

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Wednesday, 16<sup>th</sup> September, 2020

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

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

### PRAYER

### PETITION

REPORT ON PETITION: RECOGNITION OF GRADUATES OF RANGE  
MANAGEMENT COURSE TO TREAT LIVESTOCK DISEASES  
AND OFFER RELATED EXTENSION SERVICES

*(Petition deferred)*

**The Deputy Speaker** (Sen. (Prof.) Kamar): Chairperson of the Standing Committee on Agriculture, Livestock and Fisheries or the Vice-Chairperson.

In the absence of both, we shall skip that.

Next Order.

### PAPERS LAID

**The Deputy Speaker** (Sen. (Prof.) Kamar): Chairperson of the Standing Committee on Finance and Budget. I hope the Senators in the other Chamber can hear us.

Vice-Chairperson of the Standing Committee on Finance and Budget?

Sen. Mutula Kilonzo Jnr., I am informed that you are a Member of the Standing Committee on Finance and Budget. Please proceed to lay the Paper on behalf of your Chairperson. He could be trying to come from the other Chamber.

**Sen. Mutula Kilonzo Jnr.:** Madam Deputy Speaker, I beg to lay the following Papers on the Table of the Senate, today Wednesday, 16<sup>th</sup> September, 2020.

#### REPORT ON THE EQUALIZATION FUND BILL, 2019

- (1) Report of the Standing Committee on Finance and Budget on the Equalization Fund Bill (National Assembly Bills No. 43 of 2019).

#### REPORT ON THE PROMPT PAYMENT BILL, 2020

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(2) Report of the Standing Committee on Finance and Budget on the Prompt Payment Bill (Senate Bills No. 5 of 2020)

*(Sen. Mutula Kilonzo Jnr. laid the documents on the Table)*

**The Deputy Speaker** (Sen. (Prof.) Kamar): The next Paper is by the Chairperson of the Standing Committee on Roads and Transportation.

REPORT ON THE OPERATIONALIZATION OF THE NCA  
(DEFECTS LIABILITY) REGULATIONS, 2020.

I am informed that the Chairperson has sent a word that he will not be available. So, we will proceed.

*(Laying of Paper deferred)*

The next one is from the Senate Majority Leader.

THE 2019 KENYA POPULATION AND HOUSING  
CENSUS BASIC REPORTS

**Sen. Dullo:** Madam Deputy Speaker, I beg to lay the following Paper on the Table of the Senate, today Wednesday, 16<sup>th</sup> September, 2020.

The 2019 Kenya Population and Housing Census Basic Reports (Volume II, III and IV).

*(Sen. Dullo laid the documents on the Table)*

**STATEMENTS**

**The Deputy Speaker** (Sen. (Prof.) Kamar): Hon. Senators, I am a bit sympathetic with Chairpersons who have been here and their Statements have not been given. Therefore, I would like to use my discretion to start with Statements pursuant to Standing Order No.51 (1) (a) by the Chairperson of the Standing Committee on Justice, Legal Affairs and Human Rights, if he is here.

**Sen. Faki:** Madam Deputy Speaker, the Chairperson of the Standing Committee on Justice, Legal Affairs and Human Rights had handed over the Statement to me to read on his behalf because the matter concerns the Sessional Committee on Delegated Legislation.

CONSIDERATION OF VARIOUS REGULATIONS RELATING  
TO THE COVID-19 PANDEMIC

Madam Deputy Speaker, I rise pursuant to Standing Order No.51(1)(a) of the Senate, to make a Statement relating to matters to which the Committee is responsible, namely, consideration by the Standing Committee on Justice and Legal Affairs and Human Rights of various regulations relating to the Covid-19 pandemic.

Madam Deputy Speaker, at the sitting of the Senate held on 21<sup>st</sup> April, 2020, the Senate Deputy Leader of the Majority laid on the Table of the Senate:

The Public Health Declaration of Formidable Epidemics Disease Order, 2020; the Public Health Prevention, Control and Suppression of Covid-19 Rules, 2020; the Public Health Covid-19 Restriction of Movement of Persons and Related Measures, 2020.

Annexed to the letter were Public Health Covid-19 Restriction of Movement of Persons and Related Measures Orders in respect of the Nairobi Metropolitan area; the Mombasa County and Kwale County.

These Rules and Orders are referred to in this Statement as the Covid-19 Regulations.

As the Sessional Committee on Delegated Legislation was yet to be constituted at that time, the hon. Speaker of the Senate committed the Covid-19 Regulations to the Standing Committee on Justice, Legal Affairs and Human Rights for its consideration, pursuant to Section 12 of the Statutory Instruments Act, Act No.23 of 2013 and the Senate Standing Orders.

Madam Deputy Speaker, the Committee commenced scrutiny of the Rules and Orders immediately and on 22<sup>nd</sup> April, 2020, published an advertisement in two newspapers with national circulation inviting stakeholders and the public to submit their views on the rules.

The Committee further invited the regulation-making authority, in this case, the Cabinet Secretary for Health to submit written responses to specific queries and concerns that had come up during scrutiny of the regulations by the Committee.

The Committee examined the Covid-19 Regulations against the Constitution, the Public Health Act, Cap. 242 Laws of Kenya; The Health Act, Act No.27 of 2017 and the Statutory Instruments Act, No.23 of 2013; the Interpretations and General Provisions Act, Cap. 2 of the Laws of Kenya and the Senate Standing Orders.

The Committee further considered the impact that annulling the said regulations would have on the fight against the pandemic in the country.

Madam Deputy Speaker, at a sitting of the Committee held on Wednesday, 8<sup>th</sup> July, the Committee resolved that the Covid-19 Regulations be acceded to. The Committee has since communicated the decision to the Clerk of the Senate, who, pursuant to Standing Order No. 221(4) (a) is required to convey the resolution to the regulation-making authority.

In considering the regulations, the Committee made several observations and recommendations, two of which I wish to bring to the attention of the Senate.

Delays in submission of statutory instruments to Parliament - While the regulations submitted on the committee on Justice, Legal Affairs and Human Rights for consideration relate only to Covid-19 pandemic, the Committee did observe that there was an inordinate delay by the Executive in submitting statutory instruments to Parliament for approval.

Section 11 of the Statutory Instruments Act, No.23 of 2013 requires that every Cabinet Secretary responsible for a regulation-making authority, to within seven days after the publication of the instrument, ensure that a copy of the instrument is transmitted to the responsible Clerk for tabling before the relevant House of Parliament.

This provision, with regard to Covid-19 regulations was not complied with.

To illustrate:

(1) The Public Health Declaration of Formidable Epidemic Diseases Order 2020 was published on 27<sup>th</sup> of March, *vide* Legal Notice No.37 of 2020, and submitted to the Clerk of the Senate on 16<sup>th</sup> April, 2020. This was 21 days from the date the Order was published.

(2) The Public Health Prevention, Control and Suppression of Covid-19 Rules, 2020 were published on 3<sup>rd</sup> of April *vide* Legal Notice No. 46 of 2020 and submitted to the Clerk of the Senate on 16<sup>th</sup> April, 2020. This was 14 days from the date the rules were published.

(3) The Public Health Covid-19 Restriction of Movement of Persons and Related Measures, 2020 and the Orders made thereunder were published on 6<sup>th</sup> April, 2020 *vide* Legal Notice No.50 of 2020 and submitted to the Clerk of the Senate on 16<sup>th</sup> April, 2020. That was 11 days from the date the rules were published.

The timelines set out in the Statutory Instruments Act for submission of regulations to Parliament was, therefore, not complied with on all the three sets of regulations.

The immediate impact of that, was that, with the regulations being tabled in the Senate on 21<sup>st</sup> April, 2020, it would not have been possible for the relevant Committee to consider Regulations, undertake public participation, engage sector stakeholders, table its report thereon and have it considered in Plenary before the first set of Orders made under the Public Health Covid-19 Restrictions of Movement of Persons and Related Measures Rules, 2020 lapsed on 27<sup>th</sup> April, 2020. The Committee would have engaged in a purely academic exercise.

Madam Deputy Speaker the Committee did raise the matter with the hon. Attorney-General during a courtesy call at the State Law Office on Monday, 6<sup>th</sup> July, 2020. The Attorney-General indicated that the Cabinet Secretaries have consistently been advised to ensure that they comply with Section 11(1) of the Statutory Instruments Act, Act No.23 of 2013 regarding timelines of submission of Statutory Instruments to Parliament for approval, but some delays were still being experienced.

He, therefore, undertook to set up a tracking mechanism at the State Law Office to monitor and ensure that whenever regulations requiring approval by Parliament are published, they were, indeed, submitted to the Clerk of the respective House within the specified timeline.

Lack of sufficient public participation in making Statutory Instruments - Section 5 of the Statutory Instruments Act requires regulation-making authorities to undertake appropriate consultations before making Statutory Instruments and sets out an elaborate procedure for ensuring that persons likely to be affected by the proposed Statutory Instruments are accorded an opportunity to comment on its proposed content.

Once again, this requirement appears not to have been applied by regulation-making authorities as intended with Ministries coming up with all manner of excuses to avoid compliance.

In the case of Covid-19 regulations:

(1) The Public Health Regulation of Formidable Epidemic Disease, Order 2020, dated 20<sup>th</sup> March was published on 27<sup>th</sup> March, 2020 and submitted to the Clerk of the Senate on 16<sup>th</sup> April, 2020. The period of 46 days however, and as the Ministry admitted

in its response to the Committee, no public participation or consultations were undertaken regarding that Order.

(2) With regard to Public Health Prevention Control and Suppression of Covid-19 Rules 2020, which were published on 3<sup>rd</sup> April, 2020, the Cabinet Secretary advised that emails were sent to specific stakeholders for their input to the rules on 2<sup>nd</sup> April with a requirement that they submit their comments thereon by 10.00 a.m. on 3<sup>rd</sup> April.

Such organizations that were invited to comment on the rules submitted to the Committee said that they received the said emails on the evening of 2<sup>nd</sup> April and that by the time they were able to send their comments on 3<sup>rd</sup> April, the Rules had already been sent for publication which was done the same day vide legal notice 46 of 2020.

This clearly demonstrates that there was impetus on the part of the regulation-making authority to undertake appropriate and adequate consultation before making these Regulations, while at the same time, the Ministry wanted to give the rules a cloak of legitimacy *vide* a hastily undertaken and ineffective public participation exercise.

With regard to the Public Health Covid-19 Restriction of Movement of Persons and Related Measures Rules, 2020 and the orders made thereunder, the Committee did concur with the explanation given by the Cabinet Secretary for Health which was that, it would have been impractical to undertake public participation on the rules as citizens will have been alerted to the proposed containment measures and thus flee the infected area before the restriction of movement was imposed.

After the initial set of Covid-19 Rules were committed to the Committee on Justice, Legal Affairs and Human Rights for consideration the Sessional Committee on Delegated Legislation was constituted by the Senate on 28<sup>th</sup> April, 2020.

Consequently, the subsequent sets of regulations on the pandemic as well as regulations touching on other matters have been referred to and considered by the Committee on Delegated Legislation, chaired by my counterpart, the Senator for Mombasa County, Sen. Faki.

The Statement, therefore, relates only to the first set of Regulations which were committed to the Committee on Justice, Legal Affairs and Human Rights and not other regulations, orders and rules that have subsequently been referred to the Committee on Delegated Legislation.

Madam Deputy Speaker, in conclusion, I wish to thank the organizations and members of the public who sent submissions to the Committee during consideration of the COVID-19 Regulations.

I further wish to thank the Members of the Committee for their diligence in undertaking this assignment and the Office of the Speaker and the Clerk of the Senate for facilitating the Committee in its work.

I thank you.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you. I will allow one intervention from Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Madam Deputy Speaker, it is only one comment. In our work we have found that there is a direct contradiction in the Public Health Act, which was assented to in the 1940s. It has offences and things that were done in the 1940s and, therefore, not in tandem with the Health Act. Therefore, I think the

Committee on Delegated Legislation must recommend that the Public Health Act must be repealed.

Secondly, it was also very unfortunate that whilst the wearing of masks was outlawed, the standard of masks and the provision of masks by the national Government was not implemented.

Part of the concerns we had Madam Deputy Speaker, is that, even before the lapse of the period for Parliament to make a decision on this matter, the national Government and several people had already been charged in court and found guilty for offences which we had not approved.

Therefore, on this pandemic, I want to say that these Regulations and the work we did was purely an academic exercise. These Regulations became law before we could even start having our first sitting.

I thank you.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you, Senator. The next Statement is from the Chairperson of the Standing Committee on Labour and Social Welfare, Sen. Sakaja.

DEMISE OF RENOWNED ARTIST POPULARLY  
KNOWN AS PAPA SHIRANDULA

**Sen. Sakaja:** Thank you, very much, Madam Deputy Speaker. This Statement is pursuant to Standing Order No. 51 1(a). It is a Statement that would have come earlier, celebrating three great Kenyans by the Committee on Labour and Social Welfare and by extension, this Senate.

It is not too late because their memory must go to the record of this House that the Senate of the Republic of Kenya recognized them and paid tribute.

Madam Deputy Speaker, I wish to give a tribute to a magnanimous departed hero of this Republic, the late Charles Bukeko, popularly known as Papa Shirandula.

As I do so, I would also like to mention and give tribute to two renowned *Ohangla* musicians: Bernard Onyango, better known by the stage name Abenny Jachiga - I can see Sen. Outa is very happy - and Maureen Achieng, popularly known as Lady Maureen, who passed on 11<sup>th</sup> June, 2020 and 11<sup>th</sup> July, 2020 respectively.

Madam Deputy Speaker, these artists have contributed in promoting art, culture and our national heritage. Papa, as he was commonly known to many in the entertainment industry, was an icon and a thespian extraordinaire whose sudden transitioning left many families, friends, colleagues, the entertainment industry, in particular, the nation and the global community as a whole in awe and at a loss; a loss and a gap that, indeed, will take time to recover and to fill.

On behalf of the Senate and this Committee which oversees three Ministries, one of which is the Ministry of Sports, Culture and Heritage--- We continue to support the Ministry and give courtesy of our oversight and legislative roles in creating opportunities for artists, growth of local talent and preservation of national heritage, culture, art and artistic practices for sustainable communities.

Madam Deputy Speaker, it is against this backdrop that we give this Statement cognizant of the contributions that these three great artists, especially Papa Shirandula in

the creative industry has been able to make. Indeed, he was a prolific and talented actor and concept creator. He was also a father, a husband and lately, a goodwill ambassador to several Asian nations.

I, therefore, wish to recognize several of his traits that have contributed not only to his illustrious career as a thespian, but also traits that have led to the growth of local content in this country and entertainment and a rebuff of classic entertainment.

Madam Deputy Speaker, he was born in a humble family and a small village in Busia County. Reports indicate that his rise to stardom was not a walk in the park, but a tough journey that dates back to 1998. It was a journey that saw him surmount many ups and downs and leverage on opportunities, so as to be where he was at the time of his demise.

Amongst the most notable was his experiences with poverty and its untended challenges, including being forced to walk several kilometres to the Kenya National Theater where he plied his art.

Secondly, the patience to be mentored by renowned actors, including Ian Mbugua and his commitment to training and mentorship. This also includes James Forkland and the rest at the Kenya National Theater and the Phoenix players, where I met him when I was also acting once. A seemingly impossible, unaccepting and rigid local entrapment architecture that was back then addicted to foreign content, especially Mexican soaps that had filled our television screens, thereby unappreciative of local talent and content.

Even with these challenges, he was determined to excel including in finding a new concept for a new Swahili local programme to make it acceptable. This culminated in the birth of the programme *Papa Shirandula*.

Needless to say that Papa made a name for himself and we salute the strength and persistence of the departed hero. He was a pacesetter and a good example to upcoming young thespians and a classic example of what not to do to find an easy way out, but to persist against all odds to follow one's passion in order to achieve the insurmountable with one's integrity intact.

Remarkably, during an interview, he was quoted as saying:

“Initially, it almost seemed impossible since Kenyans preferred Mexican soaps that were ruling the airwaves, but today I am glad that I have made a name for myself both locally and abroad, where I am always referred as the African king of comedy”.

In his own words and advice to aspiring artists, the late Charles Bukeko stated that they should never give up in achieving their lives' dreams. It all comes down to patience, consistency and persistence. They should always remember that life is not about how much money you have, but the difference you make in someone's life. Indeed, this should be a life lesson to young people and even old people, and all of us who are yearning for success by hook or by crook, that virtues are key determinant to success.

Madam Deputy Speaker, apart from Papa's notable traits that propelled him to the highest pedestal in the entertainment industry on this continent, the Committee recognizes and lauds his tremendous achievements spanning two decades. Apart from being a renowned household character on the television series, he featured in several movies among them *Fernando Meirelles* an excellent adaptation of *John le Carré's* Novel, 'The Constant Gardener'.

He was recognized through an award-winning movie; *Malooned!* by Bob Nyanja, where he played the role of a watchman. He featured in *Pambazuka* at the Kenya National Theatre and *Makutano Junction* which aired on national television, where he played the role of distrusted politician for a period of two years. He was recognized and his talent appreciated throughout various awards.

In the *Kalasha* Awards held in 2010, he won the award for the best actor in television series, while his programme, Papa Shirandula won the award for the best comedy category.

He was well known in South Africa, having featured in a *Vodacom* advert where he played the role of a dictator. He will be remembered for his funny moments in the global *Coca Cola* advert that was voted the 2000 Advertisement of the Year globally by the Creative SACCO, and that achievement cannot go unnoticed.

Amidst all his achievements, some of which I may not be able to enumerate at this time and I am sure Members would know, the Committee takes note of the late Bukeko's contributions as an advocate for creativity and Goodwill Ambassador for South East Asia.

Madam Deputy Speaker, that was his character and signature. In one of his writings, Aristotle says that man is at his best when he is doing his best at what he likes doing best. Indeed, Papa Shirandula is one of those men who is revered by many and applied this philosophy as an epistle in his life through his personal commitment to the dignity of creativity, no matter the insurmountable journey.

Those who knew him, know that he worked tirelessly to bring a smile to people's faces and laughter to the world. He enriched the lives of many.

