

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 19th May, 2020 – Morning Sitting

*The House met at the Senate Chamber,
Parliament Buildings, at 10.00 a.m.*

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

PRAYER

COMMUNICATION FROM THE CHAIR

GUIDELINES ON VOTING IN THE SENATE DURING THE COVID-19 SITUATION

The Speaker (Hon. Lusaka): Hon. Senators, you will recall that at the Sitting held on 5th May, 2019, during the Division on the Report Regarding the Implementation Status of the Resolution on County Governments' Infrastructure Projects, Sen. (Dr.) Mwaura rose on a point of order and sought the guidance of the Speaker, on the matter of the voting procedure in the Senate.

He claimed that he was in receipt of a concern that the Senate Majority Leader and the Senate Minority Leader were voting on behalf of Senators and that if that was the case, then there was the possibility of Bills from the Senate being rejected by the National Assembly.

Sen. (Dr.) Mwaura further asked why Senators, who were present in the Chamber could not vote, even when the minimum number of delegations required to carry a matter in the Senate had been confirmed to be present. This was in the context of the further Guidelines for Senate Plenary and Committee Sittings During the COVID-19 Pandemic Situation that I issued on 17th April, 2020.

The Guidelines provide as follows –

(1) On a day when a Plenary sitting is scheduled to be held, in order to facilitate the smooth processing of legislative business that is before the Senate, in addition to the Senators designated by the Senate Majority Leader and the Senate Minority Leader as attending the Senate sitting in the Senate Plenary Chamber, a Senator shall be considered and reckoned to have attended and to be present during the sitting if the Senator -

- (a) has come to the precincts of Parliament for purposes of the sitting;
- (b) is at the Senator's office within the precincts of Parliament; and,

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(c) has been recorded and certified by the Clerk to be present in terms of subparagraphs (a) and (b).

(2) Whenever a vote is to be taken on a matter concerning counties, the vote shall be by Roll Call and in addition to the Senators who are physically present in the Senate Plenary Chamber, a Senator who is present at a sitting in terms of paragraph (1) shall -

(a) for purposes of reckoning the county delegations that are present and voting in terms of Articles 122 and 123 of the Constitution and Part XVI of the Standing Orders, be considered and reckoned to be present and voting; and,

(b) communicate his or her vote in writing to the Senate Majority Leader or the Senate Minority Leader or to a Senator designated for that purpose by the respective Leader, as appropriate and may, for the purpose of such communication, use electronic means such as e-mail or text message.

(3) Whenever a question is put on a matter concerning counties, in order to ensure the expeditious and efficient disposal of the business of the Senate, the Senate Majority Leader and the Senate Minority Leader, or a Senator designated for that purpose by the respective Leader, shall, when called upon to do so by the Speaker, verbally state the vote of each Senator of their respective side.

I undertook to give a Ruling on the matter at the next Sitting of the Senate Plenary.

Hon. Senators, as you are all aware, the Coronavirus Disease 2019 (COVID-19) is a global pandemic that has disrupted the way business is undertaken in virtually every sector of our society and put the entire world in uncharted territory.

It has resulted in unprecedented preventive measures being undertaken globally. These include quarantines, isolations, lockdowns, social distancing and thorough hygiene protocols among others.

In Kenya, since the reporting of the first case and the subsequent spread of the disease to many parts of the country, the Government has introduced various containment measures. They include -

(i) Advising members of the public to maintain basic hygiene.

(ii) Requiring that people maintain social distancing.

(iii) Recommending that employees who are not in essential services be allowed to work from home.

(iv) Imposition of a daily curfew from 7.00 p.m. to 5.00 a.m.

(v) Restriction of travel into and out of the Nairobi Metropolitan area and the counties of Kwale, Mombasa and Kilifi.

(vi) Restriction of movements in certain parts of Nairobi City and Mombasa counties.

The unprecedented times in which we find ourselves pose unique challenges for legislatures around the world. Legislatures, by their nature are, or at any rate, should be open spaces for public involvement, interaction and participation. The primary questions that legislatures have had to grapple with in the face of a deadly and highly contagious disease have included -

(a) whether to continue holding sittings;

(b)if to continue holding sittings, whether these are to be held physically or virtually;

(c)if to meet physically, how to ensure that the appropriate protocols relating to personal protective equipment, hygiene and social distancing are observed;

(d)if to meet virtually, how to utilize appropriate technology to ensure safe and seamless transaction of business;

(e)the frequency of meetings and the nature of business is to be transacted; and,

(f)how to protect the sanctity of each legislator's vote.

In our Parliament, to allow for the continuation of parliamentary business within the Kenya's COVID-19 containment guidelines, on 13th March, 2020, at the onset of the pandemic, jointly with my brother; the Speaker of the National Assembly, we issued a set of Guidelines to all Members of Parliament and staff of Parliament.

As no two legislatures or even two chambers of the same legislature are exactly the same in their circumstances, thereafter, on 2nd April, 2020, the Speaker of the National Assembly issued further guidelines for the conduct of business in the National Assembly; and on 17th April, 2020, I issued further guidelines to all Senators and staff of the Senate, which contain the voting guidelines that are the subject matter of this Ruling.

How each Parliament or House of Parliament responds to the COVID-19 situation has depended on a multiplicity of factors, including the Constitution and the laws of the country, the mandate of the different Houses, the prevailing public health situation in the country, containment measures imposed by the Executive Arm, the number of legislators and the available infrastructure.

Speakers or presiding officers of legislatures have had to, in the first instance, take leadership acting as agents of necessity to offer practical and pragmatic interim solutions, to enable the continuity of business until the full legislative body through its appropriate organs can define the way forward.

For jurisdictions such as ours, the versatility of Standing Order No.1 or its equivalent has been powerfully manifested. Standing Order No.1 was clearly designed to ensure that no situation arises where the business of Parliament stalls or its conduct is rendered impractical for the reason only that a situation was never envisaged or contemplated, and accordingly, no express provision was made in the Standing Orders on how Parliament would proceed in such event. It empowers the Speaker to step into such a breach and determine a procedure based on the Constitution, statute law and the usages, forms, precedents, customs, procedures and traditions of the Parliament of Kenya and other jurisdictions to the extent that these are applicable to Kenya.

A sampling of action taken by legislatures around the world reveals a mixture of interventions unique to the circumstances of those jurisdictions. Jurisdictions such as Spain, Brazil, Norway and Finland have all allowed for remote sittings. Others such as Poland, Mongolia, Belgium, Greece, Romania, Portugal and the European Union Parliament have a hybrid of both virtual and physical sittings, where only a small percentage of Members attend chamber, so as to ensure appropriate social distancing. Others such as Croatia, Luxembourg and France have limited the number of meetings and the kind of business to be transacted.

Of paramount importance in a parliamentary context is voting. The Belgian House of Representatives amended its Rules of Procedure to allow Members, under certain conditions, to be considered as “present” at selected committee and plenary meetings, even when they are not physically in the chamber, and to vote electronically or by email. In Ireland, voting is currently by either ‘voice vote’ or ‘roll call vote,’ with Members remaining in their seats. In Greece, postal votes are being accepted.

Only last week, the House of Representatives of the United States of America, with a Constitution that does not expressly provide for proxy voting, has voted to construe the Constitution as not prohibiting proxy voting and amended its rules of procedure to allow proxy voting during this period of the Coronavirus pandemic for Congressmen who are unable to attend the Plenary sittings in person.

In our own case, we started with general guidelines for both Houses, but the peculiarities of each House have since demanded that each House addresses its unique challenges. Sen. (Dr.) Mwaura's concern has taken on a greater importance because, while Standing Order 96 (5) of the Senate Standing Orders provides that it is out of order for a Senator to criticize or call to question the proceedings in the National Assembly, and while there is a corresponding provision in Standing Order 87 of the National Assembly Standing Orders regarding the proceedings of the Senate, it is in the public domain that a Member of the National Assembly, on the Floor of the National Assembly, sensationally called to question the proceedings in the Senate and went so far as to seek the ruling of the Speaker of the National Assembly on the constitutionality of our proceedings.

Briefly stated, the crux of the allegation made on the Floor of the National Assembly was that the voting procedure employed by the Senate during these extraordinary circumstances, pursuant to the aforementioned guidelines, violates Articles 122 and 123 of the Constitution by empowering or allowing the Senate Majority Leader and the Senate Minority Leader to vote on behalf of other Senators.

Hon Senators, fidelity to the Constitution is at the core of the business of the Legislature and members of the public would be alarmed as indeed they must have been to hear that this august House has been conducting its business in a manner that violates the Constitution. An allegation of unconstitutionality levelled against a House of Parliament is so grave that it merits an urgent and appropriate clarification.

In making this clarification, it is important to recite the following key differences between the Senate and the National Assembly both under the current COVID-19 situation, but also generally under the Constitution and the laws -

(a) under the current situation, the Senate Chamber has been cleared by the health authorities to only accommodate 28 Senators while the National Assembly Chamber is allowed to accommodate 53 Members;

(b) with 53 Members in the Chamber, the National Assembly can transact virtually any business save for amending the Constitution or other business requiring a fixed majority;

(c) the Senate, on the other hand, requires at least 24 county delegations in the Chamber to vote on matters that concern counties and cannot vote on any contested matter with only the 28 senators;

(d)even if the 28 available slots in the Senate are allocated only to heads of delegations, it would mean that all of 19 county delegations and the specially elected Senators who represent persons with disabilities, women and the youth would be left out of the proceedings. This is further complicated by the need to maintain party proportions in the Chamber;

(e)ordinarily, voting in the Senate is electronic while voting in the National Assembly is by acclamation. With the COVID-19 situation, while the voice vote is unaffected, electronic voting in our chamber has not been recommended because of a number of factors, including the so called "assisted voters" who have to come to the Clerks' Table to vote and the paperwork entailed in the printouts of the results. In any case, the electronic voting provided for in the Senate Standing Orders is predicated on physical presence in the Chamber and would not therefore solve the problem of the limitation of the numbers permitted in the Chamber. Thus while the National Assembly did not have to change its method of voting, the Senate had to resort to the roll-call method of voting; and

(f)at the time of issuance of the guidelines, the Senate had resolved to hold only one sitting in a week between the hours of 2.30 p.m. and 4.30 p.m and, therefore, it was important to transact business in the most efficient manner in the two hours available.

All the foregoing notwithstanding, did the Senate, therefore, resort to allowing or empowering the Senate Majority Leader and the Senate Minority Leader to vote on behalf of other Senators? The answer is an emphatic and resounding 'No.'

Hon. Senators, Article 122(1) of the Constitution provides that:

“Except as otherwise provided in the Constitution, any question proposed for decision in either House of Parliament shall be determined by a majority of the Members in that House, present and voting.”

Article 123(4) provides that:

“Except as provided otherwise in the Constitution, in any matter in the Senate affecting counties each county delegation shall have one vote to be cast on behalf of the county by the head of the county delegation, or in the absence of the head of the delegation by another Member of the delegation designated by the head of the delegation.”

Article 259(1) of the Constitution requires that the Constitution be interpreted in a manner that promotes its purposes, values and principles; advances the rule of law, and the human rights and fundamental freedoms in the Bill of Rights; permits the development of the law; and contributes to good governance.

