were available to issue the statements. The Senator urged the Speaker to call the Chairpersons to order.

Sen .Olekina while speaking on this matter suggested that there was need to enhance the capacity of Chairpersons to address such statements that were before the respective Committees.

Hon. Senators, having noted the concerns of the Hon. Senators and the issues they had raised, I undertook to issue a communication on the way forward on this matter.

As you are aware, statements have featured in the Standing Orders of the Senate since the commencement of the Eleventh Parliament. Statements are presently provided for under Standing Order No.46 of the Standing Orders of the Senate.

Standing Order No.46(2) provides four categories of statements:-

(a) A statement made by a Senator on the county issues or an issue of general topical concern.

(b) A statement requested by a Senator from a Committee chairperson relating to matters under the mandate of the committee for which the Speaker may appoint a day for the statement to be made, or direct that the statement be issued on the same day.

(c) A statement issued by the Senate Majority Leader, or in his or her absence, a member of the Senate Business Committee designated by the Senate Majority Leader for that purpose, informing the Senate of the business coming before the Senate in the following week.

(d) A statement issued by the Senate Majority Leader, the Senate Minority Leader or a Committee Chairperson, as the case may be, or their designees relating to their responsibilities in the Senate or the activities of the committee.

Most statements in the Senate fall under statements that are requested under Standing Order No.46(2) (b) of the Standing Orders of the Senate. In the first Session of the Senate, 27 statements were requested under Standing Order No. 46(2)(b).

In the Second Session, 86 statements have so far been requested under this Standing Order. This makes a total of 113 statement requests on the Twelfth Parliament, so far.

Of the 27 statements requested in the First Session, seven responses were issued and concluded, three statements were issued, but further information, or clarifications, were sought from the Chairpersons. By the end of the First Session, a total of 17 statements had not been concluded and therefore lapsed. In the second Session, a total of 86 statements had, by Thursday, 10th May, 2018, been requested.

(Loud consultations)

Order, hon. Members.

Of these, 20 statements have been issued so far. All others remain in abeyance and have continued to be rolled over in successive Order Papers, to the chagrin of the Senators who requested for the statements. From these statement statistics, and from the issues raised by Sen. Kajwang' in his point of order and other Senators who spoke on the same matter, it is evident that there is need to reconsider the manner in which statements are processed in the Senate.

As hon. Senators are aware, the order on statements traces its roots to the order on question time that featured in the Standing Orders of the National Assembly prior to the Eleventh Parliament, before the shift to a Presidential system of Government. At that time, ministers and assistant ministers formed part of the membership of Parliament, and were therefore, personally present and available to respond to questions addressed to their respective dockets in each sitting. This changed in the Eleventh Parliament following the shift to a Presidential system of Government. Cabinet Secretaries are now not Members of Parliament, and are therefore, not present in the Senate to respond to issues raised relating to their ministries, departments and agencies.

Thus, taking into account the Presidential System of Government, the Standing Orders of the Senate of the Eleventh Parliament did away with question time, and instead provided, under Standing Order No.46(2)(b), for statements, which statements would be provided by the Chairpersons of Committees. In this design, Chairpersons and their

Committees were expected to seek information from the respective Cabinet Secretaries as well as all other relevant persons and institutions and to eventually issue a comprehensive statement of the Committees that would take into account the information received from the various entities, including, the Cabinet Secretary. This was not to be.

The practice that has prevailed since the Eleventh Parliament is one where the Committee seeks the written response of the Cabinet Secretary which is then read to the Senate verbatim. Committee Chairs have, as by this state of events, been reduced to agents or mouth pieces of the Cabinet Secretaries.

This, hon. Senators, has often resulted in awkward situations, especially, where the Senator who requested the statement or other Senators seek clarification on the statement issued or further information from the Chairperson. This information is not usually readily available and the Chairperson and the Committee will then proceed to request for further time to seek the additional information from the Cabinet Secretary.

As a result, the Order Paper now features statements which are to be issued by Chairpersons as well as a lengthy schedule of statements on which further information is to be provided by the Chairpersons. As an example, on the Order Paper of Thursday, 10th May, 2018, we had 16 such requests for further information. In some situations, we have ended up, in the unfortunate situation, where further information has been sought on further information provided.

Hon. Senators, it is important to observe that Chairpersons have expressed frustrations directly to me or in the Senate on this state of affairs. Chairpersons have specifically cited various frustrations, including their inability, sometimes, to obtain statements for issuance from the Executive at all, despite their best efforts on the statements requested. The fact that they, often-times, have to personally shuttle from office to office in the Executive in order to ensure that they secure a statement for issuance at the required time which takes away valuable time within which they would otherwise be engaged in other Parliamentary business.

The fact that they also receive the statements to be issued outside of the timeline within which they are required to issue the statements in the Senate, thus calling to question the commitments that they make in the Senate. The fact that the information that they receive from the Cabinet Secretaries is often, sometimes, inadequate and falls short of comprehensively addressing the issues raised in the request for statements and the time taken by the Committee in processing statements *vis-à-vis* the time dedicated by Committees to processing of other business before the Committee, such as Bills and Petitions.

Indeed, on that very day, Thursday, 10th May, 2018, the Chairperson of the Standing Committee on Lands, Environment and Natural Resources expressed such frustrations and decried his inability to obtain the sought statements from the Executive. The Chairperson sought the intervention of the Speaker to summon the Cabinet Secretaries responsible for Lands and Environment to the Committee in order to ensure that the Committee obtained the required statements which were long overdue.

Sen. Khaniri correctly pointed out that the powers vested in the Committees of the Senate under Article 125 of the Constitution were such that the intervention of the Speaker was not required for a Committee to summon a Cabinet Secretary to a meeting

of a Committee. Nevertheless, the request by the Chairperson and similar requests by other Chairpersons, point to the challenges that the Chairpersons of Committees continue to face in obtaining statements from the Executive. There is, therefore, frustration both on the part of the Senators who request the statements and on the part of the Chairpersons who are required to respond to these statements. The Speaker has not been spared of these frustrations, since day after the day, statements continue to be deferred for lack of responses or lack of adequate responses.

Beyond these frustrations, hon. Senators, there lies a consequential difficulty with the Standing Orders. Standing Order No.46(2)(b), contemplates that it is therefore, the Chairpersons of the Committees from whom statements are requested and who are to issue the statements requested yet the matters raised in the requests for statements are matters that are within the domain of the Executive.

The information that the Chairperson requires in order to issue the statement is information that is within the possession of the Executive. If the Chairpersons are to obtain the information, it would require that it is provided fully, truthfully and within the stipulated time. Once presented, the Chairperson may present it to the Senate in the manner in which it has been received, in which case, the Chairperson and the Committee cannot vouch for the information received. The Chairperson may also choose to process information received from the Executive through the Committee before it is issued to the Senate for interrogation. This way, the Chairpersons and the Committee would take full ownership and responsibility for the statement that is subsequently issued.

However, this would mean that each and every statement or respective Committee would conduct a full blown inquiry to enable the Committee to establish the issues relating to the statement requested. This would, therefore, mean that pursuant to the responses that would be provided after lengthy periods of time, further, the Committee that has previous statements in their in-tray would spend most of their legislative time on inquiries on the statements that are before them.

Hon. Senators, these concerns are not new. They have been the subject of deliberation not just in this Senate, but also in the Senate of the Eleventh Parliament. Measures have over time been put in place in an attempt to better manage the statements. It is however evident that we have now come to a place where we require to conclusively determine the way forward so as to ensure that smooth processing of business of the Senate.

At the inaugural leadership retreat of the Senate of the 12th Parliament, this matter was considered at length, and the leadership considered and proposed the way forward. In order to take the matter forward and following deliberations by the Senate Business Committee, I have directed that this matter be comprehensively addressed at a meeting of the Liaison Committee which will be held on Thursday, 17th May, 2018, at noon.

The Liaison Committee, as hon. Senators, are aware brings together the Chairpersons of all Senate Committees. Thereafter, a meeting of all Senators shall be held, at which Senators shall have the opportunity to receive and consider the proposals emanating from the leadership and the Liaison Committee.

Accordingly, I hereby inform all hon. Senators, that until the meetings are held, and until I have given further direction on this matter thereafter, the approval for requests

for statements and for the issuance of statements under Standing Order No.46(2)(b) of the Standing Orders of the Senate shall be deferred. It is important that I clarify that this does not affect statements provided for under Standing Order No.46 (a), (c) and (d).

As such, in the interim, Senators may consider taking advantage of the provisions of Standing Order No.46(2)(a) of the Standing Orders of the Senate which allow Senators to make a statement on county issues or on an issue of general topical concern to raise any issues that may arise within their respective counties or that are of general topical concerns.

I thank you.

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, allow me to congratulate you for making a very comprehensive statement in so far as the issue of statements is concerned.

I would like to inform the House that the Senate Minority Leader and the Senate Majority Leader have been invited by the Liaison Committee to attend the same meeting. Once we get the direction on this matter, it will make the business of the Senate more organised. As we speak, that Liaison Committee meeting must consider to what extent a chairman can defend a statement that has been signed vis-à-vis a statement that has been interrogated by a committee and tabled in this House as a report.

I would like to defend the chairmen because I saw a story elsewhere misquoting you to some extent and I know it is not evidence in this House. They are criticising the chairmen in the House saying that they have not done enough. I doubt if it is really their fault. It is we who are using the parliamentary processes and systems to respond to the presidential system of government.

Sen. Wetangula used to ask us what committee system means. To what extent does a committee function on behalf of the House? If you look at all the debates and inquiries that have been done in the United States of America (USA), because that is where we borrowed the presidential system of government from, you will realise that in all the reports about Facebook Inquiry and all the inquiries related to security in the USA, nobody talks about how the question was answered on the Floor of the Senate in the USA. All we hear is about how the Senate committee was inquiring into a particular issue and the report that was given to the House. I think the ultimate objective of this process should be to return a proper presidential system of government with a proper working committee system.

From where I stand and speaking of my colleagues from the Minority side, we will be there and ready to shift that. Perhaps that will be your greatest contribution as the second Speaker of the Senate. It would be said that during your time, a proper working committee system was established, which responds to the Constitution; which recognises the presidential system of government.

I thank you.

Sen. M. Kajwang': Mr. Speaker, Sir, I thank you for your ruling and I had initiated the matter. I must also note that I am also a Chair of a committee. When I raised those frustrations, I am part of that big mess that we are trying to address.

You have enumerated the challenges that Chairs face and I do not want to belabour or debate before the Liaison Committee sits. However, I wish to urge Members

of the Liaison Committee that when we will be considering this matter, we must ask ourselves fundamental questions. It is not just about the efficient use of the time of the Senate but also about effective representation because a Senator has got a duty to represent the interest of the people from the county where they hail from. Let it not just be an issue of efficiency and how we manage time in this House but it should also tackle the issue of effectiveness.

More fundamentally, the Liaison Committee should also look at leadership and composition of committees. We have had a habit of ensuring that certain committees should be chaired by Members of the Opposition. When it comes to audit of county accounts, what is the Opposition or Government about it?

In the previous Senate, we had a gentleman's arrangement where one coalition would chair and another coalition would deputize. Could the Liaison Committee also try to address this gluttony that we have seen in this current Senate where the Chairs and Vice Chairs are drawn from one political divide and therefore it does not bring about---

The Senate Majority Leader (Sen. Murkomen): On a point of order, Mr. Speaker, Sir. Sen. M. Kajwang' was proceeding very well in a very humble and submissive manner. Is he in order to use the word "gluttony"? Democracy provides that in any situation, the majority will have their way and the minority will have their say. Is that not an insult on a constitutional order; but more importantly is that parliamentary?

The Speaker (Hon. Lusaka): Sen. M. Kajwang', proceed. I will make a ruling on that.

Sen. M. Kajwang': Mr. Speaker, Sir, I will continue in a submissive and humble manner. However, I want to remind us that when old bones are mentioned in a proverb, old women usually complain.

I hope that the Liaison Committee will also address itself to this particular matter of committees---

The Senate Majority Leader (Sen. Murkomen): Point of order!

The Speaker (Hon. Lusaka): What is your point of order?

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, you can see that Sen. M. Kajwang' is drifting from one sin to another. By the time we rescue him, he would have committed an unforgivable sin. What is it that Sen. M. Kajwang' saw in an old lady and not in an old man? Why is he using examples revolving around age of elderly statesmen and stateswomen but particularly focusing on women?

The Speaker (Hon. Lusaka): I think that is a proverb from Chinua Achebe's book. He was only quoting what Chinua Achebe wrote.

Proceed.

Sen. M. Kajwang': Mr. Speaker, Sir, thank you for protecting me. I know Sen. Murkomen's birthday is a difference of one month from mine. I will get him a copy of that Chinua Achebe book.

Mr. Speaker, Sir, I humbly submit that the Liaison Committee also considers the issue of leadership of committees. I thank you.

Sen. Haji: Mr. Speaker, Sir, thank you very much. Unfortunately, on Thursday, I will not be available to make my suggestions because I will be attending another meeting.

In the first place, Sen. M. Kajwang' corrected himself. He said that he is a chairman of a committee. However, it is not fair to generalise because as far as my committee is concerned, I have always been here and if I am not there, my Vice Chair is there.

I mentioned about the delay in receiving statements. Whenever we encounter Cabinet Secretaries when they are available, which is not always the case, they always give excuses that a statement request reached them a day before it appeared on the Order Paper of the day. We need to check why statements are not taken to them in time.

It is also not possible for a committee to interrogate every statement it receives because most of the time, we chase for the statements. You can get the response today and the following day it appears on the Order Paper. So, it becomes difficult to call your committee Members to go through it. I think that is another area which the Liaison Committee should look into.

The other thing is that it is not fair to attack the Chairs only. Some Members ask for statements and when they are ready, you will find that the Members are not available even if the statements are listed on the Order Paper to be issued. I can give examples of some of them who have not been here two or even three times. That should also be dealt with.

I thank you.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Speaker, Sir. The Chairpersons come from the Majority side, which means the Government. I hope that the people who are in Government are not attempting to sabotage this House.

(Sen. Kang'ata consulted loudly)

The Speaker (Hon. Lusaka): Sen. Kang'ata, please, let us consult in low tones.

Sen. Mutula Kilonzo Jnr.: The Chairpersons come from the Majority. In South Africa, Hon. Malema is famous for questions and in the United Kingdom, Question Time, on Wednesdays, is the most important session. We recently watched one member resign in the House of Lords because of not answering a question. The only way we can put the Government to task is by asking questions.

While you contemplate it, we hope that we will not lose the opportunity to question Government on the Floor of the Senate where Kenyans are watching. We do not want to hide. The balance must be created in such a way that the Government must still answer questions through the Majority and possibly follow a handshake formula. It is not a contradiction, in the spirit of moving this country forward, for the Majority to cede some of the Chairpersons to the Minority.

Thank you.

Sen. Wambua: Thank you Mr. Speaker, Sir, for giving me the Floor. This is a House of record and order. When you issued orders on Thursday, you required that all Chairpersons and Vice Chairpersons of Committees attend the Sitting today before you deliver your ruling. I want to request the Chief Whip of the Majority to confirm to this House whether or not all the Chairpersons and Vice Chairpersons of Committees are in attendance, in compliance with orders that you gave from the Chair.

My second point is on the order that you issued today about deferring requests for Statements under Standing Order No. 46 (2) (b). I want to know whether that order applies retrogressively. If it does not, on that same Thursday, you issued an order about a Statement that I had requested and said that it be listed in the Order Paper today. However, that Statement has been omitted from the Order Paper. I request for directions from the Chair.

The Speaker (Hon. Lusaka): I will give that directive.

Sen. (Dr.) Zani: Thank you Mr. Speaker, Sir. The 11th and 12th Parliaments found themselves in a Presidential system and that has created problems. As you have said, had it been the Cabinet Secretary (CS) answering the questions, they would know the intricacies of the issues and even answer *ad hoc* questions. It has been clumsy and unfortunate when Members or Chairpersons have to answer questions on behalf of the CS's. They sometimes even answer questions on behalf of the CS from the opposite side. We definitely have a problem.

