

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

Wednesday, 7<sup>th</sup> October, 2020

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

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

#### PRAYER

#### MESSAGE FROM THE NATIONAL ASSEMBLY

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

**The Speaker** (Hon. Lusaka): Hon. Senators, I wish to report to the Senate that, pursuant to Standing Order 41 (3) and (4), I have received the following Message from the Speaker of the National Assembly regarding the passage, by the National Assembly, of The County Allocation of Revenue Bill (Senate Bills No. 7 of 2020).

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

“PURSUANT to the provisions of Standing Order 41(1) and 144 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly-

“WHEREAS, the County Allocation of Revenue Bill (Senate Bill No. 7 of 2020) was published vide Kenya Gazette Supplement No. 45 of 17<sup>th</sup> April, 2020 as a special Bill concerning county governments to provide, *inter alia*, for the equitable allocation of revenue raised nationally among county governments for the 2020/2021 financial year;

WHEREAS, the said Bill was passed by the Senate on 29<sup>th</sup> September, 2020 and referred to the National Assembly for consideration in accordance with the provisions of Article 110 (4) of the Constitution;

AND WHEREAS, the National Assembly also passed the said Bill on Tuesday, 6<sup>th</sup> October, 2020 without amendments (in the form passed by the Senate);

NOW THEREFORE, in accordance with the provisions of Article 110 of the Constitution and Standing Orders 41(1) and 144 of the National Assembly

Standing Orders, I hereby convey the said decision of the National Assembly to the Senate”.

Hon. Senators, Article 110 (5) of the Constitution states as follows-

"If both Houses pass the Bill in the same form, the Speaker of the House in which the Bill originated shall, within seven days, refer the Bill to the President for assent".

Further, Standing Order 163 (1) states as follows-

“When a Bill originating in the Senate is passed by the National Assembly, without amendments, the Speaker shall certify and refer the Bill to the President for assent within seven days of its passage by the National Assembly”.

In the circumstances, I wish to inform the House that I am in the process of transmitting the Bill to His Excellency the President for Assent.

I thank you.

Sen. Cherargei, what is your point of order?

**Sen. Cherargei:** Mr. Speaker, Sir, I thought after you had read that Message, I could just make a quick comment.

Mr. Speaker, Sir, I want to thank the National Assembly for expeditiously passing The County Allocation Revenue Bill. I wish that, in future, the same National Assembly should be fast-tracking the passage of some of the Bills that originate from the Senate, so that we can continue to work together as a Parliament, as envisaged under Article 93 of the Constitution.

Secondly, the Chair of the Council of Governors (CoG) and counties are complaining that there is a chronic delay of disbursement by the National Treasury. I hope that the Cabinet Secretary (CS) in charge of the National Treasury and Planning, Hon. Amb. Ukur Yatani, will disburse and give us the schedule of disbursement, so that the counties can continue to access services.

As you transmit the Bill to His Excellency the President, I urge him to assent to it expeditiously because our counties are going through hard times. Salaries have not been paid and development programmes are stalling. When development programmes stall in our counties, it translates to a lot of pending bills and, therefore, service delivery is delayed.

Mr. Speaker, Sir, I want to call upon the House that, in future, we need to relook into the issue of delayed disbursement by the National Treasury to our counties, so that our counties do not continue to suffer. We need our counties up and running. We also need transparency and accountability from the part of governors that we have in this country.

That is a significant step. The Chair of COG threatened that they might shut down the counties, but the passage of this Bill will bring hope, so that counties can continue service delivery to our great people.

I thank you, Mr. Speaker, Sir.

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

**Sen. Wambua:** Thank you, Mr. Speaker, Sir. Indeed, that is a very timely Communication. The speed with which the National Assembly has passed The County

Allocation Revenue Bill as passed by the Senate is commendable. We are hoping that within the next seven days, or much less time, the President will find time and reason to assent to the Bill.

