

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 29th 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

MESSAGE FROM THE NATIONAL ASSEMBLY

APPROVAL OF THE THIRD BASIS FOR REVENUE SHARING AMONG THE COUNTY GOVERNMENTS

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, I wish to report to the Senate that, pursuant to Standing Order 41 (3), I have received the following Message from the Speaker of the National Assembly regarding the approval of the Third Basis for Revenue Sharing among the County Governments (Third Generation Formula).

Pursuant to the said Standing Order, I now report the Message as follows-

“WHEREAS the Third Basis for allocating among the counties the share of national revenue that is annually allocated to the county level of government, for the Financial Years 2020/2021 to 2024/2025 was determined and approved by the Senate on Thursday, 17th September, 2020, pursuant to the provisions of Article 217(1) and (3) of the Constitution and referred to the National Assembly for consideration;

AND WHEREAS the National Assembly on Thursday, 24th September, 2020, considered and approved the Third Basis for Revenue Sharing among the County Governments in the form as determined and approved by the Senate without amendments;

NOW THEREFORE, in accordance with the provisions of Article 217(1) and (4) of the Constitution and Standing Order 41(1) of the National Assembly Standing Orders, I hereby convey the said decision of the National Assembly to the Senate.”

Hon. Senators, in the circumstances, the Third Basis for Revenue Sharing among the County Governments (Third Generation Formula) stands approved and, pursuant to

Article 217 (7) of the Constitution, shall be applicable until a subsequent basis for revenue sharing is approved.

I thank you.

PAPERS LAID

The Deputy Speaker (Sen. (Prof.) Kamar): Chairperson of the *Ad Hoc* Committee on the COVID-19 Situation in Kenya, kindly, proceed.

THE NINTH PROGRESS REPORT ON THE COVID-19 SITUATION IN KENYA

Sen. Kasanga: Madam Deputy Speaker, I beg to lay the following Paper on the Table of the Senate, today, Tuesday, 29th September, 2020-

The Ninth Progress Report of the *Ad Hoc* Committee on the COVID-19 Situation in Kenya.

I thank you.

(Sen. Kasanga laid the document on the Table)

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

Next Order.

Sen. Dullo, please, present your Paper.

THE NATIONAL GOVERNMENT BUDGET IMPLEMENTATION REVIEW REPORT FOR FY 2019/2020

Sen. Dullo: Thank you Madam Deputy Speaker, I beg to lay the following Paper on the Table of the Senate, today, Tuesday, 29th September, 2020 -

The national Government Budget implementation review report for the Financial Year 2019/2020.

(Sen. Dullo laid the documents on the Table)

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

Next Order.

NOTICES OF MOTIONS

ADOPTION OF THE NINTH PROGRESS REPORT ON THE COVID-19 SITUATION IN KENYA

Sen. (Arch) Kasanga: Madam Deputy Speaker, I beg to give Notice of the following Motion-

THAT, the Senate adopts the Ninth Progress Report of the *Ad hoc* Committee on the COVID-19 Situation in Kenya, laid on the Table of the Senate on Tuesday, 29th September, 2020.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you. Go ahead and give the following notice.

EXTENSION OF MANDATE OF THE *AD HOC* COMMITTEE
ON COVID-19 SITUATION IN KENYA

Sen. (Arch) Kasanga: Madam Deputy Speaker, I beg to give Notice of the following of Motion-

THAT AWARE, that at its Sitting held on Tuesday, 31st March, 2020, the Senate by resolution established the *Ad hoc* Committee on COVID-19 Situation with the mandate to oversight actions and measures taken by national and county governments in addressing the spread and effects of the COVID-19 pandemic in Kenya;

APPRECIATING, that the mandate of the Select Committee is due to lapse on Wednesday, 30th September, 2020;

ACKNOWLEDGING, that the Committee has undertaken a tremendous amount of work in its execution of its mandate and has regularly tabled in the Senate progress reports of its work;

AWARE THAT, the Committee directed the Auditor General to undertake a special audit on the utilization of funds allocated to and appropriated by the 47 county governments in responding to the COVID-19 pandemic and that the report thereon once received will require to be considered by the Committee;

NOTING THAT, the COVID-19 situation in the country continues to evolve;

NOW THEREFORE, the Senate resolves to renew the mandate of the *Ad hoc* Committee on COVID-19 situation in Kenya by a further period not exceeding 30 days of this resolution to enable the Committee continue to monitor and oversight the evolving COVID-19 situation in the country and to table its final report in the Senate.

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, before we start Statements, I would like to use my discretion to move to Order No.12, which we have wanted to dispose of in the last two weeks.

I ask the Senator, who is a Member of the Committee of Powers and Privileges, Sen. (Arch.) Kasanga, to move the Motion.

MOTION

ADOPTION OF REPORT ON THE INQUIRY INTO
THE CONDUCT OF SEN. KWAMBOKA AND SEN. SENETA

Sen. (Arch.) Kasanga: Madam Deputy Speaker, I rise on behalf of the Chairperson of the Committee of Powers and Privileges to move the following Motion-

THAT, the Senate adopts the Report of the Committee of Powers and Privileges on the Inquiry into the Conduct of Sen. Beatrice Kwamboka,

MP and Sen. Mary Seneta, MP, during the Election of the Chairperson and Vice chairperson of the Standing Committee on Health, laid on the Table of the Senate on Tuesday, 8th September, 2020.

Madam Deputy Speaker, the Committee of Powers and Privileges is established under Section 15(1) of the Parliamentary Powers and Privileges Act No.29 of 2017. The functions of the Committee as provided under Section 15 (4) of the Act shall be to inquire into the conduct of a Member whose conduct is alleged to constitute breach of privilege in terms of Section 16.

Secondly, is to perform such other functions as may be specified in the Act. Section 15 (5) of the Parliamentary Powers and Privileges Act, 2017, provides that-

“The Committee of Powers and Privileges shall, either on its Motion or as a result of a complaint made by any person, inquire into the conduct of a Member whose conduct is alleged to constitute breach of privilege in terms of Section 16, within 14 days of receipt of the complaint.”

Madam Deputy Speaker, on Wednesday, 24th June, 2020, the Senate approved Motions that reconstituted Committees. Consequently, during the election for the positions of Chairpersons and Vice Chairperson of the Standing Committee on Health held on 1st July, 2020, the Chairperson of the Standing Committee was elected unopposed.

However, the election of the Vice Chairperson could not proceed and had to be postponed as a result of a dispute arising from that election. A report of the events surrounding the election of the Vice Chairperson was submitted to the Office of the Speaker explaining why the election could not be held.

Upon reviewing the Report, the Speaker directed that the matter be referred to the Committee on Powers and Privileges for its consideration in accordance with its mandate as set out in the Act. In addition, there were reports in the media that some Senators were involved in a scuffle after the Committee adjourned. Subsequently, the Ethics and Anti-Corruption Commission (EACC) wrote a letter dated 2nd July, 2020 to the Speaker of the Senate drawing the attention of the Speaker to the reports appearing both in print and electronic media of an alleged scuffle within the Senate precincts.

It was against this backdrop that the Speaker of the Senate and the Chairperson of the Committee of Powers and Privileges convened meetings of the Committee to deliberate on this matter. The Committee held three sittings; on 11th August 2020, 18th August 2020 and 1st September, 2020. The Committee considered the Report of the events surrounding the election of the Vice Chairperson of the Committee on Health and the letter of the EACC on the incident.

Madam Deputy Speaker, the Committee further invited the Chairperson of the Standing Committee on Health and the two Senators who appeared before the Committee on 18th August, 2020. They have an account of events during the botched election of the Vice Chairperson of the Committee on Health.

The Chairperson of the Committee on Health confirmed that there was an altercation and scuffle involving Sen. Kwamboka and Sen. Seneta. He also stated that trouble began during the election of the Vice Chairperson after a Senator, who was not a Member of the Health Committee, presented a letter from the Senate Majority Whip nominating her to vote on behalf of Sen. Omanga, a Member of the Committee who was

not present at the meeting. However, upon being called on cell phone by one of the Members present, she allegedly denied having nominated any Senator to vote on her behalf.

Sen. Kwamboka informed the meeting that there had been an exchange of words between her and Sen. Seneta. She had been provoked into a physical confrontation by Sen. Seneta. Sen. Seneta who had offered herself for the position of Vice Chairperson of the Standing Committee on Health informed the Powers and Privileges Committee that there had been a disagreement concerning who would be allowed to vote for the absent Member of the Committee.

Sen. Seneta expressed regret at the unpleasant turn of events and stated that after the incident, she and Sen. Kwamboka continued to work together in a cordial manner. Further details of the deliberations are contained in the Report of the Powers and Privileges Committee.

Madam Deputy Speaker, arising from the enquiry into the conduct of the two Senators, the Committee observed that-

The allegations on the conduct of the two Senators were serious and suitable for inquiry by the Committee within the meaning of Section 15 (5) of the Parliamentary Powers and Privileges Act, 2017.

In terms of Sections 15(4) and (5) of the Parliamentary Powers and Privileges Act (2017), it is upon the Committee to determine whether there had been a breach of privilege in the matter.

Section 16 of the Act provides for conduct that constitutes breach of privilege as follows. The Committee of Powers and Privileges may find a Member to be in breach of privilege if the Member -

- (a) Contravenes sections 25, 26 or 28;
- (b) Commits an act mentioned in Section 27(1) (a), (b) or (2) and (3) (d), (e), (f) or (g);
- (c) Willfully fails or refuses to obey any rule, order or resolution of Parliament;
- (d) Contravenes any provision of the Speaker's orders issued under Section 38 of this Act; or,
- (e) Conducts himself or herself in a manner which, in the opinion of the Committee on Powers and Privileges, is intended, or is likely to reflect adversely on the dignity or integrity of Parliament, or of the Members, or to be contrary to the best interests of Parliament or its Members.

In their submissions, the three Senators who appeared before the Committee confirmed that a scuffle had indeed occurred between Sen. Kwamboka and Sen. Seneta in the precincts of Parliament on 1st July 2020, and the two Senators had conducted themselves in a manner which reflected adversely on the dignity and integrity of the Senate.

Madam Deputy Speaker, the Committee, therefore, found Sen, Kwamboka and Sen. Seneta to be in breach of privilege in terms of Section 16(e) of the Parliamentary Powers and Privileges Act (2017), for conducting themselves in a manner that in the opinion of the Committee reflected adversely on the dignity and integrity of Parliament and its Members, and was contrary to the best interest of Parliament and its Members.

Madam Deputy Speaker, Section 17(3) of the Act provides that where the relevant House of Parliament finds that a Member has committed breach of privilege, the relevant

House of Parliament may, in addition to other penalties to which the Member may be liable under this Act or any other law, impose any or more of the following penalties-

- (a) A formal warning;
- (b) A reprimand;
- (c) An order to apologize to the House or a person in a manner to be recommended by the Committee on Powers and Privileges;
- (d) The withholding, for a specific period of time, of the Member's right to the use or enjoyment of any specified facility provided to Members of Parliament;
- (e) The removal or suspension for a specified period of time of the Member from any parliamentary position occupied by the Member;
- (f) Such fine in terms of the Member's monthly salary and allowances as the House may determine;
- (g) The suspension of the Member for such period as the House may decide, whether or not Parliament or any of its Committees is scheduled to meet during that period;
- (h) Vacation of seat pursuant to Articles 75(2) (b) and 103(1) (c) of the Constitution.

It is against this backdrop that the Committee recommends that pursuant to Section 17 (3) (b) and (c) of the Powers and Privileges Act, Sen. Kwamboka, MP, and Sen. Seneta, MP, be reprimanded for breach of privilege and ordered to apologize to the House from the Bar.

Madam Deputy Speaker, I beg to move and request Sen. Nyamunga to second this Motion.

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

Sen. Nyamunga: Thank you, Madam Deputy Speaker, for giving me this opportunity to second the Motion. I would like to state categorically that the matter was treated with the seriousness it deserves. The Speaker himself was on the Chair for the three sittings that we held.

Parliament is a House of honour. Immediately one joins this Parliament, there is a way he or she is expected to behave. It is also important to note that once a Member has been given the title "honourable," it means that for the rest of their life, anywhere they sit, more so in this country, they are referred to as 'an hon. Member.' Therefore, there are expectations that go with it. However, since we are human and also prone to error, it is worth understanding that we make mistakes sometimes and fall short of expectations.

I may not take a lot of time to belabour all the details of the Report because it has been given in detail by Sen. (Arch.) Kasanga, who brought the Motion to Parliament. However, from where I sit, it is very clear that the two Senators have normalized their relationship. I have watched them from time to time, any time that we interact. I have noticed that the two Senators have normalized their relationship and they are in good communication. It is also a learning experience for all of us; that we need to accommodate each other from time to time as we interact in this House, and also practice restraint at all times.

In conclusion, I would like to say that it is unfortunate that these days, the social media forum is always with us and we do not know when anything will strike. Therefore,

it is important that we are very careful in how we relate. Sometimes we cannot be too careful because we are human beings who are likely to err.

Madam Deputy Speaker, I beg to second the Motion.

(Question proposed)

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, we are trying as much as possible to use our Statements Hour as the Statements Hour. So, please, use one or two minutes. Sen. Nyamunga has said that we know that the relationship of the two Members has normalized, so let us take the shortest time possible. I will give a chance to two or three Members only.

Yes, Sen. (Dr.) Musuruve.

Sen. (Dr.) Musuruve: Thank you, Madam Deputy Speaker, for giving me the opportunity to air my thoughts on this Statement. Indeed, there are so many expectations that come with the name “honourable” from members of the public and ourselves.

Nowadays, I have always seen Sen. Seneta and Sen. Kwamboka relating with each other very well. In fact, I am so surprised with this information in the Report because I did know that there was any misunderstanding between the two Members.

Let us always ensure a good relationship amongst us and endeavour to have emotional stability as we interact with each other. Every day, even as we execute our mandate as Senators, it is always crucial for us to respect one another inside or outside this House.

We need to let bygones be bygones because this is a juicy story to the media and they are happy about it. They might talk about it for the whole week during their breakfast, lunch and supper. For us, let us forget about it and move on because we have many legislative duties to execute.

The Deputy Speaker (Sen. (Prof.) Kamar): Let us hear from Sen. Omanga.

Sen. Omanga: Thank you, Madam Deputy Speaker. I want to contribute to this Report and tell the two Senators that apart from being hon. Members of this House, they are mothers. All our children are on social media and are privy to what we do inside and outside this House.

As Members of Parliament, we are out there in the public and children look up to us. They are on social media.

When sometimes I walk on the streets of Nairobi, the youth say: “*Mama Miradi*, you are our mentor.” All these kids look up to us. I think it was not a good scene. However, they are also human; not all of us are emotionally stable. Since they have accepted their mistakes, maybe they will apologize and endeavor to behave right next time.

Thank you, Madam Deputy Speaker.

Sen. Wambua: Thank you, Madam Deputy Speaker. I want to add a male voice to this conversation in the spirit of “he for she”. Both Sen. Kwamboka and Sen. Seneta are my great friends. What happened was unfortunate. However, the saving grace is that both of them have since noticed the mistake that they made and agreed to work together.

As a people and leadership, it is true that the world looks at us and the things that we do as a benchmark for what is expected in society. As unfortunate as that matter was,

we must also agree that at the time it happened, the political temperature was very high and so, to some extent, they were also victims of circumstances. We are now past that stage. For those of us who understand group dynamics, I think at the time this was happening, we were at the storming stage, where everybody was trying to exert their authority and take their positions.

Madam Deputy Speaker, I support the recommendation of the Committee that the two will just apologize, we move on and continue to set a good example in this country.

I thank you.

Sen. Faki: Asante Bi. Naibu Spika kwa kunipa fursa hii kuchangia Ripoti ya Kamati. Kwanza, ningependa kusema kwamba sisi kama Maseneta ni Waheshimiwa na lazima tuendeshe mambo yetu tukiwa na heshima. Aidha tukiwa katika Bunge ama hata tukiwa nje ya Bunge, lazima maadili yetu tuyafuate kama Waheshimiwa.

Pili ni kuwa ni jambo la kupendeza kwamba hawa Maseneta wawili, Sen. Kwamboka na Sen. Seneta, wameweza kuomba msamaha na wakajutia makosa yao. Kwa hivyo, ni sisi kama Bunge kukubali Ripoti ya Kamati ili waweze kusamehewa na warudi kwa miungano yao kama kawaida.

Tumechaguliwa kuhudumu kwa miaka mitano. Kwa hivyo, ikiwa tutaanza kupigana wenyewe kwa wenyewe, ina maana kwamba itakuwa vigumu kutekeleza malengo na shabaha ya Bunge.

Kwa vile wameweza kukubali kwamba walikiuka maadili kwa upande fulani, ni jambo la sawa kwamba waombe msamaha ili tuweze kusonga mbele.

Asante Bi. Naibu Spika kwa kunipa fursa hii.

Sen. Farhiya: Thank you, Madam Deputy Speaker. I am glad that I am the final one because that is what I wanted to request you. Since they have already agreed to work together and their relationship is cordial, that problem is past tense. Therefore, it is my request that we just ask them to apologize and we finish this matter now.

I thank you, Madam Deputy Speaker.

(Question put and agreed to)

The Deputy Speaker (Sen.) Prof. Kamar): Hon. Senators, having passed that, I now want to give another Communication relating to the decision that we have just made.

COMMUNICATION FROM THE CHAIR

REPORT OF THE PARLIAMENTARY COMMITTEE OF POWERS AND PRIVILEGES REGARDING THE CONDUCT OF SEN. KWAMBOKA AND SEN. SENETA

Hon. Senators, the Committee of Powers and Privileges undertook an inquiry pursuant to its mandate under Section 15(4) and the Parliamentary Powers and Privileges Act, 2017.

The Committee was of the opinion that pursuant to Section 16(e) of the Parliamentary Powers and Privileges Act, 2017, the two Senators engaged in a conduct that

reflected adversely on the dignity and integrity of Parliament and the Senate in particular, contrary to the best interests of Parliament and its Members.

Accordingly, the Committee of Powers and Privileges recommended that pursuant to Section 17(3)(b) and (c) of the Parliamentary Powers and Privileges, Act, 2017, Sen. Beatrice Kwamboka, MP, and Sen. Mary Seneta, MP, be reprimanded for breach of privilege and ordered to apologize to the House from the Bar.

Hon. Senators, this recommendation has been adopted by the Senate a few minutes ago, and subsequent to that decision, Sen. Beatrice Kwamboka, MP and Sen. Mary Seneta, MP, are now considered Strangers until they have been reprimanded and tendered a suitable apology to the Senate, in accordance with Section 17(3)(b) and (c) of the Parliamentary Powers and Privileges Act, 2017.

Paragraph 4 of the Third Schedule of the Parliamentary Powers Privileges Act, 2017 vests in the Speaker the authority to administer disciplinary action recommended by the Committee on Powers and Privileges and adopted by the House.

Hon. Senators, the said paragraph provides that where the House adopts any recommendation of the report for disciplinary action, with or without amendments, the Speaker shall forthwith take action accordingly.