In the 11th Parliament we tried to solve this many times by having the CS come to the Committee of the Whole, especially when we had so many questions relating to a particular Ministry. That gave the House a good opportunity to oversight. To add to what Sen. Mutula Kilonzo Jnr. has said, we could have those sessions televised, so that we ease the workload.

We also mentioned the importance of Committee Chairpersons allocating responsibilities to some of the Members of their Committee, so that they can give some of the specific answers. I do not know what will be the decision of the Liaison Committee, but we have to wait to see the direction that they will go. However, I think that it is important to have a balance in all that. I know that the National Assembly decided that Statements will be handled by the Committees. If we do that, we will lose a very important role of the Senate because the Senate stands for the interests of the counties and there are certain issues that happen within the counties that have to be discussed through Statements. When that is discussed here, it gives us the representative role. I hope that we will not go the direction of the National Assembly.

However, we also have to find a way to balance the number of Statements and the way they are given in this House. This is because we seem to be getting lost along the way in terms of strength, effort and energy that is put into getting the answers, including the way they are given on the Floor of the House and the questions that come after that. As the Liaison Committee meets, let us ensure that we have a balance. Right now, bigger discourse within the country is whether we will remain Presidential or go Parliamentary. However, we have definitely lost a very important aspect of having the CS's in the House for them to answer questions. We must find a way of holding them accountable and this House can do that better than any other institution.

Thank you, Mr. Speaker, Sir.

Sen. Mwaura: Thank you Mr. Speaker, Sir. This is a serious issue because a lot of business transacted on the Floor of this House is done through Statements. However, the Chairpersons and Vice Chairpersons of Committees cannot be the representatives of the Executive in this House. When I was in the National Assembly and we tried to create a General Purposes Committee, there was protest from the Executive. They said that the

move was like the Speaker trying to usurp the role of chairing a Cabinet meeting, and it became very acrimonious.

However, I found a lot of respite in the fact that Statements were turned into questions. The questions would be listed in the Order Paper and the National Assembly Leader of Majority would actually give notice of when a CS or the Principal Secretary was supposed to appear before a certain Committee to respond to a question. This expedited a lot of issues. As we explore the solution to this problem, that is something we may want to consider for us to redeem a lot of Plenary time to enable us discuss cogent issues, especially, actual Bills. I think that we are not doing very well when it comes to Bills, yet that is what we need to discuss on the Floor of the House.

There is always the benefit of us sitting together to discuss a certain matter of national interest, but expecting a fellow Senator, who does not have the instruments of proper research, to balance between county matters and Committee work is asking for too much. The situation will not change even if we hammer the Chairpersons and their deputies. We will still end up misleading this House or delaying the proceedings or deliberations of this House if we rely on somebody who will give half answers or try to dodge because they do not want to be accountable.

Since this august House has the powers to summon anyone, the way to go is that the CS and their assistants can appear after being summoned to a Committee. If need be, such reports can be tabled on the Floor of the House.

Sen. Wetangula: Mr. Speaker, Sir, I laud your ruling and want to urge that a better mechanism be designed to handle Statements. If you look at today's Order Paper, we have 38 Statements. Even if we were to allocate five minutes to each, it would consume the entire afternoon. We have to find a formula on how to handle Statements. Last week, my distinguished brother from Garissa said it all on the Floor, when he read a Statement. When we interrogated him, he said: 'I did not say it; I just read it'. That means that---

(Laughter)

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

The Speaker (Hon. Lusaka): What is your point of order?

Sen. Haji: Mr. Speaker, Sir. I said that it might have been in the statement; but I never said or read it.

The Speaker (Hon. Lusaka): Okay. Proceed, Sen. Wetangula.

Sen. Wetangula: Mr. Speaker, Sir, the long and short of it is that the Chairman carried a statement from the Executive and disowned the contents. What we want is responsibility from whoever brings the statement. The reason that Chairpersons sometimes fumble is because these statements are given to them as they walk into the Chamber. Sometimes they are not even able to interrogate the Ministries that are sources of these statements.

The National Assembly, in the last Parliament, tried to get Cabinet Secretaries (CSs) and Principal Secretaries to answer statements and questions in the House, but they did not succeed. Taking cue from what the Senate Majority Leader said about the

committee system, perhaps we could also encourage Members who bring request for statements here to prosecute them in committees.

There, CSs can be summoned and any Member interested in prosecuting a similar statement can appear. You can also use the Parliamentary Broadcasting Unit because sometimes during the statement hour, hon. Members also want to play to the gallery for their constituents. You can also encourage live coverage for such committees when such statements are being interrogated.

Mr. Speaker, Sir, the second issue that the Liaison Committee should address is the inability of this House to prosecute petitions. Our rules are very clear, 60 days must be the time within which a petition is received, presented, interrogated and a report tabled on the Floor of this House. However, we have had no situation, apart from one or two, where a petition has been processed within the requisite 60 days. I want this House to address this issue because when the *wananchi* bring their petitions to this House, it means that they have failed elsewhere. They have tried at the county level and they have found it unnecessary to go to the National Assembly and the Executive. They then come to this House to seek justice.

During the last Parliament, we had petitions that lasted four years and lapsed with the House. We, therefore, need a better system of managing those petitions when they come to this House. We shall, otherwise, end up being a House of crumbling cards and not doing much for the *wananchi*.

Sen. (Dr.) Kabaka: Mr. Speaker, Sir, I am sorry for coming in late after you had recognised one of the schools from my county, Machakos. I take this opportunity, as the Senator for Machakos County, to welcome one of the schools from my county known as Sengani Girls Secondary School. For those who do not know, it is situated in the sub-county of Matungulu, Machakos County. Their visit to the Senate today is a learning experience of how one of the three arms of Government – the Legislature – functions. When they go back to school, they can read about our roles as the Senate under Article 96 of the Constitution.

Lastly, let this visit to the Senate be a motivational avenue for the students to work hard in school so that one day they may become legislators or future leaders to serve the society.

I thank you and God bless you.

The Speaker (Hon. Lusaka): Thank you, hon. Senators. The issues that have been raised have been noted. When the matter is discussed by the Liaison Committee and later by the Senate, we will get a way forward so that we are not caught in a situation similar to the one we are in today.

Next order!

MESSAGE FROM THE NATIONAL ASSEMBLY

PASSAGE OF VARIOUS BILLS BY THE NATIONAL ASSEMBLY

The Speaker (Hon. Lusaka): Hon. Senators, I wish to report to the Senate that, pursuant to Standing Order 41(3) and (4), I have received the following message from the

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Speaker of the National Assembly regarding the passage by the Assembly of the Physical Planning Bill (National Assembly Bill No. 34 of 2017), the Irrigation Bill (National Assembly Bill No. 46 of 2017), and the Kenya Roads Bill (National Assembly Bill No. 47 of 2017).

“PURSUANT to the provisions of Standing Orders 41 and 142 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly –

WHEREAS, the Physical Planning Bill (National Assembly Bill No. 34 of 2017), was published vide Kenya Gazette Supplement No. 143 of 18th September, 2017, to repeal and replace the Physical Planning Act, No. 6 of 1996, to provide for the planning, use, regulation and development of land in Kenya;

WHEREAS, on 3rd May, 2018, the National Assembly considered and passed the said Bill with amendments and in the form attached hereto;

FURTHER WHEREAS, the Irrigation Bill ((National Assembly Bill No. 46 of 2017) was published vide Kenya Gazette Supplement No. 183 of 1st December, 2017, to promote and regulate the development and management of irrigation in Kenya;

AND WHEREAS, the National Assembly considered and passed the said Bill with amendments on 19th and 24th April, 2018, and in the form attached hereto;

FURTHER WHEREAS, the Kenya Roads Bill (National Assembly Bill No. 47 of 2017) was published vide Kenya Gazette Supplement No.184 of 6th December, 2017, to give effect to the Fourth Schedule of the Constitution in relation to the roads subsector to review, consolidate and rationalize the legal and institutional framework for management of the road network and roads subsector in a more efficient and effective manner;

AND WHEREAS, the National Assembly considered and passed the said Bill with amendments on 19th April, 2018, and in the form attached hereto;

NOW THEREFORE, in accordance with the provisions of Article 110(4) of the Constitution and Standing Order 41 of the National Assembly Standing Orders, I hereby refer the Bills to the Senate for consideration.”

Honourable Senators, Standing Order No.151 requires that Bills originating in the National Assembly be proceeded with by the Senate in the same manner as Bills introduced in the Senate by way of First Reading in accordance with Standing Order No. 133.

I therefore direct that the Physical Planning Bill (National Assembly Bill No. 34 of 2017), the Irrigation Bill (National Assembly Bill No. 46 of 2017), and the Kenya Roads Bill (National Assembly Bill No. 47 of 2017) be read a First Time tomorrow, Wednesday, 16th May, 2018.

I thank you.

Next Order.

**MESSAGE FROM THE GOVERNOR
OF MAKUENI COUNTY**

DISASTER REPORT AND REQUEST FOR ASSISTANCE

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I rise under Standing Order 44 to read a message from the Governor of Makueni County, Hon. (Prof.) Kivutha Kibwana, to the Senate reporting a request for assistance on the recent disasters. The letter is dated 11th May, 2018, and is addressed to the Speaker of the Senate. It reads as follows;

“Dear Sir,

Ref.: Disaster Report and request for assistance.

The above subject refers. I wish to bring to your attention the devastating effects of the heavy rains and the resulting loss of lives and property due to the flooding situation in Makueni County and our urgent need for assistance towards mitigation of the same. We have done a comprehensive mapping of the quantification of the damage incurred so far. This has been done jointly with national Government agencies, Members of County Assembly (MCA), the Kenya Red Cross and other multi-sectoral players. The damage is massive. The estimates in the immediate reports and humanitarian assistance is Kshs1,134,200,354. We estimate the cost to complete the required investigation and people’s livelihood will be over Kshs2 billion.

Mr. Speaker, Sir, in summary, Makueni has lost 18 people due to rains. At least, 26 dams have been washed away and 58 dams have been eroded requiring urgent repair work. Almost all our roads have been rendered impassable with several drifts and bridges cut off or washed away rendering places inaccessible. People’s homes have been destroyed by floods or mudslides leaving them homeless and vulnerable. A total of 263 school toilets have been sunk and collapsed and 55 classrooms have been destroyed. Families have lost livestock and farm crops, among other resultant misfortunes.

On 30th April, 2018, I convened a meeting of all the leadership of the county, including the County Commissioner, representatives of the departments of the national Government, Members of Parliament (MPs) and Members of the County Executives, MCAs, the clergy and other stakeholders to enable us jointly deliberate and address ourselves to the devastating situation.

Subsequently, the County Assembly of Makueni during its 31st sitting held on 2nd May, 2018, passed a resolution on the establishment of an *ad hoc* rapid response committee to address the effects of the floods in the county. I have attached the copy of the resolutions.

The Committee was charged with the coordinating efforts---

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

The Speaker (Hon. Lusaka): What is your point of order, Sen. Halake?

Sen. Halake: Mr. Speaker, Sir, are we in order to be discussing the economics of these devastating floods alongside these deaths before we first acknowledge the deaths and accord our dearly departed some respect? The last time we acknowledged deaths in this House---

The Speaker (Hon. Lusaka): What is your point of order, Hon. Senator? Once this statement is made, you can rise to make your points.

Sen. Halake: Mr. Speaker, Sir, my issue is that the Hon. Senator is reading about deaths and the devastating effects of the floods---

The Speaker (Hon. Lusaka): Order, Member! We are not yet there. Be patient and we will get there.

Proceed, Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Speaker, Sir. Let me see whether I can find where I was. I have found the paragraph.

“The Committee was charged with coordinating efforts geared towards addressing the effects of the floods in the county and identifying the necessary emergency responses. A comprehensive report of the status is attached.

Now therefore, Mr. Speaker, Sir, the purpose of this letter is to request for the urgent intervention of the Senate towards the urging the relevant Ministries, agencies and arms of national Government to offer assistance to our county towards humanitarians assistance, reconstruction and recovery efforts.

Mr. Speaker, Sir, I hereby kindly ask your office to deliver our request to the Senate pursuant to the provision of Standing Order No.44 of the Senate. The statement is signed.

Yours Faithfully, Kivutha Kibwana, Governor, Makueni County.”

Sen. (Prof.) Ekal: Thank you, Mr. Speaker, Sir. Following the statement that has just been read, I had already requested for a statement on deaths and other devastating effects of floods in Kapedo. What we need here is a real statement. This is a situation where---

The Speaker (Hon. Lusaka): Order! Order!

Sen. (Prof.) Ekal: Mr. Speaker, Sir, where death is concerned---

The Speaker (Hon. Lusaka): Order! Order!

(Laughter)

Hon. Senator, I know you are raising a very important matter. However, it is a completely different subject matter from what is being discussed. We will give you an opportunity to seek your statement when the time comes

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, this is the first statement of its kind in this House conveyed by a governor of a county. We must congratulate and laud the efforts of Governor Prof. Kivutha Kibwana for formally

recognizing that the right entity whose responsibility is to protect, defend and represent the interests of counties is the Senate. That is why I thought the Senator, professor from Turkana County should wait a little bit because his governor has not yet sent his message here and the subject is different.

We, as a Senate, must recognize the governors who appreciate the constitutional responsibility of different institutions. Senate being a voice of counties, it has a mechanism of transmitting that information to the national Government. This is a call to all counties to work with us closely in addressing such issues.

I know the damage caused by floods is all over different places of the country. However, it is important to notice that the Senate will always be the guarantor of any agreements or process the national Government will want to undertake with county governments even where the request has been made by the county government. For example, if it is a conditional grant, or assistance given by the national Government, or partnership, the Senate must play its role.

The national Government announced the other day that they have spent Kshs600 million to deal with the issues of floods. The Senate should audit those resources to know how much has gone to which county and under what framework. We know disaster mitigation is a function of both the national Government and the county governments. The legal framework must be thought through by this House to assist counties to partner with the national Government in matters of disaster management and make sure each cent is accounted for.

Sometimes, some counties would receive money from the national Government, but then steal county money by pretending they are spending it on disaster management. There is also a situation where the national Government would put money in county "x", but the national Government officials steal it and spend the county money on disaster mitigation. That level of accountability must be achieved. When we address ourselves to the framework of disaster law, these are some of the issues that we must address.

I must congratulate my former lecturer, Prof. Kibwana, for being in the forefront. I also congratulate, Sen. Mutula Kilonzo Jnr. for the fantastic work he is doing in so far as development of Makueni County is concerned. I am sure that the next governor who most likely is in this House will follow suit.

Thank you, Mr. Speaker, Sir.

Sen. Wetangula: Mr. Speaker, Sir, I also salute my good teacher, Prof. Kibwana, for not only sending a message here, but leading the queue of governors to recognize the importance of this House in protecting and defending devolution.

Mr. Speaker, Sir, Standing Order No.44(6)(b) under which the Message has been delivered, gives the Chair authority to exercise a discretion to appoint a day for consideration of the Message.

I encourage you that in exercising your discretion under that Standing Order, you give this House an hour or two, either today or tomorrow. We want to ventilate exhaustively, not only on the plight of Makueni County, but also the plight caused by devastating floods countrywide.

Mr. Speaker, Sir, if you look at what is going on in the country following the unusual heavy rains that we have had in the last two months, you will start to wonder

whether there is a Government. This is because anywhere there is emergency intervention; it is only the Kenya Red Cross that responds. Ordinarily, in a situation like this, we would be seeing the army and the National Youth Service (NYS) personnel everywhere at hand, to help people who have been displaced by floods.

Mr. Speaker, Sir, I urge that we have much more to say and that you allocate time for us to debate and consider this statement in the global picture of how floods have devastated and affected livelihoods across the country.

The Speaker (Hon. Lusaka): Let us have Sen. Poghisio.

Sen. Poghisio: Mr. Speaker Sir, I just wanted to add my voice in congratulating Governor (Prof.) Kibwana, for as has been said, setting the pace in the trend, mode and the nature of expressing support for this House. He is the kind of person who has gone and made calculations of the losses in terms of almost exact how much it is going to cost.