Mr. Speaker, Sir, having said that, and following on what Sen. Cherargei has just commented on, it is true that The County Allocation Revenue Bill is probably one of the most important Bills that we will be passed by this House; the matter of sharing of revenue among counties.

Mr. Speaker, Sir, what baffles me is that there are counties that are able to continue paying salaries to their staff without delays irrespective of whether or not The County Allocation Revenue Bill has passed. There are counties where a slight delay in the passage of The County Allocation Revenue Bill or disbursement occasions long delays in payment of salaries.

It is incumbent upon governors to ensure that they come up with innovative ways of ensuring that, at the very least the payment of salaries to staff is not affected by technical delays in the passage of The County Allocation Revenue Act (CARA) or disbursements from the Treasury.

Mr. Speaker, Sir, I have had conversations with some governors who have gone out of their way to have deals with commercial banks, where counties are depositing their money. They have established standing orders with those commercial banks that at the clock of 26<sup>th</sup> of every month, all salaries are processed whether there is money in the accounts or not. Our governors need to be innovative.

The Chairperson of the Council of Governors (CoG), hon. Oparanya, has a default setting that whenever there is a problem, he just thinks about closing counties. He must think beyond that because he has no capacity to close any county.

Thank you, Mr. Speaker, Sir.

**Sen. Cheruiyot:** Thank you, Mr. Speaker, Sir. I have a different comment altogether. I want to register my disappointment with the disparaging remarks about this House and you, as Speaker, that were made by various Members of the National Assembly during the debate on this Bill yesterday.

As a leader in this House, I take great exception to the fact that there was a Speaker on the Chair, who knows very well the Standing Orders of the National Assembly and what it requires of them if they need to discuss the conduct of any Member of Parliament. Least of all is the fact that he allowed certain Members to make unsavoury remarks about you without intervening or asking them to withdraw.

Mr. Speaker, Sir, I would wish to send you because I know you occasionally consult with the Speaker of the National Assembly, Hon. J.B Muturi. Please, register our disappointment collectively as a House. We are not short of insults and very good superlatives we can use on that House. However, since we are very honourable people, we keep our discussion to levels of decency and ensuring that every time we debate issues, though we may hold contrary views to those of the many of the Members of the National Assembly, we are always decent people and keep our conversations to be within the confines of the law.

I saw Members whose counties were being denied funds or going to lose funds in the formula that had been proposed before this House, deriding this House and saying all manner of things. You wonder where the conscience of some of these Members is. Some of them are in leadership, like the Minority Whip, hon. Junet Mohamed, and many others that I can mention. They need to be named and shamed.

Mr. Speaker, Sir, please, pass our message to hon. J.B Muturi that this House did not take that kindly.

Thank you.

**Sen. Wetangula:** Thank you, Mr. Speaker, Sir. I want to register my appreciation for the Message that you have delivered; that CARA is now passed. I believe that the President will expeditiously assent to the Bill, so that it becomes an Act of Parliament to effect orderly management of resources between the two levels of government.

As we do so, I want to take the opportunity to say two things. First, the CoG should understand and appreciate that it is not a trade union. The CoG is degenerating into a very poorly managed and organized trade union. If you look at the setup of the CoG, it is a coming together of governors who can engage the national Government in an orderly, legal and constitutional manner.

The Chairperson of the Council of Governors (CoG), hon. Oparanya, has absolutely no authority in law and/or in fact to direct any county to close down. What they should be doing is that when there is a shortage of money, the CoG and its Chairperson should be asking the national Government: “How come you have no shortage of payment of salaries to your staff and yet we are suffering?” We know that on the Vote on Account and the advisory from the Supreme Court, the counties should be able to access at least 50 per cent of their previous year’s allocation.

I also join Sen. Cheruiyot in saying that dignity and decorum are the cornerstones of management of parliaments. The unsavoury things that I heard Members of the National Assembly say in general and about you, Mr. Speaker, Sir, are totally unhelpful.

