

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 25th June, 2013

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

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

PRAYERS

QUORUM CALL AT COMMENCEMENT OF SITTING

The Speaker (Hon. Ethuro): Order, Hon. Senators! Could we confirm if we have a quorum?

The Clerk of the Senate (Mr. Nyegenye): Mr. Speaker, Sir, we have 13 Senators in the House; we do not have a quorum.

The Speaker (Hon. Ethuro): May the Division Bell be rung?

(The Division Bell was rung)

The Speaker (Hon. Ethuro): Order, Senators! We now have quorum. Stop ringing the Division Bell and then we proceed!

NOTICE OF MOTION

Sen. Mukite: Thank you, Mr. Speaker, Sir---

The Speaker (Hon. Ethuro): Order, Sen. Nabwala! Do you have a Notice of Motion? Yours was also listed, but under the Motion itself.

Is Sen. Muthama here?

Okay, proceed.

Sen. Catherine Mukite; it is now your turn.

Order, Senators! We have 10 minutes only to conclude this particular Motion.

MOTION

ESTABLISHMENT OF GRADUATES ENTERPRISE FUND

THAT, aware that the level of unemployment among youths in Kenya is over 70 per cent and rising; concerned that the formal Sector is unable to generate sufficient formal employment for college

graduates, resulting in far reaching ramifications to the economy and society across all counties in Kenya; noting that the youths are unable to venture into private enterprises because of lack of access to affordable credit; the Senate urges the Government to take urgent and immediate steps to ensure legislation is enacted to provide for the establishment of a Graduates Enterprise Fund to offer revolving interest free loans to unemployed graduates in all the 47 counties.

(Sen. Nabwala on 19.6.2013)

(Resumption of Debate interrupted on 19.6.2013)

Sen. Nabwala: Thank you, Mr. Speaker, Sir. I read my Motion---

Sen. (Eng.) Karue: On a point of order, Mr. Speaker, Sir. The last time we adjourned and this Motion was still going on, I had a few minutes to go; I was the one on the Floor.

The Speaker (Hon. Ethuro): Let me check.

(The Speaker consulted the Clerk-at-the-Table)

You are both right; you were on the Floor and you had not exhausted your time allocation. But, unfortunately, the duration of the entire Motion reached a point where only 10 minutes was remaining and that is usually reserved for the Mover to reply. Now, maybe, you can request Sen. Nabwala to donate a few minutes to you; but it is really her generosity.

Sen. Nabwala: Thank you, Mr. Speaker, Sir. I donate my three minutes to the Senator.

Sen. (Eng.) Karue: Thank you, Mr. Speaker, Sir. While I was contributing to this Motion--- First of all, I supported the Motion and, secondly, I was at the point of establishing the fact that part of our problem with the youth is that we are producing too many of them; we need to slow down.

(Laughter)

The other point, Mr. Speaker, Sir, is that quite a number of contributors seemed to be of the view that we do not need another fund because we have a Women Enterprise Development Fund (WEDF), a Youth Enterprise Development Fund (YEDF) and that we have this and that fund. But this Motion is not a fund in itself; it is calling for a statute to be made. Some of these other funds like the WEDF, the YEDF and so on, did not start with a law – there is no statute attributed to them – they started off with something called, I think, an Executive order; and I am not even sure if that exists in the new Constitution.

So, Mr. Speaker, Sir, I appeal to hon. Senators to see that the Mover or the promoter of this Motion is asking for a statute to be brought here so that we can put in all these other, maybe inadequacies we may be seeing in those other funds.

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

Thank you very much for donating two minutes to me.

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

Sen. Nabwala: Thank you, Mr. Speaker, Sir. Sen. Daisy has asked me to donate to her two minutes.

Thank you,

The Speaker (Hon. Ethuro): Proceed, Sen. Daisy.

Sen. Kanainza: Thank you, Mr. Speaker, Sir, for this opportunity. Actually, this Motion could not end without me speaking because I represent the youth of this nation. It is a great pity as we have already seen and read that the majority of us are outside there, tarmacking because of lack of jobs. That is why I stand to support this Motion; that we need a Graduates Enterprise Fund, the reason being that in many cases, youth are used as statistics; indicating that we have 70 per cent youth in this country and 42 per cent of them are unemployed. That is why I believe that the proposed Graduates Enterprise Fund will be important, be it those graduates from the polytechnics, colleges or universities. It is because they have a special need – parents have spent money to take them to school – and here they are, after college, and they do not have employment. In the recent days, like the last two weeks, the Higher Education Loans Board (HELB) has been sending messages to graduates asking them to repay their loans. How are they going to repay those loans if they do not have a source of income? That is why I stand to support this Motion.

Thank you, Mr. Speaker, Sir.

Sen. Nabwala: Thank you, Mr. Speaker, Sir. I read the Motion as I put it to the House:-

THAT, aware that the level of unemployment among youths in Kenya is over 70 per cent and rising; concerned that the formal Sector is unable to generate sufficient formal employment for college graduates, resulting in far reaching ramifications to the economy and society across all counties in Kenya; noting that the youths are unable to venture into private enterprises because of lack of access to affordable credit; the Senate urges the Government to take urgent and immediate steps to ensure legislation is enacted to provide for the establishment of a Graduates Enterprise Fund to offer revolving interest free loans to unemployed graduates in all the 47 counties.

Mr. Speaker, Sir, as the Senator for Nyandarua has said, this is about enacting a law that is to protect the youth. If you read Article 55 of the Constitution, it is the duty of the State to take measures, including affirmative action programs, to ensure that the youth have access to employment.

Mr. Speaker, Sir, I thank hon. Senators for taking time to contribute to this Motion on the establishment of a Graduates Enterprise Fund. In their contributions, Senators demonstrated their knowledge and desire to find solutions to the problems of the youth or graduate unemployment in Kenya. I also thank the media, especially the *Standard* Newspapers, for coming out clearly to focus on the tribulations of the graduates who range from any post secondary training diplomas and degrees in both public and private institutions.

Mr. Speaker, Sir, it has come to my notice that in their contributions, Senators did not understand the differences between the current YEDF administered by the national Government and the need for a fund that takes care of graduates in the counties. This is

because after the training and graduating from college, the graduates mostly come back to their counties to look for their livelihoods. Therefore, it is in the counties that a solution must be found.

Mr. Speaker, Sir, I have also learned from the contributions by Senators from North Eastern region that they have not experienced graduate unemployment in their counties by virtue of the pastoral economy. Recently, the Senate debated a Motion on the establishment of public universities in every county. There is, therefore, need, in the long term planning – if currently it may not be an immediate concern – for preparedness; this cannot, therefore, be overemphasized. The YEDF, which was launched in 2006 to address the rising youth unemployment in the country, is moribund with no clear and realistic targets and has not been satisfactory, effective, consistent or efficient. The National Youth Council Act, which was passed in 2009 and gazetted in November, 2012, has not been allocated funds. Even after conducting elections from the sub-locations to the national level, it only operates from a room in Uchumi House, further denying the youth a chance to voice their problems.

Mr. Speaker, Sir, the data from the Ministry of Education indicates that there are about 10 million pupils in primary schools; a further two million students in secondary schools and with public universities producing about 60,000 graduates annually, the chance of a graduate landing a job, therefore, is very slim owing to the competition for the job openings.

The Speaker (Hon. Ethuro): Order, Senator! Your time is up.

Sen. Nabwala: Thank you, Mr. Speaker, Sir; although I have not made the points. Could you give me two more minutes?

The Speaker (Hon. Ethuro): No; just beg to move!

Sen. Nabwala: I beg to move the Motion.

Thank you. I think it has been in the media; everybody has read about it---

The Speaker (Hon. Ethuro): Order! Order, Senator!

Sen. Nabwala: Thank you.

The Speaker (Hon. Ethuro): Order, Senator! You must learn that when you become generous, you suffer the consequences of generosity.

(Laughter)

You donated half your time for replying to the Motion.

We have concluded that particular Motion, but we will not take a vote until tomorrow afternoon. So, hon. Senators; those ones present and those ones away, you need to lobby Members. Tomorrow afternoon is literally the D-day for voting on all the Motions that we have concluded so far. It is important that the requisite quorum of at least 24 delegations – and you know what I mean – are present.

Order, Senators! I have a communication to make from the Chair, and this is on a visiting delegation from Taita Taveta County Assembly.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM TAITA TAVETA COUNTY ASSEMBLY

The Speaker (Hon. Ethuro): Order, Senators! I wish to acknowledge the presence of visitors who are visiting us today from the Taita Taveta County Assembly. Allow me, hon. Senators, to introduce to you this delegation, who are seated at the Gallery to my right. The delegation is led by the Taita Taveta County Assembly Speaker, hon. Meshack Maghanga. As I proceed to introduce the delegation, I request that if an hon. Member of the delegation is called, he or she should stand up and be acknowledged in the normal tradition of Parliament. Arising from the inadequacy of space in our Gallery in this temporary Senate Chambers, the delegation had to divide itself into two groups. So, this will be the first group. They are as follows:-

The hon. Speaker, Meshack Maghanga; the hon. Chrispus M. Masaga Tondoo, hon. Johns Mughanga Solomon, hon. Ronald Sagurani, hon. Jason Mwamondenyi Tuja, hon. Paul Waweru Mwangi, hon. Abraham Mwambonu Juma, hon. Arresmus Kajeni Mwarabu, hon. Cromwel Mwarigha Baridi, hon. Frumence Mwishila Mndwapimisha, hon. Frank Kichoi Mwawakanyanga and hon. Godwin Kilele Mwamodo.

Thank you, and you are most welcome to the Senate Chambers.

Next Order!

(Applause)

MOTIONS

ESTABLISHMENT OF SELECT COMMITTEE TO INQUIRE INTO EXISTING LEGISLATION AFFECTING FUNCTIONS OF COUNTY GOVERNMENTS

THAT, knowing that Section 17 of the Sixth Schedule to the Constitution requires the national government to restructure the system of administration commonly known as the “Provincial Administration” to accord with and respect the system of devolved government established in the Constitution; noting that the provincial administration continues to operate in circumstances that have affected the exercise of certain functions and operations of the county governments; appreciating the doubts about the constitutionality of offices linked with the provincial administration including provincial, regional and county commissioners as established and deemed to be part of the national government; the Senate resolves to establish a select committee comprising the following Senators to inquire into all existing legislation that may undermine the authority, mandate and functions of the county governments and draft appropriate legislation by Parliament-

1. Sen. James Orengo
2. Sen. Beth Mugo
3. Sen. Moses Wetangula
4. Sen. Kindiki Kithure
5. Sen. Murkomen Kipchumba
6. Sen. Amos Wako
7. Sen. Hassan Omar
8. Sen. Judith Sijeny
9. Sen. Kiraitu Murungi

10. Sen. Otieno Kajwang
11. Sen. (Dr.) Agnes Zani
12. Sen. Dullo Fatuma
13. Sen. David Musila
14. Sen. Lesuuda Naisula
15. Sen. Boni Khalwale

(Sen. Orengo on 13.6.2013)

(Resumption of Debate interrupted on Thursday, 13.6.2013)

The Speaker (Hon. Ethuro): Who was contributing?