Hon. Senators, I, therefore, order the Serjeant-at-arms to escort the two strangers; Ms. Beatrice Kwamboka and Ms. Mary Seneta, if they are in the Chamber, and ensure that they withdraw from the Chamber and take seats at a suitable place designated for strangers at the Bar. Thereafter, I will call each one of them to the Bar for disciplinary action as resolved by the Senate.

I thank you.

*(The Serjeant-at-arms escorted Ms. Seneta and
Ms. Kwamboka to the Bar)*

COMMUNICATION FROM THE CHAIR

REPRIMAND TO SEN. KWAMBOKA

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, I now call upon Sen. Kwamboka. Hon. Senators, by the authority and the powers conferred on the Speaker, and following the adoption of the Report of the Committee on Powers and Privileges, I wish to state as follows:

That on Wednesday, 1st, July, 2020 during the election of the position of Chairperson and Vice-Chairperson of the Standing Committee on Health in the precincts of Parliament you, Ms. Makori Beatrice Kwamboka, engaged in a scuffle with a fellow Senator in violation of Section 16 (e) of the Parliamentary Powers and Privileges Act, 2017.

That your conduct on the said date reflected adversely on the dignity of the Senate and its Members. This House expresses its displeasure on your conduct, which brought disrepute to the Senate and its Membership.

You are hereby reprimanded and warned to refrain from engaging in such behavior, whether in public or private life.

I now require you to tender an apology to the Senate forthwith.

Sen. Kwamboka: Madam Deputy Speaker, I, Kwamboka, hereby tender my unreserved apology to this House for having acted in a manner which, pursuant to Section 16(e) of the Parliamentary Powers and Privileges Act, 2017, constituted a breach of privilege that reflected adversely on the dignity and integrity of Parliament and its Members, and was contrary to the best interest of Parliament and its Members.

I undertake that I shall abide by the responsibilities of leadership as set out in the Constitution, the Leadership and Integrity Act, 2012 and the Parliamentary Powers and Privileges Act, 2017.

I thank you.

The Deputy Speaker (Sen. (Prof.) Kamar): Sorry, we missed part of your reading the last paragraph.

Sen. Kwamboka: I, therefore, beseech to be admitted to the Chamber.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Senator. Your apology is accepted. You are required to go to the desk right here to submit the same.

(Sen. Kwamboka walked to the Clerks-at-the-Table and submitted her written apology)

Sen. Faki: On a point of Order, Madam Deputy Speaker.

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

Sen. Faki: Madam Deputy Speaker, the apology read by Sen. Kwamboka does not include her full name as stated by the Communication from the Chair. She said, "I Beatrice and I Kwamboka." The name should be cited the same way it was read in the Report and in the Communication from the Chair.

The Deputy Speaker (Sen. (Prof.) Kamar): Let us verify if it is the same Kwamboka, we are talking about. The Clerk will do the verification shortly.

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

Sen. Mutula Kilonzo Jnr.: On a point of order, Madam Deputy Speaker. We have not seen this before. When the apology is read is it you, Madam Deputy Speaker, to accept the apology or us? I thought you would say: "Members, I put the question. Do you accept the apology?" Then we say, "Yes" or something like that.

The Deputy Speaker (Sen. (Prof.) Kamar): I gave you opportunity to have three Senators from each side to say whether the Report is adopted. Having adopted it, the remaining part was mine. I have just implemented what should be implemented.

On the question that was raised by Sen. Faki, on the issue of the names, I have perused. I may not have heard that she skipped some of the names, but we have verified that all the names are here. So, we are okay.

Allow me to call on the next Senator, Sen. Seneta.

Sen. Kwamboka, please take your seat.

(Sen. Kwamboka walked into the Chamber)

Now, you are becoming a stranger indeed. Sen. Kwamboka, you have not been admitted to the seat.

(Laughter)

(Sen. Kwamboka walked to the Bar, bowed to the Chair and took her seat)

(Applause)

REPRIMAND TO SEN. SENETA

Hon. Senators, by the authority and the powers conferred on the Speaker, and following the adoption of the Report of the Committee of Powers and Privileges, I wish to state as follows:

Sen. (Dr.) Lelegwe: On a point of order, Madam Deputy Speaker.

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. (Dr.) Lelegwe, what was your point of order?

Sen.(Dr.) Lelegwe: Madam Deputy Speaker, I have seen my neighbour here, Sen.(Dr.) Mbito, walking to the Dispatch Box while you were on your feet. Is he in order?

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. (Dr.) Mbito, were you walking around when I was concentrating on delivering a message?

Sen. (Dr.) Mbito: I apologize, Madam Deputy Speaker.

The Deputy Speaker (Sen. (Prof.) Kamar): Okay. I take the apology because I did not see you.

(Laughter)

Hon. Senators, by the authority and the powers conferred on the Speaker, and following the adoption of the Report of the Committee of Powers and Privileges, I wish to state as follows:

That on Wednesday, 1st, July, 2020 during the election for the position of Chairperson and Vice-Chairperson of the Standing Committee on Health in the precincts of Parliament you, Ms. Mary Yiane Seneta, engaged in a scuffle with a fellow Senator in violation of Section 16 (e) of the Parliamentary Powers and Privileges Act, 2017.

That your conduct on the said date reflected adversely on the dignity of the Senate and its Members. This House expresses its displeasure on your conduct, which brought disrepute to the Senate and its Membership.

You are hereby reprimanded and warned to refrain from engaging in such behavior, whether in public or private life.

I now require you to tender an apology to the Senate forthwith.

Sen. Seneta: Madam Deputy Speaker, I, Yiane Mary Seneta, hereby tender my unreserved apology to this House for having acted in a manner which, pursuant to Section 16(e) of the Parliamentary Powers and Privileges Act, 2017, constituted a breach of privilege and reflected adversely on the dignity and integrity of Parliament and its Members, and was contrary to the best interest of Parliament and its Members.

I undertake that I shall abide by the responsibilities of leadership as set out in the Constitution, the Leadership and Integrity Act, 2012 and the Parliamentary Powers and Privileges Act, 2017.

Madam Deputy Speaker, I, therefore, beseech to be admitted to the Chamber.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Sen. Seneta Mary Yiane. I now admit you back to the Chamber. Please, bring a copy of your apology to the Clerks-at-the-Table.

(Sen. Seneta walked to the Clerks-at-the-Table and submitted her written apology)

Hon. Senators, we will now go back to the Order Paper.
Next Order!

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

Hon. Senators, there is a very strong request that I continue to reorganize the Order Paper. I will reorganize because there are three Motions that are at Division level.

I want to start with Order Nos.10, 11 and then 9, so that we vote for the three today and get them out of the Order Paper. We will then go back to Statements.

Hon. Members, please, take your seats.

Next Order.

BILLS

Third Reading

THE COUNTY ALLOCATION OF REVENUE BILL (SENATE BILLS NO. 7 OF 2020)

The Deputy Speaker (Sen. (Prof.) Kamar): I now direct that the Division Bell be rung for three Minutes.

(The Division Bell was rung)

Hon. Senators, please, come in and settle down. We need two Tellers. Where are the Whips to give us the names? We already have Sen. Farhiya for the Majority side. Can we have a Teller for the Minority side? Whips, can you give us a Teller for the Minority side? Sen. Kwamboka and Sen. Farhiya are already here.

Hon. Senators, we will vote by Roll Call. We want to start voting.

I now want to put the question. Please, settle down. Can you take your seats, please?

Hon. Senators, I would now like to put the question; that The County Allocation of Revenue Bill (Senate Bills No.7 of 2020) be now read a Third Time.

We already have two Tellers. Sen. Farhiya and Sen. Kwamboka. The two Senators, kindly, come forward.

(Loud consultations)

Hon. Senators, please, consult in low tones because the Roll Call voting is beginning.

(The Senators proceeded to vote by Roll Call)

(Voting in progress)

DIVISION

ROLL CALL VOTING

(Question, that the County Allocation of Revenue Bill be now read a Third Time put and the Senate Proceeded to vote by County Delegations)

AYES: Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. Haji, Garissa County; Sen. (Eng.) Hargura, Marsabit County; Sen. (Dr.) Kabaka, Machakos County; Sen. M. Kajwang', Homa Bay County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kang'ata, Murang'a County; Sen. Kibiru, Kirinyaga County; Sen. Kihika, Nakuru County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County; Sen. (Dr.) Lelegwe, Samburu County; Sen. Linturi, Meru County; Sen. Loitiptip, Lamu County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Mahamud, Mandera County; Sen. (Dr.) Mbito, Trans Nzoia County; Sen. Mpaayei, Kajiado County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jr., Makeni County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita-Taveta County; Sen. Ndwiga, Embu County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. Orengo, Siaya County; Sen. Outa, Kisumu County; Sen. Poghio, West Pokot County; Sen. Sakaja, Nairobi City County; Sen. Wamatangi, Kiambu County; Sen. Wambua, Kitui County; and, Sen. Wario, Tana River County.

Teller of the Ayes: Sen. Farhiya.

NOES: Nil.

Teller of the Noes: Sen. Kwamboka.

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, the results of the vote on the County Allocation of Revenue Bill (Senate Bills No.7 of 2020) are as follows:

AYES: 38

NOES: Nil.

ABSENTIONS: Nil.

The "Ayes" have it.

(Question carried by 38 votes to Nil)

(The Bill was accordingly read the Third time and passed)

Second Reading

THE PROMPT PAYMENT BILL
(SENATE BILLS NO. 3 OF 2020)

(Sen. Farhiya on 2.6.2020)

(Resumption of Debate interrupted on 23.9.2020)

The Deputy Speaker (Sen. Prof.) Kamar): Hon. Senators, the next vote will be on Order No.11, The Prompt Payments Bill (Senate Bills No. 3 of 2020).

We will do Roll Call Voting. We shall retain our ‘returning officers’, Sen. Farhiya and Sen. Kwamboka.

(The Senators proceeded to vote by Roll Call)

DIVISION

ROLL CALL VOTING

(Question, that the Prompt Payment Bill (Senate Bills No. 3 of 2020) be now read a Second Time put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. Haji, Garissa County; Sen. (Eng.) Hargura, Marsabit County; Sen. (Dr.) Kabaka, Machakos County; Sen. M. Kajwang’, Homa Bay County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kang’ata, Murang’a County; Sen. Kibiru, Kirinyaga County; Sen. Kihika, Nakuru County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County; Sen. (Dr.) Lelegwe, Samburu County; Sen. Linturi, Meru County; Sen. Loitiptip, Lamu County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Mahamud, Mandera County; Sen. (Dr.) Mbito, Trans Nzoia County; Sen. Mpaayei, Kajiado County; Sen. Murkomen, Elgeyo Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita Taveta County; Sen. Ndwiga, Embu County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. Orengo, Siaya County; Sen. Outa, Kisumu County; Sen. Poghisio, West Pokot County; Sen. Sakaja, Nairobi City County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County and Sen. Wambua, Kitui County;

Tellers of the Ayes: Sen. Farhiya

NOES: Nil.

Tellers of the Noes: Sen. Kwamboka

The Speaker (Hon. Lusaka): Order, hon. Senators. The results of the Division are follows:

AYES: 38

NOES: Nil

ABSENTIONS: Nil.

(Question carried by 38 votes to Nil)

(The Bill was Read a Second Time and committed to a Committee of the Whole tomorrow)

The Deputy Speaker (Sen.) (Prof. Kamar): Senators, we have a last vote to make. The last vote is on Order No.9, Provision of Cemetery, Funeral Parlours and Crematoria in all counties by Sen. (Dr.) Alice Milgo.

MOTION

PROVISION OF CEMETERY, FUNERAL PARLOURS AND CREMATORIA IN ALL COUNTIES

THAT, AWARE THAT under Article 61 of the Constitution of Kenya, land in Kenya is classified into three categories, public, Community and private land;

FURTHER AWARE THAT, public land is vested in both the County and National Governments and is managed on their behalf by the National Land Commission, and that Article 62 (2) clarifies the distribution of public land between the two levels of government.;

COGNIZANT THAT, the Fourth Schedule of the Constitution delegates cemeteries, funeral parlours and crematoria as a function of County Governments;

CONCERNED THAT, cemeteries in the Country are filling up, and counties are finding it increasingly difficult to identify land to allocate as “public” for use as a cemetery with the knowledge that any cemetery or burial-place that is crowded and therefore dangerous to health is defined as constituting a nuisance in the Public Health Act;

NOW THEREFORE, the Senate calls upon the county governments to ensure that funds are allocated in the County Annual Development Plans for FY 2020/2021, towards the planning and development of cemetery, funeral parlours and crematory facilities.

(Sen. (Dr.) Milgo on 12.3.2020)

(Resumption of Debate interrupted on 12.3.2020)

The Deputy Speaker (Sen.) (Prof. Kamar): Hon. Senators, I will now put the Question.

(Question put)

Our votes are going to be by Roll Call. I call on the two Senators, Sen. Farhiya and Sen. Kwamboka, to come forward and tally the votes.

(Roll Call voting in progress)

DIVISION

ROLL CALL VOTING

(Question, that the House approves the Motion on provision of Cemetery, Funeral Parlours And Crematoria In All Counties put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. (Eng.) Hargura, Marsabit County; Sen. Iman, Garissa County; Sen. (Dr.) Kabaka, Machakos County; Sen. M. Kajwang', Homa Bay County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kang'ata, Murang'a County; Sen. Kibiru, Kirinyaga County; Sen. Kihika, Nakuru County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County; Sen. (Dr.) Lelegwe, Samburu County; Sen. Linturi, Meru County; Sen. Loitiptip, Lamu County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Mahamud, Mandera County; Sen. (Dr.) Mbito, Trans Nzoia County; Sen. Mpaayei, Kajiado County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita-Taveta County; Sen. Ndwiga, Embu County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. Orengo, Siaya County; Sen. Outa, Kisumu County; Sen. Poghisisio, West Pokot County; Sen. Sakaja, Nairobi City County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; and, Sen. Wambua, Kitui County.

Teller of the Ayes: Sen. Farhiya

NOES: Nil

Teller of the Noes: Sen. Kwamboka

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, we now have the results: They are as follows-

AYES: 38

NOES: Nil

ABSTENTIONS: Nil

The "Ayes" have it.

(Question carried by 38 votes to Nil)

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

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

The Speaker (Hon. Lusaka): Order, Members! If you remember, last week, I did commit myself that I will be allowing a lot of time this afternoon for us to discuss the Managed Equipment Services (MES) Report. Therefore, the Statements here under Standing Order No.48 (1) will just be read and committed to the Committees, so that we go straight to the debate on the Report of the *Ad Hoc* Committee on MES.

Senator for Homa Bay County, Sen. M. Kajwang', kindly, proceed.
Clerk, please, read the Order.

STATEMENTS

The Speaker (Hon. Lusaka): Sen. M. Kajwang', kindly, proceed.

ALLEGED INDUSTRIAL STRIKE BY HEALTH WORKERS IN HOMA BAY COUNTY IN THE MIDST OF COVID-19 PANDEMIC

Sen. M. Kajwang': Mr. Speaker, Sir, at a past sitting, you allowed me to pass this Statement to the relevant Committee. To avoid wasting the time of the House, just allow me to report that the Committee on Health has already taken action on my Statement on the strike by health workers in Homa Bay County.

Mr. Speaker, Sir, they have called the Governor and the workers, and as I speak, the matters that I raised in that Statement have been resolved and the Committee is even planning a visit to Homa Bay County.

Thank you, Mr. Speaker, Sir.

(Applause)

The Speaker (Hon. Lusaka): Thank you, Sen. M. Kajwang'.
Sen. (Dr.) Ali, what is your intervention?

ABDUCTION AND DISAPPEARANCE OF MEMBERS OF THE PUBLIC

Sen. (Dr.) Ali: Thank you, Mr. Speaker, Sir. Before you go to the other Statements, I raised a Statement here on issue of abduction, which was very urgent. You had ordered the Cabinet Secretary (CS) for the Ministry of Defence and Internal Security to appear before the relevant Committee. Up to now, we have not heard anything from that issue. That young man has not yet been found. The family members were the whole of today going around mortuaries looking for him. From there, they said that they want to go to Ngong Hills and other places to check for his body.

Mr. Speaker, Sir, when can we get an answer from the concerned authorities on the whereabouts of this young man?

The Speaker (Hon. Lusaka): It is unfortunate the Chair of the Committee on National Security, Defence and Foreign Affairs had a slight accident. He was flown in this morning, and I was able to receive him at Wilson Airport. I think he slipped and hurt his hip. He was brought by the African Medical and Research Foundation (AMREF) flight.

He had had a discussion with the CS. I will find out exactly what they agreed and give you a feedback by Thursday.

Sen. Were, kindly, proceed.

EMERGENCY FUND WITHIN TRADE UNIONS

Sen. Were: Thank you, Mr. Speaker, Sir, I also brought a Statement here on the issue of the emergency fund within the trade unions that was sent to the Committee on Labour, and Social Welfare some months ago. The answer that was brought was unsatisfactory, and the Chair agreed with me. They were to bring back a better answer. That has not been done.

FRUSTRATIONS OF PENSIONERS BY PENSIONS DEPARTMENT

I also requested a Statement on the frustrations within the Pension Department; frustrations of pensioners. That has not been handled yet. I know that the Chair was busy with the *Ad Hoc* Committee on COVID-19 Situation in Kenya, but now that he is available and I know he is diligent, could he expedite this matter?

I thank you.

The Speaker (Hon. Lusaka): The Chairman has heard. Sen. Sakaja, I can see you want to---

Sen. Sakaja: Thank you, Mr. Speaker, Sir, it is true those Statements were brought, but you remember during this period, I was also chairing the 12 disciples on the Revenue Formula. Now we are free. Therefore, we shall expedite them. Sen. Petronila Were, please, do not be worried. I will give you a response very soon; within the next one or two weeks.

I commit to do that, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Thank you. Sen. Cherargei, I can see you have an intervention.

NON-PAYMENT OF WORKERS BY NANDI COUNTY GOVERNMENT

Sen. Cherargei: Mr. Speaker, Sir, there is a Statement I brought on urgency on firing of around 394 employees in Nandi County and the county government subsequently went ahead to put a nullification notice in the newspapers.

Mr. Speaker, Sir, I had requested last week that Committee on Labour and Social Welfare, through the able Chair, Sen. Sakaja, to give us an interim report, since they have not been paid and yet they have been fired through a national newspaper.

RAMPANT POWER BLACKOUTS IN NANDI COUNTY

Secondly, I have seen your Communication on electricity. Since it is an urgent matter, I was requesting that you vary, so that the CS can appear before the Committee this week. The issue of blackouts in Nandi is becoming rampant and erratic. You had directed that it becomes a matter through the Committee on Energy, but through the old Committee.

The issue of electricity is a live matter, and most Senators in this House have a similar problem.

Mr. Speaker, Sir, I have never seen a situation where a witness is directing the Speaker to come at the convenient time or the comfort of that witness. I think there is something wrong there.

I thank you.

