

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

Tuesday, 23<sup>rd</sup> February, 2021

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

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

#### PRAYER

#### COMMUNICATIONS FROM THE CHAIR

DEMISE OF HON. FRANCIS MUNYUA WAITITU,  
MP, JUJA CONSTITUENCY

**The Speaker** (Hon. Lusaka): Hon. Members, I have a Communication on the demise of Hon. Francis Munyua Waititu, MP.

It is with deep sorrow that I wish to inform you of the untimely demise of Hon. Francis Munyua Waititu, MP, Member for Juja Constituency, Kiambu County, who passed on yesterday, Monday 22<sup>nd</sup> February, 2021 while undergoing treatment at the M.P. Shah Hospital, Nairobi.

Hon. Senators, the late Hon. Francis Munyua Waititu, MP was born on 5<sup>th</sup> October, 1958 in Gigiri, Kiambu. He attended Karura Forest Primary School where he took his Certificate of Primary Education (CPE), before proceeding to Sharda High School for his East Africa Certificate of Education (EACE).

He thereafter obtained Certificates and Diploma in Agriculture from the Coffee Research Institute (CRI), Finaff Coffee Consultants, the Kenya Planters Co-operatives Union (KPCU) and Bouchard International Services.

Hon. Senators, the late Hon. Francis Munyua Waititu, MP, popularly known as 'Wakapee', had a passion for agriculture and real estate, whereby he had an illustrious career working at Magumu Nyakinyua Coffee Estate in Kiambu, Iganjo Farm in Juja, Kirathe Mang'u Coffee Estate, Surrey Coffee Farm, Muiri Coffee Estate in Thika, Ngungugu Farm in Gatundu, Sunflower Farm in Machakos and Saramwai Estate in Nyeri, where he served as Group General Manager.

Hon. Senators, Hon. Francis Munyua Waititu entered politics in 2013 when he was elected as MP for Juja Constituency and re-elected to the same position in 2017. In the second term of his political career, he was however constantly in and out of the country for cancer treatment.

In Parliament, the late Hon. Francis Munyua Waititu, MP, was a devoted Member of the Departmental Committee on Agriculture and Livestock, Select Committee on

Catering and Health Club, which is the predecessor of the Select Committee on Members' Services and Facilities, and the Select Committee on Implementation.

He was instrumental in the establishment of the Coffee Cherry Advance Revolving Fund by His Excellency the President during the 124<sup>th</sup> Session of the International Coffee Council in Nairobi in March, 2019.

He consistently supported legislation geared towards the improvement of the agricultural sector and ease of doing business in Kenya, as exemplified by the Law of Contract (Amendment) Bill, which he sponsored in 2019.

Hon. Francis Munyua Waititu relentlessly worked for his constituents. He will be remembered for championing matters on education and socioeconomic development of his constituents and the country at large, as seen in his Motions, Questions and Petitions that he sponsored.

On behalf of Senators and the staff of the Senate, and my own behalf, I take this opportunity to condole with the family of the late Hon. Francis Munyua Waititu, Members of the National Assembly, the people of Juja Constituency and all his friends in this most difficult time. The Parliament of Kenya has lost a diligent leader.

Hon. Senators, in honor of our departed colleague, I request that, in the usual tradition, we all stand and observe a moment of silence.

May his soul rest in eternal peace.

*(Hon. Senators stood up in their places and  
observed a minute of silence)*

I thank you.

**Sen. (Eng.) Maina:** Mr. Speaker, Sir, I wish to extend my condolences to the people of Kenya for losing an industrious MP. Hon. Waititu was an easy, kind and humourous gentleman. He was a man of the people who interacted easily with the locals.

We have lost him to cancer, and I must commend him for his courage. He owned up and tried to draw the attention of the nation to the seriousness, extent and harm that cancer is doing to our society. He also mentioned that 63 Members of the National Assembly and the Senate were diagnosed with cancer.

Mr. Speaker, Sir, we heard that he went to India. Kenya is spending billions of dollars to send its people for treatment to India, Europe, the United States of America (USA) and other countries. This country is able to organize itself and have an ultra-modern facility to train our doctors and take preventive measures against cancer, which has taken our dear friend and colleague. Therefore, we should not forget that healthcare in the country requires a lot of attention. Forget the strikes that we are seeing; few dispensaries in the country are giving the right services.

I got a call this morning about a case in Nyeri where somebody got a cut and went to the Government hospital in Karatina, but later on, he developed problems on his hand, which had the cut. When he went to a private hospital, he was told that the hand had been misdiagnosed.

Mr. Speaker, Sir, we need to ask ourselves where our priorities are. The health of a nation is the basis of advancement. Therefore, I ask the almighty God to rest the soul of our dear friend and colleague, Hon. Waititu in peace.

I wish that we wake up, as a people, and see the important things that our citizens require, for example, healthcare.

**Sen. Khaniri:** Mr. Speaker, Sir, once again death has robbed this country of another dedicated and down to earth leader. I take this opportunity on my own behalf, that of my family and the people of Vihiga to convey our deepest condolences to the family of our departed colleague and the people of Juja at large.

Mr. Speaker, Sir, I knew *Mheshimiwa* personally. I met him in the last Parliament and we became good friends. He was a close neighbour to my first born sister. Every time I met him here, he brought me greetings from my sister, nieces and nephews from Juja.

I interacted with him quite a bit and he had great plans for his people. What I admired most about him was his simplicity. He was a down-to-earth person, and I loved that about him. It is unfortunate that death has taken him before he could fulfill the aspirations that he had for his people.

Mr. Speaker, Sir, *Mheshimiwa* was brought down by cancer, which has become the biggest killer in our country. Before his death, he was a strong ambassador and advocate for the Government to establish facilities locally that can treat people suffering from cancer. Therefore, if we have any respect for the dead, the Government should go ahead and ensure that we have enough facilities in the counties to take care of our cancer patients.

It is unfortunate that he is gone. It is our prayer that the Almighty God will give his family the strength and fortitude to bear the loss and comfort the people of Juja, the National Assembly and Parliament at large.

May his soul rest in peace.

**Sen. Seneta:** Mr. Speaker, Sir, I thank you for giving me a chance to condole with the family of our departed friend, Hon. *Wakapee*. I interacted and worked with the late Member in the 11<sup>th</sup> Parliament.

This country has lost a very hardworking Member of Parliament (MP) who was a down-to-earth family man. The late Hon. Waititu spent a lot of time thinking about his constituency. On behalf of my family and the people of Kajiado County, I condole with the people of Juja Constituency, Kiambu County, and all the people of Kenya because we have lost a leader who was mindful of the agriculture sector.

The late Hon. Waititu was always thinking of ways to promote agriculture and working on policies concerning the uplifting of the agricultural sector. This country has lost an important person.

May his soul rest in eternal peace.

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

**Sen. Wetangula:** Mr. Speaker, Sir, I join you and the House in condoling the family of our departed colleague, Hon. *Wakapee*, from Juja Constituency. The late colleague was a personal friend and a very good person. He was passionate about agriculture in general, particularly coffee farming, having himself worked in the coffee sector. Every time you met our departed colleague, he had something to say about the growth and improvement of the coffee sector in Kenya. He constantly reminded me that the frontier for coffee growing lies in the Western Region of Kenya, lamenting that most of the coffee farms in Kiambu County have been converted to real estate.

The late Hon. *Wakapee*, as we commonly called him, suffered for a long time from cancer. During the last Parliament, there was a time he was out of the country for

close to a full year. When he came back to Kenya, he invited me to lunch and told me: 'My brother, I believe that my problem is over. I have been treated by the best of the best, and so, I have no doubt that I have recovered from the scourge of cancer that has been afflicting me.' Little did the late Hon. Waititu know that it was still hiding somewhere and would come to bring him down.

Mr. Speaker, Sir, as we mourn our departed colleague, cases of cancer in the country that were so much highlighted in the last couple of years are not largely forgotten. We do not hear anybody in the Committees on Health of both Houses or even the Ministry of Health paying attention, at least publicly, to the scourge of cancer, which continues to be a major killer of many Kenyans. Something has to be done.

We have gone through many investigations and reports about equipment that is supposed to help Kenyans, but we continue losing very valuable lives. If MPs are going down that easily due to cancer, you can imagine what the ordinary person in the villages, whose problems are hardly highlighted and can hardly access medical care, are going through.

As we continue to lose colleagues in the manner that we have lost the MP for Juja Constituency, it is a reawakening to this country on the state of the health sector all over the country. You will all remember that we buried the late MP for Matungu Constituency just because there was no oxygen available in the nearest health institution. I am sure that many more Kenyans have lost their lives due to lack of such basic equipment in hospitals.

Health is a devolved function, but most of what we can talk about are just buildings. In those buildings, you will find medics constantly at loggerheads and in conflict with the county executive over the payment of allowances. Everywhere you go, you will find that there are no drugs, and if they are there, they are substandard. The Kenya Medical Supplies Authority (KeMSA) that has the monopoly of supplying drugs to counties is embroiled in the most monstrous fraudulent activities. It is really sad.

On my behalf, my family, FORD-Kenya and the people of Bungoma County that I represent, I send my heartfelt condolences to the family of our late brother and ask Sen. Wamatangi to keep us abreast with the funeral arrangements. I will personally be there to see him off because he was very dear to all of us.

I thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Proceed, Sen. (Dr.) Langat.

**Sen. (Dr.) Langat:** Mr. Speaker, Sir, I thank you for giving me this opportunity to pass my condolences to the family of our colleague from Juja Constituency. Just as Sen. Wetangula has stated, if we the MPs, who are more privileged than the ordinary Kenyans, are suffering so much from cancer, what about the people we represent who are less privileged in the villages?

Cancer has become a menace in this country. It is a high time that all of us in this country spoke out loud and acted accordingly on matters cancer. Many Kenyans are diagnosed with cancer in the late stages. The awareness of cancer in our country is still very low. I urge all those who are concerned to do something because treatment of cancer is very expensive.

Many MPs attend several fundraisings weekly for persons who are seeking the treatment for cancer. To make matters worse, we are always raising funds to cater for funeral expenses for persons who have succumbed to cancer. It is unfortunate that some local hospitals are taking advantage of cancer patients. For example, when patients are

referred to the Moi Teaching and Referral Hospital (MTRH) in Eldoret, they encounter so many privately owned hospitals around MTRH, which claim to be cancer treatment centres. Such facilities offer medical care at such an expensive rate that even after a loved one succumbs to cancer, they detain their bodies until all the treatment cost is cleared.

Mr. Speaker, Sir, cancer is a big problem in this country. It is claiming many of our people. It is a high time that all the people concerned did something about it. I recently read an article, which states that if cancer is discovered in the early stages, it can easily be treated. Public awareness must be taken seriously to create awareness on the early symptoms of cancer, so that it can easily be addressed. I pass my condolences to the family of our departed colleague who was development conscious and friendly to everyone. I interacted with him closely when we travelled on a work related trip to Malaysia and saw that he was a man of great ideas as far as developing his constituency was concerned.

May the soul of the late hon. Waititu rest in peace.

**The Speaker** (Hon. Lusaka): Proceed, Sen. Nyamunga.

**Sen. Nyamunga:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to add my voice to that of my colleagues, who have eulogized the late Hon. Waititu. I had an opportunity to serve with him in the National Assembly. I learnt today with great sadness of the demise of our colleague.

What I know about the late Hon. Waititu is that he was a very sober man. In the last Parliament, sometimes debate would get so hot, and we were divided along party lines. We did everything that any Member of Parliament could do to have their case put across. However, he was one person who was very sober; he would cut across and did not take even some very harsh comments by the leaders on the other side seriously.

Another thing that I know about him is that he was a very generous person. I remember there was a time I had a fundraising, and actually just tried to seek his support. I did not even think that he would support me, but he went out of his way to support me and even came to my rural home.

I learnt of his death with a lot of sadness. I saw this in the news at 1.00 p.m. when one of his daughters was eulogizing him. She said that she will always remember her dad for his kindness. That is one thing that most of us can attest to.

We want to ask God to help the family during this time when it is very difficult for them. As human beings, we will support them. However, there is that which only God can do and none of us can do.

I want to ask the country as a whole that we should take this disease called cancer very seriously because, if the people who are privileged are falling by the day, what about the people who are in the villages and cannot afford even the food that is required by people who are suffering from cancer?

Mr. Speaker, Sir, I support.

**Sen. (Dr.) Musuruve:** Hon. Speaker, Sir, thank you for giving me this opportunity to condole with the family of the late Hon. Waititu and the people of Juja.

From practical experience and as a cancer survivor, the people suffering from cancer, whether they are living with it or are survivors, go through harrowing moments in their lives. I can imagine what the late Hon. Waititu was going through. Normally, when you are going through the process, you are drained financially, including family resources, and there are so many worries that you have as an individual and even as a

parent. If you have children in school, you wonder who will pay their fees and how they will get jobs. This is a story that no one cares to find out or even make a follow-up from cancer survivors on how they are getting on.

I want to commend the late Hon. Waititu for actually doing what he did in life because we have experiences of him having been very illustrious. He did the best that God allowed him to do. As a cancer survivor, I want to say that most cancer survivors live not because of themselves, but because they want to leave an impact on their families and significant others. There is need for us to have policies that will help cancer survivors to be productive members of the society.

I condole with his family.

Mr. Speaker, Sir, thank you for giving me the opportunity.

**The Senate Majority Leader** (Sen. Poghio): Mr. Speaker, Sir, let me also take the opportunity on my own behalf, my family, the people of West Pokot and this side of the House that I lead to pass condolences to the family, relatives and friends of the late Hon. Waititu. My condolences also go to the National Assembly where he belonged and worked. I take this opportunity to wish them God speed and the fortitude that is required now for them to bear the loss.

It is important for us to realize that cancer is no longer an urban problem. It is no longer a lifestyle problem. It has spread throughout this country in almost every village in this country. I want to challenge our Committee on Health in this matter, that this House can actually take the lead in the matter of dealing with this scourge called cancer.

It is very important that this House takes that lead because it is now in the counties and health is devolved. It is very important that we realize, if we look at the economics of things - as my colleagues have said including the Member for Bungoma - that resources have gone overseas. A lot of our resources could have been used to train our own oncologists and prepare our own high level hospitals that can handle this matter.

Mr. Speaker, Sir, we can speak about these things, but I am throwing this to ourselves and the Committee on Health; that we may come up with a way to deal with this matter once and for all.

I want to wish my colleague, Sen. Wamatangi and the people of Kiambu God speed and the necessary strength.

May his soul rest in eternal peace.

Thank you, Mr. Speaker, Sir.'

**The Speaker** (Hon. Lusaka): Proceed, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo, Jnr.:** Thank you, Mr. Speaker, Sir, for the opportunity. On behalf of the people of Makueni and my family, I pass my condolences to the family of the late Hon. Francis Munyua Waititu.

As has been said by many of us, you could not actually distinguish which party or community this gentleman came from. He did not wear his tribe or party on his face, and this is perhaps because he came from a very cosmopolitan constituency.

Sen. Poghio has mentioned something, which I think we must continue reiterating. The Corona pandemic has taught us that we are not infallible. It will drop us as much as it would drop an ordinary Kenyan. Cancer will drop a Member of Parliament possibly even faster than an ordinary Kenyan. We are vulnerable because of the work that we do.

The Committee on Health, we will continue telling you with love that you are sleeping on the job; we will say it several times. In the Division of Revenue 2015 or 2016, there was a conditional grant for doing two cancer referral hospitals. The total of that conditional grant was Kshs9.4 billion. It was removed from the conditional grants at the time. However, the only champions left for purposes of health can only be in this House, and the Committee can speak about this much more.

This year, we have put Kshs7.2 billion for the medical leasing equipment; that very scandalized project that continues to bedevil counties and this country. We have spent billions of shillings, which is completely wasteful.

Mr. Speaker, Sir, can we find a bishop here for cancer because we are vulnerable and will catch up with us. We lost a colleague here in the Senate. We went to bury a colleague, and yet we are not speaking enough about those ordinary Kenyans.

You can imagine that while it is possible that this gentleman, even when he was suffering, had the benefit of a very good medical scheme – and we must thank the office of the Clerk that when we get sick you treat us well - I imagine what happens to Mama Mwikali and Mama Atieno. Chemotherapy is absolutely unaffordable.

We must find a method of telling the national Government that when they borrow money, one of the things that they can borrow and we can accept is treatment for cancer. Here in Nairobi, cancer is not going to discriminate between the people who Sen. Millicent Omanga advocates for, those hustlers, or the people who others are advocating for, who do not belong to that grouping of people who are supposed to be the lower cadre of society. We continue commiserating with families, but as a Senate, we have not done enough to speak to the ordinary Kenyan, who is really suffering.

In Kenyatta National Hospital (KNH), for example, people are being detained. A lady has been detained at the KNH after delivering quadruplets and she was unable to settle her bill of Kshs2.8 million. I expected the Standing Committee of Health to say something about that lady because this is a public hospital.