(The Speaker consulted the Clerk-at-the-Table)

Hon. Senators, on this Motion, we were debating a proposed amendment, which we were to vote on. We shall vote tomorrow with the rest of the other Motions that have been concluded.

Senate Majority Leader, it is important that you ensure that we have enough Senators to participate in the voting process tomorrow.

(Deferment of Voting by Delegation on the question of the amendment)

Next Order!

PROFILING AND RESETTLING OF INTERNALLY DISPLACED PERSONS

THAT, aware that over the last twenty years thousands of people in some counties in Kenya especially within the Rift Valley, Western, North Eastern and Coast regions have suffered displacement due to politically and ethnically instigated violence, violation of the nation's sovereignty, natural disasters, resource-based conflicts and forced evictions; noting that during displacement people lost lives, livelihoods and property with some families losing their breadwinners; aware that thousands of families live in deplorable conditions and their economic life has been disrupted; appreciating the efforts undertaken by the Government, donors, civil society groups and individuals to alleviate the suffering of Internally Displaced Persons (IDP's) and resettle them; concerned that the problem of internal displacement has been worsening and that the budget for feeding IDPs currently living in tents continues to grow by the day and that the number of IDPs continues to rise, partly aggravated by individuals posing as IDPs; further concerned that the country has no reliable, comprehensive and disaggregated data on IDPs; the Senate urges the Government to profile all the current Internally

Displaced Persons and to take urgent and immediate steps towards resettling IDPs and finding a lasting solution to their plight.

(Sen. G.G. Kariuki on 20.6.2013)

(Resumption of Debate interrupted on 20.6.2013)

The Speaker (Hon. Ethuro): Who was on the Floor when debate on this Motion was interrupted?

(The Speaker consulted the Clerk-at-the-Table)

Hon. Senator for Kakamega County, you have the Floor. You have five minutes to conclude your contribution.

Proceed!

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I had the Floor when debate on this Motion was interrupted. Just before the interruption because of quorum, I had said that I was in agreement with Senators G.G. Kariuki and Ndiema. However, I am forced to support Sen. G.G. Kariuki and oppose Sen. Ndiema for the reason that Sen. Ndiema is attempting to ride on this very good and important Motion that Sen. G.G. Kariuki has brought before this House, to bring in the issue of historical injustices. Sen. G.G. Kariuki's Motion has nothing to do with historical injustices. We are simply urging the Government to settle Internally Displaced Persons (IDPs). Why should we mix up this issue with the matter of historical injustices?

Mr. Speaker, Sir, we all know that when the eight leaders who sat at Serena Hotel, after the post-election violence, amongst the many good decisions they made was that we should create the Truth, Justice and Reconciliation Commission (TJRC). When the time comes, I am sure the TJRC will have something to say about historical injustices. In any case, even the Commission, in its own wisdom, decided to limit its mandate to only the period after independence. When Senior Counsel, Paul Muite, took the UK Government to court over the mistreatment that was meted on the Kenyans who fought under the Mau Mau Movement, he did not trace this to 1895. He limited this to a short period. It is my submission that we allow Sen. Ndiema a different day to file his Motion. We should let this one pass. Sen. Ndiema will convince us and we will support him.

Mr. Speaker, Sir, in support of Sen. G.G. Kariuki's Motion, it reminds me of three particular incidents; in Ngombeni Location, Mombasa, Kitale and Banita Settlement Scheme. All these cases are pathetic. You see how poor Kenyan IDPs are ignored by this Government and the two other previous governments. When you visit Banita Settlement Scheme, you find that we have indigenous Tugens. There are also Kikuyus, Luos and Luhyas who were working on the whiteman's land. Before the white man left, he allowed them to take possession of his sisal estate. But rich people, politicians like us and senior civil servants, have moved in and taken possession of acres upon acres of land that was meant to be settled on by these poor Kenyans. Since the rich man; a politician and senior servant is a Kikuyu, for example, when he takes over the land, he then causes the Kalenjins at Banita Settlement Scheme to have hatred against the local Kikuyu who has nothing to do with that person who has settled from Nairobi. We have to address this issue with sobriety.

Mr. Speaker, Sir, in Ngombeni Location in Mombasa, we have only a road dividing Ngombeni with the beach plots. The beach plots on the left, as you are going to South Coast, have title deeds. They are properly delineated. But in Ngombeni Location, where the indigenous coastal people live, and this is where the Chairman of the Mombasa Republican Council (MRC) comes from, they do not have title deeds. When they ask for these title deeds, whoever it is that is the spokesman of Government says those people from Ngombeni are diehard criminals when all that the youth are saying is: "Just like you gave the up title deeds for the beach plots, also give us, the indigenous coastal people, our title deeds in Ngombeni Location." Now that we have a Senate, a House of sober men and women, that can rise to the calling of a nation rather than to the calling of a region or ethnic community, we must speak, so that we end the nonsense of noise in Mombasa County by making sure that the justice that they are looking for is given to them.

Mr. Speaker, Sir, I do not know who will save Kenyans from politicians. From the period tribal clashes started in this country, there has always been the hand of politicians. In 1992 and 1997, the tribal clashes that were ably described by the late Kiliku were because of political interest. In 2002, when former President Kibaki was overwhelmingly elected as a people's president, there was no post-election violence. In 2007, because Kibaki was no longer a people's President, there were clashes. In 2013, there were no clashes because we brought in a new Constitution. I am sure if the new Constitution was not there, again, because of us, politicians, Kenyans would have fought after 4th March, 2013. Therefore, as politicians, we have to rethink and ask ourselves: "What is so important about me becoming Senator or whatever position, that we must kill fellow Kenyans?"

Mr. Speaker, Sir, I would like to request the office of the Auditor-General to come before the Lower House and give a proper account of what happened to the billions of shillings that were allocated for the resettlement of IDPS. These funds were allocated in the budgets 2009/2010, 2011/2012 financial years. Somebody has to tell us what happened to these funds. I know of a Senator, whose name I do not want to state now, who confessed to me when we were having a tete-a-tete, that he was approached. He was told: "We want to buy your farm at an inflated price so that we cut a deal." But because this Senator is very distinguished, he said: "No, I do not want you to misuse public funds just because you are buying my ranch."

An Hon. Senator: Very few hon. Senators can---

Sen. (Dr.) Khalwale: Well, you can draw pararells.

I do not want to conclude without addressing the issue that was raised in this Motion by Sen. G.G. Kariuki, that we must profile these IDPs. We have problems of IDPs because we are afraid, we do not want to face them and tell them some truths. We have some IDPs whose only business in Rift Valley was that they were having a kiosk. The only thing they lost was that kiosk. But after they were displaced, they moved away from claiming the kiosk which they lost, they are now claiming five to ten acres of land. Surely, if somebody is claiming that he or she is an IDP from Kiambaa in Eldoret, if he or she, indeed, had land there, there is a chief, sub-chief, DC and DO from that area. These officials will tell us, for example: "This guy called John Kamau, who is claiming land has plot No. "X", "Y" or "Z". That man will then be settled. We cannot indefinitely be pumping public funds into the needs of professional squatters and IDPs. Let those who did not have land be humble enough and not claim it. In my own community, for example, we had many Luhyas who were displaced. But because they were doing other things where they were other than

owning land, they were integrated in their families and this matter ended there. But there are others who want to practice conmanship; they pretend they are IDPs who lost land when they had no land at all. We know them. When you profile them, you will realise that even some of their surnames seem to have a pattern. This must be stopped if we really want to rise to nationalism.

The Speaker (Hon. Ethuro): Your time is up!

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, with those few remarks, I beg to oppose Sen. Ndiema's amendment and support Sen. G.G. Kariuki's Motion.

The Speaker (Hon. Ethuro): Sen. (Dr.) Khalwale, you were contributing to an amendment to the Motion. The amendment was:-

“THAT, the Motion be amended by deleting the words “over the last 20 years” appearing in the first line and replacing them with the words “since 1945.”

Hon. Senators: 1895!

The Speaker (Hon. Ethuro): But the document I have indicates “1945”. Is it supposed to be 1895? Let me confirm.

(The Speaker consulted the Clerk-at-the-Table)

Where is Senator Ndiema?

(Sen. Ndiema approached the Chair)

Hon. Senators, we have confirmed that the amendment to the Motion should read as follows:-

“THAT, the Motion be amended by deleting the words “over the last 20 years appearing in the first line and replacing them with the words “since 1895.”

That is the amendment you may wish to talk to.

Proceed, Sen. Wetangula.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, the distinguished hon. Senator moving this amendment is a member of my party and coalition. But I find it difficult to appreciate the philosophy behind the 1895 period. Any country that wants to move forward must be like a good driver. You cannot drive to your destination with your eyes on the rear view mirror because you will not move, you will crash. We set up the TJRC after the post-election violence of 2007/2008. Part of what they were to look into, I believe, is what Sen. Ndiema has in mind. These are historical injustices. But we also know that the TJRC Report now remains a mystery. We understand that the chapter on land was disagreed on, mutilated or doctored so that the truth does not come out.

Mr. Speaker, Sir, in 1895, there was no state called Kenya. I do not know what my distinguished party member wants to address. Part of this country was under a British company called the Imperial British East African Company (IBEAC), whose sole intention was to find a route to Uganda. At the time, they were not even interested in Kenya.

An hon. Senator: You are misleading us!

The Senate Minority Leader (Sen. Wetangula): I am quite well informed on this.

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

The Speaker (Hon. Ethuro): What is your point of order, Sen. (Dr.) Machage?

Sen. (Dr.) Machage: Mr. Speaker, Sir, is the hon. Senator in order to mislead the House that there was no country called Kenya? We know that Kenya became a British protectorate in 1895.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, the hon. Senator is just fortifying what I was saying; a protectorate is not a state. He should understand this. I know he is a very well educated person.

Mr. Speaker, Sir, as I oppose this amendment, I also find it very difficult to come to terms with the whole Motion. I was driving to the airport to go to Mombasa and I listened to the distinguished hon. Senator for Kisumu County, Sen. (Prof.) Anyang'-Nyong'o. I thought he made valuable contributions to this Motion. I know that Sen. G.G. Kariuki holds very passionate views about the IDPs. But where do you start and end? What normally happens whether you are reviewing issues of 1895, 1993 or 2007? There are some politically-instigated clashes, like Sen. (Dr.) Khalwale has said, that have resulted in what we would call professional IDPs. People come; they are taken to a settlement and given land. The next day they sell the land and go back to the camps and become IDPs.

Mr. Speaker, Sir, in 2007, the country produced the highest number of IDPs in Kenya. This was because of the conflict between two communities in the Rift Valley. My community suffered serious collateral damage. Those two communities are now firmly in a political bed. The IDPs left their land; their houses were burnt down and went to markets and camps. Their land, however, was not burnt and is still there. Why can the Government not take these people back to their parcels of land? We do not want to get to a situation where Prof. Ali Mazrui remarked once; very intelligently, that once two elephants fight, the grass suffers. He added that grass suffers more when the two elephants make love.

Now that the elephants are together, should the grass continue to suffer? This is a big question. I do not think we should spend any state money---

Sen. Njoroge: On a point of order, Mr. Speaker, Sir. While the remarks by my fellow Senator are not only worthy of making people laugh, they, indeed, are serious. Is he in order to mislead the country and this House that the 2007 clashes were caused by a sour affair between two communities? Again, which communities? Is he in order to imply that there are two communities currently making love?

