

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 3rd March, 2021

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

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

PRAYER

PETITION

DELAYED ADJUDICATION AND SETTLEMENT OF SQUATTERS
ON MACHUNGWANI LAND IN TAITA TAVETA COUNTY

The Speaker (Hon. Lusaka): Sen. Mwaruma is not here. The Petition is supposed to be read by Sen. Kasanga but she is not here. Therefore, the Petition is deferred.

(Petition deferred)

STATEMENTS

ADDRESSING CORRUPTION IN POLICE RECRUITMENT

ABUSE AND MALTREATMENT OF CHILDREN

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

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

(Statements deferred)

POWER OUTAGES IN VIHIGA COUNTY

Sen. Khaniri: Thank you, Mr. Speaker, Sir, for giving me this opportunity. I rise pursuant to Standing Order No. 48(1) to seek a Statement from the Standing Committee on Energy concerning the frequent power outages in Vihiga County.

In the Statement, the Chairperson should-

(1) Explain why Vihiga County experiences frequent power outages that cause disruptions in the economic and social-economic activities;

(2) Explain what has been done about it so far, considering that this is an issue that has been going on for a long time;

I have brought it here before on the Floor of this House.

(3) Explain when and how this issue will be dealt with once and for all.

Sen. (Dr.) Ali: Thank you, Mr. Speaker, Sir. I thank Sen. Khaniri for bringing this Statement which should not only be about Vihiga County but the whole country. This is because Kenya Power and Lighting Company (KPLC) has failed the country. They are collecting money from everybody but failing in every way, not only in the rural areas but also in Nairobi.

A person has to pay Kshs30,000 or Kshs40,000 for a House which has five people. KPLC is a looter and something should be done about it.

In Wajir, we have had problems with KPLC day in day out for the last one month. The whole town is on rationing. We are going into the month of Ramadhan soon and if we continue with this, there might be riots in Wajir.

Mr. Speaker, Sir, if you remember, I have brought issues concerning Wajir County to this House three or four times. However, most of the times, nothing has been done.

The former manager left, a new one was appointed, they tried to do something but now they have gone back to where they were before. So, I asked the Committee to look into these issues not only in Vihiga County but also in Wajir County and other parts which have serious problems.

The Speaker (Hon. Lusaka): We have a problem with the system. So, use the Dispatch Box.

Proceed, Sen. (Dr.) Ochillo-Ayacko.

Sen. (Dr.) Ochillo-Ayacko: Thank you, Mr. Speaker, Sir. I believe the problem that we have is also with KPLC. This Dispatch Box seems to be linked to KPLC, which is a problematic animal. I am glad that the Chair of the Committee, Sen. (Eng.) Maina is here.

One time, I had the privilege of being the Minister for Energy. We noticed that KPLC suffers from two kinds of losses. That is technical losses that lead to power outages and commercial losses. So, KPLC is a loss-making entity. However, this should not be the case because it is a monopoly and is supported heavily by the National Treasury, which borrows and guarantees money to it to improve services to Kenyans yet it is unable to do so.

Mr. Speaker, Sir, as we speak, last week, my wife who runs my electricity bills found that KPLC changed one of the bills for her hotel to her personal name and in order to get it back, they wanted her to pay Kshs10,000. They change your bill without requesting and demand Kshs10,000 from you. She had to look for the money, give it to them and later on request for a refund.

I request the Chair of the Committee on Energy to seriously deal with KPLC. They are good at disconnecting people's power supply and not responding to their requests yet year in, year out, they plead to the Government to give them our money to guarantee loans that they have taken from our money. They should tell us whether they

have failed so that we start another entity or other generators are made to distribute electricity instead of having KPLC as a monopolist.

The Speaker (Hon. Lusaka): The system is back. You can speak from where you are. Do not lift up your hand because I can see your requests.

Sen. Linturi: Thank you, Mr. Speaker, Sir. I rise to support Sen. Khaniri's Statement.

It is worth noting that power outages are not only a common phenomenon in Vihiga. Meru is one of the worst hit counties in terms of power outages despite there being some sub-stations within the county, especially in Maua where I come from.

Mr. Speaker, Sir, I have stayed without power. I have a generator which runs my house yet I have KPLC next to my door. So, the problem that we are talking about cuts across this country.

As the Committee looks into this matter, there are a few other things that they must bring to the attention of this country. This is because a lot of resources have been channeled to KPLC through various agencies to make sure that power distribution in the country is effective, efficient and accessible to most common citizens.

Mr. Speaker, Sir, I remember when I was a Member of the National Assembly, every constituency used to put in around Kshs15 to 30 million as what we used to call a matching facility for provision of power in our constituency. This money was, in my view, a grant to KPLC.

Therefore, I want the Committee to further find out what the return on that direct investment by our constituency to KPLC is. This is because KPLC is half private and half Government. Money that has been put into it by way of National Government-Constituency Development Fund (NG-CDF), grants and others must be reflected by way of how much KPLC pays to the exchequer every financial year if at all, they are making any profit. I have never had an opportunity to interrogate their accounts.

If they are not making any profits, it is unfortunate. We do not expect this to change in the near future if that is the situation. The country is waiting to see what will be done beyond the power outages. This is because the power bills are so expensive.

The economy is doing badly and our hustlers down there are unable to access or pay for power. They are being disconnected every time and so they cannot run their kiosks. Things are bad.

I thank Sen. Khaniri for bringing this Statement. It has come at the right time.

Sen. (Dr.) Zani: Thank you, Mr. Speaker, Sir. I support Sen. Khaniri for this Statement. He continuously bring Statements on issues that touch on his county and so he is representing his county well. As he does that, he is also representing many other counties. There is no county that is not suffering from consistent power black outs, which are sometimes without notice.

This also goes to industries. This Committee should also investigate for every one hour of lack of power, what does it translate in terms of industrial loss and how much money are we losing? This is what some of the investors consider before they put up their businesses. If they find out that they will have power blackouts all the time, they might not be keen.

At the household level, there are people who buy their foodstuff but the power goes off for a whole day sometimes without a warning. Sometimes, they give a profile of

the places that will not have power but what do we do with that because we still need power?

This Committee should begin to look at alternative means of energy. I know that there was a lot of talk about solar and windmill energy from the Committee on Energy. How far has the Committee gone on engaging with stakeholders to find how we can look for these other alternative sources of energy through other means?

This will be very important. Despite all that, you find the people have to pay very high power bills. There are a lot of disappointments in this sector.

Mr. Speaker, Sir, this Committee has a lot of work from that one question from Sen. Khaniri. We can just expand it to that particular sector in terms of provision of electricity throughout the country.

I thank you.

The Speaker (Hon. Lusaka): Sen. Farhiya, proceed.

Sen. Farhiya: Thank you, Mr. Speaker, Sir, for giving me this opportunity. Thank you, Sen. Khaniri for bringing this Statement. Power outage is everywhere in this country including the Lavington, Karen and Wajir areas of this world. Everywhere there is power outage.

Sometimes what I do not understand in public sector is; if somebody does not deliver, why are you keeping them there? This problem of Kenya Power and Lighting Company (KPLC) has been there for some time.

Mr. Speaker, Sir, in my county, for example, every year during Ramadhan time, there is complete power outage. Sometimes you just wonder whether they work with the devil. There is no other explanation.

Marsabit County produces 210 megawatts of electricity. Wajir County is a neighbor to Marsabit County. What is the problem of just pulling that power from Marsabit County to Wajir County? This is so that people of Wajir County can feel part of this country and be served as well.

Mr. Speaker, Sir, if it does not work, do something about it. Why are we not fully privatizing KPLC? Let the Government sell it if it cannot provide power. Provision of power should be privatized. There are people who can invest in Wajir County, for example, start billing and they can get power.

Like I said here another time, power outage has been in Wajir County since I was in primary school. Can you imagine what kind of a situation this is, that year in, year out there is nothing being done?

Mr. Speaker, Sir, if we could have privatized, even the cost of energy would have come down significantly. There is also a problem with the billing system of KPLC. Not only do they charge you highly but you wonder where that money goes because KPLC is a money looting machine. We are just watching as it loses money, yet what they charge and the output does not correlate at all. Where does all this money that we pay go to?

In this House, we talk about a problem. From 2018 to date, there is no town that either Sen. (Dr.) Ali or I have not brought a Statement on, in this House, regarding power outages in Wajir County, but nothing has been done. Why are we wasting our time debating here if our contributions do not account for anything?

Mr. Speaker, Sir, it is high time that KPLC is dealt with decisively. This is so that Kenyans do not lose their resources to a money losing venture. How long can the Government finance? This country is full of clean energy. There is enough solar and

wind. You do not even need fuel-based energy. From hydro to solar, to wind, there is enough power in this country. Let us harness that opportunity that this country has instead of us having to lose money all the time.

I thank you.

The Speaker (Hon. Lusaka): Sen. (Eng.) Maina, I will give you the last opportunity since you are the Chairperson. Sen. Mutula Kilonzo Jnr., proceed.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Speaker, Sir. It is actually a misnomer to call this company Kenya Power and Lighting Company. It is Kenya no Power and no Lighting. It is a misnomer.

(Laughter)

The second point is that when all of us got tired of talking about Kenya Airways, we formed a Select Committee. It is when we discovered what the problem of Kenya Airways was. It was mismanagement and looting by the group of Mr. Titus Naikuni and Mr. Mbuvi Ngunze.

Mr. Speaker, Sir, what nobody is going to say is that KPLC is overwhelmed by faulty transformers brought here by tenderpreneurs. They will never tell you. In Makueni County alone, there are 300 failed transformers.

By the time they replace those transformers, people are running for months without electricity and schools are suffering. This cost is being transferred to teachers and parents because they have to pay for the cost of generators.

The third one and the most important is that any company that attempts to get a license for alternative energy, they get hell on earth in the Ministry. This is because the Ministry officials are protecting cartels. That is where the problem is. I know somebody who is prepared to do solar energy in Makueni County. However, even to get an appointment to do so, he cannot.

Mr. Speaker, Sir, we must interrogate this issue. The wind power from the projects that are in Turkana, Ngong Hills, *et cetera*. You do not even know where this energy goes to.

I had the privilege through an organization in Germany of the First Chancellor. I went with Sen. Were and Sen. Kinyua. The Germans have figured out this problem. They have hectares and hectares of wind power and hectares and hectares of solar power. One windmill is enough to deal with this sort of problems.

Mr. Speaker, Sir, however, what Sen. Linturi is saying is correct. You know Sen. Linturi professes to be a hustler. He can afford a generator. His generator is Kshs2 million or Kshs3 million and he can pay fuel of Kshs30,000 or Kshs40,000 a month. The real poor Kenyan cannot even afford a lamp. The welders and the people who are doing small little things cannot weld. Markets are dead.

If we are going to actually promote the things that are happening in the countryside, it is to get to the bottom of the operations of KPLC. You should not call the Cabinet Secretary (CS) here quietly. I know the Chairperson is a very polite man. He is an extremely polite gentleman. He has been here for a long time and he knows. He is going to be so nice to the CS and his Principal Secretary (PS) when they come here.

Let us interrogate the energy sector through not only non-provision of power, but also why we cannot license private companies to provide alternative sources of energy.

That is the solution. It is to wake up this company and we remove the word “Kenya” from them. This is because they are not Kenyan. That is not the way Kenya should be.

Thank you.

The Speaker (Hon. Lusaka): Sen. (Eng.) Mahamud, proceed.

Sen. (Eng.) Mahamud: Thank you, Mr. Speaker, Sir. Let me also thank Sen. Khaniri for bringing this Statement regarding power outage in Vihiga County. Power outage is actually a phenomenon in the whole country. It is not confined to Vihiga County.

The KPLC over the years have not been able to light up the country as required. Look at the systems that are on the national grid. At the slightest of rain you see there is outage. In fact, you do not see the relationship between rain and power outage. In fact, even in Nairobi, the outage is very common.

Mr. Speaker, Sir, in systems where we come from where we are off grid, they are areas in this country where they are put off grid systems and those are not functioning. A case in point is my county in a place called El Wak, which has been in darkness for the last several months at a cover, which is, of course, in the same position.

In Mandera town itself, there are generators that are under capacity and no attempt is being made to bring them to standard. We are told that every time, they are procuring new generators. The capacities which were planned some years back are not functioning any more. People have to bare power rationing which is excess and nobody knows when it is going to end.

Mr. Speaker, Sir, Kenya Power Company has a monopoly of power in this country. They must up their game. The Committee must interrogate this issue properly, so that we are able to give power and lighting where it is required. Since they are the only ones who are supplying this service, something must be done and they must be put to task. There is no competition and of course, bills are getting very high with people complaining about their bills. We are also paying for some independent power suppliers; we do not know how long they will be there.

The combination of power sources such as hydro-power and independent power stations like wind generated, overtime we have been told that this is being done, but as the population of Kenya grows and with increase in the demand for power, Kenya Power Company must pull up its socks especially in those outlying areas in our regions. Something has to be done and I urge Kenya Power Company that they must restore power in El Wak. People are suffering in this heat where temperatures are rising to over 35 and it is unbearable.

Sen. Outa: Thank you, Mr. Speaker, Sir. I take this opportunity to thank my neighbor Sen. Khaniri for bringing this Statement.

Kenya Power has become more of a white elephant in this Republic. We are affected in Kisumu County. As you know, some of the Members call themselves hustlers.

However, the small business people in Kisumu, especially, the *mama mboga* and the welding people who want to do their business at night cannot do their jobs because it has become a tradition that even a City like Kisumu, where the economy depends on the supply of power, you realize that with any slight change of the weather in the evening or day time, there will be a total blackout for hours. That has gone on for ages. The major problem or the elephant in the room is the cartels that embedded themselves in this

Company. Today, even as you want to bring an alternative solution to have enough power for this country to grow, you will not be able to break that cartel.

If the Chairperson of the Committee is listening, I would like to tell him that if you go for an alternative license, you will not get it because Kenya Power has already given them out. I personally brought people here, they did a survey in Kisumu and they came up with an alternative like the windmill that can produce a lot of power and the extra will be channeled to the main grid. Up to date they have never got a license.

Another group came in to do what we call solar power. They did a survey at Awasi. They found a station so that they could have enough for Western Kenya, but up to date they have not been licensed.

There is a cartel in Kenya Power Company and I want the Chairperson to go deeper, not only to the outages of the supply of power, but dig deeper and come up with all the names of cartels within Kenya Power because they are comfortable, you cannot move them. They think that they own Kenya and they do not need advice from anybody.

In the village area where my home is, if the power goes off, you are going to have a blackout for months. They cannot even afford to replace the poles when the wind blows them down. Kenya Power is comfortable in their zone, but it is a high time that we wake them up so that we get rid of the Kenyans who have embedded themselves as cartels to allow us develop this county.

I thank you because this alternative is what we need in order to make progress. This is the only thing that will awaken Kenya Power Company. If we do not push to find out who these people are, those who are given this license and who cannot give them out so that they are given a timeline in that if anyone has already been licensed and cannot come up with investment, they should be given timeline. Therefore, we will be able to rescue Kenyans who need power to develop this country.

I thank you.

Sen. Omogeni: Thank you, Mr. Speaker, Sir. First, I thank Sen. Khaniri for bringing this very important Statement to the House. Anybody who uses power in any part of this country will affirm that power that is being provided by Kenya Power is the most unreliable.

If we go down memory lane, we know that privatization has made life easier for many Kenyans. If we never allowed companies like Safaricom and Airtel to set foot in Kenya, we would not be having access to communication through mobile phones the way we are do. Unless we solve the problem of monopoly by Kenya Power, we will continue to have problems.

Mr. Speaker, Sir, I do not know why this country cannot learn from other jurisdictions. I was a student of Geography and when I was in form six, and if there is anybody who went through the A-Level system of education, we had a programme that was introduced by President Franklin Roosevelt in Tennessee Valley Authority. It was a whole chapter.

Tennessee Valley Authority (TVA) was set up with the aim of not only controlling floods, but also providing a source of power to Americans who were living in the state of Tennessee. If you check today, Tennessee Valley provides the cheapest source of power to the national grid in America.

If we allow liberalization in this country, you will be surprised that we will access power much cheaper than what we are paying to Kenya Power today.

(Applause)

Why are we not opening up this sector by inviting other investors to come and provide reliable and cheap electricity to Kenyans? Why are we behaving like we are in stone-age? That will be a source of jobs. Tennessee Valley provided jobs to many Americans and it controlled floods.