In addition, Article 259 (3) of the Constitution provides that every provision of the Constitution shall be construed according to the doctrine of interpretation that the law is always speaking.

Our purpose for interpretation of Article 259 of the Constitution, therefore, means that Articles 112 and 123 of the Constitution must be construed in a manner that enables the Senate to continue to operate even at a time when it faces the challenges presented by the COVID-19 health crisis.

As such, a voting procedure that provides an opportunity to all the county delegations to participate in any vote on a matter concerning counties is not merely desirable; it is mandatory. To do otherwise is to violate the Constitution.

The guidelines that were issued on 17th April were introduced to ensure efficiency in the Roll Call method and for better time management in the Chamber, as well as to ensure that county delegations have an equal opportunity of voting on matters concerning counties, whether they made it in the list of the 28 Senators designated to sit in the Chamber or not.

This was achieved, firstly, by construing the term ‘present and voting’ as used in the Constitution to mean not just the Senators sitting in the Chamber, but also those others within the designated places in the precincts of Parliament that were deemed to be part of the extended Senate Chamber.

Secondly, by allowing the votes once cast by the Senators themselves to be communicated at once by the respective leaders during the Roll Call, instead of each Senator in the Chamber standing to answer the Roll Call and the votes of those outside the Chamber being communicated by a different medium.

Those who had alleged that some Senators are voting on behalf of others have misconstrued how voting on matters affecting counties have been taking place. The guidelines make it clear that the vote is cast by each Senator, but communicated to the Senate by the leaders of the delegations. No Senator’s right to vote as they choose to is taken away; it cannot be taken away. No Senator has delegated their right to vote as they choose to the Senate Majority or Minority Leader, to exercise their right on their behalf. Our Constitution does not permit this.

The guidelines do not provide for proxy voting as was erroneously alleged. Proxy voting is a form of voting where a member of a decision making body may delegate his or her voting power to a representative, to enable a vote in absence. It clearly cannot be a proxy vote where the voters are present, and where they furthermore cast their votes themselves. The correct analogy is that the Senate Majority Leader and the Minority Leader are Tellers to present the tally of the votes cast by the Senators on their respective sides.

As pointed out earlier in this ruling, all jurisdictions have to adapt and innovate. In jurisdictions where virtual sittings have been adopted, for instance, new meaning has been given to the term ‘present’. For instance, for the first time in the Africa Union (AU) Parliaments’ 62 years’ history, in the month of March, Members who usually vote by raising their hands in Plenary or pushing a button on their desks, voted by email from their home countries. We are no exception.

Nevertheless, hon. Senators, the COVID-19 situation is constantly evolving and appropriate decisions must be constantly made. In our case, we have now not only extended the sitting hours by reverting to the usual adjournment at 6.30 p.m., on Tuesdays, but have resolved to be sitting on Tuesday mornings. This has injected a further four-and-a-half hours sitting time every week and eased the pressure on our procedures. It will, therefore, be possible to conduct the full Roll Call in the Chamber for the Senators present in the Chamber, while we must continue to accommodate Senators who attend the sittings, but cannot be present inside the Chamber.

In addition, hon. Senators, the option of finding a larger venue that can accommodate all Senators without the need for designation for only some Senators to attend the Plenary, continues to be pursued and if adopted, the need for this innovations and adjustments may cease. Indeed, the Senate Business Committee (SBC) has requested the Procedure and Rules Committee to consider the various dynamics that have been brought forth by the COVID-19 situation and make proposals for possible amendments of the Senate Standing Orders, including provision for virtual sittings of the Plenary.

Hon. Senators, in conclusion, I wish to reiterate that the Senate will always be bound by and act in accordance with the Constitution and the laws of this country. This is the oath that all of us in the House have undertaken.

I thank you.

Proceed, Senate Majority Leader.

The Senate Majority Leader (Sen. Poghiso): Mr. Speaker, Sir, I just wanted to thank you for that detailed ruling on this matter and basically say that I support it.

These are difficult times. These are moments that we need innovation. I suspect that there will be more questions on other details about how we, for example, include those places we are calling from or sending messages from, to be part and parcel of the precincts of Parliament or how we make it look like we are actually within Parliament when we are away. So, as we think about the detailed aspects of how we are going to be voting under these circumstances, I suspect that we might need to do more consultations.

I am not very sure that we should be spending so much time answering the Leader of Majority from the other House because I think it is already mischief; the fact that these questions would have been asked. As we look at our own House here, with our difficulties and our own special situation where we vote in delegations, we must look at our own situation because as you say, which I agree, the Houses are different in terms of how they are made up and how they vote. We vote by delegations, they vote differently.

I stand to support, as we work on the details, for us to be able to agree on how to vote. I was thinking that if, for example, on our side somebody writes a letter and signs and says: "you are going to vote for me," I would agree. We are not doing proxy voting. We are simply communicating the vote.

As you have ruled and it is a very big ruling, I will look at the details. I agree with you that things are different, and we are going to have to look at various aspects of this COVID-19 situation; how we are going to survive around it and, of course, make sure that we are not breaking any laws and we are not contravening our Constitution.

Mr. Speaker, Sir, Sen. (Dr.) Mwaura raised the issue, and we should just continue to explain to our Members in communication, so that it is easy for all of us to agree that things are different, and we can support this kind of decision.

Thank you.

The Speaker (Hon. Lusaka): Senate Minority Leader.

The Senate Minority Leader (Sen. Orenge): Mr. Speaker, Sir, I thank you for that ruling. With the pandemic and nobody not knowing when it will end, all over the world, people are looking for innovative ways to transact business. Here in the country, every arm of Government has made adjustments, so that work continues even as we find ourselves in a very difficult position. I am sure that the operations within the Executive

are not at a standstill; they are also finding innovative ways of holding meetings. Some of those meetings are statutory and must be held.

The courts also have come up with innovative ways of dealing with hearings. For example, in criminal cases where accused persons must always be present, the courts have come up with ways and means of ensuring that certain cases of urgency must continue, notwithstanding the presence or absence of parties in cases that are going on in the courts.

Parliament is an important Arm. Law making must continue and we can never have a situation where Parliament is completely out and the operations cannot continue. Therefore, the only suggestion I would make is that, probably, we need to go back to the Rules Committee, like you have cited the case in the United States of America (USA), where they have had to amend their Standing Orders.

It is said that, probably, COVID-19 is not going to stop tomorrow or in the next two or three months. We should amend Standing Orders accordingly so that the manner in which the votes are carried out and the definition of the word "presence" can also be looked into, so that everything is done within the Standing Orders.

Mr. Speaker, Sir, as you have said, the law is never static. It is always speaking, including the Constitution. When we make laws, they are supposed to serve us; we are not supposed to necessarily serve the law. Therefore, I hope that in that spirit, Parliament – Senate and National Assembly – will continue to hold its deliberations.

I hope that the ruling or communication will be made available because some people do not understand how we vote here. They do not understand why we are here as delegations. Every Senator belongs to a delegation. Sometimes it is important to consider how to vote within the delegation, although the Standing Orders normally say that the leader of the delegation will probably determine how that vote is cast.

This is a timely ruling. Thank you for it

The Speaker (Hon. Lusaka): Sen. Khaniri, proceed, then Sen. Mutula Kilonzo Jnr.

Sen. Khaniri: Mr. Speaker, Sir, allow me to join the Senate Majority Leader and the Senate Minority Leader in hailing you for the elaborate and very well-thought-out ruling that you have made this morning. Once again, you have risen to the occasion and provided true leadership to the House of Senate. I thank you.

These are extraordinary times and, therefore, they call for extraordinary actions. We cannot pretend that we are living in normal times and do things the way we normally do them. This is one case in which you have applied the provisions of Standing Order No.1 correctly. Standing Order No.1 clearly states that in instances that are not provided for in the Standing Orders, the Speaker will make a ruling.

Mr. Speaker, Sir, this is one incident that is not provided for in our Standing Orders. When we made our Standing Orders, we did not envisage or contemplate the Coronavirus Disease (COVID-19). Therefore, Standing Order No.1 now applies.

Standing Orders, other rules and laws, are supposed to facilitate and not inhibit the operations and debate of this House. If there are any Standing Orders or rules that will inhibit us from proceeding with our legislative responsibility, this is the right time to

relook and review them. We should even make provisions for such occasions now that we know they can occur.

Mr. Speaker, Sir, virtual sittings are here with us now; it is unprecedented. We have never had them before, but now we have them and they are valid. We have been holding a lot of meetings virtually and taking decisions. Therefore, the work of the Senate has to continue.

The particular Member who raised the issue in the National Assembly, in my opinion, was totally out of order. This is because both our Standing Orders here and in the National Assembly prohibit us from discussing proceedings in whichever House. In our case, it is Standing Order No.96 (5). We stand with you in this ruling and support it fully. The work of the Senate has to continue with or without COVID-19.

I thank you.

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

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, thank you for your direction. I agree entirely with Sen. Khaniri on the wisdom of it. Secondly, for some reason, our meetings have many Members attending virtually. The Committee on the COVID-19 Situation in Kenya has had many sittings as above 40 or 45. The Members are participating from whatever location.

The silver lining behind COVID-19 is that we have refused to embrace technology. In the Judiciary, those who have been there would find that the former Registrar, Hon. Gladys Shollei, installed screens and technology that has never been used for a long time. Even in one of your committee rooms, there is a screen that is never used.

Mr. Speaker, Sir, as the Committee on Information Communication Technology (ICT) of the Senate then led by Sen. Mutahi Kagwe, and I was Vice Chairperson, we proposed these things a long time ago. It is important. If governments can run virtually, then people do not need to have physical meetings. It is the end of traffic jams. We can hold two or three sittings from one location, so that business can run.

I still have another proposal. Last week, when we sat at the Bomas of Kenya, we realized that we can actually have a full sitting of the Senate while observing social distance. One of the problems we have as whips is choosing Members who sit here every day. I have a problem of dispute resolution amongst my Members because it is a challenge of choosing 13 people to come, yet a Member has been chosen by his people to come here to speak about important and pertinent issues.

Mr. Speaker, Sir, when I tell somebody to wait for their opportunity next week, some of them have told us that we are discriminating them. It is not just our side. In fact, maybe our side of the Minority is better. The Majority side was actually worse. I remember Sen. (Dr.) Ali complaining loudly in one of our platforms.

The amendment of the Standing Orders is important. There will be no excuse for Members not to attend meetings. There will be no excuse to make sure that we run our business as quickly as possible. In fact, it is an anathema to have an iPad sitting here and leave it here. The idea of having technology is to carry it to where you are. I should stop my car, like I did yesterday, and we conduct a meeting using this same iPad that you have installed in the Senate.

Mr. Speaker, Sir, as we embrace technology, we should find a way in which we can sign our reports electronically. We should find a way where we can have these gadgets also and visit the business of the Senate virtually, not only when we are in the House, but also when I am in Makueni County. We had a meeting yesterday, and the Senator for Nyamira County had *Zoom* meeting while at home.

The Speaker (Hon. Lusaka): Sen. Wambua, proceed, then Sen. Madzayo.

Sen. Wambua: Mr. Speaker, Sir, thank you for this opportunity. I join my colleagues in hailing you for the decision or direction that you have given in regard to voting on the Floor of this Chamber.