We are giving the national Government money. The Chairperson and Members are here, but we have not heard them say anything. What do they want to happen, so that they can talk about these people who are being detained in public hospitals?

Thank you, Mr. Speaker, Sir.

**Sen. Kwamboka:** Thank you, Mr. Speaker, Sir. I take this opportunity to pass my condolences to the family of the late Hon. Francis Waititu. It is so sad that this year has started badly. We have lost many Members of Parliament and Senators. It is so sad that we can lose a Member of Parliament or any other person due to cancer.

It is high time the Government puts its house in order, more so, the Ministry of Health. Let us equip all of our facilities with the necessary equipment, so that we can detect and treat cancer.

Since I am on the Floor, let me pass my condolences to the families of late Hon. Oroo Oyioka and late Sen. Haji. I was not here when the House was condoling with their families. It is so sad.

May they rest in peace.

**Sen. Wamatangi:** Thank you, Mr. Speaker, Sir. I stand to eulogise and convey my condolences to the family of the late friend of mine, Hon. Francis Munyua Waititu alias *Wakapee*. He was a man of unique distinction and led what one would simple describe as a chequered life. Many people did not know much about him, but I knew him

because he was a personal friend. We campaigned together in 2013 and 2017 on a Jubilee Party ticket.

Mr. Speaker, Sir, late Hon. Waititu rose from being a farmhand to a coffee plantation foreman, and later became a manager. He was a shrewd businessman who was finally elected Member of Parliament for Juja Constituency. To me, that in the life of a man who has grown from that level to accomplish so much is unique.

There are no other words that will describe the late Hon. Munyua Waititu. He was a brave man and fighter. One of the unique things that he did when he was diagnosed with cancer is that he never hid it. He went public about it and asked for prayers. He also professed and confessed that he was putting up a fight. Although at that particular time it looked like he had been given a short time to live, he endured and lived through all those days until this time when the good Lord called him to be with him.

Mr. Speaker, Sir, as many of my colleagues here have said, the late Hon. Francis Munyua Waititu was known for his devotion to finding peace. In Kiambu County, there were several times we had issues as leadership. There was a time in the past sessions when we could never see eye to eye. There was a lot of squabbling and fighting within the county government leadership. It was Hon. Waititu and I who always found the voice to tell the others. He stood in front to make sure that there was consensus.

The people of Juja will have a testimony to tell; that even in his last days when he was ailing and in pain, he never let that overshadow his role or even the commitment he had to serve them.

Mr. Speaker, Sir, if Members of Parliament would follow what he did and believed in public service, then we would have quality leadership. He was not selfish. If you met him, you would rarely think or know that he was a Member of Parliament. He mingled with the commoners in Juja Town. Even when he was sick, people were still going to his home, for him to solve their issues.

I want to condole with his family, the people of Juja and Kiambu. As I condole with them, I want to remember to put my voice to what most of us have said; that we must do more to ensure that we come up with a solution that will give people in this Republic hope in the fight against cancer.

The way we came together and combated the COVID-19 pandemic, we probably did so because it is almost an instant killer and cancer is a slow killer. I do not know that, that is one of the reasons we have decided to go slow in research against it. As we all know, our public institutions, especially universities, should be in the forefront in ensuring that medical research is done.

Institutions like the Kenya Medical Research Institute (KeMRI) should be strengthened and given more funding, to ensure that as they do other research, they do more research on cancer. It is a pity in this country that when somebody is diagnosed with cancer, most of us seek a ticket to go to India. The Indian Government has invested a lot in terms of research on cancer. Why can we not bring India to Kenya by making sure that we not only sponsor and fund research, but embrace technology and invest more in our doctors.

Currently, we know the tribulations that they go through. We must educate, fund and support our medical fraternity and health sector, to ensure that we come up with a proper and effective solution against cancer.



As we stand together in this, I will find a day when I will be inviting my colleagues to join me in paying a visit to the family of the late Hon. Munyua Waititu because he was a colleague to many even in the National Assembly. We convey our togetherness with that family in the coming days.

I condole with them.

**The Speaker** (Hon. Lusaka): Finally, Sen. Omanga.

**Sen. Omanga:** Asante Bw. Spika. Kwanza ningependa kutoa rambirambi zangu kutoka kwa familia yangu na watu wa Nairobi kwa jumla. Tunasema pole kwa watu wa Kiambu, hasa Juja.

Mhe. Waititu ni mtu ambaye ungemuita *hustler*. Umesikia Seneta wake akisema kwamba alianza kama kijana wa mkono lakini akafanya kazi kwa bidii hadi akawa meneja. Alifanya biashara kwa bidii hadi akawa Mbunge wa Juja kwa muhula wa pili.

Niliweza kumjua Mhe. Waititu wakati tulifanya kazi pamoja katika ile vuguvugu ambayo wengi wanaiita 'Tangatanga', '*hustler*' au 'kazi ni kazi.' Pale ndipo niliweza kumjua kama mtu mjakazi sana. Mhe. Waititu alikua anapenda kazi yake na mtu jasiri aliyetetea watu wake wa Juja. Alipenda maendeleo.

Ni huzuni sana kwamba tumempoteza Mhe. Waititu kwa sababu ya ugonjwa wa saratani. Nimesikia viongozi wengi wakilalamika na kusema kuwa Kamati ya Afya haifanyi hili au lile. Kuna mambo ambayo Kamati ya Afya haiwezi kufanya na mambo mengine ambayo Seneti au Wabunge tunafaa kufanya kwa jumla.

Bw. Spika, miezi mitano ama sita hivi iliyopita tulileta Mswada hapa kama Kamati Maalum ya *Managed Equipment Service (MES)*. Kulikuwa na maoni mazuri kwenye hiyo Ripoti. Tulionyesha vile pesa zinavujwa kwenye Wizara ya Afya. Lakini kulifanyikaje? Viongozi wa Bunge hili la Seneti waliwashawishi Maseneta kupiga kura kulingana na mwongozo wao wa siasa.

Hata Kamati ikiandika ripoti, ikija hapa Seneti, ni vile vigogo wetu wa siasa watasema tupige kura ndivyo tutapiga. Tumeona kwa Miswada nyingi kama ile ya *Ruaraka Land Report*. Ilikuwa ni shamba ya umma. Mwenyekiti wa Kamati hiyo alikuwa Sen. M. Kajwang'.

**The Speaker** (Hon. Lusaka): Mhe. Seneta, jaribu utoe rambirambi. Unaingia kwenye---Umeanza kuongea mambo ambayo hayahusiki na---

**Sen. Mutula Kilonzo Jnr.:** Hoja ya Nidhamu, Bw. Spika.

**The Speaker** (Hon. Lusaka): Hoja yako ni ya nidhamu ni ipi, Sen. Mutula Kilonzo Jnr.?

**Sen. Mutula Kilonzo Jnr.:** Bw. Spika, Seneta ambaye anazungumza anaihada Bunge hili. Hii ni kwa sababu, Kamati Maalum ya MES ilikuwa na wanachama tisa. Kura ambazo zilikuwa za "ndio" zilikuwa mbili. Yule ambaye anazungumza, yeye mwenyewe hakuipigia kura.

Je, ni haki kwake kutushutumu sisi ambao tuko hapa ilhali yeye mwenyewe hakuipigia kura?

**The Speaker** (Hon. Lusaka): Sen. Omanga, nilikuwa nakueleza uchunge kwa sababu unaweza kuingia kwenye eneo hatari.

**Sen. Omanga:** Samahani, Bw. Spika. Hata hivyo hiyo sio ukweli. Mimi niko kwa *Delegation* ya Kaunti ya Nairobi. Seneta ambaye alipiga kura kwa niaba ya Nairobi ni Sen. Sakaja. Sikupata nafasi ya kupiga ile kura, lakini nilikuwa mwana kamati na tulitoa maoni yetu.

**The Speaker** (Hon. Lusaka): Malizia kwa kutoa rambirambi.

*(Laughter)*

**Sen. Omanga:** Bw. Spika, namalizia kwa kusema kwamba afya ni jambo la--- Shida ambazo tumekuwa tukiona katika Wizara ya Afya zinafaa kupewa kipao mbele. Madaktari wetu wanalalamika kwamba hawalipwi vizuri. Hatuna madaktari maalum wa ugonjwa wa Saratani. Hii ni kwa sababu kusomea huu ungonjwa wa Saratani unachukuwa muda mrefu na fedha nyingi sana. Daktari akimaliza kusoma, hawezi kuja kufanya kazi kwa hospitali zetu za kitaifa ama kaunti kwa sababu hawalipi vizuri.

Serikali Kuu na zile za kaunti zimeweka fedha kwenye miradi mingine na afya haipewi kipao mbele. Hii ndio kwa sababu sasa hivi Serikali imepea *Building Bridges Initiative (BBI)* kipao mbele badala ya madaktari ili waweze kuhudumia wagonjwa wetu kwenye hospitali.

Nitamalizia kwa kusema kwamba Mungu amlaze Mhe. Waititu mahali pema peponi.

Asante, Bw. Spika.

**The Speaker** (Hon. Lusaka): *Asante sana.* I have another Communication to make.

PROCESSING OF THE BUDGET POLICY  
STATEMENT FOR FY2021/22

Hon. Senators, as you may recall, on Tuesday, 16<sup>th</sup> February, 2021, the Budget Policy Statement (BPS) for the Financial Year 2021/22, amongst other documents submitted to the Senate by the Cabinet Secretary for the National Treasury, were tabled in the Senate.

I, thereafter, gave a detailed Communication on the processing of the BPS for the Financial Year 2021/22. As I stated then, and would like to reiterate now, the BPS is an important tool as it sets out the broad strategic priorities and policy goals that will guide the national Government and county governments in preparing their budgets both for the following financial year and over the medium term.

Therefore, it is critical that the Senate's input at this point is submitted to the National Treasury, given that any proposals that the Senate has on the overall budget process should be included in the Report of the Senate on the matter, failure to which it may be difficult for changes to be accommodated later on.

Hon. Senators, thus far, a briefing to all Senators on the BPS was undertaken on Wednesday, 17<sup>th</sup> February, 2021 and respective Standing Committees have now submitted their recommendations to the Standing Committee on Finance and Budget, which will compile a comprehensive report for consideration by the Senate. I am aware that the Standing Committee on Finance and Budget has held consultations with relevant stakeholders, including the Cabinet Secretary for the National Treasury and Planning, the Commission on Revenue Allocation (CRA), the County Assemblies Forum (CAF), the Council of Governors (CoG), among others. I have also received communication from the Standing Committee that all efforts are being made to conclude its report and table it

on Wednesday, 24<sup>th</sup> February, 2021, and file a Notice of Motion for adoption of the Report pursuant to Standing Order No.180 (7).

Hon. Senators, in view of this, and to ensure that the Senate makes a determination on the matter within the stipulated timelines, I hereby direct that no Committee travel outside Nairobi shall take place on Wednesday, 24<sup>th</sup> and Thursday, 25<sup>th</sup> February, 2021, and on Tuesday, 3<sup>rd</sup> March, 2021, until the resolution of the Senate on this important matter is made.

I thank you.

Next Order.

## PETITION

### APPOINTMENT OF THE CEO OF NHIF

**The Speaker** (Hon. Lusaka): Hon. Senators, I hereby report to the Senate that a petition has been submitted, through the Clerk, by Mr. Alexander Irungu Wanjiru concerning the appointment of the Chief Executive Officer (CEO) of the National Hospital Insurance Fund (NHIF).

As you are aware, under Article 119 (1) of the Constitution, and I quote -

“Every person has a right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation.”

Hon. Senators, the salient issues raised in the said Petition are –

(1) THAT, in July, 2019, the NHIF Board advertised for a vacancy in the position of Chief Executive Officer (CEO) and on 17<sup>th</sup> January, 2020, invited shortlisted candidates for interviews;

(2) THAT, sometime in February, 2020, the Chairperson, NHIF Board, Mrs. Hannah Muriithi and the Principal Secretary, Ministry of Health, Mrs. Susan Mochache, informed the Departmental Committee on Health in the National Assembly that the interview process conducted on 17<sup>th</sup> January, 2020, was conclusive and that names of the top three candidates had been forwarded to the outgoing Cabinet Secretary, Ministry of Health, and further that the Board was awaiting for the appointment of a substantive Cabinet Secretary, Ministry of Health, to finalize the appointment of the NHIF CEO from the names of the top three candidates;

(3) THAT, without cancelling the initial recruitment process of 17<sup>th</sup> January, 2020, the NHIF Board proceeded to re-advertise the position of the CEO on 24<sup>th</sup> February, 2020, and changed some eligibility requirements;

(4) THAT, on 20<sup>th</sup> March, 2020, the NHIF Board held a special meeting on the recruitment of a new NHIF CEO, handpicked and appointed Dr. Peter Kamunyo Gathege as the new NHIF CEO, without subjecting the appointment through a competitive process and refused to appoint a CEO from among the persons who had emerged top at the earlier interviews, despite the specific provisions of the Constitution and statutes, which require appointments for such positions in state corporations to be through a competitive process and on merit.

(5) THAT, the Petitioner has made the best efforts to have this matter addressed by the relevant authorities, all of which have failed to respond.

The Petitioner, therefore, prays that the Senate investigates this matter with a view to ensuring due process as stipulated by the Constitution and the National Hospital

Insurance Fund Act on appointment to the position of CEO is adhered to by the NHIF Board to safeguard public interest.

Hon. Senators, pursuant to Standing Order No.231, I shall now allow comments, observations or clarifications in relation to the Petition for not more than 30 minutes.

I do not see any interest.

Hon. Senators, pursuant to Standing Order No.232(1), the Petition should be committed to the relevant standing committee for its consideration. In this case, I direct that the Petition be committed to the Standing Committee on Health.

In terms of Standing Order No.232(2), the Committee is required, in not more than 60 calendar days from the time of reading the Prayer, to respond to the Petitioner by way of a Report addressed to the Petitioner, and laid on the Table of the Senate.

I thank you.

*(The Petition was committed to the Standing Committee on Health)*

Let us move on to the next Order.

### NOTICES OF MOTIONS

#### NOTING OF THE REPORT OF THE 3<sup>RD</sup> ORDINARY SESSION OF THE 5<sup>TH</sup> PAP

**Sen. Madzayo:** Mr. Speaker, Sir, I beg to give notice of the following Motion- THAT, the Senate notes the Report of the Third Ordinary Session of the 5<sup>th</sup> Parliament of the Pan-African Parliament held from 7<sup>th</sup> to 18<sup>th</sup> October, 2019 in Midrand, South Africa, laid on the Table of the House on Tuesday, 10<sup>th</sup> March, 2020.

**The Speaker** (Hon. Lusaka): Before the next Order, there is a Notice of Motion by the Chairperson of the County Public Accounts and Investments Committee, deferred. Also, there is report of the delegation---

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

Sen. (Eng.) Hargura will give the Notice of the County Public Accounts and Investments Committee Motion.

#### ADOPTION OF CPAIC REPORTS ON THE AUDIT OF VARIOUS COUNTY EXECUTIVES FOR FY 2014/2015

**Sen. (Eng.) Hargura:** Thank you, Mr Speaker, Sir. I beg to give notice of the following Motion-

THAT this House adopts the Report of the Sessional Committee on County Public Accounts and Investments on the consideration of the audit reports of Bomet, Homa Bay, Isiolo, Kakamega, Kiambu, Laikipia, Kisumu, Mandera, Migori, Mombasa, Murang'a, Nandi, Nyeri, Samburu, Siaya, Tana River, Tharaka Nithi, Trans Nzoia, Turkana and

Wajir County Executives for the Financial Year 2014/2015, (1<sup>st</sup> July, 2014 to 30<sup>th</sup> June, 2015), laid on the Table of the Senate on Thursday, 18<sup>th</sup> February, 2021.

**The Speaker** (Hon. Lusaka): Sen. Kihika was addressing the press. There was a press conference.

Sen. (Dr.) Musuruve, proceed.

PROVISION OF MONTHLY STIPEND TO  
CANCER PATIENTS IN HOSPITALS

**Sen. (Dr.) Musuruve:** Mr. Speaker, Sir, I beg to give Notice of the following Motion-

THAT AWARE THAT, in Kenya, cancer is estimated to be the third leading cause of death after infectious and cardio-vascular diseases, with the annual incidence of cancer closing in on 37,000 new cases with an annual mortality of 28,000;

FURTHER AWARE THAT, the economic impact of cancer is significant, and is increasing with staggering consequences occasioned by increased medical costs, lost income, and the financial, physical and emotional burden placed on families and caregivers during treatment time;

ACKNOWLEDGING THAT, while Kenya is among the state parties that signed and ratified the Abuja Declaration that affirmed that state parties shall set aside at least 15 per cent of their annual budget to improve the health sector, and that Article 43(1)(a) of the Constitution of Kenya states that everyone has a right to the highest attainable standards of health;

NOTING THAT, the Ministry of Health has put in place the National Cancer Control Strategy (2016-2020) aimed at implementing a coordinated and responsive cancer control framework that leads to the reduction in incidence, morbidity and mortality through effective partnerships for collaborations for prevention, diagnostics, treatment, palliation and financing of cancer control activities to improve wellbeing of Kenyans;

CONCERNED THAT, gaps in the existing legislative framework such as discriminatory practices in the form of coverage limits and bureaucracies by the National Hospital Insurance Fund (NHIF) and private insurance firms that result in delayed diagnosis, incomplete cancer treatments and inadequate follow-ups that contribute to poor outcomes for cancer patients;

NOW THEREFORE, the Senate calls upon the Ministry of Health in partnership with the Council of Governors to-

(i) Incorporate county cancer support services in their annual development plan.