(Laughter)

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, it is obvious that the distinguished Senator for Kiambu went to a different school than I went to. I did not say that the two communities had an affair. I was very clear. I think he knows the story of Kiambaa Church among other incidences like the one that happened in Naivasha. Many people from the Luhya Community were killed and others expelled from their properties but we have not asked for money to buy land for them because we responsibly took them into the communities.

I will oppose, every day of my life, any attempt to take public funds to buy land to resettle IDPs without holding those who caused them to be IDPs responsible. That is the starting point. If you go to Trans Nzoia where my distinguished party man, Sen. Ndiema, comes from, you will see 60 year old squatters who have been living on river banks since Independence. They are suffering. Here, you will find families of more than 40 members.

You must know the famous Turkana settlement in Kitale called Kipsongo. Here you will find grand children, children and parents living on less than an eighth of an acre. If there is any money to settle Kenyans, these should be the first people to be considered and not people who ran away from their land because the political class was misbehaving.

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

The Senate Minority Leader (Sen. Wetangula): Please, inform me my distinguished party man.

Sen. Ndiema: My party leader, I just want to inform you - since you were not there last time - that those are the people I was referring to as having been left out of the resettlement programme of IDPs. These are the people who would be excluded if the main Motion went through. Their cases date back beyond 20 years.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I want to thank Sen. Ndiema for that information. Let me finish by saying this: This country must undertake serious agrarian reforms. We must re-profile our land tenure system. We must move away from the feeling and belief that for one to be anybody in this country, they must own land. That is where the problem lies.

For a country with just about 20 per cent of our land arable, we must change our psyche and attitude about land.

I oppose the amendment and will also oppose the main Motion.

The Speaker (Hon. Ethuro): Order, hon. Members. We have about 10 minutes remaining for both the main Motion and the amendment to be disposed of.

The Chair directs that the main Motion be disposed of tomorrow. We will try to dispose of the amendment now so that we do not overcrowd tomorrow's time. This is a Motion affecting counties. Before I put the question, you know that we will vote by delegations.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir, following your ruling, I was just wondering whether in the interest of time; given that we do not have a lot of business ahead of us, considering that it is still early in the afternoon, whether we can stay the voting on the amendment but allow the main debate to go on? When we vote for the amendment, if it does not go through, we will have exhausted the main Motion and vote on it. If you so rule, what would stop us from doing the same to the Motion by Mr. Orengo? The Orengo Motion still has a lot of time on the main Motion but we were due to vote.

I thought you should guide us.

The Speaker (Hon. Ethuro): Sen. Orengo had requested that we take the voting to tomorrow. Unless he has discussed this with you, without informing the Chair to change that position, this was a straightforward matter. While I appreciate your concern, considering that the Chair is at liberty to do so, except procedurally, we must dispose the amendment before we move to the Motion that was being amended.

Order, Senators! I order that the Division Bell be rung.

(The Division Bell was rung)

Could we have the names for the tellers?

Sen. Juma Boy is for the Ayes while Sen. Mositet will be for the Noes.

DIVISION

ROLL CALL VOTING

(Question of the amendment put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Boy, Kwale County; Sen. Harguara, Marsabit County; Sen. Keter, Kericho County; Sen. Kipchumba, Baringo County; Sen. (Dr.) Kuti, Isiolo County; Sen. Leshore, Samburu County; Sen.(Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Melly, Uasin Gishu County; Sen. Mositet, Kajiado County; Sen. Muthama, Machakos County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Okong'o; Nyamira County; Sen. Orenge, Siaya County and Sen. Wako, Busia County.

Teller of the Ayes: Sen. Boy Juma Boy.

NOES: Sen. G. G. Kariuki, Laikipia County, Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Kivuti, Embu County; Sen. (Prof.) Lesan, Bomet County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murungi, Meru County; Sen. Njoroge, Kiambu County and Sen. Wetangula, Bungoma County.

Teller of the Noes: Sen. Mositet.

The Speaker (Hon. Ethuro): Order, Senators! I wish to announce the results of the Roll Call Division.

AYES: 18

NOES: 10

ABSENTIONS: Nil

The amendment is lost.

An Hon. Senator: No!

(Question of the amendment negated by 18 votes to 10)

(Debate on the original Motion resumed)

The Speaker (Hon. Ethuro): Just to educate a few Senators who may still be thinking that we are in the other House, when the Senate votes by the delegations, you need to acquire a minimum of 24 counties to be able to carry whatever business that is required for counties. The idea is that we have 47 counties and so, you need to get more than 50 per cent plus one in order to ensure that you have carried the majority of the

counties. So, it is not just the numbers, but that threshold. I hope that the relevant persons have been informed accordingly.

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

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

Sen. Keter: On a point of order, Mr. Speaker, Sir. I just want to seek a clarification. Is this a county issue? This is not a county issue according to me.

The Speaker (Hon. Ethuro): Order! Order, Sen. Keter! You are arguing with the Chair and that is a very dangerous path to pursue.

(Laughter)

It is the Chair who determines whether a matter is affecting counties or not and at the time of that determination, of course, you can always challenge the Chair in a proper way. Before we took the vote, I made it abundantly clear that this is a matter affecting counties. So, that is why we went on to the roll call division. That is the correct position.

Hon. Senators, in fact, even the first line of the Motion reads like this:-

“Aware that over the last 20 years, thousands of people in some counties in Kenya---“

So this is a matter affecting counties. We now have a balance of 10 minutes where we will call upon the Mover to reply on the initial Motion. The voting for the main Motion will be tomorrow afternoon.

Sen. G. G. Kariuki: Mr. Speaker, Sir, thank you for this second opportunity for me to try and reply to this Motion which has just taken us some time. There is no need for me to repeat or to attempt to reply to issues which were raised by Members of the Senate. I want to insist that the time we moved this Motion, we did not intend to speak or talk about land issues in this country. Land is a big problem in this country. It has a lot of other connotations because most people think that the problems that we go through in this country are because of land but personally, I have known two things. Land being number two, the major problem is leadership. People have been fighting. For example, in Laikipia, we have about 14 tribes but they have never fought over land. Nobody has ever thought of moving any other person from his land. During the political period when people are campaigning who will become the president and so on, that is where the problem begins. I want to talk to my friend who attempted to amend this Motion that this issue has been taken care of by Article 67 of our Constitution. That one is very clear and if he could pursue that issue, he will find that the problem he has of historical injustices and whatever other injustices he might want to introduce, the enactment of the Constitution of Kenya 2010 has given fresh hope for the Maasai land claims, especially Article 67 which has created a National Land Commission whose duties are to initiate investigation on its own initiative or a complaint into present or historical land injustice and recommend appropriate redress.

Therefore, I appeal to my honourable friend who got aggrieved by this Motion to reconsider---

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

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

Sen. Ndiema: On a point of order, Mr. Speaker, Sir. Is it in order for the Senator to say that my interest was catered for somewhere else while here the issue is dealing

with Internally Displaced Persons? Also noting that in the Constitution, the national values and principles of governance require, under Article 10(2)(b), that there be human dignity, equity, social justice and inclusiveness, the 20 year limit excludes and yet the Constitution says that there must be inclusiveness, equity, human rights and non-discrimination and protection of marginalized people.

Sen. G. G. Kariuki: Mr. Speaker, Sir, I wish the honourable Senator could have asked me to give him some information because he is attempting to give this House further information but that does not do away with Article 67 of the Constitution. In any case, my appeal to you is to consider people who are being rained on as we stand here because of a fault which is not theirs. They are suffering because of issues they do not even understand. They are suffering because they have made some of us Members of Parliament or Members of the Senate just by sheer voting. I think time has come when we should do away with political disagreements and this House should start looking for ways and means of getting all the wrongs which have happened in the last 20 or 30 years and correcting them. It can only do that if we do away with agitative politics where if anybody brings anything we see politics in it. Let us now try and see a human being in everything that we have try to do here.

Mr. Speaker, Sir, I remember looking at the records where you headed a select committee of the National Assembly which came out with a very good recommendation. I was happy to look at it when I was doing some investigation about this Motion and I found that you were concerned and so is everybody. So, let us not appear out there as if we do not care about others. When the honourable Senator found that it is not conclusive, we can bring a Motion to do exactly what my friend wanted to do. If somebody is rained on and you tell him that he should continue being rained on until other people come to report to us whether they are having similar problems, that is not good.

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

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

Sen. Ndiema: Mr. Speaker, Sir, does it mean that a Senator wants people to be rained on? I have made it clear here that I would like all IDPs including those who were rained on to be resettled. It should not be limited to those who have been IDPs for only 20 years so that it can capture those who have been rained on for many more years.

Sen. G.G. Kariuki: Mr. Speaker, Sir, I think you can understand the problem. I will give one or two minutes to Sen. Njoroge. Do I have that time?

An hon. Senator: He is not around!

The Speaker (Hon. Ethuro): Ideally, we usually donate before. I think just conclude. Next time you learn to donate before.

Sen. G. G. Kariuki: Thank you, Mr. Speaker, Sir. We all agree that we are learning. We are in a new Chamber and most of us are not familiar. Some of us left this place a long time ago and we stayed out for some time.

I would also like to mention that Sen. Murungi attempted to explain the Maasai and British agreement. That is a big problem because the Maasai voluntarily, willingly or unwillingly signed an agreement with the British Government in 1904 which decided that the Maasais would be given two districts. The districts were Narok and Laikipia. But the Europeans found that that was not enough for their settlement. In 1911, they signed another agreement which pushed all the Maasai from Laikipia to the southern side of the railway. During the Lancaster House Conference, the Maasais attempted to ask the

British Government to leave the land under their responsibility but the British did not agree with the Maasais at that particular time and without explanation rejected the clamour by the people of North Eastern Province to secede and join other people in Somalia.

Mr. Speaker, Sir, it is not this Senate which will solve this matter whether we like it or not. We will cry and appear to be helping our people, but I think time has come for me to tell the Kikuyus that this country belongs to all of us. It is high time for all of us to be open to our people and tell them that nobody will move any person from where he is. Let us agree and not behave as if time is coming---

Sen. Kembi-Gitura: On a point of order, Mr. Speaker, Sir, I am just curious; I want to know what the Senator is talking about. He is saying that the Kikuyus should be told that land belongs to all of us. Is that generic or he is specifically talking about the Kikuyus? If you want to inform the people that this country belongs to all of us, then you must inform all the 40 million Kenyans. But you cannot in fairness – this is going on HANSARD – tell the Kikuyus as if they do not know. We know that this country belongs to all of us. I say that strongly believing that unless he is talking generically, I would like to understand whether that is what he means for the HANSARD or it was a mistake.

Sen. G.G. Kariuki: Mr. Speaker, Sir, I am sorry that I have to disagree with the Deputy Speaker. I think he should listen to what others are saying. I said that we must tell the Kikuyus and the other people in this country. If he was not listening, that is not my problem. It is entirely his problem. Therefore, my experience in this House---

Sen. Kembi-Gitura: On a point of order, Mr. Speaker, Sir. As you know this is a gentleman I have a lot of respect for and that is the reason I have been listening very carefully to this Motion. I would like to challenge him and if need be that the HANSARD be looked at because he said exactly what I said. I said it is in good faith. I just want to understand whether that is what he meant or whether he meant “Kikuyus and other people of this country” because that would be acceptable to me.