Indeed, I have a reserve of memories of his trait's tenacity and achievements, an example that will live forever and will not be lost in the midst of time.

Madam Deputy Speaker, in honor and tribute to the late Papa Shirandula, this House must continue and strengthen the resolve of ensuring - I am glad I can see the Vice Chairperson Committee on Information, Communication and Technology - we push the policy of minimum local content of 60 per cent. This is the only way we can grow this industry. Also, not let young think talent is only in other parts of the world but also in this country.

May his soul rest in peace. May the souls of Lady Maureen and Abbeny Jachuga rest in eternal peace.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Sen. Wako, on our behalf. I want to reduce the number of contributors.

**Sen. Wako:** Thank you Madam Deputy Speaker, for giving me this opportunity to speak in remembrance of a great Busia man called Papa Shirandula and all the mentioned artists.

Sen. Sakaja has more or less said it all and I do not want to add any more because of the brief time, except to say that he loved his work and was a mentor to many. I am sure there will be many more "*Shirandulas*" coming and acting like him. Generally, artists are not given their due place in Kenya. We are far behind countries like Nigeria and Tanzania, which have encouraged their artists in a big way to an extent where they are now contributing to the international scene.



I wish to thank the *Nation* Media Group who had an agreement with Papa Shirandula, which enabled him to appear frequently on *Nation* Television. I would wish to encourage other---

Sorry, it was *Citizen* Television headed by my friend Mr. Waruru. I mentioned *Nation* because I was a director there. I would like other television networks like *Nation*, *Kenya Television Network (KTN)* and many others that have come up to encourage our local artists.

Madam Deputy Speaker, it is sad there are reports that our local artists are being exploited and defrauded of their income. There are reports that they only get 10 per cent of what they earn in terms of royalties and in some cases, 1 per cent. The rest of the percentage whether 90 per cent or so, goes to the management.

We know that administrative costs and management should not take more than 15 to 20 per cent of the income. The World Bank says only 5 per cent. However, when it comes to copyright matters and intellectual property rights matters, 90 to 95 per cent, is being taken by the management. I would like us to go into that. I know there is a Petition before the Senate, and I am looking forward to a reply to the Petition so that we can see how to benefit the local artists. When I was the Attorney-General, this is one of the areas I focused on.

During my tenure, we enacted a new Copyright of Kenya Act, which was consistent with international practices. Nonetheless, people have not benefited from that because of what I have outlined. What prompted me to come up with the legislation was when I noticed that some of the old well-known artists, the composers of the song "*Malaika*" had died in poverty, some in Kibera in one room next to a sewerage line when in America, they would be the people who would be staying in Karen, Muthaiga and so on.

We have a lot to do, which is part of the overall development of the country. I wish the Government would focus on this area of encouraging our local artists. They die poor. If there is anything that could be done, one of the *Ohangla* musicians who died was said to have died in real poverty.

If there is any way we can step in and assist the families of the bereaved, I would be in the forefront in assisting that.

With those few remarks, I thank you for this opportunity.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you Senator. I had said, I will be give the chance to one person, but because Papa Shirandula was a Kiswahili man, let me give this chance to the Senator of Kilifi, Sen. Madzayo.

**Sen. Madzayo:** Asante Bi. Naibu Spika. Pole nilikuwa naongea na Kiongozi wa Walio Wachache, Sen. Orengo.

Najiunga na ndugu yangu Seneta Sakaja kwa kumsifu na kuwatakia faraja familia iliompoteza Papa shirandula. Tunajua alikuwa mcheshi Sana na watu wengi karibu Kenya nzima iliweza kumtambua. Ni mtu aliweza kuleta tabasamu na furaha wakati wa jioni watu wakipata burudani zao ama wakiwa wanastarehe nyumbani mwao na familia zao.

Bi. Naibu Spika, tukisema hivo tusingahau viongozi wengine. Bi. Naibu Spika, kelele imezidi upande huu.

*(Loud Consultations)*

**The Deputy Speaker** (Sen. (Prof.) Kamar): Order, Senators! Please, consult in low tones.

**Sen. Madzayo:** Bi. Naibu Spika, upande wa pwani tungependa kuona wale wanaotambuliwa kama Mekatilili wa Menza, aliyepigania Uhuru wakati ule. Imekuwa utovu wa nidhani katika Serikali, kwamba hawawezi kutambuliwa baada ya kufariki miaka mingi iliyopita.

Alikuwa mama wa kwanza katika upiganiaji wa Uhuru, aliyepiga Mzungu kofi na akafungwa. Alifungwa katika jela ya Kisii lakini kwa ujasiri wake alitoka na kutembea kwa miguu mpaka akarudi nyumbani, Kilifi. Watu kama hawa hatuwezi kuwasahau katika historia ya nchi yetu.

Mama kama Mepoho alikuwa mpiganiaji mkubwa wa Uhuru. Mwaka jana, tulipoteza bibi ya aliyekuwa kiongozi wa Pwani wa kisheria wa hali ya juu sana; bibi wa Ronald Gideon Ngala.

Watu kama hawa wasipoteze hadhi ya Wakenya. Wasifiwe, maanake, waliacha nguzo na mienendo ya kufurahisha na kusaidia watu wa jami yao na Wakenya wote.

Asante.

**The Deputy Speaker** (Sen (Prof.) Kamar): The next Statement is pursuant to Standing Order No.51 (1) (b).

I call on the Chairperson of the Committee on Agriculture, Livestock and Fisheries. I can see the Chairperson of the Committee is not here, so we go to the Chairperson of the Standing Committee on Devolution and Intergovernmental Relations.

ACTIVITIES OF THE COMMITTEE ON  
AGRICULTURE, LIVESTOCK AND FISHERIES

*(Statement deferred)*

ACTIVITIES OF THE COMMITTEE ON  
DEVOLUTION AND INTERGOVERNMENTAL RELATIONS

*(Statement deferred)*

On the last one, we will go to the Chairperson of the Standing Committee on Education to make a Statement relating to the activities of the Committee.

ACTIVITIES OF THE COMMITTEE ON EDUCATION

**Sen. (Dr.) Milgo:** Thank you, Madam Deputy Speaker. I rise pursuant to Standing Order 51(1) (b) to make a Statement on the activities of the Standing Committee on Education for the period commencing 13<sup>th</sup> February to 30<sup>th</sup> June, 2020.

During the period under review, the Committee held 13 sittings, considered three Bills, six Statements and undertook one inquiry. The Committee also held one engagement with stakeholders.

Madam Deputy Speaker, in the period under review, the following Bills were considered -

(a) The County Early Childhood Education Bill (Senate Bills No. 26 of 2018); and

b) The Kenyan Sign Language Bill (Senate Bills No. 15 of 2019).

As you are aware, the National Assembly amendments to the County Early Childhood Education Bill, 2018, were referred to the Committee on 13<sup>th</sup> February, 2020.

After considering the amendments to the Bill, the Committee recommended that pursuant to Standing Order No.159 (4) of the Senate Standing Orders, the Senate rejects some of the amendments by the National Assembly.

Consequently, the Bill, pursuant to Article 112 (2) (b) of the Constitution, was referred to a Mediation Committee.

Madam Deputy Speaker, the Committee also considered stakeholder submissions on the proposed County Vocational Education Training Bill, a Bill sponsored by the Committee and resolved to recommend the Bill for publication. The Bill is presently undergoing the publication process.

Regarding Statements pursuant to Standing Order No.48 (1), six Statements were referred to the Committee during the period under review. The Committee sought reports and responses from the Executive and its agencies, which were received and considered at various meetings.

Madam Deputy Speaker, while considering these responses, the Committee found some of the responses to be inadequate and inconclusive and a couple of them elicited supplementary questions. In this regard, the Committee has engaged the Ministry of Education to provide conclusive responses to these Statements.

Majority of the Statements requested from the Committee during the period under review are on the effects of the Coronavirus disease (COVID-19) pandemic to continued learning, challenges posed by school closures, and strategies being applied by the Government to facilitate continued learning and resources allocated to help learners, teachers and parents during these unprecedented times.

Madam Deputy Speaker, the Committee has been engaging with the Ministry of Education and other like-minded decision makers and education leaders in order to come up with a way forward and informed decisions that prioritize the interests of learners, parents and teachers and reverse any devastating impacts of the school closure.

As you are aware, the measures taken to contain Covid-19 make it difficult to operate normally. Specific means and tools of oversight that are central to our functions have been greatly hampered.

During the period under review, the Committee had scheduled to carry out inquiries into the Early Childhood Development Education (ECDE) landscape in the country and implementation of the Sector Policy for Learners and Trainees with Disabilities, through oversight visits and study tours.

However, following the outbreak of the COVID-19, the Committee was unable to conduct any county and site visits.

Madam Deputy Speaker, nonetheless, the Committee has put in place a business continuity plan and we have resolved to carry out these inquiries virtually. Already, the

Committee has written to both levels of Government and we should soon be reporting to this House on our findings.

Going forward, the Committee also intends to continue with the inquiry into the effects of the COVID-19 pandemic on education and challenges related to the continued closure of schools.

I thank you.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you, Chairperson of the Committee on Education. We will wait for your comprehensive report after this week, then we can contribute on that Statement.

Hon Senators, we now go back to Statements pursuant to Standing Order 47 (1). Out of a special request, I would like to start with the fourth Statement by the Senator for Vihiga.

#### BORDER DISPUTE BETWEEN KISUMU AND VIHIGA COUNTIES

**Sen. Khaniri:** Madam Deputy Speaker, I want to thank you for giving me the first opportunity in this particular category.

Madam Deputy Speaker, first and foremost, I would like it to be on record that I am not in any way opposed to development projects being implemented anywhere in Kenya and Vihiga County, in particular.

However, all development projects should be undertaken within the confines of the law and ensure value for money for the public. This planned development, though in good faith, will most likely only work to increase hostility and animosity around Maseno area, especially from residents of Vihiga County because it is being undertaken on a contested area.

Madam Deputy Speaker, the boundary dispute between Kisumu and Vihiga counties at Maseno is a historical issue that spans many years back. I have raised this issue severally in Parliament. Most recently in the Eleventh Parliament on 5<sup>th</sup> March 2015, I requested for a Statement with regard to this boundary, when residents of Emabungo Ward complained to me that the County Government of Kisumu had constructed a road that disfranchised them.

In the Twelfth Parliament, I again presented a Petition to this House from the residents of Vihiga County complaining about the same issue of the disputed boundary.

It was the advisory of the Senate then, that since Article 188 of the Constitution of Kenya (2010) requires legislative provision, the matter will be better addressed after the enactment of the County Boundaries Bill (2017), which will provide the procedure for establishment of an independent commission, the mechanism for alteration of county boundaries and a framework for resolution of boundary disputes between counties.

I believe this is the right way to go about this issue. I believe one of the most important principles in the Constitution of Kenya, 2010 is public participation in governance.

The boundary issue in Maseno being both emotive and contentious must have an amicable solution at some point. Meanwhile, since development must be undertaken and residents' concerns addressed, there must be consultation and public participation when county leadership decides to undertake development activities.

The residents around Maseno, especially the Vihiga side, have concerns that include access to services, expenditure of revenue collected, management of the institutions in the area and employment. These are all valid concerns that must be addressed.

The main reason this area is of great interest to both counties is the high concentration of institutions, which seem to benefit only one county. Having these institutions is not a bad thing and we should ensure equity of benefits between the two counties and the residents.

Madam Deputy Speaker, silence and peaceful coexistence should never be taken for weakness; they are strengths. While the residents of Vihiga and the political leadership of the country chose peace and allowed the planned function to proceed uninterrupted, the county Government of Kisumu should take this opportunity to initiate dialogue and consultations before further action on the planned development.

I know the Governor of Kisumu is a great intellect and politician and we can agree to have an amicable solution to this contentious boundary dispute. If the leadership of the day fails to solve this issue urgently, the animosity and mistrust created by the unilateral decision of developing the area will persist and erupt at the slightest provocation and reverse all the gains.

In conclusion, my advice to the Vihiga county government executive under the leadership of the governor is that history will judge us very harshly if he fails to defend the boundary integrity of Vihiga County.

The current dispute and tension was created by leaders who failed to defend and bargain for fair delimitation of districts, then. The mistake must be corrected now and, the governor of Vihiga has that mandate.

To the Senate leadership, the issue of important pieces of legislation from the Senate gathering dust in the National Assembly in the name of concurrence must be addressed. The life of the current Parliament is today past the halfway mark. The sibling rivalry between the Senate and the National Assembly is affecting Kenya as a country.

The institution of Parliament is already established in the Constitution and the expectation of the public is better pieces of legislation, oversight and representation from the bicameral Parliament and not the current underhand supremacy battles.

The County Boundaries Bill, 2017 and other Senate Bills currently in the National Assembly must be debated, passed and forwarded to the President for assent, for the betterment of our beloved country.

For the people of Emabungo Ward in Vihiga County, rest assured, I will stand with you to ensure that the issue of Maseno boundary is resolved through the laid down legal provisions.

I thank you.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Proceed, Sen, Haji. The Statement has attracted a lot of attention, so I will give three minutes for “Senior” because he was in the provincial administration and two to the rest.

**Sen. Haji:** Thank you, very much Madam Deputy Speaker. I was a District Officer in Maseno in 1969 before some of you here were born.

*(Laughter)*

I remember very vividly as a young officer for the first time in my career, I saw somebody killed on the border of Vihiga and Kisumu. The agony here is that, it is not only the Maseno and Vihiga boundary issue; boundary issues are all over the country and many people have lost their lives.

We even have places such as Kapedo and Baringo where many people have lost their lives. We also have Garissa, Marsabit and Ethiopia even though Ethiopia is another country altogether. Within Kenya itself, what is surprising is that, every other government has failed to resolve this issue. Since the colonial times, the boundary of every district of this country was known.

*(Applause)*

All we need to do is to get the surveyors. When I was a Provincial Commissioner (PC) in the Rift Valley, I remember we reinstated the pillars of the boundary between Kenya and Ethiopia because we followed the maps that were there. Why are we not able to do the same thing in our own country?

I do not think we need any legislation as such. It is just a question of determination and doing what is right for Kenyans.

Madam Deputy Speaker, I can understand the feeling of my brother or rather my son - I can say - because I campaigned for him when I was PC during those good days.

*(Laughter)*

As a country, we will resolve, but boundary issues must be resolved as soon as possible, otherwise, we will continue losing people.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Proceed, Sen. Wetangula. Let us try two minutes each.

**Sen. Wetangula:** Madam Deputy Speaker, the Statement by the Senator of Vihiga is apt. The Districts and Provinces Act is very clear on what the boundaries are. It is a terrible indictment on Parliament, particularly, the National Assembly. We passed a Bill in this House to give effect to Article 188 of the Kenya Constitution, 2010. It is still queuing in the "Lower House".

I urge former Senator, now Governor (Prof.) Anyang'-Nyong'o, that issues of boundaries are not only emotive but can be potentially destructive and costly. Any unilateral act in dealing with boundary issues can easily have catastrophic consequences. I encourage Governor Ottichilo and Governor (Prof.) Anyang'-Nyong'o and all the leadership, including Sen. Outa the Senator of Kisumu and Sen. Khaniri, the Senator of Vihiga, to sit and address this issue in a calm manner.

People have fought even on individual land ownership boundaries, leave alone, where resources are involved, as in counties. Nobody has the right to arrogate himself the power to deal with a disputed boundary. We have many such boundaries, for example, Pokot-Turkana, Makueni-Machakos, Makueni-Kitui, Machakos-Kiambu, Machakos-Murang'a and many other borders that are existing.

If everybody behaved the way Governor (Prof.) Anyang'-Nyong'o is behaving, then we can ignite a fireball in the country. He has to stop it. The Committee of this House in charge of Devolution and the Committee on National Security, Defense and

Foreign Relations sitting jointly should invite him to appear before these Committees to bring him to order.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Let me go gender and go back to 'Senior'. We have another Senior Lady. Proceed, Sen. Were. Two minutes.

**Sen. Were:** Thank you, Madam Deputy Speaker. I join my colleague and thank him for this Statement on this border issue with Maseno.

I as well condemn what Governor (Prof.) Anyang'-Nyong'o did knowing very well the issues that are abounding in Maseno. I spent four years in Maseno and that issue is a time bomb. My friend and village-mate Ted Malanda describes what Governor (Prof.) Anyang'-Nyong'o

has done as watching your neighbour dress and take your wife to the salon your just because he is better endowed.

Just because Kisumu County is a City, it thinks that it can lord it over Vihiga County on the Maseno issue. The residents of Vihiga County might be humble and peaceful because they are people of 'Mulembe,' but that does not mean that they should be 'sat on' by Kisumu County. Vihiga County should not be looked down upon by Kisumu County because it is a small county. I condemn the actions of Kisumu County.

*(Loud Consultations)*

I know where the loud consultation is coming from, but I ask them to give me a chance to finish making my remarks. Sen. Haji has clearly stated that the disputes between Kisumu and Vihiga Counties date back to 1969---

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

**Sen. Shiyonga:** On a point of order, Madam Deputy Speaker. Who is the neighbour's wife that is being dressed in this context?

**The Deputy Speaker** (Sen. (Prof.) Kamar): Sen. Were, are you referring to a real wife?

**Sen. Were:** Madam Deputy Speaker the word 'wife' was used metaphorically or in figurative speech. The wife in this case is Vihiga County and the neighbour is Kisumu County, which thinks that it is better endowed, and so, it can go around dressing other people's wives. I condemn the act by Kisumu County.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Kindly, proceed, Sen. Wako.

**Sen. Wako:** Madam Deputy Speaker, I thank you for giving me the opportunity to speak on this important matter on behalf of Vihiga County and the people of the former Western Province generally. This is a boundary dispute between Kisumu and Vihiga Counties that has been there since Independence. The people of Maseno area have been petitioning for a very long time.

I know that the first President of Kenya, the late Mzee Kenyatta and the late President Moi were petitioned over the dispute issues at the boundary of Kisumu and Vihiga County. When I took office as the Attorney-General, my first duty was to delineate boundaries for the former districts and provinces. A cartographer was appointed and he went round all the former 47 districts, which are now counties and delineated the boundaries.