The Speaker (Hon. Lusaka): Is Sen. (Eng.) Maina present? He is the one who requested they vary the date since they need time to bring a response to what had been raised. We agreed they are coming to a Committee of the whole House led by the Committee on Energy but I have given him discretion.

Next Statement by, Sen. (Dr.) Mwaura, deferred.

OPERATIONALIZATION STATUS OF THE COUNSELLORS
AND PSYCHOLOGISTS ACT, 2014

(Statement deferred)

Next Statement by Sen. (Eng.) Hargura.

UTILIZATION OF THE ROAD MAINTENANCE
LEVY FUND BY COUNTY GOVERNMENTS

Sen. (Eng.) Hargura: Mr. Speaker, Sir, I rise pursuant to Standing Order 48 (1) to seek a Statement from the Standing Committee on Roads and Transportation regarding the utilisation of the Roads Maintenance Levy Fund by the county governments. In the Statement, the Committee should-

(1) State whether the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works has amended the Third Schedule to the Kenya Roads Board Act to designate county governments as road agencies. If so, provide the gazette notice on the same.

(2) Table evidence that Kenya Roads Board has issued instructions to county governments as road agencies concerning the utilisation of the fund as pertained to planning and distribution of maintenance works in the counties.

(3) Provide a breakdown of the amounts disbursed to each county from the financial year 2015/2016 to date and indicate the maintenance works undertaken.

Lastly, explain whether the Kenya Roads Board carries out audit of the utilisation of the funds and provide a summary of the audit findings both financial and technical on how each county government has utilised the funds from Financial Year 2015 to date.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): It is committed to the Standing Committee on Roads and Transportation. Senator of Lamu, Sen. Loitiptip, proceed.

NON-PAYMENT OF HEALTH SERVICE ALLOWANCE TO
AMBULANCE DRIVERS AND SUPPORT STAFF

Sen. Loitiptip: Thank you, Mr. Speaker, Sir for giving me this opportunity. rise pursuant to Standing Order 48 (1) to seek a Statement from the Standing Committee on Health regarding non-payment of the health service allowance to ambulance drivers and support staff working in hospitals and health facilities in Kilifi, Lamu, Tana River, Mombasa, Kwale and Taita Taveta county governments. In the Statement, the Committee should-

(I) State the reasons for failure by the county governments of Kilifi, Lamu, Tana River, Mombasa, Kwale and Taita Taveta, to pay health service allowance to employees in job group D-F, consisting mainly of ambulance drivers and support staff contrary to the provisions of a circular from the Salaries and Remuneration Commission(SRC) reference No. SRC/TC/HW1/VOL1/61 dated 9th March, 2017.

Lastly, outline the measures put in place if any to ensure that these cadres are expeditiously paid their due allowances which have been pending for the last three years. That they are not left out in any allowances that will apply to other health workers in future.

The Speaker (Hon. Lusaka): It is hereby committed. That brings us to the end of Statements. The Statements under Standing order 51 1(a) and 51 1(b) stand deferred.

DEATH OF A PATIENT AT M.P. SHAH HOSPITAL DUE
TO ALLEGED NEGLIGENCE

ACTIVITIES OF THE COMMITTEE ON AGRICULTURE, LIVESTOCK
AND FISHERIES

ACTIVITIES OF THE COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL
RELATIONS

ACTIVITIES OF THE COMMITTEE ON FINANCE AND BUDGET

(Statements deferred)

MOTION

ADOPTION OF THE REPORT OF THE *AD HOC*
COMMITTEE ON MES

THAT, the Senate adopts the Report of the Ad-Hoc Committee on Managed Equipment Services on inquiry into the Managed Equipment Services Project by the Ministry of Health, laid on the Table of the Senate on Tuesday, 8th September, 2020.

(Sen. Dullo on 24.9.2020)

(Resumption of Debate interrupted on 24.9.2020)

The Speaker (Hon. Lusaka): Sen. Mutula Kilonzo Jnr., you had a balance of 15 minutes.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Speaker, Sir. As I was making my submissions last week, the question of cost in the Report is unanswered. This program is titled Managed Equipment Services (MES). This service according to what we have been passing is supposed to be a leasing contract. When the Committee was supposed to address this issue, in paragraph 61, page 49, this is what they said-

“Most equipment supplied under MES project did not require frequent changes in technology. As such, there was no value for money by acquiring the equipment through MES rather than the outright purchase”

Mr. Speaker, Sir, that conclusion is a contradiction. This is why we are saying the chapter on report by the distinguished Committee, chapter six is a contradiction of the whole report. I will say this without fear, that the chapter on recommendations, chapter six, was done by a different person from chapter one to five. They appear to have been reading from a different script.

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

The Speaker (Hon. Lusaka): What is your point of intervention Sen. Dullo?

Sen. Dullo: Thank you, Mr. Speaker, Sir. Is it in order for Sen. Mutula Kilonzo Jnr. to say that recommendations of this Report were done by a different person while it is clear the Report was signed by the nine Member Committee?

The Speaker (Hon. Lusaka): It is a point of debate.

Sen. Mutula Kilonzo Jnr.: It is not merely a Statement of fact.

The Speaker (Hon. Lusaka): Sen. Mutula Kilonzo Jnr., do you want to be informed by Sen. Wambua?

Sen. Wambua: Mr. Speaker, Sir, I would hate to interrupt my brother the Senator for Makueni. However, just to inform you and it would be for the benefit of the entire House as we debate this Report. Let us draw a distinction between leasing and MES. If we do not do that, we will end up in trouble. What we are dealing with is a new concept that has been improved into placement. We came from leasing into MES which is what we are dealing with. Now the world has moved from there to placements.

Let me just say something about MES. In this scheme, can I just finish? I am not defending the Report but explaining the difference between leasing and MES.

The Speaker (Hon. Lusaka): He is on a point of order. So let him conclude.

Sen. Wambua: You will achieve what you want but let me make my point.

MES is a situation where the equipment we have in our hospitals does not belong to us. The only thing we are paying for in those hospitals is the service we are getting from the equipment. It is a risky thing. The torch we bought at Kshs1 million does not belong to us but we are paying for the light we are getting from the torch for seven years.

Thank you, Mr. Speaker. Sir.

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

Sen. Kinyua: Mr. Speaker, Sir, the Report is with us and we are reading it. If they had not written everything in it, they would have asked for more information so that they include everything in it. We are responding to what is in it.

The Speaker (Hon. Lusaka): That is okay. Let Sen. Mutula Kilonzo Jnr. proceed.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, the reason I am raising these concerns is because the last chapter in this Report is on the recommendations which the Committee would like us to vote on. Therefore, the recommendations cannot be ambiguous and leave us with questions. For example, on page 61, the paragraph on whether this was direct purchase or lease of basic equipment is not answered. There is no recommendation on what this House should do about it.

Mr. Speaker, Sir, is it possible that the Government entered into a euphemism of purchase and pretended that it was leasing? The question must be answered because I lease my printers and I only pay for consumables.

The tragedy is that the Ministry itself drafted and has a list of purchase. Did this criminal enterprise get into a direct purchase disguised as leasing? Why do we call it a leasing contract? Why does the Committee pose a question which they do not answer? Who is supposed to answer that question? That is the concern that I have.

This Report is well authored, but the conclusions appear to be disjointed from the body. Let me just give you a highlight of what the Committee says on pages 22 and 249. The Committee identifies this is a leasing contract where you are supposed to buy high end equipment for a short period of time. In the end, you return the equipment if you do not need it.

Mr. Speaker, Sir, the question that has not been addressed is what happens after the seven-year lease? Do we return this equipment now that we have placed it in our hospitals? Do we buy it? What do we do? When we are praising Mombasa for doing a good job, what happens after the seven-year contract? Do we transfer the same?

As you show me the red light, I was given 15 minutes.

The Speaker (Hon. Lusaka): I am told that it was only six minutes.

Sen. Mutula Kilonzo Jnr.: You said it was 13 minutes.

The Speaker (Hon. Lusaka): Yes, I did but I have been advised by the Clerk. It was only six minutes.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, you have revised your ruling?

The Speaker (Hon. Lusaka): Yes, I have revised my ruling.

Sen. Mutula Kilonzo Jnr.: Let me try and finish then.

The reason I said that recommendations of this Committee appear to be in contradiction with the body of their report is that in the conceptualization of this project, on page 77, they identify what this project was supposed to do and who was supposed to do it. This is what they said on page 81 on the Committee Observations.

“Mr. James Macharia, the Cabinet Secretary (CS), Transport, Infrastructure, Housing and Urban Development was the CS for Health between 2013 and 2015. It was during his tenure that the Ministry of Health proposed the specialized medical equipment---”

They have already identified the problem. When it comes to the conclusion, they say that some public officials entered into contracts that are not known. When it comes to lawyers, and in particular on pages 96 and 97, something very strange happened. They say the contractors contributed donations for legal fees. This is unheard of. Here we are being

told that the law firms were part of the contractors. This is what we refer to as a direct conflict.

When the Committee makes recommendation on page 249, it says that GE East Africa Services refused to appear before it. One of the contractors, Phillips Medical Systems were paid late. They were paid a late payment fine of Kshs6 million. This is on page 249. Under the Public Finance Management (PFM) Act, this is a violation. Under Section 198 of the Act, the person who caused this late payment should have been sanctioned.

Mr. Speaker, Sir, I thought I was going to say more, but I do not have time. It is not enough to say that this was criminal enterprise. It is not enough to use the words “if” in this Report. This was criminal action by persons who are known – the CSs and the Permanent Secretaries (PSs) who are known. They signed the contracts and lawyers were involved. They did not bring in a priest. PKF Kenya were paid for work which they did in three days. You cannot travel to 47 counties in three days. Somebody should have been sanctioned. Public officials should have been told to step aside. There is nothing to hide.

As I wind up, I do not agree with those who say that we should throw out this Report. The Committee of the Whole should take cognizance of it and we amend it. We should amend it to conform to what we are saying. Let us not do a Ruaraka on it. It will be an indictment on the Senate if we do a Ruaraka on it.

Mr. Speaker, Sir, I support with those amendments.

Sen. Cheruiyot: Thank you, Mr. Speaker, Sir. I wish to make my contribution on this Report because it is good work done by our colleagues. I had the opportunity to listen to the presentation from the Committee itself and now reactions from colleague Senators, after reading it.

First of all, I commend our colleagues who served in this Committee for work well done. I have misgivings and areas that I consider fatal to it I will later speak about. However, before I get there, I wish to take time to appreciate that not many Committees of this House go to the depth of issues as this particular Committee on leased medical equipment did. They have brought to light various issues that Kenyans have asked themselves over the last five or six years about this scandal.

Mr. Speaker, Sir, I say this with a lot of nostalgia because one time in the year 2015 as a young man going about my duties, there was a function in Kericho County. Amongst the dignitaries who came to grace the occasion that day were colleague Senators and some of them are still Members here. They had come to do what most of us do on every other weekend, perform our social welfare duties as citizens of this Republic and speak about one or two things that affect our society.

There was a general heated debate across the country about governors who had refused some equipment to be given to counties. At that time, I thought it is a donation because I was not a keen follower of the things that were happening. However, as fate would have it, 10 or 11 months down the line, I found myself in this House and I began to understand the challenges that our county governments were facing.

There was a lot of misinformation about why many governors were refusing to append their signatures on these contracts. I am glad that this Report indicts all the 46 first term governors and leaves out Gov. Isaac Rutto who refused to sign. This is because the

rest signed. All of them gave reasons why they signed for the equipment. We have read the ridiculous explanation by the Governor of Kakamega County. Much as it may look ridiculous, at that time, we were approaching a general election. This is Kenya and Kenyans are peculiar people.

Many a times, they are minimalists in their expectation of issues and how they appreciate different issues. It's either that you are "yes" or "no". I think this is a product of the 2005 debate on referendum, where since that time, Kenyans have always known all our debates to be about a "yes" or "no".

Just like the current debate on the Building Bridges Initiative where, despite the fact that there may be general consensus that there are things that we need to review, we are all being boxed into one situation, where you either support or you do not. It is a very bad culture within our country and I sympathize. Many of our governors found themselves in a situation whereby you either sign so that people in your county access medical services or you let people to die in our public hospitals.

It is under that cloud that many of our governors went on to sign. Of course, that is not to excuse their behavior because they should have behaved like their colleague, the then Governor for Bomet, Gov. Isaac Rutto who stuck to his guns and said; "my conscience cannot allow me to sign these things that are being done here".

Therefore, what this committee has done, reading through the report, from the annexures all the way to exposing how the project was conceptualized---

Allow me to spend a minute in explaining that this is one of the most poorly conceptualized public procurement projects in the Republic of Kenya. The first point of call for county governments, if you want to buy equipment--- Surely, how do you sit at Afya House and make decisions on behalf of County governments? I can bet you that because you know how people are employed in this country, perhaps the people who sat in that boardroom meeting have never crossed River Chania to the left and maybe not anywhere beyond Machakos Town and yet they are making decisions on behalf of people in Hola, Lodwar, Kericho, Kisumu.

Mr. Speaker, Sir, if the conception of this project was properly guided then the first cardinal rule that would have been observed is to ensure that you combine all our county governments so that you do a needs assessment course of what are the specific needs that each and every part of the country has.

We know the kind of diseases that the people of Kisumu battle are not similar to what we battle in Kericho. Even in Kericho, the county that I represent, I know that different parts of the county battle different kinds of diseases at different times. Therefore, it is not a one size fits all situation, where you can sit in Nairobi and say I want to supply the whole country with radiology machines, dialysis machines and that kind of conceptualization.

It is clear from the onset at conceptualization that this was all about making money. This has been properly brought out and, for that, I commend the efforts of our colleagues, that indeed they have spoken to the issues that many Kenyans have continued to ask over the years about this particular Report.

The greater challenge that we have as a House this afternoon is: What do we do with this report because as colleagues have pointed out, the recommendations are wanting.

The reason I am saying this is because - and Sen. Mutula Kilonzo Jnr. I agree with you - about two weeks ago I sent a petition to our county assembly about various issues that were of concern to me as the Senator in charge of Kericho. When the recommendations came back, they were just as generic as what is in this report; we are recommending DCI, we are recommending EACC. Fortunately, I took time to call the clerk of the county assembly of Kericho who worked on the report because he is somebody who is known to me. This is somebody with whom went to school together. I asked him: "Why would you recommend such?" He said that many of their reports, they draw the context and the wording from the reports that are produced in parliament and the Senate. Therefore, we must do something that radically departs from what we are used to, generally.

This business of a Committee sitting and ensuring that they expose all the ills in a particular situation, then coming to be soft on the recommendations is something that this House today, is being called to make a radical decision on.

You cannot tell me that after you have invited a private entity like General Electric and they have refused to show up, yet at the end of the term of this contract they are going to make away with Kshs28 billion, that we can just allow it to pass and say we refer them to the EACC. Which EACC? The same EACC that for the last six or seven years has not been able to prosecute the people who painted containers in green and white, dumped them in Mombasa and told us that those were mobile clinics? We have got to be serious as a House and the options that we have are quite limited.

You will recall that I brought before you an amendment; and I do not want to revisit the ruling of the Speaker. I am well guided. However, I recall that on that day, I said that if I am not allowed to prosecute my amendment, then I will be forced to make a very difficult decision about this Report. I know that if I pass it as it is, that will be giving a pat on the back of the thieves that have executed this particular contract.

It is unfortunate, but I call upon our colleagues to think through and let us make a decision that Kenya will eventually be proud of.

I do not mind even waiting on decision making on this particular report because if it goes as it is, the companies that have been mentioned here, they are not just ordinary people. A company that does business with the Government of Kenya and is given business worth Kshs28 billion, this is not just business that you are given by a procurement officer. I daresay, that is not business that can be given just by a Cabinet Secretary. That is big business! In order for the KRA to collect Kshs28 billion, sometimes it takes almost a month. Therefore, for you to give a private entity, the ability to transact with you, like General Electric did in this particular deal, these are people that have connections in high places.

If you read through the Report, you will realize that the companies that were involved in that scandal of mobile clinics, the containers that have been in Mombasa for the last five, six, seven years and nothing has been done about it, are the same companies that we are reading about, even in this particular current KEMSA scandal of COVID-19 millionaires. These are the same sharks who took donations from Jack Ma and you want to tell us we send them to DCI. What will Kinoti do to them? It is only us, as Parliament, that can make a decision with finality on what to do with these particular people.

I am being forced to make a difficult decision this afternoon, to think because time--

*(Hon. Senators cheered as Murkomen
walked into the Chamber)*

The Speaker (Hon. Lusaka): Sen. Murkomen, why are you causing a lot of excitement with your entry?

Proceed, Sen. Cheruiyot.

Sen. Cheruiyot: Mr. Speaker, Sir, you remember I had mentioned something about certain Senators who visited my county at that particular time. I need not say more but some of them have just walked in.

(Laughter)

Sen. Murkomen: And forced the governor!

Sen. Cheruiyot: And forced Gov. Chepkwony that if he does not sign, he will face the music come 2017.

Mr. Speaker, Sir, I am speaking to the issues that have been brought before us, that as a House of Parliament, we must make a decision. We must vary this business of referring people back to the EACC and the DCI.

You must name public officials. The Attorney-General came before us and gave this Committee, because I took time to watch some of the submissions that were brought. On one day he came and said he never signed this contract. On another day, he said: "I did it but under duress." He must explain. You were duty-bound as a committee to ask Attorney-General Githu Muigai to tell this House, who is it that forced his hand to sign this particular contract? If you do not expose him, for sure you are making it a joke. CS Mailu, a good gentleman, appeared before this committee. He sat where Sen. Kabaka is seated today and told the committee that a PS told him that those contract documents are State secrets, that for the two or three years that he was Minister for Health he never saw them; yet that PS has not been indicted in this report.

Honestly, good people, when you tell us that you want to refer the same people to the EACC and DCI and you make generic, general comments about it, are we not just handing another eating expedition to the officials of the EACC and DCI because we live in Kenya and we know what will happen?

If as Parliament we want to be serious with it, the options are before us. Either we have a stay on the decision until we make a decision on how do we enlarge, now that the window for making amendments has been stopped. I do not mind exercising Standing Order No. 58, waiting for another six months as this report is in purgatory, as we draft, one, what to do with these public officials that have been named. General Electric in Boston, the headquarters of this world conglomerate, they need to know that their subsidiary in East Africa involved itself in corrupt practices and when they were called to account before Parliament, they refused.

I do not mind waiting for six months. If that decision is a decision that I need to make today and put on hold by either abstaining or voting, 'no', until the right decision is made on the recommendation, I find it hard to support this Report in the current context.

I call upon my colleagues to think through it. Perhaps in the next few minutes as we debate, let people coalesce; let us be given options, but supporting it in the current format, I am afraid is not an option.

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Senators. Consult in low tones.

Sen. Cheruiyot: Mr. Speaker Sir, finally, because I know many of our colleagues want to speak on this issue, I have said that Section 58 of our Standing Orders is one of the options that I want to consider as I make a decision on this.

Finally, there are a few challenges on how you guide this project home. Sen. Mutula Kilonzo Jnr. may know that apart from being granted an opportunity to exercise authority on people who have misappropriated funds, we are also the leaders of this country. This is where we are expected to make a decision on this MES issue.