The COVID-19 pandemic has brought about monumental changes in the way business is transacted in this country, region and entire world. The other day, I saw the Presidents of the East African Community (EAC) holding a virtual meeting and making very strong recommendations on the way forward. The fact that a decision was made virtually does not make it any less of a decision of the Summit.

In our committees, we are holding virtual meetings. We are interrogating Cabinet Secretaries (CSs) and making recommendations. We are making serious progress through the internet.

Mr. Speaker, Sir, for the avoidance of doubt, all of us are being called upon to innovate around the challenges brought about by COVID-19. Those who choose to stick to the old ways of doing things at such a time will definitely sink. However, those of us who choose to innovate around this pandemic, will definitely stay afloat.

You have done well to guide us on how to vote through the delegations. We will stand guided.

There are those who have the mentality that they will sit back and wait for things to return to normal before we can begin transacting business. Maybe by the time they wish that would happen, there will be no business to transact.

Mr. Speaker, Sir, I thank you for your guidance.

The Speaker (Hon. Lusaka): Let us have Sen. Madzayo, Sen. Farhiya, then Sen. Halake.

Sen. Madzayo: Shukrani, Bw. Spika. Kwanza, ningependa kukupa kongole kwa uamuzi wako ambao wazungu wanauita *Solomonic wisdom* juu ya vile tunaweza kufanya kazi wakati huu mgumu katika Bunge la Seneti.

Madhumuni ya Kanuni za Bunge la Seneti ni kusaidia utaratibu wa kuendesha kazi ama majadiliano katika Bunge na vile Maseneta wanaweza kupiga kura kuambatana na mfumo wa *delegations*.

Wakati huu ni mgumu sana katika historia ya nchi yetu na ulimwengu mzima kwa jumla. Tunaambiwa ugonjwa kama huu ulitokea zamani kabla sisi kuzaliwa. Hivi sasa, hili janga la COVID-19 ni janga ambalo hakuna mtu yeyote aliyelitarajia kubuika.

Kukabiliana na huu ugonjwa una taratibu zake ambazo zimepeanwa na shirika la ulimwengu linaloshugulika na afya. Shirika hilo ni World Health Organization (WHO). Taratibu kama hizo zimepeanwa na Serikali yetu ikiongozwa na Wizara ya Afya. Taratibu hizi ni jinsi watu wanaweza kujipanga ile waepukane na huu ugonjwa na vile tunaweza kukabiliana nao.

Bw. Spika, ni jambo njema sisi kama Maseneta kuona kuwa kuna udhaifu jinsi tunavyopiga kura hapa. Ni vizuri umefafanua kwa uwazi kabisa jinsi ya kushughulikia kazi hapa Bungeni. Kanuni za Bunge la Seneti zina umuhimu kuona jinsi tunaweza kujipanga kutumia teknolojia kufanya kazi wakati huu wa COVID-19. Kanuni za Bunge la Seneti zinafaa kugeuzwa ili kuambatana na wakati mgumu tulio nao sasa na siku za mbeleni.

The Speaker (Hon. Lusaka): Sen. Farhiya, Sen. Halake, then Sen. Kinyua.

Sen. Farhiya: Thank you, Mr. Speaker, Sir. This being my first time to speak after being elected by Jubilee Party Senators as the Deputy Majority Whip, I wish to thank them for their decision and I will live to their expectations.

I agree with other Senators both from the majority and minority side that, that was a well-thought-out decision. Extraordinary times and circumstances call for extraordinary decisions. It is true that life after COVID-19 in the whole world will never be the same. After this, people should take advantage of new ICT to ensure that even their universities of choice are able to conduct virtual training from wherever they are in the world, including Oxford University, Harvard University and even our University of Nairobi (UoN). Therefore, people do not have to travel all the way to spend accommodation and other unnecessary costs to ensure that they are in the location of the university.

Mr. Speaker, Sir, with COVID-19, even the world emissions have drastically reduced because most aeroplanes are not flying anymore. We are still surviving and the environment is breathing. Therefore, in our set up, we, as Senators, I think we should not be left out of technology. We should be able to transact our business technologically like the other Members have said. Since we are called upon to make decisions on behalf of Kenyans, we must be there to do just so.

Finally, I wish to thank His Excellency, President Uhuru Muigai Kenyatta, for accepting us, as the leaders of this House.

I thank you, Mr. Speaker, Sir.

Sen. Halake: Thank you very much, Mr. Speaker, Sir. Let me also add my voice in congratulating the new leadership of the House. I know that they embody unity and we look forward to working with them. They are up to the task and are the best that we have.

Mr. Speaker, Sir, also allow me to congratulate you on your progressive ruling this morning. As usual, you have done us proud by making sure that we are not left behind or out of touch. Anybody questioning anyone who is using virtual meetings or voting is not only out of touch, but also out of order. The new normal is low touch, virtual and minimal footprint. Therefore, this House is on the right path.

As the Vice-Chairperson of the Committee on Information and Technology, I look forward to working with you to look at even further measures that use technology. This is to ensure that the Senate is more dynamic, progressive and will continue to use new technology in this new normal.

Mr. Speaker, Sir, we applaud your decisions. If there is any legislative and other policy measures that are going to make us put this into law, we will do so. I congratulate you and look forward to working with you to ensure that this becomes a reality and the new way that we do business.

The Speaker (Hon. Lusaka): Sen. Kinyua, and then finally, Sen. (Prof.) Ongeru.

Sen. Kinyua: Asante sana, Bw. Spika, kwa kunipa fursa hii. Nataka kuungana na wenzangu kupongeza uamuzi wako ambao ni wa busara. Hii kwa sababu janga la COVID-19 liko nasi na ni lazima tukubali kukumbatia teknolojia. Teknolojia ndio itatusaidia wakati huu mguu wa kuendelea na maisha yetu.

Nimemsikiliza Sen. Mutula Kilonzo Jnr. akisema kwamba ni vizuri tutafute sehemu ambayo Maseneta wote wanaweza kutoshea. Nilimsikiliza kwa makini nikaona ni kama anaongea mambo mawili kwa wakati mmoja. Alisema kwamba tukumbatie teknolojia na pia tutafute sehemu ambayo Maseneta wote wanaweza kutoshea.

Ni vizuri kukumbatia teknolojia kwa sababu tuko na ujuzi na vyombo ambavyo vinahitajika. Ni vizuri janga hili liwe kama funzo kwetu. Tusiseme kwamba baada ya janga hili kutuondokea tutarudi pale pale tulikotoka. Liwe kama funzo kwetu ili tukumbatie teknolojia kama mataifa mengine ya ulimwengu ambayo yameendelea. Sisi tuna uwezo na ujuzi wa kufanya hivyo.

Bw. Spika, ningependa kukubaliana na wewe vile ulivyosema mia kwa mia. Tutaendelea na mikutano yetu tukitumia vyombo vya teknolojia.

The Speaker (Hon. Lusaka): Sen. (Prof.) Ongeru, and then Sen. (Prof.) Kamar.

Sen. (Prof.) Ongeru: Thank you, Mr. Speaker, Sir. Let me also stand to congratulate you for a very good ruling on how we should move forward in this situation of the COVID-19 pandemic.

Let me remind this House that when we had the HIV/AIDS pandemic, I was then the Minister for Health. One of the things we needed to do was to get a decision of Parliament. However, it happens that, at that time, the President was not in the country. He had gone to another country for peace talks. He was to stop in Mombasa for three hours when he came back. So, through a special resolution of the House on the important subject of the HIV/AIDS pandemic, we were able to access the antiretroviral drugs, which were hitherto, at that time, patented. We could only get them through the generics after the Government and nation declared it a national disaster.

Coronavirus is a pandemic. It is not only affecting Kenya, but every other part of the world. Therefore, we must look for new innovative ways to make decisions that are both constitutional, good for our people and can make us move forward because we cannot keep them in abeyance.

When we started technology in our schools, it was envisaged that in good time, we would go the virtual way of teaching and have bookless teaching. However, the pandemic seems to have hastened the process.

Mr. Speaker, Sir, if there are any innovations to be done, we need to amend our Standing Orders so that we can incorporate the virtual online discussions. I must say that of late, we have heavily benefited in the Committee of the House through the zoom virtual meetings. They are lively and engaging. I have also noticed that we have literally had 100 per cent attendance. Therefore, we are in the right direction.

We support your thoughts and today's ruling. That is the way to go forward.

Sen. M. Kajwang': Mr. Speaker, Sir, I am impressed that you are able to recognize me by forehead because in the new norm that we are in, the beautiful smiles that we have in this House do not count for anything anymore.

Your ruling is not just for exceptional times; it is for the new norm that we find ourselves in. We are told that we must find a way of living with this virus.

I want to point out two things. One, there is a saying that when the mother cow chews cud, the calf watches. County assemblies are watching the manner in which the Senate is conducting itself. Many of us have received calls from Speakers, Leaders of Majority and Members of County Assemblies (MCAs) from our respective counties seeking guidance from the Senate on how they can conduct their deliberations.

Mr. Speaker, Sir, the fundamental difference is that we vote by delegations whereas theirs is a vote by count. However, I wonder whether there could be a framework within which the Senate can find a way to informally, or formally advise county assemblies on how to ensure continuity of operations in the respective counties during this pandemic and new normal.

They are having challenges particularly when it comes to Committee meetings. There are certain county assemblies where Speakers have made analogue rulings with regard to online attendance of meetings. If the Senate is capable of conducting meetings *via* Zoom or any other platform, then it should be perfectly okay for all the 47 county assemblies to follow suit.

Secondly, at a corporate level, it is important for Parliament to have a business continuity plan. Today, we are talking of a COVID-19 pandemic and we do not know what else is coming.

Many of us took this thing for granted. I was with a friend of mine from South Sudan who thought that COVID-19 was melanin resistant; that is, the darker you are, the more resistant you are to COVID-19. Today, it is reported that the deputy President of South Sudan, Dr. Reik Machar and his entire delegation are staying at the Pyramid Continental Hotel because they been infected with COVID-19. The Pyramid Continental Hotel in Juba is now a no go zone because it is a COVID-19 hotspot.

In Nigeria, the chief of staff of the Presidency is infected. In the United Kingdom (UK), the Prime Minister is also infected. In the United States of America (USA) high ranking officials have also been infected. Let us not take this thing for granted. The same way HIV/AIDS will catch you if you go around sleeping without the equivalent of facemasks for other parts of the body is the same way COVID-19 can afflict all of us irrespective of the positions we hold. So, let us take it seriously and send the message to the nation that we are not here for *per diems* or allowances. We are here for a bigger call.

Finally, Committees must also learn to adjust. I sympathize with my colleagues and successors in the County Public Accounts and Investment Committee (CPAIC). The old style of grilling and interrogation of governors was a pre-COVID-19 era. No governor, at this point in time, will want to come to Nairobi. They will use COVID-19 as a perfect excuse. They will, first of all, say that Nairobi has been cordoned off and that there is COVID-19 in Parliament. So, they will prefer to do accountability sessions on *Zoom*. Let us be inventive and creative because it is the future. Also, there will be no international travel.

Mr. Speaker, Sir, I support your ruling, but let it not be for a short term; it is for the new norm. In fact, Standing Order No. 1 should not be it.

