

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 19th October, 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

VISITING DELEGATION FROM THE PARLIAMENT OF ZIMBABWE

The Speaker (Hon. Lusaka): Hon. Senators, I would like to acknowledge the presence in the Speaker's Gallery this afternoon of Members from the Parliament of Zimbabwe from the Portfolio Committee on Local Government, Public Works, National Housing and Social Amenities and a staffer who are currently on a benchmarking visit at the Senate for one week commencing, 17th to 23rd October, 2021. They are accompanied by officers from the High Commission of Zimbabwe in Kenya.

I request each to stand when called out so that they may be acknowledged in the Senate tradition.

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| (1) Hon. Miriam Chikukwa | - | Chairperson/Leader of Delegation |
| (2) Hon. Marko Raidza | - | Member of the Committee |
| (3) Hon. Omega Sibanda | - | Member of the Committee |
| (4) Hon. James Chidakwa | - | Member of the Committee |
| (5) Hon. Allan Markham | - | Member of the Committee |
| (6) Ms. Sithabisiwe Macheza | - | Committee Clerk |
| (7) Ms. Esline Ganda | - | Minister Counsellor from the Embassy |
| (8) Ms. Edith Muteema | - | Counsellor from the Embassy |

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

I thank you.

(Applause)

The Senate Majority Leader (Sen. Poghio): Mr. Speaker, Sir, I would like to join you in welcoming the delegation from the Parliament of Zimbabwe. Zimbabwe and Kenya have a long tradition of friendship and brotherhood and history of independence.

Now that they have come to visit our Senate, I assure them that this is the place to enjoy. Have a good time and enjoy our country. Make acquaintances with colleagues from this House and you will get to learn more about how things are done here. We would also like to learn more about your experiences in Zimbabwe.

We wish you fruitful interactions here. I encourage Members of this House to make them feel at home. *Karibu*. We wish you well in this country.

Sen. M. Kajwang’: Mr. Speaker, Sir, I join you in welcoming the delegation from Zimbabwe. Today in the morning, I had the privilege of meeting them alongside my colleagues in the Committee on Devolution and Intergovernmental Relations. The delegation from Zimbabwe came to learn and understand our devolved system of government. In the process, we have also learned a few things from them.

Interestingly, if the same rule was applied, a third of Members of this House would not sit in the Senate in Zimbabwe because there is a minimum age limit of 40. So, Sen. Ngugi knows that he would never step into the Senate in that kind of jurisdiction, including Sen. Cherargei who is still 28 years old and in the Senate. I am told he is 28, single and in the Senate. He would not make it in Zimbabwe.

We have also been told that in Zimbabwe, they have attained the gender requirement. We were proudly telling them the way the Senate achieved the one-third gender rule when Sen. Kavindu Muthama joined, but they have surprised us because in a zebra proportional representation system, they achieved gender parity a long time ago. I think they are almost at 50-50.

We have also learned how they resolve conflict between the two Houses of Parliament. I think there was an interesting question on how the Senate and the National Assembly relates, and how the Senate relates with county governors.

We told them that the relationship is similar to the relationship between the Taliban and the United States of America (USA), where the Senate, which is the good guy, is like the USA and governors are the Taliban. However, they have a very unique way of managing issues that arise from the provinces or between the two Houses. It is something that we can learn.

Mr. Speaker, Sir, the system of proportional representation is in place in Zimbabwe. When we will be looking at our Constitution, we need to give it some thought because it has worked very well in Zimbabwe. Equally, there are things that the delegation has learnt that perhaps they might want to consider.

For example, our formula for allocation of revenue is unique in the robustness with which people debate and come up with a consensus. In Zimbabwe, allocation of resources to local governments is a ministerial function. In Kenya, it is a public event with a lot of public participation.

There has never been a prouder moment than when this House resolved for 11 weeks running that it was not going to bow to pressure from external forces such that the formula we have for allocation of revenue today is one that was fought for and agreed on by this Senate. That was one of the proudest moments.

Another proud moment for this House is when we matched to the High Court in Milimani because we felt that the National Assembly and the President were not following the law when it came to enactment of legislation. Our brothers and sisters from Zimbabwe found it quite unique that the Senate can take the National Assembly to the High Court.

Mr. Speaker, Sir, how I wish you would be here post 2022 rather than back in the village. Under your able leadership, more than 20 pieces of legislation were declared null and void and we have to do it again.

This House has stood up for the right reasons and principles. I think many parliaments world over can learn something from the resolute manner you have steered this House and the steadfast manner in which the Members of this House have stood up on matters of principle.

I wish the delegation from Zimbabwe well. If we get time, we might want to take them out at night so that they can enjoy some of the hidden gems of Nairobi City. We will finish before curfew time. Since this is a parliamentary delegation, I believe they could be having some diplomatic immunity so that we can go out beyond curfew time.

Thank you, Mr. Speaker, Sir.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I also join hands in welcoming the delegation from Zimbabwe. What Sen. M. Kajwang' did not say to you is that the Members of the Senate who are advocates, including myself, have represented the Senate in courts for free in an attempt to save costs.

I was going to suggest now that Sen. M. Kajwang' has spoken about the way they allocate resources, that you also schedule a meeting with our "Lord of Exchequer - The "Lord" is Sen. Kiburu - so that we can discuss the question of financing counties. This is something that Sen. Kajwang' has mentioned.

Lastly, now that the Council of Governors (CoG) has that we are going to have the Devolution Conference towards the end of November, I thought it would be a nice thing for the Speaker to extend a welcome to this group. We have either one or two of the delegation to come to Makeni County for the Devolution Conference. That is the only way to see how devolution is working out there, away from this nice red carpet.

I thank you.

The Speaker (Hon. Lusaka): I am having challenges in my system but I am trying to remember who had logged in.

Proceed, Sen. Farhiya.

Sen. Farhiya: Thank you, Mr. Speaker, Sir, for giving me this opportunity to join you in welcoming the delegation from Zimbabwe.

What attracted me is the fact that the Senate of Zimbabwe has equal gender representation. I am very happy with that. I think we need to borrow a leaf from that. I wish to request this House to pass the Constitutional (Amendment) Bill that I brought to this House so that we can pride ourselves in having gender parity in this House as well.

Welcome to Kenya and welcome to the Senate.

I thank you.

Sen. Omogeni: Thank you, Mr. Speaker, Sir. Let me also join my colleagues in welcoming our colleagues from Zimbabwe to the Senate of the Republic of Kenya.

I think the future is very bright for the women folk; I can see the delegation from Zimbabwe is led by a lady Senator. So, congratulations to the women of Zimbabwe.

Mr. Speaker, Sir, it is always a moment for us as Africans to feel proud when we get delegations from our brothers from another African State to come and learn to benchmark from another African State. That shows that we do not always have to look to the West. There is a lot that we can learn amongst us as Africans. So, that is a very good spirit. I hope that even us Kenyans, there is something good that we can learn Zimbabwe and that should be the spirit.

I welcome you to Kenya. I am glad to hear that in Zimbabwe you have resolved this issue of gender parity. We still have a long way to go, but what I am

getting is that the best solution is to a zebra kind of nominations so that parties are able to accommodate our womenfolk and menfolk in nominations. This will ensure that when we go to elections, there is a new opportunity for ladies to participate and win elective seats.

We welcome you to Kenya and as my colleague Sen. Kajwang' has said, we are willing to show you our beautiful country Kenya. *Karibuni*.

Sen. Kavindu Muthama: Thank you, Mr. Speaker, Sir, for this opportunity to welcome our brothers and sisters from Zimbabwe. We have learnt a lot from them. For example, in their constitution, they include their traditions so that whatever does not conform to their traditions, they do not allow it completely. For instance, Zimbabwe completely put out the issue of gays and lesbians because it goes against the African traditions.

We have also learnt from them that their Senate includes chiefs from every area so that they can come and bring sanity into the Senate.

Also another thing that we have learnt from them is that the Senate is their Upper House. It is the final say in their Parliament. The Bills that originate from their Parliament are passed in the Senate. That is what we had suggested when I was in BBI that if BBI passes the Senate will be the Upper House.

I welcome them to Kenya. We have learnt a lot from them and I am sure they have also learnt something from us.

I thank you.

Sen. Ngugi: Mr. Speaker, Sir, I also want to join you and my fellow colleagues in welcoming the delegation from Zimbabwe. One thing that I learnt is that we, the young people of this country, always like crying about how marginalized we are because of the limited opportunities that we get, be it from the national Government or the county governments. However, I am pleased to tell my fellow Kenyans, the youth that in Kenya we are miles ahead of many countries in Africa.

As the delegation from Zimbabwe told us, they do not allow anybody below the age of 40 years to sit in the Senate. As the Chairperson Sen. M. Kajwang' rightly put it today, some of us would not be seated here.

I am sure that because they are here on a learning mission when they go back home they will tell their people about us because I believe that the brains that we have here in Kenya in our young men are the same brains and intellect that the people of Zimbabwe have. So, when they are thinking about the constitutional amendment in their country, they should eliminate that capping at 40 years because I believe the young men and women of Zimbabwe have a great contribution to make to their country.

I want to welcome them. Next time when they come we also want to see more women in their delegation. They have told us that in their Senate they have met the two-third gender rule. However, in their delegation, they only came with two women.

(Loud consultations)

The Speaker (Hon. Lusaka): Order! Let us consult in low tones.

Sen. Ngugi: Mr. Speaker, Sir, Sen. Cherargei is asking me "which women?" I really respect women because they are our mothers and sisters. I can maybe get one or two to marry.

Sen. Seneta: Mr. Speaker, Sir, I also want to join you and the rest of my colleagues to welcome the delegation from Zimbabwe. The delegation which is in the

House is led by our fellow woman leader which indicates that the country of Zimbabwe appreciates women and their leadership.

I wish to welcome them to Kenya and wish them a fruitful benchmarking. I wish they could also visit some of our wildlife reserves like Amboseli National Park which is in my county, Kajiado County or even the Maasai Mara National Reserve in Narok County.

I hope that they will get to learn a lot of things that are good in Kenya and enjoy *nyama choma* in Kajiado County. I wish them a good stay in Kenya.

FAST TRACKING BILLS IN THE COMMITTEE STAGE

The Speaker (Hon. Lusaka): Hon. Senators, the Senate is scheduled to proceed for a short recess at the rise of the House on Thursday, 21st October 2021, pursuant to the Senate Calendar.

Secondly, at its meeting held today, Tuesday, 19th October 2021, the Senate Business Committee noted with concern the high number of Bills pending at Second Reading, Division Stage, occasioned by an increasingly receding number of Senators physically and virtually present to vote during plenary sittings.

Hon. Senators, this situation is stalling the legislative business of the Senate. I, therefore direct the Senate Majority Leader, the Senate Minority Leader, the Senate Majority Whip and the Senate Minority Whip to make every possible effort to use all available means to ensure that the requisite number of Senators is present to vote during the said Divisions.

For at the appropriate time, I will interrupt proceedings so that a Division can be taken for the Bills to proceed to the next stage.

I thank you.

Next Order.

PETITION

REPORT ON PETITION: LACK OF SUPPORT TO FAMILIES OF VICTIMS OF THE ETHIOPIAN AIR CRASH

Sen. Omogeni: Mr. Speaker, Sir, I beg to lay the following Petition Report on the Table of the Senate today, 19th October, 2021.

Report of the Standing Committee on Justice, Legal Affairs and Human Rights on a Petition to the Senate by residents of Murang'a County and families of victims of the Ethiopian crash regarding alleged lack of support to family members or victims of the Ethiopian Airline Flight 302 Air Crash.

Mr. Speaker, Sir, on the 10th March, 2019, Ethiopian Airline Flight 302, Boeing 7378 registration ATAVJ crashed in Ethiopia killing all the 157 passengers and crew on board shortly after taking off from Addis Ababa, Bole International Airport in Ethiopia. The flight was a scheduled international passenger flight from Addis Ababa to Nairobi carrying a total of 157 passengers, 36 of them were Kenyans.

Mr. Speaker, Sir, following the air crash, some family members or victims of the air crash presented a Petition to the Senate in which it was alleged that the Government had failed to provide support to them in accessing death certificates of the deceased as well as providing counselling services to help them deal with and manage trauma.

While the Petition was initially committed to the Standing Committee on National Security, Defence and Foreign Relations for consideration, it was later

redirected to the Committee on Justice, Legal Affairs and Human Rights. The Committee in considering the Petition, held meetings with the petitioners, the aircraft manufacturer Boeing Company, the Hon. Attorney General as well as the Ministry of Foreign Affairs which had the primary responsibility of coordinating support to the bereaved families in this case.

Mr. Speaker, Sir, the Committee observed the following:

Firstly, the Ethiopian Airline Flight 302 air crash was a tragic event in which 36 dear Kenyans lost their lives. Out of this number, 32 of them held Kenyan passports, while four while travelling on passports of other countries as they had dual citizenship. The trauma to families of the victims was compounded by the circumstances of the air crash which meant that there were no bodies available for them to bury and thus commence the process of closure and healing.

Mr. Speaker, Sir, it took over six months following DNA testing for the remains of the victims to be released over to their families for burial. The national Government through the Ministry of Foreign Affairs facilitated issuance of death certificates for the Kenyan victims of the air crash which was done during the month of April 2019, one month after the crash.

Mr. Speaker, Sir, the death certificates have since been transmitted to the families save for instances where verification of the next of kin is yet to be completed or where there are disputes as to the rightful beneficiaries.

The Committee found that in the circumstances the national Government through the line Ministries, Departments and Agencies provided reasonable logistical and psychological support to the families of the victims.

Mr. Speaker, Sir, while the process of compensation for families of the victims is ongoing, the Committee noted that this is a private contractual matter between the bereaved families, the Airline and the Airline Manufacturer.

In conclusion, arising from these observations, the Committee does not make any recommendation on the matter. Instead, the Committee will continue to engage with the Ministry of Foreign Affairs to ensure that the process of verification of the next of kin for the death certificates which are yet to be released by the Ministry is concluded. This will enable the said families to pursue appropriate compensation and to obtain closure on the matter.

The Committee wishes to thank the Office of the Speaker and the Clerk of the Senate for the support extended to the Committee during the consideration of the Petition.

It is now my pleasant duty pursuant to Standing Order No.232 (2) to present the report of the Standing Committee on Justice, Legal Affairs and Human Rights on its consideration of the Petition regarding alleged lack of support to families of the victims of the Ethiopian Air Crash Flight 302 to the Senate.

Thank you, Mr. Speaker, Sir.

(Sen. Omogeni laid the document on Table)

The Speaker (Hon. Lusaka): I know Standing Order No.232 does not allow comments, but I will allow Sen. Cherargei some discretion to say something.

Sen. Cherargei: Thank you, Mr. Speaker, Sir, for the discretion. I want to thank the Committee on Justice, Legal Affairs and Human Rights. When the investigations started, we were able to visit Seattle, United States of America (USA) to engage the Boeing Company courtesy of your office. When I was the Chairperson of the Committee, we met the family members of the victims. Notably, there was an

issue of assistance from the Ministry of Foreign Affairs because the family members of the victims were requesting to have death certificates processed.

Mr. Speaker, Sir, the Ministry of Foreign Affairs working with the Ethiopian Government and other sector players, were trying to bring bodies back so that the families could have closure. My comment is that I hope the Ministry of Foreign Affairs will assist the families. We are aware this matter is also active in court and there are reports that family members might have opted out of court settlement. This is ongoing.

For the families to succeed in their suit and compensation, the Ministry of Foreign Affairs must assist them in ensuring that they get those death certificates and all the necessary support. Many lives were lost. We hope that it is only Kenyans who will receive compensation, but also others who lost their beloved ones.

Finally, when we read the reports that were done by the Ethiopian Aviation Authority then, the Boeing Company and also the Lion Air that also got a similar accident of the same make the 787 Max Boeing that crashed immediately after take-off, it was after take-off. It was more of a technical manufacturer fault.

When we visited Seattle, most airlines had returned their 787 Max Boeing. I hope that in future, manufacturers of planes must be taken into account because if it was a fault of the manufacturer that caused the plane crash, they must be held accountable.

The Chairperson on the Standing Committee on Justice, Legal Affairs and Human Rights, Senior Counsel, Sen. Omogeni, apart from not getting into the issues of the family because that is a matter in court that the family is pursuing legally to get compensation, the manufacturer of the airline must be held accountable because it has been proven that the reason the plane crash took place is because there was a technical manufacturer's fault.

I request the Committee to ensure that the officials of Boeing are brought before the Committee to tell the world what really happened on their 787 Max Boeing. Recently watched in the news that the Federal Aviation Administration (FAA) of the USA have allowed the 787 Max Boeing has been cleared to fly again.