We can deal with the thugs who misled Kenyans into getting into this arrangement but as well appreciate that if I go---

I was in Kericho Hospital about a month ago and I saw the usefulness of some of that equipment. We cannot have a technical Committee advising us on what we do with the small contractual disputes that exist. For example, if you read through the Report, since three or four years ago when they received radiology and dialysis machines, they kept them somewhere. For example, it happened in Isiolo, Uasin Gishu and Trans Nzoia counties. We have to make a decision as a House on how we guide this project to its completion.

We can separate---

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

Sen. Sakaja: On a point of order, Mr. Speaker, Sir. I hate to interrupt Sen. Cheruiyot but I need your guidance. If you heard what Sen. Mutula Kilonzo Jnr., said and what Sen. Cheruiyot is saying, we are heading towards a place where a decision must be made.

(Sen. Olekina interjected)

You have not even heard what I have said. Wait! What is wrong with Sen. Olekina?

A question was asked last week. As debate continues, you need to guide the manner in which amendments can be proposed. To date, this Committee has sat for more than eight months and spent more Ksh11,462,000 on this work. Based on what the Report looks like, it will either completely fail or be passed as it is, yet many Members are of the feeling that we recommend certain well-considered amendments.

In the course of this debate, I seek that you guide us on how that can be done.

The Speaker (Hon. Lusaka): There are only two ways that you will do it. One, there is already an amendment which is with me here. It will be read and, of course, it will

go through the normal procedure. The second way is to vote. That is the way we have been determining matters in the House.

Once the amendment is brought on board, the House will vote. In the meantime, let us just continue with the debate.

Sen. Sakaja: Mr. Speaker, Sir, of course, I know how this is done. I have been in this House. The other time you had ruled that there are certain amendments you rejected and said that you would give us the reason in future.

What I understand and thank you is that, we were all at liberty not just during the Motion on the Revenue formula, we all brought amendments at different stages. We can still bring amendments in the course of the debate. That is the only clarity I wanted.

Thank you, for being very clear.

The Speaker (Hon. Lusaka): That is what I told you; that one amendment is already here. This was earlier approved. Wind up, Sen. Cheruiyot.

Sen. Cheruiyot: Mr. Speaker, Sir, there are two points I do not want my colleagues to lose me on. One is that, this Report as it is on the page of recommendations, is not satisfactory. It cannot be supported as it is.

I have given my way out. I have said that I aim to achieve two things out of that Ksh11.4 million of taxpayers' money that has been spent. One, nail the culprits. Secondly and most importantly, we live in this country and there is nobody else that will make decisions for Kenyans. There is nobody else who will rescue your counties to ensure that they at least get services, although it is difficult to get value for money in this project.

This Report has failed to address issues of ensuring that the machines are working, that we get what we are being billed for and sorting out all the technical issues. It has failed to ensure how we guide the project home and sort out all the technical issues raised by colleagues here.

Some of these technical issues include where certain counties, after signing the contract, have not gone ahead to build the spaces where this equipment can be used.

Failure to satisfactorily get a way out of the answers, I am willing to exercise Standing Order No. 58, which will force me to wait for another six months or to convince you because that Standing Order allows you to vary. I do not have to wait for six months. In the worst-case scenario, if this Report fails today, we can still do our amendments as you had proposed in a time, less than those six months.

Those are my two proposals and I hope as our colleagues raise issues on this Report, they will guide us and tell us. Please take us home on those two issues.

Sen. (Dr.) Kabaka: Thank you, Mr. Speaker Sir, for giving me this opportunity to make an amendment.

A lot has been said about this Report. At the preliminary stage - I say what lawyers say; that parties are bound by their own pleadings. In this case, when the makers of this Report admit that it is incompetent, to me I will submit that it is incompetent *ab initio*. They should live by the consequences. I am not going to tell them what to do. They know better.

Having seen this Report, and its own iniquities, I beg to move an amendment by deleting the full stop at the end and inserting the following words---

Sen. Mutula Kilonzo Jnr.: Where?

Sen. (Dr.) Kabaka: I am moving there Sen. Mutula Kilonzo Jnr. I can give you a copy if you want.

Mr. Speaker, Sir, give me a minute. I am moving first to paragraph 5, 6, 7 on pages 9 and 10 of the Report.

One, I want the following to be amended-

Paragraphs 5, 6, 7 on pages 9 and 10 of the Report. Those who have the Report can refer to the same. That deals with overall Committee's recommendations to the Ministry of Health submissions.

The Speaker (Hon. Lusaka): Sen. (Dr.) Kabaka, I am told you have to move the amendments before you start explaining what it is.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, the pages that my good friend is reading is the preface. He is amending the preface of the Report. There is no Paragraph 5 on page 9. That is what I was trying to correct and you cannot remove a full stop before you read a sentence. I am trying to understand.

Sen. (Dr.) Kabaka: Mr. Speaker, Sir, in all these amendments, I am seeking that I have seen a certain law firm known as Iseme Kamau Maema---

The Speaker (Hon. Lusaka): Move your amendment first.

Sen. (Dr.) Kabaka: I am moving the amendment as it is. The first one, paragraphs five, six and seven as it appears in the report and also moving the second paragraph, number two---

Sen. Mutula Kilonzo Jnr.: Where?

Sen. (Dr.) Kabaka: It is appearing on Page 78 of the Report. To be specific, it deals with the Committee's recommendation on the law firm of Iseme, Kamau and Maema.

The Speaker (Hon. Lusaka): Order! There was a typing error in the paging. After Page 143, it starts again with Page 2. It says: Page 9 after Page 143. However, let him move first, then we correct that.

Sen. (Dr.) Kabaka: Sorry, that is typographical from the Secretariat.

The other one is Paragraph two on page 170 of the Report. If you refer, it deals with the recommendation on Lot 7 contract. Those are the recommendations I am moving to be amended.

Sen. Mutula Kilonzo Jnr.: Which one?

Sen. (Dr.) Kabaka: The ones I have given. They are three.

Sen. Omogeni: Mr. Speaker, Sir, can I can inform the Senator what is in the Report?

The Speaker (Hon. Lusaka): Yes, Sen. Omogeni.

Sen. Omogeni: Thank you, Mr. Speaker, Sir. I just wanted to inform the Senator, who is moving the amendment that so that he can carry along the Senators, he needs to make reference to Page 9. After page 143, the renaming of Report starts afresh from Page 2, 3 all through up to Page 9. He needs to inform Members that he is moving to delete Paragraphs 5, 6 and 7 appearing on Page 9 and 10 of the Report, so that he is able to move along with the Senators.

(Loud consultations)

Just a minute. The confusion being created in the House is that Members are making reference to the preface of the Report and not the recommendations appearing after Page 143. I think that is the amendment that the Senator for Machakos County is moving.

Sen. Mutula Kilonzo Jnr.: Allow me to help, Mr. Speaker, Sir. In proper---

(Loud consultations)

The Speaker (Hon. Lusaka): Let us consult in low tones, so that we are on the same page.

Sen. Mutula Kilonzo Jnr.: In proper procedure, if you have a document that has continuous pagination, you cannot go to Page 143 and then have Page 9. What the Secretariat should have done is to allow this document to be renumbered. Otherwise, somebody reading this HANSARD would not understand what we are doing. You cannot read 143 and say after that, read Page 9.

Therefore, from Page 143, it should be 144, 145 *et cetera*. When I said that this Report was done by two or three people that is what I mean. The confusion is real.

The Speaker (Hon. Lusaka): Sen. M. Kajwang', kindly, proceed.

Sen. M. Kajwang': Mr. Speaker, Sir, with a lot of respect to Sen. (Dr.) Kabaka, and also taking into account the precedents and traditions of this House, it is not the duty of the House to sanitize the amendment that has been raised by Sen. (Dr.) Kabaka. It is his duty to move his amendment, get it seconded and convince Members. The amendment has not been moved and seconded. There are many of us who have been lining up to contribute to this debate from last week. Could the Senator be asked to move, be seconded and then we can debate?

The Speaker (Hon. Lusaka): That is exactly what I was saying; that the Senator needs to move, let him be seconded and then we get into the details. Can we allow Sen. (Dr.) Kabaka to do that?

Yes, Sen. Sakaja.

Sen. Sakaja: Mr. Speaker, Sir, according to the Standing Orders, a Member can move an amendment at any time. For good order, just give him time for this to first be sorted out. Leave alone the people in HANSARD, even us, we cannot follow. This Page two, three, four, five and six--- Please, could the Secretariat sort out the pagination and then the amendment can be moved later? We cannot follow.

The Speaker (Hon. Lusaka): Order, Senators! I think there is a lot of confusion, Sen. (Dr.) Kabaka, and there are Senators lined up to contribute. I will give time to the Secretariat to organize that as we have other Members contributing to the debate.

Sen. M. Kajwang', kindly, proceed.

Sen. M. Kajwang': Mr. Speaker, Sir, I rise, first all, to congratulate the team that worked on this Report. This team was led by none other than Sen. Fatuma Dullo, a colleague with whom we have sat in the same Committee in the past. I do recall at some point she was leading a Select Committee that was investigating reforms in the prisons and borstal institutions. I was her able Vice-Chair and I know her work ethics.

(Loud consultations)

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

Sen. M. Kajwang’: Mr. Speaker, Sir, I have no doubt that she applied the same level of diligence and rigour in coming up with this Report. This is the first time that we have had an *Ad Hoc* Committee that has run for one full year. If you read this Report carefully, you will notice that the Motion to establish the *Ad Hoc* Committee was carried out in September, 2019, and we are in September, 2020. This Committee has had more than 365 days to come up with a Report. That is the reason they have 365-page Report. They have been doing one page every day for the last one year.

This Report is detailed and tells us a lot about what happened. Anyone who wants to understand the chronology of this particular procurement exercise, what went wrong and should not have gone wrong, should be best advised to read the 360 plus pages that the Committee has brought to us.

When this matter came up and somewhere in this Report, it is indicated that the inception of this idea came from this House. Sen. (Dr.) Machage, the former Senator for Migori County, brought a Motion to this House compelling the Government to establish a Level 5 hospital in every county and a Level 4 hospital in every sub county. The Ministry of Health used that as justification for some of the actions that were taken.

However, our 47 counties are not equal. Indeed, a former Senator, who is currently a Governor, described this exercise as being similar to a husband of many wives buying the same size of dress for the various wives.

Mr. Speaker, Sir, you well know that a dress that would fit Senator---

The Speaker (Hon. Lusaka): Order, Senators! Because of the interests, I will give five minutes each. There is a lot of interest.

Sen. M. Kajwang’: Mr. Speaker, Sir, that applies to the next speaker and not to the one on the Floor. That has been the tradition in this House.

The Speaker (Hon. Lusaka): I will give you six minutes.

Sen. M. Kajwang’: Mr. Speaker, Sir, a dress that fits Sen. M. Kajwang’ definitely, cannot fit Sen. Cherargei.

The Speaker (Hon. Lusaka): Sen. Omogeni, what is your point of intervention?

(Sen. M. Kajwang’ spoke off record)

Sen. Omogeni: Mr. Speaker, Sir, I am rising under Standing Order No.106 on limitation of debate. This matter is very important to most of us. We have been on this issue of MES equipment for a very long time.

Mr. Speaker, Sir, under Standing Order No.106, Senators are supposed to speak for a period of not less than 20 minutes on Motions or Reports of Committees. The Standing Order is very clear that any limitation of time to speak can only be done under Standing Order No.3, if it is done before debate has commenced.

On the matter that is before us, debate has already commenced. Sen. Mutula Kilonzo Jnr. has spoken, and Sen. (Dr.) Kabaka is on the Floor with an amendment. It is unprocedural and contrary to Standing Order No.106 to order limitations of time allocated to Senators at this stage.

Mr. Speaker, Sir, these Standing Orders are the force of the Constitution. This is a House of debate, and we require adequate time to ventilate and debate on critical issues like the matter that is before the House.

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

Sorry, are you through?

Sen. Omogeni: Yes, Mr. Speaker, Sir.

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

Sen. Murkomen: Mr. Speaker, Sir, while I respect the views of the Senior Counsel, this House is also guided by traditions and practice. For the whole period I have been in this House, the Speaker using Standing Order No.1, looking at the interest on a matter and considering the period in which an issue has been debated and discussed has always guided on time. This is has never been in contention.

In the best interest of the debate, I would have said the same five, six or seven minutes so that some of us can have time to speak. Sometime you sit up to six o'clock, then you are unable to make contribution. The next day the same issue starts. I persuade Senior Counsel Sen. Omogeni who is my friend, a member of team Kenya, to accede to the five minutes guided by the Speaker, notwithstanding the provisions of Standing Order 106.

The Speaker (Hon. Lusaka): What is your point of order? Is it on the same issue? No! Order Sen. Olekina!

Although it is there in the Standing Orders, we also have precedence and history. Looking at the interest, it is major and we want to give people an opportunity to contribute. Sen. Olekina, what is your point of order?

Sen. Olekina: Mr. Speaker, Sir, this is a contract that has cost Kenyans a lot of money.

The Speaker (Hon. Lusaka): Are you debating or is it a point of order?

Sen. Olekina: I am not debating. I am on a point of order. I am supporting Sen. Omogeni's sentiments. I am beseeching you that nothing stops us from debating this matter for 10 days. We do not need to conclude it today.

Mr. Speaker, Sir, 365 pages, about 50 kilograms of submissions, we have to give Kenyans justice. All I am requesting is, we should be guided by the Standing Orders, allowed the 20 minutes, let us prosecute these matters, we are dealing with issues that have cost Kenyans billions of shillings. Please, consider the point of order raised by Sen. Omogeni so that we can give Kenyans justice. Otherwise there will be no point of us contributing because we are dealing with five minutes, we might as well not contribute at all. We cannot exhaust one company in five minutes.

The Speaker (Hon. Lusaka): Sen. Olekina, try to summarize. Sen. Wambua, proceed.

Sen. Wambua: Mr. Speaker, Sir, I hope this is the last time I am talking about this issue. Once you make a ruling in this House, it must be followed. It cannot be that you give rulings in vain.

The Speaker (Hon. Lusaka): Order Senators! Sen. M. Kajwang' proceed.

Sen. M. Kajwang': Mr. Speaker, Sir, I need to be guided whether I am back to the six minutes or to my original 20 minutes.

The Speaker (Hon. Lusaka): six minutes.

Sen. M. Kajwang’: Mr. Speaker, Sir, let me focus on what ought to have been done. This is an example of a situation where the solution is a problem. We had a problem in healthcare but the solution we put in became a bigger a problem than the problem it was supposed to cure. There are certain institutional responsibilities we cannot run away from. The Council of Governors (CoG), there are governors who have kept equipment in boxes in the counties for the last five years which is criminal. How would you keep equipment in a box in a corner in your county while people are dying and yet you say they cannot work because there is no water? When we went to Samburu, we were told there was no water in the hospital and that is why the equipment was not working. Whose responsibility is it to provide water in hospitals?

In some cases, we were told there was no electricity and housing for the equipment, surely, for five years? If life gives you lemon, make lemonade out of it. I want to support the Committee where they have said that Governors who did not implement or install the machinery of the equipment should bear some fiduciary responsibility and culpability. They paid for the equipment and yet their counties were not getting any service or value for money.

Perhaps one of the reasons why many Members have a problem with the last chapter of the Report is that the issues are discussed in the body of the Report. The culpability and criminality of the actions of governors are discussed on several pages in the body of the report. What the Committee ought to have done was to copy that and make sure that it forms part of the recommendations and to identify the counties where items were kept in boxes for eight or seven years.

Mr. Speaker, Sir, let me move to this Senate. This Senate has approved the Division of Revenue, County Allocation of Revenue for all these years. The money that has gone to MES has not been a secret. We have appropriated it. It is a column Called, Conditional grant and we watched as it grew from Kshs31 million to Kshs200 million. Every year we said, “next year we shall not approve.” This thing was to run for seven years which has run out. Here we are with a 365-page report making a lot of noise when we have been part of the problem.

We need to be candid with ourselves. We even said that this year’s County Allocation of Revenue Act (CARA) which we have just passed, is there not a column for Kshs200 million? Did anybody check whether the Kshs200 million is there? How can we speak from both sides of the mouth; criticize the government for putting Kshs200 million per county and in the same afternoon pass CARA with those amounts. We have failed the nation. Let us use this report to think about how we can prevent such things from happening in the future.

The mistake has been by the executive, Governors, the Senate and the County Assemblies. In many of our counties, I went to about four or five counties, when I was the Chairperson Public Accounts Committee, the County Assemblies have never interrogated the utilization of the equipment sent to their counties, yet their counties continue to pay money.

This is a good Report but as the Americans say, it is “all hat and no cattle.”

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

Sen. Wamatangi: Thank you, Mr. Speaker, Sir. I first want to congratulate the Committee for the work they have done and the days they took to come up with that Report. We cannot summarize the Report in our debate this afternoon and condemn the Committee in its entirety and the work they have done.

(Loud Consultations)

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

Sen. Wamatangi: The debate by this House on MES has been long. We have debated this, as Sen. M. Kajwang' has said for a long time and none of these issues has happened or started to the exclusion and knowledge of the Senate.

I want to acknowledge that alongside Sen. M. Kajwang' when we were serving in the Public Accounts Committee we went around the country, inspecting the equipment in every hospital. We went to Samburu, Eldoret, I noticed in the report that there is a column where the Committee has noted that indeed, in the County of Mombasa where we visited that they give them a thumbs up for having made good use of this equipment, put it to proper utilization, thus set an example. As said by Members in their contributions earlier, this was a good project, a good idea but handled wrongly.

I want to say a few words especially on the process of implementation of this project. This is where we got it wrong. We must say loudly that at no other time in the future should we allow public funds to be put to use in a hurry. The kind of haste that was witnessed when this project was conceptualized, the equipment distributed and the lack of inclusion in the discussion--- For example, what does Article 96 of the Constitution mean to this House or to the country if in such a project of such magnitude the Senate does not include them. Why were Senators not asked when the project was being conceptualized?

Hon. Senators asked the Committee to give a report based on the oversight role of this House bestowed upon it by the Constitution. When the project was being conceptualized, probably that report would have guided on how this equipment was to be distributed to counties.

Secondly, who was calling the shots on the decisions? If a seller says he was selling this equipment at Kshs100 million who made the final decision to buy it? Reading through this Report, the Committee condemns some companies. For example, Sen. Wetangula singled out General Electric (GE) East Africa Services for condemnation. If a vendor comes up with his price, it is the responsibility of the buyer to make a decision as to whether to buy or not. Once he says he cannot afford it, then the deal ends there.

(Applause)

Mr. Speaker, Sir, I do not want to be repetitive of what Sen. M. Kajwang' said. I believe we would have had a super project. No county can say it has enough equipment. Every county needs X-rays, Magnetic Resonance Imaging (MRI) machines and so on. In fact, even after the supply of this equipment, there is still a shortage in our hospitals.