This House will not reduce itself to their level. Some of them are in Parliament through accidental processes. That is why they behave the way they do. We want to remain above board and remind them that should they wish to discuss our Speaker, which they have the right to, let them draft a Motion and table it; let it be discussed and there will be many people who will air their views in the alternative.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Since this was just a Communication, I think those are enough comments. Somebody said that if you wrestle with a pig, you both get dirty, but the pig enjoys it.

I also wanted to assure the House that we are working round the clock to ensure that we get an appointment for the President to assent to the Bill tomorrow.

**PAPER LAID**

REPORT ON THE CONSIDERATION OF THE NATIONAL  
ASSEMBLY AMENDMENTS TO THE COUNTY OUTDOOR  
ADVERTISING CONTROL BILL (SENATE BILLS NO. 19 OF 2018)

**Sen. Wambua:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today, 7<sup>th</sup> October, 2020.

Report of the Standing Committee on Information and Technology on the consideration of the National Assembly amendments to The County Outdoor Advertising Control Bill (Senate Bills No.19 of 2018).

*(Sen. Wambua laid the document on the Table)*

**STATEMENTS**

**The Speaker** (Hon. Lusaka): There are supposed to be Statements by Sen. Were.

ALLEGATIONS OF MONEY LAUNDERING  
AGAINST KCB LIMITED

STATE OF AFFAIRS AT THE HARAMBEE  
SACCO LIMITED

*(Statements deferred)*

STALLED CONSTRUCTION WORKS OF BRIDGES  
IN BOMET COUNTY

**Sen. (Dr.) Langat:** Thank you, 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 stalled construction works on two major bridges in Bomet County.

In the Statement, the Committee should:

(a) Explain why the construction works at Etiet, Mengichik and Tarkambei bridges in Embomos Ward, Bomet County have stalled since 2013.

(b) The Committee should provide an audit report of the projects and state why the projects were abandoned.

(c) State the plan, if any, by the Bomet County government to complete the construction of the two bridges.

**The Speaker** (Hon. Lusaka): Sen. Kinyua, do you want to comment on the Statement?

**Sen. Kinyua:** Asante, Bw. Spika, kwa kunipa fursa hii. Ningependa kuchangia Taarifa ambayo imeletwa na Seneta wa Bomet. Inaonekana kwamba miradi mingi anaanzishwa pasi kumalizwa katika nchi yetu ya Kenya. Ni kama hakuna haja ya kuwa na miradi mingine. Si barabara na daraja pekee.

Kule Laikipia, kuna barabara ya kutoka Naromoru kupitia Kihato, kuelekea Makutano. Hakuna kazi inayofanyika kwa barabara hiyo ambayo imekuwa ikijengwa kwa muda mrefu. Ukiuliza utaambiwa kuwa aliyepewa kandarasi alilipwa ilhali hakuna kazi inayoendelea. Wengine wanafanya kazi kiholela.

Kamati itakayopewa jukumu hili inafaa kuangalia swala hili kwa mapana na marefu. Waziri wa Barabara na Miundomsingi anafaa kuitwa hapa ili atuelezee kinachoendelea kwa sababu mambo ya barabara na daraja yamekuwa kizungumkuti. Daraja zinajengwa na kusombwa na mafuriko wakati wa mvua.

Barabara na mabwawa si mkate ambao mtu anaweza kula kisha aweke karatasi kwa mfuko. Inapaswa maneno haya yaangaliwe vizuri. Barabara na hata mabwawa ya maji yakianza kujengwa, inafaa watu wajue muda yatakayochukua. Wanaopewa kandarasi hawafai kutoweka baada ya kulipwa.

**The Speaker** (Hon. Lusaka): Let us go to the next Statement by Sen. Cheruiyot.

#### HUMAN RIGHTS VIOLATION BY THE POLICE

**Sen. Cheruiyot:** Mr. Speaker, Sir, I rise pursuant to Standing Order No.48 (1) to seek a Statement from the Standing Committee on Justice, Legal Affairs and Human Rights regarding human rights violation by the police.