For people who use airlines to be safe, we must be told what the fate of the many 787 Max Boeing that were grounded in Seattle is. Do the airplanes still have the same technical hitches? Was Boeing able to rectify that technical hitch and re-train pilots? Beyond what has been stated by the Committee on Justice, Legal Affairs and Human Rights, they must also engage the manufacturers of planes so that we do not have planes like the 787 Max Boeing with the same technical issues flying.

Mr. Speaker, Sir, I thank you for giving my Committee the opportunity to travel to the head quarter of the Boeing Company in Seattle. We learnt a lot from that trip. We hope that we shall not see any other plane crashes in future due to manufacturers' fault.

Sen. M. Kajwang': On a point of Order, Mr. Speaker, Sir.

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

Sen. M. Kajwang': Mr. Speaker, Sir, I rise pursuant to Standing Order 232(2). I know that the Standing Orders do not allow us to debate the report that has been brought to the House. However, I am worried that the Committee did not make any recommendations.

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

Sen. M. Kajwang': Mr. Speaker, Sir, Standing Order 232(2) states that-

“Whenever a Petition is committed to a Standing Committee, the Committee shall, in not more than sixty calendar days from the time of reading

the prayer, respond to the petitioner by way of a report addressed to the petitioner or petitioners and laid on the Table of the Senate and no debate on or in relation to the report shall be allowed, but the Speaker may, allow comments or observations in relation to the Petition for not more than thirty Minutes.”

The Chairperson of the Committee has said that they did not make any recommendation. That sounds like they are not reporting to the petitioner as per that Standing Order. Is that in order? The ruling on this matter will guide the Chairpersons of Committees who have tens of petitions before them. It will guide whether Chairpersons of Committees can report back to the House and say that they did not make any recommendations and that then becomes the end of the petition.

Mr. Speaker, Sir, is it in order that a petition can be responded to without a recommendation?

The Speaker (Hon. Lusaka): I will allow the Chairperson of the Committee on Justice, Legal Affairs and Human Rights to respond before I give Sen. Wetangula an opportunity to speak.

Sen. Wetangula: Mr. Speaker, Sir, why do you not listen to what I have to say first so that the Chairperson can respond at once.

The Speaker (Hon. Lusaka): Very well, proceed, Sen. Wetangula.

Sen. Wetangula: Mr. Speaker, Sir, I feel very distressed hearing what the Chairperson of the Committee on Justice, Legal Affairs and Human Rights has told the House this afternoon. The petition to this House was by the family members of the victims of the Ethiopian Airline air crash alleging that the Government had failed to provide support for them in accessing death certificates and providing counselling services to them to deal with the trauma.

The Chairperson of the Committee on Justice, Legal Affairs and Human Rights has without batting an eye lid told the House that the Committee does not make any recommendations on the matter. That is very distressful. How can the Committee bring a report pursuant to a petition and say that they made no finding on the matter? What have they brought to the House?

Listening to what Sen. Cherargei, who was the Chairperson of the Committee before he was de-whipped said, it is even more distressing to hear that they spent public resources to go to Seattle in the USA where the headquarters of the Boeing are located only to bring no finding.

(Loud consultations)

Mr. Speaker, Sir, this is a serious matter. I expected my distinguished learned friend, Sen. Omogeni, who is also a Senior Counsel, to tell this House and the families that there is no privity of contract between the passengers of the flight that crashed on 10th March 2019 and Boeing as a manufacturer. The privity of contract is between the passengers and the Ethiopian Airlines.

Compensation to the passengers who were majorly Kenyans comes from the Ethiopian Airlines. In law, if the Ethiopian Airlines need to be compensated by the manufacturers because there was a fault in the plane, that is a third cause of action. We are being told that a Committee of this House went to Seattle, visited the Boeing headquarters, met the management to discuss an accident that took place in Bole, Ethiopia, where were we lost people and then they bring us no finding.

I expected my distinguished learned friend to tell this House that following the inquiries that they made, they have made certain directions because this House does

not beg; we give directions to Ministries. I thought that they would direct the Ministry responsible for the issuance of death certificates, if they have not been issued, issues them forthwith to the families. I had hoped that the Committee would direct the Attorney-General, as the principal legal advisor, in conjunction with the Law Society of Kenya (LSK) and any other agencies involved to assist families that lost their loved ones to access justice and get support to get compensation.

Mr. Speaker, Sir, we have read here and there in the media that people who were passengers on the flight from other nationalities, including citizens of the USA, were compensated within months. It is more than a year; families here are suffering because they lost their loved ones.

The Committee has not even told us whether those who were traumatized and needed counselling got the counselling services from the Government or anybody else. This is truly not the expectation that we have on a Committee that has a galaxy of lawyers from this House.

Sen. Khaniri: On a point of Order, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): There is a point of order from Sen. Khaniri.

Sen. Khaniri: Mr. Speaker, Sir, my elder brother, the Senator for Bungoma County, has said it all. Our Standing Orders are very clear in particular Standing Order 232(2) which states that once a petition has been committed to a Committee, they must file a report. This is a serious irregularity which will need your intervention.

The reason Kenyans come to this House with the numerous petitions that we have received in this House lately is because they believe that this is a House that will take their matters seriously, investigate and come up with a report that will lead to a solution to their various grievances. The prayers in this petition were very clear that the families that were affected were not receiving support where as victims of the same plane crash from other countries were compensated and supported.

For the Chairperson of the Committee on Justice, Legal Affairs and Human Rights to tell this House that there is no report, I find that very irregular. We want you to rule that this report is totally unacceptable. This House will not accept this kind of a report.

If the matter was resolved, then the report should say so. The Chairman is whispering to me that the matter was resolved, but the report should say so. We do not want him to whisper to us.

(Laughter)

Mr. Speaker, Sir, I find this unacceptable.

The Speaker (Hon. Lusaka): I will give a direction. Chairman, hold on. Let us hear a few other comments. Sen. Faki via virtual, proceed. Senator, where are you? We cannot get him. Let us have Sen. Were.

Sen. Were: Thank you, Mr. Speaker, Sir. I want to comment on the report from the Committee on Justice, Legal Affairs and Human Rights on the compensation of the accident victims of the Ethiopian Airlines Flight 302 that happened on 10th March, 2019. We have listened to the Committee and the process through which they underwent. They met the manufacturers of the aircraft that crashed. This particular aircraft had 157 passengers and crew onboard who all perished and could not be recognised. This is traumatic and is something that the family members will live with for a long time.

Their request to this Committee was that we push the Government to give them death certificates which they will in turn use to get compensation from the manufacturers of that aircraft and from the Ethiopian Airlines. They also asked that

we compel the Government to provide counselling and therapy or trauma treatment for them.

I am surprised this Committee did not come up with recommendations that would satisfy the members of this family. In my many works, including many years of teaching report writing, I have never seen a report that does not have recommendations.

I would recommend that we give the report back to the Committee so that they to come back with recommendations that would satisfy us.

The Speaker (Hon. Lusaka): We will have Sen. Wambua, then the Chairperson of the Committee.

Sen. Wambua: Thank you, Mr. Speaker, Sir. In line with the pronouncements by my colleagues, including senior Sen. Wetangula, I find one thing very astonishing. What the Committee has done, they engaged the national Government department and agencies on this Petition, but they continue to say that they will continue to engage the Ministry of Foreign Affairs on the matter of compensation. It has been two years and seven months since the crash.

The petitioners are looking for two things; number one and most important to them is closure. This report does not come anywhere near providing any closure on the part of the petitioners and the families of the people that perished in that crash.

Secondly, the families are seeking justice. They want justice to be served by the airline and the manufacturer. This report is also silent on the issue of justice.

Lastly, this is the kind of report that the Senate of the Republic of Kenya or any House of Parliament must discourage Committees from doing. You cannot travel to Seattle and hold meetings with all these people and come up with zero findings and recommendations on a report of a petition as important as this one. In fact, the Committee then lacks the moral authority to hold the Government to account on their silence in providing justice to this people.

This is a report that should be rejected in total and the Committee directed to go back and bring findings and recommendations.

The Speaker (Hon. Lusaka): Chairperson Committee on Justice, Legal Affairs and Human Rights, you have the Floor.

Sen. Omogeni: Mr. Speaker, Sir, whereas I hold tremendous respect for my colleagues, Senators, this cacophony of noise is unnecessary.

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

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

Sen. Wetangula: Mr. Speaker, Sir, did you hear that wayward arrogance from the Chairperson? Senators do not make noise, we debate. Those of us who spoke here, did so without emotion and we simply pointed out as we must do, that the Committee has fallen short of expectation and glory. That cannot be noise and it is an imputation of improper motives on colleagues. More so, from a colleague that we hold in high esteem. We were not attacking the Chairperson, but the report. That he happens to be the conveyor of the poor report is neither here nor there.

However, the buck ends on his table. For him to say we are making noise is the most unfortunate, uncalled for and in bad taste. Those of us who spoke to this matter take great exception. We urge the Chair to rule the distinguished Senator out of order, withdraw and apologise.

The Speaker (Hon. Lusaka): Sen. Omogeni, that was completely out of order. I direct that you withdraw, apologise and then make your contribution.

Sen. Omogeni: Sen. Wetangula is my learned colleague and I do not want to derail his ambition of being a President, I withdraw so that he can have a comfortable afternoon.

Sen. Wetangula, I withdraw that remark and proceed.

Hon. Senators: Point of order!

Sen. Omogeni: I have said that I withdraw.

The Speaker (Hon. Lusaka): And apologise.

Sen. Omogeni: I withdraw and apologise to our distinguished Presidential candidate, Sen. Wetangula.

I wish my learned colleague who is an experienced lawyer had taken time to read the report and the Petition that was presented before the House. The allegation before the Committee was failure by the Government of the Republic of Kenya to process death certificates to the victims of that air crash. This is what was before my Committee.

Before I took over, I believe there was some wisdom behind the decision by my predecessor, Sen. Cherargei, to take the Committee to Seattle. I will not go to that, but I have a lot of faith that the decision was made by Sen. Cherargei with some wisdom. I know it adds some value to the report that is before the House.

What I sought from the Ministry was why they had not processed death certificates for the victims. When the Ministry appeared before my Committee, they informed us that we received the Petition before they had processed the death certificates.

They tabled evidence before my Committee to demonstrate that they issued death certificates to all the air crash victims, minus only four where there were wrangles between family members.

Mr. Speaker, Sir, with tremendous respect to my colleagues, what was I to recommend? The matter was raised to the Committee before the death certificates were processed. When the Ministry appeared, they were able to prove, not even on a balance of probabilities, but beyond reasonable doubt, that that issue had been resolved.

When the victims appeared before us, they themselves confirmed that the matter that they brought to the Senate has since been resolved. I am a very good lawyer and Sen. Wetangula knows this. What is pending is the matter of compensation for those victims, which was not within the mandate of the Committee for consideration.

I stand to be corrected if I have committed any error in law. We gave recommendations that that is a private contractual matter between the families, the airline and the aircraft manufacturer. They can seek further assistance from Sen. Cherargei, who went all the way to Seattle, on whether he found any fault with the manufacturer.

Mr. Speaker, Sir, I want to assure the Senators that after I had taken over, my mandate as the Chairperson of the Committee was to seek those answers---

The Speaker (Hon. Lusaka): There is a point of information. Do you want to be informed?

Sen. Omogeni: I think Sen. Cherargei can tell us what he went to do in Seattle.

Sen. Cherargei: Mr. Speaker, Sir, the Senior Counsel does not need assistance from me. In the Committee records, there is a report by the Ethiopian Civil Aviation Authority (ECAA) that has pointed out that there was a fault with that 787-8

map. Another report was done by the Federal Aviation Administration (FAA) of the United States of America (USA) and it pointed that the plane had technical faults.

The Chairperson and the Committee should be well informed. When I was de-whipped, I did not leave with any documents. All the documents are with the Committee. So, I request my brother to check the documents. The ECAA and FAA indicated that it was found with fault. We went to Seattle on a fact finding mission.

Mr. Speaker, Sir, you know the procedure of the Committee. Everything that the Committee did is on record. The Committee secretariat should supply the Chairperson with the necessary recommendations because we had already done them and they were written.

The Speaker (Hon. Lusaka): Chairperson.

Sen. Omogeni: Mr. Speaker, Sir, in conclusion, I have reported to the House that the issue that was under inquiry was lack of issuance of death certificates. It has been concluded. There is no further inquiry that we can conduct as a Committee.

On the remaining four families, we have reported to the House that they have wrangles. The Ministry did indicate to us that they will continue engaging the families. Once they are able to agree, they will inform the Committee that the remaining four have been issued.

Mr. Speaker, Sir, as a good lawyer, once I was able to get satisfactory answers from the Ministry of Foreign Affairs, I had no more recommendations to make. This is because the matter was *functus officio* in the wisdom of the Committee. That Committee has one of the most distinguished lawyers in this country. I am sure that what we have reported to this House was within the powers of the Committee.

I repeat and I hope that my colleagues can get a copy of the report that is before the House. We have captured the issue of compensation in paragraph six of our report. That is a private matter that families can take up against either the airline or the airline manufacturer. I do not think there is anything that is remaining for this Committee to conduct any further inquiry into.

The Speaker (Hon. Lusaka): Thank you. I think what brought confusion was No.27. The Committee did very well in the recommendations that they made. However, when you said, "Arising from its findings on the matter, the Committee does not make any recommendations on the matter" that is what brought a bit of confusion.

There needs to be a bit of re-writing on that bit, although the Standing Order does not say what type of report to give back. It just says that they should respond to the petitioner by way of a report addressed to the petitioner. What caused concern is what you have repeated, that the Committee went all the way to Seattle, spending public funds and then the report says that there are no recommendations.

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

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

Sen. Khaniri: Mr. Speaker, Sir, I think that we need to be clear on this matter. From what the Chairperson has explained to us, the prayer was just in regards to the death certificates. Right? I want to know why the Committee had to take a trip to Seattle to establish if death certificates were issued or not in Kenya.

Our assumption was that the prayers were to do with compensation and getting justice. Why would the Committee travel all the way to Seattle in the USA to inquire if death certificates were issued by the Government of Kenya?

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

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

Sen. Wetangula: Mr. Speaker, Sir, the difficulty that my distinguished learned friend finds himself in is that the more he tries to explain, the murkier the matters become. I remember when that Petition was read here, we were here and commented on it. I think it was brought by Sen. Kang'ata.

Sen. Cherargei also owes this House an explanation because we are feeling exposed for no reason. If the petitioners demanded that they needed counselling because of trauma and they needed death certificates to pursue compensation, why did the Committee go to Seattle?

What they needed was the passenger manifest. There is no evidence that they went to Addis Ababa, where the flight originated. That is where they would have gotten the manifest, or copies thereof, and give us a list of how many passengers were on this flight, how many were issued with death certificates, and how many had not.

They would then be able to tell us which families were still traumatized and needed help. This information is definitely not found in Seattle in the USA. It is found in Kenya and Addis Ababa.

Mr. Speaker, Sir, you may need to give direction. As a House, we do not want to be brought into disrepute of engaging in travel that adds absolutely no value to what we are looking into. From where you and I come from, we say that whoever ate chicken was one and the guilt was carried by the whole community.

The Speaker (Hon. Lusaka): Chairperson.

Sen. Omogeni: Mr. Speaker, Sir, I hope that you can invoke some Standing Order so that Sen. Cherargei can be given an opportunity to take the Floor and defend the decision that the Committee took to travel to Seattle when he was the Chairperson.

I have never been to Seattle and I want the people of Nyamira to know that I did not go to Seattle to look for a manifest which can be found in Ethiopia. As a Senior Counsel, I have a name and reputation to protect. All I did was to attend to the Cabinet Secretary (CS) for Foreign Affairs.

Let the record be very clear that the trip to Seattle was made by my predecessor, the former Chairperson of the Committee. He is in the House. I would like to make a request that you give him the Floor so that he can explain to the House why he went to Seattle. I do not want to carry that burden.

Sen. M. Kajwang': On a point of order, Mr. Speaker, Sir.

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

Sen. M. Kajwang': Mr. Speaker, Sir, in as much as this is some juicy stuff, I think it is a bit untidy because there is the concept of collective responsibility, especially when you inherit a Committee from another Chairperson. It ceases to be the responsibility of decision of the person who was chairing that Committee. It is the decision of that Committee because it sits with your authority.

If anyone is going to impute improper motives on the person who was chairing at that time, it is by extension imputing improper motives on the Speaker. Let us separate the juicy part of it from the substantive issues that would set the wrong precedent, where an incoming chairperson blames the outgoing chairperson for certain actions.