The boundary that we are now talking about was more than a district boundary; it was a provincial boundary. At that time, provincial boundaries were then delineated in the Constitution. The cartographer through his work could not move what rightfully belongs to Vihiga County to them. However, in the cartographer's report, he stated that the area belongs to the people of Vihiga County, but he could not do anything because it was a provincial boundary.

The Senate, through Sen. Mutula Kilonzo Jnr., drafted a Bill to solve that boundary issue. I was part of the Committee that asked Sen. Mutula Kilonzo Jnr. to draft a Bill to solve the issues of boundaries. Sen. Mutula Kilonzo Jnr. drafted a very good Bill, which continues to lie at the National Assembly, which has termed it as a money Bill.

During yesterday's Sitting while discussing the issue that is before the court, I stated that as we look into Bills that concern counties, a new problem is arising; that the Speaker of the National Assembly is referring to every Bill from the Senate, even those that have nothing to do with money, as money Bills, because they can only be considered in the National Assembly.

Madam Deputy Speaker, I would like the Senate to ensure that Sen. Mutula Kilonzo Jnr.'s Bill is expedited, so that we can deal with this problem conclusively. Sen. Haji stated that issues of boundaries affect about 16 county boundaries. We need to deal with the issue conclusively because issues of boundaries are very sensitive and can easily cause chaos. Issues of boundaries can also affect the delineation of constituency boundaries. I am aware that at every election, the people of the areas under discussion have always petitioned and said that they want to be with their brothers on the other side of Vihiga County. The people in the said area are a minority in Kisumu County.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Your time is up, Sen. Wako. I will only allow two more Senators to speak on this matter because we have many other statements, and we only have 20 more minutes of the Statements Hour.

Kindly, proceed, Sen. Cheruiyot.

**Sen. Cheruiyot:** Madam Deputy Speaker, the issue that is being canvassed on the Floor of the Senate is very serious. I agree with the sentiments that have been made by our colleagues, who have taken great exception to the conduct of the former Senator for Kisumu County, now Gov. (Prof.) Anyang'-Ny'ong'o in how he has handled boundary disputes.

I wish to bring to the attention of the House that this is not the only boundary dispute that Gov. (Prof.) Anyang'-Ny'ong'o is involved in that is causing so much chaos with his neighbours. There is a town located between Kisumu and Kericho counties known as Sondu. The Governor of Kisumu County, Gov. (Prof.) Anyang'-Ny'ong'o, through such acts as what he has done in Maseno Town, has caused so much tension in that region because of his misconduct. There is also a similar complaint in Muhoroni, which is a border town between Kericho and Kisumu counties.

Madam Deputy Speaker, I propose that you refer this matter to the Committee on Devolution and Intergovernmental Relations as it has been proposed. I hope that the Committee will invite Gov. (Prof.) Anyang'-Ny'ong'o before this House for him to brief us on what his plan is with the expansion tendencies that he is getting late in life are meant to achieve for the great people of Kisumu. We would like to co-exist peacefully as



neighbours, but his provocations are not auguring well for the co-existence of counties that border Kisumu County.

I propose that Gov. (Prof.) Anyang'-Ny'ong'o be invited before this House to elaborate on his plans.

I thank you.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Sen. Mutula Kilonzo Jnr., kindly proceed in one minute.

**Sen. Mutula Kilonzo Jnr.:** Madam Deputy Speaker, this House must condemn the actions of Gov. (Prof.) Anyang'-Ny'ong'o, who was a Senator when we proposed The County Boundaries Bill, 2017.

Secondly, I thank Sen. Haji because in their deliberation in the Building Bridges Initiative (BBI), he requested for the Bill. I would like to remind Sen. Haji, who is the Chairperson of the BBI, that the only way to protect the counties through the BBI is to protect their boundaries. The Senate must be clear that we cannot delimitate constituencies and wards and leave counties. The Independent Electoral and Boundaries Commission (IEBC) must be told to stand down until we deal with the question of boundaries.

Yesterday, I said that the National Assembly through the Parliamentary Budget Office, is declaring the work of the Senate as money Bills without any deliberation. They sit somewhere in a room and decide that all the Bills from the Senate are money Bills. The Senate must find a way and speak authoritatively that the work of the Senate under Article 123 is not going to be trashed in the manner that the National Assembly is doing right now. We must condemn what the National Assembly is doing.

Madam Deputy Speaker, lastly, I agree with Sen. Cheruiyot that Gov. (Prof.) Anyang'-Ny'ong'o's expansion policies resemble those of Hitler in 1944 and 1945.

I thank you.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Proceed, the Senator for Kisumu County, Sen. Outa.

**Sen. Outa:** Thank you, Madam Deputy Speaker. I want to thank Sen. Khaniri for bringing this Statement. I want to assure this House that Vihiga and Kisumu counties have been coexisting peacefully for a very long time.

As the Senator for Kisumu, it will be my responsibility to make sure that peace continues to exist between Vihiga and Kisumu counties. If there is anything that will disturb the peace between Vihiga and Kisumu, it calls upon us, as the leadership of Vihiga and Kisumu, especially here in the Senate - Sen. Khaniri and I - to call a *baraza* and invite all the leaders. This is because we do not want to degenerate into a conflict.

Between Kisumu and Vihiga counties, if you go deep into the way we live, you may not be able to differentiate if one comes from Vihiga or Kisumu. That is why if it only matters boundaries that will bring conflict and disturb the peace that we have had for centuries, then, I, as the Senator of Kisumu, will never want that to happen.

If the Governor of Kisumu and the Governor of Vihiga are listening to us this afternoon, I want to let them know that we will take the lead by calling a big *baraza* between Vihiga and Kisumu counties. That will also be extended to the borders between Kericho and Kisumu, as well as Nandi and Kisumu because we want to live together. These are my neighbours.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you, Sen. Outa. Hon. Senators, I know that everybody would wish to make a comment. The Statements hour is ending in 15 minutes and there are some Statements that must be done today.

Although this Statement was under Standing Order 47 (1), I want to direct that this Statement is referred to the Committee on National Security, Defence and Foreign Relations. When the Governor is invited, the Chairperson of the Committee will openly invite all other Members to come here. If we can properly make a Statement on that, the other disputes will be reduced.

Sen. Mwaruma, what is your point of order?

**Sen. Mwaruma:** Asante Bi. Naibu Spika. Hii Taarifa ambayo imeletwa na Sen. Khaniri ni muhimu sana kwa sababu kuna shida za mipaka kwa magatuzi mengi katika Jamhuri ya Kenya.

Kuna Taarifa ambayo nilileta miezi tatu iliyopita kwa Kamati ya *National Security, Defence and Foreign Relations* na Kamati ya *Justice, Legal Affairs and Human Rights* kuhusu mambo ya mipaka kule Taita-Taveta. Mpaka sasa sijapata majibu.

Taarifa hiyo ilikua inauliza kuhusu mpaka wa Taita-Taveta na Makueni kwa sababu ya ule mtafaruku ulioanza kati ya Serikali ya Kaunti ya Makueni na Taita-Taveta. Nilisema kuwa katika *District and Boundaries Act* ya 1992, wakati wa kuelezea mipaka ya Wilaya ya Makueni ilisema kwamba Mtito Andei iko Makueni na ikasema tena kuwa iko Taita-Taveta.

**The Deputy Speaker** (Sen. (Prof.) Kamar): You have made a point.

**Sen. Mwaruma:** Bi. Naibu Spika, tunataka Kamati ya *National Security, Defence and Foreign Relations* waite maafisa wa usalama wa ndani waje waseme makamanda wa kaunti au makamishna wa kaunti wanaanzia wapi na kumalizia wapi.

The Independent Electoral and Boundaries Commission (IEBC) iko na kituo cha kupiga kura Mtito Andei. Je, Mtito Andei iko Makueni ilhali kuna kituo cha kupiga kura katika Kaunti ya Taita-Taveta?

Je wataleta majibu ya ile Taarifa lini?

**The Deputy Speaker** (Sen. (Prof.) Kamar): Before I ask the Chairperson to make a comment on that, I wanted to tell you that you do not have to give---

This is a senior administrator from 1969 up to now. So, he will be able to deal with both. I know he was busy with the Building Bridges Initiative (BBI) and he is now free.

Sen. Haji.

**Sen. Haji:** Thank you, Madam Deputy Speaker. First of all, I am not aware of the request made by Sen. Mwaruma three months ago because as you have rightly said, I was on leave. He has now reminded us and I will find out from my clerk what happened to it.

As to the one for Vihiga, I take the order given by the Speaker. However, I was wondering if I will be allowed to wear my uniform on that day and come with my swagger.

(Laughter)

**The Deputy Speaker** (Sen. (Prof.) Kamar): Sen. Haji, you are more experienced than us on that one. I would also like to mention that if it was given to two Committees, we had challenges with all Statements given to two Committees. The Senate Business

Committee (SBC) has since stopped the procedure of referring statements to two Committees.

From now, one Committee will take a Statement and that Committee will have the liberty to invite any other Committee, if they wish, but there must be a lead committee on these Statements.

Statement (i) is by Sen. Mbiti, who is not here. Statement (ii) is by Sen. Iman, and she is also not here.

#### BOOSTING OF DOMESTIC TOURISM IN KENYA

#### USE OF CHINESE-OWNED SOCIAL MEDIA APPLICATION, *TIK TOK*

*(Statements deferred)*

I have been given a very special request that there is one Statement that I approved earlier, which Senators would like to speak to.

I would like to ask Sen. Wetangula to make that Statement.

#### ALLEGED IMPENDING SHUTDOWN OCCASIONED BY LACK OF RESOURCES IN COUNTIES

**Sen. Wetangula:** Madam Deputy Speaker, I rise pursuant to Standing Order 47(1) on the alleged impending shutdown occasioned by the lack of resources in counties.

The Senate has made concerted efforts to ensure that counties receive the requisite funds to enable them to execute their mandate and most importantly, to deliver services to the public. Discussions with respect to the Third Basis for allocating among the counties the share of national revenue are ongoing.

Madam Deputy Speaker, you know that this House has a Committee of 12 Co-Chaired by Sen. Sakaja and I. It is a matter that we are carefully deliberating on, and shall resolve it and come up with criteria that will benefit Kenyans. In fact, there was a meeting at Statehouse chaired by none other than the President yesterday.

This notwithstanding, I am deeply concerned and I believe so are the Senators, by the Statement made by the Chairperson of the Council of Governors on the so-called impending shutdown occasioned by the lack of resources in counties.

In his Statement, he directed that with effect from today, county health facilities will not permit any in-patient admissions and will only provide minimum out-patient services. He does not describe what 'minimum' means. All non-essential services are suspended and county employees are advised to proceed on leave for two weeks.

Madam Deputy Speaker, this is clearly an abuse of authority. The Council of Governors group is not the employer on any county employees. The employees of counties are employees of different county public service boards.

Governors have nothing to do with them and they cannot send even a sweeper on compulsory leave. They have no such authority. Therefore, they are definitely exceeding their powers.

Madam Deputy Speaker, secondly, we have seen over and over again the Chair of the CoG overplaying himself with authority he does not have; exceedingly abusing the Senate as an institution, abusing Senators as individuals; making reckless statements at funerals, including last weekend at the funeral of a respected Bishop, Byrum Makokha, of the Church of God. He said that Kenyans are suffering because of Senators. How wicked can one be to lay blame where it does not lie?

This House does not operate in a vacuum. We operate with the Executive, where all resources of the country are domiciled. We operate with the National Assembly, where appropriations are done. We operate with the counties themselves that have to tell us how much own-source revenue they are collecting. These hospitals that he is purporting to shut down, collect resources daily. What are those resources doing?

I want to stand here and urge Members to take great exception to this reckless misadventure by the Chairman of the CoG, and remind him that he should bring his governors to order in terms of accountability and respect for public resources.

Madam Deputy Speaker, we saw last week that eight governors are on the radar of EACC. There is no single Senator who is on the radar of anybody. He has to learn that accountability of public resources use is not anybody's option. When Senators ask questions, he even had the temerity to call a committee of this House, an extortionist gang. You remember what he said about CPAIC; that it is an extortionist gang and when governors come here, they pay bribes to Members of the Senate. We are not aware of any single governor who has ever gone to any agency of investigations and governance to report that a Senator has solicited for money from them for discharge of their responsibilities.

This must come to an end and I want to urge Senators to voice their revulsion and disgust at this reckless behaviour by a governor, who has served in Parliament for years and ought to know the boundary between the Legislature and the Executive. Tomorrow---

**The Deputy Speaker** (Prof. Kamar): Is there an intervention from Sen. Sakaja?

**Sen. Wetangula:** Madam Deputy Speaker, as I conclude, tomorrow, the Committee of 12 will be meeting from 7.00 a.m. We have no doubt whatsoever that by Midday, we will have some white smoke. If the meeting at State House, which Gov. Oparanya attended and whose content and discussion he appears to have forgotten---

We want to assure the country that the standoff in this House has paid tremendous dividends to the people of Kenya and they will live to remember this House. The standoff has extracted money from the Executive to the purse of the counties for greater development.

Thank you, Madam Speaker.

**Sen. Cherargei:** Thank you, Madam Speaker. I want to support the Statement by Sen. Wetangula. I see the CoG suffering from leadership crisis and have what we call attention deficiency syndrome when it comes to national matters.

I have heard the allegations that they want to dissolve the Senate. For their information, the Senate is a constitutionally established body. We can dissolve the CoG within a twinkle of an eye because it is a statutory creation under the Act of devolution law; the County Government and Intergovernmental Relations Act. Therefore, it is easier to dissolve the CoG than the Senate.

I want to advise because I have seen they are cutting down on the essential services and medical services, that it is very unfortunate. They should be cutting down on their usage of fuel guzzling vehicles because some of the governors are on a spending spree. They do not even live in their houses; they live in hotels. These are governors who spend daily in running their errands within the county government. They are not ready for accountability and transparency.

It is so sad to see somebody like the Chair of the CoG taking Senators as a bogeyman in terms of their own problems. Funds that were supposed to be disbursed from June under the last financial year, have not been disbursed. Why are they not blaming the National Treasury?

We have been having a problem where the IFMIS has been opened at the wee hours, when the sorcerers are more active than anybody else. Why are they not blaming them? These double standards by the CoG must be called out. They should respect the Senate.

Finally, you remember when we were arguing on getting Kshs335 billion, they went behind our backs. Sen. Mutula Kilonzo Jnr. and others walked out during the Mediation Committee because we wanted Kshs335 billion. They connived, went for 'mpango wa kando', and agreed to Kshs316.5 billion. That is why we have the current the problem of revenue.

I want to confirm to the country, as one of the esteemed 12 disciples to resolve the issue of revenue formula, that by 1.00 p.m. tomorrow, we shall have white smoke, and it will be a win-win for all Kenyans, all Senators and the counties.

We want to advise the EACC and the DPP to put the Chair of the CoG and the governors on the radar, especially when they continue to misuse our resources.

I thank you, Madam Deputy Speaker.

**The Deputy Speaker** (Prof. Kamar): Hon. Senators, let us contribute for two minutes because a good number of you would like to speak and we want Members who are not in the Committee of the 12 disciples to have an opportunity to speak.

**Sen. Olekina:** Madam Deputy Speaker, it shocks me when I see the Chair of the CoG, Gov. Oparanya, who has been the Governor for Kakamega for the last two terms---

The County Government of Kakamega received a disclaimer of opinion for 2015/16; 2016/17, and then on the Financial Year 2017/18 they received a qualified opinion. The definition of a disclaimer of opinion is that the county government misrepresented facts in as far as their financial position is concerned.

It shocks me because when you see these governors talking, every financial year they project that they will raise about Kshs1.6 billion in terms of Kakamega for the year 2016/2017 on own-source revenue, but only raised Kshs500 million.

Today, here, the Chair of the CoG has given orders to the other 46 governors to shut down counties. You know, this CoG is a club of boys and some ladies; it has got no consequences. This CoG has been giving orders. They have told governors not to appear before the CPAIC. However, most governors realize that Article 226 (5) will catch up with them. So, they take their own personal responsibility and appear. I want to congratulate those who are doing so because it shows that they want to be leaders.

I do not know what happens when you make somebody a prefect; they even forget that they were once students. It shocks me. This House is here to defend the interests of

counties and their governments. We are here to make sure that more money goes to the county governments.

Earlier on, we were talking about issues of boundaries. Why can this CoG not sit, if they care so much about the people, and first of all decide to resolve this boundaries issue?

Secondly, why can they not sit down together in their club and say that from today henceforth, each county will conclude its spatial plan? We will be able to increase on our own-source revenue, so that we can move forward.

Instead, they are always finding fault in a House that is defending their interests. Shame on them! It is about time that this House stood firm and defended devolution. If we have such characters, they never defend devolution. In fact, they will be thinking about becoming President. If they cannot even run their own counties, what about this country?

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you, Senator. It is done.

Sen. (Dr.) Ali, kindly, proceed.

**Sen. (Dr.) Ali:** Thank you, Madam Deputy Speaker. This is shameful to say the least. These governors should be ashamed of themselves. We all know they are the cause of this impasse, as Sen. Cherargei said. They sat in the Intergovernmental Budget and Economic Council (IBEC), which is chaired by the Deputy President, when we were fighting in the Committee on Finance and Budget to push the whole Senate. That is what they did and now they are complaining.

Madam Deputy Speaker, this morning, we had a meeting with Gov. Oparanya and I asked him questions concerning counties. He said specifically that they do not police counties; they just ask them for reports and the reports are sent. What authority does he have now to police counties and ask them to send their staff on leave and close hospitals? What a shame!

The worst part is this: They know that the national Government has been eyeing that lucrative business of the Department of Health and want to take it back. He is giving them the opportunity now. While we are fighting for counties and devolution, he wants now the national Government to take back the high docket because counties have failed. They are stealing everything.

In my county, we say that the county leadership collects the money of the county in *gunias* or bags. That is what they do everywhere. We are fighting for them here. We will continue fighting for more money for the counties because of our people and for posterity, and not because of these--- I do not know what to call them; these gunny bag collectors who collect all the money from the county. They should be ashamed of themselves and not look for political mileage by claiming what they have done and they are bringing money. There are not bringing any money. The Senate will bring money to them.