In the Statement, the Committee should-

(1) Explain why there are increased cases of unconstitutional interference with freedom of movement, association and assembly by the police, who have been meting out violence on Kenyans, including political leaders.

(2) State why the police are continuously disrupting public functions every weekend, instead of providing security at the said functions.

(3) Explain what measures the relevant authorities are taking to prevent a breakdown of the rule of law and protection of human rights of citizens in the run-up to the 2020 General Election.

(4) State the policy and mitigating measures, if any, put in place by the Kenya National Commission on Human Rights (KNCHR), the National Police Service Commission (NPSC) and the Independent Policing Oversight Authority (IPOA) to curb the trend of abuse of human rights and general interference with the rights of citizens.

Mr. Speaker, Sir, this is an extremely important issue that affects almost all our colleagues in this House, who for one reason or the other, have fallen victims to the use of the police to settle political scores. It is important that the Committee deals with this matter expeditiously because we are witnessing increased cases of violence by use of the police almost every weekend.

I thank you.

**Sen. Linturi:** Mr. Speaker, Sir, allow me to thank Sen. Cheruiyot for bringing this Statement. For those that have forgotten history, it is important for me to take this opportunity to remind Kenyans and those who were in the National Assembly in the Tenth Parliament--- I think it is only Sen. Wetangula, Sen. Khaniri, Sen. Outa; there are very few Members in this House.

At that time, we were faced with a seriously problem. We had just been elected and the country was facing serious problems because of the post-election violence. The buildup to that violence had taken quite some time because of the nature and conduct of politicians during meetings and the electioneering period. The events were so bad that we invited the International Criminal Court (ICC) to come to Kenya and do investigations in this country.

We all remember that the first people in this country to go to the ICC were, among them, Commissioner Ali, who was in charge of the police. It is not in doubt that the second one was the current President of the Republic of Kenya. We also had his Deputy and others. With only two years before the general elections, there is need for serious political tolerance.

What informed the change of name from a police force to a police service is because we wanted the police to operate within certain conduct and behavior that conform with aspects of human rights and dignity of the people that they deal with. The continued use of the police other than keeping security and ensuring that citizens do their things with peace, is something regrettable.

In Meru County, a few weeks ago, we lost a student who had just finished university in the hands of violence of the police. There is a gentleman by the name Mureithi, who right now, is in his house because he was beaten and maimed by the police. These are matters that the IPOA has taken.

I would like to address the Commissioner of Police by telling him to take control of the police service. The police should never be instructed by forces outside because that is not what the law says. They should be cautious because they must operate within the law.

We are apprehensive because of the way things are. The International Community should be watchful because of the events that are taking place in this country. We would not want to get back to where we were in 2007/2008.

It was not easy to change the Constitution to allow sharing of power in this country. We must allow the people of Kenya to decide whether they want to elect a president because we cannot allow a situation where there are people referred to as “Deep State” or “System.” That is nonsense and silly of such situations.

I hope that the Committee on Justice, Legal Affairs and Human Rights will deal with this. How I would have loved the Committee on National Security and Foreign Relations to assist and share the experiences because there are many other things that are happening.

Mr. Speaker, Sir, this country belongs to all of us. We deserve the protection of the police because we are taxpayers in this country. The police should never be used by

people who think this country belongs to them or we are in this country out of the invitation of anybody.

**The Speaker** (Hon. Lusaka): If you have a Statement under Standing Order No.48 (1), try to ask the information they should get. Do not make personal comments or statements.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, allow me to say that as a country, we are treading very dangerously. As politicians, we are also treading very dangerously with the peace of this country.

I need not remind the Jubilee Government that they came together and told us we are the ones fighting. Jubilee is founded on the principle that they were joining warring parties and tribes together. We must tell you that Jubilee is dividing Kenya.