It behooves us to help in the manner in which we should. I support the statement and encourage governors to recognize that there is a procedure and a way that they can reach this House for much of this help.

The Speaker (Hon. Lusaka): Yes, Sen. M. Kajwang.

Sen. M. Kajwang': Mr. Speaker, Sir, most of the praise has gone to the Governor but not the Senator because it is the Senator who transmits the message to the House. There is a love-hate relationship between many of the Senators here and their governors to an extent where, the day they receive a letter from their governor is a day for either celebration or when people fear because you do not know what the contents are.

Therefore, Governor (Prof.) Kibwana and Sen. Mutula Kilonzo Jnr. have shown us that devolution works when the Senator and the governor work together.

Mr. Speaker, Sir, Governor (Prof.) Kibwana, who is the Governor for Makueni County, is the first to submit to the Senate Public Accounts and Investments Committee (CPAIC). When he came before the Senate, he came with the Clerk of his Assembly, the Chair of the County Assembly Public Accounts Committee, the Chair, Finance and Budget Committee and the Senator.

He has shown us that those synergies are extremely important. We wish them well. He is the first governor to test the ability of this House and the provisions of the Constitution on dissolution. He has made it clear that if people are not going to do what is right, then they would rather dissolve and go separate ways.

Mr. Speaker, Sir, this request on disasters is novel. Sitting where I am, I could not really get the call to action. However, I know that the call to action is to help the county government to deal with the humanitarian crisis. The county put up a full page advert - I saw it in the newspapers - calling for help from members of the public. Kenyans do not like helping the Government because they believe it steals from them, and you do not want to help someone who regularly steals from you.

This letter reminds us of the stand-off we had with the National Assembly in the past where this Senate decided that the amounts that the national Government was retaining for disaster management was too much and unnecessary. I believe this is part of the call to action; that in future, as we divide revenue between national and county Governments, this Senate must stand firm and send more money to the counties for disaster management because that is where these disasters happen. What the national

Government is doing right now in response to disasters in the counties is to distribute relief food. Even in my village, where we do not have a flood disaster, I am seeing relief food coming around.

Mr. Speaker, Sir, we are now making poverty something to celebrate. You would rather give my people seed and fertilizer to plant rather than relief food in the name of disaster management. Unfortunately, we do not have powers on supplementary budgets. I beg the House that, in future, we move and say that most of the disaster management funds should go to the counties. Thank you.

The Speaker (Hon. Lusaka): Let us have Sen. Halake.

Sen. Halake: Thank you, Mr. Speaker, Sir. I also add my voice to congratulate Governor (Prof.) Kibwana and Sen. Mutula Kilonzo Jnr., for always being the first to get it right with regard to partnership, and collaborations with impact. I know everybody has jumped to congratulate Governor (Prof.) Kibwana for what I consider not to be the right reason. We should rather recognize this House as the one that will do all these things---

In the process, we do not lose sight of what the call to action - as Sen. M. Kajwang' has mentioned - is. This is because we are so happy and pleased with ourselves that we have been recognized by Governor (Prof.) Kibwana and Sen. Mutula Kilonzo Jnr.

Regarding disaster management in this country, we have seen the weaknesses that have happened and how we are definitely not resilient. Our institutions are not ready for these things, especially of the magnitudes we saw the other day.

I know that Governor (Prof.) Kibwana is looking to us to legislate and to provide the frameworks that will provide not just the legal and legislative framework, but also the resources that will go to counties. I am happy that Sen. Wetangula has said that we need to discuss this further with a view to ensuring that we see and decipher what exactly needs to happen for a certain impact to be achieved. That will then enable us built resilient communities and institutions that can actually deal with disasters in this country.

It has been said that Makueni County is one of the shining examples of a working county. I congratulate them for that. Even reaching out to the Senate is definitely a very good point in the right direction. However, disaster legislations always come with an institution, layer of coordination or another parastatal that should care for all these disasters. For me as somebody who comes from a background of managing disasters, I believe we should strengthen existing structures, systems and the county government to be the first responders. This is because when we have somebody coming from somewhere else; the result is always death and devastation. As we consider, deliberate and debate this, let us look at how we will make our local units and systems to work.

Mr. Speaker, Sir, at the same time, we have a very strong and robust Kenya Red Cross system---

The Speaker (Hon. Lusaka): Please, be brief, Senator.

Sen. Halake: Yes, I will, Mr. Speaker, Sir. Kenya Red Cross system is a very strong and robust humanitarian one. We need to look at how to strengthen these organisations and resource them so that they can continue to serve.

Just to echo what Sen. M. Kajwang' has said, disaster Management is not about relief food. I hope we will look at disaster Management from the angle of mass

command, casualty incident management and the systems and early warning response that would make sure we mitigate against loss of lives and property.

At the same time, we know that corruption is directly linked to disasters in our country. How do we then make sure our institutions and people are less corrupt and they do what they are supposed to do as a mitigating measure for disasters in our country? Thank you.

The Speaker (Hon. Lusaka): Yes, Sen. (Prof.) Ongeru.

Sen. (Prof.) Ongeru: Thank you, Mr. Speaker, Sir. I rise to add my voice to comment on a continuing disaster which is taking place in our country. Governor (Prof.) Kibwana has given us a wake-up call to a situation which I feel that there is so much human loss. My first reaction to that message is to send a message of condolence as a House to the people of Makueni County and other counties which have been devastated by these floods and disasters. That should be the first call of action from this House; to say we are very sorry for the loss of human life.

Secondly, I may be wrong, but I sense that the action from the side of the national Government has been wanting. We should roll up our sleeves through this House to look at various mechanisms through which we can address disaster management in this nation. For instance, we need to look at disaster preparedness and the consequences arising out of the disasters that we have witnessed like the flooding now.

The next thing I expect to see is cholera, malaria and other infectious diseases because of stagnant pools of water all over the place. The Kenyan nation, owing to its reputation must rise to the occasion of being able to address the disaster management in a much more efficient manner.

This House, Mr. Speaker, Sir, under your watch, should be able to legislate on how resources can be allocated at such a moment in times of a crisis, and not to wait for regular budgets. We now need to look at the disaster management fund and the way it is being managed as a way forward for action.

The Speaker (Hon. Lusaka): Hon. Senators, there are statements that relate to a similar matter. Therefore, I wish to make a conclusion on this.

Hon. Senators, Standing Order No.44 outlines the procedure on exchange of messages between the Senate and the county governments and consideration by the Senate, of messages received from the county governors.

Hon. Senators, pursuant to Standing Order No.44(6) and looking at options that are provided for, I direct that the message be referred to the Standing Committee on National Security, Defence and Foreign Relations for its consideration. The said Committee should prepare and table a report on this message in not more than 14 days from today.

Next order!

Sen. Wetangula: On a point of order, Mr. Speaker, Sir. First, this is an emergency. It is requesting for emergency intervention. Two weeks is too long. This is a matter for which the Committee can drop everything and burn their midnight oil to consider the matter in the context of an emergency. A week will even be too long.

Secondly, given the complexity of the matter and the far reaching recommendations that may come out of this, it can be considered by two Committees; the

Committee on National Security, Defence and Foreign Relations which deals with disasters and the Committee on Finance and Budget that will deal with the matter of figures to communicate to the national Government to deal with the matter.

Sen. Haji: On a point of order, Mr. Speaker, Sir. I think your order is quite in order in view of the fact that although the matter is very urgent, the Committee cannot deal with it within a week or so because we have to, one, put a notice on the papers for public participation; and not only that, on Thursday this week, we have people coming to present their views on better management of disaster.

So, the matter is urgent but let us not hurry. Let us do it in an orderly manner.

The Speaker (Hon. Lusaka): Hon. Senators, in my ruling, I said, within 14 days. It can be after one day, three days; if they expedite and move faster, that will be good because it is an emergency but it should not go beyond 14 days. That is why I said, within 14 days. I agree that the Committee on Finance and Budget can also be incorporated because of the financial implications.

Next order!

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

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

PAPERS LAID

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

Sen. Poghiso: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Tuesday, 15th May, 2018:-

Report on the Proceedings of the First Extra-Ordinary Session of the Plenary Assembly of the Forum of Parliaments of Member States of the International Conference on the Great Lakes Region (FP-ICGLR) held in Kinshasa, Democratic Republic of Congo from 19th to 20th March, 2018.

(Sen. Poghiso laid the document on the Table)

The Deputy Speaker (Sen. (Prof.) Kindiki): Do we have another Paper?

REPORT ON INTER-PARLIAMENTARY HEARING AT THE UN, NEW YORK, USA

Sen. Shiyonga: Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Tuesday, 15th May, 2018:-

Report on the Proceedings of the Inter-Parliamentary Hearing at the United Nations, New York, USA from 22nd to 23rd February, 2018.

(Sen. Shiyonga laid the document on the Table)

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

NOTICES OF MOTIONS

APPROVAL OF NOMINATION OF SEN. JUDITH PARENO TO THE SPEAKER'S PANEL

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, pursuant to Standing Order No.17, the Senate approves the nomination of Sen. Judith Pareno to replace Sen. Cleophas Malalah as a member of the Speaker's Panel and to further preside over the Senate in the absence of the Speaker and the Deputy Speaker pursuant to Article 107(1)(c) of the Constitution and Standing Order No.5 of the Senate.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Do we have another notice of Motion?

Next order!

Okay, we have the Senator for West Pokot.

Sen. Poghiso: Mr. Deputy Speaker, Sir, I beg to give Notice of the following Motion:-

THAT, the House adopts the report of the proceedings of the First Extra Ordinary Session of the Plenary Session ---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Poghiso. Is that a Notice of Motion?

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

The Deputy Speaker (Sen. (Prof.) Kindiki): I heard as if you talked about something else. Proceed, if it is a notice of Motion.

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

Sen. Poghiso: Mr. Deputy Speaker, Sir, I beg to give Notice of the following Motion:-

THAT, the House adopts the report on the proceedings of the First Extra Ordinary Session of the Plenary Session Assembly of the Forum of Parliaments of Member States of the International Conference on the Great Lakes Region (FP-ICGLR) held in Kinshasa, Democratic Republic of Congo from 19th to 20th March, 2018.

The Deputy Speaker (Sen. (Prof.) Kindiki): Next order.

Order, hon. Senators! We proceed on that order but on the basis of the ruling made earlier by the Speaker, which is that we shall be looking at statements under

Standing Order No.46(2)(a) mainly, and therefore, let us have Sen. Susan Kihika proceed under Standing Order No.46(2)(a).

SENATORS' GENERAL STATEMENTS

THE SOLAI DAM TRAGEDY

Sen. Kihika: Mr. Deputy Speaker, Sir, pursuant to Standing Order No.46(2)(a), I rise to make a statement on the Solai Dam Tragedy that has caused havoc, deaths, loss of property, livelihoods and generally disturbed the normal operations of the people of Subukia in Nakuru County and Kenyans in general.

This tragedy has, indeed, pricked the conscience of every Kenyan. It is a matter of grave concern. I kindly request that hon. Senators be upstanding and observe a minute of silence in honour of the departed souls.

(Hon. Senators rose in their places and observed a minute of silence)

Thank you, hon. Senators.

Mr. Deputy Speaker, Sir, on Thursday, 10th May, 2018, Kenyans woke up to the tragic news of the Solai Dam Tragedy which had swept away villages on Wednesday night. The privately owned dam broke its banks at around 8.00 p.m. on Wednesday night and it left 47 lives lost - most of them being small school-going children - in the most unfortunate circumstances.

Over 500 families are now homeless with orphans and destitutes among them. Majority of these people who had their own habitations, whether own homes, rental or farm quarters, are now camping in tents at Solai High School grounds where well-wishers are supporting them with foodstuffs, blankets, mattresses and other types of clothing. It is indeed a human catastrophe. Several others are undergoing treatment at levels four and five medical facilities within Nakuru County.

I also wish to commend the good work of the Red Cross Society of Kenya for their swift action. Upon receiving the information of the dam tragedy, a disaster management centre was set up to provide counseling information and they have attended to the survivors of the tragedy as well as the coordinated dissemination of updates to the media and the affected locals.

I also commend the national Government for its response with a high powered team led by Cabinet Secretary for Interior and Coordination of National Government, Dr. Fred Matiang'i; Cabinet Secretary for Devolution and ASAL Areas, Mr. Eugene Wamalwa; Cabinet Secretary for Water and Sanitation, Mr. Simon Chelugui; our defence forces disaster management team and other officials from the National Disaster Operations Centre (NDOC) who went to assess the damage and humanitarian impact, advised on immediate remedial actions as well as commissioned the rescue, recovery and support mechanisms.

I take this moment to note the visit to Solai area in Subukia Constituency of the Standing Committee on National Security, Defence and Foreign Relations of the Senate led by the Chairman, Sen. Yusuf Haji and committee Members who included Sen. Fatuma Dullo, Sen. Kwamboka and myself. The Committee conducted a fact-finding mission on the horrific dam tragedy by touring the killer dam and other dams in the farm.

While the Committee was on tour, a body was discovered and it raises the question as to why the recovery efforts were hurriedly called off while some families still report that they have missing persons. I look forward to the Committee's findings being tabled in this House with recommendations on how to deal with the tragedy to its final conclusion and also prevent occurrences of such tragedies in the future.

On behalf of Nakuru leaders and the people of Nakuru County, we are indeed, very grateful and appreciate all well-wishers for the donations made so far and the prayers from all Kenyans.

A multi-agency committee that has been coordinating the recovery efforts; support to surviving families; receiving, storage and distribution of donations; and planning and preparations for the burial arrangements for the victims is in place under the coordination of the regional commissioner and local leaders. The final interdenominational prayers are scheduled for tomorrow, Wednesday, 16th May, 2018, to bid farewell to the victims and release their bodies for burial by their families.

Reports from initial investigations indicate that a wall of the dam build on high ground plunged down sweeping away homes, cars, mud and huge rocks towards a sleeping village. The flood waters and tumbling debris hit the Nyakinyua Village and the neighbouring Energy Village at high speed, washing away homes leaving the rest of the people in pitch darkness. It destroyed everything on its path including a primary school and power lines.

The killer dam is owned by one Mansukul Patel, a farmer with over 2,000 acres in that area. The dam lies adjacent to River Kabazi, collecting water from the river and draining it to another dam next to Kamukunji Trading Centre. The Patel Farm has a horticultural farm, coffee plantation and is also involved in dairy farming.

In the Solai area where the farm is located, access to the expansive farm with seven dams is highly restricted. The farm neighbours Marigo, Nyakinyua, Solai and Kabazi villages.

Although the Patel family has been involved in a number of community social responsibilities such as building a classroom at Solai Secondary School and equipping a local health centre, they have completely denied surrounding community's access and sharing water from the several dams. They have also diverted two rivers in the area and have made it impossible for the people of that area to get any water because the water does not flow out of their property which is highly restricted.

Water is a natural resource whose management is by the national Government under the Constitution. However, recently through negotiations, the national Government ceded the management of water companies and other water resources in the counties to county governments as a step towards effective service delivery under the devolved system of governance.

The Water Act of 2002 created the Kenya Water Resources Management Authority (WRMA) as a semi-autonomous Government institution and a key State Corporation under the Ministry of Water. WRMA's overall development objective is to ensure rational and effective management of water resources. However, the questions that come to mind are how earth dams are licensed and whether there are regular inspections and adherence standards which dam owners must comply with. There are also regulations on construction, usage, sharing of the dam water and even the insurance aspects in relation to such dams.

WRMA is squarely on the spot for sleeping on their mandate. As a regulatory authority, in this regard, the buck is on their table. The very acknowledgement that WRMA knew of the dams, that there have been visits to the Solai Farm and that there have been reports on the concerns noted and the actions called for points to a very carefree approach and attitude on the part of the authority, especially in the Nakuru office. How could they just leave the owner of the dam escape their demands to first regularize them, meet the set standards and allow the officials access for regular inspection?

The blame game witnessed so far between the farm management and WRMA has not helped explain why 47 lives have been lost. The legality of the dams is clearly in doubt. WRMA officers allege that WRMA has ordered them to regularize the ill-fated dams. This is utterly ridiculous and irresponsible, to say the least. How can they license a structure whose construction they did not inspect?