The Speaker (Hon. Lusaka): Order, Senators. Of course, Sen. Cherargei, I know you are excited, but you are not off the hook yet. This is because it was a very serious decision that you made, but then it is turning out that it was an irrelevant tour. You spent public funds to go and look for something that could not be found where you went. Therefore, you may need to carry the cross at some point.

Yes, Sen. Cherargei.

Sen. Cherargei: Mr. Speaker, Sir, can I be given up to Thursday, so that I crosscheck the records with the Secretariat? I can then report the wisdom of the Committee to the House using Senate Standing Orders 48(4).

We went to follow up on the issues of compensation for the victims.

The Speaker (Hon. Lusaka): Order, Senators. This is a very serious matter that may appear to affect only this Committee for now, but it is a very good lesson for all committees because we have all been making these trips. I direct that by Thursday, Sen. Cherargei brings a report, indicating who went and all that, so that we know those who went to look for compensation.

Hon. Senators, log in afresh as the system has been restarted.

Next Order.

PAPERS LAID

Sen. Omogeni: Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate, today, Tuesday, 19th October, 2021-

REPORT ON INQUIRY INTO EXTRA JUDICIAL KILLINGS AND ENFORCED DISAPPEARANCES IN KENYA

Report of the Standing Committee on Justice, Legal Affairs and Human Rights on the Inquiry into extrajudicial killings and enforced disappearances in Kenya.

LAW OF SUCCESSION (AMENDMENT) BILL (SENATE BILLS NO. 15 OF 2021)

Report of the Standing Committee on Justice, Legal Affairs and Human Rights on the Law of Succession (Amendment) Bill, (Senate Bills No.15 of 2021).

REPORT ON STATEMENT: DELAY IN APPOINTMENT OF 41 JUDGES FOR THE HIGH COURT AND THE COURT OF APPEAL

Report of the Standing Committee on Justice, Legal Affairs and Human Rights on a statement sought by Sen. Mutula Kilonzo Jr., MP, regarding delays in the appointment of judges of the High Court and the Court of Appeal

REPORT ON COUNTY BOUNDARIES BILL (SENATE BILLS NO. 20 OF 2021)

Report of the Standing Committee on Justice, Legal Affairs and Human Rights on The County Boundaries Bill (Senate Bills No. 20 of 2021).

REPORT ON PARLIAMENTARY POWERS AND PRIVILEGES (AMENDMENT) BILL (SENATE BILLS NO. 33 OF 2020)

Report of the Standing Committee on Justice, Legal Affairs and Human Rights on The Parliamentary Powers and Privileges (Amendment) Bill (Senate Bills No.33 of 2020)

(Sen. Omogeni laid the documents on the Table)

The Speaker (Hon. Lusaka): Next Order.

NOTICES OF MOTIONS

Sen. Omogeni: Mr. Speaker, Sir, I beg to give notice of the following Motions:

ADOPTION OF REPORT ON INQUIRY INTO EXTRAJUDICIAL KILLINGS AND ENFORCED DISAPPEARANCES IN KENYA

THAT, the Senate adopts the Report of the Standing Committee on Justice, Legal Affairs and Human Rights on the Inquiry into extrajudicial killings and enforced disappearances in Kenya, laid on the Table of the Senate on Tuesday, 19th October, 2021.

ADOPTION OF REPORT ON DELAY IN APPOINTMENT OF 41 JUDGES FOR THE HIGH COURT AND THE COURT OF APPEAL

THAT, the Senate adopts the Report of the Standing Committee on Justice, Legal Affairs and Human Rights on a Statement sought by Sen. Mutula Kilonzo Jr., MP, regarding delays in the appointment of Judges of the High Court and the Court of Appeal, laid on the Table of the Senate on Tuesday, 19th October, 2021.

The Speaker (Hon. Lusaka): Next Order.

STATEMENTS

MURDER OF MS. AGNES CHEBET TIROP

Sen. Cherargei: Mr. Speaker, Sir, I rise pursuant to Standing Order 47(1) to make a Statement on an issue of general topical concern and national importance, namely, the brutal murder of athlete Agnes Chebet Tirop at her home in Iten, Elgeyo-Marakwet County.

Agnes Tirop was born on October 23rd, 1995 at Kapyemisa, Lelmokwo, Ngechek Ward in Nandi County. Her life was brutally cut short barely a week to her 26th birthday. Ms. Tirop's first taste of international success saw her win the World Junior 5000 meters bronze in 2012 and 2014 as well as the World Junior Cross-country silver medal in 2013.

Two years later, during a rapid ascend, she won the Senior World Cross country championships in China at the age of 19, becoming the second youngest woman to do so after Zola Budd of 1985, to claim gold.

It will be remembered that it was only last month that Ms. Tirop broke the World Women 10 kilometers world Record in Germany, a title previously held by Morocco's Azamei since 2002.

She had also competed for Kenya in the just concluded Tokyo Olympics, placing fourth in the 5000 meters, trailing Ethiopia's bronze medalist Gudaf Tsegay by 0.75 seconds.

Just two weeks ago, the 25-year-old athlete returned to the country after participating in the giant Geneva 10-kilometer race in Germany, where she placed second after the Olympic 10,000 meters silver medalist Kalkidan Gezahegne set the world record.

Kenya has lost a young and promising hero who at the age of 25 years had brought so much glory to her country. She was set to win gold medal and break more world records.

In honour of the slain athlete, I shall continue to pursue the welfare of our sportsmen and women and also the interest of sports managers such as contracts to coaches, legal framework to facilitate investments, taxation, COVID-19 cushion measures, training gear with improved training facilities and also starting sportsmen and women social welfare.

I also wish to call upon Athletics Kenya (AK) and the Ministry of Sports, Culture and Heritage to set up a fully functional department of guidance and counselling to ensure that at least mental wellness is kept and checked at all times.

I wish to condemn the brutal act meted on the young promising athlete with the strongest terms possible. I call upon all the relevant authorities to complete the investigations and bring the perpetrators to book as soon as possible and ensure justice is served to the family of the late Agnes Tirop who are my neighbours back in Mosoriot.

On behalf of the great people of Nandi County, the source of champions, and on my own behalf, I wish to pass our heartfelt condolences to the family and friends and the sporting fraternity in Kenya for the loss of the young hero. We should remember her alongside other heroes and heroines who fought for deliberation of this country even as we celebrate Mashujaa Day tomorrow.

May her soul rest in eternal peace.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, it is extremely distressful that the young lady and a champion lost her life to a heinous act at home. The Bill by Sen. Kasanga comes into play. However, what bothers me is that when the lady won her medal, the Kenyan Anthem was played but when she died, she now belongs to the Nandi County. It is extremely sad.

Sen. Cherargei, your Statement should not talk about the lady as if she was a Nandi asset because she was a Kenyan asset. As a hero, even the flag should have been flown at half-mast.

When those people were not received, there was an outcry that they should have been received at the airport and given a red carpet but they just disappeared into the woodworks. Now that the lady has died, it becomes a Rift Valley affair. That is extremely bothering.

I hope that the inquiry into her death will be completed as quickly as possible, even though it will not return to life the young lady who lost her life through a very heinous act at her home. I hope we will find a method but strictly speaking there is a problem.

In fact, what we should suggest is that some of those people should get security immediately because it is possible that they are being pursued out of jealousy of finance. If you investigate, you will find that there is a prize money involved *et cetera*.

Sen. Wetangula whispered that it is the same thing that happened to our marathoner called Wanjiru. When somebody as young as that makes money, their partner or manager becomes jealous that they have to stab them.

It is sad and unfortunate when we have up to 400 policemen offered to Very Important Persons (VIPs) but our heroes who make Kenya proud are stabbed in the houses. May her soul rest in peace.

I hope that the lady will be recognized as our hero and not as a resident of Nandi County or a Kalenjin. Let us hope that something is going to happen but it is very sad.

The Speaker (Hon. Lusaka): I can see a lot of interest. For those who are yet to speak, I will allow you three minutes each because we have a serious Motion which we agreed that we should give priority and have it debated exhaustively.

Proceed, Sen. (Dr.) Langat.

Sen. (Dr.) Langat: Mr. Speaker, Sir, I want to begin by sending my deepest condolences to the family of the late Agnes Tirop who was murdered in a sad way. I knew that particular champion personally. It is regrettable that she had to die in such an ugly manner.

She went through a lot even before the murder. Her relationship with her lover was sour. She also went through a stressful moment. I think the lady was not open to discuss her issues with the church and everyone else.

This particular case should be taken seriously by the Government because she was not an ordinary person. She made this country proud and lifted the image of this country everywhere else.

This is not a unique case because we have several cases of this kind among many young couples. We have had people killing their children and wives and committing suicide.

The Bill that Sen. Kasanga is championing might be a salvation to such issues which are on the rise in our country. We need serious guidance and counseling centres in our country. We need security to be tightened for these important people. Like Sen. Mutula Kilonzo Jnr. said, perhaps somebody killed her because of money or her wealth.

Mr. Speaker, Sir, it is sad that the young lady was murdered in cold blood. I request the committee that will handle the matter to take it seriously so that the same is not repeated in the near future. The solution is to emphasize on counseling centres so that many people are rescued because many people are going through stress in our country and they need assistance.

I thank you.

Sen. Wetangula: Mr. Speaker, Sir, when I watched the fallen heroin running, she reminded me of Maria Mutola of Mozambique, Tirunesh Dibaba of Ethiopia and Paula Radcliffe of the United Kingdom (UK). She was stylish and energetic.

In 2011, we lost an international hero athlete called Wanjiru. To date, the case is not over. Just the other day, we lost the young girl called Agnes Tirop who was killed in a savage and crude manner of stabbing. Only cowards would kill another human being by stabbing them with a knife. The girl had just set a world record, once again putting Kenya on the international map as a home of heroes and heroines in athletics.

Sen. Cherargei, please do not reduce this national heroine into a Nandi asset because she is a Kenyan heroine. We would want to see that justice is done because management of success especially at a very young age by young Kenyans probably whose levels of education are not up to university need support.

Mr. Speaker, Sir, when I was the Minister for Foreign Affairs, I recommended - and that recommendation remains part of Government policy - that these breakers of world records in athletics should, one, be given protocol support all the time. Two,

that they be given security. If you go to Uganda that rarely wins gold medals in international events, the gold medalists automatically become national heroes. They are given security, government support and protections, 24 hours.

In this country, from what we are reading here and there, this young heroine has fallen to the intrigues of malice, greed and probably poor human relations. We want to see that this comes to an end.

The Government must respect the people who bring untold success to this country. When the national anthem of Kenya is played in an arena while the national anthem of a big democracy like India is never played; where the anthem of China is never played, it is a moment of great pride for this country.

I would want to urge the DCI that this is one case where he should be giving update reports on investigations on a weekly basis for Kenyans to know who killed this girl and why; and what they are doing to the person who killed this girl.

Even as a lawyer who defends people's rights, these are the sort of cases where courts should re-think the quick allowance of bail to such people. When such things, happen, it discourages, it kills morale and above all, it is something that we must all denounce.

Sadly, the death of this girl was announced more prominently on BBC than on any radio station in Kenya. BBC carried the death of Tirop the whole day, the next day and the third day while in Kenya, it was a meanwhile to a story. This is not right.

Thank you, Mr. Speaker, Sir.

Sen. (Prof.) Kamar: Thank you, Mr. Speaker, Sir, for giving me an opportunity to join my colleagues by first, thanking Sen. Cherargei for bringing this Statement on the brutal murder of Agnes Chebet Tirop.

Secondly, I want to join those who have sent their condolences to the family of Agnes Chebet Tirop because this was a murder that was most foul.

It is so sad that at a point when we are supposed to be celebrating Chebet, somebody decides to take her life. This is a girl who was self-made, a girl who was not sponsored to train. She trained by herself.

This is a girl who migrated from Nandi County and travelled close to 100 kilometres to Elgeyo Marakwet County to seek residence and train. She was a very hardworking and focused girl. As we heard from her parents, this is a girl who had completely transformed the family that she came from and this is what a good number of our athletes do; they transform their families when they have become professional athletes.

It is so sad and we are sorry for the family. You ask yourself, who could have saved this girl? Who could have protected her from her enemy who was a very close friend?

I think we need to ask the Ministry of Sports, Culture and Heritage to start paying attention to the athletes because these are young girls and young men who receive a lot of money within a very short time. You run for a minute and you get a Mercedes. You run for two minutes and you become a millionaire. Who really talks to these youth so that they know how to handle themselves beyond the money that they receive? I think the Ministry must pay attention.

If you compare the way Chebet arrived in Kenya with how Chemutai arrived in Uganda, it was a complete contrast. The whole of Uganda knows Chemutai. I say this because I went for the Prayer Breakfast in Uganda and Chemutai was introduced in State House to all of us. In fact, the Speaker of Uganda jokingly said Sen. (Prof.) Kamar should not claim this Chemutai because she is not a Kenyan; she is a Ugandan. That is how possessive they are of their athletes. They love them, they take care of

them and counsel them. Whatever they give them, they do not just leave them at that. They monitor them to ensure that they are in the right.

I felt so that because this kind of record-breaker should not be in Iten. They should be in the police service as Inspectors of Police. They should have been recruited to join the police force from the time they left Form Four so that they know how to protect themselves.

Sen. Murkomen will tell you that they are a huge number of them who are in the camp in Iten. Why should they be living within a camp situation where they end up marrying one another, having conflict that is so local and killing one another? We need to separate these children. We need to get them out. The minute we identify the talented ones they should be the property of the Nation. When they become the property of this Nation, they should be taken care of by the country because the minute they are number one, it is the Kenyan flag that they are flying.

Why are we leaving them to themselves where there is nobody? I looked at the mother and she was dazed. She even did not know that her daughter was married. This was a girl who was not empowered by anybody. When your trainer decides to marry you, it becomes a problem because he is your trainer, he is almost your everything.

The Ministry of Sports, Culture and Heritage must ask itself, when do they identify this talent and transfer the same to the armed forces and the police force so that we have them in a very secure environment?

I am sure the athletes that are in a secure environment do not face these kinds of challenges. What they fight over may be very minor compared to what they would be. I am sure this girl was going to be a record breaker in the future. So, the future was better than the past. The money she was going to earn was much more than the peanuts that she may have been killed for.

We really must push the Government to consider this talent development as a national agenda so that we are able to protect and build them.

Once more, I send my condolences to the family of Agnes Chebet Tirop and I hope the HANSARD of this House shall be taken by the Senator of Nandi to the family during or after the funeral.

Thank you, Mr. Speaker, Sir.

Sen. Were: Thank you, Mr. Speaker, Sir. I also want to join my colleagues in condemning the murder of our athlete and champion, Agnes Tirop.

Sen. (Prof.) Kamar has raised very important points on us adopting these children and making them the property of the country. I call them children because they go into these camps right from high school. I am glad that Sen. (Prof.) Kamar is going to be the Governor of Uasin Gishu County because it is the source and the keeper of athletes. She will be the first one to pick up this issue and make them children of the county first before the National Government picks up on them.

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

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

Madam Deputy Speaker, what we are missing out here is the issue of gender-based violence. After this lady was murdered, the husband or boyfriend is on the run and he is being looked for. This is a matter of violence against women because women are considered weak and helpless.

They can only be helped and cannot help themselves. We call the country to this issue. Of late, we have had many young women or wives being killed by their spouses or the people they trust to protect them.

This is a societal problem. The loss of a champion like Agnes Tirop is also a loss to this country. She raised our flag very high as well as our country. She earned us foreign exchange and improved our economy. That one single person, when we lose her to something mundane is unfortunate.

Madam Deputy Speaker, we need to put up a social welfare scheme to help our sportsmen and women, whether they are in camps or outside; a follow-up mechanism to find out how they are doing. Earning money as a young person is a challenging thing. You get money, but with little responsibility. These people need guidance, counselling and therapy all the time as a programme, not only when things go wrong.

These are young people. There is the folly of youth which we need to take into account. What are the sports managers at Riadha House doing to deal with this problem?

I condemn the murder of Agnes Tirop and may her soul rest in peace even as we continue to seek justice for her and other victims of gender based violence.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you. Sen. Halake.

Sen. Halake: Thank you, Madam Deputy Speaker. I join my colleagues in condoling with the family of Agnes Chebet Tirop. They are feeling the pain more than us. I send my condolences to them and also congratulate Sen. Cherargei for bringing this matter to the House because we get an opportunity to not only condole, but to also look for solutions to the issues affecting athletes in general considering they have a lot of problems.