We must tell you, while we sit on the other side, that we will not allow you to split this country and unite it when you feel like. When you want, you merge. When you do not want, you split. This country does not belong to all you, but all of us. Even though I agree, I want to remind Sen. Linturi that the question of International Criminal Court (ICC) cannot come. This is because the principle of ICC under the Rome Statute is that we have failed as a country in our criminal justice system. That is not exactly a good thing.

As you continue fighting as to who will be what and where, we are also with you in making sure that you do not drag this country into war. We must watch our statements as a country. Two people lost their lives. The worse thing was that somebody took a video of a woman who was bleeding and interrogating him like the police would do, instead of wiping their blood.

**An hon. Senator:** It was a tomato!

**Sen. Mutula Kilonzo Jnr.** What do you mean that it was tomato sauce? Instead of giving her first aid, she was interrogated and ashamed. We must condemn violence in whatever form, from whichever party.

Mr. Speaker, Sir, Sen. Shiyonga is giggling behind me and it is her Committee that should have spoken. I am surprised that the Committee on National Cohesion, Equal Opportunity and Regional Integration has not made a statement. It is unfortunate. I saw it in Makueni recently---

**An hon. Senator:** Who is the Chairperson?

**Sen. Mutula Kilonzo Jnr.:** The Chairperson is behind me. I condemned heckling when I saw it in Makueni. I knew that this heckling would lead to more heckling. Politicians will be tempted to hire more people to heckle. Eventually, people will stone one another---

**Sen. Shiyonga:** On a point of order, Mr. Speaker, Sir?

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

**Sen. Shiyonga:** Mr. Speaker, Sir, thank you. When you rattle a snake, expect it to bite you. I have a folder here. However, this is not my turn to speak, but his. It is not wise for him to mention my name when I have not been given a chance to speak. Let him hold his horses because I will be tabling before this House what my Committee has done. Let us keep quiet and continue.

**The Speaker** (Hon. Lusaka): Sen. Shiyonga, what is out of order?

**Sen. Shiyonga:** He is out of order because he is preempting what he has not heard from me. He is completely out of order.

**The Speaker** (Hon. Lusaka): Sen. Shiyonga, you are out of order! Take your seat. Sen. Mutula Kilonzo Jnr., conclude.

**Sen. Mutula Kilonzo Jnr:** Sen. Shiyonga sometimes makes our points of order look like mathematical formula. You know, why “y=b;” those things of Sen. Sakaja.

Mr. Speaker, Sir, all of us must condemn violence. As you drive along Rongai to Nakuru Town Road, you see blue *mabati* houses built with mud. Those are families that were relocated there as a result of the post-election violence. We lost neighbours whom I know.

It must send chills to all of us irrespective of who we want to support for the presidency; that it can never be godly for people to die because we want positions of power. The blood of those people is on our hands. If you do this to other families, somebody will do it to you. I am speaking to some of you who are seated here. Go with your families and children to political rallies. Carry them and put them at the front. As people are throwing stones, put them in your car, so that when they are teargassed your family is inside there. If you will not do that, then do not allow families of people who have come to your rallies to be injured while you are there. I know what Sen. Kang’ata said, which is shameful and you should condemn.

Wiper Democratic Party wants to open an office in Kenol Town. I hope you will be a little more kind to other political parties in this country when coming to your jurisdiction.

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

*(Loud Consultations)*

**The Senate Majority Leader** (Sen. Poghisio): Mr. Speaker, Sir, protect me.

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

**The Senate Majority Leader** (Sen. Poghisio): Mr. Speaker, Sir, I would like to make a comment on how we run our business in this House. There are colleagues in this House who have formed a habit of using Statements to get an opportunity to bash the Government and say things that do not promote peace in this country. I thought Sen. Cheruiyot raised a good issue, but our colleague from Meru made it look like it was a Meru issue and bashed the Government.