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

Sen. Wambua, kindly, proceed.

**Sen. Wambua:** Thank you, Madam Deputy Speaker. I want it to go on record that we are not just dealing with a failed leader at the Council of Governors (CoGs), but also with a big question without an answer.

Gov. Oparanya is known for reckless statements. He appeared before the Special Committee on Managed Equipment Scheme (MES) and made very weird statements, including that he signed the MES project for Kakamega because chiefs and assistant chiefs were threatening him at funerals.

Madam Deputy Speaker, this is a man who last year went to bed with the national Executive and sold counties at Kshs316.5 billion, when the Senate was stuck at Kshs335 billion. I want to state that Gov. Oparanya is hell-bent on calling on Senators - this Senate - to entrench marginalization of counties like Mandera, Wajir, Kitui, Makueni, Kwale and Kilifi because he is going to bed with the Executive.

Madam Deputy Speaker, on the letter that he has written to governors, I want to address my Governor, Hon. Charity Kaluki Ngilu. Do not touch that letter. Do not try to close a single hospital in Kitui. If you do, we will come for you.

Madam Deputy Speaker, this Senate is serious about devolving more funds to the counties and the Governor of Kakamega County, who says that he is the Chairman of CoG, has no business in the sharing of revenue---

*(Sen. Wambua's microphone went off)*

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

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

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, there is a lot of interest. We would like to give as many Senators as possible time. You will have only two minutes.

Yes, Sen. Mohamud.

**Sen. (Eng.) Mahamud:** Madam Temporary Speaker, let me thank Sen. Wetangula for bringing this important Statement. The so-called impending shutdown of counties by the Chairman of the CoG is a joke. Gov. Oparanya is behaving like a trade unionist. We know that all trade unions in this country--- If the biggest of them is not performing as required, we will fail very badly.

Madam Temporary Speaker, this Senate does not share its mandate with anybody. The CoG has no business in trying to tell this Senate what to do. The Senate is here under Article 96 of the Constitution to defend counties. We are doing that.

Last year or the year before, they forced us behind our back to accept the Division of Revenue Bill, which was actually not what we wanted. They go behind our back, go to bed with the Executive and make sure that they deny the counties money.

This year, we are trying our best to make sure that the counties get enough money. The delay is caused by lack of money. Therefore, we are doing our best. Here they are, going round and saying that the Senate is not doing their business. We do not share our job with him. Let him do his business. He cannot shutdown any county. He is not in charge of any other counties. The County of Mandera, led by my Governor, Hon. Ali Roba, is independent of Kakamega County. This idea of being a unionist should be stopped.

Madam Temporary Speaker, the Cabinet Secretary for National Treasury and Planning should also stop joking. The Supreme Court did say that he can give money to the counties. Section 134 of the Public Finance Management (PFM) Act authorizes him. He is now waiting for authority from the National Assembly. Shame on him! We cannot accept that.

Let this country be given the right it has under the Constitution. Counties collect own-source revenue. They are always dependent on the sharable revenue. A delay by two months, they say they have no money. They should collect that money; do not misuse it. Use it for the people of the counties you are under.

*(Sen. (Eng.) Mahamud's microphone went off)*

**Sen. Ndwiga:** Thank you, Madam Temporary Speaker. I am shocked that my good friend, Gov. Oparanya, came out with that Statement.

Madam Temporary Speaker, I think everybody and all Kenyans know the reason we have had problems in the last 10 or 12 meetings. It is because Gov. Oparanya or the CoG, under the leadership of Gov. Oparanya, betrayed this House last year. They betrayed Kenya last year. However, they have been the first ones to proclaim and tell the world that the Senate is holding money.

Madam Temporary Speaker, we have had four Chairpersons of CoG, and Gov. Oparanya is the most colourless of all.

*(Applause)*

It is a shame that Gov. Oparanya can allocate himself the duty of telling counties what to do. All of us know - we come from counties – that there is no genuine reason counties do not have money. All our counties are collecting less than what the defunct local authorities were collecting. Can we be told what is happening to that money first?

Madam Temporary Speaker, I think it is time Kenyans were told the truth and there is need to check the kind of people we put to lead our small clubs like CoG.

Madam Temporary Speaker, last year, we all know what happened here. We fought as the Senate to get more funds to go to the counties---

*(Sen. Ndwiga's microphone went off)*

**Sen. Wambua:** On a point of order, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, we do have enough time for this. This was done at the Speaker's discretion. Let us not interfere much. Let us give Senators opportunity to air their views.

**Sen. Wambua:** On a point of order, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Nyamunga): Yes, I will give it to you but, please, quote what is out of point of order.

**Sen. Wambua:** Madam Temporary Speaker, with all due respect to the Chair, the institution of the Senate and counties are under attack. In two minutes, these Senators cannot express themselves. Even if it means that we stop the business of this House and



discuss the attack on counties, let us do it. What the Governor of Kakamega is trying to do is an assault on this House and counties. Please, give us more time.

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, there is only one hour for Statements. I will go with the rules of the House and give you two minutes.

Sen. (Dr.) Ochillo-Ayacko.

**Sen. (Dr.) Ochillo-Ayacko:** Madam Temporary Speaker, can you put the question on how much time we wish to be given to speak, to feel the mood of the House? Having said that, allow me to make my remarks because I have been queuing on this matter.

The CoG has become the council of gangsters. Actually, Gov. Oparanya is a gangster.

**The Temporary Speaker** (Sen. Nyamunga): You are on a point of order. Please, state it because I have not given you time.

**Sen. (Dr.) Ochillo-Ayacko:** I have asked whether I would be in order to ask you to put the question as to how much time we are requesting to speak, so that you represent us. The mood in the House is to talk about the gangsters.

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, you have raised the issue. We are doing consultations and will come back to you. In the meantime, we continue with the two minutes.

*(Several Senators stood up in their places)*

Order, Senators! You are not going to stand. Take your seats. We must listen to one person at a time.

**Sen. (Dr.) Langat:** Madam Temporary Speaker, I request that we take this issue seriously. We are dealing with somebody who has denied human health in this country. He has closed in-patient services in all the hospitals. He has issued a statement and we do not want to take it carelessly. This is a criminal who is supposed to be in jail. He is a murderer.

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, I have mentioned that we will issue a ruling on it. In the meantime, let us hear Sen. Sakaja.

**Sen. Sakaja:** Madam Temporary Speaker, on a point of order pursuant---

**The Temporary Speaker** (Sen. Nyamunga): Please, state your point of order, and at the same time, make your contribution.

**Sen. Sakaja:** Madam Temporary Speaker, my point of order will contradict my contribution because it is pursuant to Standing Order 34, which says-

“A Senator may at any time rise in his or her place and seek leave, for reasons stated, to move the adjournment of the Senate for the purpose of discussing a definite matter of urgent national importance.”

Madam Temporary Speaker, I beg to move that the Senate do now adjourn to discuss a definite matter of urgent national importance, namely, the statement by the CoG issued today.

*(Several hon. Senators stood up in their places)*

**The Temporary Speaker** (Sen. Nyamunga): Order! Hon. Senators, you have stood up and I can see the numbers. At the same time, on the Floor of the House, we cannot change a Statement to an Adjournment Motion. These are the same rules we are talking about. Let us go through the procedures because this is a House of procedure. Let us do the procedure and we will change it.

Hon. Senators, please, take your seats; I will make a ruling on that.

*(Loud consultations)*

The Speaker is on her feet. Let me make a simple ruling. First of all, you know that time is gone and we have agreed that we are here for the purposes of our counties. We have also agreed that as much as time is spent, we can add from two minutes to five minutes. That should take care of the issues you had. Let us continue.

Sen. Sakaja, make your contribution.

**Sen. Sakaja:** Thank you, Madam Temporary Speaker. I urge my colleagues to accept the ruling because Standing Order 34 (5) limits contribution on adjournment to five minutes.

We miss Hon. Isaac Rutto, Hon. Peter Munya and Gov. Nanok. It is shocking to us how somebody who has been the Cabinet Secretary for Planning, and should understand processes, and a Member of Parliament for Butere can act in such a manner. Today's action, leave alone his opinion about the Senate which can defend itself--- We can bring a substantive Motion to discuss the character of the individual. However, what we are discussing is the threat to human life. Health is an issue that is sacrosanct.

We have done our work. I wish the Senate Majority Leader was here or Sen. Mwaruma who I saw earlier, or any of those who were in State House yesterday. I saw Gov. Oparanya in State House. Was he just passing by? Did he go for tea and *mandazi*, or did he participate in that discussion? The outcome of that discussion is a solution to the issue of counties getting money. The outcome of that discussion was more money being channeled to counties. We have agreed on the proposals. Tomorrow, we will sit down in the Committee that I lead with Sen. Wetangula. We are confident that there will be a win-win solution tomorrow, and we will sort it out.

Let it not be lost upon us that the game being played between CoG and the National Treasury, we can see it. The Cabinet Secretary for National Treasury issued a circular at the beginning of the impasse saying that based on the Supreme Court ruling, he is going to issue 50 per cent to counties. When did he backtrack the circular? We would not be here if the Supreme Court advisory is not an opinion or a suggestion, but binds the National Treasury to give counties 50 per cent of the last allocation. I want to tell him that if anybody dies because they cannot access health services during this time, their blood is on his hands. The law has allowed you to give counties money. It is not you who gives money; the issue must be clarified.

Devolution is not the national Government giving counties money, but the Constitution dividing money between both levels of government. When the Supreme Court rules and says that the money must be given to counties, it must be done. In fact, we should take them to court for contempt.

Madam Temporary Speaker, we are urging Gov. Oparanya to come back to his senses. Earlier today, I asked somebody when his term ends and I am sad that it is March 2021. However, between now and March, 2021, he should wake up and come back to his senses. I have dealt with them in the Committee on Labour and Social Welfare. It is disheartening when health workers, or any other category are in negotiations; the CoG sits with them, do a Collective Bargaining Agreement (CBA), and when they want to strike, they say: 'no, they are not our employees, we cannot honour the CBA.' At some turn, they understand that they are not the employers. At another turn, they say that they are the employers. I want to tell each and every Governor of the Republic of Kenya that the Statement is illegal, unconstitutional and should not be obeyed by anyone.

I want to start with my county. I am happy with the Nairobi Metropolitan Services (NMS), because it does not pander to the winds of the club called the Council of Governors (CoG). Major (Gen.) Badi should not try to touch a single hospital in Nairobi County. All the 47 governors should not implement that illegal decree. Counties will get their money and should be given their resources from the National Treasury as per the ruling of the Supreme Court.

Madam Temporary Speaker, we need to summon the leaders of this House. Apart from the statement and the photographs, what was going on yesterday? Was he asleep? He looks like he was awake in the meeting, or was it part of the plan? We need to understand. How do you leave a meeting with the Chief Executive of the Republic of Kenya, whom we all respect ---

We had agreed on Kshs316 billion, and he said that he will give us Kshs370 billion because we stalled the process here. In less than 24 hours, the Chair of CoG issues such an illegal obnoxious statement that he wants to shut down hospitals. Where does he want the women in Mathare and children in Kiamaiko to go to?

*(Sen. Sakaja's microphone went off)*

**The Temporary Speaker** (Sen. Nyamunga): Sen. Mutula Kilonzo Jnr.

*(Sen. Sakaja spoke off record)*

**The Temporary Speaker** (Sen. Nyamunga): Senator, you know, you move away from the real points and consume most of your time. Anyway, I will give you one more minute.

**Sen. Sakaja:** Thank you, Madam Temporary Speaker. I must speak and finish. You cannot say that the point I am making is--- It is my point, and I speak on behalf of millions of Nairobians.

The Statement issued against the Nation Media Group, telling governors not to advertise because they are being named for corruption, is also illegal. Let them stop being a club of illegalities. Let them know that this country has a law. We are glad that the Ethics and Anti-Corruption Commission (EACC) spoke about that.

Finally---

*(The red light went on)*

Please, be warning Senators. When it comes to about five minutes, that is when you put on the red light. Do not just go to red straight. Even traffic lights go in three steps.

Thank you.

**The Temporary Speaker** (Sen. Nyamunga): Sen. Mutula Kilonzo Jnr. Just one minute, Senator. We have a system error, so you will be speaking from the Dispatch Box.

**Sen. Mutula Kilonzo Jnr:** Madam Temporary Speaker, I have been looking for the definition of incompetence and gross misconduct under Article 181 of the Constitution. All the definitions of incompetence, gross misconduct and abuse of office are synonymous with Gov. Wycliffe Ambetsa Oparanya. That is the new definition of incompetence, gross misconduct and abuse of office.

Madam Temporary Speaker, I am telling Gov. (Prof.) Kibwana, that if he shuts down the Level Four Hospital in Wote, the Sultan Hamud Sub-County Hospital, and Makindu Level Three Hospital, pursuant to a memo issued by Gov. Oparanya, we will impeach him. It is an impeachable offence for a governor to receive a memo from another governor and shut down a hospital. If any person; *Mama Mwikali* or *Mama Mutheu*, goes to the Level Four Hospital in Wote to deliver a baby, find it shut down and something happens to that baby, we will hold Gov. (Prof.) Kibwana responsible. It is a fact.

Madam Temporary Speaker, there is something about Gov. Oparanya that makes the rest of the Chairpersons of the CoG look good. The incompetence is unbelievable. We must all ask: Yesterday, the same governor was in a meeting with the Head of State. It is even worse that we were in a meeting with the Cabinet Secretary (CS) for Finance and the National Treasury with all the governors, where upon, it was greed that the Supreme Court opinion is not an advisory opinion, but an order.

I will suggest the following: Other than Gov. Oparanya, the CS in charge of the National Treasury must be discussed on the Floor of this Senate. We do not have power to censure, but we must censure, because that is the person who is working in cohort with Gov. Oparanya, in an attempt to coerce us to move a formula the way they want. It will not happen. You are not going to force, jail or arrest us, even if we send you a pin. If any hospital shuts down tomorrow, we must suspend all our business and discuss the conduct of Gov. Oparanya and the CS in charge of Finance.

Thank you.

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

**Sen. Faki:** Asante, Bi Spika wa Muda, kwa kunipa fursa hii kuchangia Taarifa ambayo imeletwa Bungeni na Sen. Wetangula. Kuku alivishwa kilemba, watu wakamuona kama jogoo, lakini kuku ni kuku, na jogoo ni jogoo.

Kwa muda wa wiki moja sasa, tumeona Mwenyekiti wa Baraza la Magavana akitoa taarifa ambazo hazina msingi kikatiba na kisheria. Kwanza, alisema kuwa atavunja Bunge la Seneti. Bunge la Seneti liko katika Katiba. A some *Articles* 93 hadi 96 na kuendelea, aone majukumu ya Seneti ni nini, ili aone kuwa Bunge la Seneti liko hapa kikatiba na haliwezi kuondolewa mpaka Katiba ibadilishwe kupitia *referendum*.

Leo ametoa barua. Wiki iliopita alitoa vitisho kuwa atasimamisha huduma katika kaunti zetu. Tumeangalia sheria zote zinazohusu kaunti zetu, na hakuna mahali ambapo Mwenyekiti wa Baraza la Magavana ana amri ya kusema kwamba huduma zisitishwe.

Hana mamlaka kabisa kuhusiana na utendakazi wa kaunti zingine. Yeye ana mamlaka chache katika kaunti yake.

Bi. Spika wa Muda, ni kejeli kubwa Gavana Oparanya kusema kwamba atazuia huduma za afya. Ametaja mahali ambapo panamuathiri yule mwananchi wa chini kabisa. Hivi sasa, tuko katikati ya Janga la Corona (COVID-19). Wananchi wanapata shida kupata huduma za afya ilhali yeye anasema kwamba huduma za afya zisitishwe katika kaunti zetu.

Hii sio dharau kwa Wakenya pekee, ila pia kwa Rais wetu. Jana, katika mkutano ambao uliongozwa na Rais Kenyatta, Gavana Oparanya, viongozi wa Bunge la Seneti na Kiranja wetu, Sen. Kwamboka, walikuwa pale. Sen. Kwamboka alikua ameshikilia fimbo yake ya Kiranja. Kwa hivyo, hii ni madharau kwa Bunge la Seneti na kwa taifa kwa sababu Gavana Oparanya hana mamlaka ya kuzuia huduma katika kaunti yoyote.

Natoa onyo kwa magavana wote 46. Gavana Oparanya anaweza kusitisha huduma katika Kaunti ya Kakamega, lakini zile kaunti zingine 46 wapuuze amri yake, kwa sababu amri ile haina mamlaka yoyote ya kisheru ambayo inaweza kusaidia kuwatetea wakati kitakapoumana.

Asante kwa kunipa fursa hii.

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, kindly consult in low tones, so that Members who are interested in listening to fellow colleagues' contributions can follow.

Sen. Madzayo.

*(Loud consolations)*

Hon Senators, all of you are going to find time, so just be patient.

**Sen. Madzayo:** Asante, Bi Spika wa Muda. Cha kwanza ni kuwa, kufunga hospitali, hususan maeneo ambayo yanaweza kusaidia akina mama na watoto, ni makosa kisheru.

Pili, Gavana Oparanya kutoa amri ya kufunga hizi hospitali na kuwaambia wafanyakazi waende *leave* ya wiki mbili amekiuka sheria. Kulingana na sheria, hana mamlaka hata kidogo kutoa amri kama hiyo.

Bi. Spika wa Muda, tunamuuliza Gavana Oparanya, katika sheria zote za Kenya na Katiba, ni kipengele gani kinampa yeye uwezo wa kufunga kaunti ama kuamrisha kaunti zote 47 ndani ya Kenya zifunge?

Ndugu yangu ni mwanasheru shupavu na alikuwa katika lile Bunge ambako Gavana Oparanya alikuwa ndani ya Serikali kama waziri. Gavana wangu pia alikuwa Waziri katika hiyo Serikali. Ninamwambia ndugu yangu asifuate sheria hiyo iliyotolewa na Gavana Oparanya kwa sababu haina msingi wa kisheru katika Kenya.