I support what Sen. Orengo said. We, probably, need to do a substantive amendment to our Standing Orders to cater for pandemics, the same way Sen. Sakaja has advised us on how to manage them through the Pandemic Bill.

Sen. (Prof.) Kamar: Thank you, Mr. Speaker, Sir, for giving me the opportunity. I join my colleagues in applauding you for a wise ruling. This is the new norm. We cannot run away from it. We have had two good sessions in the Committee on Education, one of which I undertook from my farm. We had a successful meeting and managed to have the highest quorum we have ever had since the start of this term. So, it brings a lot of success.

This pandemic has brought its positives, which we must address. As a House, our decision range from questions which are raised to Motions and Bills. Our decisions are either 'yes' or 'no.' There is no way we can do without voting. Everything has to do with voting. So, the decision to ensure that we vote while at home through our leaders is wise. This is the way we need to go. I agree with Sen. Orengo that we may need to change our Standing Orders.

E-learning is the way to go. When universities started e-learning, many people doubted the content and competency of the people receiving the content and whether they were the ones being examined or the people helping them. We know that today, it is possible to examine a person after they have undergone e-learning. So, ICT, assisted decision-making and policy making are things of today. It is the new norm.

The Speaker (Hon. Lusaka): Thank you, for your contributions. I assure the House that in the next two weeks, the Procedures and Rules Committee (PRC) will meet to look at the Standing Orders and see how to amend them to fit in the times.

We move now to the next Order.

PAPERS LAID

The Senate Majority Leader (Sen. Poghio): Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate today, Tuesday, 19th May, 2020-

THE SACCO SOCIETIES REGULATIONS, 2020

The SACCO Societies (Specified Non-Deposit Taking Business) Regulations, 2020.

THE TRAFFIC RULES, 2020

The Traffic (Driving Schools, Driving Instructors and Driving Licenses) Rules 2020.

THE PUBLIC HEALTH (COVID–19) RESTRICTIONS/ MEASURES
FOR VARIOUS COUNTIES AND REFUGEE CAMPS

The Public Health (COVID–19 Restriction of Movement of Persons and Related Measures) (Daadab Refugee Complex and Kakuma Refugee Camp) Order, 2020.

The Public Health (COVID–19 Restriction of Movement of Persons and Related Measures) (Mandera County) Order, 2020.

The Public Health (COVID–19 Restriction of Movement of Persons and Related Measures) (Mombasa County) (Extension) Order, 2020.

The Public Health (COVID–19 Restriction of Movement of Persons and Related Measures) (Kilifi County) (Extension) Order, 2020.

The Public Health (COVID–19 Restriction of Movement of Persons and Related Measures) (Kwale County) (Extension) Order, 2020.

The Public Health (COVID–19 Restriction of Movement of Persons and Related Measures) (Nairobi Metropolitan Area) (Extension) Order, 2020.

THE 2019 BI-ANNUAL REPORTS FOR THE CAJ

The Commission on Administrative Justice “Office of the Ombudsman” Bi-annual Report for the period January to June, 2019.

The Commission on Administrative Justice “Office of the Ombudsman” Bi-annual Report for the period July to December, 2019.

Thank you, Mr. Speaker, Sir.

(Sen. Poghiso laid the documents on the Table)

The Speaker (Hon. Lusaka): Next order.

STATEMENTS

ALLEGED MARGINALIZATION OF MUSLIMS FROM
ACCESS TO FINANCES BY GOVERNMENT INSTITUTIONS

Sen. Halake: Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order 47(1) to seek a Statement on a matter of national concern, namely; the marginalization of the Muslim population with regards to access to finances given to Micro Small and Medium Size Enterprises (MSMEs), women, youth and persons with disability by Government institutions.

Mr. Speaker, Sir, the Uwezo Fund, Women Enterprise Fund, Youth Fund Loans, Kenya Industrial Estates (KIE) Loans, Industrial Development Bank (IDB) Capital Loans and Industrial and Commercial Development Cooperation (ICDC) Loans are aimed at enabling women, youth and persons with disability in this country to access finances and

affordable credit with the view to promote or support them to start businesses for wealth and employment creation.

Additionally, the Government announced that the youth, women, persons with disability and (MSMEs) will soon be able to get cheap business loans from the Government.

Mr. Speaker, Sir, according to the Islamic rules, loans that attract interest are not permissible. Unfortunately, the interest payable on these loans by financial institutions upon lending to women, youth, persons with disability and (MSMEs) locks out the Muslim Community from benefiting from such opportunities.

Article 27 (4) and (5) of the Constitution imposes an obligation on the State and every State Organ not to discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

Mr. Speaker, Sir, commercial banks with their profit orientation and thinking have managed to create certain interest free products targeting the Muslim Community. Taxpayer funded financial institutions should take a cue and be able to design some favourable terms and conditions that would be extend similar courtesy to the Muslim Community for this category of loans.

I, therefore, urge that measures be put in place to ensure the Muslim Community is not discriminated against, but instead, considered and accommodated to enable them to benefit from taxpayer's funds to which they are also a significant contributor.

Mr. Speaker, Sir, I rest my case and thank you.

The Speaker (Hon. Lusaka): Sen. (Dr.) Mbito, kindly proceed.

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

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

Sen. M. Kajwang': Mr. Speaker, Sir, Sen. Halake's statement raises very fundamental questions afflicting close to 10 per cent of the population of this nation. Would it be in order if the very serious concerns are committed to the relevant Committee so that it can look at them and, probably, advice the House and the nation on how to include the Muslim population? Could there be a call for action by dedicating it to a relevant Committee?

The Speaker (Hon. Lusaka): The Standing Committee on Finance and Budget can look at that Statement and give us a feedback.

Sen. Halake: Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Sen. (Dr.) Mbito, kindly proceed.

MISLEADING INFORMATION IN THE MEDIA CONCERNING CORONAVIRUS (COVID-19)

Sen. (Dr. Mbito): Mr. Speaker, Sir, I rise pursuant to Standing Order 47(1), to make a Statement of national concern regarding misleading information that has been making rounds on social media since the first Coronavirus Disease (COVID-19) case was confirmed in Kenya. Purveyors of lies, for whatever reason, find it convenient to

disseminate data that they know is inadequately verified, exaggerated and ardently written. This is dangerous and can lead to unnecessary panic and anxiety.

It has been more than two months since this novel strain of COVID-19 pandemic popped up in Wuhan Town, China, and proceeded to spread to numerous countries across the world. As the virus spread, panic-raising information has continued to be propagated throughout social media, forcing technology platforms to grapple with what the World Health Organization (WHO) is calling “Infodemic”.

Mr. Speaker, Sir, with more and more people searching online for information about the COVID-19 pandemic, they easily encounter a barrage of misleading and potentially dangerous, harmful information. WHO has warned that misinformation about COVID-19 has caused unnecessary stigmatization and discrimination across the world. Most of the posts provide a series of supposed tips about the virus, such as wrongly instructing people to hold their breath to gauge whether they have been infected and falsely suggesting that water, lemon and even alcohol consumption can kill the virus.

Mr. Speaker, Sir, in Kenya, a person who publishes false and misleading information is liable upon conviction to a fine not exceeding Kshs5 million or two-years imprisonment or both under the Computer Misuse and Cybercrimes Act, 2018. There is an overriding need for the Government to remind the general public of the existence of this law and to employ its law enforcement agencies whenever there is a breach.

Finally, Mr. Speaker, Sir, the Government must continue to educate the public on this pandemic and steps to be taken to be safe from it. The public as well must follow the measures put in place by the Government and not any other news from social media as regards novel COVID-19.

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

Sen. (Prof.) Ongeru: Thank you, Mr. Speaker, Sir. I rise to complement the Chairperson of the Committee on Health for the very timely Statement.

One of the most worrying things is when you see a very prolific presentation of various versions of COVID-19 in the social media or even in some of the scientific papers; whether they are scientific fictions or papers *per se*. What worries me right now is the interpretation of what a pandemic is and what it can cause to the society.

There is no doubt that the Coronavirus has ravaged quite a number of nations starting with China, Italy, Britain, Germany, Russia and the United States of America, people who say that they have the highest level of technology.

Mr. Speaker, Sir, one area that requires clarification and I think the Chairperson of the Standing Committee on Health ought to seek that clarification from the Ministry of Health and the COVID-19 Emergency Response Team and KEMRI, is the efficacy of the testing kits. This is because there are claims from our neighbours that there are certain kits that give false positives. That can be extremely misleading in terms of assessing the pandemic’s toll or heaviness.

Mr. Speaker, Sir, my contribution to this Statement is that, could they openly clarify the efficacy of the testing kits and to what level they can be trusted when they are saying positive and negative results. It is important for this nation to know. This is because the bottom-line is that COVID-19 does exist and it can cause very miserable end times. Therefore, we need to observe the regulations put by the WHO. By the way, the

WHO has a plethora of scientists who can look through the problem before they declare it a worldwide pandemic.

With those few clarifications, I think this nation should be well off on the road to combat the COVID-19 the way we are doing it at the moment.

Sen. (Dr.) Milgo: Thank you, Mr. Speaker, Sir. I rise to support this Statement on misleading information about the COVID-19 pandemic.

Unless issues of misleading information are checked, the spread of it will continue. We have realized that in most places, people are imagining that it will affect certain groups of people or they are in certain towns and not in the villages. In this case, people tend to ignore instructions from the Ministry of Health and the WHO in terms of taking care of themselves.

Unless stern action is taken as stated in Article 16(1); that anybody conveying misleading information must be brought to account. In this case, it will cause more problems to the sick people. Right now, we have many people having varied information, even on the people who caught COVID-19 and got healed. The whole family is deemed to have it and they lack the necessary information.

Very soon, people will begin to suffer other conditions such as mental illness. It is a time that we advised the Government to sensitise the entire nation through media or other various means so that there is stern warning for issues of misleading information. In this case, there is need for more sensitization of the people to understand COVID-19 means and that it affects everybody and not a certain cadre of people.

EFFECTS OF COVID-19 PANDEMIC ON MICRO AND SMALL ENTERPRISES

The Speaker (Hon. Lusaka): Next Statement by Sen. (Dr.) Mwaura. I cannot see him. His Statement is deferred.

(Statement deferred)

Sen. (Dr.) Milgo to seek a Statement. You do not seem ready.

Sen. (Dr.) Milgo: Mr. Speaker, Sir, let me find out.

The Speaker (Hon. Lusaka): Sen. Kwamboka.

STATUS OF EDUCATION IN KENYA FOLLOWING THE OUTBREAK OF THE COVID-19 PANDEMIC

Sen. Kwamboka: Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No.48(1) to seek a Statement from the Standing Committee on Education regarding the status of education in Kenya following the outbreak of the COVID-19 pandemic that has led to closure of schools and other institutions of learning.

In the Statement, the Committee should -

(1) Explain whether all the learners are equally accessing online educational materials, bearing in mind the fact that not every parent or guardian uses digital mobile gadgets or has access to the internet.

(2) Outline the steps the Ministry of Education intends to take to ensure that any imbalance in access to educational information and materials is checked and that those students that may be found to have no access to online classes are brought at par with the rest of the students.

(3) Expound on whether parents or guardians will be expected to pay full school fees for Second Term bearing in mind that the school fees for First Term was not fully utilized due to the premature closure as a result of the pandemic.