These dams are expected to be insured in the event of such eventualities of bursting the embankment walls and causing deaths and destruction as the Solai Dam has done. Mansukul Patel, the owner of the illegal dams, must be held accountable. He should by now have been arraigned in a court of law as we have seen with the owners of buildings that collapsed, killing Kenyans. If found culpable, he must compensate all the families for the losses suffered.

The order by the Cabinet Secretary for Water and Sanitation needs to be followed for inspection with immediate remedial actions of dams across the country. It is unfortunate that the Solai Dam will call for a task force and indeed the said inspection of earth dams in the country, a further wastage of public resources as a result of officers' negligence and business people who are a law unto themselves.

These deaths could have been prevented and the destruction of property could have been avoided had WRMA acted decisively on the residents' complaints of spillage in 2015, which caused a scare, though no life or property was lost. Had they taken action, these occurrences two years later would have been prevented.

There is a principle on destruction of environment, especially on pollution which is called the "polluter pays" principle. This principle, indeed, compels any person, be it an individual or corporation, to compensate for any pollution. Their actions by omission or commission, may lead to pollution of the environment.

As the Senator for Nakuru, a leader and a mother, I cannot comprehend how the families now camping at Solai High School in tents will normalize their lives. How are those poor people expected to pick up their pieces and move on with life? What pieces

anyway are there to pick up when everything was washed away by the raging floods of the dam?

I ask this Senate and the leaders of Nakuru to support me in demanding for justice and fair treatment of the victims. While the national Government has offered support to cater for funeral expenses of the victims, the challenges of survivors remain and this is not enough. We must do more.

There are also issues of labour and employment laws which need to come out. Whereas the national Government has set a minimum wage for the lowest paid workers in this country, Solai Farm has blatantly been operating outside the basic minimum salaries and wages. The elephant in the room, however, is the compensation of all the families of the deceased victims and the surviving families, many of whom were employed in Solai Farm.

Solai Farm management has to shoulder that burden as the loss occurred due to their own intransigent and failure to adhere to set regulations on constructing, maintaining and managing earth dams. What compensation will the farm owner undertake in regard to the environment where trees, vegetation and top fertile soils were washed away?

The Deputy Speaker (Sen. (Prof.) Kindiki): Order Sen. Kihika. I appreciate how serious, grave and touching this issue is but the Standing Orders gives you a maximum of 10 minutes and I hope you are conscious of that.

Sen. Kihika: Thank you Mr. Deputy Speaker, Sir. In conclusion, what compensation will the farm owner undertake in regard to the environment where trees, vegetation, top fertile soil was washed away and land left bare? Rocks and boulders are jutting out as well. Previous arable and productive lands now look like a desert. Disaster occurrence anywhere causes panic, confusion, huge losses and hence demands decisive and prompt responses. I look forward to what is coming on the Floor of the Senate, which is the National Disaster Management Bill, which will help us bring sanity to such situations.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order Sen. Kihika. Your time is up. You know what to do if you want to communicate to the Chair and that does not include what you are doing now.

Sen. Kihika: Mr. Deputy Speaker, Sir, could I have an additional three minutes and I will be done.

Disaster occurrence anywhere causes panic, confusion, huge losses and hence demands decisive and prompt responses. The Senate and every Kenyan needs to ask if the speed of response by the national and county governments is appropriate whenever a disaster occurs. When we have fire outbreaks, road accidents, drowning or buildings collapsing in Nairobi and elsewhere, do we respond in time and as prepared? Is the country's disaster response up to the expected standards in terms of personnel and equipment? These are provocative questions, lamentations and open concerns that need real answers.

The Senate has debated the National Disaster Policy and approved the same. The question is; has it been operationalized? While the Red Cross as well as the National Disaster Management Authority (NDMA) have swift and prompt response in the event of

reported disasters, other supportive Government agencies take unnecessarily long to respond, leave alone being actively engaged in the rescue, recovery, support and mitigation activities. This situation needs to change. County governments are also expected under the policy on NDMA to have County Disaster Management Committees (CDMA) and to set aside a percentage of their allocated revenues to a disaster fund which would support disasters that may occur in their areas.

It is high time the counties took the issue of disaster management seriously especially with regard to quick responses. Counties need to appreciate that they are in unique environments and be prepared to mitigate for any eventual disasters. Some counties are prone to floods, landslides, forest fires, industrial accidents and so forth. There has to be continuous capacity building of personnel and members of the public with inspections of various potential disasters by the CDMA. Only by being alert, responsible and prepared will the country lessen the impact of disasters to our people.

The NDMA policy behooves all stakeholders to be well acquainted with its operations and how every Kenyan, especially the mandated agencies keep themselves prepared both in resources and personnel to manage disasters of all kinds, if and whenever they occur.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Sen. Kihika. I will give this chance to a number of other Senators to make their comments. Please be brief and specific to the point.

The Senate Majority Leader (Sen. Murkomen): Thank you Mr. Deputy Speaker, Sir. First of all, I pass my condolences to the families and relatives of the people who lost their loved ones. That was a horrendous incident. From the facts that are coming out and having consulted the people who know the history of this country, that must be the worst water tragedy that we have ever witnessed in this nation and it is sad to know that it occurred as a result of negligence. There is a possibility that it could have been avoided.

I want to thank the Chairperson of the Committee on National Security, Defence and Foreign Relations and its Members. I also want to thank the Senator of Nakuru County, who is the Whip of the Majority side, for she has been very vocal on these issues. She has been the voice of the weak in Nakuru County. That includes, Subukia and Solai itself. Those people need a voice. Sometimes, in such situations, it is possible to find that one is dealing with very wealthy people and it is easy for leaders to fear to speak their mind because they think that they will be offending the rich.

I saw a clip, which is circulating all over, where she said that if it was a Senator or an elected leader who was swept away, the whole country would have been mobilized to do something. As leaders, we must be compassionate enough, like it was shown by Sen. Haji and his team, so as to address this issue which includes going to the bottom of this issue.

It is very sad that when such incidents occur, we suddenly get to know that there is an institution called Water Resource Management Authority (WARMA). We get to suddenly know that there is an institution that is supposed to inspect and give licenses to people who own dams. We are giving these institutions resources and that was their work but why is it that they are suddenly saying that they will inspect dams in this

country? Why do they have to wait for people to die for them to now say that they want to start doing their job?

The investigation being carried out by the Committee of this House and the Government agencies like the police and any other agency involved in this matter, must tell the nation the person who is responsible. If that person had the right licenses, who gave him those licenses? If he did not have the license, how did he end up keeping a dam of that magnitude without paying regard to the effects that it would have caused? The impact and the effects that have been caused by this disaster is a wake-up call for all of us, as citizens of this Republic, to be conscious of the things that we want to do and their impact on the lives of the people of Kenya. I want to thank Sen. Kihika and encourage her to continue fighting for the compensation of those people and being their voice.

Under the rule of *Rylands v Fletcher*, whether you talk about the question of compensation for those people or criminal liability on the part of Mr. Patel and his team, there is enough law and legislation in this country that is capable of holding every person who is responsible for that matter. I thank the Cabinet Secretary, Ministry of Water and Irrigation, Mr. Simon Chelugui, for he went there immediately. He recently came here and he must now hold the agencies including WARMA to account on the work that they have been doing over the years in so far as dams in this country is concerned.

This is also a wake-up call for us. We need to also think of other institutions or potential dangerous investments in this country that may explode and kill many people. We have seen pipelines that are in slum areas, electricity wires that are hanging all over and we should not wait until hundreds or thousands of people die for us to come back here then say that investigations must be done. Every department of Government must be diligent in all that they do. I beg to support and request that this House and our Committee continue with the investigation that they are doing and come back with very strong recommendations that are actionable.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, the Senate Majority Leader. I had given you additional few minutes, but you did not use them as one would have expected. You should have told the country what *Rylands v Fletcher* is; in the terms that everyone in this country can understand. If you keep a dangerous thing in your compound, whatever it may be and it escapes and injures a third party, there are no two ways about it. You have to compensate and pay for that injury. I think that would have been a better explanation.

(Sen. Murkomen spoke off record)

There is nothing that can be out of order from this side. There can also be no point of information towards this side.

Order, the Senate Majority Leader! Nevertheless, well spoken.

(Laughter)

The rate of interest from the rest of us is very high and that is understandable because this matter is grave. It is serious because many of our citizens are mourning their loved ones. Nevertheless, because of the constraints of time, I will try and make sure that everybody has a chance of two minutes to give their condolences and add a point they think has not been brought out. However, kindly do not repeat what has been said by Sen. Kihika and the Senate Majority Leader.

I give the first two minutes to Sen. (Dr.) Kabaka of Machakos County.

Sen. (Dr.) Kabaka: Mr. Deputy Speaker, Sir, I take this opportunity to send my condolences to the people of Nakuru County. I also congratulate the Senator for Nakuru County, Sen. Kihika, for the work that she has been doing. God bless her.

I have seen the former Member of Parliament for Subukia, hon. Koigi wa Wamwere say that he has given a lot of warnings about similar dams which are about to burst. I hope that the relevant bodies will take that seriously. Disasters of this magnitude in law are not different. I saw the owner of the dam say that it was an act of God. However, we are saying here that this is not an act of God because God did not build the dam.

Disasters of this magnitude vary. For example, we had the Chernobyl disaster and the nuclear explosion in Japan which caused a lot of deaths. Now that Kenya is also embracing nuclear technology, this House must be careful to ensure that proper measures are put in place as we embrace technology.

I beg to support.

Sen. Cherargei: Mr. Deputy Speaker, Sir, from the outset, I join the rest of my colleagues and the country at large to pass our deepest condolences, on behalf of the great people of Nandi County and my own accord, to the victims of the tragic Solai Dam that happened a few days ago. I thank the Senator for Nakuru County, Sen. Kihika, for standing with her people. I also thank the Committee on National Security, Defence and Foreign Relations led by the Chairman, Sen. Haji, for the intervention as well as many other agencies.

I would also like to pass our deepest condolences to the families that were affected by floods across the country. There are many issues that are happening because of the vagaries of weather. The rains should be a blessing. As a farmer from an area where rain is celebrated, it should come with blessings and not the kind of disasters that we have witnessed. I hope the agencies that have been mentioned such as the Water Resources Management Authority (WARMA), must take responsibility. If there was any element of negligence in any form, they must be held accountable, so that in future we do not have to pay the high price of losing lives.

Mr. Deputy Speaker, Sir, I urge the Senator for Nakuru County and all of us to continue condemning such dams. I know that the person who owns the killer dam is a man of means and has influence, but we should stand up so that the poor *Wanjiku* does not suffer at the hands of others.

Moving forward, I believe that it is not sufficient that the people---

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

Please, proceed, Sen. Faki.

Sen. Faki: Asante sana Bw. Naibu Spika kwa kunipa fursa hii kujiunga na Seneta wa Kaunti ya Nakuru, Sen. Kihika, na Maseneta wote kuomboleza vifo vya watu takribani 50 kutokana na mkasa wa kupasuka kwa bwawa la Solai.

Jambo la kusikitisha ni kwamba mkasa kama huu umetokea wakati huu ambao nchi yetu inajivunia kupiga hatua kimaendeleo ya kila aina. Ni wazi kwamba mikasa kama hii itaendela kutokea kutokana na utepetevu ambao unafanyika kati ya wafanyikazi wa Serikali na mashirika yasiyokuwa ya serikali.

Nachukua pia fursa hii kuwatia moyo watu wa Kaunti ya Nakuru na hususan Sen. Kihika kwamba haya mambo asiyaachie hapo. Tuliona kwamba mwaka wa 1993 kule Mombasa wakati Ferry ya Mtongwe ilipozama, watu 250 walipoteza maisha yao. Jambo la kusikitisha ni kwamba hadi wa leo wale wahanga wa mkasa huo hawajalipwa. Serikali imeweka ahadi mara kwa mara kwamba watalipwa lakini bado haijatumiziwa. Mikasa kama hii itaendelea kutokea hadi wakati tutakaa chini kama wananchi wa Kenya na kusema kwamba yametoshwa na wale wanaosababisha mikasa kama hii lazima wafungwe ili kuhakikisha jambo kama hili halitokei tena.

Bw. Naibu Spika, miaka miwili iliyopita, wakati ferry ilizama nchini Korea Kusini Waziri Mkuu alijiuzulu.

The Deputy Speaker (Sen. (Prof.) Kindiki): Hata wewe utajiuzulu.

(Laughter)

Sen. (Prof.) Kamar.

Sen. (Prof.) Kamar: Mr. Deputy Speaker, Sir, thank you for giving me this opportunity. I would like to join my colleagues in passing my sincere condolences to the people of Nakuru County and to our sister, Sen. Kihika.

All of us were horrified by what happened in Nakuru. I happen to be a soil and water conservationist. When we are dealing with water conservation through dam construction, it is very clear that dam construction is a technical area in itself. It is not about creating a storage place for water. It is about measuring to know what would happen or the worst incident that can happen over time. There are rainfall occurrences that you can only see once in your lifetime, because they occur every 100 years.

We normally say that when you are doing dam construction, you must construct them with stones that peak only once in 100 years. It looks like this was not done for this dam. My question is focused on who constructed this dam; was it the farmer who did the construction? Did he hire a technical team and, if he did, who were the scientists or engineers who did the construction? This is because it starts from the collection of the water to the embankment that you are building so that it is not destroyed. We do know that, overtime, anything wears out and gets old. However, we are aware that for that to happen, we should not---

The Deputy Speaker (Sen. (Prof.) Kindiki): Your time is up, Sen. (Prof.) Kamar. Please, organize your thoughts, be brief, offer your condolences and maybe one or two points.

(Interruption of Debate on Statement)

COMMUNICATION FROM THE CHAIRVISITING DELEGATION FROM MARY HILL GIRLS
HIGH SCHOOL, KIAMBU COUNTY

Hon. Senators, before we proceed, I have a Communication to make regarding visiting students and teachers from Mary Hill Girls High School from Kiambu County. I do not know whether they are still with us?

Hon. Senators: They have left.

The Deputy Speaker (Sen. (Prof.) Kindiki): Nevertheless, we should acknowledge that they visited the Senate today. They are welcome in the Senate. In our usual tradition, on behalf of the Senate, we wish them a fruitful visit, if they are still within the premises of parliament.

Thank you.

Very well, proceed, Sen. Wetangula.

(Resumption of Debate on Statement)

Sen. Wetangula: Thank you, Mr. Deputy Speaker, Sir. I join the House in condoling the people of Nakuru, their Senator, their county government and all the people of Kenya who have lost their loved ones. This tragedy is of a very huge proportion because lives have been lost. I urge those who are involved in search, rescue and recovery operations not to close the door yet, because chances are that there could be children who could have been swept much further than the areas that they are concentrating on.

Secondly, Mr. Deputy Speaker, Sir, rudimentary science and engineering will tell you that when you construct a dam, there must be a spillway so that when the dam is full, there is a valve through which extra water can flow downstream. Did this dam have a spillway? If it did not have one, then it probably was not constructed in a proper manner. When the Water Bill came here, I cautioned that we are creating too many institutions within this field of water which will keep on piling on each other and not doing the right things. I am sure that if there were periodic inspections of these dams, this disaster would probably have been averted.

Thirdly, Mr. Deputy Speaker, Sir, people do not just wake up and construct dams, even if it is in your private property because you must seek approval and technical supervision. Was this done in relation to this dam?

Fourthly, Mr. Deputy Speaker, Sir, as a professor of law you know that the culpability of this disaster should not be limited to that Mr. Patel. Even the national Government is vicariously liable for not doing its supervisory role properly and letting people own dams that are unsafe. Therefore, the compensation for the victims must go beyond the Patel we are talking about. The national Government must also move in and support the compensation process because where there is a constructive relationship of agency and principle, the culpability of the principle and the agent is equal.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen.(Prof.) Kindiki): Very well; that is another angle of vicarious liability.

Proceed, Sen. Fatuma Dullo.