The Speaker (Hon. Ethuro): Of course, we need to confirm with the HANSARD what your precise words were. The Chair heard the way the Deputy Speaker heard but you have clarified in the subsequent ones that you meant Kikuyus and others. So, I think to settle the matter, just set the record straight and we will all be comfortable.

Sen. G.G. Kariuki: Mr. Speaker, Sir, there is no way I will only single out the Kikuyus in the way they are being described. Maybe I was misunderstood. The purpose of my statement was so that this august House will lead this country in a way that political gimmicks will not be a major issue. We should speak to our own people and that is why I referred to the Kikuyus and others. We have to be open to them that this country belongs to all of us. What mistake did I make? This country belongs to all of us.

The Speaker (Hon. Ethuro): Time is up!

Sen. G.G. Kariuki: Mr. Speaker, Sir, I beg to move.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM TAITA TAVETA COUNTY ASSEMBLY

The Speaker (Hon. Ethuro): Order hon. Senators! As we agreed, we have concluded debate on this particular Motion. We will not take the vote now. We will take

the vote tomorrow with the rest of the concluded Motions. So, again, I give notice to the Senators that tomorrow afternoon you should be available in the House to take the vote. Before we proceed to the next business, I will allow the Senator for Machakos to give the Notice of Motion. He has explained the reasons why he could not give it at the time the Order was called out and the Chair is quite satisfied that those were circumstances beyond his control. Before we do so, I would like to introduce the second group of Members of the delegation from the Taita Taveta County Assembly whom we said could not all be here because of our limited space. I would like to inform our visitors that for the avoidance of doubt, this is a temporary shelter, you are most welcome to come when we get our proper Chambers and then you will know that you are in the Senate. The second group from the Taita Taveta County Assembly include:-

Hon. Haris Keke Nganga
 Hon. Judah Kilonzo Mulwa
 Hon. Johnes Fundi Maskuji
 Hon. Justine Juma Mwamba
 Hon. Liverson Mwazala Maghanga
 Hon. Omar Ahmed
 Hon. Raymond Mwangola
 Hon. Reuben Kipampltiges
 Ms. Veriti M. Mganga - Clerk to the Assembly
 Mr. Andrew S. Jumanne - Serjeant-at-Arms
 Hon. Senators you will notice that that is our employee whom we have seconded to the Taita Taveta County Assembly.
 Mr. Michael Ngala - Finance Officer
 Mr. Rodgers Mwakio - Clerk Assistant
 Mr. William Sowa - Clerk Assistant.

Thank you and you are most welcome.

NOTICE OF MOTION

PROTECTION OF TANA AND ATHI RIVERS FROM POLLUTION

Sen. Muthama: Thank you, Mr. Deputy Speaker, Sir. I do appreciate your consideration for giving me the opportunity to give Notice to this Motion.

I beg to give Notice of the following Motion:-

THAT aware that a large population, especially in Tana River, Murang'a, Embu, Kitui, Machakos and Makeni counties depend on Tana and Athi River for their livelihood; concerned that industrial chemical and animal waste and residue soil continue to find their way into these important rivers thereby seriously polluting them; further concerned that waste from Dandora Dumping Site is a major pollutant of Athi River; further concerned that the Government's response against pollution of rivers has been grossly inadequate; appreciating the provisions of the Environmental Management and Coordination Act, 1999, cognizant that Article 69 (1) (g) of the Constitution obligates the State to eliminate processes and activities likely to endanger the environment, the Senate

urges the Government to take immediate steps to stop pollution of Tana and Athi Rivers, compel polluters to compensate those affected and further that the Department of Environment, Water and Natural Resources submits a report to the Senate within six months on specific measures taken to protect the rivers from pollution and compensate those affected.

MOTION

AGREEMENT BETWEEN NATIONAL AND COUNTY GOVERNMENTS
ON INFRASTRUCTURE DEVELOPMENT AND EQUIPPING
OF EDUCATIONAL INSTITUTIONS

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I beg to move:-

THAT, recognizing that the respective functions and powers of national and county governments are provided for in Article 186 and the Fourth Schedule of the Constitution, and that under paragraphs 15, 16 and 17 of Part 1 of the Fourth Schedule, education policy, including promotion of sports, is a function of the national government; further recognizing that Article 187 of the Constitution provides for the transfer of functions and powers from one level of government to the other, particularly if the function or power can be more effectively performed by the receiving government; aware that Part III of the Intergovernmental Relations Act, 2012 requires that agreements on transfer of functions be in writing and Part III of the Transition to Devolved Government Act, 2012 recognizes the role of the Transition Authority in the transfer of functions; the Senate urges the national government to enter into agreement with county governments with a view to transferring resources, functions and powers relating to development of infrastructure and equipping of institutions of learning, at primary and secondary levels, to county governments.

Mr. Speaker, Sir, I am moving this Motion on behalf of Sen. Murkomen, the Senator for Elgeyo-Marakwet, and Chair of the Devolution and Planning Committee who is not in the Chamber this afternoon. This Motion aims at testing very new ground in our constitutional dispensation in terms of the relationship of the national governments and county governments. In a nutshell, what this Motion is trying to achieve is to allow for the functions of providing infrastructure and equipment to primary and secondary schools be transferred to county governments from the national government.

The Constitution anticipates a situation where a function which is assigned to one level of Government can actually be transferred to another level of Government. Through this Motion, reference has been made to very fundamental provisions of our Constitution that provide for that scenario and within this Motion, a justification for the transfer of education functions as requested here have been provided. Article 186 (1) of the Constitution says that the powers that either the national government or the county government shall exercise are defined in Schedule 4.

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

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

In the same Article, 186, paragraphs 2 and 3, the Constitution sets out the parameters or distinctions of three types of functions which are important for us to appreciate. There are three types of categories or functions in Schedule Four.

A reading of Article 186(2) and (3) provides those three categories. The first category is what we call exclusive functions. These are assigned to one level of government only. For example, if you read Schedule Four, you will discover that certain functions are assigned to either the national government or to the county government.

For example, the issue of national security, foreign affairs or immigration policies is exclusively within the powers or jurisdiction of the national government. Such powers are what we call exclusive jurisdiction. It is exclusive to the national government. Other functions such as lotteries and gaming are exclusive to the county governments. That is the first category.

The second category is what we call concurrent jurisdictions. Here, certain functions are shared and that is under Article 186(2). They are shared by the two levels of government; the county and national governments. To exemplify, one can take the education function as a concurrent function between national and county government in the sense that certain aspects of the education policy, especially those regarding secondary and post-secondary education and even primary education are vested in the national government which is one level. Other educational functions such as early childhood education are vested in county governments. So, there are some concurrent functions between the two levels of government.

Finally, still under Article 186, we have what we call residual functions. These are spelt out in Article 186(3) of the Constitution which says; I will paraphrase, where a function has not been stated to belong to whether national or county government, such function shall belong to the national government. In other words, the national government retains residual powers to deal with any function of government that is not stated anywhere in Schedule Four.

It is in this connection; therefore, in trying to contextualize this Motion, this Motion is saying that in any of those cases, namely; where you have exclusive jurisdiction or concurrent jurisdiction or residual jurisdiction, that the powers can be transferred in any of those cases from one level of government to another. You will find that in Article 187.

Under Article 187, the transfer of functions, whether concurrent, exclusive or residual from one level of government to another, is only done by agreement between the two levels of government. They must agree. The Inter-Governmental Relations Act of 2012 which is one of the laws passed to implement the Devolution Chapter of our Constitution provides that such agreement or transfer of functions must be in writing between the national government and the county governments.

In a nutshell, Articles 186 and 187 are trying to say that the national government can transfer some of its functions to the county governments and *vice-versa*. The county governments can also transfer some their functions to the national government. However, there must be an agreement which should be in writing.

This Motion, secondly, sets out the purposes and why the Mover of the Motion is requesting for the transfer of the education function; specifically the equipping and the provision of infrastructure of primary and secondary schools from the national government to the county governments. This one says – the answer is in the Constitution - such transfers are necessary if it is deemed that the level of government to which the function is being transferred can perform more effectively. So, there is an effectiveness test that must be met before one makes a case for the transfer of functions.

According to the Mover of this Motion, the equipping of primary schools and the provision of infrastructure in those educational facilities are better handled by the county governments and not by the national government. However, since the Constitution, right now, assigns those functions to the national government, the only legitimate way of having the county governments undertake these functions – equipping of primary and secondary schools and the provision of infrastructure – is by way of agreement. This is by way of following the criteria set out in Article 186, read together with Article 187 of the Constitution.

The last thing I want to mention which is in our Constitution and which has been referred to by this Motion is that the transfer of functions must be accompanied by resources. So, where one level of government transfers functions to another level, the resources for the performance of that function must also be transferred to the level that will take responsibility. However, there is a caution. As we debate this Motion, we must be aware that when such a transfer is done together with the transfer of functions, the Constitutional responsibility of ensuring that function is performed remains with the level of government which has transferred the function. For example, in the case in point, even if this House passes this Motion where the national government is urged to transfer the issue of equipment and the provision of infrastructure in primary and secondary schools from to the county governments, the buck stops with the national government to ensure that the functions are performed.

In other words, you will transfer the functions, the resources but the constitutional responsibility to ensure that the responsibilities are undertaken remains at the level of government which is transferring. Why is this caution provided? This caution is provided to ensure that neither level of government; either the national government or the county government abdicates its responsibility by simply transferring those responsibilities and the resources to another level of government. So, at the end of the day, that responsibility will remain the constitutional responsibility of the transferring level, notwithstanding the agreement to transfer or the transfer of resources to the recipient level of government.

Therefore, to me, this provides an exciting test for inter-governmental relationships between the two levels of government because there are two extremes which are emerging. One extreme is where you have two levels of government appearing to operate as if they are in competition with one another and yet Article 6(2) of the Constitution says that the two levels of Government are interdependent and must operate on the basis of cooperation as opposed to competition.

If this Motion, therefore, is passed, we will have put to test a very important relationship issue between the two levels of government. The choice of the subject matter of transfer, in my view, is also a great choice because it relates to education which is one of the most decentralized services in this country even under the centralized version of

the constitutional dispensation that we had. Education was decentralized. Every village has a primary school and maybe a secondary school.

Many decisions related to building and equipping schools are undertaken at very local levels. So, this is a good area where the national government can say that the power belongs to us but because we are one government despite the fact that we have two levels; the county level and the national government, we can transfer this service and the resources. This would help in the big strides that Kenya has made in education. They are likely to be felt if the national government can release those functions to the county government and localize decision making and the issue of procurement for the building of schools. I see no harm in the local community making quick decisions on where to build a new classroom and where to provide one service or the other as opposed to the centralization of the same.

Mr. Deputy Speaker, Sir, as you are aware, this is a Motion by Sen. Kipchumba Murkomen. I am moving it with his consent. Mine is to urge this House to be as useful to the Mover and to the country as possible because it will set the ball rolling as to how the inter-governmental relations in this country will be governed.