Mr. Speaker, Sir, we must tell the national Government this is not the way to do things. It should not go about appropriating funds or conceptualizing projects that affect members of the public at the county level without involving key players.

Without being repetitive, let me take the opportunity to say to the Government---

(Sen. Cherargei spoke off record)

Mr. Speaker, Sir, protect me from Sen. Cherargei. I do not know where he picked those words, “deep state.” When I speak, he says that I am “deep state.” I am the Senator for Kiambu County.

The Speaker (Hon. Lusaka): You are protected, proceed.

Sen. Wamatangi: It behooves the governors to take responsibility with the actions that happen within their counties. They cannot sit behind there and start crying that they were brought equipment, which they were forced to take. Who said that they must take it? They would have refused to take it.

Lastly, let me commend those few counties that took the equipment and did what they did. I am waiting for the amendment by Senator for Machakos Counties. We must be fair in this Report. We cannot condemn all and sundry when some of them are providing services to our people. When you are given a Local Purchase Order (LPO) to supply, you do so.

Sen. Olekina: Mr. Speaker, Sir, I rise to make my comments on this Report. I have taken time to read it. I have also taken time to read the submissions of the contractors. However, I will oppose it for the following reasons.

I am going to restrict my five minutes to two companies called BellCo SRL Ltd. and Angelica Medical Supplies. When you read it, it entirely contradicts itself. Any company that applies for the tender must be the original manufacturer of the equipment. In the Report, we are told that representatives of the three companies appeared before the Committee, but one company declined. The procurement laws allow agents to act on behalf of original manufacturers. We are told that the power of attorney to Angelica Medical Supplies came in after the tender was awarded. However, in the documents tabled before the Committee, there is a letter dated 25th November 2014. That was before the contract was awarded. It identifies Angelica Medical Supplies as the sole agent for BellCo SRL Ltd.

Mr. Speaker, Sir, the Committee was also presented with the power of attorney that was signed after the contract had been awarded. The letter was addressed to the Permanent Secretary (PS), Ministry of Health. It talks about the relationship between the two companies.

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

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

Sen. Wambua: Mr. Speaker, Sir, is it in order for Sen. Olekina to mislead this House that there are letters written by Angelica Medical Supplies to the Ministry of Health based on the power of attorney which he has, but it was not availed to the Committee? How was the Committee supposed to know about those letters?

Secondly, it is on record that the position of the Committee was that the people who were invited to bid for the contract were original manufacturers of medical equipment. M/s Angelica Medical Supplies was not. The only exemption was if they were invited to bid, they were to present a letter of attorney from the original manufactures of equipment.

Sen. Olekina: Mr. Speaker, Sir, my good friend Sen. Wambua, did not---

The Senate Minority Leader (Sen. Orengo): On a point of order, Mr. Speaker, Sir.

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

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, since you had said that we have very limited time which is five minutes, I am rising on the foot of Sen. Wambua. He was a member of the Committee. He probably knows more than we do because we have only the report to go by. If there are any factual contradictions, the Mover can react to them when replying. However, if every time somebody says something another stands up and says that it is wrong when the whole evidence is not here--- They should have carried the books here.

(Applause)

Sen. Olekina: Mr. Speaker, Sir, I want to clarify one thing here. In my submission, I did not say said that M/s Angelica Medical Supplies wrote to the Committee. I said there are letters written by a company called BellCo SRL Ltd. clearly stating that M/s Angelica Medical Supplies was their sole agent in this country.

Mr. Speaker, Sir, we are also told in this Report that the equipment which was supplied by BellCo SRL Ltd. was locked to only use reagents and consumables from BellCo SRL Ltd. I took my time and called a few companies mentioned in this Report.

The report contradicts itself. It says that the equipment which were supplied by one company were locked. It is almost like Safaricom selling their own phones and only allowing their sim cards to be used.

I took my time and I called a few companies. This afternoon, I spoke to a company called Medifast Africa Limited just to get the point clearly. I wanted to find out whether the equipment which was supplied by a company called BellCo SRL Ltd. was open it was locked to only their consumables.

I spoke to a lady by the name of Carol. She confirmed to me that the Formula 2000 which is the equipment used---

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

Sen. Olekina: On a point of order, what? You know when you are given time to debate, you must have you read the Report and submissions. You can see where there is a contradiction.

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

The Speaker (Hon. Lusaka): Sen. Kinyua, what is your intervention?

Sen. Kinyua: Mr. Speaker, Sir, I am just concerned as to whether we are dealing with the Report or not. This is because the Senator called Carol to find out whether it is true or not. I do not know why we are discussing Carol and maybe her age.

The Speaker (Hon. Lusaka): I think Sen. Kinyua is asking about the authenticity of your source. Are you saying that you can pick any Carol and mention her on the Floor of the House as your source of information? Sen. Olekina, be a bit careful.

Sen. Olekina: Mr. Speaker, Sir, because of the limited time, let me just be very categorical. There was a lawyer by the name of Johnny Cochran who represented an entertainment guru called OJ Simpson and he said: "If it does not fit, you must acquit."

Even a Class Seven pupil can read this Report and tell you it is full of contradictions. I will not support a report which is full of contradictions.

I want to support my dear friend and colleague, Sen. Mutula Kilonzo Jnr. that this Report be committed to a Committee of the Whole. We look at the submissions and compare apples with apples because submissions do not add up. The recommendations are contrary to submissions by either the Ministry of Health or contractors.

Mr. Speaker, Sir, I would have been happy if the Committee recommended those who were in the tender committee be prosecuted. They must tell us why they allowed one company which was the manufacturer, to bid and win the tender and, on the other hand, they also allowed another company which was not an original manufacturer to bid and win the contract. The prerequisite for the tender was that you must be the original manufacturer of this equipment.

I invite my colleagues to take their time and read the report. I have read the whole of it over the weekend. This is the reason I am seeking for more time. As I said, it is full of contradictions. We have spent over US\$43 million on this MES.

On one page they are raising issues of the cost of buying equipment. It is a leased equipment service. That equipment should go back to the manufacturers and we proceed. Do not be coming here and saying that the price of a torch is Kshs1 million and yet it is leased. This report is bogus.

The Speaker (Hon. Lusaka): Your time is up.

Sen. Murkomen: Mr. Speaker, Sir, in the interest of time, I want to start by congratulating the team that was led by Sen. Fatuma Dullo, Sen. Wetangula and others for the work they did and for the period of time they did it.

I had the privilege to sit in the Senate Business Committee when we established this *ad hoc* Committee. The intention was to get to the bottom of the many questions that were coming out of this issue of MES.

I must admit that I have read the Report. It is a very long one. I spent a lot of time over the weekend reading it. Many of the provisions, especially related to the Inter-Governmental Relations Act and the implementation of Article 187 and the fact that county governments were not involved in the original inception of this project and that they were forced to sign memoranda.

I need to admit like Sen. Cherargei said, those of us who are in Jubilee, especially on this side, Sen. Wamatangi, myself and Sen. Cheruiyot and indeed all of us in this House, cannot escape blame. This is because at that point in time when many of our counties did not want to sign this MES, some of us went and forced them and told them they must sign; and that they were anti the people and so forth.

I must also admit that most of these contracts were signed in State House. We must understand the circumstances under which the governors operated. This Report indicts 46 governors out of 47. It indicts about four Ministries, including the Attorney-General. It indicts National Treasury, Ministry of Health and others.

I have a lot of sympathy for the work Sen. Dullo and team have done. However, I do not think the proposals they are giving will give us solutions. I may be wrong, but punitive measures alone cannot solve such a mega project, where first it is an ongoing project.

Secondly, it talks about some counties: Meru, Isiolo, parts of Garbatula, and Elgeyo-Marakwet where some of the equipment is lying idle and has not been fixed. However, they are also giving reasons as to why that equipment is lying there.

If there was room for us to amend this Report, I have a completely different proposal that departs from the proposal on EACC, DCI investigating, charging and instituting prosecution. We are dealing with 46 governors. If you come here and for the sake of publicity, you say “prosecute 46 governors” because they signed the memoranda, including Mr. Speaker himself who was then governor. Many other governors signed because they wanted to equip dialysis machines to a local area in our counties.

I have a different proposal. As beautiful as it is, we defeat it today and submit it to the Health Committee as a preparatory document. The Committee should then work on proposals of correcting, getting proper Inter-Governmental Relations agreements for purposes of implementation.

We should make sure that the money that was already paid by counties like Meru, Garbatula and Elgeyo-Marakwet, but the equipment was not delivered on time, we negotiate an extension of the period of the work of the contractors so that the project can be implemented. This is a beautiful project and we must be alive to the problems we are dealing with.

I also want to add that if you look at the indictments from the Committee, they focus mostly on the local contractors. It talks about Angelica, Megascope, but the biggest contractor which is General Electric is not mentioned anywhere in terms of recommendations.

We know why. I know because - at least I have been in politics for a longer period of time - it is because it depends on who is the agent of which company, who is related to who and so forth. So, it becomes difficult even to get information.

It was even difficult for this Committee to succeed to get General Electric to come before them. Arising from those difficulties, why do we not give a hand of friendship to the Executive, invite them to the negotiating table and tell them we want to renegotiate the legal framework in a way that is implementable. We can even extend the period beyond the seven years that as indicated and get value for money instead of calling for so and so to be prosecuted.

If we take the report and say we want to correct the wrongs that are in it through our health Committee and we walk through the journey until we find results and value for money, we will be helping our country more than washing our hands like Pontius Pilate and saying just hang them.

I do not intend to oppose the Report, but propose that it becomes part of preparatory documents for future implementation.

Sen. Omogeni: Thank you, Mr. Speaker, Sir. I first congratulate Sen. Dullo and the other Committee Members that have looked into this MES mess that has been with us for a very long time and for coming up with a 253-page Report.

It is almost impossible to do justice to such a report by making comments on it for six minutes. I hope that going forward, we will be able to borrow best practices from the debates we watched on television that take place in the House of Commons and even in our neighbouring country, Tanzania. We see representatives of the people given time to

debate and ventilate on issues that touch on the people they represent because that is why we are here.

Going through it with a very candid and fearless eye, I have no hesitation in concluding that this project was unwise, unjust and almost bordering on throwing away all the values that we put in place when we enacted our 2010 Constitution.

If you read through it, you must single out one human being of the 47 men and women who are governors in this Republic. It is only one man who stood alone and strong enough and refused to sign this Memorandum of Understanding between the Government and the county governments. That one man is the former Governor of Bomet County, hon. Isaac Rutto. As they say, the strongest man is he who stood alone. As we indict all the other 46 governors, it is hon. Ruto, who stands out.

What really pricks our conscience as leaders is the fact that, reading the Report, you will notice that the Government behaved like a thug. I have read that in some counties, including Kakamega County, the Government dumped the medical equipment forcefully at the offices of the County Government of Kakamega.

I cannot understand how a Government can act so thuggish to the level of carrying equipment and delivering them in the hours of darkness. We know that under Article 6 of the Constitution, we have two levels of government that should cooperate with each other.

The conclusion I make is that, the schemers behind this project wanted to impose this idea of leasing medical equipment on county governments without even caring whether some county governments were ready to receive them.

(Loud consultations)

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

Sen. Omogeni: Mr. Speaker Sir, if you read it, you will be shocked that in the Country Government of Meru, they have been paying for machines that have been lying in the Netherlands for the last six years.

In my county of Nyamira, we have been paying for equipment that were dumped at the Keroka Hospital for the last six years yet we have never made any use of them.

What I really have an issue with on the recommendations in this Report is that we are trying to crucify professionals such as the law firm of IKM, simply because they rendered legal services. We are going after the wrong people. This law firm of IKM is a local one owned by Kenyans that simply rendered professional services to the Government.

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

The Speaker (Hon. Lusaka): Sen. Omogeni, do you want to be informed by Sen. Omanga.

Sen. Omanga: Mr. Speaker, Sir, I was in the Committee. It is not that IKM was engaged professionally, but over a cup of coffee for six months, advising the Ministry of Health. After that, they got into formal engagement and they invoiced for the coffee dates they had with the Ministry.

The Speaker (Hon. Lusaka): Sen. Omogeni, your time is up. What is your point of order, Sen. Murkomen?

PROCEDURAL MOTION

EXTENSION OF SENATE SITTING

Sen. Murkomen: Mr. Speaker Sir, I beg to move the Motion- THAT, pursuant to Standing Order No.31(3)(a), the Senate resolves to extend its Sitting until the conclusion of business listed in Order No.8 in today's Order Paper and request Sen. Orengo to second.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker Sir, I second this Procedural Motion. One of the reasons I am in support is that, I have some things to say--

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Senators. You are not even listening to what Sen. Orengo is saying.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, there are lots of heavy things that have come across the Floor that have motivated me to speak today so that we resolve this matter today.

We have a lot business to do which is pending, but this matter has also been pending for a whole year. I second the Motion and beg that we conduct business until conclusion of this matter today.

(Question proposed)

(Question put and agreed to)

The Speaker (Hon. Lusaka): Proceed, Sen. Cherargei.

Sen. Cherargei: Thank you, Mr. Speaker, Sir. from the onset, I congratulate the Committee for trying to---

(Sen. (Dr.) Lang 'at spoke off record)

The Speaker (Hon. Lusaka): Order, Sen. (Dr.) Lang'at. I know you came from Bomet, but this is Senate now. You cannot address the House the way you address the people of Bomet County.

Proceed, Sen. Cherargei.

Sen. Cherargei: Mr. Speaker, Sir, I have taken my time to read this 365-page document by the Committee. The Constitution has given us powers that we should exercise on behalf of Kenyans. This Report looks like a letter of lamentations. The way it has been done by the Committee, it has solely been based on raising issues and observing. When you look at the recommendations, it is like shooting blanks.

This letter of lamentation that has been espoused by this Committee is very unfortunate and any right-minded Senator would not support such a Report. In fact, the Committee has established that the MES project appears to have been conceived like a

criminal enterprise shrouded in opaque procurement processes aimed at benefiting a few commercial interests.

Mr. Speaker, Sir, when you look at all these issues that have been raised, under Article 201 of the Constitution, on the issue of public finance, there should be transparency and openness. The recommendations of the Report says -

“The Committee, therefore, recommends that all public officers that are found culpable of irregularities and illegalities committed in the furtherance of adverse commercial interests----”

Who are these public officers? You go ahead and tell the EACC and the DCI to investigate. We know that the role of EACC and DCI is to ‘pray’ for the perpetrators and ‘sanitize’ corruption in this country.

Mr. Speaker, Sir, it is very unfortunate. The Committee recommends that all private entities---

(Loud consultations)

Protect me from the Deputy Majority Leader.

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

Sen. Olekina: Mr. Speaker, Sir, it is a point of debate. It would be wrong if we now start pointing fingers at other institutions that are tasked with the oversight mandate. We must respect all institutions. We can support or oppose the report but not actually say that EACC prays for the culprits, so that it goes and sanitizes the process. That is not right.

The Speaker (Hon. Lusaka): There is another point of order from Sen. Wambua.

Sen. Cherargei: Mr. Speaker, Sir, let us avoid interruptions.

Sen. Wambua: Mr. Speaker, Sir, thank you. You invite the interruptions to yourself. I would request the Senator for Nandi County to kindly also mind the language that he uses. When he says that no right-thinking Senator should support such a report, that is not fair on his colleagues. Let him use respectful language.

The Speaker (Hon. Lusaka): Yes, Senator. Let us be sensitive about other independent institutions.

Sen. Cherargei: Mr. Speaker, Sir, on the issue of my colleagues, I agree with him. However, on the issue of other independent institutions, that is my own opinion. We should not be gagged in expressing our own opinions.

They went ahead and said that all private entities that might have been found culpable should be prosecuted. I have read it very well, General Electric did not appear before this Committee, and you are not indicting them. They are going away with Kshs28 billion. This Committee, under Articles 124 and 125 of the Constitution, has the powers of the High Court, yet you have not gone ahead and indicted General Electric.

Mr. Speaker, Sir, as the Senate, we must go beyond what we have been given. The other aspect I have seen is on the issue of the Office of the Attorney General. That issue has been settled long ago. In short, it is very unfortunate that in the counties, there was no needs assessment or value for money.

This is a letter of lamentation that was written by the Committee. When you look at observations and recommendations, it looks like you cannot tell the head from the tail

or legs from hands. What is observed is correct, but when it comes to recommendations, you cannot tell.

Mr. Speaker, Sir, as I conclude, when you read the book *Devolution in Kenya*, Thomas Tödtling observes that devolution can be a roaring lion. However, when you look at this Report, devolution is a dying rhino because this is a white elephant as compared to *Devolution in Kenya* written by Thomas Tödtling. Therefore, I request that under Standing Order No.58, after the six months, in your discretion, we must bring it back and relook at it. This is so that the right people can be punished and the correct private entities can be punished. The value for money that is given for these people would be ensured.

The Speaker (Hon. Lusaka): Do you want to be informed by Sen. Cheruiyot?

Sen. Cherargei: Mr. Speaker, Sir, I do not mind.

Sen. Cheruiyot: Mr. Speaker, Sir, Sen. Cherargei says the application of Standing Order No.58 is after six months. In Standing Order No.58 (2)(i) it is actually 'within.' It gives the Speaker the option to review the matter even before the period of six months lapses, if that is the route he wants to take.

Sen. Cherargei: Mr. Speaker, Sir, thank you. Thank you for that information from my colleague. Finally, this was a grand scheme that was aimed to fleece counties. Under Article 43 (1) on the right to health is that every person has the right to the highest attainable standard of healthcare.

I oppose and reject this report in totality.

The Speaker (Hon. Lusaka): The Senate Leader of Minority, Sen. Orengo, proceed.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, I rise to congratulate this Committee. It did a wonderful job. If you look at the membership, there are Members of this Senate that I really respect. By some coincidence, nearly just under half of them were lawyers. Therefore, in giving my comments, I want to put that factor in the background.

Mr. Speaker, Sir, I must confess that I have never seen a report for a long time in this House of this magnitude. If it is for size, they did a good job. If it is for annexures, they did a good job. If it is for time spent, they did a very good job.

Mr. Speaker, Sir, from the outset, I want to start from where Sen. Murkomen and Sen. M. Kajwang' ended. If you look at this Report generally it is making recommendations. To whom is it making recommendations? It is to the EACC. What will the EACC do? They cannot prosecute. They will recommend to the office of the DPP). The DPP is not obliged by those recommendations. If the DPP refuses to prosecute, probably, that is the end of the matter.

I was beginning to ask myself the question: What can the Senate itself do, or what the Senate itself has not done? I am taken back to memory lane. If you look at the Goldenberg Scandal, it emanated from a legislation that enabled the Government to pay compensation to exporters of gold. There was a legal basis, but it was wrongly used. In this Report, if you look at the public servants who came before the Senate, where did they start when they were giving evidence? They said there was a resolution of the Senate as a basis. That they were doing this on the basis of a Motion which was passed by the Senate. It was Sen. (Dr.) Machage's Motion.