Madam Deputy Speaker, these athletes fly our flags and bring good reputation to our country. Anywhere we go and hire a taxi and say we are Kenyans, the first thing we are told is about our runners. It is the first thing we are known for around the globe and that we are fast runners. This is a good thing. As Sen. Wetangula has said, we have beaten big nations and ensured that our country is on the world map when it comes to sports.

Madam Deputy Speaker, there is a school of thought on what a Committee can do. I was going to suggest that we have a Committee look into this, but this is a murder case and the police are dealing with it. We must exercise our oversight even over the police force so that we ensure that they are doing the right thing and that these murder cases are investigated and the perpetrators brought to book.

Madam Deputy Speaker, a few months ago in July I brought a Petition where a woman was killed. She was a conservationist, but we have not heard anything up to now. I know on this one, we may not hear anything in the next few weeks, but I urge this House to not drop the ball when it comes to these matters. It does not matter we are not the investigating authority, it does matter that we cannot stand by and not take oversight seriously when it comes to ensuring that the right thing is done and that our people are protected and security is provided.

Security of any individual in any country is the responsibility of the State. The State must, therefore, stand up and take responsibility for the protection of our athletes, especially the young women. The young women are disproportionately affected by murders, violence, maiming and all manner of violence against women. This is not necessarily a women issue, but the women are disproportionately affected.

I urge the security forces and the Ministry of Sports, Culture and Gender to make sure that systems are put in place and that our athletes are protected.

I support.

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Farhiya.

Sen. Farhiya: Thank you, Madam Deputy Speaker, for giving me this opportunity to join my colleagues in passing my condolences to the family of Agnes Tirop. Violence against women continues to thrive in this country, especially this time of COVID-19 pandemic. Greed also drives people like this gentleman who killed Agnes Tirop. It must have been greed.

Where is his human heart? Where is his patriotism? Where is his human nature to ensure that life is saved? How do you sleep and dream about killing somebody for your own benefit and gain?

Madam Deputy Speaker, we need to pass a law where sports trainers are not involved socially with athletes. First of all, they have a responsibility over this person and now they breach responsibility over that person because of a relationship they are in with that person. They breach responsibility of training and other things. What kind of a human being is this? Even if all those things do not matter to him, where is that sense of patriotism as a Kenyan to ensure that our athletes are preserved?

It pains me very much that a man just decides to kill a lady because of her wealth. Where do ladies get reprieve? When you have a property, people kill you. When you do not have, you are disturbing them and they kill you. How are you supposed to survive all this?

It is my considered opinion, that this man should be punished more severely than the ordinary criminal. I think he should be stoned to death and not even jailed.

The sports department or the Treasury should train athletes on their investment. If that money was invested somewhere, this guy would not have had an opportunity to murder her. The temptation would have been less. That money would have been stashed somewhere earning interest instead of tempting people to kill others.

Madam Deputy Speaker, the Committee you are referring this matter to should not treat it as another murder case. This is a special circumstance and should be treated as such. As I said earlier, mental health is a challenge in the world at this point and specifically in this country; it needs to be addressed urgently so that we do not have such a thing occurring in the future.

Thank you, Madam Deputy Speaker, for giving me this opportunity. I also wish to thank Sen. Cherargei for bringing this Statement.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Senators. Sen. Wambua.

Sen. Wambua: Thank you, Madam Deputy Speaker. You spoke for all of us when you spoke on this matter. I take this opportunity to convey, on my own behalf and on behalf of the great people of Kitui, our very sincere condolences to the family of Agnes Tirop.

I want to say a few things. First, a few minutes ago, the Senator for Nandi, Sen. Cherargei, approached me to make a contribution towards the burial of Agnes Tirop. It is a big shame that we are making small contributions to bury a person who has flown the Kenyan flag so high internationally and the State is doing little to even accord her decent send off.

Madam Deputy Speaker, I appeal to the Government of the Republic of Kenya to not punish this girl three times. When she came back after winning for this country, she was abandoned by the state at the airport and there after left to be killed by a person who was supposed to give her protection. The state has now left villagers to raise money to bury this girl.

The Government must live up to the expectations of all of us and ensure that they at least pretend to do something at her funeral to at least give her a decent send off.

Having said that, the management of sports persons in Kenya is really appalling. When our sportswomen are going to run, play or fight for Kenya, they normally travel with officials from the Ministry of Sports, Culture and Heritage and Athletics Kenya. The officials from the Ministry and the managers of the sports persons fly business class while the sports persons themselves fly economy. When they get to their destinations, the athletes are bundled together in dormitories while the managers go to be accommodated in five star hotels.

That kind of shame must be brought to a stop. We must respect the athletes for who they are and accord them the support that they need so that they can continue to fly the Kenyan flag high for that glory to come to us and to them as well.

Madam Deputy Speaker, I submit.

The Deputy Speaker (Sen. (Prof.) Kamar): Proceed, Sen. (Dr.) Milgo.

Sen. (Dr.) Milgo: Madam Deputy Speaker, I thank you for giving me this opportunity to condemn in the strongest terms the act that happened to Agnes Tirop. I take this opportunity on behalf of the people of Bomet to pass my condolences to the family. It is unfortunate that the life of Agnes Tirop has been nipped at the bud. She was a young talent who was murdered under very crazy circumstances and that may discourage other talents from taking up athletics.

We have been looking for ways of encouraging our athletes to take up various challenges so as to make a contribution to our economy in terms of what they gain. Many of our athletes have been doing a lot for our country. As my colleagues have said, it is quite unfortunate that we hardly even recognize what our sportsmen and women do despite the fact that they fly our country's flag high. Whenever our athletes are on the racing track, we all feel proud as Kenyans especially when they win or break world records. However, we end up ignoring our sportsmen and women after breaking the world records. We do not cater for their housing. We have been previously shocked to learn that men and women who have represented our country in the world arena live in pathetic conditions. We do not even bother receiving our sports persons at the airport with pomp and color when they return like the way nobody was there to receive Tirop when she came back from Tokyo.

Madam Deputy Speaker, we have lost Tirop in a situation that should not have happened. It is a high time the Ministry of Sports, Culture and Heritage puts up centres of counselling for our athletes, centres of training on financial management as well as how to carry themselves. The circumstances surrounding the death of Ms. Tirop are so sad to the extent that we do not know what else could have been done to ensure that we protected her.

Not very many years ago, we lost another young athlete by the name, Samuel Wanjiru, whose mother had single handedly brought up and was just starting to see some light at the end of the tunnel after very many years of toil. However---

The Deputy Speaker (Sen. (Prof.) Kamar): Your time is up, Sen. (Dr.) Milgo. Proceed, Sen. Nyamunga.

Sen. Nyamunga: Madam Deputy Speaker, I thank you for giving me the opportunity to join my colleagues in sending my condolences to the family of the fallen hero.

Ms. Agnes Tirop was a young and promising athlete. It is unfortunate that her life has ended under very mysterious circumstances. That explains the type of families that we have and the integration that we have in our families. This also goes to the

type of education system that we have in our families and the country at large. Most of our people do not get enough mentorship as well as ways of empowerment and capacity.

I am not blaming or threatening any athlete but the kind of things that are happening in this country are not good. There are many cases of domestic and gender based violence; husbands killing wives, wives killing husbands, mothers killing their children and such other vices. That shows that we have a very big problem as a country that we should address. We must go back to the basics and consider the values that we have as a nation. We have put money and wealth ahead of ourselves. Even we, politician, run our affairs in a manner to suggest that we do not put our people and our country at heart. What drives us is the amount of money that we can get and all that we can get out of whatever we do.

Madam Deputy Speaker, I insist that we should go back to the basics and look at the way we run our families, the values and virtues that we have as well as consider what we are passing to our children. Parents are spending very little time with children. There is no mentorship, encouraging and giving way forward to the children. We should put a system to manage our sports men and women. We should not be a country that is always chasing after the wind; we should not start blame game once something has happened. This is not a matter that we can blame the Ministry of Sports, Culture and Heritage only. We must put in place systems that help our sports men and women.

I condole with the family of the late Ms. Agnes Tirop and pray that God gives them solace during this time of loss.

I thank you, Madam Deputy Speaker.

The Deputy Speaker (Sen. (Prof.) Kamar): Proceed, Sen. Cheruiyot.

Sen. Cheruiyot: Madam Deputy Speaker, I join the rest of my colleagues in passing my message of condolence on behalf of the people of Kericho to the family of Ms. Agnes Tirop, her fans and supporters across the globe. Many at times, when we speak about our athletes, I hear us trying to localize them. In fact, Sen. Wetangula was reminding Sen. Cherargei not to make the late Ms. Tirop Nandi. I also tell Sen. Wetangula that he should not make her Kenyan because she was a global star.

A story is told that one time, in the London 2012 Olympics, the then Cabinet Secretary in the Ministry of Sports, Culture and Heritage, Hon. Paul Otwoma, had to be accredited as a personal assistant to one of the athletes so as to access the arena. That is how well celebrated our athletes are globally yet we do not think about them much locally.

Madam Deputy Speaker, what happened to Ms. Agnes Tirop is very sad, unfortunate and tragic. Such a young life has been cut short in a manner that is so brutal and leaves one with so many questions. You are left wondering what really goes on in the mind of many of the people who commit atrocious acts on fellow human beings be it out of jealousy, greed or whatever other reason. What happened is terribly unfortunate. I hope that this House can think deeply about what we can do. I have a Bill that is before this House which is meant to address the plight of our sports men and women. I appreciate the Chairperson of the Committee on Labour and Social Welfare, Sen. Sakaja and Sen. (Dr.) Milgo who last week listened to presentation by officials from the Ministry of Sports, Culture and Heritage, who tried to stop Parliament from legislating by saying that they have a Bill of their own that they want to send to the House. Sen. (Dr.) Milgo who was chairing the meeting reminded them that we are the legislators so they should bring whatever they want to legislate to us.

We reminded them that ‘we are the legislature, bring whatever you want to legislate’. Until we find a way of turning sports into a business and looking at these athletes as a natural resource, the same way South Africa values its mines; the same way Saudi Arabia values their oil, is the same way we should be valuing our athletes because of the huge amount of resource in terms of the things they do for us, as a country.

Therefore, I hope we shall conclude on the process so that we resolve many of the issues that you have spoken to it. Their living conditions, how we receive them when they arrive, just celebrating them and ensuring that as an institution they are well respected. I hope we can do that before the lapse of the time of this Parliament.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you. Sen. Sakaja, proceed.

Sen. Sakaja: Madam Deputy Speaker, my deep condolences to the family of Agnes Tirop. As you have described well, this young lady had already changed the lives of her family members. You can imagine the level of hope that people within that community and family had in her and the expectations of the years to come. It is sad that there is a harambee tomorrow for – as Sen. Cheruiyot is saying – a global star. She is being buried on Saturday on her 26th birthday.

It is poetic injustice for us to bury Tirop on her birthday as she turns 26, or even do the harambee, she should have gone on for many more years. As the Chairperson of the Committee immediately after this, I commit to Sen. Cherargei and to the House that I will call the Cabinet Secretary Ministry of Sports, Culture and Heritage and inquire what they are doing to cover all the costs that come with respect to this funeral. We have a sports fund where 90 per cent is being used for Universal Health Coverage (UHC) yet we cannot take care of the sports people.

I love what Sen. Cheruiyot has said. This country does not have oil. The one found in Turkana; I do not know what is happening there. We do not have gold and a lot of mineral resources. Our greatest resource is above the ground, it is our people. This is one country where our people excel in all fields. Whether it is human resource going to middle east, Kenyans wherever they are make our country proud. These are our biggest ambassadors. There are people out there who have never heard of President Kenyatta but they know Tirop. When I went to Boston, they asked me, when are you coming for the Boston marathon? I said “Boston Marathon?” They said we do not call that anymore, we call it, ‘chase the Kenyans’. That is how the world know it is about; trying to be number two.

Let us do more and as the Chairperson Committee on Labour and Social Welfare, I will bring certain things we are doing to look at the welfare.

On the investigation, I cannot comment because it is a murder which should be look at as such. We expect the Director of Criminal Investigation (DCI) not to be appealed to by the Senate to do his work, let them do their work. However, let us see how we take care of this great resource that we have, which is our people.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you. Sen. Wambua, you have a point of information?

Sen. Wambua: I wanted to inform Sen. Sakaja, who has just finished but I can still inform him. Kenya is known more for its athletic prowess than anything else. The other day, I was in the streets of Turkey and met a random person who was not communicating properly. I said, ‘I am Kenyan’, the first question they asked me, ‘do you run?’ This is what it is.

The Deputy Speaker (Sen. (Prof.) Kamar): Senator, I hope you told them you could run. Before I give Sen. Murkomen the Floor, who is from the county where this lady was murdered. I will give three minutes to Sen. Musuruve who is joining us

virtually, Sen. Musuruve, can you hear us? She is experiencing technical challenges. Let us have Sen. Murkomen, I will give him two more minutes because he is the host of all the youths having problems.

Sen. Murkomen: Thank you, Madam Deputy Speaker. You are very kind. First, I would like to thank Sen. Cherargei for coming up with this Statement. Last week on Friday, Governor Sang, hon. Sudi and myself visited the family of Agnes Tirop at their home in Nandi County. It was a sad occasion. When this murder occurred, I was shocked because I know Iten to have been a peaceful town. The people of Iten recognise athletes. Iten is nothing without athletes. It is one of the towns that have been developed by the resources of our athletes running all over the world. Iten hosts all our top runners, people like Rudisha grew up in Iten, coached by brother Colm O'Connell and many other coaches who have coached many other athletes in that town.

Unfortunately, on that very day we received the news with a lot of shock and gave Iten and Kenya a very bad image that an athlete had been killed. If anybody was following the news, this story like Sen. Wetangula captured, was probably covered more by BBC, Sky News and CNN more than our local media. It was breaking news all over the world that an athlete had been murdered in our country. I send my condolences to the people of Nandi and the family of Agnes Tirop. I will stand with the family with my personal support.

Secondly, this act is a demonstration of how serious domestic violence is. The evidence that is in place points to the purported husband. Who has been having an abusive relationship with this lady. Evidence will come out in good time and I hear that this lady was hoodwinked in the name of reconciliation to meet her killer. Unfortunately, that fateful night she was in a training camp and somebody hoodwinked her in the name of meeting for reconciliation, then she was murdered. Domestic violence is a national crisis. You have seen some other characters also who are being investigated online called 'the Ndichus'. This is a national conversation as it is global. Domestic violence is worse when it comes to women who are the worst victims.

There is a silent killer that we must say. There are people who are preying on our athletes. They know they have won gold medals in the world; like gone to New York marathon and won. They come and pretend to extending help to them and they end up having relationships, begin registering properties for these ladies, young girls aged 18 to 22 years in their own name. As the investigations go on, we are aware, as was said to the family to us, that the lady's property was registered in the name of the suspected murderer and had appropriated most of her property; the money, the vehicles, the land and house.

This is a national crisis. When I spoke to the President of Athletics Kenya, Retired Lieutenant General Tuwei, he promised me that this House is going to get the Bill from the Ministry of Sports, Culture and Heritage which they have been working on by December. It creates a structure within which all our athletes will be given psychosocial support in everything they do. These are young people who are handling money for the first time. They have worked so hard but they may not have the capacity to manage the resources they have.

If you go to Iten, Nandi, Uasin Gishu and some parts of Trans Nzoia and West Pokot where athletes live, you will find so many former athletes who were world champions living in abject poverty because people took advantage of them. Unfortunately, the disease of alcoholism has taken over their lives and some of them

have become victims of shylocks. I know someone who is still an athlete who almost lost his house last week because of shylocks.

Madam Deputy Speaker, all these athletes require the support of the Ministry of Sports, Culture and Heritage and Athletics Kenya (AK) to ensure that there is a structure where they are trained on how they handle their property, family and other social concerns. This is so that we do not find ourselves in a situation of our sister Agnes Tirop.

In conclusion, if you would give me two minutes---

The Deputy Speaker (Sen. (Prof.) Kamar): One last minute.

Sen. Murkomen: Thank you, Madam Deputy Speaker. That is okay. In conclusion, I believe that we should not just stop at this stage of the Statement. Sen. Sakaja promised that his Committee will do something. I propose that they summon the Cabinet Secretary (CS) of Sports, Culture and Heritage *suo moto*, on their own Motion.

Instead of waiting for them to submit a Bill or policy to this House, they can develop the Bill together with them. Let this Bill be tabled in the House before the end of the 12th Parliament. This is so that we can provide a structure of protection for our people in three ways. One is social support. Number two is how we can train and help them to invest so that they can protect their property. Number three, we ensure that they have social security in the sense that we find a way of how their investments will protect them even they are no longer running.