I end by emphasizing that the Constitution does not envisage competition between the two levels of government. I emphasize cooperation and mutual respect. So, I see no harm in any function under the Constitution, even exclusive functions, being transferred to other levels of government.

With those many remarks, I beg to move and request my brother, Sen. Obure, to second.

Sen. Obure: Mr. Deputy Speaker, Sir I want to commend the Mover of the Motion for presenting his views very eloquently. This is a very important Motion.

I support the Motion and, indeed, there is need for the two levels of government to complement each other and to cooperate in matters regarding provision of essential services. Education, in particular, is a very essential service to our communities particularly as we appreciate its importance in terms of development; economic development, provision of manpower and meeting the manpower needs of our country and developing individual capacities as human beings. Therefore, it is a very important matter.

We are all aware that this function belongs to the national government. However, we also know that the national government has limitations. We have schools all over our counties; we have primary and secondary schools scattered all over the country. We are aware that many times the national government positioned in Nairobi is not familiar with the conditions of some of the institutions in the counties. Therefore, if we developed relationships where these functions could be transferred to the counties, that would represent the perfect situation where at the county level, people own the schools. They would know the inadequacies and challenges which the institutions face. It is only logical that we transfer these functions to the county governments where they would be best handled.

For this reason, I support this arrangement. I know that this will require negotiations between various county governments and the national institutions. However, we will urge, particularly, the national government to understand and appreciate this situation because I believe that it will add a lot of value.

We have seen situations before where officials at the national level have funds intended to improve infrastructure both for the primary and secondary schools but the manner in which the resources are distributed leaves a lot to be desired. There is no arrangement or criteria for distributing these funds. We know for sure that if these resources were to be transferred to the county level, they will be put into good use. The infrastructure will be improved at that level. Probably, this is what we need because it will have a more positive impact, not only to the students, but also to the communities which own and support these institutions.

Mr. Deputy Speaker, Sir, once again, I want to commend the Mover of this Motion for the initiative of bringing it to this level. I request my colleagues in this House to support this very important Motion. In particular, I believe that it will add value and improve infrastructure at the various institutions of learning in our counties. It is really something that we ought to encourage because of the value that it will bring.

(Question proposed)

Sen. G. G. Kariuki: Mr. Deputy Speaker, Sir, I thank you now that I have caught your eye. I was wondering whether I would get a chance because others have not spoken on the last Motion.

Mr. Deputy Speaker, Sir, this Motion is a bit complicated. It is too early to start thinking that county governments are capable of handling this big responsibility. We all know that county governments have not settled yet in terms of personnel and ability to deal with the functions which are in their hands. I support this Motion, but I think the Mover needs to consider its terms because if we transfer this big responsibility to county governments very soon they will not handle it. If we are going to deal with it immediately, then I think that we will land this country into a bigger problem. But eventually, this kind of responsibility will have to be transferred to the county governments where they will be handled effectively.

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

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

Madam Temporary Speaker, education is a very important factor in our development. The educationists are here with us and will come and say more about what they think about this Motion. However, we have to be extremely careful and ensure that the standards of our education will not be compromised at county government level. Those are new governments and we respect them. We know that no county government has so far settled down. They are in the process of employing personnel, preparing their budgets and creating their status. Therefore, it will be difficult for me to think whether time is ripe for us to transfer this kind of a responsibility to county governments. First of all, they have the responsibility of primary education, but they have not attempted to do anything about it. The Senate Committee has just started going round to see if there will be any improvements that they can recommend or support. Let us think very critically whether it is really ripe for us to allow this situation to happen before we jump into these affairs. I agree with someone who said that the responsibility can effectively be handled

by the local people. But even today, the central Government does not interfere with the public when they decide to put up a classroom or develop a secondary school in any area. I do not know of any person who has ever been stopped from starting a secondary school in his locality.

Madam Temporary Speaker, I think that the Senate Leader of Majority has tried to explain the purpose of this Motion. However, if it was within my power, or if I could advise him, the time is not ripe for this Motion. He needs to frame it in a different way. But if it is supported by the Jubilee Government and it is the one which thinks that it is now time to start negotiating internally with the county governments on how to hand over powers, I have no reason not to support it.

Madam Temporary Speaker, I support this Motion, but with a lot of reservations.

Sen. Wangari: Madam Temporary Speaker, I rise to support the Motion and congratulate the Mover.

Madam Temporary Speaker, I want to pick from where the President stopped during the summit that he recently held with the Governors from the 47 counties, and actually be more optimistic than the Senator for Laikipia. We all know that the longest journey starts with one step. By all means, this country is ready for devolution. If we were not, then we would not have passed the Constitution as it is right now.

Madam Temporary Speaker, I want to actually pick up from where the Senate Leader of Majority left. I would like to note that when we look at the efficiency or performance of roles more effectively, it will take maybe a whole week or more, even to procure a piece of chalk because of the processes followed in the national Government. These county governments are settling down and they need to be supported. At the same time, we cannot dismiss them and say that they lack capacity. When we were discussing the Division of Revenue Bill, the Committee on Devolved Government and the Committee on Finance had a lot of reservations. It is true that counties do not have the capacity or they are not ready to shoulder some of these responsibilities at the moment. They need time to reorganize themselves.

The President was right when he gave directive that some of these functions be devolved immediately. We cannot keep on waiting until we say we are ready to devolve these functions. We must start the discussions. We are not actually hiring new personnel for the counties or doing everything from point zero. We are looking at staff who are already in the counties. The central Government can assist county governments to start off by seconding officers, so that they are effectively managed. We must not shy away from taking this role to the county governments. This will lead to more efficiency and things we will move faster. It will also lead to the local people that we represent in this Senate feeling that they own a piece of the processes. If they can be entrusted with the Early Childhood Development (ECDE), which is already a function of the counties, why can they not be entrusted with taking this children right from their daycare to the primary and secondary levels?

Madam Temporary Speaker, I support the Motion. It is time that we gave it a chance; we should be optimistic and ready to build the capacity of the county governments.

Sen. Harguara: Thank you, Madam Temporary Speaker, for giving me this opportunity to contribute to this Motion. I rise to support the Motion, taking into account the fact that the Mover of the Motion clearly indicated that what is being proposed to be

transferred are actually the resources, functions and powers relating to development of infrastructure and equipping of the institutions. That does not affect the quality of education because the policies and guidelines are all still under the national Government.

Madam Temporary Speaker, I support this Motion because I come from an area where illiteracy levels are still very high. I am talking of about 80 per cent illiteracy. With the new Constitution which has devolution, where the county governments are to take care of education, I think that now we have a new beginning. If we start with the ECDE programmes then we can capture, at least, those who have been missing out due to lack of infrastructure. We can get the children to start early. But my dilemma was: How do we ensure that these children will actually transit to primary and secondary schools? But this could be a saviour in the sense that if the development of infrastructure and equipping of the primary and secondary schools moves to the county governments, then the county governments can plan in an orderly manner. They will know that we are going to have maybe one ECDE centre per village. Then, from there they will know where these children will move to at the end of the three years or so. They will have developed the primary schools infrastructure and equipped them. That way, we will have continuity and there will be no dropouts. This will improve the level of education and the illiteracy levels will go down. This is because we know very well that education is important in human capacity development of any area. Right now, if you check even within the Government system, there might be a few people from the marginalized or northern part of this country.

So, I fully support this Motion where the county government is given that opportunity to develop its own infrastructure. Of course, the key word here is “resources”. There is no need of devolving functions when you have not given them the resources. So, the key word here is “resources” because that is what has been hindering development. We know communities have been coming up with their own institutions, but they have had that limitation. At the end of primary education, results show that some areas perform poorly because of lack of facilities. We now have a chance of remedying that if the Government can provide enough resources so that we can have proper facilities in our schools. By doing so, we shall be in a position where we can compete effectively or reach a level where we can compete with the rest of the country.

So, I support the Motion with a rider that it should not only be the functions to be devolved, but resources have to be there. The Government has to develop policies and also do staffing so that we can maintain uniformity. For example, if teachers are trained and employed centrally, there would be uniformity in terms of what they are delivering. Even the curriculum should be centralized.

With those few remarks, I support the devolvement of infrastructure and equipment.

Sen. Lesuuda: Madam Temporary Speaker, thank you for giving me a chance to contribute to this very important Motion. I rise to support it and also to congratulate the Mover.

Without repeating what my colleagues have said, I think it is an important Motion, especially when we are talking about the transfer of resources, functions and powers which relate to the development of infrastructure, equipping of institutions of learning at primary and secondary levels. I also commend the Government for the work they have been doing before. It is time we realized that devolution is here with us. So, it

is time that the people of various counties contributed to the development of their education at primary and secondary levels.

I have had various discussions with my Governor and the county executives who have just been appointed in Samburu County. One of the things they are saying is that they want to be in charge of the ECDE or the nursery schools. After that, what happens to those children? I think they know better where the primary schools should be and what needs to be done in a certain secondary school within the area. Therefore, we should convince the national government to start having such discussions.

I would like to support what Sen. Wangari said, we are not saying that it should happen now. As the Mover said, “the Senate urges the national Government to enter into agreement with county governments.” We know that before any agreement is reached, definitely, there will be deliberations where they will be looking at the pros and cons of all those things.

This is a very important Motion because it will give us a chance to understand Article 187 of the Constitution on how to deal with the transfer of powers. Education is an important step towards devolving powers. In Samburu, for example, we do not have proper roads. This is true with many other counties. But at least we have schools. So, we can experiment with schools when talking about transfer of powers.

Article 174 of the Constitution says that the functions of devolution or the devolved government is to give powers of self governance to the people and enhance the participation of people in the exercise of the powers of the state and in making decisions affecting them. It goes further to say that the devolved government will recognize the right of communities to manage their own affairs and to further their development. I think the leaders of the County of Laikipia know better what to put in place to make sure that the quality of education is not compromised. So, I support this Motion in the sense that it will also facilitate the decentralization of state organs, their functions and services from the capital of Kenya.

As it had been mentioned, the process of procurement takes longer to complete. Even now if a roof of a certain school is blown off, we have to wait for the national Government to fix it. This is something the county government can easily fix. So, there are also other issues which can be handled easily at county government level. There is no need for a child to be out of school because a roof has been blown off and has not yet been fixed.

This Motion will test some of the issues that are enshrined in our Constitution, especially concerning the transfer of functions and resources to the counties.

I support this Motion and I hope that the other Senators will also support it.

Sen. Haji: Madam Temporary Speaker, first of all, I would like to say that I support this Motion because it is aimed at making the counties function. In my view, we must take step after step to be able to achieve the objective of making counties operational. While ECDE institutions can be managed by county governments because they require minimum supervision and support unlike primary, secondary schools and colleges, it is incumbent upon the Government not to merely transfer and increase the burden of the counties without proper planning and proper arrangement, so that we do not fall into serious problems in future. I am particularly concerned with the marginalized areas whereby exams after exams show that they have been at the bottom of the line. So,

if the entire operation of education is transferred to the county governments, it might even worsen the situation instead of improving it.

Similarly, the question of infrastructure is also very important. We have suffered greatly since Independence for lack of proper infrastructure, particularly the roads to enable the movement of goods and services. Therefore, to just transfer things without elaborate plans, will aggravate the situation. Therefore, the Senate urges the Government that it should be done in a very well organized proportion, so that the counties do not fail as a result of heaping a lot of responsibilities on them which they might not be able to undertake, particularly when it comes to staffing.