Sen. M. Kajwang' has also reminded us that we have been appropriating, if that is the right word, funds to go to this project. When it comes to making accusations, we also stand accused. The Executive also stands accused. If I look at this project, it is more than Kshs38 billion. We should have been told that there was some Cabinet approval of a project of this magnitude. When the Senate is looking for additional Kshs5 billion to go to the counties, we cannot get it. However, suddenly for this project, the billions were ready even without the Governor's asking for it.

Mr. Speaker, Sir, there are constitutional questions that are raised in this Report which we should not really put under the bus. As far as devolution is concerned, are we electing governors who know their constitutional duty? If a governor is elected and sovereign authority is placed on him at the county level, that power is not really shared.

The delegation of that power at the county level is not shared, but a governor alleged he was blackmailed by a chief. Such a governor should not have been in office, a governor who can be blackmailed by a chief yet when we call them for oversight here, they do not come. However, when they are threatened by chiefs, they are telling us they are ready to spend Kshs2 or Kshs3 billion on account of the demands of the executive.

Mr. Speaker, Sir, there are some areas where there is no clarity, for example, the role of the National Treasury on Public Private Partnership (PPP). Normally, the National Treasury has a very important role to play. Somehow, the National Treasury was removed, I do not know by design or otherwise, from this process. If it was a PPP, the National Treasury should have been at the centre of this project. It was changed to services to be rendered through public procurement process.

There are many questions to be answered. I am not sure that just talking about the people who have been indicted and there are names here that I can see. I am not sure that by addressing those few names we are actually resolving the problem.

Mr. Speaker, Sir, I am more concerned about these monopolies from overseas. There was General Electric and Philips. In fact, before we can begin to indict our people-- -. There are companies from China. If you indict them here, they get protection from their countries. No company is above the law. No single international company is above the law. They have representatives here.

I remember the case in South Africa involving the former President Zuma. His co-accused was an international company. They are appearing in a criminal case in South Africa. If criminals who are identified - whoever they are - and they are supposed to operate under the law and they are not brought before Parliament. The Committee has not shown us the efforts they made or even to require of them to appear in the same way they made it possible through virtual hearing to adduce evidence from Amb. Mailu. We should have seen something of a similar nature in regard to some of these international companies.

Mr. Speaker, Sir, there is a fear that I have. When you see a project like this, it is what in America they call a "sweetheart deal". By the time it comes to fruition, they had already known what was going to come. They know even what to do with the Senate, the National Assembly and the Executive. When the project is to go for feasibility study, they say that is not even necessary.

To that extent, I am begging that in future and I know we need trading partners and donors. However, they must operate within our territory under the law. If they are the ones

who appoint local agents because a lot of these companies we are told they were local agents of these international companies. This report is not coming out with a proper indictment of these international companies.

Mr. Speaker, Sir, I must confess that if you read this Report, it shows what is wrong with us. That is a proper study of this Report. It is not an accusation against these particular individuals. This is an accusation of how Kenya operates. If you are really to evaluate it, everything; even what is going on in Kenya Medical Supplies Agency (KEMSA) now--- Forget about this one. This is what Kenya is. It is not another country. This is Kenya. Sen. Dullo, if you have not succeeded in anything else, it is just telling us this is our DNA. We can make billions of shillings and have a debate on it and, by the end of the day, nothing happens.

Mr. Speaker, Sir, the prosecutor and investigatory arms of Government have more information than we have. What have they done? We are just sitting here and hoping that somebody will do something about this. I want to ask you to look at the Motion that is before us. That we adopt the Report of this Committee. What is that?

The Speaker (Hon. Lusaka): As a leader, I will add you three minutes.

The Senate Leader of Minority (Sen. Orengo): Mr. Speaker, Sir, probably we need to borrow from the United States of America and some of these jurisdictions where Parliament can appoint a special counsel or prosecutor. If they cannot have a mechanism of ensuring that we can have a special counsel. This is so that in this matter instead of making these recommendations, we will be directing a special counsel to investigate and we come out with the solution that makes sense to the people of Kenya.

Mr. Speaker, Sir, if we take it to the EACC, probably the prosecution will be very selective as it is most of the time. Sometimes, this fight against corruption is very seasonal. When it comes, people are excited and the next round another bunch comes. In the third round, another bunch comes and it goes on and on.

For those reasons, I propose that this Report becomes part of our records, which can be used by this House and any other agency. However, to leave it the way it is, I would rather oppose it and leave it to the House to make note as a record.

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

Sen. Linturi: Mr. Speaker, Sir, thank you for this opportunity. I want to share my comments and ideas about this Report. However, allow me to associate myself with the sentiments of Sen. Murkomen and Sen. Orengo and the others who have spoken with the suggestions that this Report forms part of our preparatory report on how we need to address the issue as we move forward. This Report before us this afternoon is a reflection of how we are as a country. Nothing that is further from the truth.

Mr. Speaker, Sir, I have listened and I have also had an opportunity to visit my county. I want to specifically address this Report with serious reference to what is happening in Meru County. I went to Meru County and had the opportunity to visit various health facilities with the Committee when they invited me there.

We went to the general hospital. We were told the Intensive Care Unit (ICU) equipment had not been supplied. We went to Maua, Nyambene District Hospital and there was a machine called the C-arm machine lying there, but there was no power.

Mr. Speaker, Sir, you remember that this scheme or project was one of the serious projects of the Jubilee Administration. No wonder these contracts were being signed in State House. The whole intention was to give or provide accessible healthcare to our citizens, which idea was good and we all support it.

Having heard many people who perused the Report, I have not seen anywhere written that so and so contractor continues to receive money for items or equipment that have not been delivered. In Meru County, the failure to have an ICU was because the county was not able to provide a building in which to install the equipment which is being done and will be opening any time. The Nyambene District Hospital, the C-arm machine did not have a three phase power supply.

Mr. Speaker, Sir, when I went to the hospitals, I saw see our patients, mothers, brothers and sisters getting dialysis services. This problem cannot wholly be attributed to the supplier. The suppliers in one way or another performed their part.

Failure by governors to provide space for installation of ICUs or where boxes of equipment have been stored in a corner somewhere, is not the problem of the supplier or Executive. It is a problem that is within the county.

Mr. Speaker, Sir, we cannot always be a House that continues unnecessarily to point accusing fingers or be permanently a lynch mob. We must say things as they are and apportion blame squarely where it falls. This House itself just like Sen. M. Kajwang' said. For the last over five years, it has approved the County Allocation of Revenue Act (CARA) with conditional grants for payment of these equipment in our hospitals. We never rose to strongly say no to this allocation.

I find it completely hypocritical for us to start laying blame without, first of all, trying to reflect and see where we have acted negligently or where we have not been able to do what we are required as a Parliament.

Mr. Speaker, Sir, because there is this warning of time, allow me to conclude by saying in the Book of Luke, there are two women that were taken before Jesus Christ for committing an offence of adultery. The punishment was that one was to be killed through stoning. In his wisdom, Jesus Christ said whoever has not sinned let him throw the first stone. All of them went and nobody threw that stone.

With those few remarks, I oppose this Report. If we are to subject it to the Committee on Health so that we can see how they can correct and form a basis of how things will---

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

Sen. Nyamunga: Mr. Speaker, Sir, thank you so much for giving me this opportunity. First of all, I have been serving in the Committee on Finance and Budget. For a long time, we raised a few issues on the leasing of the medical equipment and there were no answers. However, what comes to my mind is that it is the responsibility of the national Government to come up with policies. Sometimes these policies can affect the running of the Government at the national or county levels.

I had an opportunity to read the Report before us although not in detail. Just as Sen. Orenge put it, it is a very huge. Sometimes you get lost in some areas. You really do not understand exactly where to put the blame. When we passed our Constitution and came up

with county governments, we formed some small governments within the national Government. This country has 47 governments.

The people running the county governments are grownups. They have been charged with a lot of responsibility. First of all, the governors have never raised any issue to do with MES. It is here in the Senate where we have kept on asking ourselves questions about it. This is not the first time that we, as a Senate, struggle to get answers on behalf of the governors. For example, if it came to the point of the amount of money that should go to the county governments, it was us.

Even if it is our responsibility, the county governments should also give us a push so that when we are struggling to get more resources for them, they should have an input in it. When we were doing so, they were the first ones to run and leave us on the table trying to negotiate for them.

Mr. Speaker, Sir, if it is a matter of putting up buildings to install the equipment that had been negotiated and brought to county governments, it is the responsibility of the governors to put up the buildings. If it is a matter of three phase, you cannot tell me that a whole governor cannot even within a matter of days look for three phase and install wherever it is required.

At the same time, you cannot tell us that a whole governor can stay for three or four years without drilling a borehole. A borehole cost like Kshs1 million or Kshs3 million depending on where it is being drilled. Sometimes we fight battles which are not ours. We want to babysit some of these governors.

In my own county, the equipment is working because our governor put everything in place for it to be operational. It is not the national Government to train medical technicians to operate the equipment.

Mr. Speaker, Sir, we should always be careful and put blame where it is. Yes, they do a policy. They say that we need better equipment and improve our county health facilities. This is a very big problem in this nation. It is a very big struggle for each and every county to run medical facilities in a manner that citizens get help whenever they need it.

I cannot support this Report on one simple thing. What was the origin? What was the intention of coming up with it? There was an intention to bring it to us. What was the underlying intention? Some of those questions should be answered so that we understand the intention behind it. For how long are we going to be fighting battles for the governors? For how long are we going to babysit them when they should be taking their responsibilities?

Mr. Speaker, Sir, I thank you so much for giving me this opportunity.

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

Sen. Omanga: Mr. Speaker, Sir, I hope you are not counting my time.

The Speaker (Hon. Lusaka): Your time is counting; you need to organize yourself.

Sen. Omanga: Mr. Speaker, Sir, thank you. This project started on a wrong footing from the word go. Let us not burry our heads in the sand and start blaming contractors for the failure of our own Government and Ministry of Health. This project was supposed to be a Public Private Partnerships (PPP) according to the concept paper we got from the Ministry of Health.

How they changed from a PPP to MES, it is under unclear circumstances. From their own concept paper as the Ministry, they gave us statistics that if we went through PPP, all counties would pay around Kshs1.5 billion. That translates to Kshs31 million per county per year. However, the Cabinet Secretary (CS), Hon. James Macharia and the Ministry decided to change it from PPP legal framework to public procurement under unclear circumstances. This was his baby.

The Auditor General's Report for Financial Year 2015/2016 pointed it out that they did not even change the policy by the time they were changing from PPP to the MES. As I said, if we had a PPP, the counties would be paying Kshs31 million. Right now under MES, we are paying Kshs200 million.

Mr. Speaker, Sir, the Ministry did needs assessment. From it, they established that the counties could not absorb this equipment under MES. However, mischievously the Ministry went ahead to roll out this project.

It is just similar to the Ruaraka land saga where the Ministry itself conducted due diligence and it was reported that the land was owned by the Government. However, the Ministry ignored its own report and went ahead and paid for the land. The same thing happened in the Ministry of Health. The needs assessment report shows that the county governments are not able to absorb these equipment, but they still went ahead, ignored their own report and rolled it out.

Mr. Speaker, Sir, I will fault the Ministry again on how they implemented the Healthcare Technology Innovation Centre (HTIC) project. Had it been successfully implemented it would have been a pillar that could have played a critical role in leveraging Information, Communication and Technology (ICT). The Government should optimize and promote the full operationalization of this project.

However, the Cabinet Secretary (CS) then, Ms. Sicily Kariuki on an acting capacity, maliciously, non-procedurally and illegally canceled the HTIC project. It was apparent when she appeared that she had a personal vendetta with this company. By cancelling this project, everything went haywire and maybe that is why these things are not working.

Mr. Speaker, Sir, it is worrying and Kenyans should be worried because currently we have no regulatory system in place for this medical equipment. The Kenya Bureau of Standards (KEBS) has not approved the equipment. We are using medical equipment, which the CS then wrote a letter to exempt it going through KEBS.

Let us give credit where it is due. We have also some positive impact of this project. The implementation of Lot 5 of this contract has a very positive impact on service delivery. I am sure every Senator here would attest that the renal and dialysis machines in their counties are working.

Mr. Speaker, Sir, there is also accessibility of the critical care which is also improved under Lot 6, the ICU is working. As my colleagues said, the ones which are not working, it is up to the county governments to operationalize them. We went to Elgeyo-Marakwet County, for example, and three years down the line, the county Government has not put a three-phase power line in place. How long does it take a county government to apply and fix a three-phase power line?

Some of these things we need not to blame the contractors. Even in terms of pricing, it is a willing buyer, willing seller. If the Government decided to buy whatever they bought at whatever prices, it is the Ministry. It is not up to the contractor to determine the price. Most people here are comparing apples and oranges.

The Speaker (Hon. Lusaka): Your time is up. Sen. Shiyonga, proceed.

Sen. Shiyonga: Thank you, Mr. Speaker, Sir, for giving me this opportunity to contribute on this Report. I would like to start by congratulating the team that worked on this Report. It is one of the giant reports that has ever been received in this House since I was sworn in. This Report clearly states the findings, undertakings and information that came out of the project. I again applaud the Committee for this effort.

My fellow Senators have contributed a lot on this particular Report. A lot of time has been taken by the Committee to come up with the findings that they laid on the Floor of the House. A lot of money has gone in this *ad hoc* Committee, just to give us the information.

Mr. Speaker, Sir, I would like to pose a few questions to the Committee on this Report. I barely blame the county governments, especially led by the governors who received this particular equipment. First, did the governors receive this equipment? Yes, they did. Did the governors negotiate and receive this equipment to utilize them, yet they kept them? Yes, they did. Were the governors in charge of these counties when this equipment was being given to them? Yes, they were.

From all those questions, it is true that the governors have not utilized this equipment that the Government gave them, hence they need to blame themselves. How do you then continue as county governments? I want to imagine, if you have been given equipment that you are sourcing money for, how do you continue paying for equipment that has been given to you when you doubt its efficacy?

Mr. Speaker, Sir, there are governors and ministries of health in those county governments. With this devolution, they needed to go ahead and prioritize this equipment, putting into consideration that they have budgets every year. For the last five years or so, they have been sitting with this equipment. We have been having the equipment wasting away.

It is a shame to see the time that has been wasted, when this equipment is there and the county governments have not been utilizing it. A good example is Governor Joho, who has utilized this equipment very well. What went wrong with the other governors?

Mr. Speaker, Sir, the findings are not linked to the recommendations that we expected from this Committee. You look at the findings and the observations that the Committee is making are fake. They are really not adding up.

I feel like---

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

The Speaker (Hon. Lusaka): Order, Sen. Shiyonga! What is your point of Order, Sen. Dullo?

Sen. Dullo: Mr. Speaker, Sir, I agree with the sentiments made by Sen. Shiyonga, but for her to say that the recommendations are fake is out of order. She should say she does not agree with the recommendations. However, for her to say that they are fake is out of order.

The Speaker (Hon. Lusaka): Sen. Shiyonga, you do not have to use such strong words because they are unparliamentary.

Sen. Shiyonga: Mr. Speaker, Sir, I withdraw, but I do not agree with the recommendations as a person.

In conclusion, the county governments should know that we are struggling here under a very unfavourable atmosphere on the Floor of this House, just to get money for them. They need to up their game, especially when it comes to money that deals with services that have been devolved to county governments.

I do not support this Report. I urge that next time when we have such a voluminous report, it is good for us to digest and make recommendations that are worth the country, citizens and devolution that we are yearning for.

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

Sen. (Dr.) Mwaura: Thank you, Mr. Speaker, Sir. I heard Sen. Mwaura Johnson. I was wondering whether it is Sen. Johannes Mwaruma.

The Speaker (Hon. Lusaka): Just a minute. By the way, I do not even see your name.

Sen. (Dr.) Mwaura: Okay, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): It is Sen. Mwaruma. Your name was there, but now I do not see it.

Switch off your microphone.

Sen. (Dr.) Mwaura: Mr. Speaker, Sir, if I switch off, I will be off the record.

The Speaker (Hon. Lusaka): Since I called out Sen. Mwaruma Johnes and he is here, and I do not see your name. Let Sen. Mwaruma speak then I will give you an opportunity.

Sen. Mwaruma: Asante, Bw. Spika, kwa kunipa hii fursa ya kuchangia hii Ripoti ya MES. Huu mradi ulikuwa mzuri sana ambao ulisaidia kaunti kupata vifaa na kuhakikisha kwamba vituo vya afya vinapata vifaa vya kuboresha huduma.

Bw. Spika, huu mradi haukuwa na mpangilio wa kutosha kuhakikisha kwamba unafaulu. Kwa mfano, tumeambiwa na Ripoti ya kwamba kuna hospitali zilizopelekewa vifaa, lakini hakukuwa na miundo msingi ya kutosha kuhakikisha ya kwamba hivi vifaa vinafanya kazi. Kwa mfano, kuna vituo vya afya ambavyo havikuwa na maji ama umeme. Kama huu mradi ungekuwa umepangiwa vizuri ili kufaulu, kungekuwa na mipangilio madhubuti ya kuweka umeme ama maji.

Bw. Spika, kuna watu wa kulaumu kama vile magavana. Kwa mfano, itakuwaje kifaa cha huduma za afya kisifanye kazi kwa sababu hakuna umeme? Ni kazi ya nani kuweka umeme kwa vituo vya afya? Ni kazi ya gavana ama serikali za uagatuzi. Katika kuweka lawama ama dhambi hii, lazima pia magavana pia wapate lawama yao. Hii ni kwa sababu ni pesa za magatuzi zilizopelekwa huko, zilikatwa na vifaa vimekuja lakini havikuweza kutumika.

Bw. Spika, kuna baadhi ya Maseneta ambao wamesema kwamba tulikuwa na lawama kidogo kwa sababu tulipitisha pesa ziende kwa kutafuta vifaa vya afya, na hatukuangalia hizo bei ama kandarasi ambayo zilikuwa zinapitiswa.

Huu mradi unahitajika hata siku za usoni. Kwa hivyo, inatakikana pia tushikane na Serikali ama Idara ya Afya kuangali ni vipi wakati hiyo miaka saba ya hii *lease* ya MES

equipment itakapoisha. Je, tutaendelea vipi? Kwa mfano, kaunti yangu ambayo iko na vifaa vya ICU ziondolewe baada ya hii miaka mitano kutamatika. Kwa hivyo, lazima kuwe na mpangilio madhubuti ya kuhakikisha kwamba vile vyombo havitaondolewa, hali ya afya itadorora tena.

Kuna Kaunti tumeambiwa, kwa mfano, Meru, ambazo vifaa vyao bado havijakuja Kenya viko kule *Netherlands*. Nafikiri pia ni lazima huu mkataba uangaliwe tena ili zile pesa zilizo lipwa kwa vile vifaa, labda muda uongozwe ili vifaa hivyo vitumike kwa miaka iliyopendekezwa.

Bw. Spika, kuna mapendekezo yametolewa hapa na Kamati ambayo kusema ukweli hayaeleweki vizuri. Hii ni kwa sababu hayajataja watu wa kuchunguzwa. Katika kila sura, kuna mapendekezo hapo chini, labda yale mapendekezo ndio yalihitajika kutolewa na kuwekwa kwa kila sura ya mwisho. Hii Ripoti ilivyo sasa, mapendekezo hayaambatani na ule mwili wa Ripoti.