Thank you, Madam Deputy Speaker. I am willing to be involved.

The Deputy Speaker (Sen. (Prof.) Kamar): You would like to be involved? Sen. Sakaja.

Sen. Sakaja: Madam Deputy Speaker, I wish to inform Sen. Murkomen that I fully agree with the sentiments that he has raised. Sen. Cheruiyot has mentioned this. As we speak, our Committee is looking at a raft of amendments to the Sports Act. Part of these amendments are to give effect on what we are talking about in terms of support from the county level, not just the national level.

We are in the process of doing that. In fact, I have just discussed this with Sen. Cheruiyot. Part of the plans that we have as a Committee is to do a three or four-day retreat with the federations, not just the Ministry. We will start with the federations. We want representatives of the players of our key sports like football and rugby. This is to get their side of what is happening.

Finally, I am extremely passionate about this because I am the son of an athlete, a champion. My mother was the 1970 and 1971 East and Central Africa 200 metres champion, so I know what it means. I do not run in the field. I run for office, but it is still running. I am proud that when I grew up, people had decorations of flowers in their houses, and ours were medals. I still have those medals from the late Emily Ayoti Kubasu Sakaja, to date.

Sen. Murkomen: Madam Deputy Speaker that is very useful information. I just want to add on to what Sen. Sakaja has said. He should please listen to me. Either his Committee or the Committee on Roads and Transportation also needs to work on the infrastructure for sports. I am not talking about stadia. I am talking about working with the Ministry of Transport and Infrastructure to ensure that there are running tracks along the tarmac roads in Uasin Gishu, Elgeyo-Marakwet, and Nandi to start with. This is because the tarmac roads are no longer safe.

You remember Geoffrey Kamworor; he was going to run for the New York Marathon and later the World Championships. He could not go because he was knocked by a *boda boda*. Why? Because where they run is also a highway. Tarmac

can hurt their feet, so we can provide a parallel lane with marram along all these areas that they train in Iten, Eldoret, Uasin Gishu and other towns where athletes train. It will be a very good thing.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Senator. That brings us to the end of that.

Next order. Sorry, I can see that there is an intervention from Sen. Cherargei. You have one minute.

Sen. Cherargei: Madam Deputy Speaker, I forgot one small detail. For any Member who would like to support the family, we have a fundraiser tomorrow. The funeral will be on Saturday. If any Member would like to attend or support the family, I request that they kindly see me.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you. That is a good announcement for Members.

Hon. Senators, we will now go to Statements pursuant to Standing Order No.48 (1). The first Statement will be read by Sen. Were.

EFFICACY OF COVID-19 VACCINES

Sen. Were: Thank you, Madam Deputy Speaker. I rise pursuant to Standing Order No.48 (1) to seek a Statement from the Standing Committee on Health concerning the efficacy of the Coronavirus Disease (COVID-19) vaccines.

In the Statement, the Committee should-

(1) Clarify on the efficacy period of the each of the COVID-19 vaccine brands being administered in the country.

(2) Indicate whether the Government will provide the vaccines free of charge post the efficacy period.

(3) Provide the statistics on the number of fatalities from side effects with respect to each of the vaccines.

(4) Outline the long-term plans, if any, to provide vaccines to Kenyans.

Thank you, Madam Deputy Speaker.

The Deputy Speaker (Sen. (Prof.) Kamar): The second Statement is from Sen. Pareno, but it will be read by Sen. (Dr.) Milgo.

DECISION TO DECLASSIFY KAJIADO EAST KAJIADO WEST AND PARTS OF KAJIADO SOUTH AS ASAL AREAS BY TSC

Sen. (Dr.) Milgo: Thank you, Madam Deputy Speaker. This Statement is from Sen. Pareno.

I rise, pursuant to Standing Order No.48 (1) to seek a Statement from the Standing Committee on Education on the decision to declassify Kajiado East, Kajiado Central and parts of Kajiado South as Arid and Semi-Arid Land (ASAL) areas by the Teacher's Service Commission (TSC).

In the Statement, the Committee should-

(1) Explain the decision to declassify Kajiado East, Kajiado Central and parts of Kajiado South as ASAL areas by the TSC thereby denying teachers serving in such areas benefits associated to ASAL classification and further making the area unattractive to teachers.

(2) State whether relevant stakeholders were involved through public participation in the declassification process and table evidence of the same.

(3) Provide details of the amount of Government and donor funding set aside for ASAL allowance, particularly to Kajiado County in the last 24 months indicating the timelines of the next disbursement to the ASAL areas.

(4) Outline the targeted interventions to promote teachers holding administrative positions in ASAL and hardship areas giving the current state as promotions.

(5) Confirm whether Kajiado East, Kajiado Central and parts of Kajiado South will be reinstated and re-classified as ASAL areas by the TSC in compliance with the provisions of Article 56 (b) of the Constitution.

Thank you.

The Deputy Speaker (Sen. Prof.) Kamar: Hon. Senators, following consultations with the Whips, I defer the following Orders on Division. Order Nos. 8, 9, 10, 11, 12, 13 and 14. I request Members who are online and present in the House that we will do all Divisions on Thursday, before we go for recess. Please, we will do the Divisions on Thursday. We appeal that everybody either be here or online so that we complete that before we start our recess.

Next order.

BILLS

Second Reading

THE DISASTER RISK MANAGEMENT BILL (SENATE BILLS NO. 14 OF 2021)

(Bill deferred)

Second Reading

THE KENYA CITIZENSHIP AND IMMIGRATION (AMENDMENT) BILL (SENATE BILLS NO. 33 OF 2021)

(Bill deferred)

Second Reading

THE LAW OF SUCCESSION (AMENDMENT) BILL (SENATE BILLS NO. 15 OF 2021)

(Bill deferred)

Second Reading

THE PUBLIC PRIVATE PARTNERSHIP BILL (NATIONAL ASSEMBLY BILLS. NO. 6 OF 2021)

(Bill deferred)

Second Reading

THE HEALTH (AMENDMENT) BILL
(SENATE BILLS NO. 26 OF 2020)

(Bill deferred)

Second Reading

THE COUNTY BOUNDARIES BILL
(SENATE BILLS NO. 20 OF 2021)

(Bill deferred)

Second Reading

THE LIFESTYLE AUDIT BILL
(SENATE BILLS NO. 36 OF 2021)

(Bill deferred)

MOTION

ADOPTION OF REPORT ON THE STATUS OF
KENYA'S STOCK OF PUBLIC DEBT

Sen. Kibiru: Madam Deputy Speaker, I wish to pass my condolences to the young athlete, Ms. Agnes Tirop. I request that as Sen. Sakaja looks into the issues of sports, he should not forget golf, which is also a serious sport. Youngsters are also joining golf and need support.

I beg to move the following Motion -

THAT, the Senate adopts the Report of the Standing Committee on Finance and Budget on the Status of Kenya's Stock of Public Debt, laid on the Table of the Senate on Thursday, 14th October, 2021.

Madam Deputy Speaker, now that Sen. Murkomen is with us here, during the Financial Year 2019/2020, on one specific afternoon, he persuaded us, when he was the Senate Majority Leader, to review the public debt ceiling. I can remember vividly that he and I had conspired not to agree. However, on that afternoon, he called to say that things were bad and we could not avoid it.

Sen. Murkomen, these are the fruits of that very fateful afternoon.

(Laughter)

On a more serious note, as you may be aware, during the Financial Year 2019/2020 Parliament was involved in the review of the public debt ceiling, which was set at Ksh9trillion. The objectives which were very clear, as the Committee then was advised, was to create fiscal space to allow replacement of expensive debts with concessional or loans with favourable terms.

That is very important that we were persuaded. I agree and supported that we needed to create some fiscal space, so that we could retire expensive loans with concessional ones.

Since then, approximately two financial years have elapsed. In an endeavor to assess the achievements of the objective, this Committee on Finance and Budget resolved to enquire on the status of Kenya's stock of public debt.

Article 201 (c) of the Constitution stipulates that the burden and benefit of use of resources and public borrowing shall be shared equitably between present and future generations. This constitutional need is to safeguard the future generations as it creates a basis for use of resources for today.

Madam Deputy Speaker, the public debt has increased from Kshs1.49 trillion as at June 2011 to Kshs7.71trillion as at June, 2021. This represents about 400 per cent increase in debt in the last 10 years.

The increase has been mostly caused by a persistent fiscal deficit or financing gap. In the FY2021/22 it is estimated to amount to Kshs252.9billion, which is the deficit. The deficit will have to be financed through borrowing and the resultant total public debt will rise to a further new level of Kshs8.663trillion.

The total new public debt level is estimated to account for approximately 69 per cent of the GDP, indicating that up to 69 of all the country's productivity will be utilized in the repayment of public debt.

That means that if we continue with that trend, the debt will account for 96 per cent of the Kshs9 trillion that had been approved. It seems as if we have already hit the Kshs9 trillion debt ceiling set by the Public Finance Management (PFM) Act. We will be left with about 4 per cent that we can play with, which is Kshs337 billion. It is very clear that this will not be sufficient to finance the FY2022/23 Budget. As we saw, the fiscal deficit is almost getting to Kshs1 trillion.

It is important that the National Treasury has already entered into commitment worth about Kshs1.13trillion. As such, the provided borrowing space is already locked into loans commitment.

That is what I meant when I said that we may have exceeded this. Surprisingly, this, therefore, brings the total debt stock, dispersed and non-dispersed, to Kshs9.02 trillion, which is beyond the approved ceiling and leaves no space for new debt. As we do all the other issues, we may be declared an ongoing concern as a country.

The continued existence of this fiscal deficit indicates a lack of fiscal commitment required to maintain the budget deficit on declining trends as provided in the fiscal consolidation path, whose parameters are set annually through the Budget Policy Statement (BPS).

The East African Community Convergence Criteria encourages member states to ensure their deficit is below 3 per cent of the GDP. It is important to note that the country is always in the vicious cycle of budget deficit, having achieved a budget surplus only once in the FY 1999/2000, which amounted to Kshs3.3billion or 0.04 percent of the GDP.

The composition of the debt, as we found out, is that we have both domestic and external debts. Domestic debt is worth about Kshs3.69 trillion and accounts to 48 per cent of the total debt stock. This is largely owned by commercial banks. No wonder banks continue making huge profits even when other businesses are complaining that they are going down because of the pandemic. Banks are laughing all the way. Non-bank institutions such as pension and insurance companies own about 48 per cent.

Domestic debt is critical cash flow management, maintaining depth of domestic financial market and for cushioning the economy against erratic external vulnerabilities.

However, a higher percentage of domestic debt indicates a high risk exposure of the domestic financial market should debt servicing concerns arise. So, we will be hard hit especially in the finance market if for one reason or another we start behaving like a country in the southern part of Africa.

The external debt amounts to Kshs4.015 trillion, accounting for 52 per cent of total debt stock. This comprises bilateral debt at 28 per cent, multilateral debt at 41 per cent, and commercial debt at 30 per cent. I believe the commercial debt includes the infamous Eurobonds.

The key creditors, who together account for 77 per cent of external debt are China at 19 per cent, International Development Association (World Bank Group) at 27 per cent and sovereign bond holders and commercial banks at 30 per cent.

Madam Deputy Speaker, the accumulation of public debt has resulted in the increase in debt servicing expenditure, given that they are mandatory expenditures. That is what we call first charge to the Consolidated Fund.

Debt servicing expenditure negatively impacts the fiscal space by firstly decreasing the resources available for other budgetary expenditures, and secondly creating general budgetary inflexibility. That is capacity of fiscal policy to respond to economic shocks. For example, the economic shocks we had when COVID-19 pandemic came.

In FY 2021/2022, which is the current financial year, debt servicing expenditure will amount to Kshs1.17 trillion and will account for 66 per cent of ordinary revenues worth Kshs1.77 trillion. As such, we only have less than 30 per cent of revenues which will be available for financing other critical budgetary activities.

At this level, expenditures on debt servicing have surpassed the expenditures meant for national Government development. That is about 188 per cent. Secondly, it has surpassed the transfers to county governments by 285 per cent. Probably that is why we support governors to get 35 per cent in the coming financial year because that is what we have always been promised.

Madam Deputy Speaker, during the engagements, the committee noted that there was a reserved adherence to the constitutional requirements of openness and accountability when it came to debt management. This relates to the use of borrowed resources surrounding project information such as feasibility study, evaluation and status of implementation.

When we met the National Treasury, we were pained to ask how they could approve Kshs86 million per kilometre of gravel road using borrowed money. That is the road that was mentioned the other day and it was also in the newspapers. I think it is from Lamu all the way to Garsen.

That gravel road will cost this country about Kshs17 billion which is borrowed money. If you calculate, that is close to Kshs86 million per kilometre. That is just gravel and not tarmacked or asphalt road.

Departments come up with wish lists. Can they not become responsible and tell that a road costing Kshs1 billion per kilometre cannot add value currently based on our economic situation? Those are some of the issues. We need openness and accountability. I think the Ministries need to be held responsible. The National Treasury should not just get wish lists and dish out money.

Madam Deputy Speaker, this creates avenues for creeping of inefficiencies on the use of public debt as manifested by under-absorption of borrowed monies by Kshs74 billion in FY 2019/2020 as reported by the Auditor-General. Remember we borrowed that money and we are paying interest. We commit but we cannot absorb

because probably somebody somewhere has not gotten the right contractor where they can benefit. That is also worrying.

Lack of openness further weakens oversight mechanisms in terms of review, monitoring, and supervision of agencies, programmes, activities, and implementation. With that kind of opaqueness, oversighting also becomes a bit tricky. We will make some recommendations as a committee and request the Senate to support what the Ministries and concerned entities need to do.

Inefficiencies are also indicated through the continued incurrence of commitment fees as noted during engagement with various stakeholders. This is even more worrying. We commit funds and continue to pay commitment fees.

From June 2016 to June 2021, this country that is struggling has paid Kshs14.3 billion as commitment fees. That is money that we are not utilizing. That is a shame on those who were ahead of us. They should be held accountable for such inefficiencies. That indicates a general wastage of public resources for meeting expenditures that are avoidable.

The committee noted that there were no indications that there were measures being put in place to control these avoidable expenditures. We asked the stakeholders that we met, including the National Treasury, but they could not convince us. They had nothing to prove that somebody is feeling the pain of paying Kshs1.6 billion every year for monies that we are not utilizing. We have also made some recommendations on that.

Madam Deputy Speaker, concerns have been raised on sustainability for Kenya's debt stock. Presently, a number of key debt sustainability indicators have been breached, thus indicating vulnerability to fiscal shocks into the long-term. Coupled with low economic growth rate, like we all know because of other factors, Kenya's debt stock is currently classified by the International Monetary Fund (IMF) as being at a high risk of debt distress. That means we are at the tip. So, if anything happens, it will be disastrous.

That is the information that was provided by the stakeholders that we met, including the Governor of the Central Bank of Kenya (CBK), the Auditor-General, Controller of Budget, the Commission on Revenue Allocation (CRA) and the National Treasury. So, it is not information created by the committee.

The public debt benchmark that is present value of debt to the Gross Domestic Product (GDP) ratio as defined by the IMF is at 55 per cent. Kenya's public debt is at 62.4 per cent. Breaching of this threshold should be a concern for everyone especially the National Treasury which is mandated to ensure adherence to sound fiscal policies.

Madam Deputy Speaker, unfortunately the people who are seated in front of us, we may not be the Cabinet Secretary or the National Treasury, but nobody convinced us that they can be able to handle the kind of crisis that we have. I think it is high time the National Government and the leadership looks for experts to come and save this situation.

The other concern relates to contravention of Section 15(2)(c) of the PFM Act, 2012.

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

Sen. Sakaja: Madam Deputy Speaker, I just wanted some clarification on whether the chairperson is in order to say "these people in front of us". The people in front of him are Sen. Mutula Kilonzo Jnr. and Sen. Nyamunga. Who is he referring to when he makes that reference "the people who are in front of us"? We want to understand who we really need to put to task over this Report that we are discussing.

Sen. Kibiru: Madam Deputy Speaker, I meant the people who sat in front of us and I inferred to the CS, National Treasury. The buck stops at the National Treasury and the person who heads the National Treasury is the CS, National Treasury. So, the buck stops with him.

The other concern as I mentioned relates to the contravention of Section 15(2)(c) of the PFM Act, 2012 which stipulates that: -

“Borrowed funds shall only be used to finance development expenditure.”

In the Financial Year 2020/2021 the National Treasury - the people I have mentioned here - utilized Kshs61.5 billion of Kshs70.1 billion from sovereign bond proceeds from payment of recurrent expenditure. That is contravention of the law. Somebody is culpable and our recommendation is that somebody must be held responsible.