(4) Elucidate the efficiency of the e-Learning approach with regard to students' concentration and understanding of the lessons taught.

Sen. M. Kajwang': Mr. Speaker, Sir, as a parent of a child who is in the CBC programme, I associate myself fully with the Statement requested by Sen. Kwamboka. I want to request the Committee when it is considering those issues to address the issue of digital learning programme.

Last week, through the Chairmanship of Sen. Moi and Sen. Halake, we engaged the Kenya Institute of Curriculum Development (KICD) and Kenya Broadcasting Corporation (KBC) to understand what they are doing to ensure the children of the poor and the common man in this country are able to continue learning.

Unfortunately, in this country, it is the children at Brookhouse, Sabis, Braeburn, Braeside and other schools with English sounding names that are learning. The majority of 15 million children in this country are sitting at home, idling.

We are risking a generation that will be driven into illiteracy, disease and poverty. Our children are facing the threats this country faced at independence.

Could the Committee find out why after spending Kshs100 billion to provide laptops for children in the Republic, we cannot continue to provide electronic and virtual learning to the children of this Republic? Could the Committee tell this country the kind of adjustments that need to be made to the Digital Literacy Programme (DLP) to ensure that if this pandemic goes to the end of the year as some people think it will, or some people think it will be there forever, how will our children continue learning?

Mr. Speaker, Sir, the model of going to radio, KBC told us that they are doing two hours of radio every day. Unfortunately, the children of the rich have access to the Kenya Education Cloud 24/7 and that is just about 10 per cent. About 90 per cent of our children are only given two hours of content every day.

If we do not deal with this, COVID-19 is not just going to be a disease, it is not going to be a health hazard, but it is going to be a great social risk. It is going to drive the children of the poor and the common man to a very disadvantaged position. Could the Committee bring that report to the House?

The Speaker (Hon. Lusaka): Sen. Halake, then Sen (Dr.) Ali.

Sen. Halake: Thank you, Mr. Speaker, Sir. I would like to congratulate Sen. Kwamboka for this timely and really important Statement. We have already picked few of this in the Standing Committee of ICT, as Sen. M. Kajwang' has mentioned.

I can confirm that the Digital Literacy Programme (DLP) and The Computers for Kids is not working. It is about time now, through this Statement, that we got to the bottom of this issue. We have already started the process at the ICT Committee level.

We are certain and we can confirm to this House that children in the Arid and Semi-Arid Lands (ASALs) areas like Isiolo are not learning at all. Some of us have tried to help with what we can. We have approached a company like Safaricom to give toll free numbers to do what we can, but that is a drop in the ocean.

While we thank our stakeholders for coming in small ways, 78 per cent as of last night we were told are children who have no access to any learning materials, online or otherwise.

We have spoken through the *ad hoc* Committee on COVID-19 to many stakeholders. They have confirmed that no learning is going on and the syllabus is not being covered. The radio programmes are one way and cannot guarantee the interactive feedback that is needed for learning to be measured. The Cabinet Secretary needs to tell us exactly what they are doing about the future generation of this country.

Mr. Speaker, Sir, this Statement should be expedited. As you know, the Cabinet Secretary (CS) has written to our Clerk asking to be given time to work on it. We do not have that time. This is because the disparity and the gap between the rich and the poor is expanding to unacceptable levels.

Therefore, if there is one Ministry that really needs to put its act in order as soon as yesterday, it is the Ministry of Education and the Ministry of Information, Communication and Technology (ICT) and explain to us all the billions that have gone down with regard to connectivity, computers, all content and cloud connectivity. Parts of Kenya do not even have the basic 2G internet to access anything.

Energy is another issue. We do not know what happened to the Last Mile Connectivity because, again, the children who have the gadgets cannot even charge them. This is dire and should be expedited. We should be given a report as soon as possible.

The Speaker (Hon. Lusaka): Let us have Sen. (Dr.) Ali and then Sen. Mwaruma.

Sen. (Dr.) Ali: Thank you, Mr. Speaker, Sir. The issue here is that there are very few who can afford to be online. There is another group in the rural areas who have televisions but they cannot do it very well. In other areas, there is no television or network. Some of them do not have anything.

You can talk of people who are rich and schools are giving online content. Others see what the teacher is doing on black and white televisions and others can do it through telephone with 2G network which is a problem. There are those who do not have anything. In most parts of the northern regions, the Arid and Semi-Arid Lands (ASAL), there is no connectivity of Safaricom or Airtel.

The Committee should look into all those categories when they respond to this Statement.

Sen. Mwaruma: Thank you, Mr. Speaker, Sir. I support the Statement by Sen. Kwamboka.

We need to know the status of education in our country because it is on its knees. I disagree with the assertion of the CS that learning is going on given the many impediments that arise as a result of low internet and electricity connectivity despite the fact that the Ministry and the Government have done a lot to increase electricity connectivity. However, the truth of the matter on the ground is that most schools are not connected to electricity.

Secondly, I request that as the CS responds to the Statement, let him also tell us what they are doing in terms of policy. You remember that the Ministry is averse or against use of mobile telephony in schools. They said that mobile telephony is very dangerous.

I remember in 2014 when I was presenting a paper at Kabarak University on mobile learning and trying to discount the fact that we should ban mobile phones as a tool for learning in schools because they are dangerous. I argued that even a pen like this one can potentially be very dangerous because a child can even remove an eye of another using a pen. However, we are not banning pens.

In the same breath, we need a policy framework that allows us to use mobile telephones in schools the same way we use sulphuric acid, bicas and microscopes so that our children can access learning using mobile telephones.

There is a lot that needs to be done in terms of policy change to allow mobile telephony to be used in schools and even at home by children. Parents can then buy smart mobile phones and give children to use.

The Speaker: Let us have Sen. Sakaja and then Sen. (Prof.) Ongeru.

Sen. Sakaja: Thank you, Mr. Speaker, Sir. Sen. Kwamboka's Statement is extremely important at this time of the pandemic. I am making these comments assuming that this Statement is not being directed to my Committee.

Realistically, we must accept there is no education going on. We might aspire and say that we want to use the internet but there is no education going on this year.

For the education sector, we met private and public schools' stakeholders, Kenya National Union of Teachers (KNUT), Kenya Union of Post Primary Education Teachers (KUPPET), Universities Academic Staff Union (UASU) team and others.

The long and short of it is, even as we try to say we need to innovate and think of new ways of doing things, the reality we must face is that the quality of education this year cannot be compared to any other year. Education is happening only in schools. If we take Sen. Mwaruma's advice or recommendation and try to introduce mobile telephony, it will not work.

Mr. Speaker, Sir, if you tune in to televisions, it will show you Class 7 English and then tomorrow Class 2 Geography. It is not consistent and no proper curriculum is being followed. As leaders, we must get to a point where we face reality because that is what leadership involves. That, certain very radical measures and pronouncements need to be made about this year's education calendar. The quality of a Class 8 pupil as of May this year, is not anywhere near the quality of a Class 8 pupil as of May last year.

Second and maybe on a light note, this learning from home is exposing many parents. Many parents told their children they were number one when they were in school and even skipped classes. Now, students are asking questions that parents are even trying to avoid being at home. So, parents are being exposed because they do not know what photosynthesis or electrolysis is. It is unfair on both sides. Let us help parents and students.

We have seen the issue of fees even being adjudicated in court. There are schools that are still charging the same amount of fees. We understand teachers need to be paid

their salaries and the costs being incurred need to be taken care of. However, we have not seen a solid pronouncement.

May I inform the House that we met the education stakeholders and we will still meet the CS for the Ministry of Education, so that we can give the country a realistic position with respect to education this year.

Sen. (Prof.) Onger: Thank you, Mr. Speaker, Sir. I do not know where to start and where to end. There are several issues that need to be redefined.

As the Cabinet Minister for Education, I engaged the Kenya Institute of Curriculum Development (KICD) in developing the digital content. Indeed, they developed digital content for Standard 1, 2, 3, 4, 5 and 6. By the time I left, they were developing digital content for Standard 7 and 8. Equally so, they had also developed digital content for Form 1 and 2 and were waiting to develop the same for Form 3 and 4.

We had identified KICD because they have a fantastic state of the art digital transmission centre. On the other hand, the Government has the Kenya Broadcasting Corporation (KBC) transmission centre. However, the interface between the digital transmission centres is that the KICD one is digital and the KBC one is analogue.

Mr. Speaker, Sir, therefore, even contemplating school transmission study through KBC radio and television is impossible because the furthest you can go is within 100 kilometres of Nairobi City County. So, what happens to schools in rural areas?

I am a Member of the Committee on Education and these are the issues that we wanted to interrogate the CS on. First of all, on the issue of transmission and second, the content to be transmitted. Third is on the issue of the availability of command centres where in the remote areas, they can congregate and learn. That is another level.

However, the first level is the gadgets which were supposed to come. Initially, we had digital centers in every school and now they brought in the so-called tablets. I saw yesterday on the television a teacher somewhere in the Arid and Semi-Arid Region who has invested in his own tablet, but has not been approved by the Ministry of Education, which indicates the level of confusion there is in learning.

My submission this morning - I thank Sen. Kwamboka for raising this matter - is that the Cabinet Secretary for Education, with the Kenya Institute of Curriculum Development (KICD), must come up with a cogent and clear programme on how learning is going to be carried out in our learning institutions. More so, they must tell us what is going to happen to the Competence Based Curriculum (CBC) *vis-a-vis* the regular 8-4-4 programme, which is running concurrently. I can see the target where they will phase out 8-4-4 system, bring in the CBC system and crush the systems. The burden cannot be taken by the parents. It is a major confusion.

Mr. Speaker, Sir, I want to submit that the Committee has already set out questions for the Cabinet Secretary for Education. It is up to the Cabinet Secretary to be available in conjunction with the Committee on Education of the National Assembly and the *Ad hoc* Committee on the COVID-19 Situation, so that we bring clarity to the educational system. Otherwise, the greatest danger looming today is reverting back to illiteracy. Once children stop learning, and Sen. (Dr.) Ali knows this, they do not remember very quickly. Their memories lapse and they end up focusing on other anti-

social behavior because of the idleness. Therefore, when learning does not exist, they in turn become very dangerous members of our society.

Thank you.

The Speaker (Hon. Lusaka): Sen. Ndwiga, you have the Floor.

Sen. Ndwiga: Thank you, Mr. Speaker, Sir. I want to join my colleagues who have voiced concerns on the current issue of education. I thank Sen. Kwamboka for bringing this Statement.

This is a very clear example of how resources are misused in this Republic. We have KICD who develop content. We have developed beautiful content because I had an occasion to watch some of what they are transmitting. However, who is the recipient of this content? How are the children supposed to receive this content?

I did a sample test in my county and I can tell you that in Embu County the children who are receiving this content are 20 per cent. The remaining 80 per cent of the children are not receiving the content in Embu County, which represents a sample of the entire country. There is absolutely no learning in this country. As the Senate, we challenge the Ministry of Education to come up with a very clear roadmap on how we will resume learning in this country.