Sen. Dullo: Thank you, Mr. Deputy Speaker, Sir. I wish to confirm to the House that I am one of the Members of the Committee who was on the ground. We were informed by the Water Resource Management Authority (WARMA) when they were on ground that once they issued the license, there are no mechanisms in place to follow up and make sure that those dams are safe. It is time that we come up with regulations and legislation to allow WARMA to supervise the licenses they have issued to various private dams.

Secondly, Mr. Deputy Speaker, Sir, this will actually inform this country of the private and big farmers who are obstructing water from the poor *wananchi* downstream. We have a similar situation in Isiolo County where the rich farmers from Mt. Kenya are blocking water from coming to Isiolo County downstream. The Ministry of Water should investigate all the big farms that are doing that.

Thirdly, Mr. Deputy Speaker, Sir, is the issue of insurance. I am sure that Mr. Patel has not insured his workers. In the absence of that, he should be held liable. I am actually appealing, if there is a mechanism, because he has 3,000 acres. Why can he not be forced to donate 300 acres to settle those farmers, because 300 acres is nothing?

Finally, Mr. Deputy Speaker, Sir, the situation is a bit better than the previous disasters we have had. Kenyans really love each other because there was a lot of food coming---

The Deputy Speaker (Sen.(Prof.) Kindiki): That is what you should have started with.

(Laughter)

I will give you 30 seconds to finalise that thought.

Sen. Dullo: Thank you, Mr. Deputy Speaker, Sir, for the few seconds that you have given me. As I was saying, Kenyans really love each other and we should not take that for granted. Can we, as Kenyans, enforce the legislation that we have so that we can hold individuals responsible in this country? For example, Mr. Patel is at large. We have set precedence in this country where the first thing we announce is, arrest the person responsible for that disaster. For sure, Mr. Patel has pocketed everybody in Nakuru County. Sen. Kihika, you should not relent on your efforts.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Rose Nyamunga, you are next and you have two minutes.

Sen. Nyamunga: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity. First of all, I offer my condolences to the people of Nakuru County and to Sen. Kihika. I know that this is the second time you are being hit with a tragedy and we are with you in this.

Mr. Deputy Speaker, Sir, this issue takes us back to corruption. Just as Sen. Dullo has mentioned, everybody concerned has been pocketed by this one Patel. In my view, we should go back to our basics. We, Kenyans, are so reactive; we do not plan or do the right things in advance. Some of these things should be done; for example, there must be ways of inspecting these projects all the time. However, we wait until such a tragedy strikes for us to start looking for who should have done what or who did not do the inspections.

We are such a reactionary country, but we should be proactive to ensure that we do not go through such occurrences in our country. If it is not a water tragedy, it is a fire tragedy or something else; a tragedy is always happening. Therefore, we should be on top of things as a nation. We should be thinking about our citizens all the time, and not only when things occur. We have all the structures and institutions that should be doing their work. However, because of corruption and somebody wanting to take something little here or there, we forget our responsibility, do the wrong things and end up with such great tragedies.

Mr. Deputy Speaker, Sir, on behalf of the people of Kisumu County, I send my condolences. We want the people to be compensated, not only by covering the funeral expenses, because that is nothing. They should be properly compensated so that they can move on with their lives.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Let us have Sen. (Eng.) Mahamud.

Sen. (Eng.) Mahamud: Thank you, Mr. Deputy Speaker, Sir. I also join the other Members in condoling with the people of Nakuru County for the disaster that befell them.

The tragedy that has occurred there is a first of its type in terms of dam failure in this country. I know that because I worked in the water sector for 20 years as a water engineer. I know how the Ministry of Water, Environment and Natural Resources is structured.

First of all, Kenya Water Resources Management Authority (WARMA) has no capacity to design and check dams. Its purpose is to allocate water resources in terms of the amounts of water that it allows an individual to take from rivers and streams. In fact, in terms of design, I think there is a big lacuna because all these activities are happening; where everybody is making his own dam. It is like the way we are building houses in Kenya with no control. People are engaged in various activities without regard to the danger they are posing to Kenyans.

Mr. Deputy Speaker, Sir, in designing dams, there is dam break analysis. If you design a dam, you must clearly state what will happen if it breaks. I took part in the design of Ndakaini Dam. If it breaks today, Thika Town and all the towns before it would be under water and washed away. It is that serious.

That is why when designing a dam, one must be able to make sure that the design is proper and forestalls all the danger. We also need to do proper inspection. This is a wake-up call. Whereas the people of Nakuru must be compensated, we as a country must now come up with a proper framework to see that our dams, even the existing ones, are safe.

A lot of people, especially the flower farmers are damming rivers without the knowledge of that water we are talking about. I would not be surprised if the licensing was not properly done.

Mr. Deputy Speaker, Sir, it is a very serious matter. It is time that the authorities--

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The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Let us have Sen. Pareno.

Sen. Pareno: Thank you, Mr. Deputy Speaker, Sir, for allowing me to condole with Sen. Kihika and the families that have been affected in Nakuru County. I take this opportunity to also thank the Government for moving very first to give a fund. As a Committee, we were already told that the fund for settling these people is there.

However, as a Committee we had requested that we continue with the search. By the time the Committee was visiting, they were told that the search had slowed down, yet we still had people who were missing and suffering families. We have appealed that the search continues so that we can get those that are missing.

Interestingly, the Committee was told that - and the WARMA people on the ground had confirmed - that they had been denied access for inspection. We were asking who it was that is above the law. A person who denies access for inspection and had blocked two rivers? We were told that the Mr. Patel blocked two rivers, such that even villagers do not have access to them. Who is this Patel who cannot be arrested after a crime has been committed, blocks rivers, denies villagers access to rivers and denies inspection by WARMA? I think somebody is going to be held accountable.

Why did WARMA keep quiet when somebody refused access for inspection. Why did you not tell people to take action against someone who stopped you from your work? We will have a lot of homework between both WARMA and Mr. Patel. People should be brought to account.

Thank you.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Senator. Let us have Sen. Mwaura.

Sen. Mwaura: Asante sana Mhe. Naibu Spika kwa kunipa fursa hii. Nampongeza Sen. Kihika kwa sababu ya kuleta Hoja hii Bungeni, hususan kwa sababu yeye pia juzi, alikuwa na mkasa wa wale vijana ambao walipoteza maisha yao wakiwa katika shughuli zao za kampeni. Pia, ni mama mwenye nguvu kwa sababu kama Seneta wa Kaunti hiyo, basi ni wajibu wake kutetea watu wake.

Mhe. Naibu Spika, jambo la kushangaza ni kwamba unaposikiza vile ambavyo watu wanasema kuhusu hayo mabwawa ya Bw. Patel, ni kana kwamba, hakukuwa na ubaya wowote uliotendeka, ilhali tuna ona kwamba kumekuwa na uharibifu wa mali kwa hali ya juu. Watu pia, wamepoteza maisha yao.

Swala kubwa ambalo lina jitokeza ni kwamba, katika nchi hii, kuna sheria za mabwanyenye na za makabwela. Maisha ya watu duni hayashughulikiwi kwa sababu wao wanakufa kiholela holela.

Kulingana na kanuni za kutengeneza mabwawa ya maji, ni kwamba lazima bwawa likae kwa miaka zaidi ya 50 ama 100. Hata hivyo, ni lazima ujenzi wake uwe unaweza kustahimili miaka 1,000. Hilo hatujaona likitendeka. Tunasikia wakisema kwamba ni kwa sababu ya mvua, ilhali mvua ilitarajiwa.

Tunapofanya ujenzi wa miundo msingi ni muhimu kuhakikisha kwamba tuna kadiria majanga kama haya kutendeka. Hili ni bwawa la kwanza kufanya hivyo. Tunajua kwamba mvua ikiendelea kunyesha, basi tutaona majanga mengine pia yakitendeka.

The Deputy Speaker (Sen. (Prof.) Kindiki): Asante sana. Let us have Sen. Shiyonga.

Sen. Shiyonga: Thank you, Mr. Deputy Speaker, Sir, for giving me this chance to join my colleague Senators in condoling with the people of Nakuru for the disaster that befell them. I congratulate the able Sen. Kihika for standing with her people during the tragedy.

Our communities need to be sensitized when tragedies await them. They should not keep quiet especially when they see that there is a disaster that is about to happen in their community. It is important for us to prevent and not to wait for the healing processes that are taking place in Nakuru right now.

Mr. Deputy Speaker, Sir, we need not ask why the disaster is to be prevented. It is an obvious reason that we need to prevent these disasters especially when it comes to fire and the rain havoc that is befalling our nation right now.

I beg to support this Statement that has been brought by our able Senator. Something needs to be done for the people of Nakuru and others who have been in similar situations, such as those of the Nairobi, Mukuru Sinai slum fire disaster in this country.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you. Let us have Sen. Mugo.

Sen. Mugo: Thank you, Mr. Deputy Speaker, Sir. You can see that my sound system is not working. I have reported quite a few times. I hope now it will.

I take this opportunity to condole with the very able Sen. Kihika and the people of Solai in Nakuru County, for this terrible tragedy. We commend you. You are truly a leader.

It is horrifying to watch such a thing happening. We know that tragedies can happen. However, sometimes when they are aided by people, then they are not “Acts of God”. That is why we are asking that this Mr. Patel and anybody else who is related to this tragedy be arrested immediately, tried and justice meted on them. We do not want the situation as it happens in Kenya, where people go to court and then go scot free. We want to see real action.

We commend the County Police Boss because he also got there. However, let it not be covered anymore the way we are used to seeing, where a light is lit and then goes out without action. We want to see action this time.

We commend the Government for saying that people will be compensated. We know there is no way one can be compensated for life. However, we want to see the survivors compensated. These children, especially those whose parents died need to be cared for. Since they have no parents, we should now care for their education and other needs.

I thank you.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, first, I pass my condolences to the people of Solai and Nakuru for the grave tragedy that befell them.

Secondly, I urge Sen. Susan Kihika not to spare the perpetrators of this man-made disaster. There is no explanation why you have a dam on a hill, with two million litres of water and much more. Somebody must be called to task. Majority Whip, say it as it is. You will make enemies in Government; but say somebody must take political responsibility.

Thirdly, Sen. Sakaja and I have sponsored the Disaster Management Bill. It is coming for public hearing on Thursday. Senators, this is the way to deal with disaster. The fact alone, that President Uhuru Kenyatta gave the Kenyan Red Cross money, Kshs1 billion or thereabout is confirmation that the persons tasked with the duty of managing disasters in this country have failed. So, we are vindicated.

Therefore, I urge the Senators to support the Bill when it comes to this House. Let us get action but so many must take political responsibility for this action. It is not enough to say “sorry”. It is not enough to say that the dam was illegal. The Water Resources Management Authority (WARMA) is solely responsible. Somebody must be fired.

Sen. Cheruiyot: Mr. Deputy Speaker, I also join my colleagues, on behalf of the people of Kericho County, to condole with our neighbours, the good people of Nakuru, following this very unfortunate incident. I have two quick points.

First, is to Sen. Susan Kihika, Senator for Nakuru County. I urge you on as you pursue justice for the victims of this heinous act. I call it “heinous” because negligence has led to many people losing property and more importantly, lives. As we pursue their compensation, we note that life is priceless and there is absolutely nothing that we can do, but at least for the remaining members of the family, let them be paid something quite decent enough to ease off the pain. Mr. Patel is an entrepreneur who has enjoyed the fruits of Kenyans. We all enjoy his signature salt, Kensalt in our homes. Therefore, he is not poor. He is able to compensate these people properly.

Secondly, lives would have been lost in vain if we do not come up with far-reaching regulations to manage all our dam waters across the country. There are many dams that are being built now and those that are already in existence may continue to be a problem if the report that will come from the task force that has been formed to look into this incident is not properly considered. I hope this will be done unlike in other incidents in the past.

Sen. Halake: Mr. Deputy Speaker, Sir, I will be brief. I will stick to conveying my condolences to the families of the Solai victims. I congratulate Sen. Kihika for her steadfast support of the victims, first and foremost and for ensuring that she speaks up for them with regards to the people that are culpable and compensation that they need to be given. We stand with the families and mourn with them.

More importantly, as a House, I am happy that each and every person has given their support and commitment to support disaster management in this country. I appeal to the sponsors of the Disaster Management Bill to make sure that we are strengthening our institutions as opposed to perhaps making another layer as I said before. I also laud the initiator of the Bill that will come at a time when we need to consolidate all the different fragmented disaster organisations and systems that are in our country.

I hope this Bill will look at all these little bits and pieces. What we have seen so far is many narrow organisations or institutions that tell you, mine is to just issue a permit. What happens after that is none of my business. Another may say; I have no powers to execute or prosecute. We have all these different little institutions that are causing a lot of chaos and draining the extra coin and taxpayers' money. They do not provide us with what we need in disaster management.

Sen. (Prof.) Onger: Mr. Deputy Speaker, Sir, I join the people of Nakuru County on this rather sad episode of losing lives because of man-made disasters. Two million cubic metres of water is enough storm to clear even the mountain when it comes from a given height. The level of culpability is clear: The owner of the dam, WARMA and the national Government in failure to monitor and supervise the building of dams. It is time for this Senate to put a legislative mechanism in place to handle such disasters with great finesse.

If we do so, we would have succeeded in the effort of ensuring that every Kenyan goes to sleep not feeling threatened in one way or the other either through a dream or any other imaginary level that there would be a disaster occurring to him or her during their sleep. We need to give comfort to our Kenyans, given the level of disaster. This is a manageable situation. It is a man-made situation. It can be controlled.

My condolences go to every family affected by that disaster. Sen. Susan, you have done a great job. Do not relent in your efforts to fight corruption because corruption will fight back.

Sen. (Prof.) Ekai: Mr. Deputy Speaker, Sir, I thank you for giving me the chance to condole the people of Solai, Nakuru for this terrible disaster. I would like to repeat what my honorable colleagues have already said. We need to learn a lesson from this terrible disaster so that in future, something like this does not happen again. It is sad that we normally react to things when they happen but we do not take the measures to be sure that such a disaster does not occur again.

Hon. Kihika, I support your move. I insist that Mr. Patel be arrested because he is responsible for what has happened. Also, some kind of support should be given to the families of the deceased because many parents lost their lives and children are left without anyone to take care of them. So, they need to be held responsible so that others that may be tempted to do things carelessly may be careful in future.

Sen. Prengi: Mr. Deputy Speaker, Sir, I also join my colleagues in sending my condolences to the affected families in Nakuru County.

Secondly, I congratulate Sen. Kihika for bringing up this issue. I am also a resident of Nakuru County. I assure her that I will join hands with her in ensuring that justice prevails. The institutions and people who are responsible in the said accident in Nakuru should be held responsible.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. That brings us to the end of a statement on an unfortunate event.

(Sen. Mutula Kilonzo Jnr. spoke off record)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order Sen. Mutula Kilonzo Jnr.!

Hon. Senators, we have one more statement under Standing Order No.46(2)(a). That is the statement of the Senator for Turkana County, Prof. Ekal.

STATUS OF KAINUK-NADAPAL, LODWAR-LOKITANG
AND LODWAR-LOKIRIAMA ROADS IN TURKANA COUNTY

Sen. (Prof.) Ekal: Thank you, Mr. Deputy Speaker, Sir. Pursuant to Standing Order No.46(2)(b), I rise to seek a statement from the Chairperson of the Committee on Roads and Transportation regarding Kainuk-Nadapal, Lodwar-Lokitang and Lodwar-Lokiriama roads in Turkana County. In the statement, the Chairperson should explain the following:-

(a) why the Kainuk-Nadapal Road, which is the main highway connecting Kenya and South Sudan is dilapidated;

(b) why the bridge at Kainuk which was washed away by the rains has not been permanently fixed and when it will be repaired;

(c) why the road from Lodwar-Lokitang has not been tarmacked despite the Government promise that it will be tarmacked;

(d) why Lodwar-Lokiriama Road construction has stagnated and clarify whether or not---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order Senator! Sen. Ekal, you are not seeking for a statement but making a statement. I have made it very clear that you are making a statement under Standing Order No.46(2)(a). You have been seeking a statement under Standing Order No.46(2)(b) and I think we had a discussion on this matter. So, you are out of order.