Jambo la mwisho kabisa, kama ningelizwa kama Seneta wa Taita-Taveta, ningesema yakwamba tungeunda tume ya kuchunguza huu mradi wa MES. Tume ambayo itasimamiwa na hakimu na wale wahusika wote waje mbele yake na waelezee vile walihusika moja kwa moja katika huu mradi wa MES.

Bw. Spika, mradi ni mzuri na unahitajika---

The Speaker (Hon. Lusaka): Your time is up.

Sen. (Dr.) Mwaura: Asante sana, Bw. Spika, kwa kunipa fursa hii ya kutoa maoni yangu kuhusu hii ripoti ya vifaa vya huduma ya afya. Mwanzo, hili ni jambo linafedhehesha staha ya hili Bunge la Seneti. Ukiangalia ugavi wa mapato ya nchi utakuta kwamba kulisheheni kwa miaka saba mtawalia tutakuwa tukitumia kitita fulani cha fedha ambacho kingeangaziwa kwa hivi vifaa. Lakini, jinsi mambo yalivyo, miaka miwili iliyopita kulikuwa na tetesi zilizojitokeza kutokana na ule mswada wa mgao wa mapata, *Division of Revenue Bill*. Hizi fedha ziliongezeka kutoka Kshs4.7 bilioni hadi Kshs6.1 bilioni. Ni jambo la kushangaza, tulipomuuliza Waziri husika aliyekuwepo, mheshimiwa Henry Rotich, akasema ni hitilafu ya tarakirishi.

Swala ambalo tulijiuliza ni, je, kunawezaje kuwa na hitilafu ya karibu Kshs2 bilioni. Ripoti hii imeonyesha wazi. Mimi nachukulia huu kama wizi mkubwa wa mali ya umma. Ni pesa ambazo zimetengwa kwa huduma ama majukumu ambayo yamegatuliwa, lakini kupitia mikataba ya serikali ugatuzi tunaona vile ambavyo hivi vifaa vilivyokodiwa ni jambo kila kutamausha. Ukiangazia zaidi ya Kshs63 billioni zimetumika katika mradi huu ilhali mahospitali yetu hayana vifaa vya kutosha. Vingi vya vifaa hivi havijatumika kwa sababu hatuna wataalam wa kutosha fauka ya kwamba tumeleta madaktari kutoka nchi ya Cuba.

Bw. Spika, jambo hili ni la kufedhehesha ambalo tunafaa kuchukua msimamo. Kamati imeeleza kinagaubaga, shida, matatizo, madhila na majanga ya mradi huu. Lakini ukiangazia mapendekezo yao, hayana mashiko. Mapendekezo haya ni ya kijuu juu. Haya mwangazii mtu yeyote kibinafsi iwe kwamba hakuna mtu yeyote aliyefanya hatia, wawe watu wataweza kusitiliwa na sheria zinazotokana na kukinga afisi walioko. Ni vizuri tuwe tunajua kampuni zilizohusika na mradi huu.

Kwa mfano, kampuni hii iliweza kuweka bei ya juu kwa vifaa ambazo zinepatikana hapa nchini na kwa kiasi hiki kampuni hii ikapata pesa ambazo haingeweza kupata. Wale

wote waliotia sahihi nyaraka hizi wachukuliwe hatua. Haiwezekani tuje hapa, tuongee kama chiriku aliyekunywa maji ya chooni ilhali hakuna choshote kitachukuliwa na hotuba na marubano ambayo hayaishi.

Ni lazima Bunge la Seneti liimarisha staha yake kwa kuhakikisha hii ripoti itupiliwe mbali kwa sababu ya yale mapendekezo ambayo nimetoa.

Baada ya hapa, tuna njia mbili. Aidha tubadilishe mapendekezo haya na kutoa masharti na msimamo ambao utahakikisha ya kwamba wafisadi hawa wamechukuliwa hatua za kisheria---

(Sen. (Dr.) Mwaura's microphone went off)

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

Sen. Faki: Asante, Bw. Spika, kwa kunipa fursa hii kuchangia Ripoti ya vifaa vya matibabu. Kwanza, ninajiunga na Maseneta wezangu kupongeza Kamati kwa kazi nzuri iliyoifanya ya kuzuri kaunti kadha wa kadha ili walete ripoti hii.

Nilibahatika kuandamana na Kamati katika ziara yao ya Kaunti ya Mombasa, Kilifi na Tana River. Tulizuru Mombasa kwa arifa ya siku moja. Tulipozuru Coast General Teaching and Referral Hospital, ambapo vifaa vingi vilikua vimewekwa, Kamati iliridhika na matumizi ya vifaa vile. Vifaa katika hospitali hiyo vilikua vinatumika vilivyo.

Bw. Spika, najiunga na wenzangu kusesitiza kwamba vifaa hivi vimetumika vizuri katika Kaunti Ya Mombasa. Mradi huu umesaidia sana Kaunti ya Mombasa kukimu mahitaji ya vifaa maalum vinavyo hitajika kuhudumia wananchi.

Mradi wa MES ulikuwa na lengo nzuri sana. Tulipoenda Tana River, tuliona kuwa vifaa vingine vilikuwa pale kama vile *Computerized Tomography (CT) scan* na *X-Ray*. Vifaa vinatumika ingawa kuna uhaba wa wataalamu. Kwa mfano, *X-Ray* na *CT scan* zao zilikuwa ni lazima kupelekwa Mombasa kusomwa na kurejeshwa Tana River ili watu waweze kuhudumiwa.

Mradi huu ulikuwa na malengo mazuri sana. Lakini utekelezaji wake ndio uliyoleta mtafaruku, sinitofahamu na ufujaji wa pesa. Jambo la kwanza hakukufanywa utafiti wa kujua mahitaji ya kila kaunti. Ingekuwa ni jambo bora kama tungejua mahitaji ya vifaa vya kila kaunti ili viwe na manufaa kwa watu wetu. Mrundiko wa masanduku ya vifaa katika stoo za kaunti zetu hauna faida kwa watu wetu ikiwa vifaa hivyo havitumiki vilivyo.

Bw. Spika, utaona pia kuwa kaunti nyingi hazikuwa zimejitayarisha. Kwa mfano, mashini za *dialysis* zinahitaji maji safi. Hospitali nyingi nchini hazina maji safi na kutosha kuwahudumia wananchi wetu. Ni kweli kaunti nyingi hazikua zimejitayarisha kupokea vifaa hivi.

Kaunti ambazo zinaona mbele zimefaidika na vifaa hivi. Kaunti ambazo bado ziko katika fikra ya kurudi nyuma hazijafaidika na vifaa hivi. Hatukuweza kupata *value for money* katika kaunti nyingi ambazo vifaa hivi vimepelekwa.

Bw. Spika, pia nilibahatika kuzuru Kaunti ya Meru na Kamati ya COVID-19. Tuliona kwamba vifaa vya ICU walivyopewa vilikua bado katika stoo miaka mitatu iliyopita. Hawajaweza kujenga ICU kuweza kutumia vifaa hivo. Tulizuru Kaunti ya Kilifi. Vifaa vya ICU havijatumika kwa muda wa miaka mitatu.

Tumeelezwa kwamba mradi wa MES ulikuwa utumike kwa muda wa miaka saba. Miaka mitatu imekwisha na bado hakuna vifaa vingine vipya. Hivi vifaa vilikua vimekodishwa kaunti zetu. Baada ya miaka saba, je, vifaa hivi vitarudi kwa waliokodisha ama vitanunuliwa na kaunti zetu ili watu wetu waendeleo kupata huduma?

Kwa kumalizia, Kamati imesema kwamba kuna makosa fulani ambayo yalifanyika kisheria, lakini hatukuweza kuona hata mmoja ambaye amenyoshewa kidole kusema ya kwamba wewe umefanya makosa haya. Hii Ripoti kama alivyotangulia kusema Mhe. Mwaura, ni kwamba, ni kama kupiga domo kaya; hakuna mwelekeo wowote ambao sisi tunaweza kuchukua kama Seneti kuhakikisha ya kwamba wale ambao walifuja pesa za umma na kufanya makosa kadhaa, wameletwa mbele ya korit ili waweze kushtakiwa.

The Speaker (Hon. Lusaka): Your time is up.

Sen. (Rev.) Waqo: Thank you, Mr. Speaker, Sir, for allowing me to add my voice to this very important Report.

I want to base my contribution on the Report. From the Report, according to the Ministry of Health, the MES project was aimed at accelerating progress towards attaining the health sector goals of equitable, affordable and quality healthcare at the highest attainable standards. This is something that can really encourage anybody and especially counties that really needed this equipment.

From the Report, it is quite clear that MES has not served the intended purpose. Attaining equitable, affordable and quality healthcare services is something that is relevant, that can save and transform the health sector. Unfortunately, this did not happen. The other main aim of MES was to equip Level Four and Level Five hospitals with specialized modern and state of the art equipment so as to ensure that all citizens, regardless of location, have access to centralized, quality health services.

Mr. Speaker, Sir, when we were told about MES and what it was to do, a county like Marsabit where we have a Level Five hospital and has suffered in many ways, we gained a lot of hope. Unfortunately, that has not happened.

From the recommendations of the Committee that has sat for many months, discussed, deliberated, visited, done their own analysis and come up with this big Report, that we are all going through now, the Committee that I highly respect, alongside the Report that they have given us, we must say a big thank you to the team because they sacrificed a lot in order for this information to be placed before us.

From their recommendation, it is clear that the design of the MES Project was not conducted in accordance with the constitutional provisions. That is where the vacuum is.

According to the Committee's observations, county governments were not involved in the needs assessment. Therefore, whatever they were given was not according to their needs. From their recommendations, the equipment supplied under the project was not tailored to suit the unique and specific needs of each county.

This is very sad because many of our counties have been suffering and this project was expected to transform their lives, but unfortunately, it did not help them.

Mr. Speaker, Sir, under the recommendations, in many instances, the equipment supplied under this project duplicated equipment already in use at the county level. For example, Turkana County received an additional CT Scan machine. This is total wastage

of resources. Many are the times we have talked of corruption in our country, misuse and mismanagement of funds, which are not well used.

The Speaker (Hon. Lusaka): Your time is up. Proceed, Sen. Wambua.

Sen. Wambua: Thank you, Mr. Speaker, Sir. I need to declare that I was a Member of the Committee that came up with this Report. In support of the work that was done by this Committee, I want to make a few clarifications and then add my voice to it.

There has been concern that the Report seems to be targeting local contractors and businesses for punishment. Nothing could be further from the truth. I will give an example of maybe two companies. For the record, Sen. Olekina read before us a letter that he said was dated October, 2014 giving a local company the power of Attorney, to act on behalf a foreign contractor. For the record, let it be known that the tendering for this project was done in June, 2014, five months before the purported letter of Attorney was tabled.

Mr. Speaker, Sir, the other matter that needs clarity is the issue of the local law firm IKM. It is on record in this Report that the engagement between IKM and the Ministry of Health (MoH) began as an informal engagement, then MoH wrote to the Attorney-General requesting that IKM be enlisted in this contract.

That is not even where the issue is. The issue is that, towards expiry of the contract General Electric who is a contractor in this project organized a fundraiser. In fact, in the words of the former Attorney-General, they conducted a *harambee* to raise money for payment to IKM.

Mr. Speaker Sir, I want to say two things about this project. The conceptualization of the MES Project was a good idea.

The Speaker (Hon. Lusaka): What is your point of order, Sen. Olekina, although you have just walked in?

Sen. Wambua: How can he walk in with a point of order?

Sen. Olekina: On a point of order, Mr. Speaker, Sir. This is a House of record. It is important that when a Senator makes an allegation, he has to prove it. I have listened to my colleague, the distinguished Senator of Kitui who is my very good friend. The only problem is maybe his style of clothing, which is a bit different from mine. Otherwise, we would be brothers.

He has indicated that I made an allegation that there was a letter which gave the power of Attorney to a particular company, way back in October. The HANSARD can bear me witness that I indicated very clearly that there was a letter that was addressed to the Principal Secretary, dated November 25th 2014, appointing a local company.

Secondly, I also pointed out the issue of the power of Attorney. That the power of Attorney according to the Report was issued to this company on 18th February, but it was ratified on 18th May by the company in Italy. All I am saying is that it is important for us to have facts. Those are the facts that I read. Those are what I tabled, and it is in the Report.

Mr. Speaker, Sir, I want to request my good friend, the Senator for Kitui County, that if he does not remember, he can call the HANSARD Department to give him the facts.

The Speaker (Hon. Lusaka): Okay. He was a Member of the Committee. Sen. Wambua, proceed.

Sen. Wambua: Mr. Speaker, Sir, I am just restraining myself.

The Speaker (Hon. Lusaka): Are you tabling the letters as part of the record, Sen. Olekina?

Sen. Olekina: Mr. Speaker, Sir, I can table them. Why not?

The Speaker (Hon. Lusaka): Okay. Proceed, Sen. Wambua.

Sen. Wambua: Mr. Speaker, Sir, I am just restraining myself from having an exchange with my friend.

Sen. Olekina: Mr. Speaker, Sir, may I table them.

Sen. Wambua: Mr. Speaker, Sir, I am on the Floor.

The Speaker (Hon. Lusaka): He is still on the Floor.

Sen. Wambua: Mr. Speaker, Sir, I would have actually asked the Senator for Narok County, under Standing Order No.99, whether he would want to declare interest on this matter, but let me not go that direction. He has just confirmed what I said; that the letter was issued on the 25th November, 2014. The tendering for the project was done in June, 2014, five months before that letter was given.

Sen. Olekina, let us not go there; let me just conclude my submission. The Managed Equipment Services (MES) project in two counties did a fantastic job. At the Coast General Hospital - the Senator for Mombasa County has confirmed it - it is a resounding success. At the Moi Teaching and Referral Hospital (MTRH), they have done very well.

Mr. Speaker, Sir, as I conclude my submission, I hope at some point, maybe not now, each one of us will take time to go through this Report from the first to the last page. Most of the issues that have been raised on the Floor of this Senate are captured in this Report. In fact, there are observations and recommendations at every level of investigation.

I think what has happened is that many of us have just gone to the general observations and made our conclusions from them. At every level of investigations and every institution that has been mentioned, there are findings, observations and recommendations.

I support the Report.

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

Sen. Boy: Asante sana, Bw. Spika kwa kunipa fursa hii ili niweze kuchangia Hoja hii. Kusema kweli, mradi huu ulikuwa ni mzuri sana katika nchi yetu ya Kenya. Ukiangalia katika kaunti zetu, kuna kaunti zingine ambazo hazikujua lini watapata mashine kama zile za kukagua na kusafisha figo, *Intensive Care Unit (ICU)* na zinginezo.

(Loud consultations)

The Speaker (Hon. Lusaka): Let us consult in low tones, Sen. Olekina.

Sen. Boy: Tafadhali Bw. Spika naomba uweze kunisaidia.

The Speaker (Hon. Lusaka): There is a Senator on the Floor of the House. Let us listen to him.

Sen. Boy: Huu mradi ulipokuja katika nchi yetu ya Kenya, watu wengi sana walifurahia kuona kwamba hali ya matibabu katika nchi yetu----

Kwa wale ambao walikuwa hawana uwezo na wale ambao hali yao ni nyembamba kwenda kwa hospitali kubwa, huu mradi ulipoingia, umewasidia wananchi wengi sana. Maradhi kama ya figo, ukiangalia Kenya, mtu akiwa na ugonjwa wa figo kama Hana Ksh1

milioni ama Ks500, 000, mtu huyo atapata shida kubwa sana. Ni lazima atafute usaidizi katika hospitali za kibinafsi.

Huu mradi ulipoingia, watu wengi sana waliufurahikia. Mimi kama Seneta, niliufurahia ulipoingia katika nchi yetu. Hii ni kwa sababu watu wengi walipata huduma. Ingawa kuna ripoti zingine za wananchi wanasema kwamba, pesa zimefujwa, hii ni kawaida. Waswahili wana msembo wao wanasema: “Hata ukifanya vyema katika nchi hii, lazima utaongelewa.”

Kwa hivyo, ninaunga mkono Kamati hii kwa kazi waliyofanya. Ripoti yao imefanywa vizuri sana. Walizunguka katika Kaunti ya Mombasa, wakaenda Tana River na kaunti zingine vile tulivyowaona katika runinga. Kwa hivyo, ninishukuru sana Kamati hii na Mwenyezi Mungu awajalie kwa kazi waliyofanya.

Asante.

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

Sen. Dr. Musuruve: Thank you, Mr. Speaker, Sir, for giving this opportunity to add my voice. I want to thank the *Ad Hoc* Committee led by Sen. Dullo for the effort they made in coming up with the Report.

Initially, when this project started, the intension was very noble. For example, Kenyans who had diseases that were chronic would be treated at the county level. Before this project, I know there are quite a number of Kenyans who were going abroad for their illnesses to be managed. Leasing equipment would necessitate that there will be capacity building for medics on how to use ---

(Loud consultations)

The Speaker (Hon. Lusaka): Let us consult in low tones. The team from the Eastern region. Senator for Lamu---

Sen. (Dr.) Musuruve: Mr. Speaker, Sir, a concern that would raise eyebrows is the issue where payment has been made for equipment that is already in Netherlands, but it has not arrived yet in Kenya; meaning that the Netherlands Government will be paid on monthly basis and yet the equipment is not being used.

This is not economical in any sense; that you are paying for equipment that is still in the Netherlands. In fact, the payments ought to have been done when the equipment had landed, but because of the many dynamics, the project became highly expensive and did not meet the needs of Kenyans.

Yes, the Report has come to the Floor of this House, the over-generalization of the Report does not give a true picture of who exactly was involved in what. Probably, specific issues, and names needed to come out clearly so that Kenyans have a clue of what happened.

Mr. Speaker, Sir, there is need for a re-think of this particular Report, so that the recommendations are seamless. The contradictions and ironies that are in the Report need to be ironed out. I am sure that Kenyans are really waiting to hear the verdict of this Report.

The verdict needs to confirm the Senate as the Upper House. There is need to rethink on this, so that the Committee on Health is brought on board to ensure that whatever is being put before us is commendable and meets the test of time.

Thank you, for giving me the opportunity.

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Senators! Finally, Sen. Sakaja.

Sen. Sakaja: Thank you, Mr. Speaker, Sir. I am really disappointed by the constraint of time. There is a lot that I would like to touch on when it comes to this Report on MES.

Members of the Committee on Health will tell you that this past Monday when we were questioning the Nairobi Metropolitan Services (NMS) on issues with respect to Pumwani Maternity Hospital, we had an opportunity to discuss the happenings in the health sector in Nairobi.

The Director of Medical Services in Nairobi City County confirmed the minimal equipment they received. We asked further for them to share the information with us. That a county of 4.3 million people, 17 constituencies and 85 wards would have only one renal facility under MES, is really disappointing.