(ii) Partner with stakeholders to create support including counselling services.

(iii) Provide cancer patients with free prescriptions, wigs for those who have lost their hair, improvised breasts where applicable, and a subsidy for prostheses.

Thank you.

**The Speaker** (Hon. Lusaka): Sen. Nyamunga, proceed.

RECOGNIZING AND APPRECIATING THE  
ELDERLY BY COUNTY GOVERNMENTS

**Sen. Nyamunga:** Mr. Speaker, Sir, I beg to give Notice of the following Motion-  
THAT, AWARE THAT, in 2006, the national Government initiated the Older Persons Cash Transfer (OPCT) Programme, popularly known as *Pesa ya Wazee*, which is an unconditional cash transfer programme to destitute elderly persons above the age of 65 years to cater for their subsistence needs;

NOTING THAT, the beneficiaries receive a monthly stipend of Kshs.2,000, delivered every two months through appointed payment agents, and also entitled to medical insurance through the National Health Insurance Fund (NHIF);

CONCERNED HOWEVER THAT, the programme's credibility is marred by issues of delayed payments to beneficiaries, difficulties in processing of payments through the stipulated agents and payments to unregistered persons;

NOW THEREFORE, the Senate recommends that the County Governments complement the efforts of the national Government and assist in resolving these challenges by-

(i) Developing legislation and policies to protect the elderly including ensuring all elderly persons in their counties are registered in the OPCT programme.

(ii) Organise value addition mechanisms such as financial training to help the beneficiaries of the programme to efficiently utilize this allowance.

**The Speaker** (Hon Lusaka): Sen. Kihika, you can now give your Notice of Motion.

NOTING OF REPORT OF THE 141<sup>ST</sup> ASSEMBLY  
OF IPU AND RELATED MEETINGS

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

THAT, the Senate notes the Report of the Parliament of Kenya Delegation to the 141<sup>st</sup> Assembly of the Inter-Parliamentary Union (IPU) and related meetings, held in Belgrade, Serbia, from 13<sup>th</sup> to 17<sup>th</sup> October, 2019 laid on the Table of the House on Wednesday, 4<sup>th</sup> March, 2020.

**The Speaker** (Hon Lusaka): Thank you. Let us move on to the next Order.  
Sen. Were, proceed.

STATEMENTS

THE ABUSE OF CHILDREN UNDER THE CARE  
OF FOREIGN MISSIONARIES

**Sen. Were:** Thank you, Mr. Speaker, Sir. I rise, pursuant to Standing Order No. 47(1), to make a statement on an issue of general topical concern namely, the abuse of children under the care of foreign missionaries.

First and foremost, I would like to take this opportunity to congratulate Ms. Mercy Chebet Ruto, for her brave and laudable actions, in ensuring justice for the children in the Dow Family Children's Home in Bomet County. Mr. Gregory Hayes Dow was finally convicted and sentenced to nearly 16 years in prison for abusing underage girls while running the Dow Family Children's Home in Boito, Bomet County between October, 2013 and September, 2017.

Mr. Speaker, Sir, when the community in Bomet County discovered the heinous acts that were happening in the children's home, they alerted the Kenyan authorities but, due to corruption, Mr. Dow managed to evade justice by fleeing the country back to Lancaster, Pennsylvania, USA, where he is from.

Ms. Ruto, who happened to be a neighbor to Dow in Lancaster and also hails from Bomet County refused to allow Dow's crimes to go unpunished. Despite the slow bureaucracy of America's justice system, she dauntlessly continued to push for justice until Mr. Dow was finally convicted of his sex crimes committed in Kenya and ordered to pay USD16,000 in restitution to the victims. It is my sincere wish that the Government will recognize and accordingly honor the intrepid efforts of Ms. Ruto especially the awards that are normally given to Kenyans as *marshujaa*.

Mr. Speaker, Sir, it is very heartbreaking that this is not an isolated case. Abuse of children by foreign missionaries has become the norm in Kenya. There was the case of Mr. Matthew Durham from Oklahoma who was sentenced to 40 years in prison by a US federal court for molesting four children at Upendo Children's Home in Juja, Kiambu County. There was also the case of Fr. Renata Kizito Sesana who allegedly molested boys under his care, but the charges were later dropped due to lack of evidence.

The pervasion of these cases and the evasion of justice within Kenyan soil are appalling. The Government cannot continue to allow the innocence of our vulnerable children to be lost in the cruel hands of these missionaries. It is our legal and moral responsibility, as a Government, to protect these children by all means. We should emulate Ms. Ruto's actions and, in doing so, there are key areas of concern that the Government should address.

Mr. Speaker, Sir, firstly, proper background checks should be done on these missionaries in collaboration with their countries of origin, before allowing them to set up children's homes in Kenya. This will also allow us to hold these countries accountable for the actions of their citizens who are residing in Kenya.

Secondly, the Government should set up a proper monitoring and evaluation mechanism for the work of missionaries to both deter and arrest these incidents.

Thirdly, due to the rampancy of these cases, the law enforcement agencies should set up a unit dedicated to receiving reports and investigating cases of abuse by missionaries to ensure that they do not evade justice.

Mr. Speaker, Sir, due to the sensitivity of this matter, I would request that this Statement, though is under Standing Order No. 47 (1), be referred to the relevant committee, pursuant to Standing Order No. 47(3), to hold discussions with the relevant Government agencies and formulate and implement tangible resolutions that will ensure we stop this vice once and for all.

I thank you.

**The Speaker** (Hon Lusaka): Sen. (Dr.) Langat, proceed.

**Sen. (Dr.) Langat:** Thank you, Mr. Speaker, Sir. That is a very important Statement that touches on Bomet County. When the matter came up in Bomet County, it was very emotive. It is very unfortunate that we all tried to pursue the rights of those children who were abused sexually.

This is a man who came to Bomet County in disguise of a missionary. He built a very beautiful and big children's home especially for the orphaned children. It attracted so many children from our society especially the needy ones.

Mr. Speaker, Sir, finally, this man with his wife, started abusing these children sexually. It was so interesting that it was his wife who was assisting him in the same evil. When we tried to pursue justice for these children, it became so difficult in our county. They even bribed their way out of this country without being arrested. However, finally, somebody from Bomet County, Ms. Ruto, as the Senator has said, pursued this issue from countries which actually value justice for their people. Mr. Dow was arrested and finally jailed.

Mr. Speaker, Sir, this is a learning lesson to our country especially those who are in charge of fighting crimes. They are supposed to act so that those abusing innocent children on a daily basis are brought to book. I support this Statement so much. Thank you Sen. Were for bringing up the matter. I also thank Ms. Ruto for pursuing the matter and bringing justice to those children.

I support.

**The Speaker** (Hon Lusaka): Sen. (Dr.) Zani, proceed.

**Sen. (Dr.) Zani:** Thank you, Mr. Speaker, Sir. I stand to support this Statement and suggest that investigations by the committee that this Statement will go to, extend and deal with all the children's homes as far as possible. This is an issue that keeps coming up over and over again.

I fear that we might have many paedophiles who make their way into this country and find ways of masking themselves in the name of doing good. Children have to be protected. The most unfair thing that you can do is to a child who cannot protect themselves. Worse still is when they are under the guise that they are being helped.

Mr. Speaker, Sir, this is a very important Statement and we need to really exhaust it very broadly. Maybe we need to start by making an investigation into how these homes are run. Maybe we have a regulatory system about how these homes are ran the way we do for cooperative societies. We need to have a way of having a regulator who can constantly check that these children are not abused. This is only one case that has come up. Many others might be hidden.

I thank you.

**The Speaker** (Hon Lusaka): I see many questions. Sen. Wetangula, proceed then Sen. (Dr.) Milgo.

**Sen. Wetangula:** Thank you, Mr. Speaker, Sir. This Statement is very important and this House should support it fully. There are many children who fall in the hands of criminal benefactors who come in the name of adoption, running children's homes and appearing like they have come to help our children from poor families. They however end up turning into pedophiles.

Along the Coast, in areas like Watamu and Malindi in particular, where Sen. Madzayo represents, we have many people from Europe who come ostensibly to settle. They have been exposed once in a while by the media as running rings and chains of



abusive conduct to young children; girls of 10 years, 11 years up to 13 year and 14 years of age.

I agree with Sen. (Dr.) Zani that it is now time that this kind of Statement triggered a thorough audit on the management and the character of the managers or people who set up these children's homes because some of them are actually convicted criminals where they come from. They arrive in Kenya looking like philanthropists, set up homes and end up doing the most wicked things to our children. Due to the weakness of our criminal justice system, many of them get away with it.

Mr. Speaker, Sir, we need to encourage the Government to sign mutual legal agreements with countries where persons who want to run these kinds of enterprises in Kenya come from, so that in the event that they flee - like the character in question here - they can be extradited back to Kenya.

When somebody is tried and jailed in the USA, he is going to live in a three-star hotel in the name of a penitentiary, but if he was in Kenya, he would feel the weight of our criminal justice system and know that crime does not pay.

Mr. Speaker, Sir, I want to urge that the Committee on Justice, Legal Affairs and Human Rights of Sen. Omogeni carries out an audit on how these institutions are run, who runs them, their backgrounds, their character and their sponsors, so that we get to know what kind of people they are.

We should also have a mechanism of checking how children get into these homes. Children from very destitute families take economic refuge in these homes and land into the traps of these criminal characters.

I support the Statement and hope it will trigger a more important process that will save Kenyans from this kind of behaviour.

**Sen. (Dr.) Milgo:** Thank you, Mr. Speaker, Sir. I also rise to support this Statement by Sen. Were. I thank her for bringing this issue to the Floor of the House. I also want to thank Madam Ruto for playing a very important role in ensuring that that culprit was brought to book.

Article 53 of the Constitution stipulates the right to children's protection. However, vulnerable children will at times run to any home where they imagine that they might get refuge, more specifically, children from very poor families. This case of Bomet County was a very serious case because in most cases you will find that our people may not even be able to authenticate people who set up such homes.

They just look at the colour of their skin and imagine that such people cannot be criminals. That is what happened to the children who went to that children's home. Those were criminals and the children there were molested. That is not the only area where this happens.

I am a member of the Committee on Labour and Social Welfare and we have been dealing with many children's home where there have been many problems. Children are taken to those homes and we find that for some of them, if they are not sexually molested, they sleep on the floor, they are underfed and eventually those children suffer a lot of damage.

Mr. Speaker, Sir, I am happy that the long arm of the law did not spare that particular white man despite the fact that he was able to escape Kenya. This will go a long way to serve as an example to the rest. I hope that the Committee that shall take up

this particular Statement will investigate this matter thoroughly so that we save our children from such conditions.

**Sen. Madzayo:** Asante, Bw. Spika. Kule nyumbani watu wanasema mshale ukiingia nguruwe huwa uko tamu kuliko ukiingia wewe binadamu. Hii inamaanisha kwamba hushughuliki yakitokea kwa mwingine, lakini yakitokea kwako inakuwa jambo la kusikitisha.

Taarifa hii iliyoletwa na dada yetu, Sen. Were, ni Taarifa ya kuhuzunisha sana. Ni jambo la kusikitisha kuona kwamba tunaweza kuruhusu watu kutoka nchi za ng'ambo, wazungu, na wengineo ambao wako na nia ya kuja kuanza biashara kama hizi Kenya. Wakati wanaanza hizi biashara inakuwa rahisi sana. Wanaweza kuanza hizi nyumba za kuweka watoto yatima, na hatimaye wanachukua watoto wadogo sana na kuwaweka katika zile nyumba.

Bw. Spika, makosa ambayo yanafanyika hapa ni kwamba katika hizi nyumba hakuna uchunguzi unafanywa na serikali zetu za mashinani. Vile vile, hakuna uchunguzi unafanywa na Serikali yetu ya kitaifa kuona ya kwamba mtu akipewa ruhusa ya kuanza biashara kama hio ama usaidizi kama huo, anafaa kuchunguzwa kwa kina ijulikane kule alikotoka, alikua anafanya nini, na anataka kufanya nini hapa. Kunafaa kuwe na mkataba maalumu kuliko kuachiliwa hivi hivi.

Ninakubaliana kwamba haya yametokea leo huko Bomet, lakini pia mambo kama haya yanatokea sana katika Mkoa wa Pwani. Watoto wadogo wanachukuliwa na wazungu, wanawekwa katika nyumba ikisemekana kwamba wanafanyiwa msaada na hatimaye wanabakwa wakiwa umri mdogo sana. Kwa sababu ya uwoga, hawawezi kusema, lakini kesi kama hizi zinatokea kila siku katika Mkoa wa Pwani.

Bw. Spika, jambo dhaifu zaidi upande wetu ni korti zetu. Kitendo kama hiki kikitokea, kikiripotiwa, mtu anashikwa na kupelekwa kortini, halafu korti inaangalia inamuachilia. Ninampongeza sana Bii Ruto ambaye alichukua hii kesi kwa hasira na hatimaye akaipeleka kwa korti za ng'ambo na sasa hukumu imepatikana. Yule mtu aliyefanya kitendo hicho kwa wale wasichana wadogo wa Kenya amefungwa miaka mingi.

Lazima korti zetu hapa Kenya ziige mfano kama huu ya kwamba watu ambao wanabaka watoto wadogo wasiachiliwe hata kidogo. Wakati mwingine yule dada yetu Naomi akisema mambo haya yanafanywa namna hii, inaonekana ni kama tunaweza kuunga mkono. Huwezi kufikiria jinsi mtu baro baro, mzima wa miaka arubaini na kitu analala na mtoto wa miaka mitatu ama sita. Unaenda wapi sasa na mtoto ambaye hata hajakuwa mwanamke ambaye unaweza kulala naye?

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

**The Speaker** (Hon. Lusaka): What is your intervention, Sen. Halake?

**Sen. Halake:** Mr. Speaker, Sir, my information is that 50 per cent of our children experience sexual and other physical violence, but not all of it is from *Wazungu* or outside. We must also make sure our children are protected within our homes as well. We should not always think it is an external issue because that is like three or four guys.

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

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

**Sen. Wetungula:** Mr. Speaker, Sir, is it in order for Sen. Halake to interrupt a very reasoned, flowing and eloquent discourse by the Senator of Kilifi when, in fact, the point she is raising has already been raised by other Speakers on this matter? We are not

limiting ourselves to *Wazungus*. Sen. (Dr.) Zani and myself had said that we must audit all these philanthropic activities and homes regardless.

**The Speaker** (Hon. Lusaka): Malizia, Sen. Madzayo.

**Sen. Madzayo:** Shukrani, Bw. Spika. Hata mimi ninashangaa ni kwa nini Sen. Halake ameniingilia katikati. Sijui kama amekielewa Kiwahili changu. Inafaa katika Hoja kama hii unakuwa wazi kwa kila jamiii. Hatuongei habari za Wazungu pekee maanake hata ndani ya nyumba tunajua akina baba wengine hubaka watoto wao. Kwa hivyo, jambo hili si la mzaha.

Bi. Spika, amenipa habari hiyo lakini badala ya kusikiliza anaendelea kuongea. Sasa ni kama alikuwa anaingia tu katikati.

**The Speaker** (Hon. Lusaka): Hata wewe umechanganyikiwa hadi unaniita Bi. Spika.

*(Laughter)*

**Sen. Madzayo:** Pole, Bw. Spika. Ni ulimi unateleza lakini si kumaanisha hivyo. Kumekuwa na kuingiliana kwingi sana kutoka kwa Sen. Pareno ambaye yuko hapa karibu nami.

Hoja iliyoletwa na Sen. Were ni sawa kabisa. Tunataka hatua kali zaidi ichukuliwe ili mchezo kama huu usiendele katika Jamhuri ya Kenya.

**The Speaker** (Hon. Lusaka): We now go to the next Statement. I remind you that we should keep observing the social distance. I can see we that we are forgetting.

Proceed, Sen. Kihika.

#### IMPLICATIONS OF CORRUPTION ON GENDER-BASED RESOURCE ALLOCATION

**Sen. Kihika:** Mr. Speaker, Sir, I rise pursuant to Standing Order No. 47(1) to make a Statement on an issue of general topical concern on the implications of gender and corruption on resource allocation with a focus on the budget for the Financial Year 2021/2022.