Sen. (Prof.) Ekal: Mr. Deputy Speaker, Sir, I will go on to---

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, but you are out of order. You should apologise to the House and proceed in the proper manner.

Sen. (Prof.) Ekal: I apologise to the House. The mistake was made from where this statement was made.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order Senator! It is your statement!

(Laughter)

Sen. (Prof.) Ekal: I will start from the beginning. Pursuant to Standing Order No.46(2)(a), I rise to seek a statement---

(An hon. Senator spoke off record)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order Senator! The Clerk's Table will be of help to you. Approach it quietly and resume your seat after that. After that, the Chair will give further directions at an appropriate point and that will not be quietly.

Hon. Senators, subject to further directions by the Chair, we shall proceed with the Order Paper because this House waits for no man or woman. For that reason, you can see on the Order Paper that we are supposed to go to Order No.8. In exercise of the

powers under Standing Order No.40, I direct that that Order be stood down. The same applies to Order No.10. It is so ordered.

Next Order!

Sen. Mutula Kilonzo Jnr.: On a point of order, Mr. Deputy Speaker, Sir. Allow me to revisit your order, with your permission. Regarding Order No.8, we had agreed that since the committee chaired by Sen. (Eng.) Mahamud will issue a report, that this matter awaits the report so that the direction is clear that it has not been done away with completely.

The Deputy Speaker (Sen. (Prof.) Kindiki): Is that a further order? Sen. Mutula Kilonzo Jnr., I said the Order is stood down. Standing it down is not deferring. That means it can be reinstated at any point, including today.

Sen. Mutula Kilonzo Jnr.: You have clarified. Thank you.

The Deputy Speaker (Sen. (Prof.) Kindiki): Next Order! Sorry, Clerk, you need to read Order No.8, so that we do what I have directed.

BILLS

Second Reading

THE COUNTY WARDS DEVELOPMENT EQUALIZATION FUND BILL (SENATE BILLS NO.5 OF 2018)

The Deputy Speaker (Sen. (Prof.) Kindiki): I direct that it be stood down.

(Bill deferred)

Next Order!

Second Reading

THE COUNTY GOVERNMENTS (AMENDMENT) (NO.2) BILL (SENATE BILLS NO.7 OF 2017)

(Sen. Mutula Kilonzo Jnr. on 15.3.2018)

(Resumption of debate interrupted on 10.5.2018)

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, I do not want to put words in your mouth again. I thought you will call upon the Mover to reply.

The Deputy Speaker (Sen. (Prof.) Kindiki): You can do so at your own peril.

(Laughter)

I call upon the Mover to reply.

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Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, first all, I would like to thank Senators who contributed to this Bill. There was an innocuous amendment by county governments to ensure that there is a report to dissolve a county and I hope this does not happen in this Senate. Various matters that were debated came to the Floor for discussions.

While we were at it, since the directions that were issued by the former Speaker, Hon. Ethuro were not overturned and are still there, maybe a report from Makueni ought to come to the Senate for discussion in the spirit of this Bill and in the spirit of the “handshake”, so that those recommendations can still find footing for purposes of helping the county.

I hope that these amendments will be fast-trucked because there are no further amendments. I hope the secretariat will bring this Bill for Third Reading so that it proceeds to the National Assembly for enactment since there are no contentious issues.

Mr. Deputy Speaker, Sir, I beg to reply. I thank you.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Mutula Kilonzo Jnr. is there any further request?

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, there is a Senator who has just distracted me by bowing here and walking to the other side.

The Deputy Speaker (Sen. (Prof.) Kindiki): That has not been brought to the attention of the Chair.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, under Standing Order No.55(3), I beg that you defer the putting of the question to another date.

The Deputy Speaker (Sen. (Prof.) Kindiki): I direct that the putting of the question be deferred to next week on Tuesday.

(Putting of the question on the Bill deferred)

Next Order!

Second Reading

THE OFFICE OF THE COUNTY ATTORNEY BILL
(SENATE BILLS NO.3 OF 2018)

The Deputy Speaker (Sen. (Prof.) Kindiki): As I had directed earlier, order No. 10 is stood down.

(Bill deferred)

Next Order.

THE COUNTY GOVERNMENTS RETIREMENT SCHEME BILL
(SENATE BILLS NO.6 OF 2018)

The Deputy Speaker (Sen. (Prof.) Kindiki): Could we hear from the Chairperson of the Committee on Labour and Social Welfare or the Vice Chairperson? That is a Committee Bill. The Chairperson and the Vice Chairperson are not here. Is there any Member with information regarding the fate of that Bill?

Sen. Poghiso: Mr. Deputy Speaker, Sir, I believe that we were out for the Report on the public hearing on that Bill. I do not know if the report was ready because I know that the Chairman was waiting for the report to be prepared before moving it for Second Reading. With your indulgence, you can allow that this be done tomorrow or the day after tomorrow.

The Deputy Speaker (Sen. (Prof.) Kindiki): In future, the Chairpersons of Committees and the Committees in general should liaise with the Clerk's office to ensure that when you have an item in the Order Paper, it is transacted or otherwise communicated to the Chair ahead of time. Otherwise, we are just crowding our Order Paper with business and we are not here to play a game of chance.

(Bill deferred)

Next Order.

THE PUBLIC PARTICIPATION BILL
(SENATE BILLS NO.4 OF 2018)

The Deputy Speaker (Sen. (Prof.) Kindiki): I cannot see Sen. Wako. My direction in the previous item still applies. Going forward, the House will be very harsh on sponsors of Bills and Motions who just decide to walk away and keep us here reading their businesses without any communication.

(Bill deferred)

Next Order.

MOTIONS

ADOPTION OF REPORT OF THE SENATE DELEGATION TO THE
WOMEN POLITICAL LEADERS ANNUAL GLOBAL SUMMIT

THAT, this House adopts the Report of the Senate Delegation to the Women Political Leaders Annual Global Summit held in Reyjavik, Iceland from 28th - 30th November, 2017, laid on the Table of the House on Wednesday, 14th February, 2018.

(Sen. (Dr.) Milgo on 22.2.2018)

(Resumption of debate interrupted on 22.2.2018)

The Deputy Speaker (Sen. (Prof.) Kindiki): Motion of the Report of the Senate Delegation to the Women Political Leaders Annual Global Summit. Sen. (Dr.) Milgo is also not here. This is extremely disappointing.

(Motion deferred)

Next Order.

NOTING OF REPORTS OF THE 47TH AND 48TH SESSIONS OF
THE ACP-EU JOINT PARLIAMENTARY ASSEMBLY

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. (Prof.) Kamar, give the Reports of the African, Caribbean and Pacific (ACP) Parliamentary Assembly and the Inter-Sessional meeting and the 34th Session of the African, Caribbean and Pacific – European Union (ACP-EU) Joint Parliamentary Assembly.

Sen. (Prof.) Kamar: Thank you, Mr. Deputy Speaker, Sir. I beg to move the following Motion:-

THAT, this House notes the Reports of the 47th and 48th Sessions of the African, Caribbean and Pacific (ACP) Parliamentary Assembly and the Inter-Sessional meeting and the 34th Session of the African, Caribbean and Pacific – European Union (ACP-EU) Joint Parliamentary Assembly held in Brussels from 9th to 12th October, 2017 and Haiti on 13th and 20th December, 2017, respectively, laid on the Table of the House on Wednesday, 28th February, 2018.

I am happy to present these two Reports before the House. The 47th Session of the ACP Parliamentary Assembly took place as mentioned on October, 2017 and the Assembly was preceded by the committee meetings of the ACP Group, which are the African, Caribbean and Pacific group of parliamentarians and was followed by the Inter-Sessional Committee meetings of the ACP-EU Joint Assembly.

The delegation of this meeting as you are aware is led by the National Assembly and the 47th one was led by hon. Ruth Mwaniki, I was the Senate representative. In the delegation, we had hon. Lilian Gogo, who is Member of Parliament (MP) for Rangwe. We had three clerks in the delegation; Mr. Samuel Njoroge, Mr. Amos Kiangwe and Ms. Getrude Chebet. The Kenyan Ambassador to the Kingdom of Belgium and the Grand Duchy of Luxembourg and Mission to the European Union, His Excellency Amb. Johnson Weru and Ms. Dorothy Nthiwa from the Kenyan Embassy in Brussels, were on hand to provide technical support to the delegation.

The 47th Plenary Session considered and debated issues affecting the member states and the committees agreed on topics for discussion and expert review. They also exchanged views on selected topics and urgent topics for resolution in the presence of

experts. Our delegation participated very actively in all the deliberations and issued statements with regard to various topics on the position of our nation. Kenya also provided a brief on the political situation in the country at the time, post-general elections, assuring the delegates that there was peace in the country despite the fact that the repeat election was going to take place at the time.

On the meeting of the 48th, the delegation to Haiti for the meeting of December, 2017, was led by the Hon. Patrick Muiru, who is a Member of the Speaker's Panel in the National Assembly. He was accompanied by hon. Lilian Gogo, hon. Corneli Serem, hon. Wafula Wamunyinyi and myself on behalf of the Senate. We had the following clerk; Ms. Wanjiru Ndiriri, Mr. Noah Too and Ms. Lilian Osundwa. Amb. Johnson Weru provided the technical advice.

The Joint Parliamentary Assembly was preceded by the three standing committees which are; Political Affairs, Economic Development and Trade and Finance. At the time when we were in Brussels, we chaired the Economic Development committee and on proceeding to Haiti, it was the change over time because we had one year of leading that committee.

For the benefit of Members, I will say something about the ACP-EU Group. The ACP-EU Joint Parliamentary Assembly was created out of a common desire to bring together the elected representatives of the European Community, who are the members of the European Parliament and the elected representatives from African countries, the Caribbean and Pacific states who form the ACP Group. Those groups must be groups that have signed the Cotonou Agreement which I will be mentioning later.

Since the entry into force of the Treaty, that is the Cotonou Agreement, the European Union has acquired a more prominent role in trade activities between itself and the ACP Groups. A substantial part of the work of the Joint Parliamentary Assembly is directed towards promoting human rights and democracy and the common values of humanity and this has produced joint commitment undertaken within the framework of the United Nation conferences as well as resolutions of partner states to implement.

The composition and working of the groups, the representation of the African, Caribbean and the Pacific (ACP) bring together 78 member States who, under the Cotonou Agreement, must be Members of Parliament (MPs). They meet their European parliamentary counterparts who must also number the same; 78. The number comes from the 27 partner states of the European Union bringing together; a Parliament of about 156 members. The joint parliamentary assembly meets alternately in all the ACP countries and the European Union (EU).

Mr. Deputy Speaker, Sir, two co-presidents exist and we are happy because Kenya has enjoyed the state of co-presidency previously when the hon. (Dr.) Joyce Laboso, the current Governor for Bomet County, was a leader of the delegation in the last Parliament. As I had mentioned earlier, there are three standing committees; the committee on political affairs, the committee on economic development, finance and trade and the committee on social affairs and environment. The assembly also rotates membership among the committees and every partner state is supposed to be in one committee. We also do a rotational system when it comes to the chairing of the committees.

The assembly regularly forms exploratory and fact-finding missions such as missions for election observation or for any issue that may be emerging in partner states. The impact of the work of the joint parliamentary assembly goes well beyond the economic considerations and embraces the fundamental objectives of the development of mankind and the establishment of peaceful relations among nations and the world at large. The ACP Joint Parliamentary Assembly is a democratic parliamentary institution which aims to promote and defend democratic processes in order to guarantee the right of people to choose their own development objectives, agendas and decide on how they govern themselves.

Mr. Deputy Speaker, Sir, the joint parliamentary assembly has made an active contribution towards the implementation and enforcing of successive ACP conventions. It has also put forward numerous proposals.

I will just mention a few of them:-

(1) Advocating for the role of women in the development process. There is a whole gender committee that looks into such matters.

(2) The integration of the environmental policy in development process especially in this age of climate change and sustainable development activities.

(3) Promotion of trade as a tool of development particularly by way of the economic partnership agreements which are overseen by the founder Cotonou Agreement.

(4) The drawing up of rural development programmes and micro projects tailored to the needs of specific communities.

(5) The promotion of regional, political and commercial co-operation.

Mr. Deputy Speaker, Sir, the forum has elected members as I had mentioned before, drawn from the EU and the parliaments of Africa, the Caribbean and the Pacific states. Prior to the joint parliamentary assembly, the ACP committees hold meetings which are followed by a meeting of the ACP parliamentary assembly which brings together the Africa, Caribbean and Pacific states before the joint ACP and EU meetings.

This has promoted a lot of inter-regional relations and has given birth to collaborations among the regional blocs in Africa itself. It is gratifying that in the last meeting - the 49th meeting - whose report is not here yet, when the African group was meeting, the meeting in Rwanda was taking place and we were extremely excited to hear that our heads of states were opening up so that there is a trade flow among the African states.

This is one of the principles contained within the Cotonou Agreement; that the EU should deal with Africa as a bloc. However, since we have regional groupings, they have sometimes had to deal with the regional groupings rather than Africa as a whole which would have been more advantageous. It is very gratifying that has taken place.

Mr. Deputy Speaker, Sir, from the year 2002, the EU and individual as well as groups of countries that together form the ACP group of states have been negotiating free trade under the economic partnership agreements. The general framework for negotiating the free trade is found in the Cotonou Agreement. The overall objective of Economic Partnership Agreements (EPAs) is to ensure sustainable development of the ACP

countries, their smooth and gradual integration into the global economy and eradication of poverty.

The issue of eradication of poverty found its place in many different statements within the Sustainable Development Goals (SDGs) that are currently in force. It is within the framework of the ACP-EU that we have been dealing with that. The EPAs specifically aim at promoting sustained growth, increasing the production and supply capacity of the partner states and fostering the structural transformation and diversification of the ACP economies and providing support for regional integration by being tailor made to suit specific regional circumstances.

This has been extremely important for the African states as well as the Caribbean and the Pacific states because promotion of regional integration has opened up the regions for access of goods and movement of persons and goods. We look forward to a time when the continent will be open for anybody to go and work anywhere and goods to move freely. That will be important for us as Kenyans because we will forget about the 47 tribes and start thinking about establishing businesses in Zimbabwe, going to South Africa for businesses. We will be going to South Africa for business and people from the same regions will also come to us.

Some other key features of Economic Partnership Agreements (EPAs) include the following. They are World Trade Organization (WTO) compatible agreements that go beyond conventional free trade agreement, focusing of African Caribbean and Pacific (ACP) development, in particular, taking into account their socio-economic circumstances, including cooperation and assistance to help ACP countries benefit from the agreements. They open up the European Union (EU) market, which is a very important thing for this House to note.

These agreements open the EU markets for exports and imports fully and immediately. They allow ACP countries to trade with the EU. This kind of relationship is important for us because our exports to Europe have continued to be of a very small fraction compared to goods that we import from Europe. So, with these kinds of economic partnership agreements, there is an opening; a window and an opportunity for us, as a country, to continue to promote trade and export of goods.

Mr. Deputy Speaker, Sir, what has been good in the recent times is the increase of goods that are being exported from Kenya to the EU, which now includes agricultural products, fruits and vegetables as well as the flowers, which have traditionally been exported. This is very important for us because as much as our climate is extremely conducive for production of flowers and vegetables, we do not have to produce for ourselves; we can also produce for trade. These agreements between the EU and the ACP States have become a great opportunity for this country.

Mr. Deputy Speaker, Sir, with those remarks, I beg to present this report to the House and ask Sen. Poghisio to support.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator. It is to second.

Sen. (Prof.) Kamar: Mr. Deputy Speaker, Sir, I request Sen. Poghisio, who was previously a Member of the delegation to second.

Sen. Poghiso: Mr. Deputy Speaker, Sir, I beg to second the report. This is a comprehensive report of the activities of the African Caribbean and Pacific-European Union (ACP-EU) Joint Parliamentary Assembly.