The other day I was at home enjoying an evening and then power went off. I never saw it until the following day; no warning no nothing. Even if you called the customer care line, you will call for eternity, nobody will pick your call and there will be no solution.

I hope that the Committee that is chaired by my good friend, Sen. (Eng.) Ephraim Maina, can provide some solutions going forward. We cannot allow this kind of situation to continue.

I do not understand why we cannot have wind power in Northern Kenya where there are vast acres of land. Why are we only relying on Kenya Power Company? The temperatures up there allow for solar power. We really need a solution because our people are suffering.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Chairman, as you come, you can hear the sentiments of the Members. I remember that this issue was here and we directed that the whole House sits and meets the Committee on Energy and all the stakeholders. Chairman, as you come to talk, you need to bring us up to speed on what really happened because I want to give a direction that will address this matter once and for all. We cannot become a House of lamentations. There are very many other books in the Bible; we cannot just be reading Lamentations.

(Laughter)

Sen. (Eng.) Maina: Thank you, Mr. Speaker, Sir. I want to thank my friend, Sen. Khaniri for bringing this Statement. However, this is not the first time that this matter is coming before the House and also not the first time that my Committee has consistently been concerned.

Gentlemen, we are all Kenyans. I must say that what Sen. Khaniri has brought here is not specific to his County; it is in all counties even here in Nairobi City.

I do not know where you people live, but I can tell you that I am a culprit of these shortages. I keep on buying gadgets in my house, adapters and so forth. There is therefore no doubt that there is a problem.

Mr. Speaker, Sir, I must remind you the history of this country. Kenya Power and Lighting Company (KPLC) was our prime company at one time. When I was growing up, KPLC was a company that one admired. I remember that they came to my secondary school and tried to recruit some of us to work for them. KPLC was a very efficient company.

Gentlemen, let us not condemn the idea of KPLC as wrong. I want to caution that this private partnership that is being talked about is not the solution to this world. If we look at countries that have developed, including the United States of America (USA). They developed and are where they are because of big state co-operations. The National

Aeronautics and Space Administration (NASA) projects are done by state co-operations, and they work efficiently.

Kenya was there. Where did we go wrong? Sen. Mutula Kilonzo Jnr. mentioned that there are issues with about 400 transformers that were bought. We have considered this in my Committee and demanded that we be assured that these 400 transformers were never installed. I do not know what happened.

When we say that, there is the Kenya Medical Supplies Agency (KEMSA) story. You can tell me. It is more recent. I do not know whether you have the right story. What we are facing are things that might have happened because of our behavior. These so-called cartels, if they are there, are not cartels of simple people. They are not just in KPLC, they are in every sector that we are concerned with.

Mr. Speaker, Sir, I do not think there is a knee jerk solution to this problem. My Committee has gone into it several times, and we are ready to go back to it. I quite agree with you. I want the Members to have a chance where we will call these people and interrogate them. However, Parliament can only do the questioning, try to investigate, and try to offer solutions.

My Committee has offered solutions. We told them not to buy transformers from some rural village in Northern India, Pakistan or China. We told them to buy transformers where we used to procure them from in Germany or Britain, and they can get a 10 year guarantee, and they used to stand.

Sen. Mutula Kilonzo Jnr.: On a point of order, Mr. Speaker, Sir.

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

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I am going to speak as if I am in a funeral. Somebody is sanitizing this microphone.

Mr. Speaker, Sir, is it in order? The Chairman is lamenting even more than the person who has requested the Statement. He is the man we are looking up to, to tell us whether there are Indian transformers. The Chairman should not be looking for an assurance from the Ministry of Energy or KPLC. He should have the documents.

Were those transformers installed or not? I seem to think, and I suggest that we form a select Committee where we can request for documents and check them, but even more importantly, we can ask Kenyans to come here and tell us the problems they have had with KPLC. This is so that the Committee led by Sen. (Eng.) Maina can suggest even legislative changes. When he is on the Floor, suggesting that private partnerships will not work, he is actually attempting to answer questions that we have not asked yet. Please, direct the Chair.

Sen. (Eng.) Maina: There we are. I am not going to dwell too much on big language. I know that lawyers learnt many languages. I am not lamenting. I think it was unprocedural for me to be cut short. All that I wanted this House to note is that we are with them, and what we have done. My Committee has offered that we will write a letter to the National Treasury, if need be, asking that KPLC be given exemption on the issue of this tendering, so that they can procure transformers from the best in the world. That does not mean that the Committee is lamenting. We have gone a step further to solve the problem.

Mr. Speaker, Sir, let me now come to the problem. Let me now come to my point. I quite agree that we need to interrogate this matter and bring it to an end.

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

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

Sen. (Eng.) Maina: Mr. Speaker, Sir, a bit of protection is good because---

The Speaker (Hon. Lusaka): I know, but he is also entitled to do so.

Sen. (Eng.) Maina: Are you a hustler?

Sen. Linturi: Yes, I am a hustler. I am proud to be one, because I have hustled to where I am.

Mr. Speaker, Sir, I do not know whether you have heard the Chair of the Committee on Energy suggesting that they are going to write a letter to the National Treasury seeking exemption for KPLC to buy transformers from whichever country they want.

I would like the Chair to tell this House whether he is a part of the cartels. We have a lot of respect for the Chairperson because he is my personal friend. Whether he is a part of the team that does not believe in the rule of law, or that there exists a Procurement Act in this country---

That particular procurement law requires that when specifications or standards are set for goods and services that are being procured, the business of the procuring entity is to ensure compliance and conformity with the specifications that are being made.

With that, will the direction that they are trying to take open a floodgate for more corruption that has taken place and that is deep rooted in KPLC? That way, they will buy transformers at whatever price, because there are exemptions. Is he in order to suggest the circumventing of a procurement law that is established?

Sen. (Eng.) Maina: Mr. Speaker, Sir, I do not know whether I am hearing things right. It is important for people to try to actually understand and see where the reasoning is going. I did not say what we allow KPLC to import transformers from every corner. We have said it in the Committee. If anything, I was saying that we deal with specific manufacturers, as it used to be.

Let me tell you ladies and gentlemen, the problem this country is facing today is because even when you go to buy drugs, you do not know what you are buying because we are flooded with things from all over; the so called regulation and tendering.

Earlier on there were things that were restricted in terms of where you were to buy them because of the national importance. Kenya Power and Lighting Company and power security is a matter of national security; it is not just a question of providing electricity. We need to ensure that there is quality when we go to the world market. You do not just go floating tenders the way we are doing---

The Speaker (Hon. Lusaka): Senators, you can log in afresh. Sen. (Eng.) Maina, try to wind up.

Sen. (Eng.) Maina: That is the point I was making. With all these barrages from the ignorant and the misinformed, I have to try and straighten up matters.

The Speaker (Hon. Lusaka): There is a point of order. Sen. (Eng.) Maina you are inviting all these points of orders. Just complete but be careful in the way you address hon. Senators.

Proceed.

Sen. (Eng.) Maina: Mr. Speaker, Sir, they are my colleagues. You may not know this but there is the language we use to communicate in our informal interactions. Let me admit going back to Sen. Khaniri I agree - as you also suggested - it was also my feeling that we invite the Ministry.

The present management of the Kenya Power and Lighting Company that we are dealing with is not the earlier one. Senators should be aware of the fact that there was a change. They have confused us that they are trying to do their best to solve the issues that have already been there.

It is not just a question of power outages, we all know that one time there were agencies that were charging people for electricity. They were stopped through the efforts of my Committee. I gladly accept that we call the Ministry and Kenya Power and Lighting Company to try and understand the urgent steps they are taking to make sure this problem is solved once and for all because a country that cannot provide stable and adequate power cannot develop.

Thank you.

The Speaker (Hon. Lusaka): I am directing the Chair and your Committee that you do all these things within 14 days. If you do not come up with a concrete solution, then the other options such as what was suggested by Sen. Mutula Kilonzo Jnr. will be explored by this House.

If we look at Vision 2030, we cannot become an industrialized country with these kinds of power outages. That will be a pipe dream. So, do justice to this Statement by Sen. Khaniri.

The next Statement by Sen. Kwamboka is deferred.

OUTBREAK OF FOOT AND MOUTH DISEASE
IN NAROK COUNTY

(Statement deferred)

Proceed, Sen. Kasanga.

ABUSE AND MALTREATMENT OF CHILDREN

Sen. Kasanga: Mr. Speaker, Sir, I rise pursuant to Standing Order 47(1) to make a Statement on the issue of general topic concern namely the abuse and maltreatment of children.

I wish to draw the attention of the Senate to a deadly and continuous rising trend in Kenya where a large number of children are being subjected to various forms of abuse and maltreatment. In such cases, children are being exposed to physical, emotional and psychological, sexual abuse, neglect and child labour.

Article 53 of the Constitution establishes the basic rights of children including protection from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment and hazardous and exploitative labour.

The Ministry of Gender, Labour and Social Development in consultation with the National Council for Children Services and African Network for the Prevention and Protection against Child Abuse and Neglect, developed a national plan for action against sexual exploitation of children in Kenya 2018-2022. As such, our Government has put in place measures to ensure children are protected from sexual abuse and exploitation.

Mr. Speaker, Sir, conversely, a 2019 violence against children survey done by UNICEF Kenya found that over the last two decades, sexual exploitation and abuse of

children has worsened as shown in these statistics. Physical violence was the most common type of violence experienced by children and reported that 39 percent of young women and 52 percent of young men aged between 18 -24 years.

Nearly one in six young women about 16 percent of those aged 16-24 years experienced sexual violence as a child compared to 6.4 percent of young men with intimate partners the most common perpetrators.

Around a third of boys 32 percent and 34.3 percent girls aged between 13-17 years, experienced emotional violence such as being told that their parent wished they were never born. It is not common for children to report violence or seek assistance. Only 12.5 percent of young women who had experienced sexual violence as a child sought help and only 3 percent of young men.

Lastly, many children think violence is to be tolerated. More than half of the girls, 50 percent and almost half of the boys 47 percent aged between 13-17 years indicated that it was acceptable for a husband to beat his wife.

Echoing the words of UNICEF survey, a child's first experience of violence is often at home, in the school or community where they have a right to feel safe and be protected. It affects children from all backgrounds and can leave them with permanent disabilities, injuries, mental health issues and emotional scars.

Over this prolonged period of COVID-19 pandemic, we have all witnessed the numerous social and economic pressures that have intensified the number of cases of abuse and violence affecting the household including children.

Noting that only 12 percent of cases of sexually related violence against children are reported, leaving over 88 percent of cases unreported and the victims voiceless over repeated acts that are meted out on them, I would request the Speaker to refer this matter to the Standing Committee on Labour and Social Welfare pursuant to Standing Order 47(3). This is so that the Committee can, hopefully, within 20 days interrogate the state of achievement of the national plan of action as established by the Ministry and furnish this House with a comprehensive report on how the concerned departments are handling these matters.

The report should include the mechanisms in place to identify victims and children at risk, all relevant laws and policies that are utilised in enforcement, status of all convictions and progress made in rehabilitating victims, programs and activities aiding in sensitizing members of public and utilization of relevant budgets by the Ministry and relevant departments towards prevention and addressing cases of abuse against children.

Thank you, Mr. Speaker, Sir.

Sen. (Dr.) Musuruve: Thank you, Mr. Speaker, Sir, for giving me an opportunity to support this Statement by Sen. Kasanga. There are so many forms of child abuse and they are diverse.

Mr. Speaker, Sir, children are abused psychologically, socially, mentally and physically. It is very unfortunate because Kenya is among the member States that have signed the Declaration of the United Nations Convention on the rights of children. These rights are enshrined in Article 53 of our Constitution.

Every child needs to be protected by adults. The same people who are supposed to protect them sometimes violate their rights. As I speak right now, some children are out of school not because of their own accord, but have been forced into marriages by their

parents. Others are forced to work to provide for their families which are not economically endowed.

It is a very painful situation because a child is denied his or her rights as enshrined in the Constitution. A child is not a miniature adult. Let a child grow to adulthood without necessarily forcing her to drop out school and get married or start fending for their families.

Mr. Speaker, Sir, there is need to interrogate this Statement by Sen. Kasanga. As I speak, there are some children who are going through harrowing moments visited upon them by their own parents, foster parents or step-parents. Some of them are even burnt as a way of punishing them. I saw one of the newspapers, a photo of a child physically harmed. It was really bad that an adult can go to that extent of abusing a child.

I believe that the Committee will do justice to this Statement and ensure that we follow the international protocols on the rights of children to the letter.

Thank you, Mr. Speaker, Sir, for the opportunity.

Sen. M. Kajwang’: Mr. Speaker, Sir, I want to congratulate Sen. Kasanga because she never brings any matter to this House in vain. The Statement that she read was full of statistics and data that most of us are, probably not aware of.

I do hope that the issues that she has raised will be given importance. I am suspecting that the same way she came up with the Mental Health Bill, this Statement would lead to some piece of pioneer legislation that will further entrench the rights of children to be free from abuse and all sorts of discrimination.

Mr. Speaker, Sir, not too long ago, we heard the Cabinet Secretary for Education saying that we should cane children in schools. That was his prescription to issues of indiscipline, hooliganism and criminality in school.

As a nation, we must recalibrate our sense of morality. The manner in which we were taking care of children in the past, things have changed. For the Cabinet Secretary to make a roadside declaration that “Let us reintroduce the cane in school”, that reeks of irresponsibility. There are certain statements that can only be uttered once there is a proper policy examination and assessment.

It is not my view and I do hope that Sen. Kasanga is in no way implying that our children need to be caned even more so that they can be straightened. However, let us not mix the issues of upbringing of children in a traditional or contemporary African society with abuse.

Mr. Speaker, Sir, meteorologists are telling us that the rains are coming next week. If our children were not in school, assuming they were still out of school the way they were for one year, there is nothing wrong for a parent to induct a child in agricultural activities. Involving your child in ploughing the field out in the village is not abuse. It is training him/her and giving him life skills. Engaging your child in fishing activities is not abuse, it is giving him life skills.

We think that bringing our children up is about them sitting before a television, a phone, a tablet and playing PlayStation. I will disagree with those Non-Governmental Organizations (NGOs) and those civic society actors who think that the contemporary African way of bringing up children is akin to abuse.

A line must be drawn between the abuse, which is the caning, sexual harassment, deprivation of opportunities for our children and legitimate processes of bringing up our children to be responsible members of society.

Sometimes, many of us wish that our children would grow up in the village where we grew up. I know that many of us here, if you tell someone to go and hunt an antelope or a rabbit, they will do so and bring it home. However, tell our children to do that, they are clueless.

So, let us discipline our children, let us train them, but let us not cross the line of abusing them. Having children working in farms for legitimate reasons in a peasant economy is not abuse. It is only abuse if they have to work in the farms and take care of cows and camels at the expense of going to school.

I congratulate Sen. Kasanga.

The Speaker (Hon. Lusaka): Finally, Sen. Wambua.

Sen. Wambua: Thank you, Mr. Speaker, Sir, for this opportunity to contribute to the Statement by my colleague Sen. Kasanga on child abuse.

Yes, it is true that our country is a signatory to many international treaties on the care and protection of children. In most cases, we do not even adhere to the treaties which we have signed. That needs to be done.

Mr. Speaker, Sir, it is also true that a line needs to be drawn between what is child abuse and what is bringing up children? As Sen. M. Kajwang' has just said, I remember very well when most of us in this House were growing up and I believe this applies to almost everyone as we grew up, the bringing up of children was communal responsibility. The society took care of disciplining and making sure that children grew up as responsible citizens, even in the remotest villages.

I remember my own case when I was growing up. It was the responsibility of every adult to make sure that if I have been sent to go and fetch water from the river, I do not go playing on the road. If a parent finds me playing the road, whether is my parent or another parent, I would be answerable. I would be asked to do what it is that I was sent to go and do.

Mr. Speaker, Sir, one of the biggest challenges that we have and we must admit this is that the mindsets that we are instilling on our children as parents is not right for them to grow up as responsible citizens in this country. A child grows up believing that they should never be questioned for whatever it is that they want to do and they should never be disciplined by any other person apart for their father or their mother.

Unfortunately, they carry these mentalities to school. When they are challenged by teachers to do what is right, they look at that as abuse, they quarrel with their teachers end up organizing strikes in schools.