Education in this country stopped from the day schools were closed and children told to go home. Let nobody tell us that there is learning going on through television. The content is not getting to the recipient. The other day, one parent called me and said: “We have been hearing the Cabinet Secretary for Education saying that learning is going on. What are you doing as our Senator, since content is not reaching us?” The parents think that the content is not reaching them. Children are all over playing because even the parents do not know that this learning exists.

Mr. Speaker, Sir, whichever Committee will look at this Statement, we want the Cabinet Secretary for Education to hear us loud and clear that in this country there is no education. We sympathize with him and the situation because it is not his doing. However, can we come up with systems that will remove the confusion in the country today? If we are going to have any learning, when will it happen and how? The ‘when’ may be a problem because we do not know how long the COVID-19 pandemic will be with us. Nevertheless, the ‘how’ is key since systems could be developed where we can get some children to school.

For example, Standard Seven and Standard Eight pupils could resume, while the others wait until we get rid of COVID-19. I do not think that, as leaders, we are ready to watch this country go back to illiteracy. We and the Government have fought so hard. We need to put in place proper systems that will ensure that education continues.

Thank you.

The Speaker (Hon. Lusaka): Thank you very much, Hon. Senators, for your contributions. The Chairperson, Committee on Education, you have heard the sentiments of the representatives of the people because you represent the people. This is a matter that parents in the whole country are worried about. The Chairperson and the Committee need to move with speed to reassure this country on the status of our education. This is the concern being raised by all the leaders. As the Senate, we must pronounce ourselves on this matter.

The next Statement is by Sen. Wetangula, who is not in. We proceed to the Statement by Sen. (Dr.) Ali.

ELECTRICITY OUTAGES IN WAJIR COUNTY

Sen. (Dr.) Ali: Mr. Speaker, Sir, I rise pursuant to Standing Order No.48 (1) to seek a Statement from the Standing Committee on Energy concerning frequent electric power outages in Wajir County that has lasted since 2017.

In the Statement, the Committee should -

(1) Explain when the new power generator in Wajir County will be operationalized. It has been lying idle since it was procured in 2019.

(2) Explain why the generator that broke down and has all the spares ready and available in Wajir has not been repaired. They claim that the contractors are in Tanzania and cannot come. Does that mean the Ministry does not have mechanics to repair the generator, so that the people of Wajir can get electricity?

(3) State measures put in place to ensure that there is adequate electricity power in the county, as the generators in operation in Wajir County can only generate two megawatts against a demand of four megawatts required by the county.

(4) Explain what the Government plans to do to operationalize an ex-Garissa generator. They took a generator from Garissa last year, which they claim will provide two megawatts, and it is still lying idle. What do they plan to do with that generator?

(5) Explain when people of Wajir will benefit from the national grid, which we have been promised for eight years.

The Speaker (Hon. Lusaka): Sen. Farhiya, you may proceed, then, we will have Sen. (Prof.) Ongeru.

Sen. Farhiya: Thank you, Mr. Speaker, Sir. Wajir County has had electricity problems from the time I was in primary school. As we are aware, growth of businesses and Small and Medium-Sized Enterprises (SMEs) need electricity.

During the Ramadhan period, when people are fasting, the situation becomes worse than the normal times. People cannot use fans and other things. As result, there is too much dehydration and many kidney failures reported in that county. This is because there is too much sweat and people cannot even sleep at night.

This is so sad given that this is a county that has green energy sunlight throughout the year. In fact, 75 per cent of the year, there is sunshine in that county. I think it is high time that Wajir County instead of depending on generators, either have development of green energy from a solar system so that the county can adequately be supplied.

In my county, people practice pastoralist life. As a result of that, there are lots of hides and skins. If there was enough electricity in that county, small factories producing quality leather would have been established there.

In Wajir county, there are a lot of terror attacks. That is partly contributed by the fact that the towns are in darkness every other night. So, through the Senate Committee on Energy, we must come up with a solution for Wajir County. After close to 60 years of Independence, we cannot be crying about electricity year in, year out.

Sen. (Prof.) Onger: Mr. Speaker, Sir, I rise to speak with nostalgia. I was the Medical Officer of Health in Wajir County in 1967 to 1968. It is with horror that at time we had a simple generator that only supplied power to the District Commissioner's (DC), the police commandant and the Medical officer's houses. Even when I used to do the operations in the hospital, I used the foot pump to be able to do the kind of operations I needed.

If one travels the length and width of Wajir County, it is very expansive. From Wajir itself to Griftu, Burma, Gural near the border with Ethiopia, northwards towards Mandera or southwards to Habaswein and towards Garissa, it is a very vast county.

The other day we were there as the Senate Committee on Education. I do not understand why in the 21st Century, there is no stability of power or energy in Wajir County. It is all that the people of Wajir need because the water surface is very low. They can dig boreholes and get very clean and serviceable water using power.

I do not understand why the Ministry of Energy or for that matter Kenya Power Company cannot tap the solar energy which is in abundance. There is so much sunshine that they can store up so much solar much cheaper and clean energy that they can use for all the purposes rather than being subjected to electricity outages now and then. It can be very frustrating, particularly in an area which has some other security concerns.

It is important and we owe it to the people of Wajir, Mandera, Garissa, Turkana and these other areas that they now need to seriously look at generating, not only the solar, but also the wind energy which is so much in plenty in some of those regions.

I commend my medical student at that time, Sen. (Dr.) Ali for bringing this question before us.

Sen. Sakaja: Mr. Speaker, Sir, mine was a point of order. I support the Statement by the Senator of Wajir. However, when Sen. (Prof.) Onger was saying that he was there in 1967, I and Sen. M. Kajwang' were just the proverbial itch somewhere in the distant future.

I see that we have 45 minutes to go. You could limit the amount of time we take on the Statements where we still are because we want to dispense with one of the progress reports on COVID-19 Pandemic Situation in the Country. I kindly ask if you can limit the interventions by other Senators on the two Statements that are left.

The Speaker (Hon. Lusaka): Noted. Proceed Sen. (Dr.) Milgo on your Statement.

WASTE MANAGEMENT IN BOMET COUNTY

Sen. (Dr.) Milgo: Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No.48 (1) to seek a Statement from the Standing Committee on Land Environment and Natural Resources concerning waste management in Bomet County.

In the Statement, the Committee should -

(1) State why Bomet county does not have a designated dumpsite for purposes of solid waste management.

(2) Explain plans by Bomet County Government to come up with a designated dumpsite for the county.

(3) State measures put in place by the county to deal with the current waste management problem facing the county in the absence of a designated dumpsite and state measures put in place by the national Government to assist counties that are struggling with waste management.

Mr. Speaker, Sir, allow me to say one thing about waste management with COVID-19 issues. In Italy, there was a research that was conducted which shows that COVID-19 virus is in the air right now. There are lot of material used to make face masks and gloves to prevent the spread of this pandemic. However, if these masks and gloves are not managed well, very soon research may establish they will also be contributing to the spread of the virus in our society. Therefore, we need to manage their disposal properly to avoid future spread of this pandemic among our people. I urge the Committee to take the issue of masks and gloves very seriously because they can cause further havoc in terms of Coronavirus.

The Speaker (Hon. Lusaka): Thank you. I hope the Committee will do the needful. I will defer the Statement by Sen. Wetangula because he is not in the House.

TRAFFIC CONGESTION ALONG
THE BUNGOMA-KANDUYI-MALAVA ROAD

(Statement deferred)

I will also defer the Statement by Sen. Were who is not in the House.

STATE OF GOVERNANCE IN AGRICULTURAL
STATE CORPORATIONS

(Statement deferred)

The next Statement is from the Chairperson, Standing Committee on Agriculture, Livestock and Fisheries, Sen. Ndwiga.

IMPLEMENTATION STATUS OF REPORT OF
AD HOC COMMITTEE ON MAIZE

Sen. Ndwiga: Thank you, Mr. Speaker, Sir. A while ago, the Chair directed that my Committee brings a Statement on maize and also on the progress that the Ministry has done with the recommendations of the Senate *Ad hoc* Committee on Maize.

At its 74th sitting held on 22nd April, 2020, the Committee resolved to invite the Cabinet Secretary (CS), Ministry of Agriculture, Livestock, Fisheries and Cooperatives to appear before it to address the mire of the importation of maize and to brief the Committee on the implementation status of the recommendations of the Senate *Ad hoc* Committee on maize.

The Committee held an online meeting with the Cabinet Secretary (CS) on Monday, 4th May, 2020 where he briefed the Senators as follows -

On food security in the country and maize importation, the national food and nutrition security is stable following near normal performance of the 2019 long rain season and good performance of the 2019 short rain season. While prices of maize and wheat have increased following uncertainties brought about by the Coronavirus (COVID-19) pandemic, as well as the locust invasion in some counties, the prices of other food commodities have remained stable.

Mr. Speaker, Sir, the 2019 long and short rains resulted in the production of about 43.3 million 90 kilograms bags of maize which is a slight decline compared to 44.5 million bags produced in 2018. However, production of other food staples remained normal.

The maize balance sheet forecast up to June 2020 indicates that there will be a net surplus of maize of about 2,444,800 bags. At a consumption of 4.25 million bags per month, the projected balance will not be enough to cover one month up to July 2020 when early harvesting will commence. The available stocks of the other main food staples are sufficient from local production and projected imports.

Mr. Speaker, Sir, *via* Gazette Notice No. 3234 dated 20th April, 2020, the Government has gazetted the importation of two million bags of white maize and two million bags of yellow maize by private millers to supplement local supplies and to ensure food prices remain stable. These imports are meant to fill the gap that the country is expected to experience between the months of June and July 2020. This will also cushion local producers from market flooding when local supplies from the South Rift parts of the country are available in the market in August.

A concessional import duty rate of 14 per cent shall apply in respect of white maize and a rate of 10 per cent in respect of yellow maize imported to ensure that the maize sells at local prices. Importers were given a deadline of 30th May, 2020, however, this may be adjusted to a later date where there are justifiable and valid delays in shipments.

Mr. Speaker, Sir, the Ministry will continue monitoring the field situation including collection of information of available stocks held by various value chain actors to inform further action to be taken to improve access to food and price stabilization during the emergency period between April to June 2020. Maize importation remains low compared to long term averages. This is partly due to available local supplies as well as reduced inflows across regional borders owing to the challenges of the COVID-19 pandemic.

On the Strategic Food Reserve stocks, currently there is no maize stock in the Strategic Food Reserve stores as the Government left market forces to be in play. The Government had also disposed of old stocks to avoid quality deteriorations. However, the Strategic Food Reserve Trust Fund has a total cash amount of about Kshs10 billion that is readily available for food purchases locally or externally if need arises.

Mr. Speaker, Sir, there are a total of 124,625 50 kilogram bags of aflatoxin contaminated maize which is set to be destroyed by the National Cereals and Produce Board (NCPB).

On the status of implementation of the recommendations of the reports of the Senate *Ad Hoc* Committee on Maize, the committee recommended that the CS develops regulations and guidelines on importation of maize and other food crops and staples and tables them in the Senate within 45 days.

The Ministry through the Agriculture and Food Authority (AFA) has developed the Food Crops Regulations 2019 that will apply to all food crops produced, processed and marketed in Kenya or imported into or exported out of Kenya. The regulations were gazetted on 31st December, 2019 and acceded to by the National Assembly on 23rd April, 2020.