The counties can only be agents of the central Government. I am saying this because employment of teachers is usually a big problem for the nation. Even the national Government is not able to meet all the required levels. So, to leave that responsibility to the county Government will make the situation worse than before. There are teachers who have worked with the Teachers Service Commission (TSC). If they reach their retirement, or if they die, they should be paid pension and gratuity. If counties will not have enough resources then all these cannot be met. This will kill the morale of teachers who will be transferred to the county governments.

With those few remarks, I support with the recommendation that we envisage the duties that the national Government will undertake.

Sen. (Prof.) Lonyangapuo: Madam Temporary Speaker, thank you for giving me this opportunity to support this Motion. I want to thank Sen. Murkomen for introducing this Motion at this time. You notice that the Fourth Schedule describes the function of the national Government and functions of the county governments. Allow me to read this so that we do not misunderstand the intention of Sen. Murkomen when he brought it here. The Fourth Schedule concerning the functions of the national Government, especially Nos.15 and 16 says as follows:-

“The national government is to do education policy, standards, curriculum, examinations and the granting of university charters.

16. Universities, tertiary educational institutions and other institutions of research of higher learning, primary schools, special education, secondary schools and special education institutions.”

The functions of the county governments talks about what the Mover of this Motion intended. If you look at No.9, it talks about pre-primary education, village polytechnics, homecraft centres and child care facilities.

Madam Temporary Speaker, what the Mover of this Motion had in mind is that we need infrastructure to be done by the county governments, but the examinations will be done by the national government whereby it will be uniform across the whole country. All standards and measures will be done by the national Government, but the recruitment of teachers will be done by the government although it is done at the county level. What this Motion wants is that we need to devolve construction of infrastructure like classrooms, toilets, water and so on to schools. If you remember, from 1963, Kenya has been operating on Harambee basis to build schools until 2002 when the Constituencies Development Fund (CDF) came in. It is when we saw a hand given by the Government to the constituencies and for which the leaders from those constituencies started doing booming construction. Where I come from, in 2002, we had very few primary and secondary schools. But today we have about 520 primary schools courtesy of this little

money called CDF. What did the original Government do then? There was nothing they were building, but they would provide teachers although not sufficient, examination and books. They also provide funds for the Free Primary Education (FPE) programme. That little money is normally for running the schools, but not to build the primary and secondary schools.

I support this Motion and call upon all my colleagues to understand that we only need the national Government to write a letter and say that since they were not doing it anyway, it should go to the people who have been doing it because Harambees have been running the show. So, it just has to go to the people, but now that the Government has committed itself to building Kenya, for example, by providing laptops, that idea is very brilliant because we are going to directly change this country in the years to come using that technology. But the little money that the Ministry of Education now has for infrastructure, we do not even need to debate it. They just need to look at that component in their present Budget. How much money was allocated for improving infrastructure for primary and secondary schools in the whole country? You cannot do it in Nairobi alone, because if you did that---

Sen. Obure and I, know that when we were in the Ministry of Public Works in 2010, the retired President ordered that we needed to come up with Economic Stimulus Projects (ESP) for which the architect and the master is now the current President. This was very brilliant. We were able to build two model primary schools in every constituency to the tune of Kshs3.5 million each and build a school of excellence in every constituency at Kshs30 million each. But the Ministry of Public Works headquartered in Nairobi came up with the drawings and so on. They quickly went to their archives and removed their bible which said that you can only build schools or anything that is Government initiated using stones from Thika. Just imagine putting up a classroom in Lokichoggio in Turkana North using stones all the way from Thika. You were to be arrested if you used anything else. Those buildings were started, but most of them stalled along the way because of the conditions that we could not overcome.

Madam Temporary Speaker, in this Motion, we are asking the central Government to give to the counties the money that is there and then the counties now using locally available resources - sand and stones - should build the classrooms, and not to insist on their standards. If we were to give out Kshs100 million to every county per year which comes to Kshs4.7 billion, that Kshs100 million can build so many primary and secondary schools per year as we roll out. This Government that has come up with digital information will get all the credit and send the right signals that we now have leadership that thinks about the people on the ground.

I support this Motion. We need to test it because it worked with the ESP programmes. If you walk in the constituencies today, you will find people amazed at what has not been done for the last 50 years. This is going to be revolutionary. We may not need to build new primary or secondary schools by refurbishing the ones that we have. In Singapore, the change that we see, where they jumped from the third world to the first world was because of education. They do not have gold, maize or cows. They invested in human beings.

Madam Temporary Speaker, I know I am the only one supporting this laptop business because what harm will it cost if we test what we have never done? We should try this thing even if it will fail next year. However, they should not bring the laptops that

we know. They need to bring plastic laptops which cannot break. We may have to rebrand them and get a new name, so that there is no war. The teachers are now on the streets thinking that they will be given the same laptops that they are using which are very heavy. They could even cause damage to the children.

This Motion has come at the right time, to the extent that this current Government does not need to bring an amendment to bring a variation of funds. Rather than keeping money in their books, when there is another quarter, they sit down with the county governments and do the arithmetic; how much it costs per county. This situation obtains in all the counties. I went to a school in Murang'a and it was miserable. Some people may think that there are good schools in some places. When it comes to schools, we should be bold and say that those who build in the 1950s and did it wrongly and those who have not done it today, are equal. If this Government agrees to move towards that direction, then we shall sort out this problem.

I will be counting to see who does not support this Motion. I support the Motion and encourage my colleagues to discuss it with open hearts and minds.

The Senate Minority Leader (Sen. Wetangula): Thank you, Madam Temporary Speaker. The distinguished Senator for West Pokot - you can see the making of a dictator arrogating himself powers that he will never have.

This Motion, in spirit, is good to the extent that we need to help counties to develop and assist our people in near similar developmental activities around the country. The Motion coming from the Committee on Devolution and Planning, I do not know whether it is a personal Motion by the distinguished Senator for Elgeyo-Marakwet or it is a Motion from the Committee. Whatever it is, I would want to see a situation where, however short the time may be, we start looking at the powers already vested in the counties. What are they doing with them? How much have they done so far? Is the centre giving them enough resources to execute those powers and those activities? Of course, we are in a state where the national Government blows hot and cold about devolution. When it is convenient, they shout from rooftops that they support devolution. When it is not, they do the complete opposite.

When you look at the Constitution, Schedule 4, and the distinguished Senator for West Pokot has read it out, I do not need to. Sections 15, 16 and 17 really are matters that ought to remain the preserve of the national Government; education policy, standards, curricula, examinations, university charters, universities, tertiary educational institutions, institutions of research and higher learning, primary schools and special education. All these should and must remain part and parcel of the responsibility of the national Government.

Madam Temporary Speaker, Section 17 is on promotion of sports and sports education. This I fully agree should be devolved to the counties. This is because when you devolve this to the counties, it will be very easy to identify and nurture talent. The people who sit here in Nairobi and pretend to run our sports through cartels, hardly ever go to the remote parts of this country. I am not aware of any time when anybody goes to Marsabit, Moyale, Turkana, Bungoma or anywhere to try and identify young talents in sports. So, county governments and their institutions are better placed to get funds, develop infrastructure, identify talent and nurture it. I agree with the Motion that this should be done through the constitutional provisions of transfer of responsibilities through agreement to the county governments.

However, we must be careful with Motions like this that cut both ways. Because we may very well give authority to the national Government and knowing how our country has been operating, it will entirely depend on who is where. If the person sitting in a Ministry exercising powers on sports and sports education comes from my county, his first agreement will be with my county regardless of whether we have talent there, or not. You will not be surprised to find somebody concentrating on an area like where my learned junior comes from, where they have never been known to play football, but because the person responsible for football comes from there, you will find they are signing agreements relating to development of football within an area where there is no talent and ignoring areas that have talent. So, when such agreements are desired, we must find ways and means of what we lawyers call, watching the watchers.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Madam Temporary Speaker, I just want to know whether my senior in the profession and junior in this House is in order to insinuate that there are certain parts in this country which have no capacity to produce talents. This being the Senate – the House of reflection and the House of national unity – I plead that the Chair rules that my learned senior and junior in this House withdraws those remarks.

The Temporary Speaker (Sen. Ongoro): Senate Minority Leader, can you elaborate on that?

The Senate Minority Leader (Sen. Wetangula): Madam Temporary Speaker, it is obvious that my learned junior was mesmerized by my language and forgot the facts. I never said that there are areas which cannot produce and nurture talent. I said that we are in a country where tribalism, nepotism, sectionalism – name it – are the order of the day. We have a new Constitution, but we have the same old people, playing the same old dirty games, such that if we gave any discretion to somebody to go and build an athletics stadium, you will find somebody going to build it in an area that since Independence, has not been known to produce a single runner just because he comes from there. You will find the best football stadium being built in Tharaka-Nithi just because somebody comes from there, when the real footballers are in Nyanza, Western, Nairobi and Coast. That is all I am saying. I could see the seasoned Senator for Laikipia nodding in approval as I was saying this.

(Laughter)

Madam Temporary Speaker, infrastructure in schools – and that is where this Motion is really key – is very important. When a child goes to Standard One from home in the villages where we grew up, you will find a child who has been looking after goats and sheep, he has never worn a pair of shorts or shoes and he has never sat on a chair. So, when on day one, this child goes to school, with a very neat pair of shorts, a very neat shirt, a small bag carrying a book that he would not know how to use at that time, it is a new entry in life. But when that child goes to school and the first thing he or she realizes is that he or she is going to sit under a tree to learn; the teacher teaching that child is sitting on a stone, he is shocked. In the evening on the first day when the child goes home, if he is from Murang'a or the places we have been seeing, he is bitten by jiggers - with great respect to people from those areas, that child will go with an experience knowing that, that is not the place to go. When we were children and we first stepped into

school; we entered into the class and we were given a desk; there is a school monitor who gives you a slate, and a slate pencil. Then, after two terms, you are given an ink pot on your desk with an ink pen. You realize that you have come from a different background to a different environment. Education becomes interesting and good.

So, Madam Temporary Speaker, I am telling this Jubilee Government that this misguided idea of thinking that they can give Standard One pupils laptops costing billions of shillings had better be transferred into the spirit of this Motion to build classrooms and to provide desks; not classrooms in areas like some places in this country. You have gone round and you have seen when the headteacher sees a storm coming from the east, he or she must immediately dismiss the children to go home to avoid the risk of the children being rained on, being hit by a lightning strike and all manner of things. Yet at the end of the day, those children will face the same examination with the children of these Senators who are going to academies in Nairobi where they are picked from the doorstep in the morning and dropped at the doorstep in the evening. They will face the same examination with no adequacy and no uniformity of preparation.