We were asking the Auditor-General who gave us that information, what he wanted us, as legislators to recommend. We are saying that we may want to recommend that people who contravene such laws should be held responsible and accountable. We ask ourselves whether they are capable of handling the offices that they hold because as you realize, we are in a very serious crisis.

What are the recommendations? The Committee in order to control the increase of debt burden, the National Treasury--- We beseech Members as you debate you can improve on our recommendations. We are amenable. We said within six months of the adoption of this Report the National Treasury shall submit to Parliament a legislative proposal setting out the appropriate fiscal consolidation measures required to reduce the public debt stock to a sustainable level over the medium term. If they do not, we will come up with methods of enforcing it.

Secondly, we recommended that the National Treasury should utilize the non-debt options for public investment and submit a report to Parliament on a quarterly basis. Since we also dealt with the Public Private Partnership Bill, that is why one feels a bit constrained when we are not passing that Public Private Partnership Bill because it will alleviate some of these challenges that we are facing in borrowing. As much as we hate, we must also be able to provide a solution because this is our country and we must be seen to be responsible.

The other recommendation is that the National Treasury should restructure the public debt stock by undertaking the financing options, by either retiring or replacing expensive debts with debts that have more favourable borrowing terms such as concessional loans. This is what we had been promised and we need to hold those who promise us to account because we did it in good faith.

We also want to address transparency and we want the National Treasury to, within six months of the adoption of this Report to operationalize the IFMIS debt management module and grant access to the Central Bank of Kenya, office of the Controller of Budget and office of the Auditor-General for monitoring.

Madam Deputy Speaker, we will bring another Report to this House because IFMIS is also being mismanaged by the same National Treasury. We will also table a Report that will show that there are several modules that would have curtailed some of the issues that we have been seeing around that they have not been able to operationalize or reluctantly or deliberately have refused to operationalize.

We have also recommended that the Treasury should submit to Parliament the debt register, publish the same on quarterly basis in the Kenya Gazette so that it is available for scrutiny by the public.

I was watching something where Aristotle back in 332 BC said: “Whatever is public must be made public”. Some of these things are not starting today. So, when we say they do this, it is something that has come of age.

Another thing that we discovered while we were dealing with this is another very worrying situation in this country. This is where entities; both the national Government and the county governments have with impunity taken suppliers’ credit without honoring payment.

It is good that we passed the Prompt Payment Bill in this House. However, even before the Bill becomes law we should note that we have a very serious problem when it comes to pending bills. Even though pending bills do not form part of the debt stock, these are current liabilities owed to providers of goods and services. As such the National and county treasuries should update the public expenditure recording system to ensure that the payment of pending bills is prioritized. This will also improve investor confidence.

As Sen. Nyamunga will tell you, there are very many people who are under stress. There was a Bill here where we were talking about mental health and that is one of the issues affecting the business community because of pending bills. My county of Kirinyaga as we talk now, has pending bills of Kshs432 million. That is what is legitimate. There is what is called illegible that is over Kshs600 million.

I am happy that today I saw Governor Kiraitu committing the County Assembly of Meru that they have set aside Kshs779 million to settle the pending bills. We are on a transition, once these things go I do not know where counties will get money to sort out these people. As such, people’s property will continue being auctioned, people will continue committing suicide and children that would have gone to school through the effort of their parents will continue dropping out of school.

The Committee will make recommendations in another report that we will bring forward, on measures on pending bills. We must try to enforce counties to pay pending bills before the elections.

The Controller of Budget is doing a commendable job. We learnt that nobody loves her because of the controls she has put in place. Of course, she is not supposed to be loved. However, we recommend that to be able to provide reports related to recent economic developments outlook, revenue grants and loans and submit these reports to Parliament on quarterly basis for scrutiny. We want to make some amendments in the Controller of Budget Act.

Remember we have recommended that the operationalization of the debt management module in the Integrated Financial Management System (IFMIS) be done immediately. The Controller of Budget should be given powers to be able to access and see how it is being done. We are not talking about things that are new. We learnt countries with best practices like Tanzania are doing that. The other one is Ghana and South Africa is struggling a bit, but what we are recommending is possible.

Within 28 days of the adoption of this report, the National Treasury should provide a status report on the restructuring of public dead stock as indicated during the review of the debt ceiling in October 2019. They could not convince us on what they had done and kept on telling us they had plans to do. Now we are compelling that within 28 days, they must table a report to this House indicating how they went about carrying out the exercise they promised.

Madam Deputy Speaker, Section 15 (2) (c) of the Public Finance Management Act (PFM) Act, stipulates that:

“Over the medium term, the National Government’s borrowings shall be used only for the purpose of financing development expenditure and not for recurrent expenditure.”

Therefore, the Auditor-General should within six months undertake a special audit on the utilization of commercial loans in Kenya up to the first quarter of 2021/2022 and submit a report to Parliament. Remember that we said people are breaking laws with impunity. People are treating the national coffers like their private business and that they can take money from one kitty to another kitty without following the law.

Number seven, we are recommending in order to enhance public sector investment and increase efficiency of public spending, National and County Treasury should apply best practice in project appraisal and selection. We need to think widely and wildly on how we are going to tame the appetite of projects both in the county and in the national Governments. So that we can deal with only low hanging fruits. Even if we were to borrow, we can do a 70:30 ratio where 70 per cent goes to infrastructure and 30 per cent goes to areas that will generate funds.

I am seeing people coming up with economic models, but that should be one of them. That we do not just borrow for long-term infrastructure when we have very low hanging fruits that can help this country to survive and be sustainable.

The National Treasury should publish and submit to Parliament every three months a comprehensive report of debt servicing expenditure. We must hold them into account. The more they publish, the more we ask, the more they will become accountable. We are recommending that they do that with immediate effect.

Madam Deputy Speaker, lastly, in addressing the recurrence of commitment fee, the National Treasury should renegotiate and dispatch loans with the aim of either cancelling or disbursing loans. We can comfortably ask the institutions that have lent us. It happens even in businesses when they are not doing well and are defaulting on loans and when you want to make a bullet payment, you can negotiate for a haircut.

If the Government or the National Treasury are not able to, this country has intelligent experts who can negotiate for them. Let them not just sit there, saying it is not possible. Let them consult. Probably Sen. Mutula Kilonzo Jnr can do it on pro bono basis so that we able to negotiate those contracts.

Madam Deputy Speaker, they can do it through suspending the commitment fee clause to give time for the Government to address factors that affected the loan disbursement. In negotiations, you can go to a financial institution, especially now that we have a pandemic; and say that now that we have been unable to do all those things, why do you not suspend the commitment fees for period? Those are avenues that the ladies and gentlemen at the National Treasury should not take lightly, but need to deal with them.

Madam Deputy Speaker, the National Treasury should desist from undertaking projects or entering into loan agreements that could lead to payment of commitment fees. Secondly, provide for mechanisms to deter the incurrence of commitment fees into the future. Moving forward, unless we are sure that we have the project and we are ready to start, why would we want to commit ourselves to some commitments that are not healthy and are not helping this country?

Madam Deputy Speaker, this is a bit controversial and Sen. Mutula Kilonzo Jnr. does not agree with it, but let us debate about it. A recommendation was made here that the National Assembly and the Senate should constitute a joint committee to review and improve the legal framework underpinning use of public finances in Kenya.

The committee should undertake wide sectoral engagement in order to strengthen and revitalize the physical management framework against rising and evolving public finance management malpractices. I thank our researchers in our secretariat. They carried out research on best practices and that enabled us to make that kind of a recommendation. The only problem is whether the 'lower' House, our noisy neighbours will be willing to sit with us and we guide them on how to go about these issues.

Madam Deputy Speaker, given the constrained physical space, all accounting officers should prioritize the consolidation and protection of available financial resources from misappropriation in order to enhance efficacy and effectiveness of the budget implementation.

These are some of the recommendations that we have made. We have also made a number of recommendations in the amendment of the PFM Act. I do not know where the Bill is. As a Committee, when we could not proceed with the National Assembly PFM Act amendments, we decided to come up with our amendment Bill. It has also touched some of the areas that we are recommending here so that we can put them in the principal law.

Madam Deputy Speaker, with those few words, I beg to move and request Sen. Mutula Kilonzo Jnr. of Makueni County to second the Motion.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you Senator. Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Thank you, Madam Deputy Speaker. I rise to second this Motion on the report on the status of Kenya's stock of public debt. Unfortunately for my dear colleagues, Senators and the country, we have no good news to report. We are in debt. In other parlance, we would say we are broke. In some case, we would say Kenya is nearly under receivership.

There is a famous saying that when you are in a hole, you stop digging. When I stood here to oppose the increase in debt ceiling, most people heard the words "I oppose", they did not listen to what I was opposing. I was opposing the system where we have granted Treasury what appears to be a blank cheque to borrow indiscriminately.

The motion moved by Sen. Murkomen was that part of the borrowing would retire debt. From the report we have here and Members are at liberty to look at the annexures on the report, Treasury has not begun discussing the retirement of any expensive debt.

The National Treasury has not actually begun discussing the retirement of any expensive debt and that is a very serious issues. The issue is even more serious when 64 per cent of our collections are going to external lenders. As I have said before, on the Floor of this House, our sovereignty as a country is at risk. If we cannot pay debt, the debtors, just like any Shylock, will come for a pound of flesh. The question is, what will be the pound of flesh? I have insisted that we should get disclosures of our public debts in terms of some of the loans that we have entered into.

The National Treasury was good enough to give us the figures on the borrowing of the SGR through the Standing Committees on Roads and Transport and Finance and Budget. The borrowing on the SGR is extremely punitive for 13 years. A period of nine years has been exhausted and we have not completed paying and there is no room for complying with the payments within the loan period. Even after the Government has issued a directive that all cargo should come on the train and even if we put all Kenyans travelling to the Coast on the train, we will still not be able to pay.

The loans for the SGR Phase 1 and 2 as well as the ICD in Embakasi will be paid through a national asset. We will not be able to pay that debt because it is now at Kshs440 billion. If there is anything more serious than that debt alone, I want to be told what it is. That debt will not even be paid by my great grandchildren. That debt can only be paid if we surrender a piece of land somewhere. From my own research, there is somebody who is looking at our port in Mombasa or the Jomo Kenyatta International Airport (JKIA) in Nairobi.

It bothers us that the increase in domestic borrowing has easily moved from 22 per cent to 36 per cent. The ordinary person like you and the rest of the Senators here are the ones who are affected by the domestic borrowing because just like Sen. Kibiru has said, the banks are making money out of public money. Banks are declaring profits out of public funds. In my little conspiracy theories, I sometimes think that this is also an avenue for pilferage; that private entities can be making money out of public funds because the Government is borrowing domestically at a very high rate yet the ordinary hustlers that Sen. (Prof.) Kindiki and others speaks to, are unable to reach these facilities.

In this report, we have attached a schedule of the commitments fees. In simple terms what Sen. Kibiru said is that we are paying Kshs1.16 billion for loans that we are not utilizing. For example, you will find the following in the schedule; we are paying for phase one of the Bagamoyo-Hororo-Lunga Lunga-Malindi Road Project Phase One, yet we do not have a report on whether that project has begun. We are also paying commitment fees for the Jomo Kenyatta International Airport Airfield Expansion, Phase Two yet nobody knows whether this project is ongoing. The list goes on and on.

We are also paying guaranteed loans to various institutions including Kenya Airways of more than Kshs80 billion and it is guaranteed. I wonder why that is the case. The stakeholders who visited the Senate for some very strange reason only known at the National Treasury, there is no way of tracking our debt through the Integrated Financial Management Information System (IFMIS). The Auditor-General and the Controller of Budget cannot track. In fact, there is section of law which limits the Controller of Budget from checking how we are utilizing or borrowing our debts. We have proposed to amend those

Allow me to highlight a few more. On page 30 of this report, would you believe that there is an unexplained variance of Kshs2 billion between internal loans and short term borrowing balance of Kshs887.1 billion reflected in the summary statement of the public debt and recomputed closing balance of Kshs885.14 trillion. There is an over redemption of Kshs2 billion which was not acknowledged by the Central Bank of Kenya and may not be recoverable. That is a very serious statement. That is the sort of money that counties are receiving for their development budget. For instance, Kirinyaga County is spending Kshs1 billion on its development as Makueni County is spending about Kshs2.1 billion on development yet the National Government cannot account for Kshs2 billion that was an over redemption.

There is an unexplained variance of Kshs26.22 billion between the treasury bonds balance and the KShs2.2 trillion reflected in the salary statement of public debts. What is worse is that there is a non-disclosure of public debts procured during the 2019/2020 FY. I was here when Senators voted so many yes to increase the public debt ceiling. This is the result. We have no disclosure. The National Treasury has borrowed but we have no disclosure. When we ask for the debt register, we do not get it. We cannot find ways of knowing what the National Treasury is borrowing.

I do not envy the next President of Kenya; I really do not. The gentleman or lady is going to be in a lot of trouble when they assume office in September of 2022. The solutions that we have proposed here is they are not put in place; I am reliably informed that the Government is going to seek Parliament again to increase the debt ceiling from Kshs9 trillion to Kshs12 trillion. What are we going to be saying yes or no to? This report is telling us the sort of measures that we should have put in place in 2019 but we refused to do so.

How are we going to say no to this Government when it comes to us to increase the debt ceiling? Kenyans have argued that Parliament has been responsible for the problems that they are facing; whether it is increase in fuel prices or debt. It is Parliament that has enabled the National Treasury to borrow as if borrowing is fashionable like there is no tomorrow. It is unfortunate that Parliament has mortgaged the future of this country. We have failed to put in place mechanisms to stop indiscriminate borrowing.

The Executive has argued that the reason it is borrowing is so as to put up infrastructure. However, the Senator for Kirinyaga County and the Lord of the Exchequer has argued that we should have balanced between the borrowing that we are doing for things that can have high returns. We have borrowed to do the Express Way and the SGR. When people will be told to pay before using the Express Way, chances are that people are going to be bargaining between buying *unga* or being on a fast road. It is calculated that we will repay the debt in 70 years for this beautiful road that is only 23 kilometres long. Who will stop the National Treasury from mortgaging this country if they have not? It is a sad story.

This is not a lullaby where I am supposed to lull all of you to sleep, but a report of the Committee on Finance and Budget on the status of your country. This is the sort of report that you expect the Cabinet Secretary for National Treasury and Planning to lay before Parliament and tell us the solutions he has to solve this debt. Nonetheless, he is not going to do so because in a few months, he will be vying to become a governor. That is not going to help us. Unless we put our foot down and put a lid on borrowing, I am afraid, we are in a deep hole. May God help this country. May God continue leading this country because the people who are leading this country have failed.

I second.

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

(Question proposed)

Sen. Sakaja, proceed.

(Loud consultations)

Senators, Sen. Sakaja was ahead of everybody, but had a point of information that distracted his point. I am careful.

Sen. Sakaja: Senators, the Madam Deputy Speaker is fair.

I rise to speak to this Report that was ably and passionately moved by the Chairperson of the Committee on Finance and Budget, who is also the Senator for Kirinyaga County. I am sure if he did not have guests tomorrow in his county, he would have been more passionate. Since he has state guests, he has been careful about this Report.

Does this country have a debt problem? For a long time, I have held that we have a deficit problem, which creates the debt issues. I am sure the Committee on Finance and Budget received a presentation from the Parliamentary Budget Office

that spoke to the correlation of our deficit with the debt levels. We have poor forecasting of revenue and we do big budgets. Because of the big budgets which are big versus what we collect, we have huge deficits that are plugged with this debt. We have a deficit problem which must be addressed.

We have a conflict of interest in the National Assembly because they have come to fall in love with big budgets. The reason they are in love with big budgets is because National Government Constituencies Development Fund (NG-CDF) is 2.5 per cent of the budget. The bigger the budget, the more the NG-CDF. The bigger the budget, the less the revenue; the greater the deficit, then the bigger the loans. This is the problem we are in. All efforts to deal with this, because the Chairperson has taken us through a lot of details--- Many indicators of an economic nature, and I do not want to get too technical, to put it simply, based on this Report, debt servicing in this country monthly is Kshs72 billion. It was Kshs50 billion which is crazy, but now it is Kshs72 billion.

On top of that, operations and maintenance in the national Government is another Kshs50 billion. Salaries and pensions come to Kshs46 billion monthly. The pensions bill is going up because of the great number of Kenyans within Government at a certain age. This is why everybody knows somebody who always wants help at the Pensions Department, because the money may not be in existence.