It is not good that we use an opportunity to debate a matter that should not be debated and is supposed to go to Committee. We can make comments afterwards. We are developing a habit that should not be entertained, where the idea is just raising something, so that you can bash the Government. Some of us are using words like “the police officers are being used by certain people” with no substantiation. We should come out clearly---

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

**Sen. Wambua:** Mr. Speaker, Sir, I hate to interrupt my senior. However, it is the responsibility of government, not just the Kenyan Government, to ensure the safety and security of its citizens. When matters of security and safety of citizens are brought up in a Statement or otherwise, and Members ventilate in a manner to call the attention of Government to act to ensure peace and stability in the nation, it should not be misconstrued as bashing it. Is the Senate Majority Leader in order to say that questioning the Government over issues of insecurity is bashing it?

**The Speaker** (Hon. Lusaka): There is another intervention. What is your point of order, Sen. Cherargei?

**Sen. Cherargei:** Mr. Speaker, Sir, I do not know whether I heard it right and other Members heard it. The Senate Majority Leader has stated that Sen. Mutula Kilonzo Jnr is bashing the same Government, which he is part of.

**The Speaker** (Hon. Lusaka): He did not say that. Do not bring other issues. You are out of order! Take your seat.

**The Senate Majority Leader** (Sen. Poghisio): Mr. Speaker, Sir, there are opportunities if you want a statement from Government on particular issues. You can raise a specific issue. The category that this Statement falls in does not allow debate. I have seen people using personal Statements to achieve certain objectives. We should follow our Standing Orders and directly ask Government questions instead of challenging it. Let us not use every opportunity we have to challenge the Government.

**The Speaker** (Hon. Lusaka): Sen. Wetangula, proceed. This Statement is under Standing order 48 (1), so those of you who want to contribute to it, must come up with issues you want the Committee to address.

**Sen. Wetangula:** Mr. Speaker, Sir, what is happening in our good country today is worrisome. If I was in the shoes of my distinguished friend and brother, Sen. Poghisio as the Senate Majority Leader, I would have stood up to inform the House what the Government is doing to address some of the issues raised in this Statement, instead of preempting what the Committee Chairperson will bring before us.

Mr. Speaker, Sir, yesterday, I came here in anticipation that the Senate Majority Leader would issue a Statement on the happenings in Kenol, on his own Motion. The war drums going on in this country--- You lead Government business. The Government has every duty to protect the lives and properties of all Kenyans and the visitors to this country.

What happened at Kenol, and appears to be mutating into a norm for political bad behavior all over the country, is worrisome. We all remember that Sen. Orenge, Sen. (Prof.) Ongeru, the late Sen. Mutula Kilonzo, Hon. Sally Kosgei, Hon. Martha Karua, Hon. William Ruto and I were the team that sat at Serena Hotel when this country was on fire. What we went through is not an experience to behold, and we do not seem to have learnt any lessons.

Mr. Speaker, Sir, today, a rabidly pro-Government media house carried a very worrisome story that intelligence had it that there was going to be violence and chaos at Kenol, and the police responsible for security at Kenol were advised to leave their stations and go home. If this is happening in our country, then God help us.

---

**Disclaimer:** *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

I am very sure that even 20 policemen would have stopped the skirmishes that we saw at Kenol if they were properly briefed. We are told that intelligence gave information that there were underhand currents showing that there was going to be violence, and we have lost human lives. In fact, the Government owes Kenyans an apology for failing to maintain peace and security.

Sen. Mutula Kilonzo Jnr., and Sen. Dullo, who are practicing lawyers, should know the famous case of *Kimanga versus the Republic of Zanzibar*. He says that a breach of peace cannot be imagined to be committed in the presence of policemen. If policemen were there, there would have been no breach of peace, because it is their duty to maintain peace. I urge my brother, Sen. Poghiso. Shakespeare said: "Uneasy lies the head that wears the crown." The crown is on his head in this House. He must constantly assure us as his colleagues that all is well, and all will be well.

I want to go to Kenol and open an office for Ford Kenya. I hope that Sen. Kang'ata will not be there picketing, shouting and throwing crude weapons at me when I go there. Nobody needs a visa to go to any part of this country. Everybody is welcome to go anywhere and everywhere to propagate correct political messages to hold our country together.