In the 9th Parliament, I represented our Parliament as a delegate to the ACP-EU with the late hon. J.J Kamotho. I remember going through the same issues that are going on up to today, mostly on Economic Partnership Agreements (EPAs) and also on the European Development Fund (EDF). It is important for the House to be briefed on these activities since Europe is one of our big markets.

The EU which is in partnership with the ACP group bring together a possibility of enriching our cultures, economic exchanges and understanding of the political situations in these two regions of the world. The ACP makes a country understand that it is a big country even when it is small. The fact that we are 45 million strong population-wise, we are on the same platform and taken equally with a country which has a population of about 10,000 people. The small countries of the Pacific, like Micronesia and Vanuatu, have small populations and economies but argue the same way as strong economies. We ask that we share these experiences.

I commend our delegations that have gone there for fighting so hard for Kenya by negotiating through the EPAs. We have a strong economy because we are able to do business with Europe. The Kenya horticultural products are of high quality. Every time you attend these meetings you hear about how we must improve the quality of our markets and products. It helps us to compete in terms of quality.

I commend this delegation for this report. I urge Members to read the report to understand what EPAs are and the fact that we are on the 11th EDF. We can take advantage of that Fund to get our development financed and so on.

When we were there, we were still struggling with the Cotonou Agreements. Now we are dealing with Post-Cotonou agreements, which is good because we are now broken into smaller groups that we can engage as Africa and ACP.

I second this report and urge Members to read it, get briefed and understand what happens trade-wise and in political and social committees in the ACP-EU Joint Assembly.

Mr. Deputy Speaker, Sir, with those few remarks, I second.

(Question proposed)

Sen. (Dr.) Zani: Thank you, Mr. Deputy Speaker, Sir. I stand to support the noting of this Report and thank the delegation. This was a comprehensive delegation that went out, not only as participants, but also to find out what we would reap from this whole process. They looked at some of the issues that were key for Kenya and articulated them. Consequently, they have brought them to the Floor of the House for debate, noting and to help us improve. It is from such reports that we can also improve our inputs in the various Committees that we serve.

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

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

I also wish to congratulate and note that the person who has prepared this Report has done a good job. It is clear, concise and detailed. There is nothing that is missing out. Anybody looking at it can quickly pick into the various facets of this report that are key and important.

Mr. Temporary Speaker, Sir, I wish to note that most of the issues that are discussed in this Report touch on Kenya. For example, there are issues on health and ensuring that health systems are put into good use and properly structured, so that they can address various diseases, keep up with the times and address the infrastructure in order to ensure that we have a healthier nation.

The other key thing was the issue of girls' empowerment through education. I know that even here in Kenya this has been a big issue. Over time, we have made progress because when we look at the educational trajectory, especially for primary, secondary and university, the gender gap is reducing as we move on. In primary schools, we are slightly over 50 per cent and in secondary schools, tertiary institutions and universities, we are still struggling, but we will get there.

Another very important component is the inclusion of People Living with Disabilities (PWDs). This brings into insight a group of people who are key in development if we let them be on board.

Lastly is the issue of management of domestic waste. This can finally bring a problem in many countries, especially when it has not been managed well. Disaster control has been a topic for the better part of this afternoon in light of what has happened in Nakuru County and the need to address it comprehensively. It must have come as a sense of comfort to know that there are other countries as well who are dealing with a similar problem. This seems to be a global rather than a country issue. As they went on, they were able, through the experiences of other countries, to make comparisons, understand and see the best way to go about it.

Madam Temporary Speaker, I was impressed by the way the ACP-EU Assembly works in terms of Committees that are there. I have looked at the Committees there and seen that they embrace most of the issues. The first is the Committee on Political Affairs, which touches on political affairs to the extent of election observers and observations. I am glad that they also gave a chance to the Kenyan Delegation to talk about our current situation, probably with inputs that make ours a better electoral process, as we move forward. There is also a Committee on Economic Development, Finance and Trade, which is very critical because that brings the financial sector on board. Lastly they have the Committee on Social Affairs and Environment, which becomes a whole encompassing issue.

On page seven, where the initiatives by the Joint Parliamentary Assembly are highlighted, the key issues coming up are important. One of these issues is the upgrading of women in the development process. With the realization that women form half of the population, they look at things differently and have certain organisational abilities and there is need to incorporate them.

There is also the integration of environmental policy in development projects, the promotion of trade as a tool for development, the drawing up of rural development

programs, micro programmes and projects tailored to the needs of specific communities. These are very important areas, especially for us in Kenya because 80 per cent of our population is rural-based. Therefore, the projects and programmes that are specific and target rural-based communities are very important. Lastly, the promotion of regional political and commercial cooperation across the board becomes very critical.

Madam Temporary Speaker, I will not go through the report in detail because I think everything has been written there. It takes a longer reading to encompass and take some of these points home. However, I want to touch on certain key issues that are in this report as a way for us to borrow from the discussion. The one that strikes me most is on climate change and the realization that many countries, including Kenya, have made efforts. However, sometimes even what we are observing now as disasters is probably as a result of climate change. It was shocking sometime back when, around Nyahururu near the slopes of Mount Kenya, and even another time in Nairobi, we woke up to find snow pebbles. There was a realization that one day we might be the ones experiencing winter rather than the European community, who are now experiencing it. Climate change is, therefore, very real. For me, we might go into an overdrive for education on other infrastructural issues. However, when we do not dwell on climate change, we are going to get it wrong. It is clearly stated here that:

“Climate change will lead to a rise in poverty and inequalities.”

Therefore, Madam Temporary Speaker, not addressing the problems of climate change might remove overnight all the efforts that have been put in addressing poverty. Therefore, looking at poverty, inequalities, issues of food insecurity, health problems, surface water scarcity, coastal flooding, air pollution and the rise in the displacement of people is very real. This has been happening in other parts of the world but more and more, we are beginning to see the ravages of climate change. This becomes very critical for us.

Madam Temporary Speaker, part (c), notes that whereas the most serious effects of climate change are affecting developing countries particularly in the least developing countries, the people affected most by this, as this report clearly indicates, are the women, children, indigenous people, pastoralists, farmers and fishermen. This report at one point also very clearly states the importance of building the blue economy and ensuring that it can be sustained. This is so that at the end of the day it can play a bigger role in the income of a country. That has been ignored for some time but it needs to be put into place. This pinpointing of women, children, indigenous people and pastoralists gives us a nexus of beginning to approach problems with them in focus.

Madam Temporary Speaker, I wrap up by looking at the resolutions that were made. One of them is that every state has the primary responsibility to prevent and reduce disaster risk, including international, regional, sub-regional, trans-boundary and bilateral cooperation. This is very encouraging and about the reduction of disasters. We have been looking at it from the point of Kenya at a national level. However, this resolution is very important because it allows us to borrow expertise because we are breathing, getting out and involving trans-boundary and bilateral cooperation through international and regional initiatives. Probably by next week, we will be looking at the issue of the Disaster Management Board and maybe we could ensure it has these components. We are not only

looking at it at the national, but also from the regional level. We are looking at the partnerships that can come to the fore and how they can be put together to ensure that whole issue is adequately addressed.

Madam Temporary Speaker, there is also the important issue on food security and enabling to ensure that all countries can fully exploit their resources. One key finding from the Food and Agricultural Organisation (FAO) is that 87 per cent of the world's marine fish stocks are fully exploited, over-exploited or depleted. What does that mean for the fishermen communities? What does it mean for the safety, security and the possibility of exploiting the sea, which is already over-exploited? This is just one aspect because of commercial farming in new areas. Once again, there is need to balance so that we are looking at an eco-system which, if it is over used or over exploited, it will move us into a problem. That is also one of the reasons why we are having climate change.

Madam Temporary Speaker, those issues which were discussed are key and they resonate. It is, therefore, up to us to look at the specific details in this report. It is important to stress the importance of investments and also financing the blue economy projects, which I had already mentioned. That is the last one I want to talk about because it is key.

Madam Temporary Speaker, the work that was done through this particular Assembly is very helpful and I congratulate the team. I wish we can take some of these issues they brought on board and implement them, even as we shape our own policies in this country.

Thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. Nyamunga): There seems to be no further interest or comments. I now call upon the mover to reply.

Sen. (Prof.) Kamar: Madam Temporary Speaker, in replying, I thank the Members who have spoken. The functioning of our committees is commendable. They are vibrant. We sit in all of them although there is a rotational position that you must sit in one committee. In this particular Session like the Session of the 10th Parliament where I used to lead the delegation, we started when we were in a political situation that needed clarification.

Madam Temporary Speaker, you may remember that when we were in Brussels, we discussed the situation in Kenya. At that time, the Supreme Court had just said that we go for repeat elections. Everybody was nervous. We told them not to be nervous because we came through in 2007. We came back. It was nice to report in Haiti that all was well in Kenya. We had repeated elections and all went well.

So, we look forward to the next session when we can inform them that we have gone beyond that. We have had handshakes and that all is well in this country. It makes me feel proud to represent the country in this kind of delegations, where when you are discussing the country's situation, you can positively predict that Kenyans will turn around. These fora give us opportunities to portray the image of our country positively and make other states, especially the European Union, understand the workings of our nation.

Madam Temporary Speaker, with those remarks, I commend the report to Members. I urge them to look at the details and use them for opportunity.

The Temporary Speaker (Sen. Nyamunga): Very well executed report. I will now put the question.

(Question put and agreed to)

Next order.

Sen. Were: Madam Temporary Speaker, I rise to move the Motion on the Establishment of the Office of the Commission of Administrative Justice, otherwise known as the ombudsman at the county level. The Commission on Administrative Justice as prescribed by Article 59(4) of the Constitution and the Commission on Administrative Justice Act, No.23 of 2011, is mandated to check maladministration on the part of public officers and to deal with instances ---

The Temporary Speaker (Sen. Nyamunga): Order, Senator. May I bring to your attention the fact that you should read the terms of the Motion. Please proceed and move the Motion.

MOTION

ESTABLISHMENT OF OFFICES OF THE CAJ AT THE COUNTY LEVEL

Sen. Were: Madam Temporary Speaker, thank you for the advice. I beg to move the following Motion:

THAT WHEREAS Article 59 of the Constitution establishes the Kenya National Human Rights and Equality Commission to among other functions investigate complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct;

AND WHEREAS Parliament enacted the Commission on Administrative Justice Act (No.23 of 2011) to restructure the Kenya National Human Rights and Equality Commission and to establish the Commission on Administrative Justice pursuant to Article 59(4) of the Constitution to provide for the membership, powers and functions of the Commission on Administrative Justice and for connected purposes;

AWARE that the function of the Commission on Administrative Justice among others is to investigate any conduct in state affairs, or any act or omission in public administration by any State organ, State or public officer in National and County Governments that is alleged or suspected to be prejudicial or improper or is likely to result in any impropriety or prejudice; including investigating complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct within the public sector;

FURTHER AWARE that the Commission is expected to carry out its mandate in accordance with the values and principles set out in the Constitution and other laws of Kenya;

COGNIZANT that the right to access public service and fair administrative actions is critical to delivery of services to the people both at the National and the county levels of government and in other related public institutions;

CONCERNED that the Commission has its headquarters in Nairobi with satellite offices in the counties of Mombasa, Kisumu, Isiolo and Uasin Gishu;

FURTHER CONCERNED that the absence of the Commission offices in the rest of the Counties has made it difficult for members of the public to report allegations of maladministration, delay, administrative injustice, discourtesy, incompetence, misbehaviour, inefficiency or ineptitude within the public service;

NOW THEREFORE, the Senate calls upon the Commission on Administrative Justice to urgently establish satellite offices in all other remaining counties to decentralize its services to facilitate members of the public to interact with the Commission and report allegations of maladministration in the public service with ease.

Madam Temporary Speaker, the Commission is the protector of public interest and exists to be the citizens' watchman in the management of public affairs. The act bestows upon the Commission powers to conduct investigations on its own initiative or on a complaint made by a member of the public. It can issue summons and require that statements be given under oath, adjudicate on these matters that relate to administrative justice, obtain relevant information from any person or Government authorities and to compel the production of such information.

This Motion seeks to address the need for devolution of the services of this Commission to the counties, which is very paramount. The cost of travel to Nairobi for many aggrieved citizens to seek justice is prohibitive. At present, the Commission has four satellite offices in Mombasa, Kisumu, Isiolo and Uasin Gishu counties. While we laud this effort to decentralise services, further satellite offices need to be opened in the remaining 42 counties, if we are to give counties valid jurisdiction in line with devolution. Claims should be addressed at the county level and its devolved units so as to eliminate red tape technicalities that prevent citizens from receiving services at the county level.

Creating offices of the Commission on Administrative Justice at the county level will compel institutions concerned to deliver services to the public in a timely manner and increase accountability of public officials in the counties.

Madam Temporary Speaker, in its present centralized status, the office of the Commission on Administrative Justice deals with hundreds of issues of delay due to collection of information from distant counties. There is no follow up on matters under investigation.

This Motion will therefore bring the much needed urgent attention to the need to mitigate the issues of delays, incompetence and transgression and allow citizens to receive services and justice locally and in a timely manner.

I would like that the office of the Ombudsman at the county level be initially housed by governors. Also, commission offices at the county level should be given resources because currently they suffer budget constraints. Since they are centralized, it becomes difficult to ask for funding for them to decentralise these services. So, they should be given more resources.

We also expect that the structure of the implementation of this Motion should be developed by the Commission on Administrative Justice at the national level so as they put up these satellite offices at the county level. They should also outline for us the implementation structure of the decentralisation and also put timelines to it.

The Commission on Administrative Justice should also create a reporting mechanism, as they draw up the structure, and offer linkages with other agencies for further action. Such agencies include the Ethics and Anti-Corruption Commission (EACC), the Office of the Director of Public Prosecution and the Kenya Human Rights Commission (KHRC).

We also need a review of the existing Act to put the decentralisation of the Commission offices into law. We expect that through this Motion, we will amend the Commission on Administrative Justice Act, especially Section 55 that has a sunset clause, to enable the continuation of the work of the Commission on Administrative Justice.

It is also important that we take the Ombudsman offices to the counties because currently social media seems to be taking up the role of the Commission on Administrative Justice at the county level with no further action on whatever transgressions that are there.

His Excellency President Uhuru Kenyatta recently launched an initiative dubbed *Huduma Mashinani*. With *Huduma Mashinani*, we expect that there will be some sort of accountability at the *mashinani* level. Therefore, this Motion is crucial at this point to achieve the initiative by the President.

With those few remarks, I beg to move. I request Sen. Pareno to second.

Sen. Pareno: Thank you Madam Temporary Speaker. I thank the Mover for coming up with this very important Motion on devolution of the Office of the Ombudsman.

I rise to support this Motion because two years ago I was once assisted by the Office of the Ombudsman. As a lawyer, I would have quickly rushed to any court of law when I felt that I was unfairly treated by the administration. It was a case where I was unfairly treated by the Rural Electrification Authority (REA).

I weighed the options that I had. I had the option of going to court or going to the Ombudsman. The issue about rural electrification was not only for me but for the entire village. Almost 40 homes have benefited after the Ombudsman assisted me. When we advised the villagers that we should go to the Office of the Ombudsman instead of going to court, they were asking me what that office is all about and they did not know who the Ombudsman is. In fact, he needs to demystify some of the services for people to feel them right at the grassroots level.

I choose to go to the Ombudsman because I knew the issue was about unfair administration of justice. Having a legal background, I knew it would be faster for the Ombudsman to handle my situation than for me to go through the processes of a court procedure.

I also looked at the cost, knowing that I was carrying the burden of a whole community. You have to bear the cost of going to a court of law to file cases. I chose to use the Ombudsman Office because first of all it is free. That means you can easily access it. Secondly, it is not a long procedure. I just wrote a complaint on behalf of the community stating how I had been unfairly treated by the REA and that I wanted to be heard.

To me, this is a good Motion because it will take services closer to *mwananchi*. If we devolve this service, then they will have it. It will also create awareness that there is an office of the Ombudsman. If you take it to them, they will know it exists. By the time I was making the complaint on behalf of the community, I had to travel all the way from Sultan Hamud – the Senator for Makueni knows where that is – to Westlands for me to access the Office of the Ombudsman. So, you can imagine our mothers who do not even know how to go to Nairobi. If you ask them to go to the Office of the Ombudsman in Westlands, then they will never access that service.