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

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

We passed The Division of Revenue Bill and counties should be receiving a total of Kshs30.8 billion monthly and then development, Kshs25 billion, which is the smallest. If you total that, it is more than Kshs200 billion a month, yet at our best month, we are collecting Kshs150 billion. We are in a hole. Some simple things need to be done. I do not know why we need to work smart. If 64 per cent of revenue is going to pay debt, for every Kshs1,000 collected in this country, Kshs640 goes to collect debt. You wonder why counties have pending bills. It is because they are told there is no Exchequer.

We talk about delayed Exchequer, but why is it delayed? It is not there. The first charge to the consolidated fund is debt serving. If Kshs640 from Kshs1,000 has gone, we are left with Kshs360 and then the immediate concerns are salaries and pensions. What is left to do anything in this country? It is very little. Where does that lead us to? It leads us to more debt. We need to manage our country better.

I am shocked that we are now borrowing from the local market to pay external debt. There was a time it was a factor of pride when we would say that there is no foreign money paying a teacher's salary. That is no foreign money paying a doctor in Kenya. President Mwai Kibaki used to tell us '*kulipa ushuru ni kujitegemea*'. What was his deficit? The deficit was like 6 per cent; 92 per cent of our budget was locally funded by our taxes. The budgets were not huge. The first trillion budget was in 2009/2010. However, Kenyans can say that during that time we felt a difference and there was money in the pocket. Now, we have huge budgets, but people are frustrated because there is no money in the pockets. Where is it going to? Kshs640 is going to pay debt.

The make-up of our debt, which I have looked at presents a serious problem. What affects the local businessmen - the people I represent - in Nyamakima, Gikomba and Makueni in this debt issue is the domestic portion of it. The domestic debt is

Kshs4 trillion according to this Report. This is money that could have been in the hands of business people. Businessmen are not getting loans from banks, which bank would give Omogeni and sons a loan of Kshs100 million when the Government wants the same?

During that previous time, they used to hawk loans to us even when I was in the university. They used to ask us to open a student's account, so that we could get a loan to buy a radio. This is because they had to come to us. If you add the issue of the interest rate ceiling that was removed, we are bleeding our businesses in this country. Where will they get access to credit?

There is a law and I wish we could improve it. I have seen one of the recommendations is to set a team. In India the ratio of domestic debt by Government is limited. In as much as it is a debt ceiling, you should not look at a debt ceiling in terms of an absolute amount of Kshs9 trillion or Kshs12 trillion as is being proposed. We should look at, of that debt ceiling, how much of it is domestic? Sen. Omogeni, that is what is hurting traders in Kisii and Nyamira. That is where we are feeling the pinch and there is no money in peoples' pockets.

Madam Temporary Speaker, there are certain variables we look at in economics. They tell us how we are exposed as a country. First, 65 per cent of our debt is in US Dollars and 20 per cent is in Euros. This means that 85 per cent is based on foreign currencies. We know how volatile they have been, especially with the global oil issues. That means if it changes by just a small percentage, we are really exposed.

Madam Temporary Speaker, there are indicators that are very important. Look at the present value of our debt to revenue and grants. Look at the debt service to revenue and grants ratio and the present value of debt to exports ratio because that tells you about how much you have and how much is coming in.

We are a country whose biggest foreign income earner is nothing that we are exporting. Our biggest foreign income earner is remittances by Kenyans, who are working in other countries building their economies. Something is wrong. We might look healthy, but something is going wrong inside the economic structure in this country.

There is also public and publicly guaranteed debt service to exports ratio. When I was in the *Ad hoc* Committee on the COVID-19 Situation in Kenya, I said that there is a fallacy. I think that we have seen it when the fuel prices went up recently. I think Sen. Omogeni was a Member of my Committee.

When we looked at the economic pillars, one of the issues we looked at was our import cover based on our foreign exchange reserves. We said that there is a fictitious indicator. We thought that had good money, but it was because the price of oil was low. It was low because foreign travel had been suspended. The biggest demand is from international foreign travel. What happened immediately countries opened up? We are now at Kshs134. I think it went to Kshs127. We are exposing Kenyans.

Madam Temporary Speaker, a lot needs to be done. I know the National Treasury, because I have worked there, and they have been here. If you look at their presentation from the Parliamentary Budget Office (PBO), they will come and just--- I think their mantra is that 'if you cannot convince them, confuse them.' They will act all lyrical and say that they are undertaking fiscal consolidation. They like those big terms. When they say those terms and are talking to lawyers like Sen. Mutula Kilonzo Jnr., yet they are businessmen, they are not challenged properly.

When they came to ask for the debt ceiling to go up, they said that when it goes up they will do a number of things. Fiscal consolidation was one of them. They said that they want to restructure a lot of our commercial loans to be causal, so that the rates go down and to re-amortize and spread out the repayment period. This is such that what we are paying every month does not put a burden on our economy and Exchequer.

Madam Temporary Speaker, has that been done? It has not been done. In fact, under what they have recommended, this Report should say that no further review of the ceiling should even be considered, because they will come back to you. Until they show us what they did when the last one was reconsidered, we are just playing.

I like what Sen. Mutula Kilonzo Jnr. has said. Whoever becomes President in this next regime can do nothing. I do not think I will go into amending this Report, but certain things need to be put in place. One, let us be given that plan of how we are restructuring the debts that we currently have.

Number two, we must start a process of reducing the budgets in this country. We do not need a budget of Kshs3 trillion just for the sake of a big budget when people are going hungry and businessmen have no money. There is no explanation on earth why operation and maintenance in Government is Kshs50 billion. It cannot be.

This means that Kenyans are just paying people's salaries to keep the Government running. That must be addressed. I am glad that we looked at the Public Private Partnership Bill, because we can take a lot of projects that are coming off our balance sheet. We must reduce those budgets.

Number three, we must limit the proportion of domestic borrowing by the national Government. The reason I keep insisting for us to look at the deficit issue more than anything is that in 2007 our debt to Gross Domestic Product (GDP) was high; 62 per cent. However, the economy was growing at 7.1 per cent. There was growth. People could feel it, such that the debt to GDP ratio made sense. The economy was actually growing. In 2006, it was 61 per cent. Those were the best economic years we have had in a long time. After the post-election violence, it went down to I think -0.7 per cent in 2008. At that time, it went up to 63 per cent or so.

Madam Temporary Speaker, the Committee on Finance and Budget needs to be bolder. Instead of just giving us general recommendations, there should be actual sanctioning. They should say that until they show us one, two or three, we shall not approve additional requirements on the part of debt.

The Constitution says that the burden should be shared equally amongst generations. This Government has done projects. The next two governments might not be projects. They might not be able to do any development. So, we must match the resource absorption rate with project completion rate because of these projects. We must make sure that there is fiscal discipline.

Madam Temporary Speaker, you can even look at the reports by the Auditor-General. I am glad that in our constitutional make up we have different independent offices that can tell us the truth. Imagine if all this information was to come from the National Treasury only. We would be told a lot of English.

I have looked at the recommendations and not seen anything exciting. There was something about a six-month adoption of the Report and a legislative proposal. There is a Bill already. There is a Public Debt Management Bill in the National Assembly by Hon. Sakwa Bunyasi, the Member for Nambale. He has proposed a Public Debt Management Bill that creates a public debt management authority and talks about how this will be done.

Why do we not adopt that Bill? As the Legislature, when we pass a recommendation asking the Executive to propose legislation, our work is to legislate. If we already have such Bill, why do Sen. Kibiru, Sen. Mutula Kilonzo Jnr. and the rest of the Members not come together with them? Our Standing Orders tell us how Committees can sit jointly. Look at it even formally. Let us do what you did. Beyond being blamed for raising the ceiling, let us see what we did in the management of public debt.

Right now, no one is talking about public debt out there. In fact, all the candidates are talking about how to increase the public debt. There is one side saying that they are going to give more than Kshs100 million to every constituency for the bottom up approach. Another side says that they are going to give Kshs6,000 per person to those who have no jobs. Apart from Musalia Mudavadi, who is talking about this debt report that we are talking about, where will we be next year?

Madam Temporary Speaker, I saw a very funny photo of two fellows on a wheelbarrow with their hands on their heads after the election. It said that this is us after the election with our wheelbarrows realizing that bread is now Kshs7,000, and we only got Kshs6,000.

Let us be real with Kenyans. This morning I was on radio. I told Kenyans that between now and August 2022, we will be told many things. Politicians will come with all manner of promises. This is where the future of our country lies. Sen. Mutula Kilonzo Jnr. has said that an asset might go. Let me be the devil's advocate. I think that an asset could go. That is when we ask for the contract for the Standard Gauge Railway (SGR), we were not given. What will happen? I am just thinking. I am not proposing.

If the Chinese take our port, what do we do? Of course, they will not take the port. Maybe it will be good, because they will not move the port to China. They will have to make sure that it is efficient, so that they pay themselves. They will increase berths and extend the SGR to Congo, pay themselves back and go, but maybe not. It is matter of national pride. How does it feel to us for such great assets of our country to be in the hands of people whom we owe money that we took because of our large appetite?

Madam Temporary Speaker, I do not even think it is an issue of transparency concerns. Of course, they are there, but it is how we are doing these humongous budgets and increasing deficit. It is piling year in, year out. The next budget that is going to come to this House, especially since we are going into an election year, will be bigger than this Budget. We are digging ourselves into a hole with our eyes wide open.

Madam Temporary Speaker, with those many remarks, I support the Report. I hope that we can get an opportunity to actually strengthen it. At some point, the President had said that he would stop new projects. I think we had a commitment of no new projects. Our budgets in the last two years were full of very many new projects. Let us think of it. This is not to castigate the Government, but help them see where the problem is.

As I finish, I remember that in 2015, I was in the National Assembly. I asked the PBO to give me a compendium of stalled projects in 2015. They came up to Kshs1 trillion.

I would hate to ask Mr. Masinde to give me the same compendium as of 2021. That is where the problem is.

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, I need your indulgence because there is still a lot of interest and we would like to give a chance to as many Members as possible. I suggest we reduce the time to 10 minutes.

(Loud consultations)

Okay, let it remain at fulltime.

Sen. Cheruiyot.

Sen. Cheruiyot: Thank you, Madam Temporary Speaker. I am sorry to disagree with your proposal. This is perhaps the most consequential piece of work that we shall be doing this term in terms of rising up to the challenges we face as a nation.

To be on record for 10 minutes is not enough. If we manage to turn the tide and do the right things, this Report will be celebrated for having guided the country back to the correct path. In the unfortunate event that things go on as they are and we are taken over by other institutions, be it people we owe money or other countries, at least that people of Kericho need to look back to the records of the House and find out how I utilized their vote and what I said about the issue.

For that reason, allow me to have the fulltime that is needed because I know the amount of work the Committee on Finance and Budget has put in to get this Report before the House. This by the way, this is not enough. There is a lot we felt needed to be included in this Report. However, it was rounded off to one proposal which is giving the National Treasury the chance to come back to us within six months of the passage of this report with legislative proposals on how they want to do all these promises. These are the big terms that Sen. Sakaja was talking about, including the fiscal consolidation, debt management strategy and the things CS Yatani and his team mention every time they appear before us.

The gentleman, CS Yatani, has a soft voice, yet the things he and the teams he leader are doing are extremely hard to the economy. It is unfortunate because much as we want to blame the Executive, every stakeholder that appeared before us such as the CRA tell us that in the fullness of time, it will be said there was a regime that came and borrowed and threw all caution to the wind and never listened to anyone's advice on how to manage the economy.

We will also be given a prominent chapter that the 12th Parliament of the Republic of Kenya was hand-in-glove with that Executive. Every time they have come before us we have, of course, jointly given an extension. A few of us never gave them that chance. We carry the blame collectively as an institution.

Over the years, there are two or three gentlemen who for the six or seven budget cycles always make a lot of sense when they appear before the Budget Committee. I forget the exact name of the Non-Governmental Organization (NGO); that Abraham and two or three others. They appear before us and ask us these questions every time.

You look and dress like intelligent people, but the things you do are stupid. Who in the world does the things you do? The previous year, you pass a budget with a deficit of Kshs400billion. One time, a young lady appeared before us and told us, "you are all the ages of my father, but I know how to run my house better that you are running the country."

She said that out of the Kshs20,000 she was being paid, she was clever enough to live in a house where she paid rent of Kshs5,000, and access the train, so the transport costs to and from the Central Business District (CBD) did not consume more

than Kshs4,000. She was left with something to eat and could save at least Kshs2,000 or Kshs3,000.

Much as it looked simple for a complex problem, in essence, that is what we have been unable to do. We are like somebody who earns Kshs20,000, but wants to live in Karen, drive a Mercedes, put on the finest of suits, and each day on a credit card, wants to take lunch at Serena. We want to appear as if we are a big economy.

I do not know where we got this obsession to be known as the largest economy in East Africa. What is the motivation? Even if we are known to be the largest economy in East Africa, the rest of the region--- Whenever we go for the East Africa Legislative Assembly (EALA) games that we play every year, they tell us we look beautiful, but are full of debt.

We are like those people who retreat to the village every end of year to threaten their former classmates in primary school. They drive huge expensive vehicles all on loans. There is no difference between us and those people to the rest of the East Africans. They know that we have built the superhighways and railway lines, but they understand what is happening.

As a country, we should be cited at the East African Community Heads of States Summit because we have breached the EAC protocols on sound management of our economy. We have tricked the rest of the region.

We know very well that part of our obligations to the Community involve first, running our economy soundly which is why we read our budgets the same day. Secondly, it is assumed that as a region we are not posing a threat to each other. If Kenya collapses, it will have a ripple effect on the rest of the region. That is why we signed that protocol, where it is believed that what we are doing that what we are doing makes economic sense. Unfortunately, this is the situation as it is today.

As a House - and I said this a few weeks ago - of all the mistakes we have made, if we are able at least to find a solution to this debt issue, we will have cleaned ourselves up a bit and done something decent. The total amount of salary Kenyans have paid us for the 60 months we have been in this House will have been worth it if we, at least, present a roadmap. We must do it.

When we sat down as a Committee and thought about these six months, it was the feeling of many that if we do the six months from October, it would be around March of April. We have been in this House before during an electoral cycle. We know very well it is the season everyone is running around battling to get the party ticket for those who come from regions where you have dominant parties. To get quorum to pass any business here is always a struggle.

We must remain determined and call ourselves back when that comes to say what we are going to do about this issue. The figures are outstanding. We remember the proposals that came before us at that time saying, "22 per cent of our debt matrix is commercial. Therefore, grant us a chance to go and review it as we raise the ceilings, so that we retire old expensive debt."

Do you know what has happened? That figure has almost doubled to 36 per cent of our commercial debt matrix. We are paying interest as high as 17 to 18 per cent.

The most astounding thing is that when we referred back to that Report, when we were approving that debt ceiling, they said they would present the debt register before the House. We failed as a House because we have not pushed the CS. Instead they presented us with an excel spread sheet with no agreements or anybody's signature. That is what the Committee on Finance and Budget of the national Parliament relied on to calculate the debt level of our country.

Who signed? Who do we owe and what did that debt do for the country?

We were told that it was Exim Bank of Turkey. I am beginning to believe some of the stories that we read in the media; that part of the people we are borrowing money from are well to do individuals in this country. First of all, they mismanage the economy because they have the ways and means. Secondly, when you are in trouble, they actually lend you, so that they are assured. They have found ways of cleaning up their money.

It is a big kickback that you have out there. The minute you lend it back to Kenya, you have brought it back on to the world financial system. Nobody will ever question you because it will be a repayment from the Government of Kenya (GoK). That is a reputable institution; nobody will question these things. It is a crisis.

Madam Temporary Speaker, it is sad that as we discuss this matter, the House is virtually empty. I hope our colleagues are following. I hope everybody gets a chance to read through this Report, especially those that are not Members of the Committee on Finance and Budget. The things people presented to us were shocking.

It is unfortunate because there is no problem currently that is be-devilling Kenya, which you cannot trace back to the issue of debt, including even the fuel we were talking about last week. Why are we increasing it? It is because it is an International Monetary Fund (IMF) condition. We have been told we have got to raise it, otherwise, you are not meeting your obligations. That is why the cost of fuel and energy has to go up.

Madam Temporary Speaker, if you talk about the challenges we are having in the National Assembly, the other day with regards to health and the amendment to National Hospital Insurance Fund (NHIF) Act. Why are they reviewing some of the services that NHIF has to provide? First of all, the institution no longer has the financial ability to run itself.

You know how sad this issue is; that a few months ago, maybe a year or two at most, many of our well to do public institutions were duped into releasing their cash reserves back to the National Treasury with a beautiful story. They were told this money as Kenya Pipeline Corporation (KPC), Kenya Railways and NSSF, you are keeping it in local banks. The same local banks are lending it to us, as the national Government. Why do you not give us this money? That was the saddest thing that happened.