Thank you.

**The Speaker** (Hon. Lusaka): Sen. Dullo.

**Sen. Dullo:** Thank you, Mr. Speaker, Sir. I wish to add my points to this Statement. Let me take this opportunity to thank Sen. Cheruiyot.

It is right to protect Kenyans' rights. Secondly, it is the responsibility of the police to protect the rights of the citizens, but it is wrong for us to stand here every now and then blaming the police. I am saying this because we, as politicians, are also to be blamed. This is because if we are told that this place is insecure, we should stop going there. It is not a matter of life and death.

Mr. Speaker, Sir, we should not blame only the Government for where we are heading as a country. We should blame ourselves, as politicians and leaders of this country, because we all have the right to protect and bring peace to our country.

I want to advise the Committee, and I believe that it is going to be the Committee on National Security, Defence and Foreign Relations, that where we are heading is a dangerous zone. We should come up with legislation. All those politicians who are going to be involved in violence should be stopped and blocked from contesting, come 2022.

I thank you.

**The Speaker** (Hon. Lusaka): I see a lot of interest, but we have to make progress. There are other Statements.

Sen. Kang'ata.

**Sen. Kang'ata:** Mr. Speaker, Sir, let me take this opportunity to condemn the violence that occurred in Kenol in Murang'a County last Sunday. Let me also take this opportunity to state that Kenya is a free and democratic country. Every person is entitled to go to any place and give his opinion and canvass for votes. Therefore, any attempts to curtail any Kenyan from going to any place is illegal and wrong.

Mr. Speaker, Sir, I strongly believe that we have a divergence of opinion. Therefore, if we were to stop people from coming to Murang'a, on what basis will I have the moral duty or the enablement to go to Nandi, Kisumu or Mombasa and seek votes? Even if I disagree with you, I will allow each and every person to come to Murang'a. Murang'a is an open place.

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Order, Senators! Do you want to be informed by Sen. (Dr.) Langat?

**Sen. Kang'ata:** No, I do not want to be informed.

*(Laughter)*

**The Speaker** (Hon. Lusaka): He says that he does not need to be informed. Order, Sen. (Dr.) Langat. He does not want to be informed. He says that he has enough information.

**Sen. Kang'ata:** Mr. Speaker, Sir, I am very happy that it is now on record that no one blames Sen. Kang'ata for that violence, because everyone knows that Sen. Kang'ata is a peaceful man.

There is no evidence that the Government planned the chaos that happened at Kenol. It was planned by people who do not care about the poor person or respect the right to life. I want to vouch for the Government of His Excellency Uhuru Kenyatta. It was not at all involved in the planning of the chaos.

We welcome each and every person to Murang'a. Come and pursue your case in Murang'a County; we are peaceful people. None of those people who were fighting came from Murang'a. Even the injured did not come from Murang'a County. They were ferried from Nairobi and Thika Town in Kiambu County. I, therefore, vouch for the people of Murang'a County. We are peace loving citizens of this Republic.

Mr. Speaker, Sir, I am going to finalize this point by saying that I urge the police to conduct impartial investigations. Finally, if you use violence to curtail your opponent, that does not assist you. In fact, the opposite happens. The other political star will start rising up.

Let me give you an example. In the year 2007, there was one politician in Murang'a County who was almost winning, until the day he planned chaos against his opponent. When the opponent was injured, he was wise. He decided to make it a major case, and political sympathy assisted him to win.

My point is that those of us who support a certain direction in the current political formation must ensure that we do not give sympathy votes to those who we do not associate with politically. Therefore, we should be peaceful.

Thank you.

**The Speaker** (Hon. Lusaka): Since we have heard from the Senator where the scene of crime was, I want to call for the next Statement by Sen. Faki.

Is he not here?

## HALI YA BARABARA YA NAIROBI–MOMBASA

*(Statement deferred)*

What is your intervention, Sen. Sakaja? Sen. Cherargei, why are you standing?