Madam Temporary Speaker, this is why we fought for devolution; to dismantle the centre and take services to the ordinary person on the ground. It is not enough for us to sit here and talk like this. This Senate has a responsibility and a duty to even form Committees to go round the country to carry out audits to find out, for example, what does Kajiado County require to be at par with Nairobi County in education? What does Laikipia County require to be at par with Nakuru County in education? Then we can now sit and say: "Look, if the Government provided an average of Kshs1 billion per annum for the next five years to build or to maintain classrooms; another Kshs1 billion to equip those classrooms, and another Kshs1 billion for regular support services to those schools," then you will be surprised to see how much hidden talent we have in this country. Like today, the national Government is saying "no remedial classes for children." So, children in the rural areas go to school at 9.00 a.m. and go home at 5.00 p.m., learning under trees, under very difficult circumstances. But the children of these *mabwenyenyes* in Nairobi go to school---

The Temporary Speaker (Sen. Ongoro): Order, Senator! What is the meaning of the word "*mabwenyenye*?"

The Senate Minority Leader (Sen. Wetangula): Madam Temporary Speaker, *mabwenyenye* are rich people; that is all it means.

The Temporary Speaker (Sen. Ongoro): You must continue your debate in English because you started in English.

The Senate Minority Leader (Sen. Wetangula): Madam Temporary Speaker, *mabwenyenye*, for those who do not understand Kiswahili language, refers to rich people.

Madam Temporary Speaker, the children of rich people in the urban areas and in cities go to school at 7.00 a.m. from Mondays to Fridays; on Saturday they are in school, half of Sunday they are in school, the teachers are teaching them and by the time when they are in Standard Eight and it is May, they are through with the syllabus; the rest is revision to wait for examinations. The same happens to the Form Four students. But in the countryside, children go to do biology examinations and yet, they have never seen a laboratory. They go to sit for chemistry examinations, but they have never seen a test tube in their lives. Yet, they will compete in the same national examination. How can you

take unequal forces, put them together and say “now, compete fairly?” That is what devolution is here for.

Madam Temporary Speaker, I am very happy with the Senate because Senators have distinguished themselves as men and women of focus; they are not embroiled in petty things. They are focussing on how to empower the ordinary man and woman in the counties. Five years down the line, history will judge this Senate very harshly if, at the end of our first term, we shall not have created some visible levels of equity in our society, particularly in education, and infrastructure, especially in roads and water provision.

Madam Temporary Speaker, if you represent a rural constituency like I did for the last many years and hon. Senators like Hargura who come from the most marginalized areas understand this, you find a school has Standard One to Standard Eight and yet the entire school has only two teachers from the TSC. At the end of the day, they must face the same exam with children from privileged schools. We are building the most unequal society and that is so dangerous for our future. You go to some schools and you find that they have so many teachers; some teachers sit knitting from morning to evening while in other schools, there are no teachers.

(Laughter)

We must rationalize this.

Madam Temporary Speaker, this Motion talks of resources, functions and powers. However, I am not so much interested in functions and powers. I am more interested in resources. If these Senators say in every county, no primary school shall be left without proper classrooms of approved standards by the Ministry responsible for public works, this must happen. This is so that you do not just go to a place and you find one school looks like a Four Star hotel; you go to the next village and a school looks like--- I do not know what you would call it. If I was to be allowed to use Kiswahili language, I would use the correct word. But you find a classroom that is not even fit to be a pen for sheep and goats, and yet it is a classroom. That is where the problem lies.

Madam Temporary Speaker, I support this Motion because we must build institutions. I want to see an athletics stadium in Mt. Elgon in Bungoma County; the home of the famous Ben Jipcho and Linet Masai; the home of young talent that have come from nowhere to be world conquerors. I salute boys like Paul Ereng who, from nowhere, won an Olympic gold medal. I salute boys like Paul Tergat who have brought immense pride to this country without us, as a country and as a Government, supporting him. If you look at the leadership of these sports services, you find people who live like lords. We were shown the scandal at the Olympics in London where officials who escorted our athletes were living in Five Star hotels, paying themselves *per diems* of US\$2,000 per day while our boys and girls who were going to bring glory to this country like David Rudisha were sleeping in dormitories, with nobody caring for them. Then they come back and say “we succeeded; we got one gold,” when Kenya would have got even ten gold medals if they cared. This is a wonderful thing. This Senate must stand up, be counted and stop the entrenchment of marginalization that has been the hallmark of this country where some tarmac roads lead to individual homes while in others these are lessons learnt by children in books. That is what we must stop.

Madam Temporary Speaker, I beg to support.

Sen. Mositet: Thank you, Madam Temporary Speaker. I support this Motion from the outset. When I imagine how my county is and go back to the Speech by the President, I find that the only way we can be effective and efficient as the President had put it is by supporting this Motion.

It has been said a lot that our Government normally comes up with the best way of doing things. But out of the budget allocations, 40 per cent goes to waste. However, if we adopt this Motion, we will improve on that line. We will become very efficient and effective in improving our educational institutions.

I believe that we, as leaders of our counties and the rest of Kenyans know our areas very well. In fact, I am sorry, but I stand to be guided; I do not know whether the national Government has ever equipped or even built schools in my county. Apart from the centres of excellence which were done a few years ago, I cannot trace the history and say that a particular school was built by the Government. We have always done this through Harambees and Non-Governmental Organisations (NGOs) until the CDF was founded. With this Motion, I believe that most areas will have schools. Some children are learning under trees while others use churches to learn. We will turn these areas into worship centres and come up with beautiful schools.

I also feel that if we go as per this Motion, we will also be distributing wealth. We will also be creating employment in our counties. Currently, if we look at firms that supply school equipment to counties; you will find that we only have two or three companies from Nairobi. However, if counties are allowed to have resources, they can buy equipment for their schools and procurement would be done at the county level. That way, resources will effectively find their way into good use. Those who are not employed, particularly the youth will come up with companies, so that they participate in the procurement process as promised by the President. They will have an advantage in that.

Therefore, I support this Motion because I believe that we will manage to cut down on wastage and to run a very effective system of education.

Sen. Muthama: Madam Temporary Speaker, I stand here to support this Motion because of the following reasons. Today, this country has strong infrastructure, more so, in the area of education. If we had a Government, from the word go, that took down education to the people, many Kenyans would be very rich. However, you will find that it has become a normal thing for any businessman to be compelled by situations to contribute money to put up dispensaries and educational institutions. They also contributed towards provision of water and sanitation.

If you reflect back and you will see where we have come from. You will see a very clear demonstration that the Government has never worked the way Kenyans have expected it to. I have contributed a lot of funds, not only in my area, county or the constituency I represented in the Tenth Parliament, but in almost every corner of this country. In certain circumstances, I have gone to areas where I could not tell whether the people I had gone to were human beings and whether they enjoyed any constitutional rights.

For example, a child who has gone to school in Taita between Mwatate and Taveta, the border between Kenya and Tanzania, from Standard One to Standard Eight,

walks to school without books, clothes and no classroom. This is happening in Ukambani, Luoland---

Sen. Karaba: On a point of order, Madam Temporary Speaker. Sen. Muthama has talked about children going to school without clothes. Is it in order for him to mislead this House that they go to school without clothes?

The Temporary Speaker (Sen. Ongoro): Sen. Muthama, could you elaborate on your allegation?

Sen. Muthama: Madam Temporary Speaker, when you find a young girl aged between seven and ten walking in uniform that is stitched with sisal string and is torn, what do you call that? I did not use the word “naked.” I think I have substantiated that.

Sen. Karaba: You said they walk without clothes!

Sen. Muthama: Madam Temporary Speaker, look at the condition of those children. At the end of the day, after eight years, they have to face the same examinations that are given to children who are in Nairobi Primary School or Aga Khan Primary School. As if that is not enough, the same children – Sen. Karaba will agree with me – have no classrooms. Most children study under trees. Some of the classrooms do not have desks. The children sit on rocks and yet, the central Government has put a carpet in this Chamber. I feel a lot of pain when I see these things happening in this country.

The same central Government is putting up expensive offices for Cabinet Secretaries, Principal Secretaries, V.I.P lounges at the airports and many other things. As if that is not enough, it is spending money on the supply of flowers to offices which cost millions of shillings. A Principal Secretary who uses such an office goes home over the weekend and finds neighbours who are parents of such children who have difficulties going to school.

Madam Temporary Speaker, I support this Motion because I campaigned for the Constitution in the Republic of Kenya without actually taking time to rest. I went to all corners of this country because I saw hope in this Constitution. In this Constitution, I saw that Machakos County and all other counties in this Republic will be able to sit down and say: “This is what the central Government is going to do now. Money will no longer be kept in the central Government, but must be given to counties, and people will have an opportunity to build their institutions.” This Motion talks about infrastructure and resources being devolved. This is the only way forward.

Madam Temporary Speaker, Kenya High School and other secondary schools are fully equipped, but I want to give an illustration of certain schools where I come from. When you go to a secondary school you will find that it has only four teachers who teach Form One up to Form Four. I want to agree with my leader here, Sen. Wetangula, that some schools are slightly better in some corners of the country. I cannot say that there is a single school that is adequately equipped in this country, but there are those that are slightly better than the ones which are very much left behind. Schools teaching Biology without laboratories are wasting time.

Madam Temporary Speaker, the leaders, starting from the President to the Senators and others, are calling for Kenyans to unite and be one country. But how do you tell somebody who is sitting at the top and another one down there, with absolutely nothing to cater for his needs, to team up, think the same and build a united nation? It is like mixing water and oil. You cannot mix the two. For us to create a united country, we need to allow funds to go to the counties. This is what we did the other day. The Senate

looked at the Division of Revenue Bill and decided to balance issues on behalf of Kenyans. We insisted here that we just wanted money to be given to the counties for development. That was changed and the President assented to the Bill with the amounts of money that cannot develop the counties. That was the only opportunity that we had, as Kenyans, to start changing things and say: "There will be a hospital or school in a certain area."

Madam Temporary Speaker, in this financial year, we would have achieved in every county between 20 per cent and 25 per cent development with that allocation. In five years, we would achieve 125 per cent development. That would involve renovating and rehabilitating the existing institutions and building new ones. If we do this in the next ten years, Kenya will be a country that is able to provide what Kenyans need in terms of infrastructure. But if we approach our issues in that manner, the poor will just continue being poor and there will be no chance for improvement. What does that mean? It will be difficult for a child who comes from a poor family to get an opportunity to become the President of this country. By diverting resources to a certain class of people, that means that the poor will never access anything. That opens a door for unscrupulous characters to amass more and more wealth at the expense of the poor people in this country. We will just create a society in this country that will not be controlled easily. We want to have Kenyans with sober minds. We want to prove that together we own this country and share the resources. The way to do this is what Sen. Murkomen has suggested here; that the counties should be given money.

Madam Temporary Speaker, today, the Governors are in the counties, but other than just running around with the vehicles that they have been given, they are not doing anything else. They have absolutely no specific budget that they can stand up in public meetings and say: "As the Governor of this county, I have planned one, two and three, because there is money that is coming." They are in the darkness. We are still living in those old days, when the Minister would give directions and tell those Governors what to do. They have been turned into District Commissioners in this country, although they were elected.

So, we want this power to be given to them, so that they can put up infrastructure and improve the lives of Kenyans. If that money is sent to the counties and the infrastructure improved at the county level, the supply of all the requirements will be done by the locals. Since Machakos County borders Kiambu County, people from both counties will have enough business to do. That is where demand will start. You will find people from Kiambu County selling things which are not grown in Machakos and vice-versa. By doing so, we will be putting money in the pockets of the local people.