Mr. Speaker, Sir, the Senate *Ad Hoc* Committee on Maize recommended that county governments should pass legislations and regulations that will help protect farmers in the whole grain value chain. In this regard, the Food Crops Regulations 2019 has been published and will guide counties in legislating and protecting farmers in the whole grain value chain as recommended by the Senate.

The regulations also provide for the rights and obligations of growers and growers' associations, the registration of all actors in the entire grain value chain for provision of their regulations, guidelines on contract farming, and guidelines on sales and packaging of food crops and produce.

Mr. Speaker, Sir, it was resolved that the CS would provide the Committee with monthly updates on the maize situation in the country as well as the implementation status of the recommendations of the *Ad Hoc* Committee on Maize. I shall continue to provide the updates to the House as resolved.

I thank you.

The Speaker (Hon. Lusaka): Thank you for your Report.

Hon. Senators, I will now defer Order Nos. 8, 9, and 10 and go to Order No. 11.

BILLS

Second Reading

THE PANDEMIC RESPONSE AND MANAGEMENT BILL (SENATE BILLS NO. 6 OF 2020)

(Bill deferred)

Second Reading

THE SACCO SOCIETIES (AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO. 1 OF 2018)

(Bill deferred)

*Second Reading*THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (NO. 2) BILL
(NATIONAL ASSEMBLY BILLS NO. 13 OF 2018)*(Bill deferred)***MOTION**ADOPTION OF THE FOURTH AND FIFTH PROGRESS REPORT OF
THE *AD HOC* COMMITTEE ON COVID-19 SITUATION IN KENYA

THAT, the Senate adopts the Fourth and Fifth Progress Reports of the Ad-hoc Committee on COVID –19 Situation in Kenya, laid on the Table of the Senate on Tuesday, 5th May, 2020 and on Tuesday 12th May, 2020 respectively.

*(Sen. Sakaja on 12.5.2020)**(Resumption of debate interrupted on 12.5.2020)*

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

Sen. Sakaja: Mr. Speaker, Sir, thank you. I had already started moving this Fourth and Fifth Report. Incidentally, we are producing reports faster than we can debate them because I am also about to lay the Sixth Report this afternoon as mandated by this House to do a weekly report on the quickly evolving situation.

I will just go straight to a small part of the Fourth report. The Fifth Report is comprehensive about finance measures and that is the one which will require some more time.

Mr. Speaker Sir, as of today, the Committee has held 52 sittings and engaged with several institutions at the national and county level. We have received numerous submissions on different areas. As of the date of the Fourth Report, some of the gains that the Committee had made are:

One, the decision by the National Transport and Safety Authority (NTSA) to adjust the expiry duration of all motor vehicle inspection bookings from 16th March 2020 to 30th May 2020, following intervention by the Committee. Many people in this sector had already complained that they were not able to get these bookings, and as such are not able to operate commercially.

During our interactions, following a meeting on 30th April, 2020, we agreed with the NTSA that they publish a notice and the deed to that effect. Subsequently, all of those whose vehicle inspections had expired and could not operate on the roads and book inspections are required to book inspection through the Transport Integrated Management System (TIMS) account and present their booking slips. What was required is just those booking slips to enforcement officers.

Mr. Speaker Sir, we have also proposed in the Pandemic Response and Management Bill, which is coming for the Committee of the Whole stage, that during the time of a pandemic, such statutory timelines that might have been expired are then extended, especially those where it is not possible to do a renewal during the period of the pandemic.

The decision by the Ministry of Health and the Ministry of Interior and Coordination National Government to halt the detaining of persons arrested for breaching of the curfew in facilities officially designated as quarantine facilities. This is an issue that we had raised that the Government was criminalizing quarantine, leading to a lot of the stigmatization. Those found going against the curfew or the Public Order Act were being taken to those facilities, making it look like it is a criminal affair to be quarantined, while it is a public health affair.

After our interaction, the Inspector-General was directed to identify alternative facilities to deal with those who are breaking the law and the curfew rules to ensure that these persons are not mixed with those placed in quarantine, following contact testing measures which unnecessarily exposes those people to the Coronavirus Disease (COVID-19). That was a recommendation that we had also made in the Third Report.

Mr. Speaker Sir, following our meeting with the Commission for Administrative Justice (CAJ), we were able to help create a linkage between the Judiciary and certain service providers, like Swvl Kenya. Swvl is a company that does transport through technology. They have been offering our medical frontline workers free transport during this time using technology. We want to thank them and encourage the uptake of such technology. They have been facing a lot of challenges, but we are glad that they were able to provide a linkage with the Judiciary.

Following the meetings with the Cabinet Secretary of Industrialization, Trade and Enterprise Development, together with transport stakeholders, this was upscaled to the level of the presidents of the East African Community (EAC) to deal with the issue of testing of truck drivers at the borders, and reducing the traffic in Bungoma and Busia.

As of last week, the traffic was around 40 kilometers, because of the low number of people testing and the different protocols being utilized by Kenya, Uganda and the other countries. There is some progress that we are seeing in that, but we will keep following it up.

Mr. Speaker Sir, allow me to go straight to the Fifth Report. At that point, we had done 49 sittings. I have just reported that as today, we have done 52. This one is basically on the issue of economics and finance. The Sixth Report will be on Social and Public Order, and Human Rights.

In relation this thematic area of economic and finance issues, the Committee deliberated extensively on issues relating to -

(1) The impact of the Coronavirus Disease (COVID-19) on business, particularly Micro, Small and Medium Enterprises (MSMEs).

(2) The trade aspects, including easing of legislative and regulatory requirements for doing business, impact of the closure of retail markets by county governments, and protection of residential and commercial tenants and landlords.

(3) Measures to cushion borrowers through a moratorium on repayment of loans, interest and penalties, freeze on execution for borrowers who might have defaulted on their loans due to the COVID-19 situation, where it can be proven, and on listing by credit reference bureaus.

(4) The macro-economic effects, including addressing economic shocks arising from loss of export markets of commodities, as well as a drop in our tourism numbers.

(5) The drop in remittances by Kenyans abroad and in Foreign Direct Investments (FDI), and fiscal space for additional Government borrowing.

Mr. Speaker Sir, having analyzed the issues and concerns raised by the public, the Committee met and deliberated with the following stakeholders.

Under Government agencies and independent offices, we sat with the CS of the National Treasury and Planning, the CS of Industrialization, Trade and Enterprise Development, the Council of Governors (CoG), the Controller of Budget, and the Governor of the Central Bank of Kenya (CBK).

Within the private sector, we had extensive deliberations with the Kenya Bankers Association (KBA), the Kenya Union of Savings and Credit Cooperative Societies Limited (KUSCCO), the Kenya Association of Manufacturers (KAM), the Small and Medium Enterprise Federation (SMEF), the International Budget Partnership Institute for Public Finance of Kenya (IBPIPFK), and the Institute of Social Accountability (ISA), among others.

Mr. Speaker Sir, based on our analysis of the written memoranda because very many Kenyans responded, more than 160 submissions were received, we have made substantive observations and recommendations for adoption by this House.

I hope that Senators will be able to interact with this report that has been available since we tabled it and contribute to it so that we can make serious and specific recommendations to the national and county governments.

For the current situation, we observed that there is significant negative impact on key sectors. Trade, tourism, manufacturing and agriculture are worst hit. The preliminary growth for Kenya in 2020 is projected to decline to around 3 per cent. If the extreme shock persists, growth is likely to drop further to below 2.5 per cent, as global demand remains weak.

In fiscal years, growth is estimated at 4.4 per cent for Financial Year 2019/2020, and 4.6 per cent for Financial Year 2020/2021. That was the initial objection. I remember this is coming down from above 5.5 per cent. In fact, in reality with these discussions, even the National Treasury, said that realistically, if we are fortunate, the economic growth will be around 1.8 per cent. The last time we were at such a growth level was 2008, after the post-election violence. The effects on the economy have taken many years to recover. Remember, in the previous year we had gotten to 7.1 per cent.

Mr. Speaker Sir, the agricultural sector has been heavily affected by the pandemic. There is reduced export earnings and loss of income due to low global demand for agricultural exports, especially horticulture, tea and coffee, among others. The foreign exchange market, however, fortunately remains stable, supported by continued narrowing in the current account deficit.

Reduced demands for Kenyan exports and declining prices for commodities in the international markets, compounded with a drop of tourist arrival in the country has led to great revenue loss, lowering our foreign reserve and exerting pressure on the shilling. The official foreign exchange reserves held by the Central Bank of Kenya (CBK) stood at five months of import cover.

Ideally, we should be having six months import cover in US dollars, and that was in February 2020. That went down from 5.4 percent imports cover in February 2019.

There is cause for concern there. The ordinary revenue collection amounted to 11.7 per cent of the Gross Domestic Product (GDP), which is Kshs1.2 trillion against a target of Kshs1.3 trillion, recording a shortfall of Kshs132 billion of the target already.

Mr. Speaker Sir, ordinary revenue has gone up by 4.2 per cent. During the period to March, 2020 compared to 9.1 per cent growth over the same period in the previous year. The shortfall in ordinary revenue collection from the target Kshs132.3 billion was recorded in all broad categories with excise taxes recording a short fall of Kshs35.2 billion.

Other categories that performed below target were income tax by Kshs39.2 billion, import duty Kshs17.8 billion and Value Added Tax (VAT), Kshs34.8 billion.

Mr. Speaker, Sir, unfortunately, there has been a decline in remittances by Kenyans living abroad which has reduced the foreign currency inflow occasioning our exchange rate to depreciate against major international currencies.

When we filed this report last Tuesday, the Kenya shilling was at trading 107.6 against the dollar. I am sure before I finish, Sen. M. Kajwang' will tell us how much it is now.

Mr. Speaker, Sir, overall, fiscal deficit including grants for the period ending March 2020, was Kshs449.6 billion which is 4.3 per cent of GDP funded through net foreign financing of Kshs87.0 billion, net domestic financing of Kshs360.4 billion and other domestic financing including loan repayment receipts at Kshs2.2 billion.

The National Treasury continues to engage multilateral and bilateral partners on funding interventions.

Mr. Speaker, Sir, on top of those funding interventions, there has been engagement on debts swaps with development partners and restructuring the public debt. We have made specific proposals on that.

The assertions was the debt remains at the level estimated at Kshs6.2 trillion which 58 per cent of GDP which is below International Monetary Fund (IMF) and World Bank debt sustainability assessment, a threshold of 74 per cent. However, we have encouraged the National Treasury not to take comfort in those numbers as at this point.

Mr. Speaker, Sir, if I go beyond that and leave these details, the concern that we observed on pending bills by county governments and the national Government is real. It is hampering a lot of business growth and many businesses are suffering.

Through Second supplementary estimates, the Government is addressing the national Government pending bills amounting to around Kshs13 billion. However, as of 30th April, 2020, county governments have a balance of Kshs16 billion in pending bills and the national Government has eligible pending bills of Kshs34.9 billion leaving an outstanding balance of Kshs16.3 billion. That is a huge number.

Many of these bills are owed to ordinary Kenyans and not the big companies. You remember the case of a man in Kajiado who said he has been supplying his cows to the prisons and National Youth Service (NYS). So, not sorting out this will have a negative detriment.

We are encouraged by the efforts and commitment by the National Treasury but we will keep following up. We will also follow up on county governments to make sure they sort out these pending bills.