They whooped together almost close to Kshs100 billion. All that money went to pay debt. As it is right now, most of those institutions cannot even last more than a month or two without Exchequer releases. These were well run institutions. They were ranked as some of our best parastatals. People were coming from as far as Zimbabwe, Malawi and the rest of the regions to study how some of these institutions are run. However, because of the issue of debt, we are where we are today.

Madam Temporary Speaker, what are the proposals that the Committee on Budget and Finance is giving to this House for consideration? First is the legislative proposal which I have looked at. What we have said is that much as we know what needs to be done, I am sure you will listen as the rest of the Senators present about consolidation of our fiscal deficit. That is ensuring that, first, we live within our means. We will do all those things, but let us listen to the culprits first. The people who have led us into this mess, what proposals will they be giving?

Secondly and most important, which is being mentioned, is openness in the debt process. I have mentioned the sad experience that we had to go through while

looking through this particular documentation. As a representative of the people, the people of Kericho County expect me to know better.

When we go to public functions and speak about debt, they look at you and ask: Who is this that we have borrowed from? What was the collateral that was given to Standard Gauge Railway (SGR)? I remain as clueless just as the people who are not in this House. It is not fair to them. I feel bad about it.

Madam Temporary Speaker, as a House, we need to do better. When we speak about openness with regards to how we are handling our debt--- When that legislative proposal comes before us, we will make a checklist of what it takes before any lender can know that they are doing genuine business with the people of Kenya.

By the way, this is something that we may want to consider later on. How sure are we that some of these monies actually made it to the Republic of Kenya? We will need to read through these agreements, comb it and understand. What was the agreement and at what percentage? Did anyone benefit unduly? That is at least for what is behind us.

Madam Temporary Speaker, however, we have got to handle this problem by thinking about the Kshs9 trillion that is behind us. What is it that we have got to do in the future? The truth of the matter is that where we are, it is not possible to say that we shall stop all borrowing because even the revenue that we are generating internally as a country cannot run our operations as a country. Forget about paying debt. You know those are international obligations, which we must meet.

We must come up with a checklist and put it in the public finance management laws of our Republic. What documents does any lender, and it should not just be the signature of the Cabinet Secretary (CS) for National Treasury because you are doing business with 47 million Kenyans. There should be other checks.

Madam Temporary Speaker, first, institutions such as the Controller of Budget is an independent office. We need to ensure that there are documents that they approve, check and satisfy themselves that this one has met those conditions. Secondly, the Auditor General must check and read through the records.

The Attorney General should check on the legal soundness of some of these agreements. You remember when we were debating the issue of debt here, we were told how some of these agreements that we have entered into are so lopsided. If we were to get a windfall for whatever reason, for example, if the Government of Kenya was to sell shares in some of these lucrative parastatals, so that we free ourselves from these debts, we cannot even pay ahead of time. They want you to pay for longer, so that you pay more. What kind of agreements are these that we are signing? The Attorney General is an important office that we must include in some of the checklists.

Lastly, Parliament is the gathering of the people of Kenya. Therefore, we must satisfy ourselves. Where Kenya has reached because of this trying to make ease of borrowing as a way of doing business for Government of Kenya, we find ourselves where we are. I do not see why we do not want to make it easy for them to lend us. Let it come to Parliament so that the Committee on Finance and Budget in both Houses can be notified. As a Committee, they approve the same way we approve all regulations that come to Parliament.

If we approve regulations that manage different sectors, how difficult is it to demand that at least for many of these borrowings that we are undertaking, let the people of Kenya through their representatives at least have a say. This is so that you come back to your colleagues and tell them this is the reason we are borrowing, and these are the conditions.

Madam Temporary Speaker, finally, as a country, we must also consider non-debt financing options for many of these projects that we are undertaking. Unfortunately, that remains to be the only option. Somebody asked - I do not know who. I think it was Sen. Mutula Kilonzo Jnr. while speaking earlier. He asked that even for these gentlemen and ladies that are running to be President, they are running to manage what?

Out of simple mathematics, a collection of Kshs1.6 trillion, you have already more than Kshs1.1 trillion going to debt non-negotiable with you. You are left with Kshs500 billion. You have not funded counties nor done any development. You have not met recurrent expenditure of more than Kshs600 billion.

Madam Temporary Speaker, borrowing is a must for any of these people that are coming to run this country. How do they do it? That is why we have made this proposal. Indeed, as a country, we must continue to increase and think what other countries are doing to manage their economies better. This non-debt financing option remains to be one. Let us go back to our pension institutions and generate revenue and use that financing soundly.

The cost of doing many of our projects is prohibitive. The law that we recently passed here, as a House, on Public Private Partnerships (PPP) gives us one other avenue, so that we ensure that we are not crowding the Exchequer. Let us do projects in a sustainable manner.

Madam Temporary Speaker, those are my thoughts. I do support this Report. I look forward to those legislative proposals as they come from the Ministry of National Treasury, so that we at least fix this particular issue. Otherwise, if we do not do it, I consider it to be the biggest challenge that we are facing as a country. This is because if we do not rise up to this challenge and address it, then in the fullness of time, as a country, we will go the Greece way.

That will be unfortunate because it will leave a big scar on all our faces. It will not matter whether you are in opposition or Government. So long as you are a leader in the Republic, people will have questions.

Madam Temporary Speaker, there is one last thing before I sit. I hope that at one time, just like we were able to rise above the challenges of the partisan politics that is the nature of our work. We place before us all these people running for office of President either at committee level or even a caucus of Senators against maybe debt mismanagement in the country. We just listen to the plans of all these presidential candidates.

I know that Sen. Sakaja had spoken earlier and said that it is only Hon. Musalia Mudavadi who speaks about this issue. Even him, I want to hear his plan. The things that he says about let us stop borrowing that alone cannot solve this. We already have a problem. We would wish to hear to the rest of the people that we represent. Let us hear their thoughts and perhaps help them in one way or the other as the people who have assisted them to borrow in solving this matter.

Madam Temporary Speaker, by the time they go to the election, at least they have reached a solid agreement with the people of Kenya that when I get into office, first, I commit. Let people come and make commitments before us that I will not run a budget with a fiscal deficit of Kshs400 billion or Kshs600 billion as is the case in this current financial year. We cap it at a particular amount and, that way, we will have assisted the people of Kenya.

With those many remarks, I support this report. Thank you.

The Temporary Speaker (Sen. Nyamunga): Thank you, Senator. Sen. Cherargei, proceed.

Sen. Cheruiyot, can you approach the Chair.

*(Sen. Cheruiyot consulted with the
Temporary Speaker (Sen. Nyamunga)*

Sen. Cherargei: Madam Temporary Speaker, thank you for this opportunity. This is a national concern. The unsustainable public debt we have as a country continues to be a threat not only to the economic development of this Republic, but also the security and stability of this nation. If the economy is not doing very well, it becomes hard for the citizens to sustain their livelihoods.

As we talk today, this unsustainable public debt continues to bite very hard to many Kenyans across the country. When you have a budget of over Kshs3 trillion and by the last projection before Coronavirus disease (COVID-19), the Kenya Revenue Authority (KRA) projected Kshs1.7 trillion in terms of revenue. We were paying close to Kshs1 trillion towards the public debt. It is very sad for the nation.

Madam Temporary Speaker, we must agree, as a nation, that this is the right time to have a conversation about the public debt, which continues to grow daily and has become unattainable. It continues to affect the economy from the small micro-enterprises to macro-enterprises that we have in this country.

The public debt is at Kshs7.7 trillion. Word has it that the National Treasury might approach this Parliament to raise the public debt ceiling to Kshs12 trillion. I am happy that I am among the few Senators who resisted the rising of public debt to trillions of shillings when it came before this House.

As a country, we must agree. The President did indicate sometimes back that they were suspending all development projects because some of them were being financed by loans and heavy borrowing that was being done from commercial loans, Public Private Partnerships (PPP) agreements, among others from other countries.

Madam Temporary Speaker, we must agree that as a country we have a problem with the public debt. It is sad, and I have read the Committee's report, that the National Treasury is yet to submit a legislative proposal on various aspects of public debt that we have as a country. The fact that the country's public debt as at now stands at Kshs7.7 trillion in terms of being owed to commercial borrowing from other countries is very unfortunate.

We continue to raise public debt into around Kshs12 trillion. As a Parliament, we must be concurrent that when the matter of raising the public debt to Kshs12 trillion comes to this House, we must have passed these legislative proposals. We must have Public Debt Management Authority. We must be told why we are borrowing and for what. We cannot borrow to finance a recurrent expenditure. If it comes to the worst, we only borrow for development.

Madam Temporary Speaker, as my Senate colleagues have said, we risk losing some of the strategic assets of this country when the loan is being defaulted. As COVID-19 has been in the country, the economy has been performing poorly. What happens and what is the fate of Kenya when, for example, Chinese come for their loan and we cannot pay them? We have Jomo Kenyatta International Airport (JKIA), Lamu Port among other assets that we have as a country. We even have foreign missions and embassies across the world. Could they seize those assets to repay off their loans?

As a country, we are staring at a crisis. If this unsustainable public debt continues, it is a threat to the stability of the nation and national security. When *wananchi* in Kisumu County in Nyando, where you come from, do not have money in

their pockets and the economy is doing badly, we cannot be safe in this country. They would want to eat and their children to go to school.

Madam Temporary Speaker, we must agree as a nation that this is the right time to have a conversation even as the Ministry of National Treasury plans to increase public debt to Kshs12 trillion. Parliament must make some hard and painful decisions to the interest of the country and protect it. It would be untruthful to tell the country and the world that Kenya will not borrow because you have to borrow.

For the last so many years, we have a deficit budget that needs to be financed through borrowing. There are commercial loans, internal and external, borrowing and foreign bonds. There is the issue of bonds that has always generated interest and a lot of issues when it is being floated across there. It has also been a challenge. If we do not have a legislative proposal or guidance that is already there, it cannot be well for the country in terms of economy.

Madam Temporary Speaker, it is unfortunate that as we talk, I have seen the recommendation of the committee that the Auditor General should do a special audit. Unlike the commercial loans, as a country and Parliament, these are the reports that should be presented. In fact, the Auditor General should have done a special audit to ascertain how much these commercial loans are.

As at now, the Committee, National Treasury - the people in charge of the Executive - cannot tell the country that the commercial loans that are being owed until we order a special audit. I hope that this special audit can be done as soon as possible. In case the National Treasury requires that we raise the public debt borrowing from current Kshs7.7 trillion to Kshs12 trillion, then we can agree, but after looking at those reports from the special audit.

Madam Temporary Speaker, Article 201 of the Constitution on the principles of public finance says-

“(d) the burdens and benefits of use of resources and public borrowing shall be shared equitably between present and future generations.”

Unfortunately, the debt that is there, the current generation we have borrowed from the future generation, posterity that is yet to be born. The pain of repaying the public debt that stands at Kshs7.7 trillion has been borrowed already from the future.

We must be careful with the borrowing. The public money shall be used in a prudent and responsible way. It is very unfortunate that it can be borrowed, but we cannot get the value for money that we have as a country.

Madam Temporary Speaker, it is good to tell the country that we have already borrowed on behalf of the future. These public debts shall be paid by the future generation who are not in existence. The Constitution says that the resources must be equitably shared between present and future generations. The resources that are there will not even benefit the future because we have borrowed on their behalf. Somebody was projecting that when a child is being born, every Kenyan owes around Kshs60,000 to Kshs70,000 for 47.9 million Kenyans as per the 2019 population and housing Census.

I have even seen recommendations by the Council of Governors (CoG) 2022/2023 in terms of the Equalisation Fund. They want more than Kshs300 billion in addition to what they have been allocated of more than Kshs370 billion in terms of equitable sharable revenue by saying that the economy has fully recovered from Coronavirus disease (COVID-19). The CoG made those resolutions yesterday.

Madam Temporary Speaker, the question should be how it is possible to sustain when we have a budget that is already on deficit and is being financed by borrowing locally and internationally. It is noted that Kshs61.5 billion out of

Kshs70.1 billion proceeds from the international and foreign bonds were utilised to meet recurrent expenditure, contrary to Section 152 (c) of the Public Finance Management Act. That violated the law.

The only reason is that there is no legislative framework put in place to ensure prudent public debt management in Kenya. Parliament has let down the country. The National Treasury cannot borrow without the sanction and approval of Parliament. We cannot lie to Kenyans by telling them that the unsustainable public debt, that is Kshs7.7 trillion, is because of Kenyans or the Executive. The Executive brought a proposal here, I think six or seven Senators voted against and the rest agreed with the Government.

Madam Temporary Speaker, it behooves all of us. It is we, as a Parliament, to be part of how to rectify this public debt. As many of my colleagues have alluded, how will most of the people running for presidency manage the country? If the country was a company, it should be declared under receivership. We have a public debt and the Kenya Revenue Authority (KRA) is not meeting its taxes. It is chasing everybody helter-skelter and trying to collect by squeezing the same people.

One interesting thing is my fourth point. This country is funny especially KRA. You will find KRA trying to chase somebody helter-skelter. Those are small businesses looking for that revenue and they close that business. They do not think how they are going to assist by creating a good environment to ensure that business is sustainable.

Madam Temporary Speaker, I heard President Samia Suluhu Hassan in one of her speeches. She was asking the Tanzania Revenue Authority: “When you go and close that business for non-payment of taxes, and it is closed forever, where will you get the next tax?” The KRA must also be creative in terms of revenue mobilisation.

How do we create a sustainable business environment that in as much as taxes need to be paid, and avoid tax evasions and we do not encourage smuggling of goods and non-payment of taxes by everybody? How can they be creative to create an environment that would be better for all of us?

Madam Temporary Speaker, another point they have said here is inconsiderable in debt servicing expenditure constraining space and causing budget inflexibility due to diminishing revenues available for other critical government expenditure. At the beginning of COVID-19, and I expected the Committee to tell us this, there was what we call austerity measures. Parliament cut its expenses. We were told that even the President and the Deputy President took a pay cut and they said the economy is not doing very well.

Madam Temporary Speaker, what happened to the austerity measures that we have in Government? It is sad that we are told austerity measures are in place, but you do not see that money, for example, in terms of running Government operations. It is important that the Committee has noted this. What happens when the Government says we must put in place austerity measures?

Should we wait for World Bank, International Monetary Fund (IMF) and other international agencies to give us structured adjustment programmes like the way it happened in early 1990s for us to fix our economy? Should we wait for another set of structural adjustment programmes that have been given by IMF, World Bank and other international advisors?

Madam Temporary Speaker, as a country, in a way, when we say we need austerity measures, we need to save and the Government must spend some of the little money that they have, then it must be in an honest and fair way.

I want to advise the Committee as I disagree with the Report. I would request the “incoming” Governor for Murang’a County to be patient because you can become a governor and there is no money to run your county. You will be thrown out by *wananchi*. Be patient and listen to serious submissions.

Madam Temporary Speaker, when you talk about the legislative proposal, I have been a Chairperson of a Committee. If you tell a Government agency to go and develop a legislative proposal within six months, they have never done that. You allowed us courtesy of the Office of the Speaker to interrogate the Cabinet Secretary (CS) for Petroleum and Mining, Hon. Munyes. The Office of the Speaker facilitated everything. The CS could not even develop regulations on how to manage Petroleum Development Levy Fund (PDLF) that should have been used to cushion the ordinary *wananchi* when the price increase of fuel came across the country.

In the wisdom or lack thereof, the Committee - and Sen. Mutula Kilonzo Jnr., should be listening to this - should have developed a legislative proposal in concurrence with the Ministry of National Treasury, instead of saying that we give six months that they need to develop. I saw the Chairperson was here, but he can read the statement. We say go and develop a legislative proposal.

Madam Temporary Speaker, do we look at the option where we have Public Debt Management Authority? Do we need a framework on how we can manage some foreign bond? Do we need to look at the rules and regulations? Do we have a way of how to retire expensive old loans? Who sanctions? Do we need even a referendum?

Now Parliament looks like they are dancing to the tune of the Executive. Do we need to do a referendum to tell the public to allow the executive to borrow? If we do not allow, we are risking the future stability and security of the nation.

The Temporary Speaker (Sen. Nyamunga): Senator, you will have a balance of two minutes when this Motion is listed next time for debate.

ADJOURNMENT

The Temporary Speaker (Sen. Nyamunga): Hon Senators, it is now 6.30 p.m., time to adjourn the House. The Senate, therefore, stands adjourned until Thursday, 21st October, 2021, at 2.30 p.m.

The Senate rose at 6.30 p.m.