Devolving the services will mean a lot to them. First they will know that it is there and secondly it is accessible because they will just walk there and file their complaints. Thirdly, filing a case is easy and free. The other thing is devolution in itself. If we are devolving every other service, this is one service that should be devolved. We are talking about devolution in many sectors. As a result of that, there is likelihood that disputes are likely to arise out of unfair treatment by authorities. In fact, people will not believe when you tell them the Ombudsman is helping them to complain against the Government. So, it will be easier because a lot of functions are being devolved and out of that a lot of issues will arise due to unfair administration of justice. We expect that there will be more issues; the more reason we should devolve the Office of the Ombudsman.

When I visited the Office of the Ombudsman, I appealed on behalf of the community. I told them that for them to see what was happening about the project that I was complaining about – because there was so much wastage yet I was being denied – I asked them to go to the ground but they were unable. From my own assessment, they could not come because of the lean personnel and they do not have much resources to move around the country so that they can give the services.

Devolution will ensure that the little there will be is divided to the few Ombudsman offices that will be created. That will ensure that they get a good budget. At the end of the day, they will have the resources and personnel that go with it. The more the personnel, the more the resources and services to the people.

I support this Motion. I am glad the Mover has hinted that this will lead to a review of the main Act that created the Office of the Ombudsman. A review of the Act will ensure that people are served better in terms of what we are talking about in this Motion.

At that time, they could not even hear witnesses. People could complain but there was no room for them to hear or see what people were talking about because they could

not go to the ground. We ended up relying on affidavits and submissions which we brought all the way from the far Kajiado to Nairobi.

Devolving services of the Office of the Ombudsman will ensure that people feel it. Once it is devolved, they can see what the people are suffering from. They will hear from them. They should not rely on affidavits and submissions like they did in my case.

I strongly support that we devolve the offices of the Ombudsman.

(Question proposed)

The Temporary Speaker (Sen. Nyamunga): I will now call upon the Senators who want to make their contributions to this Motion. I will give the first opportunity to Sen. Kalonzo Mutula Jnr.

Sen. Mutula Kilonzo Jnr.: Madam Temporary Speaker, it is Sen. Mutula Kilonzo Jnr.

The Temporary Speaker (Sen. Nyamunga): Yes, Sen. Mutula Kilonzo Jnr., Senator for Makueni County.

Sen. Mutula Kilonzo Jnr.: Thank you, Madam Temporary Speaker. I might be mistaken.

I rise to support the Motion by Sen. Were. This is one of those very timely issues that we have not tackled. I must confess that it is only that we do not follow up the things that we do, as a Senate. I had the privilege in the last term to travel to the Republic of Germany to a state called Kemnitz. It is one of those states that were attacked during the World War and it was completely obliterated.

During our visit, we managed to meet the Ombudsman in Kemnitz. That office is where public service is checked. This gentleman is like a judge, police officer, prison officer and he is feared and revered. Public officers shake in their boots at the thought that they can be reported to the Ombudsman. That is how powerful this office is. These are the ideals on principles of public service that are rarely enforced in Article 232 of the Constitution, which we rarely speak about.

The Committee of Justice, Legal Affairs and Human Rights did a Bill on Principles of Public Values under Article 232 in the last Senate. It was the only Bill under the Fair Administrative Act that was not amended by the National Assembly. It says that you recognize public officers who do a good job and punish those who do not work or violate their offices. Currently, they are rarely recognized.

With the advent of devolution and the creation of governments, both the national and county, we have cases where people, even ward administrators, harass Kenyans. Chiefs and sub chiefs are taking peoples' wives and stealing public property by becoming administrators of an estate and dividing property amongst families. I have many cases of this nature. Who is supposed to check these people? It is the Ombudsman to tell them that they have no mandate to determine an estate of a late person. He or she is to tell them that they have no mandate to determine that this is the wife or not the wife of the deceased. He is to also tell them that they have no mandate to call meetings at night or determine marriage disputes. In a case that I know, one chief ended up marrying the person who went to him to solve a dispute. This is how serious this matter is.

It is so serious that it needs to have a check and balance by having an Ombudsman. We enacted The Fair Administrative Act under Article 47 which says that you have a right to access information such that if you request for it from Government functionaries or state officers, if they refuse to give you, they must give you a reason within a specific time. When the Government issued an order for birth certificates---

Sen. Kinyua: On a point of order Madam Temporary Speaker.

The Temporary Speaker (Sen. Nyamunga): Sorry Senator. What is your point of order Senator for Laikipia?

Sen. Kinyua: Madam Temporary Speaker, I want to understand for I am a bit confused. How can a wife be stolen?

(Laughter)

Sen. Mutula Kilonzo Jnr.: Madam Temporary Speaker, I was explaining that under The Fair Administrative Act and Access to Information Act, the Kenyan public is entitled to access to information on anything within the public view or any entity. Under The Fair Administrative Act, when you request for that information, it is supposed to be given to you, but the question is: Who checks in the county if one gets the information that they have requested for from the Government functionaries? Nobody does that.

I would support this with all my heart for when the Government issued an order for children to be registered and have birth certificates, the chiefs were requested to issue orders or letters and some chiefs were asking for Kshs500 or even Kshs1,000. This is because there is a practice that our mothers do not get notification of birth when they get children outside the system that is at home. This is what is called impunity. Our Identification Cards (IDs) are given to us for free. Why do we charge mothers of this country for birth certificates? I am still waiting for the logic. I have not heard the logic behind acquiring birth certificates upon a charge and yet when you are 18 years old, you are not charged for your ID. Who are you charging? Are you charging the children of this country for birth certificates? Who is supposed to complain? You are punishing the minor and not the mother for this is a charge to the child. The office of the Ombudsman is one of those methods that will help us ensure that we have some element of oversight. We, as Senators, can do oversight.

I have a sub-chief who is licensing one bar and denying the other and a chief who is also running a bar competing with four others. I would like to tell Sen. Were, that if there is something that we should support, this is it. The checking of public servants should be at all levels. This should also be an opportunity for the public to report. There is a chief in Nakuru who is on Twitter. When something is missing in Nakuru, he tweets about it. Whenever a child goes missing, he also tweets about it. I have a girl who was going to Siakago when the schools opened and she is now in Line Saba in Kibera and we cannot find her. However, if we had a chief like the one in Nakuru, he would have reported through Twitter that there is a girl who did not go to school in Siakago and she is with some old man in Line Saba or Silanga in Kibera.

Madam Temporary Speaker, the Ombudsman should not be an office for purposes of only reporting bad things. It should be for people who have done well. The people who

have worked in Government like Sen. (Prof.) Kamar will tell you that most of the people who receive promotions are because they either speak the right dialect or mother tongue or that they have a relative or a godfather. It is not because they perform. We should therefore promote the idea of reporting for people who work well so that for once, promotions are based on merit. That chief in Nakuru County should not only get a promotion but should be rewarded for doing a good job. There is also a traffic police officer in Sultan Hamud when there were floods there, he wore gumboots and stood in the middle of the water to ensure people did not go there. The Inspector General of Police issued a note to him telling him that he did a good job but that is not the way to deal with public service under the principle of Article 232 of the Constitution to say that you have rewarded that person.

Madam Temporary Speaker, when the President was rewarding some people recently, the Githeri man and others, we asked why that gentleman was given a commendation by the President and not the people who work. If we promote a good public service, from the county to the national level, then this is something that we should support. We support this by insisting that it must be funded. We keep saying that the Auditor-General's Office should be devolved to the 47 counties for purposes of audit. However, we do not say that the Office of the Ombudsman should also be devolved. The Ombudsman who left that office, hon. Otiende Amollo, truly showed us how an office should operate. By the time he left that office, it was truly an Ombudsman Office. Nobody raised an issue about the procurement process there or a meeting which he attended when he should not have.

In the principles of public service as Sen. Were has proposed, if we are going to have an Ombudsman, one of the things that we should say is that we should put men and women of good moral character and integrity. Sen. (Dr.) Zani and I were arguing this afternoon over lunch that truly speaking, when we insist that we must put people in office by merit, it is absolute lip service. I know that we have done things that are wrong even here in the Senate. However, allow me to say that if you want to have a true Ombudsman, he or she must be a person who is prepared for a lifestyle audit, declare how many wives you have and the number of cars that you own. If we are going to check impunity and corruption, you must truly be above reproach like Caesar's wife. Otherwise, this will be an avenue like what the Ethics and Anti-Corruption Commission (EACC) has done in some cases when they use their powers and privileges to investigate corruption to punish and use witch-hunt for people who are otherwise not guilty of corruption.

I beg to support. Thank you.

Sen. (Dr.) Zani: Madam Temporary Speaker, I stand to support this Motion right from the outset and congratulate Sen. Were. She should expeditiously give the right amendments to this. As a Motion, it is a tester and from what we have heard, this is one of the services that really needs to be devolved to the counties. When you go to Itsimba Village, where I come from, and mention the Ombudsman Office, they will first of all ask you what the Ombudsman is and what he or she does. I am sure that will also happen in Turkana and deep in Kericho as well. Listening to Sen. Mutula Kilonzo Jnr. making his contribution, it occurs to me that the Ombudsman comes very close to the village elder of high repute. We know how society has disintegrated now. We are getting less of that.

Impunity and corruption are becoming a culture in this country and people are given appointments to offices that they do not merit.

The people of Kenya are losing faith in the court systems which are also very expensive and complicated. Some of the issues that need to be solved are issues that can be brought to a closure very easily. I was looking at the report of the Office of the Ombudsman for the previous year and they have detailed the number of cases that they have dealt with, case by case. I could see that they have done a lot. From the onset, I think of what happened to that office, is that there was probably not enough publicity. I think that office has been too courteous and busy doing their work yet sometimes one has to shout from the rooftop so people know that you are there. I am sure that Hon. Otiende Amollo did a good job but very few people know about this office. That is why this office has to be devolved to the counties so that people know and we do not congest our Judiciary and legal systems with chicken cases and wife theft case. Somebody wondered how a wife can be stolen. The Ombudsman can explain that to us better.

Madam Temporary Speaker, there are many cases. These days we hear of cases where somebody has shot the other, the wife has shot the husband and many other family disputes. Disputes to do with land and inequalities that we are struggling with are what they should be dealing with. I liked the traditional system that dealt with that so diligently and effectively. In my mind, it seems to have been replaced by the Office of the Ombudsman. The imagery that Sen. Mutula Kilonzo Jnr. has drawn to the sort of power and assertion that the Ombudsman should and the means that the Government has to support and push for such an ombudsman to have the capacity at the county and national levels. I am sure that we will amend that Bill to get the right Ombudsman with the counties. We must get people of merit whose behaviour, reputation and character is not in dispute. If we do not do that, the problems is that we will have models for the ombudsman place because it will look like a job creation yet we all know what job creation means in the Kenyan context.

I hear Sen. Mutula Kilonzo Jnr. saying “yes”. We must get the right person in the right office for the ombudsman job. I would like to inform Sen. Were that even as talk about it, we should also make sure that the two-thirds gender rule is applied. Let us have women ombudsmen coming up to show their leadership. Women are well known for sorting out matters of discipline. I support this.

In light of having such widespread impunity, now rather than tomorrow, this needs to come in the form of an amendment or a Bill. I am sure that we will support it and the National Assembly will not have a problem. It should be able to deepen our administrative justice reforms which are critical. We need to devolve the office closer to the people geographically and in terms of proximity. It will also ensure that there is better coordination and monitoring. People will look at and address these cases for better accessibility. A public notice and document has to be made to let people know that the services of the ombudsman are free so that we do not have people picking on this and charging services like birth certificates and notifications.

Mr. Temporary Speaker, Sir, on a light note, the other day we had floods and people standing on the doors of *matatus* to help passengers who had to choose between walking through the water or paying to be carried on the shoulders because Kenyans are

innovative once they identify a gap. When people talk about unemployment and self employment, in our minds, that is what we mean. When we are able to apply our ingenuity, we quickly employ ourselves to do something. This is exactly what discourages people.

There are certain places in Kenya where people celebrate when they get Kshs1 or Kshs10. Unfortunately, the other day I was at a place that I will not mention and some women came to sell their produce to us. I decided to give them a token of Kshs200. The lady jumped up and down with excitement. We call ourselves a middle income economy and so we should not have such scenes. This is the same person who is expected to pay Kshs1,000 or Kshs2,000 for these services. Not only do we need these devolved units in the counties but also a lot of education, public participation and sensitization so that this particular person is facilitated to do their work. That can only happen if we have an informed citizenry. Part of the work of a good ombudsman is to ensure that there is participatory decision making even within the context of the work that they do. Some of these arbitration processes can be done quickly. For example, the Federation of Women Lawyers (FIDA) is coming up with an administration and mediation for family issues. This is the way to go.

I saw a situation in Nakuru County where young girls were welcoming people into *matatus*. I asked myself what it was all about but I realised that when people behave like this, it reduces the level of pressure that exists within the society. That is the sort of pressure there is with all the injustices that we have. We need to compare the ombudsman to the young, well dressed people who pray and wish passengers a safe journey because sometimes this is all we need. We just want to hear a kind word, laughter and encouragement from somebody. This will reduce a lot of tension.

Last but not least, it is important to improve service delivery. If devolution is to work, we need improved service delivery especially with regard to justice at any level. Let the ombudsman's office be created in county offices as early as tomorrow.

I support.

Sen. (Prof.) Onger: Madam Temporary Speaker, I rise to support this Motion by Sen. Petronila Were for having clearly drawn the inspiration from Article 10 on the national values and principles of governance, Article 47 on the Fair Administrative Act and Article 232 on Values and Principles of Public Service. It is quite clear for every one of us that what happens at the county level leaves a lot to be desired. As already alluded to, the social media has taken over the driver's seat of what is happening. Some of the information being peddled in social media may be either true or false. Therefore, an individual is totally left in a state of flux because they do not know what is happening. When we devolve these services, it is perfectly within the mandate of devolution. According to Article 174 of our Constitution, the values and objects of devolution as captured in (a) to (i) are quite clear to us. This is one service that must be devolved so that services can reach the people.

I am also informed and aware that the things that are going on at the county level are very repugnant. There is an entrenchment of ethnicity, clanism and malpractices which are not conducive to good governance in accordance with Chapter 10 of our Constitution. Therefore, we need to curb all these elements for us to continue to access

services that are necessary and important for our people. Traditionally, some of these issues that affect the family units were resolved amicably by elders or the community where somebody emanated from. Unfortunately, with the new Constitution, people have resulted to litigation which is an expensive and threatening affair.

Sometimes, people are unable to meet the expectations that are required in wanting to pursue a matter which is unfair to every one of them and to every society for that matter. Therefore, the office of the ombudsman is essential for creating the checks and balances in order to get fair administrative justice so that people can move, interrogate programmes and services freely and ask for their rights without being offended.

There is a level of impunity which has developed by the civil servants both in the national Government and county level in looking after what they can garner for themselves rather than what they can dispense to the populations that are within the county level. Therefore, this office is critical and essential since it can put checks to some of these malpractices that are going on. For example, it is pathetic when for instance you get information that instead of a Level 5 hospital offering facilities that are required for a higher management of systems or cases that are referred from other levels, patients are being tossed up and down to buy materials, fluids, medicine, bandages and all manner of things for themselves yet it is supposed to be a high class Level 5 or Level 6 hospital. Our people are going through misery. The office of the ombudsman at the county level will have an easy access for people to approach and make their complaints known by a simple quarrel, petition or letter of protestation,

The Temporary Speaker (Sen. Nyamunga): Order, Senator. You will be given ten minutes to speak when debate on this Motion resumes. Sen. Faki will be given priority to contribute when the debate resumes.

ADJOURNMENT

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, it is now 6.30 p.m., time to interrupt the business of the Senate. The Senate, therefore, stands adjourned until tomorrow, Wednesday, 16th May, 2018 at 2.30 p.m.

The Senate rose at 6.30 p.m.