Corruption remains a perverse global challenge and continues to erode public trust, democratic institutions and undermines sustainable inclusive development and peace. It also aggravates poverty.

Corruption is manifested in several ways, including the abuse of office for private gains, bribery, extortion, fraud and embezzlement, among other forms of gross misconduct of persons that have been entrusted with public offices.

Corruption has greatly impacted on the Kenyan economy. Economically, corruption raises the cost of doing business, leads to misappropriation and wastage of resources, discourages foreign investment and retards economic growth and development.

Socially, corruption accounts for poor service delivery and inefficient functioning of social services such as health, education, roads, water supply and tensions in society.

It also continues to exacerbate social inequalities, development of crime, including transnational organized crime, the smuggling of weapons, wildlife trafficking,

illegal trade in timber and forest products, drug trafficking, terrorism, human trafficking and money laundering.

Mr. Speaker, Sir, a gender dimension must be mainstreamed in any effort to curb corruption. Whereas women and men are disproportionately affected by corruption and their corruptibility varies, this does not mean that one sex is intrinsically more corrupt than the other. This is influenced by social context. In particular women have been systematically disadvantaged as structural inequalities and the low status of women affect their rights.

Social norms such as gender-based violence, harmful cultural attitudes and beliefs around gender roles, norms and female empowerment gravely place women in susceptible positions of being corrupt and corruptible. These social norms result to low economic empowerment of women thus further exposing them to corruption and its consequences as the only currency they have access to sometimes could services in sex.

Corruption deprives the public from accessing public services such as public health, education and water. It also widens gender disparity in decision-making levels. Gender inequality allows corruption networks to grow, hinder progress towards gender equality and presents a barrier for women to gain full access to their civic social and economic rights.

Mr. Speaker, Sir, allow me to take this opportunity to caution on the potential impact of corruption during the prevailing COVID-19 pandemic. The Government of Kenya has allocated many resources towards programmes to manage the pandemic. These funds have the potential to have less oversight and transparency as they move rapidly to meet the urgent needs resulting from the pandemic.

Mr. Speaker, Sir, already there have been cases of scarcity in essential protection, life-saving equipment, adequate assistance and the provision of vital services. We, as the Senate, must judiciously play our oversight role over these funds. Otherwise, it will affect our ability as a country to respond to and recover from this pandemic. Even worse, it will cripple our ability to respond and facilitate services towards other key sectors such as education, water and agriculture, amongst others.

I urge the Committee on Health, when the times for the vaccines against COVID-19 to be distributed, it is crucial that every effort is taken to ensure that corruption does not prevent or impede the equitable availability and distribution of the vaccines or at the worst, the falsification of vaccines.

As we engage in the budget process for the Financial Year 2021/22, I urge the Standing Committee on Finance and Budget to interrogate the various budget documents that will be brought before the Senate using a gender lens. It would be progressive to have line Ministries and Government agencies present reports to the Senate supported with the sex desegregated data demonstrating the impact that budget allocations have had on services delivered to men and boys, women and girls.

Time is overdue for our committees to conduct oversight using a gender lens for Bills at the pre-publication scrutiny to contain a legislative impact assessment and for legislative impact assessment to be carried out once a Bill has been passed into law and operationalized. Otherwise, as the Senate, we will be incapacitated to make informed decisions and promote meaningful gender equality and equity.

It would be irresponsible of us not to play our lawmaking role through ensuring that a strong legal framework to curb corruption is in place. This involves passing

national anti-corruption legislation and creating an environment that makes corruption more difficult by promoting transparency.

As a Senate, we must also be open, transparent and accountable. I take this opportunity to recall that the Standing Committee on Justice, Legal Affairs and Human Rights had been tasked to review existing laws on anti-corruption and present a report to the Senate. Allow me to urge the Committee to expedite that matter and present a comprehensive report enumerating the various gaps in law that continue to hinder efforts to curb corruption, including a draft Bill for our consecration.

Colleagues, let us make a concerted, collective and individual effort to build effective, transparent, accountable and inclusive institutions, and reduce illicit financial flows. Let us strengthen the recovery of stolen assets, therefore, reducing bribery and corruption.

Above all, let us remove barriers to achieving gender equality and equity.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Before I give a chance to Sen. Ledama Olekina, let me commit the Statement by Sen. Petronila Were to the Committee on Labour and Social Welfare, to look at the issues raised and give us a Report.

Sen. Olekina.

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

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

**Sen. Olekina:** Madam Temporary Speaker, I thank you for an opportunity to comment on this very important Statement by my sister, Sen. Susan Kihika.

Everyone in Kenya today is alive to the fact that we have COVID millionaires; people who made so much money during the height of the pandemic. Right now, as a Member of the Committee on Health, there are a few things that really baffle me. We know that the Government has ordered 24 million doses of the COVID-19 vaccines. We are also aware that these doses were ordered from AstraZeneca, and apparently, they have been tested by the Oxford University. I believe that they have also been tested by the Kenya Medical Research Institute (KeMRI). The issues raised by Sen. Kihika are that we, as the Senate, must sit down and talk, and decide what we need included in this budget.

The Speaker barred all travels of committees until we are able to submit something relevant to the Committee on Finance and Budget in terms of the Budget Policy Statement (BPS). It behooves all of us, as Members of this Senate, people who are tasked with the responsibility of over sighting funds that are going to the county governments, to really put all our energy together to ensure that at least we can answer a few basic questions. For example, how much will it cost for the 24 million doses that have already been procured? What is the process of procuring these 24 million doses? Is it going to be another cartel? Is it going to be another expression of interest?

We have to do away with corruption in certain sectors, like health, and particularly, also in gender. We know that the current Cabinet Secretary (CS) for Health made a statement and said that most of the doses will be focused or directed on health

workers. We have a lot of challenges currently with the health workers. They are crying out that they have not been assisted when it comes to the issues of their welfare.

Madam Temporary Speaker, as a Member of the Committee, I would like to request all the other Members of the Senate to come and team up with us, so that we can put this Government to task.

We know that this Senate does not have an oversight fund. It is going to be a personal initiative for all of us to follow counties, to see how much money and doses will be allocated to them, so that at least all of us can benefit.

On the issue of corruption, unless we say that enough is enough, we will be lamenting on a daily basis. At least for once, so that we can do away with COVID-19, which does not choose whether you are rich or poor, we should just really--- I want to plead with those cartels or people who take advantage of situations that, for once, they should stay away from the business of vaccines.

This is something that is very painful because many counties have received a lot of money. It is very difficult for the county governments to account for the money on COVID-19. This is because when that money is allocated from the national Government, and this Senate has got no role to play in it, it becomes very difficult for us to oversight that money. First, we do not know how much has been given. We only get to know when the money has already been released. On top of that, we do not have oversight funds.

Madam Temporary Speaker, I request that you commit this Statement to the Committee on Health. We can then invite the Cabinet Secretary, National Treasury and Planning to tell us how much money they are committing in terms of the vaccines. In addition, they should tell us how much of the doses are being distributed to each county as well as what the procurement process is so that we do not come back to investigate the issue again. As you know very well, we are not even done with the investigation into the corruption saga at the KEMSA.

The Director of Public Prosecutions (DPP) and the Directorate of Criminal Investigation (DCI) are overwhelmed. For once, let us make progress by preventing because prevention is always better than cure. If we can prevent this and help fellow Kenyans to benefit from the 24 million doses of vaccines, we might be among the few countries in the world to have dealt with the COVID-19 pandemic.

I thank you, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Nyamunga): Proceed, the Senate Minority Leader, Sen. Orengo.

**The Senate Minority Leader** (Sen. Orengo): Madam Temporary Speaker, I listened very keenly as Sen. Kihika, the Senator for Nakuru County, sought this Statement and rushed here to put in a word. I appreciate what the Senator is saying because this is not a light matter particularly with the COVID-19 pandemic. Many countries that are looking into ways of rolling out the COVID-19 vaccine are drawing a clear road map ahead of procuring and deploying resources in order to make sure that people get vaccinated. In our country, the most likely scenario which will emerge will be a repeat of what we have seen in many of these scandals, as the Senator for Narok County, Sen. Olekina, has stated.

I have a little point of departure because these lamentations will continue. The problem with many Kenyans is that we have not decided the nature of the state we want. It is very difficult for a politician to survive in Kenya without going for resources. In fact,

the proposition that I want to put forward is on the issue of debt and borrowing. Debt is not a bad thing. In fact, after the First and Second World Wars, the 32<sup>nd</sup> President of the United States of America (USA), Franklin D. Roosevelt, put a lot of resources in infrastructure through borrowing and debt. However, debt in Kenya is a basis of rent seeking. The problem is with us. So long as politicians in Kenya want to play the kind of politics that we are playing, we shall never deal conclusively with the problem of corruption as it feeds the Kenyan political system. That is a fact.

We have developed a kleptocratic state in Kenya where leaders are looking for resources on how to run the state. We are definitely the problem, as leaders, not the civil servants, the Judiciary or even the Office of the DPP. The issue of corruption is with us until the day that we will decide on how to define the Kenyan state. The former MP for Subukia, hon. Koigi wa Wamwere, one time brought a very good Bill against *harambees*.

The former President of Kenya, Hon. Kibaki did very well in discouraging *harambees* by never presiding in any. He may have attended one or two *harambees* after he became the President but it was not in his habit. The current president, H.E. Uhuru Kenyatta has also done well in discouraging *harambees* because you do not see him too much in *harambees*. The exhibition of wealth in *harambees* is a 'Mobutist' tactic. That is what Mobutu Sese Seko used to do in the Democratic Republic of Congo (DRC). The DRC is the richest country in Africa, but because Mobutu made the state part of his infrastructure by taking away the resources to the DRC and then going back to give people money every time he wants to have his way in election.

I supported Hon. Koigi wa Wamwere at the time he brought the Bill to discourage *harambees* by speaking to the issue of corruption. The biggest problem to fight against corruption are the politicians who determine what the Kenyan state is like and the problem is the Kenyan state. If you talk to an ordinary Senator in the USA about the kind of monies we give out in *harambees*, they would be surprised. One time, a friend of mine from South Africa who was very senior in the South African Government after serving as a Minister there for over 20 years, visited me and I took her to my activities over the weekend. She was taken aback by how a state officer can take money from their pocket and give out in *harambees*. That only happens in Kenya.

Madam Temporary Speaker, if we took at the model of Mauritius, that had a lady President who took a little trinket that she did not declare as the President of Mauritius, it did not take six months before she was removed from office. At some point, I want to bring a paper before this House for us to discuss because corruption is with us until we change the nature of the Kenyan state.

It is very hard for politicians to operate in the current state of affairs. There was a time as the MP for Ugenya, that it did not matter whether I had any money going upcountry to my constituency. However, most Members are now forced to even borrow money just to go to their constituencies. The problem we have is as a result of the Kenyan state. The Senator for Nakuru County knows what I am talking about. We have to look at each other in the eye because we have a lot of good things that are going on in Kenya. We are putting up an express way, but we may be shocked to learn that it will cost us twice the value of what we are constructing because some people have taken money out of projects like those.

Madam Temporary Speaker, I thank you.

**The Temporary Speaker** (Sen. Nyamunga): Finally, Sen. (Dr.) Musuruve. Kindly make it brief because we are running out of time.

**Sen. (Dr.) Musuruve:** Madam Temporary Speaker, I thank you for giving me this opportunity to speak to the Statement by Sen. Kihika. I agree with my fellow Senators that there is need to interrogate documents that go to the county governments. That will ensure that money is received on budgets that are disaggregated in the sense that women, children as well as Persons with Disabilities (PwDs) can benefit. Sen. Kihika has rightly cited Article 43 of the Constitution, which states that everyone has a right to socio-economic rights.

This also includes ensuring that families have water, schools and other social amenities. However, due to corruption, the Kenyan population is unable to access these rights. I would like us to find ways of over sighting monies that go to the counties. I pray that the issue of the COVID-19 vaccines will not be marred with corruption. The vaccines should be given freely to everyone so that no one misses out. There should be transparency in all the monies that go to the counties. The role of the Senate is to support counties. However, if there is no transparency, accountability or disaggregation of the money that goes to the counties, then we are allocating money to the counties in vain. It is our onus as the Senate to ensure that we oversight the funds that we fight so hard to take to the counties. The Senate needs money to go out and oversight on the money that we allocate to counties.

I support this Statement by Sen. Kihika. I hope that when it goes to the relevant Committee, they are going to do justice to it.

Thank you. I support.

**The Temporary Speaker** (Sen. Nyamunga): Sen. Wetangula, just a minute.

**Sen. Wetangula:** Thank you, Madam Temporary Speaker. I also rise to support and congratulate Sen. Kihika for bringing this Statement on the Floor. Before I say anything, I also welcome her to the baptism by fire that I saw her experience over the weekend.

The President of our country is on record, not too long ago, saying that Kshs2 billion is stolen from our coffers every day. Meaning, in a year, we are losing Kshs750 billion plus going out of the State to private individuals who hold positions of trust in our country.

Madam Temporary Speaker, when you look around, I have said this before, the wealthiest people in this country are people who have been working in the public service. It means that people go to public offices to work for private gain. This has denied Kenyans many things.

Actually, if our public resources were well managed, we would be having a dual carriageway from Mombasa to Malaba for easy movement of goods and services to our hinterland of Uganda, Rwanda, Burundi, Congo, South Sudan and beyond. We would be having a dual carriageway linking Nairobi to northern Kenya, linking Nakuru to Isebania and across the country. However, because Kenyans have been moulded into making no difference between public resources and private wealth, the country is suffering. In fact, I thought Sen. Orenge was going to mention it. The Governor of Laikipia was quoted today in the newspapers saying that counties will now be allowed to directly borrow money for public engagements, including projects and development. Woe to this country



if that is going to happen. As it is, we are unable to handle borrowing by the national Government.

Yesterday, I asked the National Treasury, in the Standing Committee on Finance and Budget - I think Madam Temporary Speaker you were also in that meeting - that we have rolled out a Budget Policy Statement talking about more borrowing; we are actually digging holes to fill holes; we are talking about more resources going into the public sector, but there is very little mention of strengthening governance in institutions.

There is no mention of how the Ethics and Anti-Corruption Commission (EACC), the Directorate of Criminal Investigations (DCI), the Director of Public Prosecutions (DPP) and the Judiciary will be strengthened to be the battlefield against fraudsters and corrupt individuals. Therefore, public resources are now private resources. We cannot carry on like this.

We need this House and the relevant Committees; the Standing Committee on Finance and Budget and the Standing Committee on Justice, Legal Affairs and Human Rights, to make sure that resources being channeled out to counties benefit Kenyans.

Madam Temporary Speaker, we need to borrow a leaf. There is a Korean President, the daughter of President Park Chung-hee, who came here with pomp and pageantry, we welcomed her here and gave her a State reception. She went back to her country, went straight to jail because she had engaged in activities with the owners of Samsung Communication equipment and the phones, and engaged in corruption. As a President, she was hauled out of office. She is serving a 26-year jail term. There are many others; almost all former Presidents in Korea are in jail.

Here in Africa, there is a clip going around from one of our neighbouring countries that is showing that the head of State of that country literally owns the country. This is the same case with Congo when Mobutu was the president. At the end of the month, the country would be so stranded and Mobutu would lend money from his personal fortune to the Public Service to pay public servants salaries. This is Africa. We must change.

Sen. Kihika, thank you for that Statement. Prosecute it to the end. Whichever Committee it goes to, invite some of us to come and help you prosecute it so that we can make our country more accountable, so that people of this country can benefit from the resources they painstakingly work for.

Thank you.

**The Temporary Speaker** (Sen. Nyamunga): Thank you, Sen. Wetangula. Hon. Senators, we are really running out of time. Let us leave this at that and move to the next Order.

Sen. (Dr.) Lelegwe, I see you have an intervention.

#### STATUS OF IMPLEMENTATION OF LAPSSSET PROJECT

**Sen. (Dr.) Lelegwe:** Madam Temporary Speaker, yes. I have an intervention.

I sought a Statement on 14<sup>th</sup> November, 2019 about implementation of the Lamu Port-South Sudan-Ethiopia-Transport (LAPSSSET) Project to the Standing Committee on Roads and Transportation. To date, the Statement has never been responded to. I do not know what the Chairperson or what the Committee is doing to give a response to this Statement.

**The Temporary Speaker** (Sen. Nyamunga): Going by the time, it must have elapsed if you are talking of 2019.

**Sen. (Dr.) Lelegwe:** Yes.

**The Temporary Speaker** (Sen. Nyamunga): It has lapsed.

**Sen. (Dr.) Lelegwe:** So, will I need to table the same Statement?

**The Temporary Speaker** (Sen. Nyamunga): You need to have a conversation with---. I am being made to understand that Statements do not lapse. Where is the Chairperson of the Standing Committee on Roads and Transportation?

Is the Vice-Chairperson of the Standing Committee on Roads and Transportation or any Member of the Committee in the House?