Mr. Speaker, Sir, as we walk the talk and try to ensure that we do not expose our children to abuse in terms of child labour, sexual, verbal and physical abuse, we must be ready to instill the right mindset on them for the betterment of our society.

Mr. Speaker, Sir, I support the Statement.

The Speaker (Hon. Lusaka): Because of constraint of time, I commit the Statement to the Standing Committee on Labour and Social Welfare to take the necessary action. There is nothing to investigate, but to look at the issues raised.

*(The Statement was committed to the Standing
Committee on Labour and Social Welfare)*

ADDRESSING CORRUPTION IN POLICE RECRUITMENT

(Statement deferred)

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

(Statement deferred)

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

(Statement deferred)

OUTBREAK OF FOOT AND MOUTH DISEASE IN
NAROK COUNTY

(Statement deferred)

COMMUNICATION FROM THE CHAIRTHE STATUS OF DELIVERY OF RESOLUTIONS OF COUNTY ASSEMBLIES ON THE
DRAFT CONSTITUTION OF KENYA (AMENDMENT) BILL, 2020

The Speaker (Hon. Lusaka): Hon. Senators, I wish to make the following Communication regarding the status of delivery by the County Assemblies to the Speakers of the two Houses of Parliament their decisions on the draft Constitution of Kenya (Amendment) Bill, 2020 and the attendant roadmap on the Bill.

You will recall that on Thursday, 25th February, 2021, I issued a Communication where I informed the Senate that as at 2.00 p.m. on that day, pursuant to Article 257(7) of the Constitution and paragraph (5) of *the Guidelines for Delivery by the County Assemblies* as set out in Legal Notice No. 175 of 22nd November, 2019, thirty-four (34) County Assemblies had submitted to the two Speakers, resolutions on the decision by the County Assemblies, on the proposed Constitution of Kenya (Amendment) Bill, 2020.

Thirty-three (33) County Assemblies delivered the draft Bill together with a certificate indicating their approval of the Bill, while one (1) county assembly rejected the Bill, but submitted a certificate of rejection only, without the draft Bill. Communication was made to the County Assembly stating the requirements under the *Guidelines* for purposes of their compliance.

A total of 33 county assemblies delivered the draft Bill together with a certificate indicating their approval of the Bill, while one county assembly rejected the Bill but submitted a certificate of rejection only, without the draft Bill. Communication was made to the County Assembly stating the requirements under the guidelines for purposes of their compliance.

Hon. Senators, since then and as at 1:00 p.m. today, 3rd March, 2021, the Senate had received submissions from an additional eight county assemblies, being Kwale,

Wajir, Marsabit, Isiolo, Turkana, Nandi, Bomet and Lamu. Out of the eight submissions received, seven county assemblies being Kwale, Wajir, Marsabit, Isiolo, Turkana, Bomet and Lamu, submitted the draft Bill and the certificate of approval, while one county assembly, namely, Nandi County Assembly, submitted the draft Bill and a certificate of rejection.

Hon. Senators, from the statistics I have just read, this brings the total aggregate of submissions from county assemblies to the Senate to 42. You will recall that in my earlier Communication made on 25th February, 2021, I stated that the threshold required under Article 257(7) of the Constitution, for introduction of the Bill in Parliament and attendant requirements in the guidelines have been met.

Hon. Senators will, however, note that a Bill contemplated under Article 257 of the Constitution is by no means an ordinary Bill within the meaning of Standing Orders 125 to 163 of the Senate. A number of issues have arisen concerning the procedure for introduction into Parliament, of a Bill under this Article. There are several procedural questions that have been brought to my attention and that of the Senate Business Committee relating to the parliamentary process. These include –

- (i) whether the Bill should be republished;
- (ii) the maturity period after publication of fourteen (14) days and timelines for consideration of the Bill; and
- (iii) whether the Bill goes through the normal Bill process.

Hon. Senators, you will recall that during the period of admitting returns from the county assemblies with regard to the Punguza Mzigo Initiative, the Speaker of the National Assembly and I observed that our rules of procedure are deficient with respect to fully actualizing the parliamentary process contemplated under Article 257 of the Constitution.

A Bill under Article 257 of the Constitution contemplates expeditious process. I refer to Article 257 (7) that states in part that such a Bill “shall be introduced in Parliament without delay.” This provision seems to be drawn from the lengthy process attached to the consideration of the Bill in terms of collection of signatures in support; verification of the said signatures; public participation undertaken by various County Assemblies; and ultimately, approval by the assemblies. I am, therefore, persuaded that the Senate is under obligation to do everything necessary to expedite the introduction of such a Bill.

Hon. Senators, in our consultations over the process of the Bill in the two Houses of Parliament, the Speaker of the National Assembly and I were initially of the view that the Bill should be republished before its introduction with minor changes to reflect the current year (2021) on its face and to include a footnote indicating its approval by a majority of the county assemblies pursuant to Article 257(7) of the Constitution.

It is agreed between the two Speakers and the leadership of the Houses that the Bill will be introduced simultaneously and as much as possible follow a similar process. Consequently, the Senate Business Committee (SBC), at its meeting held today, Wednesday, 3rd March, 2021, resolved that the Bill be introduced in the Senate for First Reading on Thursday, 4th March, 2021 in the format that it was presented to the 47 county assemblies by the Independent Electoral and Boundaries Commission (IEBC).

Hon. Senators, in this regard, and pursuant to Article 257 of the Constitution and following the SBC meeting referred to above, I direct as follows –

- (i) That, the Draft Constitution of Kenya (Amendment) Bill, 2020 be introduced in the Senate for First Reading on Thursday, 4th March, 2021;
- (ii) That, the Clerk of the Senate urgently obtains sufficient copies of the Bill from the IEBC in the format that it was presented to the 47 county assemblies by the Independent Electoral and Boundaries Commission (IEBC), to enable introduction of the Bill in the Senate;
- (iii) That, the Standing Committee on Justice, Legal Affairs and Human Rights holds joint sittings with the National Assembly counterpart Committee on the Bill and undertake public participation jointly pursuant to Standing Order 224; and
- (iv) That, the Clerk of the Senate publishes an advert on Friday, 5th March, inviting members of the public to submit memoranda on the Bill.

I will continue to issue guidelines regarding the parliamentary process as necessary to ensure that it is disposed of seamlessly.

I thank you.

What is your point of order, Sen. Mutula Kilonzo Jnr.?

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I thank you for the communication. For the future, our clarification is important because this is the first time we are doing this under Article 257(6). You have communicated that 42 county assemblies have now returned the Bill with certificates of either approval or rejection.

Article 257(6) of the Constitution reads:

‘If a county assembly approves the draft Bill within three months after the date it was submitted by the Commission, the speaker of the county assembly shall deliver a copy of the draft Bill jointly to the Speakers of the two Houses of Parliament, with a certificate that the county assembly has approved it.’

The question then arises as to whether the five counties that have not submitted the Bill can still submit to you and whether you can accept? My reading of Article 257(6) suggests that after the three months, the counties that will not have submitted the Bill cannot submit. It is important that a communication and a direction on this particular clause is given.

Secondly, for purposes of good order, the communication on the processes as contemplated in Article 256 should be issued simultaneously, jointly or agreed so that we do not look like we are following our sister House. The National Assembly issued a communication yesterday and we have issued today. That does not look tidy. If we have a joint secretariat, we should have joint communication for us to move together. Such a move will give a good message to the country. We should move in the fashion that Article 257 dictates as a Parliament.

The Speaker (Hon. Lusaka): I agree with you Sen. Mutula Kilonzo Jnr. that this is supposed to be a joint communication as the Speaker of the National Assembly and I had agreed. I will find out what happened. Otherwise, we are working together so as not to contradict each other.

Proceed, Senate Minority Leader.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, unfortunately I did not attend the SBC meeting today as I had gone for a funeral in Mombasa. I am glad that the issues we raised earlier have been addressed through your statement. However, a

little thinking should go into the issue of publication and the First, Second, Committee of the Whole and Third Reading of the Bill.

My reading of Article 257 of the Constitution is that a draft Bill will be introduced in the House and not the actual Bill. If the Bill is published afresh, it will mean that it is a different Bill all together. You have to remember that even the counties did not publish any Bill. They dealt with the draft Bill that was sent by the Independent Electoral and Boundaries Commission (IEBC).

Article 257(7) states that:

‘If a draft Bill has been approved by a majority of the county assemblies, it shall be introduced in Parliament without delay’

It is very clear in Article 257 that what is being introduced is a draft Bill and not the normal Bill that is contemplated in Article 256.

Mr. Speaker, Sir, the procedure that you have just referred to is actually set out. That is an amendment by parliamentary initiative. However, if it is by popular initiative, going through the First, Second and third Reading would undermine the process which is contemplated in Article 257, by popular initiative.

If we go through First, Second and Third Reading, the Constitution will require that if what you are doing is a mirror of what is in Article 256 of the Constitution, it says, between the First Reading and the Second Reading, you must have 90 days publication period for public participation.

However, this is a Bill which has come from the public through signatures. It has gone through public participation in the county assemblies and it will go under public participation. I admit, but I think to make it go through the First, Second, and the Third Reading, that is an issue we need to look at. This is because if that was the case, then the Constitution would have been very clear just as it is clear in Article 256.

If you read Article 256 very carefully, it talks about those stages. Each stage should be dealt with distinctly, and not at the same sitting. In Article 257, it is quiet. The reason why it is quiet is because it is by popular initiative, and the Bill is not read for the First, Second, and Third Time, but it is approved or rejected.

What happens during the Third Reading? The Third Reading contemplates some amendment, or going through the Bill clause by clause. I do not think in Article 257, that is what is contemplated.

I just think that we need to do a little bit more thinking, so that we do not raise legal issues in this expedition. We may hurry, which is good because it must be done without delay, but the legal steps that are spelt out, we must explain why we want to follow the steps which are not set out in the Constitution.

The Speaker (Hon. Lusaka): Thank you, Senate Minority Leader. I think if there are procedural issues that will come up when the Bill is introduced, we will address them. That is why we have said the two---

Sen. Mutula Kilonzo Jnr., Kindly, proceed.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I was going to ask you politely; this issue was discussed at very great length at the Committee on Justice, Legal Affairs and Human Rights. The Chair is here. There are such fundamental issues raised on the timelines, and process that was handled by the Committee on Justice, Legal Affairs and Human Rights.

Either the Committee in its work, or at some point in a Statement can go step by step and address those issues. Sen. Orengo is right. The parliamentary initiative First Reading and Second Reading is 90 days. Article 257 of the Constitution talks about introduction immediately, and does not talk about any other processes. This is because you cannot amend in Third Reading. Therefore, it is important.

However, I thought a better way is to have a more detailed communication. We had asked the legal team to synthesize. There is even an issue raised. It is important I say so because it is not a secret. If you go to Article 257 (6) and (7), it talks about draft Bill. When it goes to Article 257 (8), it talks about a Bill. Those who are arguing that it must be introduced were saying that the minute it leaves the assemblies, it is not a draft Bill and, therefore, must be published. Which is also not correct legally, but importantly, is that the Committee on Justice, Legal Affairs and Human Rights, where Sen. Orengo and I sit, should ideally guide the country in this very new area.

The Speaker (Hon. Lusaka): Chair, I will give you last chance. Sen. Linturi and then Sen. M. Kajwang’.

(Laughter)

Sen. Linturi: Thank you, Mr. Speaker, Sir. I want to add my voice to what the Senior Counsel, Sen. Orengo, and my good friend, Sen. Mutula Kilonzo Jnr., have raised in regard to the processes and your admission that when you sat with the Speaker of the National Assembly, you realized that our procedures are inadequate in trying to address how we need to treat this kind of a Bill. This is because this is the first time that it is being introduced in Parliament.

Mr. Speaker, Sir, I want to say that it is important to do wider consultation on this. Indeed, in my view, the Senior Counsel, Sen. Orengo’s interpretation of Articles 256 and 257 is correct. What I am left wondering is that if indeed we have to follow what is clearly stipulated in Article 257 and going by your Communication that you will be publishing a Gazette Notice in the newspapers within the week to call people to submit memoranda and other things in regard to this Bill.

If, indeed, it is true that the procedure that we want to adopt is that this Bill cannot be amended, then what will be the need, or what reason for us putting it to public participation yet it is expected that the county assemblies have gone through these processes?

My understanding of public participation is that; it can never be in vain. Why we put that provision under Article 10 is at least to get the reasoning, ideas of the people and how they would want their input in a certain Bill. It is expected that those people collecting ideas during this public participation, their input must be captured in that report or even must advise the amendments that should be in the Bill. If the process that we want to take is that this Bill cannot be amended, then I also do not find there being any need for that participation.

That is why I am saying that since this is new then, probably, legal minds should sit down, look at it critically and look at the history, whether there is any other jurisdiction that had such a Bill and advise and get the best position possible that we can use. The manner in which we treat this will also guide how future Bills will be treated, especially when they are meant to inform constitutional changes.

Thank you.

The Speaker (Hon. Lusaka): Thank you, Senator. I think the matter you are raising was also raised. Sen. Mutula Kilonzo Jnr., was there. Maybe he could explain why it is not going to be changed at all. There was some agreed position.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, the position about constitutional amendment is old. Once a Bill is introduced, it cannot be amended. The question of public participation is not for purposes of amending. It is out of abundant caution following Article 10.

I am not certain because none of the Speakers has communicated to any Floor and I am not aware that they have said when, for instance, in the case of Makueni, the executive conducted its public participation and the assembly conducted its public participation. However, in reporting to the Senate, and the National Assembly, did they forward what Makueni raised and said?

The Speaker has not said that through his communication. This, therefore, suggests that that part of public participation ended there. It was a view of many people who did not have constitutional challenges that the portion where Parliament is supposed to consult and listen to public views must be complied with. If you doubt, there is a very famous South African case about public participation. It is out of abundant caution. Public participation does not necessarily have to lead to amendments, but the position---

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

Sen. Kinyua: Mr. Speaker, Sir, I am rising to ask Sen. Mutula Kilonzo Jnr., a question. This is because he is saying that public participation from where he sits is just for that purpose. It did not add any value even after people from Laikipia, or Makueni participated or put their input in this draft Bill.

Therefore, what is the need? From what I heard Sen. Mutula Kilonzo saying is that it is an old process. We are doing it just for purposes of routine and it will not add any value. Why are we engaging Kenyans in this public participation if there will be no input? He even mentioned that from your Communication, you did not mention what the people of Makueni or Laikipia said. What they said then would not matter because it will not change anything.

The Speaker (Hon. Lusaka): Yes, Sen. Orenge, proceed.

The Senate Minority Leader (Sen. Orenge): Mr. Speaker, Sir, I like what Sen. Mutula Kilonzo Jnr. said. However, I wanted to give further information. Parliament is not just a rolling machine. When the matter comes here, we can reject or pass it. In making that decision, we need to know the views of the public. Just like the county assemblies, when they passed the Bill, the public gave them views on whether to reject or pass it. Therefore, Parliament also needs to get the information and know whether the public wants us to reject it or pass it.

The Speaker (Hon. Lusaka): So that we are able to move---

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, this is very important. It is almost like a class. Sen. Kinyua is a student of law and should be taking notes from what Sen. Orenge and I are saying. In addition to that, the record of Parliament must have the things Sen. Orenge is saying. In Article 257, it is not contemplated that the National Assembly and the Senate will agree. It is contemplated that they can disagree. Even in your own County of Laikipia where there was public participation, did they amend anything? Did they listen to the views? Yes, they did. Were you there? Yes, you were. Did you change

anything? No. Are you going to sit here and listen and participate? Yes. This is the point. The idea of listening to the views as explained by Sen. Orengo is because you must make a decision even though it has been made somewhere else. The decision must be informed by something.

The Speaker (Hon. Lusaka): Sen. (Eng.) Maina, are you on a point of order? That was just a communication and time will come when you will debate. If it is a point of order, you have the microphone.

Sen. (Eng.) Maina: Mr. Speaker, Sir, listening to this, we are all lawyers naturally.

The Speaker (Hon. Lusaka): The microphone should face the other direction. You are pushing it away.