Katibu wa Muungano wa Wafanyikazi nchini Kenya, Bw. Atwoli, husema kuwa tabia kama hiyo ni 'ushenzi kabisa.' Hiyo ni tabia yenye utovu wa nidhamu. Gov. Oparanya akae akijuwa kwamba amri hiyo aliyotoa Wakenya wanailaani zaidi. Kama ni Wakristo wanasema, "Ashindwe Shetani." Ashindwe! Hii ni kwa sababu hata mbele ya Mwenyezi Mungu yeye amekosea. Mungu mwenyewe alisema: "Nyinyi mtaendelea kunisifu na wale walio na imani watapona wakienda hospitalini." Hivi leo amepuuza amri hiyo na anajifanya yeye ndiye kila kitu katika kaunti. *He is nothing!* Hawezi kuendesha kaunti zote Kenya.

Yeye kama Mwenyekiti wa CoG abaki hapo; wakae wakizungumza wakinywa Kahawa, na hayo yamalizikie hapo. Mambo ya kusema kwamba anaweza kuingilia hata Bunge la Seneti kutuambia jinsi ya kugawa pesa---

Ninasikitika sana kwa mtu kama yeye aliyekuwa kule ndani ya Ikulu. Sijui kama alikuwa ameshikwa na usingizi ama hakuwa kwenye mkutano ule, lakini tulikiona kile kiwiliwili chake pale ndani. Hivi leo anatoka pale baada ya kupewa Kshs50 billioni ambazo tulikuwa tumeziomba. Si yeye bali sisi tulikuwa tumeziomba kama Bunge la Seneti. Alitoka pale na kuleta sheria zake akisema kuwa kaunti zifungwe. Unafunga kaunti kama nani? Haitawezekana.

Kukiwa na Gavana yeyote katika kaunti 47 nitakubaliana na Sen. Mutula Kilonzo Jnr., kwamba tumuite hapa atuambie na akicheza, basi atajua kazi ya Seneta ni gani. Tutamfurusha kutoka mamlaka.

Bi. Spika wa Muda, Bunge la Seneti linafaa kusheshimiwa kwa sababu ndilo linapeleka pesa katika serikali za mashinani. Waswahili watakwambia huwezi kuketi na kunyelea sinia ambalo unakulia. Yeye anatokana Seneti sasa lakini wakati ule walitaka pesa waliomba wapewe Kshs310 billioni. Wakati huu sisi tumewapa Kshs360 billioni. Yeye sasa anatakikana kusifu Bunge hili kwa sababu---

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

**Sen. Kinyua:** Asante Bi. Spika wa Muda, kwa kunipa fursa hii. Kwanza nakemea taarifa iliyotolewa na Mwenyekiti wa Baraza la Magavana. Hana uwezo wowote kufunga zahanati au hospitali katika kaunti yoyote ya nchi hii yetu ya Kenya.

Nina hofu kidogo kuongea kuhusu yule Mwenyekiti, kwa sababu itakuwa kana kwamba ninajitosa katika zizi kupigana mieleka na nguruwe. Nitakuwa na uwoga kidogo kwa sababu yeye mwenyewe amejitosa katika ulingo ambao hana uzoefu, kujua ya kwamba hana sheria na uwezo wowote kisheria kusema kwamba kaunti yoyote inapaswa kufungwa ama huduma yoyote kwa mwananchi yeyote katika kaunti zetu za Kenya inapaswa kufungwa.

Ninamhakikishia ya kwamba pale Laikipia na nimwambie Gavana wangu, msheshimiwa Nderitu kwamba kuanzia Nanyuki, Nyahururu na Rumuruti, mtu yeyote atakayekuwa mgonjwa ama mja mzito anapaswa kwenda katika hospitali bila kusikiliza maagizo yoyote ya mtu yeyote. Sisi tulimchagua Gavana Nderitu. Hatumjui gavana mwingine hata iwe Gavana Oparanya. Hicho ni kikundi tu kilichokutana hapa Nairobi au mahali pengine na kuchaguana. Sisi watu wa Laikipia maagizo ambayo tutafuata ni yale yaliyomo katika Katiba ya Kenya. Gavana Oparanya hana uwezo.

Wakenya wote waendeleo na shughuli zao, kwa sababu sisi kama Seneti--- Ninawahakikishia kwamba kesho tutakubaliana na tupitishie pesa ambazo zitakuwa zikienda kaunti. Hata kabla hatujapitisha, ijulikane wazi ya kwamba Mahakama Kuu Ya Kenya ilisema kwamba wanapaswa kuwa wakipewa asilimia hamsini ya pesa ambazo tulikuwa tumekubaliana.

Hakuna haja yoyote yake kuleta kizuizi chochote watu kupewa huduma. Rais wa Jamhuri ya Kenya jana alisema ataongeza zaidi ya Kshs50 bilioni na huyo mungwana alikuwa ameketi pale. Sasa anasema ati zahanati na hospitali zetu zitafungwa. Alisikia wapi? Sijui hayo maneno yameweza kumsumbua. Tunamwambia kwamba hospitali zetu zitaendelea. Kwa kusema kuwa hospitali zitafungwa, je, alisikia wapi? Kusema eti huduma zitafungwa katika kaunti zetu, je, alisikia wapi?

*(Loud consultations)*

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, please, let us have some order.

**Sen. Kinyua:** Adhubutu tumwonyeshe cha mtema kuni. Kama vile Sen. Mutula Kilonzo Jnr., amesema, gavana yeyote atakayejaribu kufunga zahanati, hospitali ama huduma zozote katika kaunti zetu tutamwonyesha cha mtema kuni. Watakuja hapa Seneti na tutawashughulikia vilivyo.

Asante, Bi. Spika wa Muda.

**Sen. (Dr.) Kabaka:** Thank you, very much Madam Temporary Speaker, for giving me this opportunity to air my view with regard to this misbehaviour by the Chairman of the Council of Governors (CoG), none other than Hon. Wycliffe Ambetsa Oparanya.

Anytime I go round Machakos, I hear the question as to who is the greatest between the Senator and Governor. I want to answer the people of Machakos, Kenya and the world that the greatest is not the governor. It is the Senator because we are people who fight for the monies. Without the monies, the governors cannot shine or even operate. I, therefore, settle that problem.

Secondly, I understand from where I sit now, and I have seen from social media that my governor, none other than hon. (Dr.) Mutua, has effected that illegal directive by hon. Oparanya. I do know why Gov. Mutua is very fast. If that is the way he is going to campaign for the presidency, then I am sorry. He should have given it some thought. Did he sit with the County Executive Committee or consult his Senator, Dr. Kabaka, for him to come up with such an illegal and unreasonable decision?

If anyone is going to die, and I am following the cue of other senators who have spoken before me, then---

To follow the cue of the Senators who have spoken ahead of me, I would like to know what has become of governors in this country. The governors think that they are demi-gods but they are not. The governors are referred to as 'His Excellency' illegally and they think that they are so big. I am a lawyer so I know that there is no provision in the Constitution or any other instrument of law giving governors titles such as 'His Excellency'

I went through Gov. Oparanya's letter dated 9<sup>th</sup> September, 2020 and I am surprised that he did not cite an iota of any provision of the Constitution or any other legal instrument upon which he is basing his decision to direct all the 47 counties to shut down. Shame on Gov. Oparanya who I hear want to vie for presidency. I can assure him that he will never be a president in this country. Least of all, Gov. Oparanya should never come to campaign in Machakos County.

**The Temporary Speaker** (Sen. Nyamunga): Kindly proceed, Sen. Halake.

**Sen. Halake:** Madam Temporary Speaker, a lot has been said. Gov. Oparanya should have used the speed with which he is purporting to close down health facilities to close down the criminal enterprises that are abound in the counties. Bad leadership diminishes everything. Gov. Oparanya has not only diminished the functional and institutional integrity of our county governments; he has taken them to the dogs.

I would like to bring to the attention of Gov. Oparanya Article 189(1) (a) which states that: -

‘Government at either level shall—

(a) perform its functions, and exercise its powers, in a manner that respects the functional and institutional integrity of government at the other level, and respects the constitutional status and institutions of government at the other level and, in the case of county government, within the county level;’

Gov. Oparanya has rubbished the functional integrity of our county governments and made county governments look like small departments of the National Governments where if something delays for two minutes, everything comes to a standstill. Gov. Oparanya does not have any ideas or innovations to keep the functions of the county governments running. All that he can think of is to close down health facilities. I wonder why Gov. Oparanya has picked on the health function at a time we are dealing with the COVID-19. I am disturbed by the utterances of Gov. Oparanya. I advise him to close down the criminal enterprises that are thriving in the counties especially in his own county before he can think of closing down the health facilities in other counties.

Madam Temporary Speaker, there is a panic that is setting for the Chairperson of the CoG. I urge Gov. Oparanya not to panic even though his term is coming to an end. The shenanigans will not give Gov. Oparanya anything. Whatever promise anyone might have given him may never come true. I urge him to relax and make sure that he completes his term peacefully. I urge Gov. Oparanya not to rubbish county governments because they are all equal. No Government; whether National or county is subordinate to another. Gov. Oparanya should not insubordinate our county devolved units because he is supposed to be elevating it. Devolution is dying under the watch of Gov. Oparanya.

I thank you, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Nyamunga): Kindly proceed, Sen. Boy, the Senator for Kwale County.

**Sen. Boy:** Asante sana Bi Spika wa Muda kwa kunipa fursa hii kuchangia taarifa iliyoletwa hapa na Sen. Wetangula. Kuna msemo was Kiswahili unaosema, “Afadhali kuungua kidole kuliko kuunguwa mdomo.” Mdomo uliotumiwa na Gavana Oparanya sio mdomo mzuri katika nchi yetu ya Kenya. Gavana yule anajua kwamba Seneti inapigana kuhakikisha kwamba pesa zinagawanywa katika kaunti zote sawa.

Hapo jana, Gavana Oparanya alikuwa katika mkutano na Rais Uhuru Kenya, Kinara wa Chama cha ODM, Raila Odinga na viongozi wengine wa Seneti kuzungumzia jambo la ugavi wa fedha kwa kanti zote 47. Nilifurahi kusikia kwamba Rais Kenyatta aliahidi kuongeza zaidi ya Kshs50 bilioni. Nilishangaa sana kusikia Gavana Oparanya akiaamuru zahanati na hospitali katika kaunti zote 47 kufungwa.

Kitendo alichokifanya Gavana Oparanya ni cha aibu na ninakilaani. Gavana huyo asijaribu kuamuru hospitali katika kaunti zote kufungwa. Hivi majuzi, kamati ya COVID-19 ilikuja Kwale kuzuru hali hospitali katika kaunti hiyo wakati huu wa COVID-19. Niliandamana na Kamati inayozingatia maswala ya COVID-19 na nikazungumza na Gavana wa Kaunti ya Kwale. Nilimueleza Gavana wa Kaunti ya Kwale kwamba asidanganywe na Gavana Oparanya kufunga hospitali zote katika Kaunti ya Kwale.



Naunga Sen. Wetangula mkono kwamba Mungu akipenda, kesho kutaonekana moshi hapa Seneti tutakapo afikiana katika mambo ya ugavi wa fedha kwa na kaunti zote kupata pesa. Ninalaani kitendo cha Gavana Oparanya. Nikisikia kwamba hospitali yoye imefungwa kesho katika kaunti yoyote, tutamchukulia gavana husika sheria kali sana. Sisi kama maseneta, tunapigania haki za kaunti zetu zote 47 hivyo Gavana Oparanya hana haki ya kuamuru hospitali yoyoye kufungwa. Ningependa kumkumbusha ndugu yangu Gavana Oparanya kwamba 'Afadhali kuungua kidole kuliko kuunguwa mdomo.' Huo mdomo uliozungumza unafaa kuomba msamaha.

Asante sana Bi. Spika wa Muda.

**The Temporary Speaker** (Sen. Nyamunga): Kindly proceed, Sen. Were.

**Sen. Were:** Madam Speaker, I join my colleagues in condemning the action taken by Gov. Oparanya in suggesting to counties that they need to close hospitals especially in-patient services during a time when we are dealing with COVID-19. The counties do not just use equitable share from the National Government. They have own-source revenue as suggested by Sen. Halake which they can use to maintain the essential services such as hospitals using their own revenue. The counties do not only depend on the national revenue.

Gov. Oparanya was in a meeting yesterday that was held at the Statehouse where our leadership was promised an additional Kshs50 billion to counties. However, Gov. Oparanya has been quoted today directing all counties to close hospitals because Senators are unable to approve a formula for sharing revenue. I am left wondering whether the offer by the President to add money to the counties was a scam. Does Gov. Oparanya not believe in the promise from the President of an additional Kshs53 billion for him to come out the following day and direct all the hospitals in the counties to be closed due to lack of money. If Gov. Oparanya does not believe in the offer that was made by the President in a meeting that he attended, how safe are we as Senators in believing the promise from the President?

Madam Temporary Speaker, I suggest that we should set up a platform where the National Treasury, the Senate leadership and the CoG can hold regular meeting especially on the issue of transfer of funds. We have had several instances where the National Treasury has said that funds have been transferred to counties yet counties complain that they do not receive their funds from the National Government on time. Our hands are tied currently. If we had a platform where the National Treasury, the Senate leadership and the CoG were able to meet and ensure that the funds we have allocated or appropriated as Parliament are disbursed to counties in a timely manner, we would have handled this issue in a better manner.

I thank you, Madam Temporary Speaker and beg to support.

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

Kindly proceed, Sen. (Dr.) Langat, the Senator for Bomet County.

**Sen. (Dr.) Langat:** Thank you, Madam Temporary Speaker, for giving me the opportunity to comment on this important debate.

I want to tell Governor Oparanya that he has violated Article 43 of the Constitution, which states that;

"Every person has the right to the highest attainable standard of health, which includes the right to health care services, including productive health care."

If anything happens to the citizens of this country on matters to do with health because of this statement, Governor Oparanya will be responsible for it.

The most unfortunate thing that governors in this country did is when they elected Governor Oparanya as the Chairman Council of Governors (CoG). It was very unfortunate and it is my wish that you, as governors, will never commit such a mistake. If possible, you should repent of such a mistake that we made during that time.

Governor Oparanya is a shame and is a person who applies double standards. Governor Oparanya is, in fact, undermining the efforts that the President has made with the leadership of this House in resolving the conflicts.

Last year, he undermined us. When we went to court for our counties to get more money, he went to bed with the Executive and made this Senate almost helpless.

When he appeared before us in the Senate *Ad hoc* Committee on the Managed Equipment Services (MES), he lied so much to the point of telling us that the Executive made him sign that memorandum at gunpoint. In two days, he was with the Executive denying what he had said in the Senate *Ad hoc* Committee on the Managed Equipment Services (MES). He is a liar. He is a wicked human being. He does not deserve to be a leader of a village.

**The Temporary Speaker** (Sen. Nyamunga): Sen. (Dr.) Langat, just one minute.

Sen. Wetangula, what is your point of information?

**Sen. Wetangula:** I want to inform the distinguished Senator for Bomet, Sen. (Dr.) Langata, that the Governor you are talking about is the same governor who appeared before the Senate *Ad hoc* Committee on the Managed Equipment Services (MES) with teary eyes and told us that he signed the Managed Equipment Services (MES) memoranda of understanding (MOU) because a chief and an assistant chief talked against him at a funeral. In that regard, he had been intimidated and blackmailed.

That is the man you are talking about, Governor Oparanya. He can be intimidated or blackmailed by an assistant chief and a chief.

**The Temporary Speaker** (Sen. Nyamunga): Sen. Wambua, what is your point of information?

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

I want to take this opportunity to thank Sen. (Dr.) Langat for quoting the law, the Constitution, on issues health.

I also want to inform him that the Geneva Conventions and additional protocols at times of war demand that hospitals be open and protected. The conventions require that patients must be given a safe passage to access hospitals. Governor Oparanya is closing hospitals, what a shame.

**The Temporary Speaker** (Sen. Nyamunga): Sen. (Dr.) Langat, kindly wind up.

**Sen. (Dr.) Langat:** Thank you for those very important pieces of information.

I am very sure that what he has said today is not representational information to all the other governors. I have a governor friend who says he never consulted them and he is just speaking his own mind.

I am so sure that most of the governors in this country who are law-abiding will never follow such a reckless leader in this country.

Thank you, Madam Temporary Speaker.

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

**Sen. (Dr.) Ochillo-Ayacko:** Thank you, Madam Temporary Speaker.

When I rose on a point of order, I called the Council of Governors (CoG) a council of gangsters. I believe that is where they are tethering to. They are actually gangsters.

It is gangsters who do not want to account for anything. It is gangsters who believe in impunity. It is gangsters who preach violation of the law and violation of human rights.

Sen. (Dr.) Langat has indicated, and we lawyers agree that Article 43 of the Constitution is mandatory, the right to health. Gangster Oparanya and his band of gangsters because that is what they are, are trying to break or violate the rights that Kenyans have to health by intending or threatening to withhold vital services to Kenyans. That is a violation of the Constitution that we should not countenance.

Madam Temporary Speaker, Section 196 of the Public Finance Management Act states that;

"Any public official who directs others to violate the law, to violate the Constitution," and if you read that together with Section 199 of the Public Finance Management Act, you will find that they are committing an offense and they are liable to imprisonment for five years.

If Governor Oparanya wants to go to jail for five years, he should not drag along other governors including that one of Migori County, who is in very serious trouble and the one of Tharaka Nithi, who is in very serious trouble to jail for five years.

Madam Temporary Speaker, if you look at the Public Finance Management Act, you will find that under section two or three or PFM Act;

"Any person who creates a situation that causes financial liability to a county will be personally liable for that liability."

Therefore, if any governor denies a citizen the right to health and that citizen sues; Sen. Mutula Kilonzo Jnr. is here, Sen. (Dr.) Ochillo-Ayacko, Sen. Wetangula, Sen. Orengo and other able Kenyans are willing to represent them pro bono. If courts should find them liable, they will be personally liable for the damages that will be given to those persons who will be denied health.