**Sen. Wambua:** Madam Temporary Speaker, I am a Member of the Standing Committee on Roads and Transportation.

What I will undertake to do is that I will brief the Committee tomorrow morning when we have a meeting on that request by Sen. (Dr.) Lelegwe and we will definitely get in touch with him on what we need to do about his Statement.

Thank you.

**The Temporary Speaker** (Sen. Nyamunga): Thank you Senator. We expect to get some response immediately, to Sen. (Dr.) Lelegwe.

**Sen. Pareno:** Madam Temporary Speaker, on a point of order. I hoped to contribute, but at least everybody else has been able to say much.

My point of order is on referring this Statement by Sen. Kihika to the relevant Committee. I did not hear you make a conclusion on that. That will help us to fast track it.

**The Temporary Speaker** (Sen. Nyamunga): That does not necessarily mean that it needs to be taken to any Committee. It is just for the information of the House, Sen. Kihika.

The next Statement is by Sen. (Dr.) Mbito.

Sen. (Dr.) Mbito, you have two Statements. Our time is spent and I would expect you to read them, then maybe you can allow one comment. Just do the first one and then the second one then we allow maybe one or two comments. Time is spent.

#### THE FILM POLICY AS THE SUREST WAY TO SPUR GROWTH IN THE INDUSTRY

**Sen. (Dr.) Mbito:** Thank you, Madam Temporary Speaker. I rise pursuant to Standing Order No.47(1), to make a Statement on an issue of general topic of concern, namely, the National Film Policy as the surest way to spur growth and industry.

Madam Temporary Speaker, as you may be aware, the Ministry of Information and Youth Affairs has drafted a National Film Policy. The proposed film policy in question---

**The Temporary Speaker** (Sen. Nyamunga): Senator, are you trying to debate it or what?

**Sen. (Dr.) Mbito:** No. Madam Temporary Speaker, I am reading my Statement.

**The Temporary Speaker** (Sen. Nyamunga): Okay.

**Sen. (Dr.) Mbito:** Madam Temporary Speaker, the proposed film policy in question will help build Kenya's brand, increase economic growth and promote heritage.

Also, the framework will develop national culture, promote integration, national cohesion and tourism.

Madam Temporary Speaker, the film industry will succeed when the policies made by the Government support filmmakers. The 2014 win of the coveted Oscar Award by Lupita Nyong'o, the first Kenyan to win such an award, was a wake-up call for the country's limping entertainment industry. Lupita's win of the award of Best Supporting Actress was a testimony that the country harbours great potential in the filming industry and that can place Kenya on the global radar.

Madam Temporary Speaker, whereas Kenya has many talented actors and actresses who would match Lupita's success, the country's film sector is still underdeveloped. In its own admission, the Government, through the Kenya Film Commission (KFC), said that the industry could raise an impressive USD60 billion every year and create a significant number of jobs, especially for the youth, whose unemployment rate has hit the 70 per cent.

Madam Temporary Speaker, However, despite this huge potential and for some strange reasons, the successive governments, all grappling with serious youth unemployment, have not nurtured performing arts and the film industry to make it an economic magic. A sound policy and legislation to rhyme the new dynamics in the industry is what we need.

Madam Temporary Speaker, it must not be lost to us that Nollywood, the Nigerian film industry, is the second largest employer in Nigeria and has helped to create millions of jobs for Nigerian youth. Kenya, with its robust population, can pick a few lessons from Nigeria on how it has managed that feat.

Madam Temporary Speaker, one of the key pillars, as we put measures to re-engineer the industry, is the creation of an institution well equipped to train young people on how to produce films. Such an institution would not only nurture young people with filming making skills, but also impart entrepreneurship for the industry, and to be viewed as a commercial venture.

Madam Temporary Speaker, the budgetary allocation to the Department of Film Services (DFS) is not sufficient to promote the growth to give the sector an international presence. Deliberate efforts to increase financing to the film industry is necessary. The film industry has a huge potential on economic development in terms of wealth and job creation.

Madam Temporary Speaker, the film policy will provide a fundamental pillar for the film industry by ensuring the congruent in the legislature and regulatory framework governing the film industry as well as providing a framework that will spur film development while preserving Kenya's culture, values and national aspiration through effective and efficient film regulation.

I thank you, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Nyamunga): Senator, just go ahead on the second statement. If there are any interests, we will allow comments.

IMPLEMENTATION OF POLICIES TO PROTECT CHILDREN  
FROM HARMFUL ONLINE CONTENT

**Sen. (Dr.) Mbito:** Madam Temporary Speaker, I rise pursuant to Standing Order No. 47(1) to make a Statement of general topic of concern, namely, implementing policies to protect children from harmful online content.

The influence of the media to the psychosocial development of children is profound. Thus, it is important for stakeholders, including physicians to discuss with parents their children's exposure to media and provide guidance on age-appropriate use of all media including Television (TV), radio, music, video games and the internet.

Madam Temporary Speaker, COVID-19 was declared as a global pandemic in March, 2020 and has both short term and far-reaching implications for our families, friends and colleagues. It has also had an impact on our work and will affect the achievement of our shared vision of a world without violence against children.

As the virus continues to spread, we are facing multiple new stresses, including physical and psychological health risks, schools, and business closures, family confinement, isolation and economic vulnerabilities. Thorough all that, children are particularly vulnerable.

Madam Temporary Speaker, as the number of children using the internet increases and the age at which they begin decreases, identifying and addressing these risks becomes an important public policy objective. The Government should consider how to mitigate risks without reducing children's opportunities and benefits and how to prevent risks while preserving fundamental values such as freedom of speech and the right to privacy.

Parents and caregivers should monitor and guide their children on the content they consume on TV, radio and other online platforms. State organs such as the Kenya Film Classification Board (KFCB) should keep the great work of collaboration and public education because they have the mandate to regulate the content and at the same time it is a collective responsibility to protect our children from the multiplicity of information channels that can destroy their moral values.

I thank you.

**The Temporary Speaker** (Sen. Nyamunga): Thank you, Sen. (Dr.) Mbito. The next Statements are by Sen. (Dr.) Isaac Mwaura, Sen. Cherargei and Sen. Shiyonga. I do not see them in the House. That brings us to the end of the Statements.

NATIONAL GOVERNMENT INTERVENTIONS TO CUSHION  
PERSONS WITH DEVELOPMENTAL DISABILITIES  
IN LINE WITH UHC

*(Statement deferred)*

IMPLEMENTATION OF THE GUIDELINES ON RETIREMENT  
AGE OF PUBLIC SERVANTS WITH DISABILITIES

*(Statement deferred)*

STATUS OF ACCESS TO INFORMATION REGULATIONS IN  
THE ACCESS TO INFORMATION ACT, 2016

*(Statement deferred)*

OPERATIONALIZATION OF THE PROPOSED LEGAL AID  
FUND IN THE LEGAL AID ACT, 2016

*(Statement deferred)*

DEATH OF MS. JACKLYN MUGURE  
ALLEGEDLY FROM STRAY BULLET

*(Statement deferred)*

Hon Members, let us move on to Order No.8.

**BILL**

*Second reading*

THE CO-OPERATIVE SOCIETIES (AMENDMENT) BILL  
(SENATE BILLS NO. 11 OF 2020)

*(Sen. (Dr.) Zani 11.2.2021)*

*(Resumption of debate interrupted on 17.2.2021)*

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, I do not see the number for us to take that Division. We defer that one.

*(Bill deferred)*

Next Order.

**COMMITTEE OF THE WHOLE**

THE MUNG BEANS BILL (SENATE BILLS  
NO. 9 OF 2020)

This Order on the Committee of the Whole is also deferred.

*(Committee of the Whole deferred)*

Next Order.

**MOTION****ADOPTION OF CPAIC REPORTS ON THE AUDIT OF VARIOUS  
COUNTY EXECUTIVES FOR FYS 2015/2016 – 2017/2018**

THAT, this House adopts the Reports of the Sessional Committee on County Public Accounts and Investments on the consideration of the Audit Reports of the following County Executives for the Financial Years 2015/2016, 2016/2017 and 2017/2018, laid on the Table of the Senate on Thursday, 11<sup>th</sup> February, 2021-

- (i) **Volume I-**
  - a) Baringo
  - b) Elgeyo Marakwet
  - c) Homa Bay
  - d) Kakamega
  - e) Kiambu
- (ii) **Volume II-**
  - a) Kisii
  - b) Mandera
  - c) Mombasa
  - d) Taita/Taveta
  - e) Kilifi
- (iii) **Volume III**
  - a) Garissa
  - b) Wajir
  - c) Narok
  - d) Kericho
  - e) Lamu

*(Sen. (Prof.) Ongeru on 18.02.2021)*

*(Resumption of debate interrupted on 18.2.2021)*

**The Temporary Speaker** (Sen. Nyamunga): Sen. M. Kajwang' was on the Floor. He has a balance of 13 minutes. I do not see him in the House. I also do not see any more interests on this Order. There is interest.

Sen. Omogeni, Senator for Nyamira County, kindly, proceed.

**Sen. Omogeni:** Thank you, Madam Temporary Speaker. First, I really want to thank the Committee on County Public Accounts and Investments Committee (CPAIC) for the good work that it has done and for presenting this 2,000 page plus report on the happenings in our counties. Devolution will never succeed unless we have prudent management of resources that are devolved to our counties.

Madam Temporary Speaker, having listened to the issues that were raised by this Committee, there is no doubt that there is a lot that needs to be done. I hope that constitutional bodies that are meant to ensure that there is prudent management of our resources in the counties will ensure that those who misuse our resources will be made

culpable, will take note of the contents of this report and take action. The bodies I am talking about include the Ethics and Anti-Corruption Commission (EACC), the Directorate of Criminal Investigations (DCI) and the Members of the County Assembly (MCAs).

You will remember that when we had the COVID-19 crisis sometime last year and this House appointed an *Ad Hoc* Committee to look into measures of mitigating the adverse effects of COVID-19 on our economy, some of the issues that came up included pending bills in our counties. I recall the Cabinet Secretary for the National Treasury and Planning, Amb. Ukur Yatani, made an effort of urging our counties to pay pending bills.

As we speak, most of us who talk to business people in our counties hear stories of counties failing to pay suppliers. Oftentimes, the reasons are that if you are not able to grease the hands of certain officers at the counties, you will never be paid for work done at the counties. This has been a serious issue. People have lost their properties. Those who took securities through banks to finance their businesses have had their houses or plots auctioned because of failure by counties to pay pending bills. In some instances, it is all about politics. If a governor who was in office between 2013 and 2017 is not re-elected the incoming governor will not pay the pending bills because of that being support of the previous governor. This makes it so difficult for business people to do businesses with counties. Doing business with counties should be professional. There should be a corporate approach in management of counties. There should be succession in counties. It does not mean that one should only be able to do business if you support a particular governor. This has really made business people to suffer.

The other issue that was raised by this Committee and which is really important is the issue of project completion and variations. In my county, we have a stadium where we broke ground way back in 2014 and yet seven years down the line, this stadium has never been completed. It has taken over Kshs100 million of the funds that we send to our counties. This is unacceptable. If you start a project, you should complete it within time and any variation should be reasonable. It should not be so abnormal that you are not able to find funds to complete the project.

As we speak, the new governor is not able to complete construction in Manga Stadium because there are so many audit issues around that project which means that residents of Nyamira will never see the fruits of having a new stadium being constructed.

Six years down the line we have not finalized construction of our county referral hospital at the county headquarters. All this is because of poor management of projects where there is normally variation. I am not saying somebody has been found culpable, but often times, you will find that there are issues of corruption that motivate variation of most of these projects.

Madam Temporary Speaker, I hope that this good work done that has been by the Committee that is chaired by my good friend Sen. (Prof.) Ongeru will not gather dust in the shelves of the Senate. I hope that the EACC and the DCI will get copies of this report and take action.

The other issue is the wage bill. Most of our counties, as was rightly pointed out by the chairperson of CPAIC, are not able to undertake any development projects because the wage bill has ballooned, in some cases beyond 50 per cent, yet the law says that if you have to exercise prudent management of resources in counties, the wage bill should not exceed 35 per cent. However, because people want to exercise some nepotism and

favoritism, you find counties employing staff and this can swallow up to 51 per cent of the resources that are sent to counties. This is unacceptable and I hope, as proposed by the Committee, administrative action will be taken by counties so that we do not increase our wage bill to unmanageable limits.

At times you pity those who want to vie for governor like my friend Sen. Kang'ata here because you end up inheriting problems that you will never be able to solve. I hope our governors can take steps that will ensure that more money is devolved towards development and not just for wages.

The other issue is on own-source revenue. Most counties are not able to meet the targets. They are still using analog systems in revenue collection at the counties. The easiest way of siphoning money from own-source revenue is to ensure that you are analog.

I remember when the County Government of Nairobi City had automated the collection of revenue digitally; they were able to collect more. The moment you make it analog, you open up leakages because people will print books and they will collect money that they do not surrender to the county.

In my own county, Nyamira, we project that own-source revenue should be about Kshs250 million, However, you will be shocked to note that we collect about Kshs94 million, meaning that a whopping Kshs150 million disappears into people's pockets. That is money that is enough to provide medicine to the people of Nyamira, but it disappears into people's pockets. That is really unacceptable.

Madam Temporary Speaker, going forward I hope that it will be mandatory that own-source revenue should be collected digitally and we do away with the issue of manual collection because that is the easiest way of siphoning money that is meant to go to the accounts of the county governments to be used for giving services to the people.

Finally, audit committees in our counties are not working. The MCAs do not understand that if you read the Constitution and the County Governments Act, they are the first port of call in ensuring that they oversight the governor and their county executives. However, oftentimes, MCAs assume that the work of over sighting counties is the mandate of the Senate alone.

If our MCAs were to undertake their work, if they read the Constitution, they have the mandate to summon County Executive Committee Members (CECMs). They can pass Motions to impeach CECMs or summon the governor to appear before them. However, oftentimes you find that some MCAs are in bed with the executive. They do not want to oversight the executive. When you go to the counties, they will say the work of oversight is for the Senate. No! Let them read the Constitution.

If our MCAs partnered with us to ensure that they do their work properly, in the work of over sighting our counties, we will have very little as the Senate to do. I hope that going forward the MCAs can discharge their constitutional mandate and oversight our county governments and the CECMs by periodically summoning them to appear before them to give them updates on projects. When they allocate money through the budget, there should be a follow up. They should call the County Executive Committee Member (CECM) on the state of a project and where there are issues, they should take action.



I really support this Report as presented to the House. I hope we will approve it and allow other constitutional bodies to take further action on the recommendations that are contained in it.

**The Temporary Speaker** (Sen. Nyamunga): Thank you, Senator. Sen. Kang'ata, proceed.

**Sen. Kang'ata:** Madam Temporary Speaker, I rise to support this Motion. Let me first start by congratulating my Chairperson who is a very experienced administrator. I am also a Member of the CPAIC. We have done a lot of work to collate and collect this information. We have been able to table this Report for the consideration of the House. I will give several reasons I would be urging colleagues to support this Motion.

I will start by concentrating on issues on Murang'a County. We have 47 devolved units in this country. This Committee undertook the auditing process for every county in this Republic. However, the only single governor who refused to attend to the CPAIC was Hon. Mwangi wa Iria. This was a shame to the people of Murang'a County because he could not answer audit queries concerning billions of shillings given to Murang'a County.

On average, Murang'a County receives Kshs6 billion every year. Every time an auditor goes to Murang'a County, the reports we get are what we call disclaimer reports. In auditing, there are four types of reports; one, we have unqualified opinion which is the best. It means the books are well prepared and there are no audit queries. Second category is qualified report. Third is an adverse report and, finally, we have a disclaimer report. A disclaimer report is the worst.

Murang'a County for several years has been receiving disclaimer reports. One of the reasons is because the governor has been obstructing officers from the Office of the Auditor-General to conduct their work. No wonder the reports that we have tabled here for Murang'a County, which we are now discussing, are very negative. For example, we have one major endeavour called the Murang'a County Creameries (MCC). It is a very good and noble idea, which was started by Murang'a County Government because it sought to process the milk for the poor Murang'a farmer. Indeed, I am happy that several cooperatives in my county have been taking milk to that factory. If that idea is well implemented, I have no doubt the people of Murang'a County would get good benefits out of it.

Currently, farmers are getting Kshs30 per litre, which they deliver to MCC instead of Kshs35. The transporters who take milk to MCC have not been paid. Employees of MCC have not been paid for many months. The reason is that the procurement that was done by MCC for various components of that factory; whether it is the boiler or processing plant, they delivered below the capacity that was ordered by Murang'a County Government. A subcontractor by the name Red Brick Ltd won that tender. Instead of supplying as per the specifications in the award letter, he brought machines that did not measure up to the contractual specifications. When you look at that Report, it raises serious issues concerning that factory.

I am aware of a meeting that happened in China on 9<sup>th</sup> June, 2019. Top Murang'a County officials went to China to investigate how come what was delivered in Murang'a County was not what was procured as per the original contract. The Red Brick Limited could not explain that disparity.