(Laughter)

Sen. (Eng.) Maina: Mr. Speaker, Sir, the microphone is sensitive and will capture the sound even when I talk from there. I have said that we are all lawyers naturally. I have listened to the two senior gentlemen. I think we should have public participation at this level. However, public participation was done in Nyeri County in every constituency and I was there. They said the Bill was okay. They said even if they invited the same people in the 43 counties that have passed the Bill, are we expecting a new answer? I do not expect so. Therefore, does the law not hold that we should accept what the counties have done since at our level you can get the evidence?

The Speaker (Hon. Lusaka): As I said, we shall improve as we go along. Sen. M. Kajwang, proceed then we will have the Chairperson of the Committee on Justice, Legal Affairs and Human Rights.

Sen. M. Kajwang: Mr. Speaker, Sir, having listened to your Communication and the submissions by Sen. Orengo, it has addressed one of the questions I had in mind, why the requirements of Standing Order No.135 were not applying. Standing Order No.135 relates to constitutional amendments by Parliamentary Initiative. There are those who believe that there should be a 90-day period. So far, my curiosity has been satisfied. Nonetheless, it needs to be made clear for the public to understand why we are not doing the 90-day period between publication. It will also be remiss if we do not congratulate the assemblies you have cited; those that approved the Draft Bill and those that rejected it. There has been a narrative that if you reject it, then you are anti-Kenya. The assemblies and the people residing in those areas have their democratic right and have played their civic duty to render a judgement on behalf of their people. Let us congratulate our assemblies and reflect on the things this Senate has not been able to do for the last eight years.

We had a serious issue around public participation and whether Siaya passing the Bill in one day and Homa Bay passing it in two days was against the values in our Constitution since public participation is one of the constitutional values. However, we really should not be in this Chamber on HANSARD debating whether we should conduct public participation or not. It is a principle in our Constitution that should be observed. It is just that we need to be efficient and creative around it. In December, we passed the Anti-Doping Bill and it was like the proverbial Simon Makonde; published on Monday, public participation on Tuesday, on Wednesday, we were here voting and on Thursday

the President had appended his signature to it. Nevertheless, there was an element of public participation in it.

Finally, the guidance I wish to get from you comes from Article 257 (10), because Article 257(9) is clear that if Parliament passes the Bill, it is submitted to the President for assent in accordance with Article 256(4)(5) and the article specifies the timelines, which state that it is within 90 days. However, Article 257(10) says that-

“If either House of Parliament fails to pass the Bill, or the Bill relates to a matter specified in Article 255(1), the proposed amendment shall be submitted to the people in a referendum.”

Article 257(10) does not have a timeline in it. It just says it shall be submitted to the people in a referendum. A mischievous sovereign can play around with this and decide, just like in the matter of dissolution of Parliament, where there are no timelines the decision can pend forever. Could you advise that, if we find ourselves in the circumstances envisaged under Article 257(10), do the timelines remain 90 days or it is at the discretion of the President?

The Speaker (Hon. Lusaka): Ours is clear, we shall do what we need to do. Once it is taken to the President, in my understanding, he will liaise with the Independent Electoral and Boundaries Commission (IEBC) for the next course of action. Sen. Omogeni is already on the Floor.

Sen. Omogeni: Thank you, Mr. Speaker, Sir. First, I want to disclose to the House that my Committee was already seized of this matter. We had a meeting this morning and quite a number of weighty legal issues came up for deliberation before the Committee. Before you gave this Communication to the House, as a Committee, we had agreed to get some advice from the legal team. We were to meet tomorrow to develop some position as a Committee. Now that we are where we are, we respect the Communication from the Chair and my Committee will proceed to consider this matter.

On the issue of public participation, if you read Article 257, there is nowhere an obligation is placed on the county assemblies or on the Senate to undertake public participation. This can be compared with what is in Article 256(2) where Parliament is obligated to publicise any Bill to amend the Constitution and facilitate public participation on the Bill. If you were to take it at face value, one may say that it is not necessary to undertake public participation under Article 257. However, we cannot close our eyes to Article 10 whose subheading is, ‘National Values and Principles of Governance.’

If you look at Article 10 (2), it says-

“The national values and principles of governance include-

(a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people.”

It is actually the national values enumerated in Article 10 that guide the House in ensuring that we do public participation.

Secondly, everything that we do in this House can be checked by the Judiciary. Therefore, we must proceed with caution and ensure that any process that we are doing as a House is within the confines of the Constitution and that if it was to find its way to the Judiciary, then we will not have been found to have violated the Constitution.

Mr. Speaker, Sir, the decision that has been made by the leadership that this Bill be subjected to public participation is with a lot of wisdom and it should carry the day.

Thirdly, you can look at the process of amending the Constitution under Article 256. If you look at the sub-heading, it says: "Amendment by Parliamentary Initiative." There is a whole process that has been enumerated in Article 256.

If you go to Article 257, it says, "Amendment by Popular Initiative". So, the two processes are distinct. When you go to the one that is through Parliamentary Initiative, in Article 256 (b) and (c), there must be 90 days when the Bill is first read in the House before it goes to the next stage. However, if you go to Article 257, there is no mention of that period of 90 days.

On this issue of whether the Bill that was before the assembly was a draft Bill; we were able to get a copy of the Bill that was sent to the assemblies, that is the one that was published on 25th of November, 2020. If you look at the heading, it says, Bill to Amend the Constitution of Kenya, 2010, The Constitution of Kenya Amendment Bill, 2010.

So, we already have a Bill that was published and sent to the county assemblies. That is the Bill that under Article 256 was delivered to the Speakers of the two houses.

In fact, if you read Article 257 (6), it says-

"If a county assembly approves the draft Bill within three months after the date it was submitted by the Commission, the speaker of the county assembly shall deliver a copy of the draft Bill jointly to the Speakers of the two Houses of Parliament, with a certificate that the county assembly has approved it."

So really, the idea of saying that you publish the Bill may not arise because what is being introduced in the House under Article 257(2) is the Bill that has already been debated by the county assemblies, passed and delivered to your office.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Sen. Mutula, do you still want to contribute or we proceed? Please, be brief.

Sen. Mutula Kilonzo, Jnr.: Mr. Speaker, Sir, my initial proposal still stands; that the Chair just clarifies some of those issues in a comprehensive statement, step by step. The suggestion by Sen. M. Kajwang' is also covered somewhere in terms of the rest of the articles. You have to read Articles 255, 256 and 257 so that you can understand that you do not need an assent. The minute it is passed, there is no assent; it is law under Article 257. However, the clarification is important.

Thank you.

The Senate Minority Leader (Sen. Orenge): Mr. Speaker, Sir, I just want to go back to where I was.

Remember we have had a matter in the Court of Appeal, which is pending and in the High Court on a very simple matter of Article 110(3), on what is concurrence. We wanted to know whether it is mandatory or whether it is an essential step. After we were heard, the judges took about three months to discuss that matter and consider it fully.

I think that being the body that is vested with powers under Article 257 once the county assemblies approve the Bill, I will still plead with a little caution so that the two committees which are headed by very senior lawyers from both Houses---. In fact, in the other House, one of the Members was a Member of the Committee of Experts.

Mr. Speaker, Sir, you will remember that when the issue arose, the advisory opinion that went to Supreme Court and Sen. Murkomen likes referring to it because he was a member of the taskforce. The court was using the report of the taskforce to help them interpret the Constitution.

This may be a matter which is already answered by the discussions which went around the Committee of Experts. Normally in interpreting the Constitution and the Supreme Court has said that interpretation must be contextual which means we look at the history and the debate that took place. It cannot be done in a vacuum.

Mr. Speaker, Sir, because we have a very competent legal team in both Houses and a legal directorate, what you have set out is correct. However, some of these issues, they need to think about it more carefully and give us an answer or some document we can refer to and discuss.

We do not want to be embarrassed in this very important process. We will think we are doing the right thing and because we have not done it right, then we can bring this matter to a halt unnecessarily. You know the industry of Mr. Okiya Omtatah. He would end up in court the next day.

Mr. Speaker, Sir, this is because something which looked so open like this one, we did not take it into due consideration. We do not have these committees for cosmetic reasons. They should be given a little time to think through this process. What is a draft Bill? What does the Parliament pass? Is it a Bill or a draft Bill? We need some of those answers.

I think it would not be right to take it through the First, Second and Third Reading because the Constitution would have said so just like it has said in Article 256 or even in the Standing Orders for other legislations. We set it out in the Standing Orders we set it out in the Constitution.

Mr. Speaker, Sir, however, in Article 257, the reason being that at the end of the day, it is not Parliament which is enacting the amendment. It is the people just like this Constitution. Normally, an Act or Parliament it says it is enacted by Parliament. This Constitution because it was done by the people, it talks of “we the people adopt and enact”. Let us not take away the powers of the sovereign but the sovereign has also given us some powers also to exercise. I plead that these two committees should look at this carefully.

The Speaker (Hon. Lusaka): I direct that the two committees from the Senate and the National Assembly meet tomorrow so that you can give advice to myself and the Speaker of the National Assembly on how we progress, given what has been raised on the Floor of the House. It is so directed.

Sen. Kasanga, I will allow you to read your Petition so that we make progress.

PETITION

DELAYED ADJUDICATION AND SETTLEMENT OF SQUATTERS ON MACHUNGWANI LAND IN TAITA TAVETA COUNTY

Sen. Kasanga: Mr. Speaker, Sir, it is a Petition to the Senate on delayed adjudication and settlement of squatters on Machungwani land in Taita Taveta County after expiry of the lease. This is Sen. Mwaruma’s Petition that I am just reading on his behalf.

We, the undersigned citizens of the Republic of Kenya and representatives of Machungwani squatters wish to present to the Senate this Petition on delayed adjudication and settlement of squatters on Machungwani land situated in Mboghoni

Ward in Taveta Constituency of Taita Taveta County after expiry of lease in 2013. We humbly draw the attention of the Senate to the following-

(a) THAT Machungwani area which is land covering 2,970 acres is among the ancestral land belonging to the people of Taveta given as a present to the British soldier one Captain Morgan in 1914;

(b) THAT the lease was later transferred to Mr. George Criticos who is the father of Mr. Basil Criticos, the current lease holder;

(c) THAT the leasing out of Machungwani land which made the rightful owners of this land landless in their county was an injustice of the highest order;

The land leased out was not fully developed as expected since only a small portion of the land is planted with sisal;

The landless people evicted from this land started settling on the undeveloped portion of the land;

(d) THAT the number of people settling in Machungwani increased between 1992 and 1997 when Mr. Basil Criticos invited the people to settle in exchange for votes which enabled him to become Member of Parliament for Taveta Constituency for two terms;

(e) THAT in 2000, Mr. Basil Criticos had abandoned the leased land completely and left the county to live in his home in Greece but came back in 2003;

(f) THAT the people who settled in the land have put the land in good economic use and are currently leading producers of bananas, coconuts, oranges, avocados, tomatoes, mangoes, maize and other vegetables thus earning incomes for themselves and also employing others;

(g) THAT the lease of the land expired in January 2013 and after the 2010 Constitution reversed the 999 year period of leases to 99 years;

(h) THAT since the expiry of the lease, the county and national governments has been reluctant to adjudicate the land and to subsequently issue citizens with title deeds;

(I) THAT the reluctance of the county and national governments, failure to adjudicate the land and issue them with title deeds is making the citizens of Machungwani feel insecure after investing heavily in their land. It is making them feel denied their fair administrative action as anticipated by Article 47 of the Constitution of Kenya;

(j) THAT the efforts to resolve the matters raised in this Petition with the relevant organs of Government have proved futile; and

(k) THAT there is no case pending in court or any constitutional body on matters raised herein.

Therefore, we, your humble Petitioners pray that the Senate through the relevant committees to deal with this Petition immediately in view of urgency and seriousness of the matters raised and to make a resolution that the land of Machungwani be adjudicated and citizens be issued with title deeds without further delay and take any other appropriate action that deems fit.

Thank you, Mr. Speaker, Sir.

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

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

The Temporary Speaker (Sen. (Dr.) Lelegwe): Honorable Senators, pursuant to Standing Order No. 231, I shall now allow comments, observations and clarifications in relation to the Petition for not more than 30 minutes.

Sen. Mutula Kilonzo Jnr., proceed.

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Speaker, Sir, this is actually a matter of serious concern and it requires the necessary attention of the Senate.

Mr. Temporary Speaker, Sir, I think I have administrative issues that must be handled. The petitioners want this matter done expeditiously. The Committee has 30 similar Petitions. Going by its work output, it is easy to think that this Petition will not be resolved within the current parliamentary calendar. It will go into 2023.

I was going to say that in the Committee on Liaison, where the big men and women who are Chairs sit together with the Speaker, we must find a method. This Petition will not be determined within the proposed period, if we look at the queue. If you calculate 30 Petitions, including five of mine that have been pending for the last one year, it is easy to assume that this Petition cannot heard by the Committee on Lands, Environment, and Natural Resources within the parliamentary term left between now and the election time.

Mr. Temporary Speaker, Sir, these people are suffering a great deal. The courts and the people tasked with the duty of handling this matter, including the National Land Commission (NLC) have not helped. These matters of public land should have been dealt with expeditiously by the NLC but the NLC has not managed to help.

I would have proposed that we get an *ad hoc* Committee or another method to consolidate these petitions that are of a similar nature that require the NLC to be heard simultaneously. Alternatively, we can give leave to this Committee to expedite these processes quickly, otherwise, these people are going to suffer. They are going to be evicted.

Taita Taveta County has become famous for people who want to grab land, chase away squatters and buy it for a song. It is a county which is famous for these malpractices that have been visited on Kenyans for so long. Those people are so poor and so desperate. This land has got sisal, wildlife, minerals and benefits everybody else except the people of Taita Taveta County. It is very unfortunate that Taita Taveta County is amongst the marginalized counties of Kenya, yet the biggest hotels, the best Tanzanites and all the nice looking gems come from that county. It is actually a contradiction of terms.

Thank you, Mr. Temporary Speaker, Sir.

Sen. (Dr.) Musuruve: Thank you, Mr. Temporary Speaker, Sir, for the opportunity to support this Petition by Sen. Mwaruma. It is a fact that land is a factor of production. With land, you can do so much economically. It will give one economic empowerment, so being denied land for so many years is unfortunate.

People cannot be squatters on a piece of land for over 50 years. These are people who have even been taking care of the boundaries and ensuring that land is productive. They have stayed on this land for so many years and there are some children who were born on that piece of land. They do not know any other home. There is need for the Ministry of Lands and Physical Planning to ensure that it is being fair and justice is done to these families that are being tagged as squatters yet they have made good use of this land.

I hope that when this Petition goes to the Committee on Lands, Environment and Natural Resources, where Sen. Mwangi sits, he is going to do justice to these petitioners and ensure that they are given their rightful due because they also have a future and families. When your land has been taken away, you are grounded economically and socially, therefore we have to see how to bring these people back to their feet.

Mr. Temporary Speaker, Sir, I support this Petition. May it be given the justice that it deserves in the Committee on Lands, Environment and Physical Planning.

Thank you, Mr. Temporary Speaker, Sir.

Sen. Sakaja: Thank you, Mr. Temporary Speaker, Sir. Unfortunately, I have walked in late. I wanted to comment earlier on the issue of the Communication on the Building Bridges Initiative (BBI).

On this matter, will just pick up from where Sen. Mutula Kilonzo Jnr. has left off. I can see that the Senate Minority Leader is in the House. The Senate Majority Leader was here. I sympathize this this Committee, as the chair of a committee. The right to petition Parliament in Article 119 of the Constitution is an absolute right. Any Kenyan should be able to do that. That is one of the highlights of the Constitution that we have.

However, administratively, this Committee now has 28 to 30 petitions. There is no way they can be able to do it. Our Standing Orders provide that a Petition needs to be heard and determined within 60 days and I doubt many Committees have been able to handle this. I have had a hard time. I am happy that my committee does not have any pending petitions.

This is for the leadership, Sen. Mutula Kilonzo Jnr. being part of them, that we need to do two things. Number one, we need to split this Committee, mainly because of the width of its mandate. Issues of land, environment, housing, settlement and water are too wide for that Committee. Sen. Mwangi has really distinguished himself as a very good Chair and he is also a Member of my Committee. However, there is no way. They will be overwhelmed.

Mr. Temporary Speaker, Sir, the more we fail to respond to these questions by Kenyans, the less faith they will have in the Senate. I am putting it on record that the first thing that we need to do is find a way to split this Committee. I have advised Sen. Mwangi and a few members of that Committee that they can set up sub-committees within their Committee. Out of the nine members, they can set up three sub-committees to deal with these petitions. They can have a retreat and deal with at least half of these petitions within the next few months or two. It can be done. Administratively, we need to split it.