We do not want a situation where a club that should be leading in governance, a club that should be setting the right tempo for good governance, the rule of law and good behaviour is advocating violation of the Constitution.

I do not know what has gotten into the head of the leader of the Council of Governors. I do not know what kind of dope or bhang he is taking or what all of them are taking. This is a situation that cannot be countenanced. This is a situation that is intolerable. This is a situation that we cannot accept as people who approve funds of finances to counties.

I am happy that every Senator speaking here is condemning this act. This is a particular condemnation that we are conjoined in chorus and we will not tolerate any person threatening Kenyans who are suffering economic hardship arising from COVID-19, who are suffering unemployment, who are suffering from lack of food and other disasters.

When you add insult to injury by threatening those Kenyans that you will withhold services and health from them, I think you are crazy. You should stop taking what you are taking.

In conclusion, I want to say that you have heard the Council of Governors threatening to withhold health services. These fellows should come together and demonstrate how good governance should be practised. They should come together and consult on how best to deliver services.

I thought that was the mandate of the Council of Governors and not the mandate to act in a manner that would be injurious to the public interest and the public. So, I want to ask Governor Oparanya that he should find the next church or mosque and repent of his sins for whatever he had taken or the devil that had possessed him.

Governor Oparanya should humble himself because personal interest, according to Chapter Six, should be made insubordinate to public interest. Public interest is that health is first, the people's interests are placed first and all the others will follow. He should be ready to serve without even demanding a salary until monies come. That should be the speed in Kakamega County.

Thank you, Madam Temporary Speaker.

**Sen. Wario:** Asante, Bi Spika wa Muda, kwa kunipatia nafasi hii. Nimesimama kuunga mkono Arifa ambayo imetolewa na Seneta wa Bungoma.

Kwa kweli, vile rafiki yangu Seneta wa Mombasa alivyosema, kichwa cha kuku hakistahili kilemba. Ndipo unapoon hakika gavana huyu wa Kakamega anachukuwa hatamu za county zote za Kenya akisema ya kwamba, anatishia ya kwamba atapeleka watu katika likizo za lazima. Pia zahanati zote na mahospitali zifungwe. Hana habari ya kwamba Wakenya wengi maskini wanagharamikia pesa zao kwenda kupata matibabu katika hospitali hizi. Yeye akikaa huko Kakamega, akiwa na shida zake tele za Kakamega, anatupa hizo shida katika nchi nzima ya Kenya, kuenda kwenye Baraza la Magavana na kusema ya kwamba atapeleka watu likizo, watu waende likizo ya lazima na pia hospitali zifungwe.

Pia, alirusha mawe kwa upande wa Bunge la Seneti; Bunge hili ambalo limejaa watu ambao akili zao ni timamu, waheshimiwa ambao wanajua dunia inatoka wapi na inaelekea wapi. Yeye anasema atafunga Seneti na kujiletea hali ambayo yeye yuko nayo katika saa hii.

Saa hii unavyoona, Seneta wote katika Seneti hii walichangamka, wakakasirika na kusema “wewe unatupa mawe katika Seneti hii ambayo iko na watu wa kisawa sawa, watu ambao akili zao ni mzuri.”

Na wewe sijui umetumia nini huko Kakamega, unaamka asubuhi, unasema utapeleka watu waende likizo, utafunga hospitali zote; kisha Bunge la Senate pia halifai, wewe utaenda kufunga bunge hiyo. Basi mimi ninakuambia ya kwamba shida yako ya Kakamega, wacha ikuwe shida yako ya Kakamega. Usituletee shida zako za Kakamega katika county zile zingine ambazo tuko na usalama na tunaendeleza mambo yetu kwa njia ya utaratibu kabisa.

Na pia ningependa kutoa wito kwa gavana wangu. Wewe ni gavana ambaye tumekuchagua Tana River. Kama utaenda kusikiza shida za Kakamega, uende kufunga hospitali moja, uende kupeleka watu likizo, basi sisi tutateremka na wewe. Kwa sababu shida ya Kakamega ni shida ya Kakamega na shida ya Tana River, ni ya Tana River.

Wewe kama umechaguliwa na magavana kama mwenyekiti, mkaenda mkakula mandazi na kunywa chai, ukaambiwa wewe ni chairman, wewe ni chairman we kuenda kukunywa chai na kuongea mambo yenyu.

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

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

Jana wewe uliona Seneti ilikaa mbele ya Rais na kukupatia pesa ambazo hata hujui zimetoka wapi, wakati wewe mwenyewe unatangaza vita kwa Seneti. Wewe ndio unasafiri na ndege kubwa kubwa kuenda kwako huko, wakati Senators wanakupigania na wanakupatia pesa.

Kwa hivyo, mtu ambaye akili yake ni timamu hawezi sema ugatuzi uvunjwe, ambapo wewe mwenyewe unafaidika na ugatuzi huo.

Kwa hivyo, mimi ninasimama kideti hapa kuunga mkono Arifa ya rafiki yangu Sen. Moses Wetangula.

Asante kwa kunipatia nafasi.

**The Temporary Speaker** (Sen. Mwaura): Asante sana Mhe. Wario.

Fursa hii nitampatia Sen. Pareno.

**Sen. Pareno:** Thank you, Mr. Temporary Speaker, Sir, for allowing me to comment on this Statement and I thank Sen. Wetangula for this Statement.

Mr. Temporary Speaker, I must say that I am embarrassed to say the least, that this is coming from none other than my deputy party leader, from a party that really believes in devolution; a party that should be working hard so that we have devolution working.

I really wonder whether Gov. Oparanya has really looked at the effect of what he has done today and the statement that he has made today.

Closing of all the hospitals and sending the health workers on leave for 14 days would really bring such a big crisis in this country in the health sector. I do not know what he really wants for this country.

My question to Gov. Oparanya is whether he would want to see people lying in the entrances of the hospitals unattended, being turned away or seeing them lying dead because they will come for health attention and they will not get it. I am not sure that he has looked at the effect of what he has said and it is really embarrassing. I think it is the honorable thing for him to do, to withdraw that statement with immediate effect.

I therefore, echo the same sentiments that the rest of the Senators have echoed here. Although Sen. Kabaka has said that his county seems to have already started effecting, we should not see at all any single hospital closed.

For some of you Senators, maybe you do not know what some of us go through. Some of us do not even have the luxury of closing because we almost have none. We have very little. The little we have, came out of this devolution that we have celebrated. Before we could only count two big hospitals in Kajiado, that is Kajiado District Hospital and the one in Loitoktok. The rest are very simple and with lean staff in the dispensaries.

We do not brag; we do not have much. So, we cannot afford to close, it will be too costly for Kajiado.

I know Gov. Lenku, I know he is a governor who has been fighting to ensure that we have proper services. I know our CEC Esther Somoine will not heed to this kind of call. The Kajiado residents do not have much; the little they have cannot even serve them. I know that you will not be able to close these hospitals just because Gov. Oparanya has come out to say that they be closed. Probably Gov. Oparanya has some private entities that his Kakamega people can rely on. We would want the people of Kakamega to enjoy devolution as well and not have the hospitals closed.

We know that even at times of war, you cannot close a hospital. This country is not at war. The revenue impasse is not something that should call for closing of hospitals. It is sad that they have started with the very sensitive area of life of hospitals instead of them saying the governors should lack salaries for this month, they wake to say wananchi should not have health services. I think this revenue allocation will happen. I believe in what happened in State House yesterday. It is sad that Gov. Oparanya himself was seated there as the commitments were being made. He should have told the President and the Right hon. Raila Odinga that they do not believe in the offer that was made. He should have told them and he should have said that they are not going to believe in it.

I ask Kenyans to come out and demand for their services. These counties are supposed to give them services. The hospitals are supposed to have been devolved so that they are nearer. Come up and demand for them. Let us not have sideshows as such statements like the ones that were made by Gov. Oparanya. You cannot make a situation which is already worse, bad.

This is because we already have a problem with the Revenue Sharing Formula. We have a problem from the National Treasury as to when they even give out the tranches that they are supposed to give. You cannot be saying that you will make it worse because that is not services to *mwananchi*. I think this was bad enough. Governor Oparanya should withdraw this statement immediately.

The lives of all Kenyans depend on our hospitals. They not do not depend pronouncements from the Chair of CoG. I believe that there are sensible people out believe that lives are very important and they will not be able to---

*(Sen. Pareno's microphone went off)*

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Asante sana. Nampa fursa Sen. Aaron Cheruiyot.

**Sen. Cheruiyot:** Thank you, Mr. Temporary Speaker, Sir, for this chance. I want to appreciate my colleague, Sen. Wetangula for bringing to the fore the issues that are before this House this afternoon.

Mr. Temporary Speaker, Sir, I want to take a different path from the general thinking of most of our colleagues. This is because many of you are lumping blame on Governor Wycliffe Oparanya. I agree with those of you who have described him as incompetent and somebody not deserving of leadership. The man is indefensible. I agree.

The truth of the matter is that this blame on the challenges that county governments face in this day and time lies squarely in the men and women that were in that room at State House yesterday during that particular meeting. That is the President, the Chair of CoG and even our own leadership. When I saw there was a meeting between

the leadership of the Senate, the CoG and the President, I knew that the issue of agreeing on how to share revenue amongst counties was going to be a long drawn out battle. I knew that at least if there would be goodwill on their side, they would have given a communication on what is going to happen in our counties in the interim as the Senate tries to find a solution to this particular problem.

Mr. Temporary Speaker, Sir, let us not lie to the country because the truth of the matter is that someone is trying to blackmail the Senate. Somebody wants the Senate to look bad. That it is us who have starved counties of cash. Do not fall victim to this silly trap and begin to blame Governor Oparanya. He is just an errand boy. The person that we need to ask the right question is the Cabinet Secretary National Treasury. Why has he not released funds to counties? Mr. President, you met the Senate leadership yesterday, why do counties have no money?

Those are the people that we need to be asking these questions. This is because the Supreme Court gave an advisory opinion on what happens when there is a stalemate on County Allocation of Revenue Bill such as the issues that is before this House at this particular time.

Let us not pussyfoot about these issues, trying to call governors and saying they are thieves. We understand how crooked each of the 47 governors in this country is, but the problem and the issue that is being discussed right now before this House is; we are almost finishing the first quarter of this financial year and counties have not received their monies.

Why are we not calling for Cabinet Secretary (CS), Hon. Ukur Yatani to either resign, or do that which is expected of him? I agree with Sen. Mutula Kilonzo Jnr. who has said that we must discuss the conduct of CS Ukur Yatani because he is in violation of our Constitution. What he is doing is not lawful. Counties should have received their funds with or without the formula.

Mr. Temporary Speaker, Sir, if we are genuine in our calls that counties deserve to get the monies that are due to them at this particular day and time, let us have a censure Motion tomorrow tabled by leadership discussing the conduct of the CS for the Ministry of National Treasury and Planning. Let him tell the country what is it that is stopping him from releasing funds that are due to our counties.

Mr. Temporary Speaker, Sir, it saddens me to see people want to reduce a very important national issue such as the Sharable Revenue Formula that is before this House and want to play games and political issues about it, yet we know that the reason countries fight or disintegrate is squarely on how you share resources in that particular country.

The reason I want to blame the leadership of the Senate is because I want us also to tell Kenyans the truth. The reason this House has not been able to reach a decision is because we have not been presented with an opportunity to vote. This is a democracy. It is not a monarchy. We do not have to agree on anything. We have solved issues in a democracy after allowing the minority to have their say, the majority must have their way. The truth of the matter is that there are those of us who have caucused. In our thinking, we think we have secured the requisite 24 delegations to support a Sharable Revenue Formula, but the leadership of the Senate has frustrated out efforts to bring a vote on this particular issue in the House.

Mr. Temporary Speaker, Sir, if we are genuine, honest and we believe in devolution, let us begin by first being honest, calling out the people that were in that meeting yesterday and asking when are funds going to hit the accounts of our counties?

I thank you, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Asante sana. Sen. Farhiya, naomba uchukue nafasi ya kuzungmza.

**Sen. Farhiya:** Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity. I also wish to thank Sen. Wetangula for bringing this to the House.

The fact is that Sen. Wetangula was a Member of and he still is a Member of Committee on Finance and Budget when we were proposing that counties should be given Kshs335 billion. Because they agreed in advance that we should retain Kshs316 billion, our hands were tied.

Governor Oparanya is hypocritical because he purports that he supports the handshake. One of President Uhuru Kenyatta's legacies and the Big Four Agendas number four is UHC. Let us even assume that there no enough money to run the counties, why should we start with one of the functions which is the legacy of the President of UHC for this country to fail. Is he in order to do that?

Let us even assume there is no money. They have their own resources. They should have prioritized the health function even if it the only function that is running. This is because sometimes when we steal few millions or billions depending on the budget, we think that there are no poor people who need the health services that he is starting to shut down. Poor people do not have alternatives to go to. They rely on the county health services.

Mr. Temporary Speaker, Sir, if they were to fall sick, what alternative do they have? If there was any circular that he should have written, he should have prioritized health and water so that counties are not shut down. It is so bad that he is the Chair of the CoG has shut down operation of counties. Somebody was complaining that he said that the chiefs and assistant chiefs accused him in a public *baraza*. Is he inferior to them in terms of his role? He is a Governor of a whole county and the Chair of CoG. How can he complain about them threatening him in a funeral?

Mr. Temporary Speaker, Sir, I am just appealing to other governors, including my governor to be more serious in the running of counties. Part of the reason why they want to shut the health care is because they have pocketed all the money. They do not have any other money. The own-source revenue generation already went to their pockets. They are looking for an excuse to get out of their own quagmire and making people believe that it is the Senate's problem that they cannot give services.

Mr. Temporary Speaker, Sir, the Senate is here to protect counties. We are not here to bring counties to their knees. If Governor Oparanya does not believe in devolution, he should resign as the Chair of CoG. He is FCPA. This means that he is member of the Institute of *Certified Public Accountants of Kenya (ICPAK)* and an accountant. Therefore, he understands matters of finances better than most of the governors do.

I am ashamed that he is a Member of my profession because of the manner he is behaving. If there is any disciplinary action the Institute of Certified Public Accountants



of Kenya (ICPAK) should take, they should start with Governor Oparanya because he has brought the name of ICPAK to disrepute.

I wish to support and, like everybody else has submitted, Senators are here to protect counties. People who want money in their pockets and not services to the people have no business leading any county, let alone the Council of Governors.

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Asante sana Sen. Farhiya. Kwa sababu ya muda, ningomba twende kwenye *statements* lakini hakuna kuchangia, kwa sababu ni nyingi na muda umeyoyoma. Wakati huu nampa fursa Seneta wa Mombasa, Seneta Faki.

#### SYNCHRONIZATION AND COORDINATION OF THE FUNCTIONS OF KPA, KRC AND KPC

**Sen. Faki:** Thank you Mr. Temporary Speaker, Sir. I rise pursuant to Standing Order No.47 (1) to make a Statement on an issue of general topical concern, namely the synchronization and coordination of the functions of Kenya ports Authority (KPA), Kenya Railway Corporation (KRC) and the Kenya Pipeline Company Limited (KPC).

Mr. Temporary Speaker, Sir, on 7<sup>th</sup> August, 2020, His Excellency the President issued an Executive Order No. 5 of 2020 titled, “The framework for management, coordination and integration of public, port, railway and pipeline services”.

Through the said Executive Order, the President ordered and directed that:

(1) The Industrial and Commercial Development Corporation (ICDC) on the one part and the Kenya Ports Authority (KPA), the Kenya Railways Corporation (KRC) and Kenya Pipeline Company limited (KPC), jointly enter into a framework of agreement to anchor and integrate their operations towards establishing the Kenya Transport Logistics Network.

(2) The framework agreement will secure the coordinated and synchronized implementation of the respective mandates of ICDC, KPA, KRC, KPC and add synergy to their structures, resources, operations and services towards establishing a seamless and coordinated National Transport Logistics Network, styled at the Kenya Transport and Logistics Network.

(3) The framework agreement shall be concluded and signed within 30 days from the date of the said Executive Order.

(4) The National Treasury shall support ICDC in the reorganization of its existing portfolio to facilitate the effective implementation and operation of the framework.

(5) In line with its mandate, ICDC will be responsible for the implementation of the framework agreement and for securing the achievement over the commercial vision and objects of the agreement through the Board of Directors of each entity.

(6) That the Board of Directors of KPA, KRC, KPC, ICDC are reconstituted in line with Section 7 (iii) of the State Corporations Act, stipulated in the requisite gazette notices effected.

(7) The administration and portfolios of KPA, KRC, KPC, ICDC are vested in National Treasury within the National Treasury and Planning.

(8) The ongoing transactions of the four agencies shall continue uninterrupted even as the National Treasury organizes and builds the technical skills necessary towards the full implementation of the objectives of the framework agreement.

(9) That the ICDC is exempted from prescription of the *Muongozo* guidelines on multiple directorships of board members.

Mr. Temporary Speaker, Sir, from the foregoing, I wish to observe the following-

(i) That ICDC, KRC and KPA are established by Statute under which each of the entities have a Board of Directors responsible for the management of the respective entity.

(ii) That KPC is a Government owned entity established under the Company's Act which organizational structure includes a Board of Directors responsible for the management of the company.

(iii) That ICDC, KRC, KPA and KPC are State corporations as contemplated in Section 2 of the State Corporations Act.

(iv) That Section 7 of the State Corporation's Act gives the President what may be considered to be sweeping veto powers over the management and functions of State corporations. In this respect, the President may give general and specific directions to a Board of a State corporation and revoke the appointment of a Board member of a State corporation

(v) That the Executive Order No. 5 contains directions at orders by the President for the aforementioned State corporations to enter into a framework agreement for the coordination of their respective functions.

(vi) That Paragraph 7(ii) of the Executive Order vest the administration and portfolios of KPA, KRC, KPC in the National Treasury, contrary to the provisions of part of legislation that establishes each of these agencies. Any alteration in administration has to be done through amendment of the relevant laws.

(vii) That the Executive Order is in essence transfer of the functions of various entities without parliamentary approval.

(viii) That the Executive Order is not clear on the functions envisaged under the Kenya Transport and Logistics Network.