Madam Temporary Speaker, when I raise these issues, I am happy that some entities took up these issues when this Committee raised them. However, every time I raise these issues in Murang'a County, the governor becomes personal and insults me. He does not respect my constitutional mandate as a Senator. Today, he mobilized people to go on live television to insult me. I am a lawyer and I will sue anyone who defamed my name today in a court of law.

As Senators, we shall not be intimidated as we pursue our oversight mandate. These are matters that are documented by the CPAIC, where I am a proud Member. We shall continue telling Murang'a County Government that their books must be audited by the Auditor-General. We must tell the Governor of Murang'a county that even if some goons are paid to defame me, I will continue talking the truth.

Madam Temporary Speaker, I have said that there are good things in the BBI. However, for a governor who is supporting BBI, no action is being taken against him even if he has misappropriated funds. That is very unfair. If you have done something wrong, even if you are a pro-BBI governor, you should be taken to a court of law.

**The Temporary Speaker** (Sen. Nyamunga): Order, Senator. Can you confine yourself to the matter before the House?

**Sen. Kang'ata:** Madam Temporary Speaker, it is the truth. Any governor who is supporting BBI, no action is being taken against him if he or she misappropriates funds. When I raise issues, I am now being pursued left, right and centre. It is unfair.!

**The Temporary Speaker** (Sen. Nyamunga): What is your point of order, Sen. Pareno?

**Sen. Pareno:** Madam Temporary Speaker, is Sen. Kang'ata in order to try to imply, without substantiating, that any governor who is in the BBI camp cannot be held accountable for whatever wrongs?

**The Temporary Speaker** (Sen. Nyamunga): Senator, kindly confine yourself to the issues before the House.

**Sen. Kang'ata:** Madam Temporary Speaker, I challenge the various constitutional offices that we have, which have the powers to investigate corruption, to take action against people who have been mentioned adversely by these reports. There are several governors, notwithstanding their political position. That is my case.

**The Temporary Speaker** (Sen. Nyamunga): Just a minute, Senator. Sen. Omogeni proceed.

**Sen. Omogeni:** Madam Temporary Speaker, is it in order for the Senator to continue misleading the House that governors who are pro-BBI, no action is being taken, while it is public knowledge that even the Governor of Murang'a County is actively being pursued by various constitutional organs, including the Ethics and Anti-Corruption Commission (EACC) and Assets Recovery Agency (ARA)? We know that his assets have been frozen.

**The Temporary Speaker** (Sen. Nyamunga): Sen. Kang'ata, I have warned you before. Please, confine yourself to the matter before the House, which is the report by the County Public Accounts and Investment Committee (CPAIC); nothing to do with the Building Bridges Initiative (BBI).

**Sen. Kang'ata:** Thank you, Madam Temporary Speaker. I am guided, but I continue urging the Government to be impartial, to ensure that this Report is implemented 100 per cent. We must ensure that action is taken against the governors that

have been mentioned adversely by the Director of Public Prosecutions (DPP), in particular.

I am aware of various files that are lying in the office of the DPP, where there have been recommendations for prosecution arising out of alleged misdeeds on matters county finances. However, so far, the DPP has taken no action. This House and Kenyans are watching. I will not mention BBI at all. I will now restrict myself to the issues concerning corruption in our counties.

Madam Temporary Speaker, this country has devolved billions of shillings since 2013. I am happy that there is a new proposal to devolve more funds to the counties. As a House, we must ensure that we guard against corruption, whether that corruption is in Murang'a County, Nyamira County or Kajiado County.

This Committee is one of our most important Committees so far as matters oversight are concerned. I urge various investigative agencies, which are yet to send a representative to that Committee as *ex officio* members, to please, do so.

I congratulate the few organizations that have so far sent a representative to that Committee. I urge the Director of Criminal Investigations (DCI) to do the same. I understand that there is a slot for him. He should take it up. The DPP should also take up that position, so that there is a clear interlink between the recommendations of this Committee and the actual implementation of the recommendations. We want to see executive officials being taken to court and efforts being made to ensure that there is no loss of money.

Madam Temporary Speaker, let me propose other ways of protecting county funds, which I am sure have been provided in this Report. Number one is the use of technology. This country is yet to adopt an e-government platform. We are still using manual systems to collect county revenue and charge market fees. One way to fight corruption is to adopt a paperless government, so that the county *askaris* can use technology to collect revenue. We will, therefore, reduce incidences of corruption.

Billions of shillings have been lost in devolution, as clearly captured by these reports. Those billions of shillings should be going to build and support *boda boda* people. We can train them for free. Those billions should be expended to provide inputs for our farmers. I come from Murang'a County where we are one of the largest growers of avocado. We need inputs. There are also coffee and tea farmers. The billions that have been captured in this report as lost should be used to support of coffee and tea farmers.

The producer milk price in Murang'a is currently about Kshs30 per litre. I have no doubt that if we curb corruption in our county and all other counties, the producer price of milk will be about Kshs60 per litre. It is possible. For instance, if the factory that was mooted by the County Government of Murang'a for processing milk was operating efficiently, I have no doubt that the common person in Murang'a would be getting better value for his investment.

Madam Temporary Speaker, if we curb corruption, the poor primary school children aged between three and five years, and go to our nurseries and kindergartens that are supported by the county governments, will be eating free food. We would have boosted school enrollment because of that. As a result of a few governors and county officials who have been enriching themselves as captured by this Report, we now have poor children who cannot go to school.

When I see street children in Nairobi, and children who cannot get a meal a day, I realize that there is a clear correlation between their not attending school and governors who are stealing billions of shillings and keeping the poor man down.

Madam Temporary Speaker, as the Senate, we must rise and fight for well-run counties. This is one of our most important tools that we can use; coming up with a report, which I urge my colleagues to adopt. I urge the Directorate of Criminal Investigations (DCI) and the Ethics and Anti-Corruption Commission (EACC) to take action, so that we ensure that these people who have 'eaten' billions of shillings from our counties are taken to court and jailed.

It pains me when I see children who do not go to school because some governors have stolen money. When I see that money is now being used for political purposes, to lure our citizens in politics, it pains me.

I know that it is possible to do so within a generation. Singapore was able to move from being a Third World country to a First World country within a generation. In 1978, China was a very poor country, but it is now the second largest economy in the world. When I was born in 1980, China was a very poor country.

Last year, they achieved a milestone of wiping off absolute poverty out of China, a country of 1.4 billion people. Why? It is because if you steal a single Yuan in China, they take you to face the gallows. You face the death penalty. I know that that is possible.

As leaders, we have a moral duty, to not only lead and ensure that we do not loot public coffers, but also inspire. When people see that leaders are getting ahead through corruption, they will definitely also become corrupt. This House must fight the vice of corruption.

Madam Temporary Speaker, I am happy with the drafters of the Constitution, 2010. They ensured that Senators are not interlinked with the Executive. We became very independent, unlike the National Assembly, which has the National Government-Constituencies Development Funds (NG-CDF). We do not have funds. As a result, we have the leverage to conduct oversight without fear or favour.

It is now time for us to ensure that this Report is implemented. It is now time that we urge the Executive and various independent offices to implement these reports, so that we have more and more county executives, who face the court and the law.

Madam Deputy Speaker, there are several roads that are under the management of the counties that are not done. There are several boreholes, which would have been sunk were it not for corruption. Many nursery schools would have been built were it not for corruption. There are several health centers that would have been built, but because of corruption, they are not. I am aware that most of our nurses, doctors and clinical officers are employees of the county government. They are now crying because of underpayment and their working conditions under the counties are not proper.

I have no doubt the problems have arisen because of corruption. It is now time for us, as a Senate, to rise up and say 'no' by adopting this Report and ensuring we curb corruption in our counties.

I congratulate Professor and my colleagues who sat in that Committee. We fought and ensured this report was done. It is a very coherent and logical Report.

I support.

**Sen. (Dr.) Musuruve:** Thank you, Madam Temporary Speaker for giving me this opportunity to support this Motion.

I commend the work of the CPAIC. They did a very good job to bring governors on board to come and address audit queries. As a Senate, we disburse money to go the counties with the aim of ensuring it is used for service delivery. Kenya is devolved into the 47 counties so that money reaches the common man.

When we look at the Constitution, we have socio-economic needs that must be met for everyone. They involve children, families and everyone in this Republic. It is just in good breath that there is an audit query, so that the money that goes to the counties corroborates the development in the counties. That is the essence of audit queries.

County Executives should know that when there is an audit query, no one is being targeted. It is just for the purpose of ensuring that there is a credibility bill for county executives; that they are doing a good job. Governors are brought on board to answer questions and explain how the monies were used.

Every year, money is disbursed to county governments and they come up with a budget. There is need to see if the money was used wisely according to the budget. Auditing is very important because a clean audit report shows county executives are doing well. They have been elected by *wananchi* for the purpose of ensuring that they deliver services.

The audit report will show the financial statement of the county. It will come out clearly to show if there were any contracts that were awarded. This report goes further to find out if a contractor was paid upfront to make a certain road and if the service was delivered or the road completed.

Sometimes when reports come to the Floor of this House, there are some pending bills and some incomplete projects. Audit reports will also make county executives know that there is someone who is watching, to ensure that there is service delivery.

It is important for the audited reports to be done by a very impartial person. Such a person has nothing to gain, but to see that the report is credible and *wananchi* are getting service. This is our business as a Senate. We are here to represent counties and their interests and to see to it that there is service delivery. We also make sure that there are hospitals, water and schools at the counties.

As we speak, there are some counties that do not have Early Childhood Development Education (ECDE) classes. In the financial report, there is no information showing whether a certain amount of money was allocated for ECDE classrooms. There is need to even query whether there are such classrooms, water or health facilities and people delivering or dying on the streets. We will be doing well as a Senate when we interrogate these issues.

The Committee should continue auditing so that county executives come here and we see that they are doing their work. It is unfortunate that county executives can be summoned to the Senate and fail to attend because it is the same Senate that disburses money. It is their onus to come to the Senate and tell the Senate: "This is the amount of money we were given and this is how we utilized it".

They should also tell us whether they are having pending bills. There is nothing wrong with being frank and honest. In fact, they are more credible when they come to the Senate and say: "Yes, I was given this amount of money for my county, but it was not enough. This is what I did and these are the pending bills."

Before counties are given money, they should talk about pending bills. County executives should not be given money if they have not cleared pending bills. They should explain if there are projects that were supposed to be done, but were not done.

The purpose of audit is to ensure that there is transparency, accountability and service to *wananchi*. That is our core business here as a Senate. We do not have greater business other than defending the counties and the interests of the counties.

Audit reports are mandatory and should be done yearly. The Committee can even visit the counties on a quarterly basis to see what they are doing as the indicators of development. The CPAIC should go a notch higher and ensure that they see the visible projects that are being done at the counties.

Sometimes the projects that are done on paperwork are sometimes not there at the counties. There is need to ensure that they do impromptu visits and ensure services are given to Kenyans. We are mandated constitutionally to do that as a Senate, especially when it comes to completion of projects. There is need for CPAIC to bring county executives to answer as to why there are pending bills and projects. I know of a hospital somewhere that was started long time in the last Parliament and has never been completed.

Money allocated to counties should be desegregated so that it goes to different projects. When county executives come before the CPAIC, they should show that they have allocated the money. After doing that, county executives should be frank and tell CPAIC they are ready for the projects to be inspected so that they are seem to be working.

This Report should not only be annual; even midway through the year, there is need for CPAIC to go and see what is happening. As a Senate, we need to oversight the projects that are there because CPAIC alone is not enough. We want to give service to Kenyans and we have to go and confirm in the counties that Kenyans are getting service delivery. There is need for the Senate to oversight what is happening in the counties. It is the onus of this House to do exactly that. The only challenge is that when it comes to oversight, it becomes very difficult because of money issues.

Madam Temporary Speaker, if we had the money to oversight counties, it would be easy for us to know what is happening in the counties since we would be able to conduct our oversight function properly. I believe that the money meant to oversight counties will come in due course so that Senators can go out and fulfill the mandate of the Senate. We have a duty to ensure that service reaches 'Wanjiku'.

I beg to support this report.

**The Temporary Speaker** (Sen. Nyamunga): Thank you, Sen.(Dr.) Musuruve.

Proceed, Sen. Shiyonga.

**Sen. Shiyonga:** Madam Temporary Speaker, I thank you for giving me this opportunity to support the Motion on the Adoption of Reports of the Sessional Committee on County Public Accounts and Investments (CPAIC) on Audit Reports for County Executives for Financial Years 2015/2016, 2016/2017, And 2017/2018 (Volumes i, ii and iii). This report has revealed the corruption that we have been talking about as a country.

I support the recommendations that have been proposed by the CPAIC. The 23<sup>rd</sup> recommendation that has been proposed by the Committee states that there are many unsupported expenditures relating to scholarships and other education benefits. It is clear

that there is lack of a clear framework in the counties. This is the eighth year of the existence of counties, but there are many unpleasant things. There is need for education officers or the CECs in charge of finance to ensure that bursaries or any grants that are allocated to counties are properly managed. It has been alleged that some CECs collude with governors or county officials to double fund or take money that is meant to support needy students.

Madam Temporary Speaker, the report also speaks to a series of county finance offices being burnt down. That could only mean that there is something fishy going on in the county finance departments and someone wants to evade audit. It is important for all the counties to account for all the funds that they have been allocated up to the last shilling.

County officials in charge of finance should not resort to burning offices after they have mismanaged the funds that are allocated to counties. Burning of offices to evade accountability is illegal; it is arson. Counties need to back up their data, so that even when essential offices such as finance departments are burnt, there will be back up for all the data that may be lost in the fire.

The issue of pending bills is bringing counties down. Governors should not engage their counties in unnecessary pending bills. Counties are supposed to match their expenditure to their demands. The expenditure of the counties should also match their funding so that they do not go overboard with their expenditure, leaving behind pending bills. It is very difficult for incumbent governors to take up pending bills because outgoing governors leave them with unanswered questions.

Madam Temporary Speaker, it is important for counties to do proper book keeping. Books of accounting are not kept well in the counties as the report has clearly shown. Auditing becomes very difficult when there are no proper documents to refer. I urge any able governor to ensure that they have professional accountants who can save documents in soft, *vis-à-vis* hard copies, for purposes of proper bookkeeping. We are in the e-era so any able governor should have accounting officers who can embrace electronic bookkeeping.

When Hon. Charity Ngilu, the Governor of Kitui County was the Cabinet Secretary in the Ministry of Lands, she reorganized record keeping in that Ministry by changing them from hard copy to soft copy. Currently, getting records from the lands registry is a push of a button. It is important for the governors to employ learned people with relevant skills in record keeping so as not to take CPAIC round in circles when they cannot produce the relevant evidence to support audit queries.

In conclusion, this report has shown that most governors lack governance and management skills. It is important that we get the right people in the office of the governor, right from the start. We should not elect people to office just because we are persuaded by party affiliations or popularity. We should elect qualified people to run our counties as governors. We should elect people with the right governance and management skills to avoid the kind of things that have been exposed by this report.

Somebody like Sen. Sakaja who has served as a Member of the National Assembly and is currently the Senator for Nairobi City County is capable of being a governor. I am not saying that he has declared interest in the said position, but if he were to contest for the position of governor, he would be the right candidate because he is qualified. Some governors come from nowhere to contest for the position, just because

they have money. Such people buy out voters and end up holding the position of governor without the relevant experience.

It is improper for somebody in the position of a governor to blame people for their own mistakes. I urge fellow Kenyans to avoid electing people who have no experience to the office of county governor. People who have no insight of the office they are going to hold should not be elected to the office of county governor.

Unqualified persons who hold the office of the county governor are costing their counties. Kenya is losing a lot through ignorant people who hold the office of the county governor. Not all governors are ignorant, but there are a few who do not know how to manage their counties or why they are in those offices.

Madam Temporary Speaker, I beg to support this report and remind fellow Kenyans to elect former Senators as governors because we do oversight of the counties and, therefore, know what is important in running counties.

**The Temporary Speaker** (Sen. Nyamunga): Thank you, Sen. Shiyonga. Finally, Sen. Sakaja.

**Sen. Sakaja:** Madam Temporary Speaker, I am trying to access the CPAIC report, but there seems to be a problem with the system. I generally agree with the report of the CPAIC.

Kindly direct someone to assist me display the report of the CPAIC on my iPad.

I commend the CPAIC, which went out of its way to catch up with the reports from the county executives. That is extremely commendable. Looking at these financial years for counties of Baringo, Elgeyo-Marakwet, Homa Bay, Kakamega, Kiambu, Kisii, Mandera, Mombasa, Taita/Taveta, Kilifi, Garissa, Wajir, Narok, Kericho and Lamu is not an easy job to be done.

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

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

Madam Temporary Speaker, allow me to commend the former Chairman, Sen. (Prof.) Onger. He is a former Chairman because the Committee needs to be reconstituted. I hope he comes back as the Chairman because he has shown extraordinary energy, passion, and zeal to deal with these matters. I hear from your Members that, indeed, you have been able to spur some of them who are much younger than you, your grandchildren, to actually step up and pull up their socks. That is extremely commendable.