Mr. Temporary Speaker, Sir, this is a question that we need to answer. In as much as the right to petition is absolute, as a chair of a committee, I realized that somebody can keep me busy by just sending petitions because that is the first thing that you must deal with. You will not be able to do your legislative and oversight agenda as a Committee. You will not be able to play your other roles because all you will be doing is dealing with petitions. I think that half of them are from Taita Taveta.

In as much as the issues are weighty, administratively, there needs to be filter that if a similar matter is being dealt with, that petition holds for a while until the committee has a certain threshold of petitions left and then brings them. Otherwise, we will just bombard our committees and they will be operated by remote control.

On this specific issue, I really sympathize with the good people of Taita Taveta and I hope that a solution can be found. The only way to deal with this issue is not just through the Petition. The Committee can actually just call the relevant stakeholders and deal with the matter in one sitting. It does not have to be dealt with *per se* in the traditional sense of a petition. We can be pragmatic. We have rules, but we ask, was the law made for man, or man made for the law? We can be able to circumvent some of these black and white provisions and be pragmatic enough to sort it out.

Thank you, Mr. Temporary Speaker, Sir.

Sen. Halake: Thank you, Mr. Temporary Speaker, Sir. I rise to support this Petition and say that issues of land, especially when dealing with communities, is becoming a big problem. I was a Member of the Committee on Lands, Environment and Natural Resources and yes, it is correct that there are very many petitions and cases that they are handling. That having been said, I think that something needs to be done, even if it means setting up an *ad hoc* committee, like Sen. Mutula Kilonzo Jnr. has mentioned.

When it is private land, it is a different matter, but whenever it is community land, it looks like we have an issue. The issue is that even the Land Index Bill that we passed not so long ago, which had a very clear definition of what is private land, public land and community land; is not being applied when it comes to community land. It is as if it is only private land that is well defined and established. There is evidence of shifting boundaries not necessarily physical boundaries, but through definitions and degazettements, because all the Government needs to do is to degazette or gazette something as public or community land.

I think that this is something that needs to be looked at. We have a situation where the NLC will send you to the Ministry of Lands and Physical Planning, the Ministry will send you back to the county, the county will send you back to the NLC and the circus goes on. I was a Member of that Committee and just the Standard Gauge Railway (SGR) land issue took us two years and even to date, I do not think that it has been resolved satisfactorily.

We need to find a way as Senate, especially for those vulnerable people because they do not have to wait for many months and years. We need to summon the Ministry of Lands and Natural Resources so that these issues are dealt with in Plenary. Whenever issues have been escalated to the Plenary, more attention is given to them as opposed to when Committees deal with them.

The Committee needs to prioritize issues facing the most vulnerable people. In the construction of the Standard Gauge Railway (SGR), for example, the “big boys” that had big chunks of land and were owed the most money were paid. However, those who were being compensated Ksh30,000 or less did not get any pay. There is injustice in these land issues. This House needs to look at its priorities.

I look forward to seeing this being done.

I support.

Sen. Kinyua: Thank you, Mr. Temporary Speaker, Sir. I support this Petition by Sen. Mwaruma. However, I am not concerned much about the number of Petitions, but how we have resolved what we have handled so far. To me, that will be the one-million-dollar question. Even if it would take the number of years that Sen. Mutula Kilonzo Jnr. mentioned people can be hopeful that something will happen.

We had a Petition from Laikipia concerning the Marmanet evictees that came here. I remember it was about two months ago where Sen. Khaniri was talking about what they had done. For me it is not about the number of Petitions, but the implementation. After we dealt with the two petitions that came to this House, how were they resolved? If they were resolved, then Kenyans can be hopeful that they can still wait.

If we are doing this as a procedure, it will be an exercise in futility. I thank the Committee. I remember Sen. Kasanga, Sen. Mwaruma and the Chair Sen. Mwangi came to Laikipia, listened to our people and wrote a report. However, their recommendations have never been implemented to date.

Our Standing Orders says petitions be determined within 60 days. Are we implementing what we have recommended? That is the one-million-dollar question.

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Speaker, Sir, the question raised by Sen. Kinyua is important. Unfortunately, this House does not have an Implementation Committee. It is no that it has not been discussed. I know Sen. Khaniri raised it yesterday. However, once we make our resolutions, there is no framework to make sure that they are implemented.

We have dealt with many petitions. For example, Solai Dam Tragedy is one of them. We made recommendations, but they were ignored. I hope the one we discussed yesterday about the building that is being purchased by Uasin Gishu County may not ignored. However, Sen. Kinyua has been here long enough to know that we have been making recommendations to BPS, but nothing has been implemented.

I have said this before and the Speaker said it this afternoon that we should not start reading the Book of Mark or Luke and avoid Lamentations.

Sen. Kinyua: Mr. Temporary Speaker, Sir, I am not lamenting, but speaking and observing facts. I am a good a Christian more than Sen. Mutula Kilonzo Jnr. because even his name does not suggest anything close to Christianity. My name is John who was the Baptist.

Sen. Pareno: Mr. Temporary Speaker, Sir, I want to bring the attention of the Senators to a provision of the Standing Orders that I read the other day. I do not remember it, but the Clerks can help me.

It provides that Committees to follow-up on their own resolutions. They can call for reports from various Ministries that are handling their matters. They do not have to wait for an Implementation Committee. We can be using that provision of the Standing Order for us to call to order those that have not implemented what we have resolved.

I can check the provision later.

Sen. Sakaja: Mr. Temporary Speaker, Sir, Sen. Pareno makes very strong points most times and today is not an exception. I will give an example to exhort Committee Chairpersons that we are the implementation Committee in our areas. There was a Petition that came to the House by Kenya Railways Pensioners where they had arrears of I think a year. They were suffering and languishing. In as much as we had finished with the Petition, Sen. (Dr.) Milgo will tell you that just today we have had the third follow up meeting. As of today we have been able to secure all their money. We reduced the delays from 12 to 4 months.

We have secured the other Ksh1.2 billion and they will be getting on Friday to deal with the arrears. We are also demanding compensation from the Government for people who were evicted from the railway land despite having dealt with the Petition.

Sen. Farhiya is reminding me of Wajir. They also had a similar issue. As much as we had already tabled the Petition, we went ahead and made sure all the staff were paid and they were very happy.

I am not blowing any trumpet, but just encouraging fellow Chairpersons that once we have finished with any work, we do not dump it because we are own implementation Committee. We can even task our secretariat at every subsequent meeting to remind us of whatever is pending and the resolutions passed so that they can keep writing letters to Ministries and departments concerned. It can be done. That is the way to go.

I am against us have an Implementation Committee. When a Committee has dealt with a matter very critically and technically another Committee starting from scratch will not understand the history of the issue. They will find themselves, for example, dealing with doctors, water *et cetera*. They will not have the institutional memory.

Tomorrow we will be at the Liaison Committee where I will make that exhortation. Sen. Mutula Kilonzo Jnr., Sakaja is a Christian name.

(Laughter)

The Temporary Speaker (Sen. (Dr.) Lelegwe): Hon. Senators, I bring your attention to Standing Order 215(1) and (2) on Reports on Senate Resolutions. It deals with implementation of Senate Committees Resolutions.

Proceed, Sen. (Dr.) Milgo.

Sen. (Dr.) Milgo: Thank you, Mr. Temporary Speaker, Sir. I rise to support this Petition. We are not blowing trumpets here, but we in the Committee on Labour and Social Protection have been ensuring that we take up an issue to its logical conclusion.

Sen. Mutula Kilonzo Jnr. will bear me witness that I informed them about the water issue between Kajiado and Makuen counties. We were able to solve that issue. As I speak, something has been done to those employees. I think the one of Kenya Railways was the most difficult one and we managed to solve it.

It is unfortunate to learn that people are squatters in their own land. One interesting story is that a foreigner would leave a chunk of land for over 10 years and then upon returning would come and possess as if there were animals staying on it. People of Taita Taveta County have suffered for a long time. I have heard there minerals on that land. The farm belonging to hon. Criticos had sisal. It is a fertile land.

Our major challenge is with the National Land Commission (NLC) because those are people who deal with land leases and ensuring that title deeds are given out.

I can visualise the challenges that the people who have been in this farm are going to suffer. We learn that they have grown fruits to maturity. That means those people have been there for over 10 years and they are going to lose all their livelihoods.

Mr. Temporary Speaker, Sir, it is a challenge when we disrupt a community that has been living in a place. I can compare this to my own community that has been disrupted in Mau area each time elections are around the corner. These people have suffered a lot. Some of them pass on as a result of stress. This is because the energies they have put in tilling land, building schools and constructing wonderful houses will go to waste.

We realise that we are not only disrupting the old people, but we are even disrupting school going children. For that reason, this is a challenge and we hope that the

Standing Committee on Lands, Environment and Natural Resources concerned with this Petition will look for a way out. Maybe they can combine a number of these petitions, look at similar questions and call on board the concerned people.

Today, in the Standing Committee on Labour and Social Welfare, we had up to five groups, the National Treasury, Retirement Benefits Authority (RBA) and others. The House was so full and one could get scared on how we were going to solve the issues. However, we were very keen because the Standing Committee on Labour and Social Welfare is normally fully attended and every one of us was picking up an issue and we were able to solve.

Mr. Temporary Speaker, Sir, the Standing Committee on Lands, Environment and Natural Resources should find a way out so that we do not relegate this Petition to 2023 or 2024 in the next Parliament. We have to solve it.

We could break the Committee into sub-committees so that we have about three people dealing with an issue if we want to assist the people of Taita Taveta. This is quite unfortunate and I feel for them. In a short while, those people will require medical treatment, food and many other amenities. In such a case, it becomes very expensive to maintain communities that have been evicted.

I support this Petition.

Sen. Farhiya: Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to contribute to this Petition.

Sen. Mwaruma has been known to continuously fight for the rights of his people and he has been doing so very well. There are so many petitions coming to this House because Kenyans have some level of faith that things will happen. It will be very disappointing if the same House where Kenyans have a lot of faith in to bring their issues here and nothing moves.

I agree with Sen. Sakaja that the Standing Committee on Lands, Environment and Natural Resources should either be split or make them have sub-committees to deal with matters.

There is a Petition I brought to this House in May 2019. However, up to now, I have not seen any report. I have not heard of any visits and I am wondering what is happening. The situation was dire when I brought that Petition. There was a dumpsite that was open and children would go there. There were bottles from bars that had been dropped there and children were drinking from them.

In addition, goats and animals were going inside the dumpsite and they were getting infected and dying. Those are livelihoods for some people who keep animals and live in the periphery of the town. These things are not being adequately addressed.

I agree that land is an emotive issue in this country. There are so many things that happening this county. For example, during land disputes, people become squatters. We need people who are on top of things, not talking about 2019 issues. Up to now, nothing is ongoing.

There are some matters that can be removed from the Standing Committee on Lands, Environment and Natural Resources, for example, wildlife. Wildlife comes under tourism. There is the Standing Committee on Tourism, Trade and Industrialization that can work on land issues.

There is a lot that we can do. Ministries keep on shifting departments. We should amend our Standing Orders in such a way that once departments move between

Ministries, then the recommendation of that department moving to another Ministry is implemented.

Sometimes I tend to feel that it is a crime to be poor in this country. That is because the brunt of bad issues is felt by the poor people. It is high time we became a little bit more humane in how we take care of squatters. Even if we evict them, there should be a solution.

Remember the issue of Kisumu, where a mosque that was 90 years old was brought down in a day. That is a historical site. Many issues happen, especially those that impact on poor people. They have no money to go to court.

Mr. Temporary Speaker, Sir, we should be a little bit sympathetic with people who keep electing us year in, year out. We need to take care of them the way they have taken care of us at all levels of elective positions.

I do not know if we can strengthen laws on evictions. However, it has been said that even when the laws are there, they are applied selectively. We should be a little bit more humane in how we handle issues surrounding our poor people who cannot defend themselves and do not have enough money to fight in court. They are so vulnerable that if they are displaced from one place, they become totally destitute.

Mr. Temporary Speaker, Sir, in this country, the informal sector is the engine of the economy of this country; it drives this country. No wonder we do not develop. That is because the people who are the engine of development are the ones who face evictions, their businesses messed up and their properties being burnt by unscrupulous people who are out to grab their land. We should have a responsible society in this country. Let us protect our people.

Thank you.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Sen. Kasanga, I hope you are now making your own contribution.

Proceed.

Sen. Kasanga: Thank you, Mr. Temporary Speaker, Sir. I sit in the Standing Committee on Lands, Environment and Natural Resources, I think with you, Mr. Temporary Speaker, Sir. The work is a lot. What the Senators are saying is true. However, we are up to the task. Our Chairperson has been very robust at it.

Yes, we have encountered many challenges because most of our meetings have a lot of documentation, but we managed even during COVID-19 pandemic by using the online meetings. Now we are up to speed, we are managing, and we even have our petitioners being able to login from some very remote places and are able to prosecute their cases.

We, as a Committee, realising the number of Petitions we have to deal with, we have managed to sort of put them together and prosecute them at once. Sometimes our meetings are very long. We sit even up to six hours to prosecute several petitions that are of similar nature where we get all the stakeholders together, whether it is the Ministry of Lands together with the NLC or with the Ministry of Environment. We get them all together then we prosecute several petitions at the same time.

I am happy that we have tabled quite a number of reports. I think what is now most outstanding is the implementation part of it. However, we are now hearing about the Standing Order and that is something that as a Committee we can pick on when it comes to implementation of those reports.

Mr. Temporary Speaker, Sir, I agree that land issues are very emotive. Whenever statements or petitions are referred to our Committee, we prosecute them very well. However, until our recommendations are implemented, then the rubber has not met the road. That means that the citizens who come to us do not receive their actual rights on the issue that they have brought before us to prosecute.

When the Committees were reconstituted, we lost some robust Members. I am currently the only female Senator in the Committee and sometimes I get so lonely. We need more women in that Committee. That is the sort of work that women would increase the speed of prosecution if I may say so.

We need to find workable solutions to deal with the huge backlog. Let us implement whatever proposals the Members have. If it formation of sub-committees, so be it. That will also mean that the secretariat needs to be empowered. Our secretariat need to be in touch with the issues as some of them are fairly technical. I do not know how the sub-committees would work, but we will be happy to be guided so that we can be on top of things.

The time of this 12th Parliament is quickly running out. We only have one and half year to go. It will be good if we can clear the backlog. I ask the leadership of the House to help our Committee get more female Members on board as well as advise us on how to prosecute the pending work faster.

Mr. Temporary Speaker, Sir, another challenge that we have in our Committee is lack of sufficient budget. Due to lack of finances, we have to put off numerous county visits and only go once we have grouped like areas together. It is a challenge for us to traverse from one county to another in a short span. We have to lump issues together to make the county visits meaningful. For instance, if we have three or four days to prosecute issues in the Mt. Kenya region, we cannot proceed to a county like Isiolo because we have to set aside a whole day for Isiolo and hopefully hop from one section to another with the aid of a helicopter which is very expensive.

Mr. Temporary Speaker, Sir, we seek guidance from the House.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Hon. Senators, pursuant to Standing Orders 232(1), the petition should be committed to the relevant standing Committee for its consideration. In this case, I direct that the petition be committed to the Standing Committee on Land, Environment and Natural Resources.

*(The Petition was committed to Standing Committee
on Land, Environment and Natural Resources)*

In terms of Standing Order 232, the Committee is required in not more than 60 calendar days from the time of reading the prayer to respond to the petitioner by way of a report addressed to the petitioner and laid on the table of the Senate.

I thank you.

Hon. Senators, Sen. Wambua is not present to prosecute Order No. 8, Committee of the Whole on the Mung Beans Bill (Senate Bills No.9 of 2020). I, therefore, defer that order.

COMMITTEE OF THE WHOLE

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

(Committee of the Whole deferred)

Next Order!

MOTIONSADOPTION OF CPAIC REPORTS ON THE AUDIT OF
VARIOUS COUNTY EXECUTIVES FOR FY 2014/2015.