Mr. Speaker, Sir, we noted and commended the measures taken by commercial banks, SACCOs and other financial institutions to cushion borrowers during this time. That is the agreements for deferred payment and loans.

As at the time of this report, in our discussions with the Kenya Bankers Association (KBA), they told us that during this period, the banks have, on a case by case analysis, encouraged borrowers to re-negotiate their loans.

As at the time of filing this report, the KBA informed us that they had received over 20,000 requests amounting to Kshs160 billion. On a case by case basis, they have tried to work with their clients. We encourage Kenyans to go to their banks and negotiate.

As we pass legislation on cushioning borrowers, many banks have expressed willingness. We commend the KBA and all our local banks. This is not the time to make profit.

Mr. Speaker, Sir, we have many recommendations. However, I will leave it to Senators to go through them and publish them to the public.

Allow me to go to recommendations on this thematic area because of time.

(a)The Ad Hoc Committee on Covid-19 recommends that the Cabinet Secretary for Industrialization, Trade and Enterprise Development gazettes regulations establishing the Micro and Small Enterprises Development Fund, that was established under Section 51 of the Micro and Small Enterprises Act (No. 55 of 2012), that has not been operationalized and present a report to the Senate within 60 days from the date of adoption of this report.

(b)To enhance accountability for and oversight over the COVID-19 Emergency Fund, and other funds established at the national and county level. The National Treasury, and the county treasuries to submit monthly income and expenditure reports to Parliament and the respective county assemblies. Community level monitoring and evaluation frameworks should also be put in place to ensure proper oversight of emergency COVID-19 funds.

Mr. Speaker, Sir, this came up from the observation that many accounting officers are taking advantage of the pandemic to do emergency procurement and misuse funds related to sorting out the issue of Covid-19.

They must continue to follow the public procurement laws that we have. Any funds that have been set aside including by the Covid-19 Fund, for the purposes of dealing with Covid-19, the national Government and county governments should give a monthly income and expenditure report of what they have received and what they have spent so that we do not see suspicious budgets. They shall give those reports to the Senate and the National Assembly and to the respective county assemblies.

(c) To hasten disbursement of funds to counties, counties should comply to rules and regulations set by the oversight bodies to facilitate funds disbursements.

Further, counties with pending bills to adhere to the agreements made with Controller of Budget and National Treasury on payments of verified bills and ensure pending bills are settled as per the verified bills. A specific AIE with clear bills to be settled with the released funds to be sent to counties. The funds are available.

(d) To support MSMEs to continue with their businesses during the Pandemic. The Government to hasten the planned liquidity support for small and medium enterprises through credit to banks and other financial institutions. To further promote MSMEs emphasis to be made to Government agencies to procure available items from the local firms as much as possible.

Mr. Speaker, Sir, in our discussion, the National Treasury reported to us that they were in an advanced stage with our development partners to get a grant and concessional loan of around Kshs120 billion to cushion small businesses. This money should be channeled through our lending institutions at low rates.

A business can demonstrate what it has been making in this same period, in the last financial and how it has been affected by the pandemic. For us to make sure that people do not fire their employees or get direct money to pay their rent, we should protect these businesses especially in the hospitality and tourism sector through such a wage subsidy fund. We will affect many Kenyans.

If these businesses demonstrate the Pay As You Earn (PAYE) they have been paying for their employees, their cash flows and turnovers but during this period, they get money from the banks which they already have a relationship at a discounted rate, we will have done a great service to our country.

We have made further recommendations in our Bill as part of the amendments on the wage subsidy fund that is needed as a matter of an urgency for our businesses today.

To reduce further disruption on supply chain, counties need to facilitate retail markets by adherence to the Ministry of Health requirements to ensure social distancing and provision of the necessary sanitary facilities in market areas. We have seen this in very few counties; other counties are not following this.

Mr. Speaker, Sir, on the underperformance of own-source revenue affecting the credibility of the county budgets, promotion of automation of own-source revenue collection stream to be done to curb leakages and to consider legislation--- I am glad that Sen. M. Kajwang' spoke on the need for county assemblies to resume and us, as the Senate, to guide them on how they can resume, so as to play their role.

Mr. Speaker, Sir, at this time of the pandemic, a lot of mischief is happening in counties because the assemblies are not sitting. Many governors have even colluded with leaders of majority and minority not to cause the resumption of county assemblies, but to continue doing direct procurement of masks, Personal Protective Equipment (PPEs), items for fumigation, chemicals *et cetera* from their cronies. As the Senate, we need to state that county assemblies must resume, of course, following certain guidelines, like we are resuming because we have not suspended oversight in this country.

Mr. Speaker, Sir, we have also recommended to cushion these businesses. This is because in our meeting---You have noticed that I have returned it because I have somebody close to me. That is the Ministry of Health protocol.

Mr. Speaker, Sir, the Cabinet Secretary for Health demonstrated to us that he had PPEs that have been imported from China, other countries, and local PPEs. He called the medical personnel, removed the tags and asked them which ones they preferred. They did the tests and said that the local ones are very good. Why can we not buy Kenyan at this point? Why are we still importing, yet many Kenyans are able to produce the masks and the PPEs locally?

Mr. Speaker, Sir, in this Report, Kenya Medical Supplies Authority (KEMSA) must give us the quota of the local production that they are relying on and all other agencies that are procuring publicly. This is because there is a list. Kenya Bureau of Standards (KeBS) came and gave us a list of more than 60 companies that they have certified for the production of masks and 26 local companies that they have certified for the production of PPEs. They said that they are of higher quality than those we are importing. Why are we, therefore, importing? Let us support our own home-grown industries.

Our *Jua Kali* artisans must provide the infrastructure for hand washing, like the stands for the water basins in markets. Let us go to them. Let us not have to always believe that anything that is imported is better.

Mr. Speaker, Sir, to contain public debt at sustainable levels, the Committee recommends that the National Treasury-

(1) Takes decisive action to curtail spending through austerity measures, to reduce the size of the fiscal deficit.

(2) Reduces to the extent possible commercial borrowing by gradually shifting to concessional loans.

(3) Implements domestic debt reform to lower cost and risk of domestic borrowing by shifting away from Treasury bills to Treasury bonds.

(4) Cancels or reallocates non-disbursing external loans, dormant loans to priority projects.

(5) Strengthens the capacity of the Public Debt Management Office and implement debt and borrowing policy anchored on the best practice, to improve the effectiveness of the Public Debt Management Office.

(6) Staggers contracting of the current external loans in the pipeline over the financial years 2019/2020 and 2020/2021.

(7) Refinances high cost external debt estimated at USD3 billion. That is the high cost and not the concessional or multilateral loans that we got at the better rates. They need to refinance those.

(8) Negotiates with key creditors, especially Exim Bank of China, to restructure Bi-lateral basis, specific debts and debt for development swaps. This is the time to engage in those swaps or debt development.

(9) Negotiates on bi-lateral basis swapping of debts service for grants financing key development projects on the Big Four Agenda Four, climate change and now focus on what the real issues are.

(10) Strengthens coordination of Government securities issuance with Central Bank's policy actions. I must commend the Governor of Central Bank of Kenya over the past. Throughout he has been doing a good job, but the interventions he has put in place at this point, including availing increased liquidity—We have seen what the Monetary Policy Committee (MPC) has been saying in terms of the rates moving down to 7.25 per cent. We want him to go on and we urge him to continue.

Mr. Speaker, Sir, on debt issues, negotiations to be considered on debt swaps for funding directly of operational and development activities.

Mr. Speaker, Sir, there is also strict adherence of Public Procurement and Asset Disposal Act.

Mr. Speaker, Sir, I am going to conclude in the next few minutes. We have said women, youths, persons with disabilities and other vulnerable groups must be supported at this time. There are certain specific recommendations and ideas that are in this Report for their businesses.

For those in the talent sector, there was Kshs100 million that was set aside by the Government. It is good, but is a drop in the ocean. A lot of those were artists who would benefit from media houses being able to pay the royalties for the Skiza tunes and all of this to be renegotiated. We have put that in our Report.

What we are saying is that where international markets have reopened in Europe and Asia, the Government should support the Kenya Airways in operating cargo flights to and from these destinations to facilitate import and export of goods.

Community level monitoring and evaluation frameworks to be considered to ensure proper oversight of the COVID-19 funds. As I have said, our monthly report of income and expenditure by these counties. There must be serious accountability and transparency in the list of those who are getting money through cash transfers. The targeting of the vulnerable must be transparent to the community level so that they know that this money is going to those who deserve.

As I conclude, I wish to thank the Office of the Speaker and the Clerk of the Senate for the support extended to us in undertaking this important assignment. We have been able to cover a lot of ground in many of these issues.

Recently we sat with the Cabinet Secretary (CS) for Interior and Coordination of National Government and the CS of Water and Sanitation, and we agreed that all evictions and demolitions should stop. However, after that, we were dismayed that we saw further demolitions and evictions going on. For that, we are going to bring a substantive report.

I am glad the Standing Committee on Lands, Environment and Natural Resources chaired by Sen. Mwangi is looking at Kariobangi, based on the Statement that I brought. They are also looking at what happened in Ruai. However, we cannot have a situation where we agree with the Government and make recommendations as a Committee or as a resolution of the House that is taken as mere suggestions.

In fact, what we are agreeing on now is the amount of support in terms of humanitarian money, food and resettlement that is being done to those people. I want to thank Sen. Mwangi who has led that. That is what we have been doing over this time.

I beg to move that the House does adopt the Fourth and Fifth Progress Reports of the ad hoc Committee on COVID-19. In the afternoon, I will table the Sixth Report that looks at social justice and human rights.

I beg to move.

The Report was supposed to be seconded by my Vice-Chair, Sen. Kasanga, who I cannot see. However, I will ask Sen. Halake, because of time, to second and not necessarily conclude, then she can later gather herself.

Thank you, Mr. Speaker, Sir.

Sen. Halake: Thank you, Mr. Speaker, Sir. Thank you the Chairperson of the ad hoc Committee on COVID-19 on this elaborate Report.

Mr. Speaker, Sir, the impact of COVID-19 on our economy is being felt by all of us. So, I will not belabour the point.

As you also know, this Committee has clustered a lot of its thematic areas. This is the thematic area that looks at the financial and economic issues. I do not wish to repeat all the recommendations and observations of the Committee as you have seen.

We hope that Senators will interact with this Report which has a lot of very good information because it is based on very extensive consultations with stakeholders in this sector.

If there is one time that public participation has been done justice, it is this time based and enabled by technology. Therefore, going back to your message this morning, the power of ICT to make us implement our Constitution, especially in regards to public participation, at a low cost and minimum disruption, is amazing.

We have met many people. I do not wish to go through all the people we have met. Without technology, that would not be possible.

Mr. Speaker, Sir, as we gave recommendations, we also bore in mind that our revenue as a country is taking a beating. Our revenue is probably going to collapse if we are not careful.

ADJOURNMENT

The Speaker (Hon. Lusaka): Hon. Senators, it is now 12.30 p.m., time to interrupt the business of the Senate. The House, therefore, stands adjourned until today, Tuesday, 19th May 19, 2020 at 2.30 p.m.

The Senate rose at 12.30 p.m.