Financial years 2015/2016, 2016/2017 and 2017/2018 were formative years of devolution. This was the time when many systems were still being put in place. If you remember the fiduciary risk report that was done by the CPAIC, we were able to see some areas of concern that we should be aware of.

Those areas are not just even on accountability, but budget implementation. If you look at matters of absorption, budget implementation based on what has been passed by the assemblies and then the risks in the systems, the accounts that counties are operating, multiple commercial bank accounts, many of them had issues with project accounts. I hope that in the last report, we will see a trend of some form of improvement from when we started.



Madam Temporary Speaker, devolution is the biggest gift we have given to our counties and bequeath to our people in this country. It is the biggest gift in our Constitution. I am glad that it is even being strengthened more through the BBI; we will have a stronger devolution based on proper allocation of resources at 35 per cent.

That is why many of us fought when there was BBI two. I think it was the second document of BBI which proposed to do away with Nairobi City County. I put up a spirited fight because we wondered why 10 per cent of the population of this country would be denied the greatest gift that comes to Kenyans. That lady in Mutuini, that young man in Mathare or that citizen of Kenya in Soweto and Pipeline has the same right to that gift of the Constitution as Article One says, "To exercise their sovereignty at both the national level and at the county level."

I am very pleased that that was changed. Nairobi City retains its full county status in 2022 after the mandate of the Nairobi Metropolitan Services (NMS) expires. The next governor who comes in can decide to get into a similar arrangement with a similar entity or by that time to use the systems that we will have already established.

Madam Temporary Speaker, the amounts have been going steadily up. If you look at 2014/2015 Financial Year, we were able to give counties Kshs226 billion. Many people have been asking, "If you have not been able to do 15 per cent, how will you do 35 per cent?" That is what people are asking about BBI. That needs to be debunked. Since the advent of devolution, the Government has never done 15 per cent. It does way above 15 per cent.

In the Financial Year 2014/2015, the Kshs226 billion of the last audited revenue was 43 per cent. That last audited revenue in that year was Kshs529 billion. In the following year, Kshs259 billion was actually coming to 33 per cent. In 2016/2017, Kshs280 billion, out of a total revenue of Kshs935 billion was actually 30 per cent. In the last few years when the amount has not changed, if you look at 2019/2020, Kshs316.5 billion was 30 per cent and the last year was 23 per cent.

The reason we are keen on making sure we are sending the counties 35 per cent is because any good president can do whatever amount they want. However, we do not know which kind of President we will get next time. You never know. Therefore, let the floor be 35 per cent so that no matter who sits at the national level or at the presidential level, but our counties will be assured of those resources. That deals with many things, including a sense of being Kenyan.

As you saw during the clamour in the last financial year for allocation of resources, a lot of the discourse that happens across the country, if you hear and see the contents of this report, we have a problem coming as a country. The problem is that we focus so much on how to divide the cake yet very little effort is put on how to bake a bigger cake. That is what it needs to be going on.

If you look at the risk in the counties in terms of raising revenue, we have a CRA. We will soon need a commission for revenue generation because this is an issue no one is discussing it. I remember in the beginning and even if you look through the report, counties having their revenue going down. Many of the municipal councils and town councils we had were collecting a similar amount or a higher amount in certain parts of the country than what our counties are now collecting.

Chapter 12 on Public Finance of our Constitution is extremely clear on the revenue raising abilities and capacity that counties have and should have. We need to

address own-source revenue. We need to address the innovation of how to raise revenue in our counties.

I am glad that many Members have spoken about the issue of automation. Automation needs to be done properly. In as much as Nairobi automated, we have also seen a drop. If you look at the revenue streams, those that have been automated, there is still some malfeasance and some mischief in the streams you allow to be automated and which ones remain to be collected in cash. That is something that must be looked at.

Madam Temporary Speaker, I am very pleased that my county - you know all of us come from somewhere and I come from Nairobi - I am very pleased that in this financial year, using the last audited revenue, I am glad that BBI talks about, we will not be using the years back, but the most recent. Out of Kshs370 billion, 35 per cent will be Kshs475 billion. Out of that Kshs475 billion, Nairobi City County will be receiving Kshs25 billion in a financial year as soon as we pass BBI.

I can tell you what your counties will be getting if you are interested---

**Sen. Kang'ata:** On a point of order, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Pareno): Sen. Sakaja, there is a point of order from Sen. Kang'ata.

**Sen. Kang'ata:** Madam Temporary Speaker, I apologise to the very eminent Senator for Nairobi City for interrupting him. However, I am just interested in ensuring that the rulings are equal. I rose and spoke about BBI, but the Chair reprimanded me. My colleague has mentioned BBI, but he did not reprimand him. Is there fair treatment?

**The Temporary Speaker** (Sen. Pareno): I think Sen. Sakaja only referred to the 35 per cent that counties would get as proposed in BBI. He is not debating anything to do with BBI. So, he is in order.

**Sen. Sakaja:** Madam Temporary Speaker, thank you. I am not talking about the politics of BBI, but simulations of revenue. Revenue is a part of audit. We are talking about the Report of CPAIC.

Sen. Kang'ata will be happy to note that his county, if we pass this, will be getting revenue to the tune of Kshs9 billion and above as opposed to what it has been getting.

On top of that, and I will give you an example, we passed the Sectional Properties Bill. We also doing the re-evaluation of the roll in Nairobi. The Sectional Properties law will mandate that rates and rents be paid on each dwelling, not just on the improved land value. Even for apartments, you will get a title deed. It is projected then that our own-source revenue in Nairobi City County will be anything between Kshs50 billion and Kshs75 billion in the first year of implementing that.

Madam Temporary Speaker, Kshs50 billion to Kshs75 billion plus Kshs25 billion that we are getting through BBI comes to Kshs100 billion. That is why we need to make sure that before that happens, Sen. (Prof.) Ongeru and your Committee, have proper systems for accountability. That money can change the lives of the people of Nairobi. We are talking about our water, mass transit system, our hospitals, the sewerage system, drugs and providing opportunities for the people of Nairobi County.

Madam Temporary Speaker, I am excited and I am sure that we will have a very good governor in the next election, 2022, who will use these resources prudently. This is because the whole approach of audit for us should not be to catch thieves. The focus is not really to catch thieves - because then you enter with a policing mentality - but to

improve systems and to ensure accountability that makes sure that monies are used for the intended purposes they have been appropriated.

Madam Temporary Speaker, we have had many issues. If you look at these reports, for instance, investigations are going on regarding the Dandora Stadium. There is the issue of Nairobi Water and Sewerage Company and many sectors in the City. I hope that we can continue to strengthen systems. I even want to suggest that through the Senate Business Committee (SBC) or the Rules and Procedures Committee (RPC), and through the Parliamentary Service Commission (PSC) we create a Senate Audit Office (SAO).

The Parliamentary Budget Office (PBO) does a good job. I can see the Chairman of the Committee on Finance and Budget is here and he will tell you the kind of support that he gets from that office. On top of what the PBO does, a Parliamentary Audit Office will help us achieve a few things. First, we will not be morticians to do postmortems of a body that died years ago by looking at 2014 audits or audits of many years after which the governor has gone and things have moved on. We will be able to do real time audits on budget implementation and get the quarterly exchequer releases from the Controller of Budget (CoB).

Even as that is happening, you will be able to get real time analysis and input on what is going on in your county. That equips you, as a Senator, so that your work is not just to go into history. For instance, right now, I should not be looking at the accounts of former Governor Kidero. I should be able to see what this county government is currently doing, because it has no governor for now, and what NMS is doing today because it must also be accountable to this House. A Senate Audit Office will help us be on schedule and to do real time audits. That is extremely important.

Madam Temporary Speaker, we in the Committee on Labour and Social Welfare have asked ourselves how we can address the wage bill in our counties. This is because some counties, 75 per cent of their revenue is on recurrent expenditure. Of that recurrent expenditure, a huge portion of it is on staff. How do we streamline that?

Madam Temporary Speaker, we proposed a Bill on County Public Service Boards, but we want to refine it. This is because when you go to a county, you find there are three categories of staff. You will find there are staff who were seconded from the national Government when the functions were being transferred. They are on their own schemes of service. Their pension is different through the superannuation scheme in the national level.

You find staff who had been in the councils already and staff who the governor employed. I am not saying there is a problem with that.

So, you find three people doing the same exact work under three different regimes, three different schemes of service and different salaries. Even the motivation to work cannot be there because why would you be paid twice or half of what I am being paid for doing the same job?

The legacy of this Twelfth Senate must be on how to sort out that labour issue. That is why we are proposing a National Labour Summit this year after the Devolution Conference. This is because at the Devolution Conference, we might only speak for one or two hours on labour issues. However, we want to look at that because unless you have the right human resource in a county, you cannot expect to have a good product at the tail end of the audit because you do not have the correct staff to implement what is required.

You do not have the right capacity to even do internal audits. We also do not have the right capacity in the finance departments to make sure that money is used properly.

We will be proposing to the House that the Senate holds the National Labour Summit. We are looking at the issues of inter-county transfers to make sure that if you are hired in Kisii, you can go and work in Mombasa because we have balkanized our country. Our counties are ethnic balkans.

You might even be a Kikuyu, but you are told you are not from Kirinyaga, so you will not get a job in Kirinyaga, go to Nyeri where you are from. You might be Wafula and you are told, “no”, you are from Bungoma, do not come and work in Kakamega. We must change that. The purpose of devolution was not to create 47 ethnic balkans, but to make sure that we deliver through the principle of subsidiarity proper services to the *mwananchi* at the lowest levels. We will be proposing that.

Finally, Madam Temporary Speaker, we must find a way to strengthen the Kenya National Audit Office (KNAO). In many counties, because of lack of resources, officers are housed by the same governors that they are supposed to audit their accounts. We must make sure that office is a truly independent. I will not make allegations here, but we have heard issues on what happens to some of the counties that get qualified or non-qualified reports. We do not want to cast any aspersions, but we hope that we can have a truly independent audit office that works hand in hand with the Ethics and Anti-Corruption Commission (EACC).

Madam Temporary Speaker, I support this report. I commend the Committee for having really accelerated this work. We hope to see the next volumes where we can look at our own counties. I want to look at Nairobi City County to know what has been happening.

With those very many remarks, I support.

**Sen. Kibiru:** Thank you, Madam Temporary Speaker. I want to start by saying that I have been a Member of the CPAIC for the last many years. As I stand to support the adoption of the report, I am doing so from an informed position.

Madam Temporary Speaker, as I do, I am a proud Senator from Kirinyaga County because I have seen the wonderful work the Members of County Assembly (MCAs) from Kirinyaga have done. Therefore, for all those who have agreed to pass BBI, *heko kwenu*. We are together all the way until we pass the Referendum Bill. I also note that the people of Tharaka Nithi where Sen. (Prof.) Kindiki comes from, also passed the BBI. The MCAs from that county, *Hongerera*. Thank you, Professor for supporting BBI.

Madam Temporary Speaker, as I continue, I want to say that having been in that Committee for long and having been a mortician, one of the biggest challenges that we have faced is to deal with the backlog. This morning, in the SBC, we impressed on the leadership to ensure that the 2014, 2015 and 2016 reports are adopted as fast as we can. We are in 2021 and we cannot be talking about 2013/2014 reports.

Another challenge we faced in the CPAIC was how to deal with the complacent attitude that the governors displayed towards issues of audit. The audit process is very clear. There is the first meeting, the second meeting, a management letter, and a draft report. However, you get repeated issues over a period. You see a governor who has been there repeating the same issues. This is something the Senate needs to think about. If you are a governor, you must be held responsible to the extent that you should be signing the financial statements. In the private sector, organization Chief Executive Officers (CEOs)

and Directors sign to commit whatever has been prepared is the correct information as far as the auditors are concerned.

Madam Temporary Speaker, a way forward is that governors must take the audit process very seriously. Some of the very glaring issues that are highlighted by the auditors can be avoided if the governors take their work seriously.

We also have impressed on the Institute of Certified Public Accountants (ICPAK) to take punitive measures on their members who do not take the audit process seriously. We have seen very glaring and basic issues that they do not take up. Sometimes we spend a lot of time looking into issues that do not merit the time of the Committee.

Madam Temporary Speaker, Sen. Sakaja has mentioned something about own-source revenue. I hope and believe that other Senators have also mentioned issues about own-source revenue. The Commission on Revenue Allocation (CRA) carried out research on the potential of most counties in the country. In terms of potential, most counties are meeting their potential by less than 30 per cent.

As a Committee of Finance and Budget, one of the areas we have looked at is proposing amendments to the Public Finance Management (PFM) Act. When it comes to budgeting, let counties not have a wish list become luxurious so that they can commit contracts and suppliers based on unrealistic budgets.

One of the recommendations we have made is that we need a moving target. Let us have a three-year average based on actual collections so that counties do not over budget. We have seen a county stating that they will collect Kshs300 million this year whereas they have never collected Kshs150 million. When it comes to the budgeting process, we have emphasized that they must be realistic.

I will bring a Motion here to find out how far we are on spatial planning. A law was passed and timelines given for counties and the national Government to take up this issue. This helps us in identifying how we are supposed to develop while showing areas where counties can collect own-source revenue. If we are to do a spatial planning and use a system to know all properties in this country, some of the counties collecting meagre resources would collect more and meet their targets.

Madam Temporary Speaker, as we move forward, we need to find out how the audit office can be facilitated to carry out performance audit. We lack on issues of performance audit. The auditor gets into a county and they try to establish whether a process was followed. For instance, there is a murrum road that was to be done, but the auditor will always find out whether the procurement process followed the procedure. More often than not, even in procurement of goods and services, you will find that they over-exaggerated in terms of market prices or value for money.

We need to come up with a way to improve the audit process, which is not for the Senate, but we need to sit down as a nation. If we only look at processes and giving opinions based on them, then we are doing an academic exercise.

As the Committee on Finance and Budget, working with CPAC, we would want to see how we can enhance performance. We passed a Motion sponsored by yours truly in this House on issues of stalled projects. As I speak, stalled projects through the audit report still stand in excess of Kshs366 billion. We are losing value for money. The time value of our shilling is not being exploited; we are not using our shilling to add value in giving services to our people. I ask the organizations in charge, especially the National

Treasury, to ensure the first charge in the budget is to complete stalled projects as was passed by this House.

We need to resolve that no more projects should be started in counties that do not adhere to that requirement. If it is a dispensary, an office, a class, an administration bloc for the agricultural extension officers be completed so that we do not have stalled projects because they become more expensive when rehabilitated. This is something we should look at and emphasize.

As I conclude, the issue of the Integrated Financial Management Information System (IFMIS), in terms of looking at how the counties collect their finance, is something that is not getting headway. The Kenya Revenue Authority (KRA) has been trying to get into counties and helping them in collecting revenue. As it maybe, they continue collecting revenue because they have the systems. However, at the same time, counties need to strengthen their systems. They also need to offer jobs to the Information Communication and Technology (ICT) entrepreneurs. This is something we, as a Committee, are trying to see how we can come up with rules and regulations or legislation that can support and set out compliance levels of the people collecting revenue.

This brings me back to the issue of IFMIS. One of the biggest challenges that the counties have continuously been telling both CPAIC and the Committee on Finance and Budget is the issue of IFMIS. It looks like IFMIS is an animal that needs to be dissected. We need to find out why nobody knows who controls it in terms of the way procurements are done. Why do we continue having pending bills if the law is clear? IFMIS is supposed to help because you cannot procure goods when there are no funds. More often than not, counties always say the systems were down and they could not access them.

The former Auditor-General proposed that it was the time we had two levels of IFMIS; one that deals with the national Government and another one that take cares of the county governments. This way, the systems would be more available and versatile in helping counties execute their mandate and offer services to citizens.

Madam Temporary Speaker, with those many remarks, I support the report and pray that most of the recommendations be implemented. The institutions like the DCI, EACC and others that have been requested to take further investigations on most of the matters should do so expeditiously.

**The Temporary Speaker** (Sen. Pareno): I am not sure that Sen. M. Kajwang' would want to proceed in view of provisions of Standing Order No.33. I want to hear what you want to say about that before I make a ruling.

**Sen. M. Kajwang'**: Madam Temporary Speaker, I will beg that you apply Standing Order No.1 and allow me to contribute to this matter. When it came for debate last week on Thursday, I was the last Senator in the Floor at 6.30 p.m. Unfortunately, I was not able to be in the House when the debate commenced.

I beg your indulgence to make a contribution because Homa Bay is one of the counties whose report has been presented. I am also the one who chaired a number of the meetings that gave rise to this report.