THAT this House adopts the Report of the Sessional Committee on County Public Accounts and Investments on the consideration of the Audit Reports of the Bomet; Homa Bay; Isiolo; Kakamega; Kiambu; Laikipia; Kisumu; Mandera; Migori; Mombasa; Murang'a; Nandi; Nyeri; Samburu; Siaya; Tana River; Tharaka Nithi; Trans Nzoia; Turkana and Wajir County Executives for the Financial Year 2014/2015 (1st July, 2014 to 30th June, 2015), laid on the Table of the Senate on Thursday, 18th February, 2021.

*(Sen. (Prof.) Ongeru 24.2.2021)**(Resumption of debate interrupted on 2.3.2021)*

The Temporary Speaker (Sen. (Dr.) Lelegwe): Hon. Senators, the Motion had been moved and seconded so it is open for debate. Sen. (Dr.) Musuruve concluded her contribution on the Motion when it last appeared on the Order Paper.

I will now allow Sen. Sakaja to make his contribution.

Sen. Sakaja: Mr. Temporary Speaker, I rise to support that this House adopts the report of the Sessional Committee on County Public Accounts and Investment Committee (CPAIC) on the consideration of the Audit Reports of the Bomet; Homa Bay; Isiolo; Kakamega; Kiambu; Laikipia; Kisumu; Mandera; Migori; Mombasa; Murang'a; Nandi; Nyeri; Samburu; Siaya; Tana River; Tharaka Nithi; Trans Nzoia; Turkana and Wajir County Executives for the Financial Year 2014/2015 (1st July, 2014 to 30th June, 2015), laid on the Table of the Senate on Thursday, 18th February, 2021.

I will make very brief remarks because last week when we had a similar Motion, I was able to speak to it although that was another batch of audit reports.

First, I would like to acknowledge a gentleman who went to a good school, Sen. Kajwang. The Senator for Homa Bay County, Sen. M. Kajwang, went to the Duke of York or popularly known as the Lenana School and that how he became very efficient in running the CPAIC. I do not want to compare Members as it is not right, but if you see the reports of the previous CPAIC, you will notice the Sen. Kajwang cleared a huge backlog of pending reports with his Committee in the short time that he served as the Chairperson of CPAIC.

I keep saying that it is unfortunate that many times, we are here as morticians who do very old postmortems from many years ago. For example, today, we will be

considering the audit reports of the former Governor of Isiolo County. In as much as the report will tell you the systemic issues, I think that Sen. Dullo, the Senator for Isiolo County, is interested in what is currently going on in her county.

Mr. Temporary Speaker, Sir, I am keen to look at the audit reports of Gov. Kidero. However, apart from the issues of system, I want to look at what is happening in Nairobi County now. I would like to know what the Deputy Governor, Ms. Kananu, and the Nairobi Metropolitan Services (NMS) are doing in Nairobi County. If we look at the current issues, we would be able to do real-time audit and oversight. This is a House of oversight and that is our most critical role.

I am glad that we pushed the Controller of Budget to send each Senator the monthly exchequer releases for their counties. The exchequer release report gives Senators an immediate view of what is going on. I thank the Office of the Controller of Budget because I have been receiving timely exchequer releases reports. When I call, they never fail to pick their calls to explain.

From the last exchequer release report that I received, I was dismayed that in this Financial Year, 2020/2021, out of an allocation of Kshs37 billion, the Nairobi County Government has only received Kshs4.7 billion which is for the entire financial year. I was shocked to see that all the money that has been received is all on recurrent expenditure and nothing on development project. The NMS has also not received anything from the exchequer. The NMS is currently operating on the national Government budgets.

The NMS is doing a lot of good work, but the national Government budget is not sustainable for them. The NMS should be properly funded and oversighted. If you ask which vote the NMS is getting their money from even at the national Government level, no one will tell you that kind of information.

This morning, the Committee on Labour and Social Welfare was discussing the issue of compensating the traders who were evicted from the Railways Club Ground. The members of the Railways Pension Scheme should also be compensated because their land where the NMS is putting up a bus park and a dispensary was valued at Kshs13 billion. Although the NLC says that the land is valued at Kshs9.5 billion, where will the NMS get money to compensate the traders and the retirement scheme?

Fortunately, a request for compulsory acquisition was made by the Kenya National Highways Authority (KeNHA) who later realized that they do not need that land. The request for compulsory acquisition of the land is now on behalf of the NMS. I am sure that such a reallocation can be done within Government without much trouble.

All in all, we need more sustainable ways of funding that entity. At the end of his financial year, it will be difficult to audit the Nairobi County Government as well as the NMS.

I am grateful that we have come this far. I hope that there are more of these reports that are coming for us to debate. The one thing that we must do as a House to make us efficient as we finish this term is that for those of us who are interested in coming back to the Senate, it will be important that in the same way we have a very robust and useful Parliamentary Budget Office (PBO), that we need to set up a Parliamentary Audit Office (PAO).

This is a PAO that goes step by step and hand in hand with not just the CPAIC, but with each and every Senator real time. They are able to break down issues for you as you play your oversight role, so that it is not subjective and political. Let me say someone

may say that he does not like this governor because he is stealing or he is not doing well, but based on facts, reports and it is real time.

Mr. Temporary Speaker, Sir, we can ask for special audits through the PAO. It is something we can explore. Sen. Mutula Kilonzo Jnr., you sit in the Committee on Budget and Finance and you are patched high up in the leadership. This is something we can explore not just as a legacy, but to actually make the work of the Senate as provided for in the Constitution more effective as opposed to me looking at reports of 2014/2015 and then trying to understand the most recent report.

If we had a PAO, on the most recent report by the Auditor-General, I can sit with them and go through this with the Executive and the Legislature of Nairobi City County, the NMS and know whether the people of Nairobi are getting value for money and the taxes that they are paying. We argue in this House and fight for allocations--

Mr. Temporary Speaker, Sir, I am proud as the Senator for Nairobi City County that in my time I moved our allocation from Kshs15 billion to Kshs19 billion. The first year was Kshs15.6 billion then Kshs15.8 billion, and we have gone up. So far, we are at Kshs19 billion. If we pass the Building Bridges Initiative (BBI), which I know will be passed, if Kenyans deem it fit for us to pass it, Nairobi City County will immediately get Kshs25 billion.

Why would we be fighting so much on how much money we give our counties and then when it comes to how it is used, we are years behind? It does not make sense. I am sure the rest of the Senators can say what they have received.

Mr. Temporary Speaker, Sir, the Senator for Samburu was arrested because of looking for resources for his county. Why is it that when you are hunting, we put so much effort as a Senate, but with regard to our oversight role, we are not facilitated? People should get it right. This is because I have said in this House that I will not support the oversight money that Members wanted. This is because it looks like we are trying to get resources for ourselves.

Mr. Temporary Speaker, first of all, we had refused to use a formula. You wanted to give us all the same amount of money. The Senator for Nairobi City with 85 wards and 17 constituencies with 4.3 million was supposed to get the same money as Lamu with two constituencies. Even if we were to have meetings, you cannot do the same number of meetings. If you were to meet 100 people per ward, automatically for me it is 8,500. That is why I do not support it.

We want to be facilitated to do oversight and audit. It is this kind of oversight that I am talking about. We can have auditors, accountants, experts in finance and people who can do service on different issues. I can decide this year, with that fund, I want to concentrate on infrastructure and to find out why infrastructure is being done, solid waste management in Nairobi, and to understand how the social programmes are being done. That is what that kind of money should have been used for. That is what we should be doing. However, by having the human resource of a PAO, we should be able to do so.

Mr. Temporary Speaker, Sir, the next point that I have seen in these audit reports is the matter of revenue. As a country, we are getting to that point where we need to have that conversation. Many times we say it in passing or almost as a joke, that we concentrate so much on sharing the cake and not enough on baking it. We have a Commission on Revenue Allocation (CRA). We will soon need a commission of revenue generation.

If you look at our public debt at the national level, the biggest project today in Kenya is debt. We are paying thrice the amount of money we are giving to counties. It is not because we do not need to spend, but it is because we are not creating those resources.

Many of our county governments - if you look at these reports and go back to county councils - there has been very little change from what the councils were collecting to what the county governments have been collecting starting from 2013. One wonders with new efficiencies and better ability, automation, we now have all of these smart solutions on the phones, we should be getting more money.

Mr. Temporary Speaker, Sir, in Nairobi, we have more than 134 revenue streams. A few of them were automated, but the revenue collection in Nairobi has gone down even below the last county government. I dare say that Nairobi City County has a potential of raising between Kshs50 to Kshs70 billion a year as it is, especially since we passed the Sectional Properties Law.

Sen. Kasanga will tell you from her perspective that we are redoing the valuation role of rates in Nairobi. Right now, it is at the Assembly. Nairobi can even be listed. Look at what is happening in Johannesburg. If we add that Kshs70 billion plus Kshs25 billion that we will receive courtesy of the formula and BBI, we will be talking about an amount of more than Kshs100 billion.

Since we are auditing the expenditure of that, which will transform lives in this city, we need to strengthen oversight. Otherwise, it will be an avenue for pilferage where governors can collect money and spend at its source. We have known many cases where vehicles of Wells Fargo in our counties - I will not mention which counties - have been seen going to governors' houses or their aids carrying cash to their houses.

Mr. Temporary Speaker, Sir, we must have a standard. There was supposed to be a national payment gateway that was to be effected by Posta in conjunction with the national Government. That payment gateway must make it uniform for all counties in terms of how they collect revenue.

Mr. Temporary Speaker, Sir, if you look at Chapter 12 of the Constitution, we have a form of fiscal decentralization that limits the revenue raising capabilities of counties. The four principles of devolution include expenditure allocation, revenue raising ability, intergovernmental transfer and sub-national borrowing.

In our experience of devolution, we have jumped number one and two and moved to number three. This is because if you look at number one, it is what we allocate. It is the Fourth Schedule. These are expenditure responsibilities. Once you have known those functions, then you cost them. When you cost them, then you say what are the revenue raising opportunities.

I wrote a book on fiscal decentralization in 2009 within our context of this new Constitution 2010. If you look at all the jurisdictions, I looked at like India, South Africa, those with a form of devolution like ours, and not federalism, the intergovernmental transfer is normally to feel the gap between the work you have been given to do by the Constitution and what you are able to raise. However, today in Kenya, no governor is going out of his way to think of how to raise more money.

This is because they are sure Sen. Mutula Kilonzo Jnr. will come up with "Team Kenya" and Sen. (Dr.) Milgo will be on the other side, they will battle and they will get their money. That is why when we were having that debate, they were very proud saying

that the Senate is doing a bad job. There is no leadership. This is because they are just waiting for money from the national Government.

We need to review. I wish BBI had looked at Chapter 12. This is because in Naivasha in 2009, before the 2010 referendum, there was a very light memorandum from the National Treasury with respect to Chapter 12 on public finance. That is why we have many problems. Ms. Christine Lagat told this country that the cost of the administrative structures in this new Constitution will give us a problem like it has been said in many countries.

We are adding that with the BBI in as much as I support it. We need to rethink. Are we setting up our counties to succeed? If you look at formulas, countries like India have within their formula variables that make counties compete. The marginal increase in your county Gross Domestic Product (GDP) contributes to whether you get more money.

Today, our formulas are heavy on population and poverty. This means that a governor who is 'a governor for life' would want to make sure that his or her county is as poor as possible with as many people as possible. That will mean they will get more money. We are not competing properly. We have asked for certain indices to be put in the formula going forward. I hope the next Senate that does the next Revenue Sharing Basis we will look at it.

Poverty index in the world of today is a measure of darkness. It only tells the ratio of those who are below or above the poverty line. You need to look at human development index. The CRA brought many good variables. They started looking at the issues of water and access to health care.

In as much we do not know how they counted the access to healthcare saying the number of visits to hospitals yet Sen. Wambua's county may not have enough hospitals to even visit in the first place. We need make sure counties compete on productivity and raise revenue, so that we grow as a country. That competition is not the way governors are doing it. I was in Meru over the weekend. Between Meru, Isiolo and Nanyuki, everyone is putting cess points. It makes it difficult to trade. You have to stop your truck.

Mr. Temporary Speaker, Sir, some of the work I do is in branded advertising. The headache from Mombasa to Malaba is that every county is looking for a piece of pie. It would be easy for us to have the counties; I wish I came for the meeting with the Council of Governors (CoG). I was following it online. Beyond being a club, they should make sure that some of the monies can be collected centrally so that you do not have a business man paying rates for 10 counties and 17 licences.

You do not have a businessperson having to deal with different standards of counties because his vehicle is passing through there. The issue of revenue on the audit has been brought out well, but we need to emphasise on how we bake a bigger cake and consolidate. Governors have been unrealistically projecting how much they will get in terms of revenue collection.

Beyond that, I would like to encourage our county assemblies to take the reports we are passing and look at them critically. They are the first point of oversight. It is our county assemblies that are a frontier. We play a role of secondary oversight beyond the county assemblies. They need to do their work instead of lobbying with governors and playing politics. We have a lot of beautiful legislators in our county assemblies. I was at the Nairobi City County Assembly when the debated the BBO report, I was embarrassed to tell them that they would put to shame a lot of their own Members of Parliament in

terms of quality of debate. They have very good quality of debate. Now, they need to have financial autonomy as assemblies so that they can keep their county governments to check. I support this and I hope we start seeing more recent reports coming.

I do not know what happened to the leadership because we still have not constituted the new CPAIC and the Delegated Legislation Committee, the Sessional Committees. Yet there is a lot that is going on currently. Let us constitute it and put people who are vibrant, every Senator qualifies, but let us create a fresh team. Some of institutional memory, but also just to reinvigorate those who are currently there.

I support.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Temporary Speaker, Sir. Let me begin from where my good friend, Sen. Sakaja, left. A good practise in jurisdiction all over the world is to keep a permanent secretariat as opposed to Members. This is what the Public Accounts Committee of the House of Commons does. You will find a clerk assistant has been with the Committee for 30 years. It becomes continuous unlike our practise where our secretariat is moved here and there. I have no problem with the practice, but it does not help us. Since the audits of 2013 for purposes of my county Makueni has no follow up. It is just year on year and is academic and not effective.

I recently did some calculations on how much money Makueni County has received after devolution. In this financial year, it will be Kshs60 billion. Is there value for that money? Can I go to Makueni and proudly say that out of Kshs60 billion, the county has done anything worth the money we have distributed? The answer is no.

What about the Committee? I am afraid that the site of the Chamber today in relation to the discussions we are having on CPAIC on these counties tells you that Members have lost interest. Currently, how many Senators were in this House in 2014/2015? They have no interest in following up some of the things that were done before them. To some great extent, the CPAIC need some redemption.

I have lost faith in that Committee and in its work. I say so because I have sat in many meetings regarding my own county. The Governor comes and gives undertakings to do several things within a specific period and nobody follows up after that. When you ask them, nothing happens?

I have lost faith that the CPAIC of the Senate will offer the solutions we need and they will give reports that we can go out in the public and implement. The suggestion is technical, the proposal by Sen. Sakaja might be the solution that the next Senate must consider a technical committee. It will plug into the book of accounts of any county and come out with results.

I have been taken for training in the House of Commons and The National Council for State Legislature in the United States of America (NCSL). It is only in Kenya where everything is an audit issue. We have such little faith and bad manners of operating that everybody and everything must be questioned. Every single penny has a query. In NCSL, only matters of fundamental nature reach the level of the Senate. NCSL is an umbrella body like County Assembly Forum (CAF). Only fundamental matters reach the level of this House. Half or majority are handled out there.

What is the current status? The County Governor of Makueni is now operating as County Assembly Members in a by-election. The County Governor of Machakos is operating with County Assembly Members for purposes of the Senate by-election. Are

they the same people who we will rely on to check when they are collecting money from the same governors?

It is a shame and I am disappointed that while we put in a lot of effort in this endeavour chances are that we will not get much from the Members of the County Assemblies (MCAs) in so far as audit is concern.

The things that the Auditor General flags, for example, I raised this concern last week, a document has been tabled here on COVID-19 funds and the Committee on Health has not moved a notice of Motion to adopt the report of the Auditor General. The document is here. The document was supposed to be tabled by the Committee led by Sen. Sakaja and later read by Sen. Kasanga.

Why is it that we have to wait in a pandemic, to audit the mismanagement of COVID-19 funds by Makueni County at the Senate level? Why has the Assembly not noticed? In my case, we are supposed to have received 25,000 masks. Who saw the masks? Who should have asked the question fundamentally on where the masks were? The county assemblies have not asked this question.