Madam Temporary Speaker, I beg to support this Motion.

Sen. Kagwe: Thank you, Madam Temporary Speaker. I rise to support this Motion and, indeed, say that it is something that should have been done within the first few days of our being elected.

Madam Temporary Speaker, what Sen. Kipchumba is proposing goes far beyond what is written in this document. If what Sen. Kipchumba has proposed goes through, what we are actually going to observe is the stability of our nation. Nations become stable when all people believe that they are being considered and are part of the structure that the country has. It is through this kind of thing that we can create what we can call the Kenyan dream, so that every child in this country grows up believing and knowing that

within their own counties or villages, they can live as well as other people in other places of this country.

Madam Temporary Speaker, if you talk about devolving functions and power, power is devolved through revenue. He who has the money calls the tune. You dance to the tune of those who pay. Consequently, it is this money that must go to the Governors and the county governments so that they can have power. There is no power that we can devolve through a flag. Even if we give the Governors four flags each, let alone two, but they do not have any money to function the way they are supposed to, even if we give them fantastic number plates and there is no money, even if we gave them 15 security officers each and yet the citizens are not empowered with a life where they do not have to think about crime, then we will be acting in futility.

The way to create stability and security is to ensure that we devolve sufficient money and powers to the county governments to empower our governors and their governments so that they are able to transform the counties into areas of stability, where people would want to live rather than travel to Nairobi and other urban areas.

Madam Temporary Speaker, we also need to ask our governors to invest in capacity building because we cannot devolve functions to a government that cannot handle those functions. In order for us to create efficiency at the county level, we need to ask our Governors as well as the central Government to spend some money and some time in capacity building. By doing so, we will be able to, not only seek for functions that can come from the central Government, but we can also function more efficiently than the central Government.

Madam Temporary Speaker, if you look at some of the areas that the Senator has proposed like education, if you visit the United States of America (USA), education is a state function and not a federal government function. Therefore, since we have been looking at the best practice elsewhere, education and many parts of education can be devolved to the counties. My colleagues have said it and I will repeat, there are some issues that a Cabinet Secretary or a Principal Secretary sitting in Nairobi in the Ministry of Education--- and as the Committee on Education in the Senate, we will urge that the money functions, especially the development of infrastructure and building of classrooms should not be handled by the central Government. There is no way that a Cabinet Secretary sitting in Nairobi will know what the state of a classroom is in Mukurweini or Kieni Constituency of Nyeri County. Therefore, let them give that function and the corresponding money to the Governor of Nyeri County who will handle the construction of classrooms.

It is even more than this when you think about it. Most of those classrooms have already been put up by *wananchi* themselves. Indeed, I do not know anywhere in Nyeri, particularly in Mukurweini Constituency where I was a Member of Parliament, I cannot recall in my adult life a classroom that was built by the Government. All the classrooms there were built through *Harambees* and through our own efforts. Considering that we have already built them, there is no reason for the Government to continue owning them. Let them be owned by the Nyeri County. I think we should even go a bit more than the Senator is proposing. We should, indeed, amend these functions to include some basic aspects such as security. We are aware that as we sit in this House today, people have suffered in Wajir and Garissa as a result of clashes. When that happens, we have to move many people from Nairobi to go and secure these places. In other countries that have

county governments or state governments as it were, there is what we call state police or state security machinery. We should be thinking of how we can also devolve some of the functions that are handled in Nairobi to be handled directly by those people in the counties. For example, if we had a quick response unit in places where clashes are common as we are seeing now in Wajir and Garissa, perhaps, we could have saved lives. No Kenyan should be killed by another Kenyan simply because he comes from a different community or tribe. We condemn the killings of Kenyans in Garissa and Wajir.

Madam Temporary Speaker, you saw it for yourself in today's papers, where the Governor of Mombasa has gone out of his way to secure police vehicles for his police in Mombasa yet the command structure is central. We are being told that a Governor cannot sit in a security committee and yet the Governor of Mombasa is the one who is supplying the vehicles that are being used by the same security forces. It does not make sense. The reason a Governor should sit in those security committees is because he might assist and give a little bit more to security forces if he or she is briefed properly.

Therefore, let us go even further than what Sen. Murkomen has proposed and devolve even more functions than it has been put here. I just want to emphasize that the power that we can devolve must have corresponding amounts of resources. President Kenyatta, a few days ago, told Governors at State House Nairobi that he would be devolving more powers. In fact, he gave a directive that within a month, some aspects should be devolved. Therefore, it means that if read properly, it makes the Bill that he signed null and void. If we devolve more functions and if we follow the Constitution as it is read then when it means that the money that we must devolve to the counties must be more than Kshs210 billion that was assigned.

The Senate Majority Leader (Sen. (Prof.) Kindiki): On a point of order, Madam Temporary Speaker.

The Temporary Speaker (Sen. Ongoro): What is it, Senate Majority Leader. What is out of order?

The Senate Majority Leader (Sen. (Prof.) Kindiki): On a point of order, Madam Temporary Speaker. Is the Senator for Nyeri in order to speak about the merits of a Bill that was assented to by the President and that matter is before the court of law?

The Temporary Speaker (Sen. Ongoro): Senator for Nyeri, you are actually out of order on that issue because the matter is before a court of law.

Sen. Kagwe: Madam Temporary Speaker, indeed, I take your direction. I withdraw and apologize.

Therefore, I also want to add that we are convinced that the Kenyatta administration is completely committed to devolution. That is clear. Let nobody try to hijack the issue of devolution as something that they can run away with or as if the Government of Kenya is against devolution when we know very well that it is something they support. Therefore, purporting to presume that the administration is not supporting it is simply not true. It is not a political issue, but a constitutional issue. We believe that the Government is committed to it. However, action must follow words. It must not only be seen to be done, but also observed to be done in a committed manner.

With those few remarks, I beg to support.

Sen. Nabwala: Madam Temporary Speaker, I stand to support the Motion. It has come at the right time when we are devolving functions to the counties. Article 187 states:-

“A function of power of Government at one level may be transferred to a government at the other level by agreement”.

So, these functions which are mentioned in this Motion, I believe that the Governors and our Cabinet Secretaries will have to sit down and agree and see for themselves whether they have that capacity to handle these functions. If they do not have, they may ask for support from the national government in capacity building and even support staff.

Article 187 (a) states:-

“The function or power would be more effectively performed or exercised by the receiving government”.

I believe that devolving the functions and the powers relating to the development of infrastructure and equipment of our institutions of learning at primary and secondary levels to county governments is being done and in good faith because it is the county governments that are in a position to best handle the infrastructure because they understand the problems that are at county levels. So, they may be able to create jobs by involving the people at the grassroots, particularly in building roads. They will hire these people. If we do not have enough teachers, they will be able to source around for those students who have done education and are jobless. They may be able to get jobs at the county level.

Madam Temporary Speaker, what we are saying is, even if the functions are being devolved, the same staff that are at the county assembly are the same staff who are going to handle these functions. So, really, it is not calling for additional staff, but maybe in terms of skills because these functions have been performed by the national Government in the past, and particularly if you look at Schedule 4 of the functions; No.15. Education policy has always been handled by the Government, curricula examinations, granting of university charters *et cetera*.

I believe that before the county governments sign agreements, they should go through these three Sections 15, 16 and 17 and see what they will be able to handle because you cannot bite what you cannot chew. So, if they feel that they cannot handle these tasks, they should ask for assistance. I compliment the Senate Majority Leader for moving this Motion. I think the Jubilee Coalition Government is committed to devolving the functions as per the Constitution. Devolution is about moving the powers and services to the people. This is the first step that they have taken. I am really happy and that is why I stand to support this Motion. It is also one way of legitimizing the transfer of functions.

I did not have much to contribute because I was not prepared. But I think the Governors at the county assemblies should be happy because we are now going to give them more responsibilities. It will be a test to them, that they can handle devolution. After one, two or three years, we shall be able to review and see whether devolution is really working at the county level. I am sure there will be monitoring and control from the support staff. The County Commissioners who are on the ground should assist our Governors to enable devolution take off.

Thank you.

Sen. Melly: Thank you, Madam Temporary Speaker, for this opportunity. I rise to support this Motion and say that the Government should devolve resources to county governments to ensure that schools in each county are fully equipped. A number of times, we have visited primary and secondary schools in our counties and all Senators know that

the situation is not good. The reason the Senate is there is to ensure fairness in distribution of resources in terms of finances and structures.

The Motion by Sen. Murkomen has come at the right time when this Senate should actually sit down and see to it that all schools in the country across the 47 counties record development, so that we give our children the right to compete irrespective of which county they come from. This House has the mandate to ensure that counties register progress by equipping all our institutions with the necessary infrastructure to ensure that our children produce the best so that, in turn, they can develop their own counties.

Madam Temporary Speaker, the worry is that: Are we really committed to devolution? It is easy to say that we are devolving functions to the county governments, but if there are no resources to ensure that these functions are performed, then we shall just debate, time will go and nothing will happen. It is my prayer that this Motion becomes a Bill and the Government supports it.

As the Government devolves these functions, it must have a corresponding financial obligation to finance those functions and ensure effectiveness. A number of functions have been devolved to counties. It is not just financing education institutions such as primary and secondary schools, but there are other functions that the national government is devolving. Again my worry is: Is it accompanied by finances to ensure that these functions are performed? I want to say that it is our job to ensure that corresponding financial obligation is taken to the counties so that they can move on.

With those few remarks, I support.

The Temporary Speaker (Sen. Ongoro): Since there is nobody else interested in contributing. I will ask the Mover to reply.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Madam Temporary Speaker, I moved this Motion on behalf of Sen. Murkomen. He is the expert and he has, through the Speaker, communicated that he would like to be here tomorrow to respond, I do not know what you would direct. But I would be happy if Sen. Murkomen himself was here to reply to this Motion. It is very dear to his heart. It is only fair that we do not take undue credit for the Motion.

The Temporary Speaker (Sen. Ongoro): Senate Majority Leader, you know that we have to follow due process at all times. Therefore, if you have that kind of request, just put it forward clearly and the Speaker will make the ruling. Make reference to the relevant Standing Order.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you, Madam Temporary Speaker. I want to refer to Standing Order No.97(1), which says:-

“A Senator who wishes to postpone to some future occasion the further discussion of a question which has been proposed from the Chair may claim to move “That, the debate be now adjourned”, or, in Committee of the Whole “That, the Chairperson do report progress.”

(Laughter)

Madam Temporary Speaker, I want to request the Chair, Under Standing Order No.97(1) to direct that the debate on this Motion be now adjourned so that Sen. Kipchumba Murkomen can reply to his Motion tomorrow.

Thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. Ongoro): Well, you have now put forth your request procedurally and I make reference to the same Standing Order. I now put the Question.

Hon. Senators, this does not affect counties, so those of you who are in the House are able to assent.

(Question, that debate on the Motion be adjourned, put and agreed to)

Hon. Senators, debate on this Motion is adjourned.

ADJOURNMENT

The Temporary Speaker (Sen. Ongoro): Hon. Senators, there being no further Business today, the Senate, therefore, stands adjourned until tomorrow, Wednesday 26th June, 2013, at 9.00 a.m.

The Senate rose at 6.06 p.m.