(ix) That the proposed Kenya Transport Logistics Network will affect funding of the entities as funds follow functions.

(x) That the Executive Order is *ultra vires* the powers of the President as provided for under the Constitution and the State Corporations Act.

(xi) That the Executive Order No.11 is likely to transfer functions of KPA and KRC to the National Treasury contrary to the provisions of the Kenya Ports Authority Act and the Kenya Railways corporation Act, currently under the State Department of Transport without amending the relevant laws.

(xii) That the Executive Order renders all the three parent Acts impotent without any recourse to Parliament which has a constitutional legislative mandate.

(xiii) That counties like Mombasa, which host the KPA have a dominant industry and will be prejudiced as operations of KPA will ultimately be transferred to Nairobi.

Mr. Temporary, Speaker, Sir, I kindly beseech this Senate through the Standing Committee on Roads and Transportation to investigate this blatant abuse of the law with a view to restoring the operations of the three corporations to their rightful management.

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Asante sana, mheshimiwa Seneta wa Mombasa. Ningelipenda sana kama ungalizungumza kwa Kiswahili ukiwasilisha Hoja yako. Sen. Wetangula.

**Sen. Wetangula:** Thank you, Mr. Speaker, Sir. This matter is important that I wish to enjoin the distinguished Senator for Mombasa. It is not that the President did it, but that the President is not getting proper legal advice. ICDC, KRC and KPA are established by Acts of Parliament. The Kenya Pipeline Company (KPC) is also established by an Act of Parliament.

How do you wake up and put all these parastatals under one Board and one super management without coming to Parliament? It is a serious violation of the law. How is the Board of KPA going to account to the people of Kenya, the National Treasury and Parliament? How is the Board of ICDC and, in any case - I did not hear what Sen. Faki said - how do you take a giant parastatal like KPA and put it under a dying ICDC?

The ICDC was there at Independence harnessing resources for Africanization. It is no longer functional; it is there by name. How many times do you hear of ICDC anywhere? How do you now wake up and say railways, with a massive debt on Standard Gauge Railway (SGR), KPA is going to service the debt of KRC under the SGR?

This is a matter where, with a functioning National Assembly and the Senate, we want to see the Committee chaired by Sen. Wamatangi and the one chaired by Sen. Kibiru, because ICDC is functional under Committee on Finance and Budget---

The Kenya Pipeline Company is functionally under the Committee on Energy. The KRC will be functionally under Roads and Transportation. I request you to order that the Committees coalesce together and question this Executive Order. Call the Attorney-General to inform this House whether he is actually giving proper legal advice to the Head of State. The President is not a lawyer; he will do what he thinks is convenient to the Government. The Attorney-General is there as the principal legal advisor of the Government to tell them the dos and do nots within the law and the Constitution. Obviously, they are not doing this.

I support Sen. Faki and encourage him to pursue this matter. I am of the view that these committees ought to meet together. Summon the relevant Cabinet Secretaries (CSs) and above all, the Attorney-General, to tell this House how this Executive Order was drafted and executed in the manner that it was, in total violation of existing law.

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Sen. Omogeni.

**Sen. Omogeni:** Asante sana, Bw. Spika wa Muda. Ninaunga Sen. Wetangula kwamba Mkuu wa Sheria ana jukumu la kueleza Rais kwamba Kipengele 131 cha Katiba ya Kenya kinasema kwamba Rais sharti aheshimu na aitete Katiba ya Kenya. Huwezi kupitisha nakala ambayo inaenda kinyume na sheria iliyopitishwa na Bunge. Kipengele cha Pili cha Katiba kinasema kwamba Katiba ya Kenya na sheria ambazo zimepitishwa na Bunge ndizo zinatoa mwongozo na mwelekeo wa kiongozi wetu taifa kuliongoza taifa hili.

Bw. Spika wa Muda, imefika wakati ambapo tunahitaji kumuita Mkuu wa Sheria aje hapa Bungeni atueleze kama ameshindwa kutekeleza jukumu amepewa na Katiba ya taifa letu. Hii ni kwa sababu hatutaki Mkuu wa Sheria ambaye anataka kumuaibisha kiongozi wa taifa ambaye anataka kuwaunganisha Wakenya na kuonyesha kwamba Kenya ni nchi ambayo inaheshimu mwongozo wa kikatiba na sheria ambayo zimewekwa.

Ninamshukuru Sen. Faki kwa kuleta jambo hili katika Bunge la Seneti. Ninaomba kuwa wale ambao watahughulikia jambo hili wahakikishe kwamba kama ni Mkuu wa Sheria ndiye anampotosha Rais wa taifa ni sharti sisi kama wanasheria tuelezwe kinagaubaga kwamba makosa yanatoka katika ofisi ya Mkuu wa Sheria.

Ninaunga mkono Taarifa ambayo imeletwa na Sen. Faki.

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Sen. Madzayo.

**Sen. Madzayo:** Asante, Bw. Spika wa Muda kwa kunipa fursa hii. Mimi pia ninaunga mkono Taarifa iliyoletwa na Sen. Faki. Kenya Ports Authority (KPA) imekua tegemeo kubwa kwa watu wa Pwani lakini tukichukua Usimamizi wa Bandari na kuichanganya na Shirika la Reli na Shirika linalohusika na bomba la kusafirisha mafuta, ni ukiukaji wa sheria.

Ni jambo la kusikitisha kwamba Rais wa Jamhuri ya Kenya anaendelea kugandamiza watu wa Pwani, hususan kiuchumi. Watu wametegemea sana Usimamizi wa Bandari. Ukienda Mombasa leo, utapata kwamba watu wengi ni hohehahe kama mayatima. Hukana uchumi wa aina yoyote unaongeza mapato kwa wananchi wa Mombasa unaoendelea. Si wafanyibiashara wala akina mama wanaouza vitu vyao asubuhi kwa watu wanaoenda kazi katika Bandari. Si watu wa kupata vibarua pale ndani wala madereva na wanaobeba mizigo. Kila kitu ni kama kimechukuliwa.

Tunavyoongea ni kama bandari imeondolewa. Hata wale akina mama ambao baada ya kazi wanaume wangeweza kuji--- Unaelewa. Ni makosa sana kuwa uchumi umeharibika kwa sababu ya amri kama hii. Hii amri imekiuka sheria za Kenya na Katiba ambayo ni kuu kuliko sheria zote.

Hii inamaanisha kwamba Rais alikosea kisheria alipotoa hii amri bila kufanya majadiliano na wananchi wanaoishi katika eneo hilo. Hata Katiba inasema “*there shall be consultation.*” Ni lazima ahusishe wale wanaoishi pale kwa kuwaambia: “Ninataka kufanya hivi na vile. Je, mnaonaje?” Anafaa kupata maoni na mwawaidha, lakini hakukuwa na majadiliano ya aina yotote. Sikuona gavana akiulizwa: “Hii bandari tunataka kuitoa hapa tuipeleke Naivasha.” Sikuona gavana akiitwa na kuulizwa maoni yake na ya wananchi wakiunganisha na Kenya Railways Corporation na Kenya Pipeline.

Hayo yaliofanywa ni ukiukaji wa sheria na Katiba ya Kenya. Mimi ninamuenzi sana Rais. Yeye ni mtu ambaye hana makosa kwa sababu yeye akipelekewa makaratasi na kuulizwa: “Je, umeone kuwa hii ni sawa?” Kisha akatia sahihi yake. Sasa inaonekana kuwa Mkuu wa Sheria wa Jamhuri wa Kenya ameshindwa na anazembea kazini. Hili ni jambo la aibu kwa sababu alikua hakimu kama mimi. Ninasikitika sana kwa sababu angeenda kwa Rais na kumwambia: “Kabla hujaidhinisha hatua kama hii, ni kinyume cha sheria.” Alikosea na hakuenda.

Jambo la pili ambalo ni kosa kubwa ni kwamba---

*(Sen. Madzayo’s microphone went off)*

**The Temporary Speaker** (Sen. Dr.) Mwaura): Nimekuongeza dakika moja umalize mchango wako.

**Sen. Madzayo:** Asante, Bw. Spika wa Muda. Shirika la Reli limefilisika. Lilifilisishwa na Wakenya waliokuwa katika mamlaka wakati ule. Sijaona hata mtu mmoja akipelekwa mahakamani kuwa kulifilisisha shirika hilo. Leo utapata kuwa Shirika

la Bandari linachukuliwa na kuchanganywa na shiriki ambalo lina na madeni ambayo haliwezi kulipa hadi sasa hiv linazama. Je, tutafufua shirika la reli ikiwa tuliunganisha na shughuli za Bandari? Hivi sasa Standard Gauge Railway (SGR) imeleta umasikini ndai ya Pwani. Imefilisisha barabara yote kutoka Mombasa hadi Nairobi. Hakuna biashara inayoendelea kutoka Mombasa hadi Nairobi.

Nikimalizia kabisa----

*(Sen. Madzayo's microphone went off)*

**The Temporary Speaker** (Sen. Dr.) Mwaura: Sen. Olekina.

**Sen. Olekina:** Thank you, Mr. Temporary Speaker, Sir. I will not attempt to speak Kiswahili after Sen. Madzayo because I will just butcher it. I rise to support the Statement by Sen. Faki.

I urge him because he is an attorney and an advocate of the High Court of Kenya to proceed to court and seek the intervention to suspend Executive Order No.5.

Mr. Temporary Speaker, Sir, the Law Society of Kenya (LSK) proceeded to court and the High Court of Kenya suspended Executive Order No.1 through which the Executive attempted to control the Judiciary. I keep on saying that we have made so many steps forward, but now we are making quickly steps backwards.

This House and the National Assembly are the Houses which have been given powers by the Constitution to make legislations. Legislations are made by this House and doing so corporations are created. Think of the Kenya Ports Authority (KPA) and Kenya Pipeline Corporation. The Kenya Pipeline Corporation (KPC) is established under the Petroleum Act. What are we doing when we take a body that is managed each by an Act of Parliament and consolidate them all into one, with an argument that you are trying to instill discipline in corporate governance, but you violate the rule of law yet? We have an Attorney-General who is supposed to guide you.

We talk about having democracy in this country, but it is now a pure dictatorship. It is a shame that a legal brain that we have in the Attorney-General; a former judge of the Court of Appeal, can sit there and see this happening. I wonder what these people do when they get closer to power. When they sit in that Bench, they are called "My Lord" but when they leave, they go back and become street vendors. That is not right.

I saw the National Treasury and Planning also directing KPC, Kenya Railways Corporation (KRC) and KPA to consolidate their budgets. What are we talking about? We have different corporations established under different Acts of Parliament and now just like the distinguished Senator from Bungoma was asking, how do they account for the use to those funds?

I tend to think this country was mortgaged a long time ago. When you hear arguments that these three corporate bodies have assets to the tune of Kshs1.1trillion and that their annual budget is about Kshs600 billion, then it will lead me to conclude that it is a way to lie to the Chinese from whom we have taken billions of Kenya shillings, that we have the capacity to pay.

I sit in the Senate Committee on Energy. Mr. Ngumi, now the Chairperson of the Information Communication and Technology (ICT) came to try and respond to issues of the Line Five Kenya Pipeline. His own actions as a person who came in and intervened

has now caused this country to pay a contractor millions of dollars. He came in; interfered with a contract and now we are losing more money. Is that not a travesty of the rule of law?

**Sen. Wetangula:** He is rewarded with a bigger appointment.

**Sen. Olekina:** It is wrong. In fact, when we raised issues about the legality of this---

*(Sen. Olekina's microphone went off)*

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Please finish in the next 30 seconds.

**Sen. Olekina:** Mr. Temporary Speaker, Sir, it now behooves us, Members of this House and the National Assembly, to demand for accountability from the Executive. We keep arguing that, "Oh, the Executive is the one giving us money." This is not true. It is this House that the Constitution has given powers to divide revenue between the two arms of Government.

Finally, I urge the distinguished Senator of Bungoma, the distinguished Senator of Mombasa and the judge, my good friend from Kilifi, to go to court and seek orders to suspend this Executive Order No. 5 because---

*(Sen. Olekina's microphone went off)*

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Asante sana. Sasa ninamwita Sen. Halake.

**Sen. Halake:** Thank you, Mr. Temporary Speaker, Sir. It is my first time to be in the Chamber when you are sitting on the Chair. I congratulate you. I cannot think of a better person to be sitting there. We are very proud of you. The fact that you are conducting the business in Kiswahili is especially very impressive.

#### INTERNATIONAL DAY OF DEMOCRACY

I rise pursuant to Standing Order No. 41(1) to make a Statement on an issue of general topical concern about the International Day of Democracy.

It was yesterday, but as you know, we had a very heavy Order Paper. I will still read today is still within the week when democracy is being celebrated.

Mr. Temporary Speaker, Sir, I know you are one of the people I know as real warrior for democracy. The United Nations General Assembly in 2007 resolved to observe 15<sup>th</sup> September as the International Day of Democracy with the purpose of promoting and holding the principles of democracy as well as raising awareness about democracy. The essential elements were freedom, respect for human rights, the principles of periodic and genuine elections by universal suffrage and many other rights as guaranteed in our Constitution and international law.

The multiparty aspect of democracy is characterized by having different political parties that act as vehicles of expression for the people and as gatekeepers into the democratic space.

The Constitution of Kenya, 2010, wholly supports multiparty democracy as you know recognizing it as a human right and also as a major anchor for egalitarianism. From the time multi-partyism was introduced in the country in 1992, many political parties have been formed as vehicles through which political parties' political leaders are elected to power to represent the peoples' interests in the governance of our country.

Even though some gains have been made as envisioned by our Constitution, different challenges persist and continue to threaten the democratic space as well as the spirit and values of multi-party democracy. There is hence need to build on the key benefits gained and have the challenges effectively addressed.

Allow me to appreciate that despite the different challenges the democratic space in this country has continues to expand and characterized by different democratic activities. Currently, there are different political parties. In fact, just today we had an international Webinar on the day for democracy and we have a total of 71 political parties. Is that a good or bad thing? I think at the basic level it is a good thing. Whether or not we will consolidate into much bigger ideologies is for us to discern, but yes, we have a lot of opportunities through our different political parties.

Despite the country has enjoyed the privileges that come with multi-party democracy as you have seen with the sheer number of our political parties, there are several factors that have recently been observed which ail our democratic space. We need to look at them and make sure those gaps are dealt with.

The gaps include: weak implementation of some of the provisions of our Constitution and our policies and laws, endemic corruption that has taken hold and captured some of our institutions and the various human rights violations that we have seen. In fact, some of our Senators have suffered that in the recent past. They are also delays in some of the recommendations of The Truth, Justice and Reconciliation Commission (TJRC) of Kenya and others that would have made our democratic space even more robust and constitutional.

As the Chairperson of the Centre for Multiparty Democracy - Kenya, allow me to zero in a little bit on political parties. The laws guiding the financing of political parties are in skewed in favour of the major political parties in the country such that the parties deemed to have numbers or representation are the ones that are funded by tax payers to the detriment of other smaller parties. The approach of winner takes it all is definitely disenfranchising some of the smaller parties as well as constricting the space for multiparty democracy.

Mr. Temporary Speaker, Sir, the lack of laws to govern the conduct the party primaries is hurting smaller parties. I know that you have sponsored a Bill to address this issue so I encourage you to continue pushing for laws to be put in place to make our multiparty laws more robust. Wrangles within political parties such as those that have been experienced lately end up weakening the electoral strength of parties and rendering them unreliable thus making people lose hope in them as being dictatorial in their approach.

The Kenyan democratic space continues to face challenges. One of the factors that continue to limit democratic space is corruption, which I have already alluded to. The failure to implement certain principles of democracy such as the two-thirds gender rule is also constricting democratic space for women, youth and persons with disabilities. The

minute the constitutional provisions relating to marginalized groups are not implemented, this flies in the face of the expansion of our democratic space.

Additionally, allow me to mention that the role of media and opposition parties in promoting democracy cannot be overstated. In the current dispensation, the voice of the opposition seems muffled and weakened; a situation that has left the Government unchecked. As the Centre for Multi-Party Democracy, we are not terming the 'Handshake' as a bad thing because it brought about a lot of stability, togetherness and inclusivity. There are certain undesired consequences that we are observing as a result of the 'Handshake' which we need to check.

The media has stepped in as the only major alternative voice in the last couple of months. I must commend the Senate because no matter which divide of the House we sat in, we have dispensed our mandate effectively. The third basis for revenue sharing formula is a case in point where this House felt that some things are below optimal. This House has stood up in defense of some important things when a voice of reason was needed.

Mr. Temporary Speaker, Sir, I congratulate this House and the media for the role they have played in ensuring that certain things have been highlighted in a situation where we have below optimal checks and balances that would have been provided by an assertive Opposition. The media has played a key role in promoting the constitutional guarantees of liberty and freedom of expression for all. There have been instances where these rights have been violated; a case in point is during 2018 when some of the country's private television stations were shut down. We do not want to go back into history, but we do not also want to see situation where media houses can be shut down. Those are some of the situation that speak to certain high handedness that we would like to get rid of in this Day of Democracy. We do not need to witness some highhandedness in this day and age.

It is our duty to ensure that the democratic space, values and principles that are anchored in our progressive Constitution are protected and promoted. We need to take a proactive approach to ensure that the democracy of Kenya is protected and promoted as it is the anchor of the wholesome development of this country. Relevant institutions need to be supported with legislatives and publicly, we need to ensure that they are effective and perform their roles.

Against the backdrop of COVID-19, a lot for rights that pertain to the free movement of people and access to different information have pointed to certain ways in which certain democratic rights have been taken back while we understand that regulations in the face of a pandemic need to be respected. However, this House must ensure that some of the democratic rights are given back as soon as the COVID-19 curve is flattened.

Mr. Temporary Speaker, Sir, we have had instances where corruption has flourished because of the emergency nature of some of our procurement. There has been flouting of certain rules. We have witnessed cases of police brutality in the enforcement of rules and regulations. Those are some of the democratic rights that have been violated under the pretext of the pandemic that we need to make sure---

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Sen. Halake, your time is up, but I will give you an extra minute to finish your statement.