My dear colleagues, I am afraid devolution is going to fall on the sword of mismanagement. I was glad yesterday to tell some people that I am glad the money we fought for so hard in 'Team Kenya' and others is going to come out in the next financial year. If it had come out in this financial year, these governors would have spent it doing nonsensical things. It is unfortunate. These matters must be done at a technical level.

I represented the former Governor of the Central Bank, Governor Mulei, who came up with a system, but eventually he was charged for it. The system was able to plug into the banking system and find out the misdemeanours, malfeasance and malpractices of the bank. That is how Charterhouse Bank is the only bank that was closed with money on it, because of a system. The people who disclosed this information became USA citizens before the information was made public. They had to run away. Can we have a system similar in counties?

I am completely satisfied that the governors are doing paperwork. The County of Makueni received an unqualified opinion. They have become experts in drafting good documents. When you go to Makueni and ask is there value for money, they will tell you there is no value for it.

Mr. Temporary Speaker, Sir, the Auditor-General now writes a report and says the Kalamba Fruit Factory in Makueni County is a loss making factory. This done six years down that line after it was constructed after it has spent more than a billion shillings. Audits are supposed to pick these things in advance. The auditor is supposed to pick the business plan. Where is the business plan for factories here and there? Kitui County has a similar factory called Kitui County Textile Centre (KICOTEC). We do not want to hear stories seven years down the line that this was a white elephant after money has been spent.

Mr. Temporary Speaker, Sir, we must accept our title, Senators, that we are morticians. There is nothing we can do. We will lament and that book must be read continuously in this House. We will lament and nothing can be done. The auditors seem not to have capacity to pick these things. I have heard stories. I can repeat them on record here that some counties have pocketed some auditors and, therefore, the reports are just shady.

Mr. Temporary Speaker, Sir, Sen. Farhiya had a proposal - and this is my last contribution - that there ought to be a method for the Institute of Certified Public Accountants of Kenya (ICPAK) to be outsourced at county level. A county can pick private auditors to audit its accounts or the Auditor-General is able to outsource private auditors. This is because the Auditor-General will not confess that the office has no capacity to audit the 47 counties and National Government. All of us Sen. Sakaja included are proud to have sat in the county assemblies for them to have passed the BBI which is going to bring 35 per cent.

Makueni County, if all goes well, will receive an additional Kshs4 billion out of that framework. It is a very scary thought. I know Kitui, Machakos, Nairobi and Wajir counties will receive more and so will your county. It is just not audit. If we cannot get the accountability framework right, my dear Senators, we are opening up for a grand heist just like in the movies.

Mr. Temporary Speaker, Sir, I have always wondered. Sen. Sakaja because you are an expert in this, can we begin questioning the wisdom. The previous Constitution had both the Controller of Budget (CoB) and the Auditor-General performing the same function. It was one office. Now I tend to believe there was wisdom in it. Let me explain why.

The CoB is very quick in tabling reports on the requisitions by counties and how they spent the money. Does the CoB under the Constitution marry the requisitions and their reports with the Auditor-General's reports? They are like two people, one left hand and one right hand that do not know what the other is doing to the extent, therefore, that county governments are altering their requisitions after they move from the CoB and the Auditor-General cannot pick it up. It is a complete waste of time. These are some of the amendments that I would have proposed that you merge those offices so that the office is able to track the "a" to "z".

You requisition in Nairobi to buy a table, when you get to the county, you buy a flask. How you alter that requisition and nobody picks it up is an amazing concept. When it comes here to the CPAIC, they make a recommendation of surcharge *et cetera*, but nothing happens. Accept and move on has become the mantra of the CPAIC.

Mr. Temporary Speaker, Sir, in my capacity we will try our level best to see whether we can improve the Committee or even suggest new membership. However, if we are discussing the report for the Financial Year 2014/2015 in 2021, the second term governors are going to steal like Jesus is coming because they know that the Senators who are going to raise this, are going to do so after the election, and they will most likely be in the Isle of Man or some very exotic island that has no network. There will be nothing we can do about it. Unless we can sanction them or stop them from leaving, there is nothing you can do.

Mr. Temporary Speaker, Sir, the Public Finance Management Bill that we had proposed has to go through republication, in fact, had something very drastic because the Auditor-General is not going to help us. We had suggested as the Committee on Finance and Budget that we freeze some expenditure just before elections.

Now that I have seen the by-election in Machakos and Makueni counties, I guarantee that governors will spend county funds to get Senators who will not question their pilferage of funds. It is going to happen unless we can lock out some of the expenses that are done sometime in 2022; it is going to be very unfortunate.

You are going to walk in there as a governor and find empty coffers. They will either carry the money in cartons or do something worse, burn the finance offices like they do. Sen. Wambua was right when he said that the only office that burns in our counties is the office where the financial records are kept.

May God help this country.

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

The Temporary Speaker (Sen. (Dr.) Lelegwe): Do you want to be informed, Sen. Mutula Kilonzo Jnr.?

Sen. Mutula Kilonzo Jnr.: Yes. I am ready to be informed.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Proceed, Sen. Sakaja.

Sen. Sakaja: Thank you, Mr. Temporary Speaker, Sir. I wanted Sen. Mutula Kilonzo Jnr. to go towards the end so that I inform him because I did not want to stop that flow. Now he is like a preacher. When he starts, he gets fire.

There is a lot of wisdom in many jurisdictions that still have the office of the Controller and Auditor-General. I think it is something that we need to discuss. If you look at the old Public Audit Act and many jurisdictions, I will just give you an example. There is the audit function that the Auditor-General does, but the controller function actually compliments and enables that audit function.

Mr. Temporary Speaker, Sir, if you look at New Zealand, the Controller and Auditor-General is stipulated - and anyone can look at it. In its controller function, something that Sen. Mutula Kilonzo Jnr. has just mentioned. The main features of the controller function are:

(i) Treasury supplies monthly statements to the Auditor-General to examine where the expenses and capital expenditure have been incurred in keeping with the appropriations.

(ii) The Auditor-General there can direct a Minister to report to the House of Representatives like the National Assembly if the Auditor-General believes that any expenditure incurred is unlawful or applied for a purpose that is not within the scope, amount or period or an appropriation or other statutory authority.

Then they can stop payments from a Crown Bank account or a departmental bank account to prevent money from being used for a purpose that is unlawful or inconsistent with any appropriation.

This is what we need in this country. One is in a building in town and another one is somewhere else. They are not sharing these reports. Money is being withdrawn and used for very different purposes and then we find out later as morticians two or three years later; if even we are able to find out.

When they do not share that, the Auditor-General is not able to tell us that this money was not used for its intended purpose. It is something to rethink. Bring back the office of the Controller and Auditor-General. Maybe we just wanted to create two jobs. I do not know. However, I just wanted to inform him that many other jurisdictions still have that distinction, especially in the Commonwealth countries.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Proceed, Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Thank you for your information, Sen. Sakaja. It is always useful to ponder over these issues because we are legislatures and we must continue doing this. In Germany, the auditor is called a president. To secure that office,

the president has a longer term than Parliament as we know it, both House of Representatives, *Bundestrat* and *Bundestag*. This is so that their term is not tied to the term of the politicians. That is how they do it. The President, who is the Auditor-General in Germany, summons everybody. They do as they, please. They have security of tenure and are not subject to the usual games of party politics that we play when we are appointing an Auditor-General, *et cetera*.

Those are some of the things we need to think about. The process of audit cannot be left to members of the Senate; it must be dealt with by technical people. It is those technical people who will help us. The politicians sitting in committees in the House of Commons, Congress, and the House of Representatives ideally just sit to approve reports. The technical teams are the ones who do this.

You cannot shift the people who work in the CPAIC every six or so months, that there is nobody there with institutional memory. We are now being asked to reconstitute the Committee. The first Chairman was Sen. M. Kajwang', the second Chairman is Sen. (Prof.) Onger, and the third one might be a different one. The first one does not know what the second one did, and the third one does not know what the first and second one did, and yet, it is possible that you are dealing with a governor who was in office since 2013.

At the end of every Session, between the five years, this Senate should have an exit report on a particular county. For example, between 2013 and 2017, this is the performance of Nairobi City County with regard to its audit. This is so that you have a report for the next Session of Senate to follow up. Otherwise, what we are doing now is filling the Order Paper with a lot of these things and passing so many resolutions, which are not going to add any value to the members of these respective counties wherever they occur.

Mr. Temporary Speaker, Sir, I support.

The Temporary Chairperson (Sen. (Dr.) Lelegwe): Sen. Wambua.

Sen. Wambua: Thank you, Mr. Temporary Speaker, Sir. I thank you for this opportunity to also make a contribution on this Motion by CPAIC. I will begin by thanking the Committee for compiling this Report and tabling it for debate.

There are serious and fundamental questions that all of us need to engage in, as far as this and other reports by the same Committee are concerned. We are dealing with the report of the Financial Year 2014/2015. The report is here seven years down the line, observations have been made and recommendations put forward. So, what?

Mr. Temporary Speaker, Sir, the level of misappropriation and misallocation of public funds in all counties is legendary. How these auditors, both the Auditor-General and our own Committee, come up with some of the recommendations and observations, is very baffling.

As Sen. Mutula Kilonzo Jnr. said, there is a tendency in many counties where fire just has a way of finding its way into finance offices. It is just amazing how finance offices get burnt, documents are destroyed, and that is it. When you ask for evidence of allocation of resources, you are told that those documents were consumed in the fire that gutted the finance offices. You ask for backup and they say that they had not procured a backup system by the time the fire gutted the premises. That is where the story ends.

Mr. Temporary Speaker, Sir, I pray to the Almighty God that he will give us longevity of life. In around 2030, 2040, or 2050, when the Senate of the Republic of

Kenya will be debating the audit reports for the 2017/2018 Financial Year, I want to see what they will say about particular investments in my own county.

I think very few people in this country do not know something called Kitui County Textile Center (KICOTEC) in Kitui County. Just scratching the surface of it, you will open a can of worms for a lot of things and many people. In the first place, an investment that continues to take up public resources when it was established even before Kitui County Assembly passed the necessary enabling law.

Mr. Temporary Speaker, Sir, wonders will never cease. The other day, I saw my Governor basking in the glory of an announcement that she was making Kitui the first inland artificial beach. Who does these things? Who takes public money to go and invest in certain projects?

I do not want to turn this into a session of poking holes in the administration of finances by the County Government of Kitui. The only thing that made me want to contribute to this Report is to ask the hard question. What is the value of these reports in our work? Beyond getting an opportunity to ventilate on them, apportioning blame on certain people and offices, what is the value of these reports?

Mr. Temporary Speaker, Sir, if we are dealing with 2014/2015 today, what remedies are available to correct the messes that were made then? We know very well that between 2015 and today, a lot more mess has been visited on the administration of finances belonging to the finances in the counties.

I would like to recommend two things. We should create proper synergies between the office of the Controller of Budget and the office of the Auditor-General, and by extension, all the audit institutions that have a bearing on the management of public resources in our counties. I think that is what Sen. Mutula Kilonzo Jnr. was suggesting.

Mr. Temporary Speaker, Sir, the other day, I had issues with the Controller of Budget. I wrote to them asking very basic questions.

The first question was: How is it that ever so often, staff in Kitui County go without pay and the staff in other counties are being paid? At what point does the Controller of Budget (CoB) authorize expenditure by the county government to an extent that there is not money to pay salaries for staff?

Mr. Temporary Speaker, Sir, I am still awaiting those responses, but truth be said, there appears to be serious connivance between county governments and the CoB and the Auditor General. Unless we find a way of making sure that before counties spend these monies proper due diligence and fiscal analysis of projects and consultations is done, governors should not just be allowed to invest public finances the way they want.

Lastly, yes, we could have been reduced to just being morticians in dealing with the reports of CPAIC, but there is a matter that has been raised on the Floor here on where accountability is when it comes to even our own Sessional Committees on CPAIC?

It would be important that as we think through maybe reconstituting that Committee, serious thinking goes into it. We should ensure, as has been suggested by my colleagues, that when we finally do those exit reports by Committees, all CPAIC Committees from 2017-2022 will give exit reports for each county, for example, Kitui, Nairobi City, Machakos and Makueni Counties, so that there is a report for each.

It enables the other Committees that come on board to know exactly what was happening, so that as they begin their work, they are properly guided by information gathered by previous Committees.

I rest my case.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Hon. Senators, I do not see any interest to contribute on the Motion, and the Chair is not present. I bring your attention to Standing Order 92(b)-

“A Senator who has moved a substantive motion has, on conclusion of debate and before the Question is put, a right of reply, and may delegate that right to another Senator to reply in the Senators’ stead.”

We have not received any delegation of that right. The Chair forfeits that chance of replying the Motion.

Under Standing Order 79, we have also determined that the Motion affects counties. I, therefore, defer putting the question until next time when it will appear on the Order Paper.

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

Next Order!

FAST-TRACKING CULTURAL
DEVELOPMENT IN COUNTIES

THAT, WHEREAS Kenya is a multi-ethnic and multi-racial country with rich and diverse cultural resources such as traditional medicine and foods, arts, craft, music, dances, dress among others;

AWARE THAT, the Constitution, in its preamble acknowledges the cultural diversity of the Kenyan people who are determined to live in peace and unity as one indivisible sovereign nation whilst, Article 11 of the Kenyan Constitution recognizes culture as the foundation of the nation;

NOTING that, while the Department of Culture under the Ministry of Sports, Culture and Heritage has been playing some of the key roles in promotion of cultural integration, formulation of policies and standards that will guide the development of culture, little information has been available to the Kenyan public;

ACKNOWLEDGING, that culture performs a significant role in the life of a child, the cultural background in which a child is brought up affects the totality of his or her life’s activities;

CONCERNED, that our children are losing their sense of identity due to the negative influences due to inadequate cultural identity catalyzed by globalization which has led to catastrophic consequences to the next generation as experienced in our country where a majority of young people are showing symptoms of feeling suicidal, anxious, feeling of hopelessness, anger, violence, feeling isolated, and paranoia;

NOW THEREFORE, the Senate urges the Cabinet Secretary, Ministry of Sports, Culture and Heritage to –

- a) Formulate cultural development policies and initiatives to inculcate stronger community values, safeguard Kenya's heritage, recognize local heroes and promote socio-cultural opportunities in the counties; and
- b) Formulate strategies to create an enabling environment for protection and promotion of diversity of cultural expressions in all counties.

(Motion deferred)

PARKING CHARGES IN PUBLIC INSTITUTIONS
OFFERING ESSENTIAL SERVICES

THAT, AWARE THAT, many urban areas and towns in Kenya lack designated car parking areas as a result of imbalance between parking supply and demand mainly due to ineffective land use planning and miscalculations of space requirements, thereby leading to exorbitant parking fees;

NOTING THAT, most essential services offered in hospitals, educational institutions and other public utilities are offered in urban centers, shopping malls and other designated areas that charge parking fees to access;

ACKNOWLEDGING, that whether they are delivered by public or private providers, essential services such as health, banking, education and other utilities are considered to be public services because they are public goods that sustain the well-being of every citizen and help in the development of the society as a whole;

CONCERNED, that access to hospitals, educational institutions and other places offering essential services might be hindered due to exorbitant parking fees levied on motorists accessing these services;

FURTHER CONCERNED, that charging entry fees amount to double taxation as the motorists who would have paid the parking fees will still pay for the services they seek;

NOW THEREFORE, the Senate urges the Cabinet Secretary for Lands, Housing and Physical Planning together with the Council of Governors to come up with a policy framework to create an enabling environment for protection of motorists accessing essential services from paying exorbitant fees for parking.

(Motion deferred)

PROVISION OF MONTHLY STIPEND TO
CANCER PATIENTS IN HOSPITALS

Sen. (Dr.) Musuruve: Thank you, Mr. Temporary Speaker Sir. I beg to move the following Motion-

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

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

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

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

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

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

- (i) Incorporate county cancer support services in their annual development plan;
- (ii) Partner with stakeholders to create support including counseling services; and
- (iii) Provide cancer patients with free prescriptions, wigs for those who have lost their hair, improvised breasts where applicable, and a subsidy for prostheses.

As I begin to move this Motion, I honour my fellow legislators who have gone before me. I honour the late Hon. Waititu, hon. Laboso and hon. Ben Okello who was sitting almost where I am sitting.