Mr. Speaker, Sir, as many Members have said, this Report by the Committee is a huge indictment on the capacity of the Senate to conduct proper investigation. I have been informed by my friend, Sen. Mutula Kilonzo Jnr. not to use the word ‘proper’ because it is difficult.

(Loud Consultations)

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

Sen. Sakaja: It is all bark and no bite. This is a huge undertaking by the county governments who have been funding it. Once you transform health in any society, you free up resources from the people to do other things. We expected to see a proper report.

From the outset, in the absence of any serious recommendation, it will be remiss for me or any other Member of this House to allow such a Report to be a record of an investigation of the Senate of the Republic of Kenya. This work must be done properly.

As someone alluded, it seems as if the observations and everything going on went well, but something happened when it came to recommendations. Committees are not supposed to write poetry or stories, but according to our Standing Orders and the Constitution, are supposed to give far reaching recommendations.

After eight months and Kshs11.6 million on trips - I have not spoken about allowances - the most you can say is that we are asking EACC to investigate. We should have said that on day one and saved this country and taxpayers’ a lot of money.

Mr. Speaker, Sir, there is more than meets the eye. I would urge colleagues that this matter does not rest here. There are a number of things that still need to be looked into by a properly constituted forum of this House. There was a letter which I am sure has been received by your office, the Clerk’s office and the *ad hoc* Committee. I have no capacity to table it, but it responds to some of the issues raised in this Report. I was shocked. I have never seen something like this.

Somebody admits that on 24th February, 2015 General Electric (GE) received a request for a US\$1.4 million contribution to the Ministry of Health legal fee. Upon inquiry, GE was advised that the concept of donations, including the word of ‘donations’ was

properly grounded and permitted by the Kenyan law under the Public Finance Management Act. Having such assurances, GE made a contribution of US\$600,000 to the legal fees, in two payments of US\$300,000 each.

Mr. Speaker, Sir, I do not know whether it is the spirit of *harambee* or what PFM, Act they were reading.

(Sen. Sakaja's microphone went off)

The lights did not go to amber and red.

The Speaker (Hon. Lusaka): Given that you are the last one, I will give you three more minutes.

Sen. Sakaja: I will use them properly. It goes on to say that they received assurance and made two contributions of US\$300,000.

Critically, they also obtained the requested assurances that the other seven bidders will also contribute. That they shall get the legal opinion confirming the illegality, and that the Attorney-General shall confirm this. This is after they have made the contribution.

Mr. Speaker, Sir, there is only one version of the Public Finance Management (PFM) Act. There is no other version. Our laws are very clear. In fact, I am very happy that this letter has come today. In my tradition, we say that sometimes the water pot breaks at the door. The river might be three kilometers away, but when you reach the door, that is when the water pot breaks.

As a result of this and many other revelations that have come out, I would like to urge colleagues that while we laud and appreciate the time the Committee took to do this work, it is not satisfactory. I do not know what Sen. Orenge said. I wish he were here. Maybe you will guide us.

What mechanism is there to have a report as the record of the House, yet not pass it? Let us be real with each other. I have read allegations against PKF Kenya. We have done further inquiries and have seen that there is more that meets the eye. Not only were they not single sourced, but they were not even hired.

I have worked in audit firms since the age of 19 years. I worked at PricewaterhouseCoopers (PWC). I know what you mean when you talk about lease versus buy analysis. That is not what it was contracted to do, yet if you hear the submissions that have been made by the Committee---

I would really like to know from the Committee, why is it that the bark was louder than the bite? If it is for us to come and rubberstamp on behalf of the people of Nairobi, who require proper health services throughout the city, I cannot be part of such a process. I urge Members to fail this Report and use it as just preparatory material, or an introductory preface of the real work that will be done by this House.

Mr. Speaker, Sir, using Standing Order No.58, so that you do not delay the process--. When I go to the HANSARD of this Parliament, sometimes I see reports of this House from 1965, and they are worth the paper they have been written on. You can say that this is truly a Report of the Parliament of Kenya. I urge the Committee to either seek a new mandate or to seek an extension, but not to allow us to be a conveyor belt in this love letter that we are reading.

Based on the recommendations, I oppose.

The Speaker (Hon. Lusaka): Hon. Senators, I now call upon the Mover.

Sen. Dullo: Thank you, Mr. Speaker, Sir. Let me take this opportunity to thank the Members of this Committee for their contribution. I do not know how many minutes I have to respond.

(Sen. Murkomen spoke off record)

No, it cannot be five minutes.

The Speaker (Hon. Lusaka): Ten minutes.

Sen. Dullo: That is okay. I might take less than that.

Mr. Speaker, Sir, let me take this House through memory lane as far as the Managed Equipment Scheme (MES) is concerned. When the MES issue came up, it was first subjected to the Committee of the Whole. I remember very well that, that Committee was chaired by none other than Sen. Murkomen. That did not take even a week for them to come up with anything.

Number two, the same MES issue was subjected to the Committee on Health. It did not go anywhere. It is this House that decided to give this work to the Committee that came up with this Report. Immediately this Report came up, most Senators in this House were saying that this is the best Report that Senate has ever had.

Unfortunately, two weeks down the line, the same individuals who said that this is the best Report that the Senate has ever had are the ones who are saying this is rubbish, this is fake, the committee did nothing. It is really wrong for Members to be hypocritical. Secondly, it is actually demoralizing to the Members who have put their energy, their strength into this Report.

The work of this Committee really touched each and every nerve of MES from day one to the current position. If it is an issue of the recommendation, we had all the reasons. We sat as a Committee, went through the Report, went through the investigation, went through the observations and findings and that is the recommendation we came up with.

The best reason Members are giving here to shoot down the Report, is simply that the recommendations are not biting.

If I look at some of the issues raised by individuals, where people are bringing amendments concerning particular individuals and companies, faulting the whole Report, clearly I will say that is conflict of interest. This is because you did not sit in that Committee to really understand the nitty gritty; the issues brought before the Committee.

If I may give an example of IKM. I thank Sen. Sakaja for having brought up the issue of the so-called *harambee* by the former Attorney-General, Githu Muigai. IKM were actually brought on board much earlier even before they got the approval from the former Attorney-General and that was illegal in itself.

IKM is the one that was recruited to guide the legal process, to make sure that MES went as far as the law is concerned. Unfortunately, there were so many violations of legislation. There are so many gaps as far as MES is concerned. There are so many problems as far as letters of support were concerned. Here, some of our colleagues---

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Senators! Let us consult in low tones. I know our sugar levels are deteriorating, but we are almost there.

Sen. Dullo: Mr. Speaker, Sir, you can see some of the Senators standing here exonerating IKM which is very wrong because you have not even interacted with the Report.

As far as the letter by Sen. Olekina is concerned, the contact is very clear where the original manufacturers must apply for the contract. However, the company he mentioned here, they are not the original manufacturers. The letter he is mentioning is just identifying them as the agents. However, they did not have power of Attorney to sign that contract. That is the reason why we said that investigations should be carried out.

The same applies to IKM. The names that were mentioned here, Carol and the rest, we have not interacted with those names as far as the Committee is concerned.

If I may give a story of General Electric, we have given them an opportunity four times to allow them to produce power of Attorney, to allow them to sign the contract. The first three times they appeared before us, they said they had power of attorney and they appeared with a lawyer.

However, the last day when they appeared before us, they said that they did not have the power of attorney. Clearly, they are lying to the Committee.

As far as we are concerned, General Electric (GE) was not the original manufacturer. That is the reason we did not go ahead to interrogate them. If you look at Pages 312 and 313 of the current Report, it is very clear. We have said: "Investigate and prosecute." You can refer to the Report.

Therefore, it is hypocritical for some Members to stand here and say that we did not touch anything on General Electric (GE). We have even said in the Report that they have conflict of interest as far as IKM is concerned because they had a relationship with IKM before the contract of MES Equipment. That is in the Report.

Mr. Speaker, Sir, on the issue of what happens to the equipment at the end of the contract, the Report is very clear. We said that audit of that equipment be carried out.

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

Sen. Dullo: You have had your time.

(Loud consultations)

The Speaker (Hon. Lusaka): Sen. Olekina, you can read the mood of the House.

Sen. Olekina: Mr. Speaker, Sir, I do not want to interrupt Sen. Dullo, but the key thing is that we must always reduce ourselves to facts.

Section 40 (1) of the Companies Act is very clear. It says-

"A company may, in writing, authorize Execution of deeds or other documents person, either generally or in respect of specified matters, by attorney, as its Attorney to execute deeds or other documents on its behalf."

Mr. Speaker Sir, it is okay to say that a company is not an original manufacturer, but our laws in Kenya allow. That is the same reason that when you look other international

laws, the biggest debate now is why President Trump was allowed to pay USD750 in taxes. It is because the law allows.

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

Sen. Olekina: My point of order is on facts. It is important to clarify that our laws allow for the power of attorney to be used, and I am sure the Senate Minority Leader will support me.

The Speaker (Hon. Lusaka): Sen. (Eng.) Hargura or who is---
What is it Sen. Wamatangi?

(Loud consultations)

Sen. Wamatangi: Mr. Speaker, Sir, I urge my colleagues to be patient because they do not know what I want to say.

Is it in order, just for the record, that the Mover can replace the words she has used, when Senators have aired their views and she terms them as hypocritical?

I believe that putting the word 'hypocritical' on record needs to be corrected. She should replace that word with a more amenable and parliamentary language.

The Speaker (Hon. Lusaka): Proceed, Sen. Dullo.

What is your point of order Senate Minority Leader?

The Senate Minority Leader (Sen. Orenge): My point of order is based on the right of fair hearing under the Constitution. I am a little bit taken aback when a Member who stands on a point of order is stopped on the basis of the mood of the House.

Many mistakes have been made in this country because somebody who has a valid point is told: "You can read the mood of the House." That is how Kenya became a one party State. I am pleading that though we may be tied, next time---

We may not agree with Sen. Olekina, but let us not use the mood of the House as an excuse. That silent voice may normally be the voice of God.

(Applause)

The Speaker (Hon. Lusaka): Proceed, Sen. M Kajwang'.

Sen. M. Kajwang': Mr. Speaker, Sir, I want to move away from the mood of the House to the tradition of the House. When the Mover is called upon to respond, it is like a valedictory speech. It is a final speech. All these Members had an opportunity to debate. You were very generous. One Member here was very clever to ensure that we have adjusted time until conclusion of the debate today.

Am I in order to ask you to allow Sen. Dullo to do her valedictory speech so that after that, Members can have their vote?

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

Sen. Dullo: Mr. Speaker, Sir, of course, I have to defend my Report. Let me go back to the point raised by Sen. Olekina. No, you raised it. There is no problem but I must defend the position of the Committee because we sat in that Committee and we have facts. Do not argue on points of law that you are not sure about.

This is because the power of attorney is what authorized that individual to sign the contract. The letter you are talking about is a general letter. We are specifically looking at the Managed Equipment Services (MES). Did that company have powers?

Mr. Speaker, Sir, secondly, we should not behave like we are representing contractors here. That is why I am saying that I have a right to my opinion. I must say it. We are not here to defend contractors. If you are here to defend contractors, go to the court of law and defend them there but not on the Floor of the House when you have the interest of the country at heart. You are elected by people to represent them here in this House. I must say that. It is not wrong. That is my opinion.

Let me proceed. *Endelea tu.*

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Senators! There is a point of order. Keep it brief.

Sen. Sakaja: On a point of order, Mr. Speaker, Sir. I do not know who the Senator is referring to. However, despite the emotion or the passion, our Standing Orders are clear on imputing improper motives on any Senator.

In as much as Members might be eager for her to finish, this record will stay for longer than we are staying in this House, right now. Our rules still apply. It completely prohibits any Senator - no matter who she could have been referring to- from imputing improper motive on a colleague on how they were prosecuting their point.

Because of that, you need to rule that either that statement is withdrawn or substantiated. If Sen. Dullo has facts that anybody here is representing any contractor, even I would want to know. All of us would want to know. She has 48 hours to substantiate.

Mr. Speaker, Sir, however, in the absence of those facts, this is a House of record and honor. This is a record. She will defend herself, Sen. Murkomen. Let her defend herself.

We cannot impute that anybody's submissions were not here representing the counties they represent but representing any vendor or contractor. If any of them was, they were to declare that interest. Please, that is according to our rules.

The Speaker (Hon. Lusaka): Order, Senators! Sen. Wambua, proceed.

Sen. Wambua: Mr. Speaker, Sir, I listened to the submission by Sen. Dullo. First of all, she used the collective "we". Then she went ahead to say that 'we should not behave as though'. She did not say that anybody is doing it. She is just putting caution that we should not behave as though we are representing contractors.

The Speaker (Hon. Lusaka): Yes, Sen. Orengo.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, still on the right of fair hearing, what I understood the Senate Deputy Majority Leader to be putting forward to the Chamber was not an assertion of fact. She was putting a rhetorical question of "if". So, if the "if" worries you, then there must be something happening in your system that makes you worried but I think it was a rhetorical question.

The Speaker (Hon. Lusaka): Sen. Fatuma Dullo, kindly, proceed.

Sen. Dullo: Mr. Speaker, Sir, let me point out the issue of leasing versus direct purchase as far as the Committee's position is concerned because MES was the contract for leasing. That is why the governors wanted the MES Project to be handled by them.

They felt that leasing was more expensive and yet the equipment was not theirs. That is why we were comparing leasing and direct purchase. It is better to have even purchased that equipment directly than leasing them. Some of the equipment are not necessarily important for them to have been leased. That is the position of the Committee.

Mr. Speaker, Sir, issues like equipment of Meru where Sen. Linturi is concerned, the equipment is lying in the Netherlands and yet his county is paying Kshs200 million per year. There are only three years left for the contract to expire. This is very wrong because we tried to interrogate the National Treasury and the Ministry of Health and asked them where this money was going and they were unable to explain to us.

Health Care Information Technology (HCIT) Lot 3 and 4 that was subject of variation to Kshs200 million has not taken off. Lot 3 and 4, up to now, the contract is not awarded and yet the money is deducted from the county governments. We asked the Ministry of Health and the National Treasury, where the money is but nobody could give us answers.

I want to stop here. As far as the Committee is concerned, we have done our best. Even the National Assembly investigated the same. However, if you compare the Report of the National Assembly and the Report for the Senate, they are totally different. I do not see why Members should water down a report done by this Committee. We sacrificed our time and everything to write it.

Mr. Speaker, Sir, it is up to the House. I believe if this House is going to kill it because that is where I am seeing it is heading then---

The Speaker (Hon. Lusaka): Do not preempt---

Sen. Dullo: Mr. Speaker, Sir, it is my observation and I am entitled to it. This will indict this House. Kenyans were really waiting for this Report. If it is killed today, this is the end of MES. This will be the end of the Senate as far as investigation and MES is concerned.

I thank you.

The Speaker (Hon. Lusaka): Hon. Senators, before I put the question, I told you that time is never a strategy.

(Laughter)

Time has finally come. You have spoken and you are going to speak. The majority will have their way and the minority will have their say.

This is a matter affecting counties. Therefore, the voting will be by delegation.

I direct that the Division Bell be rang for two minutes.

(The Division Bell was rung)

The Speaker (Hon. Lusaka): Order Senators! We have two Tellers, Sen. Iman is for "Ayes" and Sen. Kwamboka is for "Noes". Settle down Senators. I can see the Senate Majority Leader arriving. Senators, we are starting the Roll Call vote.

(Voting in Progress)

The Senate Minority Leader (Sen. Orenge): On a point of order, Mr. Speaker, Sir, did you see how the Senator for Machakos, who is a respected lawyer - if he was in a courtroom, he would have been taken down to the cells - crossing the Floor anyhow? Can he go to the Bar?

The Speaker (Hon. Lusaka): Sen. (Dr.) Kabaka, can you go to the Bar and do the necessary? The beauty with the Senator for Machakos is that he is very obedient. Let us proceed.

(Roll Call voting in progress)

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Senators! Let us have decorum during Divisions. Order, Senators! Standing Order No.86 (4) says:

“During Divisions, Senators shall maintain order in the Senate and shall be in their designated seats and shall remain seated until the result is announced.”

I want to discourage nomadism.

(Roll Call voting in progress)

(Sen. Malalah’s name was called out)

(Sen. (Dr.) Musuruve spoke off record)

You are not on record. We have a letter cancelling the Delegation. Since the letter has not been reversed, as much as we know that you want to vote,

(Roll Call voting in progress)

The Speaker (Hon. Lusaka): Order, Sen. Murkomen. You are not the Senator for Baringo.

Sen. Murkomen: Mr. Speaker, Sir, it is the principle of good neighbourliness, but I vote, No.

DIVISION

ROLL CALL VOTING

*(Question, that the Report of Ad Hoc Committee on
Managed Medical Equipment Services be
adopted, put and the Senate Proceeded*

to vote by County Delegations

AYES: Sen. Dullo, Isiolo County; Sen. Wambua, Kitui County.

Teller of the Ayes: Sen. Iman.

NOES: Sen. Boy, Kwale County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Faki, Mombasa County; Sen. Iman, Garissa County; Sen.(Dr.) Kabaka, Machakos County; Sen.(Prof.) Kamar, Uasin Gishu County; Sen. M. Kajwang', Homa Bay County; Sen. Kang'ata, Murang'a County; Sen. Kihika, Nakuru County; Sen.(Prof.) Kindiki, Tharaka Nithi County; Sen. Kinyua, Laikipia County; Sen. Linturi, Meru County; Sen. Loitiptip, Lamu County; Sen. (Eng.) Mahamud, Mandera County; Sen. (Eng.) Maina, Nyeri County; Sen. (Dr.) Mbito, Trans Nzoia County; Mpaayei, Kajiado County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwaruma, Taita-Taveta County; Sen. Olekina, Narok County; Sen. Orengo, Siaya County; Sen. Outa, Kisumu County; Sen. Poghisi, West Pokot County; Sen. Sakaja, Nairobi City County; and Sen. Wamatangi, Kiambu County.

Teller for the Noes: Sen. Kwamboka

The Speaker (Hon. Lusaka): Order Senators. Sen. Cherargei, as usual, you are found in the wrong place. Take your Seat. Hon. Senators, the results of the voting are as follows:

AYES: 2

NOES: 27

ABSTENTIONS: Nil

The 'Noes' have it.

(Question negatived by 27 votes to two)

Hon. Senators, the Report is now lost.

(Applause)

An hon. Senator: On a point of order, Mr. Speaker, Sir.

Sen. Murkomen: There is not point of order.

The Speaker (Hon. Lusaka): No, No. I will announce it. As I mentioned earlier, our Chairman of the Senate Committee on National Security, Defense and Foreign Relation, Sen. Haji is undergoing a five-hour operation. We just ask that we pray for him. I said earlier on that he fell at home and was flown to Nairobi. Earlier I was at the airstrip to receive him.

ADJOURNMENT

The Speaker (Hon. Lusaka): Hon. Senators, having concluded the business of the Sitting as earlier resolved, it is now time to adjourn the Senate, the Senate therefore stands adjourned, until tomorrow, Wednesday, 30th September, 2020 at 2.30p.m.

The Senate rose at 7.55p.m.