**Sen. Halake:** Mr. Temporary Speaker, Sir, it is my hope that for our own people. For the sake of our posterity, we shall act speedily to address the challenges that undermine our democracy and make sure that this House acknowledges that the democratic space in this country was fought for and that that blood was shed to attain it. We should protect it as per our mandate and not take it lightly.

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Asante sana, Sen. Halake kwa mchango wako mzuri.

Ningependa sasa kuwapa Maseneta wakati wa kuzungumzia taarifa hii nikianza na Sen. Were. Ingekuwa bora kama Maseneta wangeweza kutoa mchango wao kwa lugha ya Kiswahili lakini si lazima.

**Sen. Were:** Mr. Temporary Speaker, Sir, I thank you for giving me the leeway to decide the language I prefer to use.

I thank Sen. Halake who is also the Chairperson of the Centre for Multiparty Democracy - Kenya. When she speaks, she does so with the authority of the Centre for Multiparty Democracy which deals with all the 71 political parties and other stakeholders in the political space. I thank her for having driven that organization very well.

I would also like to congratulate the Temporary Speaker, Sen. (Dr.) Mwaura, who is sitting on the Speaker's Chair for the first time. I know that you will do us proud.

Sen. Halake has talked about the protection of our democracy and Constitution which is what we have discussed the entire afternoon. One aspect of the Constitution that we need to protect is devolution. The fight for devolution that was originally referred to as 'majimboism' did not start the other day. We need to protect the gains made from the early 90s. If we protect the gains made through the Centre for Multi-Party Democracy---

*(Sen. Were spoke off record)*

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Asante sana, Sen. Were. Nampa Sen. Farhiya wakati wa kuchangia taarifa hii sasa.

**Sen. Farhiya:** Mr. Temporary Speaker, Sir, I thank you for giving me the opportunity to contribute to the statement by Sen. Halake. I congratulate Sen. Halake for the well-reasoned statement. I support the fact that we should have very robust political parties. I also agree that the big-brothers of political parties should sweep away everything in terms of funding from the Government. There should be a more reasonable mechanism whereby even the top 10 political parties can benefit from Government funding. The smaller parties continue to suffer due to lack of funding. The internal democracies within parties are not transparent, especially for women. There is a lot of political related violence on women every time they want to vie for a political position. The playground is not equal.

Mr. Temporary Speaker, Sir, in some parties, going through the primaries is as good as winning the ticket to Parliament. I am talking about the women, youth and the Persons with Disabilities (PWDs) in that process are always disadvantaged.

Mr. Temporary Speaker, Sir, this is because some people have political muscles. Even political parties support people they presume can support the party in one way or the other. Here are people who would have made a lot of difference to the lives of the people who elected them, but they do not get an opportunity. This is because sometimes

it is because of lack of fair playing ground. That means these disadvantaged groups will always be marginalized.

Mr. Temporary Speaker, Sir, let us say even if they are nominated like our case when the critical matters in this Senate are discussed, our voting inability when it comes to matters concerning counties. It puts us in a disadvantaged position because we are not part of the people who are voting. Unless your Senator is not there, then as a Member of that delegation, you can vote.

Even if they are given an opportunity like nomination, there are still disadvantages that come with that, that disenfranchises them. A lot of Kenyans even do not understand that nominated Senators cannot vote on matters concerning counties. In my own county when the issue of revenue sharing formula came, many of people were asking the first day why I did not vote. Many Kenyans do not understand that nominate Senators cannot vote on matters concerning counties. They only vote on procedural things and other matters that do not concern counties.

The main mandate of the Senate being matters concerning counties and the fact that we are unable to vote, that puts us in a very disadvantaged position. That is unlike our sister House whereby whether you are nominated or elected, at least you have equal vote. There are also a lot of benefits the nominated Members do not enjoy that other Senators enjoy which makes us more disadvantaged, for example, running an office. If you are nominated, you cannot even have a cup of coffee or tea. You cannot serve somebody because the PSC does not facilitate you do the same while the elected whether from National Assembly---

**The Temporary Speaker** (Sen. (Dr.) Mwaura: Dakika nyingine moja. Unazungumzia hilo swala vizuri sana.

**Sen. Farhiya:** Thank you, Mr. Temporary Speaker, Sir, for adding me one more minute. I urge that prerequisite legislation needs to be passed so that we have fairness across the board. When you come here, the person who is in the constituency does not understand the difference between the person who is elected and the one nominated. You are disadvantaged in terms of the nomination process because sometimes there is violence and stuff like that. Even when you come to the House, you are disadvantaged again because of procedural issues.

Let us have the political space fairer for all competitors so that people who would have never made it to this House can easily make it through election. This is so that even in terms of your contribution, it is felt by all.

Mr. Temporary Speaker, Sir, even the Houses of Parliament need different skills. You will notice that most Houses have people who are lawyers or political scientists. However, in a House like this, people need different skills like economists, financial experts, accountants and medical doctors, so that they can bring different thinking and skills. This is so that at least we enhance each other's decisions.

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Asante sana kwa huo mchango mzuri sana hususan ukiangazia vile ambavyo unyanyapaa unakithiri katika vyama na viti vya kisiasa. Sen. Malalah, endelea.

**Sen. Wetangula:** Thank you, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Samahani. Nitampa nafasi Sen. Malalah kisha wewe baadaye. Sen. Malalah, endelea.

**Sen. Malalah:** Thank you, Mr. Temporary Speaker, Sir. I stand to support my colleague Sen. Halake on her Statement about democracy. I join my colleagues in reiterating the fact that Kenya has achieved a lot in regards to democracy. When you look at our past and what we are undergoing right now, we are celebrating the fruits of democracy because of what our political forefathers did in making sure that we achieve this very important element in our society.

Mr. Temporary Speaker, Sir, I would want Sen. Halake who is the Chairperson of the Chairperson of the Centre for Multiparty Democracy – Kenya - to look into issues on how we can define democracy and how we can implement it without necessarily interfering with the rights of human beings.

Mr. Temporary Speaker, Sir, some few moments ago, we saw respectable leaders of this Republic making some pronouncement. We have seen the Chairperson of CoG using his political democratic right to making certain decrees that will interfere with human rights. Article 26(1) of the Constitution on rights and fundamental freedoms is very right to life. It says-

“Every person has the right to life”

Article 26 (2) goes ahead to say that-

“The life of a person begins at conception”

We all know that our hospitals down in the county governments depend on maternity services. It is irresponsible of him to call for the closure of hospitals because of political democracy. We would like the Chairperson of the Centre for Multiparty Democracy – Kenya to ensure that democracy is well defined so that some people do not misuse it to interfere with the rights of the citizens of the Republic of Kenya.

Mr. Temporary Speaker, Sir, I take this opportunity to condemn that act. The Chairperson of the CoG is irresponsible in the manner in which he is handling important matters of this country. You cannot say that county governments will shut down. It is equivalent to saying that one day when the national Government will not have money, Kenya will shut down. We shall not accept this kind of leadership.

As the Senator for Kakamega County, coincidentally the governor comes from Kakamega County, I want to say here without contradiction that the healthcare in Kakamega County has deteriorated. I state here categorically that Kakamega County had Kshs467 million to fight COVID-19. Up to now, no Intensive Care Unit (ICU) bed and masks have been purchased.

Mr. Temporary Speaker, Sir, the only thing he did in Kakamega County was to purchase land to allocate cemetery. It is a shame that out of Kshs467 million, nothing has been done in Kakamega as pertains COVID-19. Recently we saw him issuing donated masks. He promised to buy masks, but he has never done so.

Mr. Temporary Speaker, Sir, it is sad that during COVID-19 time, he is the same governor who is complaining about shortage of money in county governments. He used Kshs12 million to renovate a ward worth Kshs600,000 without following due process of procurement.

I want to tell him to respect the citizenry of this country. He cannot use his democratic space and his political democratic leadership authority to misuse his power as the Chairperson of the CoG. I want to state here---

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Order, Senator! Nafikiri sijui vile ambavyo unazungumza ni kuhusu Hoja ambayo ipo mbele ya hiki kikao ama ni swala ambalo limeshapitwa.

**Sen. Malalah:** Mr. Temporary Speaker, Sir, I was very clear. My introductory remarks into democracy were very clear. I said people should not use political democracy. I have said they should not interfere with human rights because of democracy. That is my entry point in this issue.

As I conclude, it is important to let the people of Kenya know that nobody has powers to close down counties. As protectors of county governments under Article 96, we want to vow before this House that we are going to do whatever it takes.

Mr. Temporary Speaker, Sir, I am happy, Sen. Wetangula was very clear that a white smoke will emanate tomorrow from the 12-Member Committee. I want to tell Kenyans that we have a lot of confidence with the Senators who have been given the mandate to ensure that this impasse is been sorted out.

Governor Oparanya, we are giving you notice that by tomorrow morning, you must give a statement apologizing to the nation and the people of this country for misusing your political democratic authority to oppress the citizens of this country.

Thank you.

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Asante sana, Sen. Malalah. Lakini umepitwa na wakati. Nafikiri hiyo Hoja iliweza kuchangiwa kinagaubaga. Nafikiri kwa sababu wewe ni Seneta wa Kaunti ya Kakamega ungekohoa kidogo watu wakusikie.

Sasa hivi ninamkaribisha Seneta wa Kaunti ya Bungoma, Sen. Wetangula.

**Sen. Wetangula:** Thank you, Mr. Temporary Speaker, Sir. Before I seek my Statement, allow me also to join the House in congratulating Sen. Halake. I was called on my Statement, but I want to congratulate her before I read my Statement.

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Sawa. Unaweza kuendelea.

**Sen. Wetangula:** Thank you, Mr. Temporary Speaker, Sir. Then let me speak to it. I sit down, you speak and then I come to mine.

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Ngoja kidogo. Unaweza kuketi.

**Sen. Wetangula:** Mr. Temporary Speaker, Sir, I had flagged in to talk to this Statement. Since we started the Centre for Multiparty Democracy - Kenya (CMD), Sen. Halake is the first lady to chair this organization. I congratulated her when she was elected. My party is a very active member of CMD. My national chairperson is one of your Vice Chairpersons; Mr. Amuma Ruhu from Tana River County. The CMD does an excellent job.

What I would want to encourage CMD to do is not to fall into the path of being bullied by the bigger parties who think that they own the democratic space in the country. They want to subjugate everybody to bend to their whims.

Mr. Temporary Speaker, Sir, Sen. Halake has all it takes to take this CMD to greater heights. I encourage her that in her tenure, she should address a few things. One is to engineer legislation that would streamline the process of internal democracy within parties, particularly at the time of nomination of candidates and persons who go to Houses of Parliament and county assemblies.

It is important and, I think my brother, Sen. Poghiso would agree with me that nominations to positions, post-election, should be rewards for hard work. There is a

misguided preposition that exists in our Constitution and the law, that you list up people and then they lock in and know that they are going to be nominated if the party wins and then go to do their own things. They know that they are already secure.

Mr. Temporary Speaker, Sir, in any jurisdiction, nominations are used to address the imbalances in terms of disadvantaged groups. It is also used to reward party stalwarts for doing a good job and to give the party visibility, strength and good performance in elections.

I would want to see CMD championing this so that we as leaderships in parties are freed from locking in people who as soon as they are locked in as nominated list members, they move away from the party. They support other parties knowing that they will come to the House, anyway.

Mr. Temporary Speaker, Sir, I remember in the last Parliament, there was some Senator who was nominated by a party led by my brother Hon. Musalia Mudavadi. She rebelled from day one. As soon as she walked in to this House, she crossed the Floor and worked with the other side for five years and left. There was very little they could do.

Democracy has also come of age in this country. I am looking at my brother from West Pokot County who has been a victim of decisions of democracy. One day he walked to Parliament as a Member and in the afternoon he was not. The party that had sponsored him then, Kenya African National Union (KANU), “*baba na mama*” had expelled him with my late friend Hon. Lotodo.

It happened with one meeting in a morning. We heard at 1.00 p.m. bulletin: “*Mbunge wa Kacheliba sio mbunge tena*”. That was the end. He was gone and had to stay out for a full term. This is now democracy working. Parties must also have the respect they have or ought to have for their members and the institutions of the country.

Mr. Temporary Speaker, Sir, lastly, I just want to enjoin my colleague from Kakamega County that abuse of democratic space is an aberration. We must also resist it. I know I brought a Statement here that was widely debated. I want to thank the Chair for according Members to speak freely on this matter. Governor Oparanya should be warned.

I join the House again in telling him that he is biting more than he can chew. He has no authority to do what he is purporting to do. I also send a warning to my governor in Bungoma County. If I hear that any health facility is closed, we will come for you. This is because the Constitution says that every Kenyan has a right to healthcare. To close any single facility, even a small facility at the back of a shop that saves lives, is a violation of the Constitution.

Thank you.

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Asante sana kwa mchango wako, Sen. Wetangula. Nitampatia nafasi Kiongozi wa Wengi katika Seneti, Sen. Poghio. Uniwie radhi kwa sababu tarakilishi hii haifanyi kazi vizuri.

**The Senate Majority Leader** (Sen. Poghio): Thank you very much, Mr. Temporary Speaker, Sir. I am very supportive of the Statement on this International Day of Democracy. As we mark it, I congratulate Sen. Halake for the way she has led in this particular area and become a stalwart in the guiding principles of democracy in this county as she runs the CMD. As a defender of human rights, I say, thank you for becoming very clear on this day of democracy.

I am going to say a few things on this matter. First, democracy in this country had made certain strides. We have taken strides to the place where we developed our Constitution 2010, based on democratic principles. However, now we have to look at what that document is and its role in making sure that it entrenches good democratic practices. You know as has been said, we can just mention democracy as though it is a word that means you do what you want to do.

Mr. Temporary Speaker, Sir, I just want to help join my colleagues who have told off the Chairperson of CoG. We have had chairpersons before, but this is the first one to start issuing edicts and directing other governors and governments on what to do.

It is not really like Governor Oparanya. I do not know what you people have done to him. However, I just want to say this. Even before he issued that statement, the Senate Minority Leader and I, had written to him. We told him: "Please, we are working on this matter this week, be patient; do not issue a statement." He received that note and still went ahead and issued that statement.

Mr. Temporary Speaker, Sir, if this is the way we are going to work with the CoG, then, we even have to revise our strategy on how to work with them. If you cannot agree on something and work, then democracy is at a loss.

I want to say something about that. Democracy in this country is yet to be devolved. When we devolved it, we did it to the governorship. The governors, for some reasons, especially the one who is in my county, thinks that he is equivalent to a President. Therefore, he would run the county like the way the President is running the country.

Mr. Temporary Speaker, Sir, Governor (Prof.) Lonyangapuo, who is my governor, has started interfering with the county assembly. He is warning the Speaker of the consequences. He is determining what happens there. When I ask him, he says: "If the President can do this, I can do it." He is not the President of any country.

These governors must serve the people and not to rule them. You are servants of the people. Democracy is respecting the boundaries. There is nothing in the Constitution that says that a governor can walk to the county assembly, like Governor (Prof.) Lonyangapuo has done, and sit the Speaker's Chair and start addressing the Members of County Assembly (MCAs).

Mr. Temporary Speaker, Sir, we must devolve it to the levels---

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

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Kindly, proceed Sen. Poghisio.

**The Senate Majority Leader** (Sen. Poghisio): Mr. Temporary Speaker, Sir, that is my friend. I thought that maybe she has something to inform me.

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Tafadhali, muda umeyoyoma sana. Basi Sen. Farhiya, endelea, lakini nilikuwa najaribu kukufanya umalize.

**Sen. Farhiya:** Thank you, Mr. Temporary Speaker, Sir. I wanted him to give us additional information. Was Governor Oparanya asleep when the President was saying that this stalemate will be sorted out after the additional money or was he in the room for real? That is what I wanted him to clarify.

**The Senate Majority Leader** (Sen. Poghisio): Mr. Temporary Speaker, thank you. Just allow me one additional minute. We were there with him and all excited about the additional amounts of monies. We worked together.

The Governor needs to be sober. One thing he must not do is to issue statements that are contrary to the Hippocratic Oath that doctors take. Doctors can never refuse to admit anybody. It is their province to treat people. Therefore, we need to increase our level of understanding.

Mr. Temporary Speaker, Sir, the other one which is enclosing is our Chapter 6 on integrity issues. We must be tied to our democracy. When we elect or nominate people like my friend from Bungoma County said, let us nominate people who are not thieves so that they do not steal or harm people.

We must combine our democracy with our integrity and values. As we talk about democracy, we must emphasize that next time you see somebody complaining that they have a bad governor, they knew that, that governor was bad when they were nominating and electing them. Then we call them later on and say that they are now stealing from us. We must begin to see the quality of people that we nominate to our parties. That is a challenge to party leaders like the Senator for Bungoma County.

Mr. Temporary Speaker, Sir, I support and hopefully as a country, we celebrate with the rest of the world this day of democracy. Democracy is facing the challenge under this COVID-19. We have challenging times and can see even bigger democracies having problems. It looks like we are all the same when it comes to facing issues in the world. We must go back to a place where we are a league of nations and work together.

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Sen. Wetangula, una dakika mbili pekee yake kwa sababu ya muda.

**Sen. Wetangula:** Mr. Temporary Speaker, Sir, my Statement is long and comprehensive. The reason the distinguished Senator for Kakamega County is here is to speak to it and Sen. Were also. I would request that you give me priority tomorrow, so that we are the first on the Statements list.

It is so important because it touches on the lives of the people of Western region and Nyanza – the Sugar belt and the misguided programme to lease out factories to create a monopoly to kill our farmers. I request that you give me the first priority tomorrow.

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Hiyo ni sawa. Tusimame tafadhali kwa sababu muda umefika.

## ADJOURNMENT

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Waheshimiwa Maseneta, hivi sasa ni saa kumi na mbili na nusu za jioni, wakati wa kuhairisha shughuli za Bunge la Seneti. Kwa hivyo, sasa Kikao hiki kimehairishwa mpaka kesho siku ya Alhamisi tarehere 17 Septemba, 2020 saa nane na nusu, mchana.

The Senate rose at 6.30 p.m.