**The Temporary Speaker** (Sen. Pareno): Sen. M. Kajwang', I am afraid that when I saw you made a request, I proceeded to look at the provisions of Standing Order No. 33 which I take the liberty to read so that we are on the same page. It says:

“Any debate interrupted and at this part, shall on coming again before the Senate or the Committee, be resumed at the point where it was interrupted and any Senator whose speech was interrupted shall have the right to speak on such resumption for the remainder of the time available to him or her, but if such a Senator does not avail himself or herself of this right his or her speech shall be deemed to have been concluded.”

Your speech was deemed to have been concluded at the time we started this debate. In fact, your name was called out and a ruling made that Sen. M. Kajwang’ was not here and so, it was deemed that you concluded, and we proceeded. Having known that, probably you really wanted to contribute, I am afraid this cuts you out, unless we violate our own provisions.

**Sen. M. Kajwang’:** Madam Temporary Speaker, notwithstanding Standing Order No.33, which you have clearly read out, there is also a Standing Order that allows a Senator to speak twice to a question.

I know---

**The Temporary Speaker** (Sen. Pareno): Which Standing Order are you referring to?

**Sen. M. Kajwang’:** Madam Temporary Speaker, I will need to check the exact number, which allows in exceptional circumstances, for a Member to speak twice to a question.

**The Temporary Speaker** (Sen. Pareno): Let me just look at my Standing Orders. The one that I know does not allow a Senator to speak twice on the same issue. Let me just check and give you further guidance.

I am looking at the provisions of Standing Order No.92, which talks about speaking twice to a question. It says:

“(1) No Senator shall speak more than once to a Question except in the Committee of the Whole.

(2) Despite paragraph (1)-

(a) a Senator who has spoken on a question may again be heard to offer explanation of some material part of the Senator’s speech which has been misunderstood, but must not introduce new matter;

(b) a Senator who has moved a substantive Motion has, on conclusion of debate and before the Question is put, a right of reply, and may delegate that right to another Senator to reply in the Senator’s stead.

(c) the mover of a Motion of amendment shall not have a right of reply to a Motion of amendment.”

Again, Standing Order No.92 does not allow you to speak twice on the same matter unless it is on an explanation or a reply. I am afraid that, that is the ruling.

With no further requests on that, I now call upon the Mover to reply.

**Sen. (Prof.) Ongeri:** Thank you, Madam Temporary Speaker, for giving me this opportunity to reply to this debate. Basically, on the issue of counties that have been presented before this Committee, they have all been mentioned in the Order Paper, Volumes (i), (ii) and (iii). They are in total about 15 counties.

I may add at this stage that we have been able prosecute 45 counties. The remaining counties that we were not able to prosecute were because there was one or two

projects that we needed to go and check. One of them is Kajiado County and another county.

Madam Temporary Speaker, if we had time, we would have presented before this House extra 14 counties. Together with the 20 counties that have been prosecuted during the era of Sen. M. Kajwang' as the Chairperson, we would have then completed for the financial years 2013/2014, all through to 2017/2018, which is a total of five years consecutively. That puts us pretty to very updated CPAIC findings presented before this House.

Madam Temporary Speaker, having said that, I thank everybody who has contributed to this debate, given the highlights that we brought out quite clearly during my presentation. I will start with Sen. (Dr.) Ochillo-Ayacko, who seconded the Motion, then Sen. M. Kajwang' who was briefly in this meeting. I thank many others who have spoken, Sen. Kang'ata, Sen. Omogeni, Sen. Kibiru, Sen. Sakaja, Sen. Seneta and Sen. Shiyonga. You brought out some very salient features that have been captured in the HANSARD. We can work upon them.

Finally, this particular report is over 2,100 pages. I recommend that Members should go back to it, see the highlights that we have developed that can guide them. They should particularly look at their respective counties and what has been recommended in each specific audit query.

There were two counties; that is Kajiado and Trans Nzoia with two or three verifications we wanted to do in the field before completing that report. That would have made a total of about 3,200 pages of the report that would have come before this Senate.

I seriously recommend that every Senator should look at their own county and see what kinds of recommendations have been made as part of their follow up and oversight of responsibility. This is so that they can help this House to track some of the issues that have been raised, fundamentally dealt with and recommended in one way or the other. Either the issues were resolved completely or the were outstanding were noted.

One notable feature is that some of the audit queries need not appear as audit queries if the county executives were to submit their documents on time. When the audit period lapsed, they were not able to respond to the audit queries that have been raised during the exit meeting. Therefore, they were caught up in between that period. The issues then appear as audit queries.

If they were to be diligent in replying to some of these audit queries, then we would not see them appearing in the report by the Auditor-General on respective counties. I urge the governors to exercise due diligence and due governance on their County Executive Committee Members (CECM) of Finance, and the people who are charged with the responsibility of preparing the accounts checked by the Auditor-General. They should submit the information available on time.

Even when we are to meet and have given them a two or three-week window of opportunity to present the reports so that we can clear the audit queries, they have not been doing so. That is an area of weakness that we need to tighten as a House, so that when governors appear before the Committee, they have actually presented their full documents and information required during the period of audit.

The other thing that was quite evident and which many Members have attributed to is poor bookkeeping. The audit is based on the financial statements. An audit report and opinion is derived from a financial statement. The statement is developed by the



respective county governments. It is not developed by anybody else. Financial statements are basically the basic bookkeeping. That is where the opinion is derived from. I think that is one of the lapses we have noticed appearing frequently in most of the counties whose audit reports we have examined.

Accompanying this poor record-keeping is the fraudulent practices where they were trying to cover their tracks in doing certain illegal actions. We have recommended punitive measures. The EACC should go further into some of those elements to uncover the extent of that fraud so that it can be brought to book and dealt with firmly. You cannot receive money and not be able to account for it. You cannot receive money without proper record keeping and an element of accountability and governance.

We are not asking for too much or intimidating anybody, but simply they should perform their responsibilities. We also perform ours of over sighting.

There is also non-compliance with the laws and procedures and failure to recruit qualified personnel to run some of the elements that we have written here.

For those who may not have read this report, we have done an executive summary. It has 25 cogent points that you can look at and be able to make cross-referencing with your county. In passing, reference has been made to some of them. One of them is lack of remittance of statutory deductions which distorts their accounting procedures. The penalties that are extra expenses to the county governments which need not be.

There are penalties applied which cannot be lifted. County governments must pay due diligence to these statutory deductions so that they are remitted in time without attracting the penalties that usually come and eventually end up with a loss.

Sometimes some have gone for court adjudication, which has become very expensive because the county governments have had to hire lawyers to meet these obligations. That is an additional cost that needs not have been incurred. It was not budgeted for, but was appearing distorting the books of accounts of that county.

We have heard - and I think comments have been made - about pending bills. Once any county has pending bills even any prospective investor will look at their magnitude at first sight and shy away from investment. This is because they are not able to pay and get returns they expect to. Some of the contractors have perished or been liquidated because of non-payment by the county governments. Some of them are very small operators and have suffered a great loss due to non-payment of pending bills.

We have and continue saying in this report that the first charge on any releases from the Exchequer must be on the pending bills. We are asking the National Treasury and the Controller of Budget (CoB) to apply those sanctions that whatever money is released from the Exchequer in the way of sharable revenue, the first charge must be on pending bills, so that we clear that monster.

We have had audits and special audits on pending bills that have been very difficult exercises. The only way to get rid of it is now to apply the final sanction that no county should be allowed to spend without clearing the pending bills.

An element that relates to non-availability of resources is the uncollected land rates and rent on properties. When you take this element and the assets and liabilities of the county governments, it forms a very huge portfolio. Looking at the rentable houses available, if they were to do the land valuation, the roll valuation and be able to put it in place, it can generate a lot of revenue to the counties. There is also the own-source

revenue which Sen. Kibiru talked about at length. We should be able to get so much money to county governments.

Madam Temporary Speaker, some counties like Nairobi City County have the capacity to collect a lot of money, in fact, equivalent to the shareable revenue and that should make a big difference in any given county.

As for the far-flung remote counties, one of the things that we need to look at is how they are evaluating their properties like land. Have they been properly registered? Many pieces of land have been lost to fraudulent speculators or middlemen who tell you they have a title deed for a certain piece of land. Eventually, they sell somebody's plot or allocation without the knowledge of the actual recipient. Those are the fraudulent types we were talking about.

Incomplete and non-utilized projects also came up. These are projects that are started and not completed on time or not realised on time. Therefore, value for money is not realised. This is a major element that they have been budgeted for or some of them have been short-circuited to come into the budget without having a proper supplementary budget. Therefore, money is lost. That is why we found heavy leakage of resources through this level.

Madam Temporary Speaker, I also need to talk about the weak internal controls, particularly policies to guide the operations of county activities. We have made a very stringent recommendation that the Government should develop establishment policies, which is lacking in some of these areas.

There is, of course, irregular public participation on payments when they have monotype of public participation. You will see the same people moving from point A, B, C up to Z. The reason for moving so is because they want to get money. It is one way of not incorporating the actual people who need to give an opinion, particularly on a service that is being offered to them. I think we need to tighten up that one.

I have already mentioned about failure to submit documents for audit to the Auditor-General and irregular funding of national Government functions by county governments. Some particularly in arid and semi-arid areas have said they are forced to spend money on national Government projects because that is the only way they can bring their populations into focus. However, if the money has been budgeted for at the national level, I think they should chase that envelope from the national level to accomplish whatever task was supposed to be accomplished thorough that budgetary provision.

If they have to budget any additional resources, they should do so in accordance with Schedule Four of the Constitution, which has already allocated the type of functions that the county government must perform.

Madam Temporary Speaker, I can go on and on. One other element, I need to talk about is that some of them opened many commercial accounts. We know the Public Finance Management Act stipulates that every single source account of money must be swapped into County Revenue Fund (CRF) account.

Anything outside that Fund would be illegal unless they have set up special funds, which must be by legislation by their respective county assemblies, and they will be audited as separate funds for the purposes of auditing. Any expenditure outside that framework would be illegal. This is another area that we need to look at very keenly.

Madam Temporary Speaker, I want to thank everybody for accepting this very lengthy report and its recommendations. I want to thank the Members of my Committee who worked tirelessly, six days a week and we were able to complete it. Given time, there are more reports to table. Today you must have seen there was tabling of 2013/2014, 2014/2015 reports.

I also thank the staff seconded to this Committee. They did a sterling job. Plying through all these volumes and thousands of pages can only mean dedication.

Madam Temporary Speaker, I request that pursuant to Standing Order No.61(3), you defer the putting of the question to another day.

**The Temporary Speaker** (Sen. Pareno): I determine that this is a matter that affects counties and cannot, therefore, be voted on at this moment. It has to be a vote by delegation.

I order that this matter be placed in tomorrow's Order Paper for purposes of putting the question.

*(Putting of the question on the Motion deferred)*

Next Order.

## MOTION

### ADOPTION OF REPORT OF THE MEDIATION COMMITTEE ON THE EARLY CHILDHOOD DEVELOPMENT EDUCATION BILL (SENATE BILLS NO.26 OF 2018)

**Sen. Omogeni:** Madam Temporary Speaker, I beg to move the following Motion-

THAT this House adopts the Report of the Mediation Committee on the consideration of the Early Childhood Education Bill (Senate Bills No.26 of 2018), laid on the Table of the Senate on Thursday, 18<sup>th</sup> February, 2021, and pursuant to Article 113 of the Constitution and Standing Order No.161(3) of the Senate Standing Orders, the House approves the mediated version of the Bill.

Madam Temporary Speaker, this report contains deliberations and recommendations of the Mediation Committee on the Early---

**The Temporary Speaker** (Sen. Pareno): Sen. Omogeni, I think you need to confirm that the Motion you are moving is in an amended form.

**Sen. Omogeni:** Madam Temporary Speaker, I confirm it is.

**The Temporary Speaker** (Sen. Pareno): Okay. We can proceed.

**Sen. Omogeni:** Thank you, Madam Temporary Speaker.

This report contains the deliberations and recommendations of the Mediation Committee on the Early Childhood Education Bill (Senate Bills No.26 of 2018).

As a brief background, the Early Childhood Education Bill (Senate Bills No.26 of 2018) was published on 4<sup>th</sup> September, 2018. It was passed by the Senate with amendments on 22<sup>nd</sup> May, 2019. It was referred thereafter to the National Assembly for consideration. The National Assembly passed the Bill with amendments on 5<sup>th</sup> December,

2019. The Senate thereafter, considered the National Assembly amendments on 30<sup>th</sup> June, 2020 and negatived some of the amendments as proposed by the National Assembly.

In view of the above and pursuant to Articles 112 and 113 of the Constitution, the Early Childhood Education Bill (Senate Bills No.26 of 2018) was referred to the Mediation Committee with the sole objective of attempting to develop a version of the Bill that would be presented to both Houses for approval.

Madam Temporary Speaker, I am happy to report that the Mediation Committee did all the mediation meetings, with the main purpose of trying to develop a Bill that would be accepted by both Houses. The Mediation Committee on the Early Childhood Education Bill (Senate Bills No.26 of 2018) was constituted by the Speaker of the National Assembly pursuant to Article 113 of the Constitution and Standing Order No.149 of the National Assembly and also by the Speaker of the Senate pursuant to Standing Order No.160 of the Senate which was on 1<sup>st</sup> October, 2020.

For the record, the Membership of the Mediation Committee constituted of the following Senators-

- (1) Sen. Okong'o Omogeni, MP
- (2) Sen. Githiomi Mwangi, MP
- (3) Sen. (Dr.) Agnes Zani, MP
- (4) Sen. Seneta Mary Yiane, MP
- (5) Sen. Iman Falhada Dekow, MP

On the side of the National Assembly, the Membership constituted the following Hon. Members-

- (1) Hon. Wambugu Ngunjiri, MP
- (2) Hon. (Dr.) Daniel Kamuren Tuitoek, MP
- (3) Hon. John Paul Mwirigi, MP
- (4) Hon. Eve Akinyi Obara, MP
- (5) Hon. (Dr.) Pamela Ochieng, MP

Madam Temporary Speaker, at the first meeting which was held on 10<sup>th</sup> November, 2020, I was privileged to be elected the Chairperson of the Mediation Committee while Hon. Wambugu Ngunjiri, MP was elected the Vice-Chairperson.

The Committee thereafter commenced consideration of the proposed amendment. Due to the COVID-19 situation, we adopted virtual and physical meetings. The Committee concluded its considerations on the amendments and adopted the agreed version of the mediated version of the Bill on 8<sup>th</sup> December, 2020.

I must commend the Members of the Senate and the National Assembly for the way they conducted themselves during the mediation meetings. The spirit was of give and take. There were proposals of the National Assembly that were not acceptable to the Senate, that the National Assembly Members agreed with the position of the Senate that they be done away with. There were also proposals of the National Assembly that Members of the Mediation Committee were able to carry on board.

Madam Temporary Speaker, I am happy to report that this is one of those success stories where a Mediation Committee appointed by Speakers of the two Houses has been able to agree within a very short period and brought a report to both Houses that carries a win-win kind of position.

During considerations of the National Assembly amendments by the Senate on 30<sup>th</sup> June, 2020, the Senate had initially agreed with some of the proposals made by the

National Assembly. Therefore, the Mediation Committee was obligated to concentrate on consideration of the proposed amendments, which the Senate did not concur with.

I will briefly go through some of the clauses that the Mediation Committee considered. The first one was Clause 27. There was a proposal that Clause 27 of the Bill be amended by deleting sub-clause (2) and substituting, therefor, the following new sub-clause.

“(2) A public education centre shall not be converted to a private education centre or to any other private status without consultation with the County Education Board and approval by the County Executive Committee (CEC) Member.”

Madam Temporary Speaker, having deliberated, the Mediation Committee agreed on the following new version. On the Senate Bill, initially the spirit of the Bill was to ensure that an Early Childhood Development (ECD) institution that is funded by tax payers’ money should never, at any given time, be converted into a private education centre.

After deliberations, the Mediation Committee resolved to adopt the National Assembly amendments, which seek to allow conversion of an ECEC from public to private status; but only after consultation with the County Education Board and the approval of the County Executive Committee Member.

This amendment was accepted because it was the view of the Members of the Mediation Committee that it will align the Bill with the existing provisions of the Basic Education Act, especially Section 43(2) of the Basic Education Act No.14 of 2013. In summary, the Act provides that a public basic education institution shall not be converted to a private basic education institution or to any other private status, without consultation with the National Education Board (NEB) and the approval of the Cabinet Secretary (CS).

As champions of devolution, we have ensured that any conversion of these institutions from public to private status will not be done capriciously, but will be after a serious consultation and also with the approval of the County Executive Committee Member.

The other Clause that---

**The Temporary Speaker** (Sen. Pareno): Order, Sen. Omogeni. You will have a balance of 52 minutes when the matter comes next in the Order Paper.

## ADJOURNMENT

**The Temporary Speaker** (Sen. Pareno): Hon. Senators, it is now 6.30 p.m. time to interrupt the business of the Senate. The House, therefore, stands adjourned until tomorrow, Wednesday 24<sup>th</sup> February, 2021 at 2.30 p.m.

The Senate rose at 6.30 p.m.