I sympathize and empathize with the millions of Kenyans who are right now in hospital going through cancer treatment, surgery and chemotherapy. I also encourage those who have gone through the treatment plan, the active cancer patients and those who have survived, and those who are still surviving to soldier on even as they still live in this world of the living

Cancer takes a toll on many people; the rich or poor, young or old. Everyone is a candidate of cancer. The issue of cancer should concern every Kenyan because we cannot be too careful. No Kenyan can say he or she is too careful not to get cancer. Therefore, this is a Motion that involves all Kenyans, rich or poor; in executive positions or not, they must take the issue of cancer seriously. As a nation, we must do something about it.

Mr. Temporary Speaker, Sir, as a cancer survivor, I would like to say that we do not have a predictable cause of cancer and we cannot say that cancer is predominantly a

lifestyle disease. We also cannot say that cancer can catch one, two or three people because there is no specific cause of cancer.

There are different types of cancer. They are diverse; almost 200 and the causes are unknown. When you are talking of the causes of cancer, the symptoms of cancer are known because it depends with the type of cancer. Different types of cancer have different symptoms. Therefore, you cannot sit down to begin advising someone that if they feel pain, they should know that maybe they have cancer.

Mr. Temporary Speaker, Sir, from a survivor's point of view and someone who has experienced and gone through this, cancer is an abnormality of cells that can catch anyone. We have to see how to help those people who go through cancer and their families.

When it comes to treatment, there is no specific treatment plan for cancer. I saw yesterday in the newspapers that there is a Bill already in the National Assembly that has come out saying that when it comes to the treatment plan, we have to exhaust all avenues of local treatment in order to pursue treatment abroad, so that people are referred to India, South Africa and so on. I stand on the Floor of this House to say candidly that as Kenya, we are not ready for that Bill. Even if the Bill passes, it will not help cancer survivors or patients because we have not trained enough oncologists to deal with cancer.

The issue of medical tourism should stop when it comes to patients with terminal illnesses and those diagnosed with cancer. I want to thank Karen Hospital. When I was diagnosed with cancer in 2013, Karen Hospital was candid enough to tell me, and they called my family, that they are not able to treat me. This was because the kind of cancer I had was rare and the doctors were not able to manage it. Bone cancer is not predominantly found in adults. They surrendered and told me the truth; that I was going to lose my leg, uterus and pelvis.

I asked them as an innocent patient: "When I lose all that, what will I remain with?" I will forever thank them because they gave me a referral to go to India. When I went to India, I was able to salvage my limb. When you see me walking with this limb, I walk because God allowed me. God allowed me to remain with my limb. If I had not pursued other avenues and alternatives, I would be having one leg without a uterus and a pelvis.

I am speaking from a survivor's point of view. Sometimes we come up with legislations simply because we want to come up with laws. However, the laws we make sometimes do not really help the people who are affected.

Mr. Temporary Speaker, Sir, as a cancer survivor, we must rethink how we look at people who have cancer. We must rethink how we treat them because once someone is diagnosed with cancer, life changes as well as their perception of life. If you are working somewhere, no boss will give you a promotion. They look at you in terms of you dying anytime. You are given two months, three weeks or even one year to die.

When it comes to promotion, it is rare that people who have chronic diseases are earmarked for promotion. It is also rare that they are given high cadre jobs because when your employer looks at you, he or she sees as if you going to die anytime. We must come up with legislation that will help cancer survivors and people suffering from chronic diseases.

Mr. Temporary Speaker, Sir, I commend Jomo Kenyatta University of Agriculture and Technology (JKUAT) because of the intervention that they did for me.

They believed in me as a cancer survivor when I was a lecturer. They pursued and ensured that I had the money that would help me get my treatment in India. I was never laid off my job simply because my employer believed that I was going to be well and would still be productive. The reason I still have my limb is because JKUAT intervened.

I remember when I was there they were able to fast-track and even ensure that I was paid any part-times I had taught for so many months. I thank the Vice-Chancellor, Prof. Ngumi, wherever she is. She would call me while in India to ask me, "Gertrude, how are you getting on?" My colleagues would ask me how I was getting on. That gave me hope that I would make it in the world of the living.

Mr. Temporary Speaker, Sir, people with cancer go through a lot of hopelessness. No one ever makes a follow up to find out how they are getting on. In fact, most of the time when people talk to them they ask: "When are you going back to India? When are you going back for treatment?" They give you a lot of hopelessness. Nobody gives you an opportunity to be in the land of the living and do what the living are doing.

It is our onus, as the Senate, to see how to help cancer survivors and patients. Kenya is among the countries that signed the Abuja Declaration that stated that state parties were going to support health and 15 per cent of the national revenue would go to health. It is painful when I say on the Floor of this House that even from the 15 per cent that state parties are opposed to set aside, we do not have money that has been set aside to train oncologist.

Even if we buy or rent equipment and we have not trained the personnel and not paying them handsomely, medical tourism will forever be in Kenya. In the Senate, we allocate a lot of money to go to the counties for the purpose of health. However, when you go to the counties and to the ground, things are different.

If you follow cancer survivors, you will find that they are languishing in pain. Go to Githurai; some of them call me until I do not know whether to block them or not. They want support from me because they know that I am a cancer survivor. However, as a Government, we are failing. We have to see how to ensure that cancer survivors are given National Hospital Insurance Fund (NHIF) cards and get treatment freely. That is because it is not by choice that they have cancer; anyone can get cancer.

When it comes to cancer, it knocks the high and mighty and the lowly. It has no choice. Therefore, it is just our onus as the Senate to see how we will to intervene, especially when it comes to the issue of cancer. When a head of a family is diagnosed with cancer, the entire family is affected. Even the children are affected in terms of performance in school. They are affected psychologically and need to be counselled and talked to. They need a support system.

It is unfortunate that when one is the head of the family and is diagnosed with cancer, sometimes one loses a job and the same person has children and so many needs. These are the needs that take someone to the grave because there is no one to empathize with them or feel what they are feeling.

Mr. Temporary Speaker, Sir, there is no one to sympathize, feel for you or say that you are dying of Cancer and find ways to intervene. Rarely do people even offer to give the children of Cancer patients, who have papers, jobs so that they can help their families. I speak on this issue with passion because I am a Cancer survivor. I hope that I will touch Senators in this House to support this Motion. I hope that counties will also

allocate money for the purpose of supporting Cancer patients, as well as persons who end up deformed from Cancer.

I was personally not born as a person with disability, but I thank God for this disability. I got disability in order to survive. There is need to have empathy for people who get deformities as a result of Cancer. Thousands of women in Kenya have lost their breasts to Cancer, and are unable to buy the prosthesis. The county governments can help women who have lost their breasts to Cancer by subsidizing or offering free prosthesis. The county governments can also help persons who have lost their limbs to Cancer acquire artificial limbs, which can help persons be productive.

Mr. Temporary Speaker, Sir, in many nations of the world, people talk about issues of Cancer, but the money does not reach the intended persons. It is a money game. We need to empathize with Cancer patients because we are all potential Cancer victims. It is our onus to make legislation that will help Cancer survivors. The National Hospital Insurance Fund (NHIF) should be free for Cancer patients. Many Cancer patients are supposed to go for chemotherapy, but cannot afford it. Many Cancer patients have ended up selling their property to finance their treatment. More often than not, many Cancer patients die leaving their families languishing in poverty.

In other parts of the world such as the United States of America (USA), when one is diagnosed with Cancer, they are treated differently. Employers of persons with Cancer treat them with caution and empathy. In the USA and other developed countries, Cancer patients who are still productive, are allowed to work as much as they can and even receive promotions. So many Kenyans are hurting out there. Many Cancer patients in Kenya do not receive empathy from their employers. It is unfortunate that when some employers know that a member of their staff is suffering from Cancer or any other chronic disease, that will be the end of their job.

Mr. Temporary Speaker, Sir, we should learn to treat people with terminal illnesses with a lot of caution and love. It is not anybody's choice to get Cancer, and its treatment is very expensive. The treatment of Cancer varies from patient to patient, as it is determined by the biopsies. Biopsies are carried out on Cancer patients to find out whether they will be treated through chemotherapy alone or there is need to have both surgery and chemotherapy. There are some types of Cancers that can also be treated through radiotherapy alone.

For Cancer patients to receive effective diagnosis and treatment, doctors, particularly oncologists, need to be trained. Kenya must invest in the treatment of Cancer patients. Investing in the treatment of Cancer does not only mean buying equipment. Investment in Cancer treatment includes the training of oncologists and other medical personnel, who are involved in the diagnosis, treatment and care of Cancer patients. Investing in human resource is very important. We can invest in equipment after investing in the human resource. Why should we invest in expensive equipment when people do not know how to use the equipment or have the expertise? We need to invest in the training of oncologists.

It is not only training oncologists, but we must also invest in paying oncologists handsomely. If we do not pay them handsomely, we will have medical tourism where you will be referred abroad. If you are referred abroad, whoever is referring you will be given a commission. Therefore, as nation, we have to find out how we can actually help.

In a country like India, treatment is affordable simply because the payment is good. They have the medicines. We need to borrow a leaf from India. This is because we need to have those oncologists here. We do not have to refer our people to India and South Africa. However, if we do not have the personnel, why waste our people here and say that we are trying to explore---

(There was a technical hitch)

The Temporary Speaker (Sen. (Dr.) Lelegwe): Sen. (Dr.) Musuruve, you can now conclude your contribution on the Motion.

Sen. (Dr.) Musuruve: Mr. Temporary Speaker, Sir, as a cancer survivor, my appeal is that each county government and the national Government should take the issue of cancer seriously and ensure that there are policies in place that support people with cancer in terms of treatment, palliation, prosthesis, and wigs. The county government needs to have a plan. Each county government needs to put in its yearly plan an initiative they are going to do for cancer survivors, so that they live long life.

If they are given the opportunity – and I am a testimony - they can be productive. I know I am productive in this House because I was given an opportunity to live as a cancer survivor.

I beg to move and call upon my fellow Senator, Sen. (Dr.) Milgo, to second this Motion.

Thank you, Mr. Temporary Speaker, Sir.

Sen. (Dr.) Milgo: Thank you, Mr. Temporary Speaker, Sir. I rise to second this very important Motion; that is, provision of monthly stipend and other support services to cancer patients in identified county hospitals.

My colleague has spoken to it with a lot of passion because she is a cancer survivor. I like the passion she has for cancer patients. This is because those people who have cancer will be able to speak about it clearly, so that others can be helped.

Mr. Temporary Speaker, Sir, Article 43 (1) (a) of the Constitution of Kenya 2010 speaks to ensuring that everyone has a right to affordable and standardized healthcare in this country. However, it has been a challenge to ensure that every one has standardized healthcare. My colleague has spoken to the fact that there is a lot of medical tourists to other countries, not because we cannot afford, but because of misplaced priorities.

Mr. Temporary Speaker, Sir, many times in our country, we talk about the economy. A sound economy is contributed to by people who are healthy. A healthy nation contributes to a healthy economy.

Mr. Temporary Speaker, Sir, it is a challenge or whatsoever that very many diseases have affected people, hence they fail to be productive, more specifically, cancer. Cancer itself is worse because of the fact that it is the third leading killer. In most cases, like my colleague said, there is lack of treatment centers. We even lack oncologists, the specialized doctors who treat cancer.

Mr. Temporary Speaker, Sir, from this Motion, I have known that there are over 200 types of cancers in this country. However, the major challenge with cancer is the fact that, unless it is diagnosed at early stages, Stage I or II, it becomes a challenge to treat thereafter.

In our country, annually, it kills over 28,000 people. Those are reported cases, but I know there are more people who die of cancer.

In most cases when we go to the villages, we keep burying many people who pass on as a result of cancer. Maybe these 28,000 indicated here are the reported cases, but very many other cases are not reported because of cultural issues. Some people may even believe that someone may have died of witchcraft *et cetera*. However, the fact is that there are very many people who die of cancer.

This disease has robbed families of their livelihoods. As my colleague has said, we do realise that when somebody is diagnosed with cancer from a particular family, apart from being unable to continue with work, there is confusion in orienting themselves in terms of the normal duties at home. In some instances, we find that if a wife gets cancer, the husband might choose to divorce her.

In other cases, children from such families end up suffering because of loss of livelihoods from their parents. Cancer is a disease that takes up a lot of money. The moment it is at Stage Three and Four it means that person will require palliative care and a lot of medication to relieve pain. The families end up having a challenge.

Apart from this disease affecting families, our country has been robbed of great leaders. My own Governor, Dr. Joyce Laboso, died of cancer. We also had the former Senator for Migori, hon. Ken Okoth from Kibera and the most recent death of a Member of Parliament, hon. Waititu from Juja. These were great leaders whose lives were nipped in the bud. They were going to contribute much to this country, however, we lost them at an early age. May their souls rest in eternal peace.

Although Kenya is among countries that affirmed the Abuja Declaration to set aside 15 per cent of their annual budget for medical sector, it is still a challenge. We have just heard from the CPAIC how there is a lot of pilferage in the counties. A lot of money is lost in the counties.

Recently, when we had the COVID-19 pandemic, there were few counties that put up seclusion centres and facilities, to ensure patients are given the care they required at that particular time. In any case, that is a disease that just came recently.

One of the Jubilee Government pillars in their manifesto is healthcare as a key economic programme. However, Universal Health Care has not been achieved because there have been other priorities, one of them being COVID-19. We have had other issues like corruption, which have bedevilled our country.

Recently, our President said that everyday we are losing almost Kshs2 billion due to corruption. The other day, we saw how COVID-19 funds that were taken to KEMSA are a subject of corruption. Although no culprit has been found, where there is fire there is smoke.

We realise that a lot of funding has been lost, while we have cancer patients languishing in poverty. They are dying. My colleague was lucky to go for specialised treatment elsewhere. However, for those who are not able, it is a challenge because our country cannot put up cancer centres.

They cannot even train oncologists. They do not even have screening machines.

The other major challenge is lack of sensitization to inform the populace the importance of medical checkup even if one is not sick. If cancer is diagnosed when it is at Stage Three or Four, it will be difficult to treat it. It is only be treated or managed when it is diagnosed in the early stage. Therefore, we need many screening centres in counties.

Cancer is the third leading killer disease in this country. Therefore, we need to give it the attention it deserves. I encourage people suffering from it to come out, as the late Hon. Waititu did, and openly declare that they are battling, so that they encourage us to go for screening.

Cancer affects various organs in the body. For example, it affects reproductive organs. Many people in our counties do not talk about the challenges they are facing. By the time they are screened and diagnosed with it, it is at a very critical stage, and they end up dying.

This being a challenging disease, I call upon the Government to set up screening centres in all counties. Again, if it were not for the mega corruption in this country, ordinary Kenyans would access medical care easily. Even the screening we are talking about poses a major challenge to our people.

Mr. Temporary Speaker, Sir, this Motion is very important. Sen. (Dr.) Musuruve says that the Bill by the National Assembly will not assist in cancer treatment. I believe it will address cancer issues. It will help us allocate adequate resources to train oncologists and set up cancer screening centres.

With those many remarks, I second.

(Question proposed)

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

The Temporary Speaker (Sen. (Dr.) Lelegwe): What is it, Sen. (Dr.) Musuruve?

Sen. (Dr.) Musuruve: Mr. Temporary Speaker, Sir, because of the nature of this Motion and given that it has national and international impact, I request that we do not conclude debate on it today.

I request that we carry the debate to the next Sitting, so that Members can ventilate on it and enrich the Bill from the National Assembly. We need to enact a law that will help cancer survivors and patients in this country.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Sen. (Dr.) Musuruve, please, clarify whether you are using Standing Order No.105, that the debate be now adjourned or have the question deferred.

Sen. (Dr.) Musuruve: Thank you, Mr. Temporary Speaker, Sir. I request that the debate proceeds to the next Sitting.

The Temporary Speaker (Sen. (Dr.) Lelegwe): That is under Standing Order No.105.

Sen. (Dr.) Musuruve: Thank you, Mr. Temporary Speaker, Sir. It is Standing Order No.105.

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

ADJOURNMENT

The Temporary Speaker (Sen. (Dr.) Lelegwe): Hon. Senators, having concluded the Business of today's Sitting, it is now time to adjourn the House. The Senate, therefore, stands adjourned until tomorrow, Thursday, 4th March, 2021, at 2.30 p.m.

The Senate rose at 6.25 p.m.