*(Sen. Cherargei spoke off record)*

You are not Sen. Faki. Sen. Faki's Statement has been deferred.

## EXTRA-JUDICIAL KILLINGS IN NAIROBI

**Sen. Sakaja:** When I heard the Statement, and I know that the bulk of the contributions have been around a specific event, I felt that we should not lose that opportunity to follow up on real human rights issues that we have raised in this House.

I request the Committee, as it looks at this issue, to also consider the matter we had brought on extra-judicial killings in Nairobi. I know that we had started it when Sen. Cherargei was the Chairman of the Senate Committee on Justice, Legal Affairs and Human Rights.

There is an officer called Mr. Ndiema, who was charged with shooting a 13-year-old boy, Yassin Juma, in Huruma. I think the Committee will do us justice if they can update us not just on the case of Mr. Ndiema, but together with Amnesty International we gave a whole list of officers who have been accused in Nairobi in Kamukunji Constituency, Embakasi North Constituency---

**The Speaker** (Hon. Lusaka): Sen. Sakaja, we have already moved on. You are using a shortcut to say something.

**Sen. Sakaja:** No, I am not. I am just asking for additional information. I am not talking about the politics. These are serious cases and the parents still want justice, yet we are seeing games being played by the prosecution and police in court. I think with your indulgence you can ask that, that additional information be given. We will deal with the other issues of politics politically. The Committee will not sort out our politics, but on this one, we need responses on those specific cases that we listed. I will speak to the Chair of the Committee on Justice, Legal Affairs and Human Rights.

**The Speaker** (Hon. Lusaka): Is it an observation, Sen. (Dr.) Ali?

## ALLEGED ABDUCTION OF A YOUNG MAN IN SOUTH C

**Sen. (Dr.) Ali:** Mr. Speaker, Sir, I raised an issue here the last two weeks regarding the abduction of a young man from South C. Up to now, I have no answer or communication. If this Government does not want to give us information, let us be told.

**The Speaker** (Hon. Lusaka): That is not, first of all, about the Government. It is the Chairman of the Committee on National Security, Defence and Foreign Relations.

**Sen. (Dr.) Ali:** It is about the Government because the Chairman has said he cannot get involved in that. He told you, as the Speaker, to deal with it, and you called the CS, who has refused to appear.

**The Speaker** (Hon. Lusaka): May be we will discuss it out of the Chamber. The next Statements are from Sen. Cherargei. Read them at the same time, without comments, so that we can move. Those are under Standing Order No. 48(1).

**Sen. Cherargei:** Thank you, Mr. Speaker Sir. I do not know how it is ordered in the Order Paper, but I will just read.

*(Loud consultations)*

Mr. Speaker Sir, protect me from the Majority Whip. I do not know why he is becoming reckless.

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

**Sen. Cherargei:** Mr. Speaker Sir, I think you need to take punitive measures against the Majority Whip. He is loitering a lot.

#### STATE OF AFFAIRS AT TIVET CENTRES AND ISSUES AFFECTING THEIR TRAINERS EMPLOYED BY BOGS

Mr. Speaker, Sir, I rise pursuant to Standing Order 48(1) to seek a Statement from the Committee on Education on the Technical, Vocational Education and Training Institutions (TIVETs) across the country and issues affecting trainers employed by respective Boards of Governors in the institutions.

In the Statement the Committee should-

(1) State the measures that have been put in place, if at all, to cushion the trainers across the country, particularly during this time of the COVID -19 pandemic considering that they have not paid salaries for the duration of the pandemic.

(2) State the reason TIVET institutions are not currently employing business trainers, yet they are providing equally required services as technical trainers.

(3) Elaborate the measures that will be put in place to address the current deficit of trainers due to high enrolment in TIVET institutions.

(4) State the measures instituted to adhere to established recruitment guidelines to ensure there is transparency and fairness in recruitment processes of trainers in all TIVET institutions.

(5) State the measures in place, if any, to ensure there exists a uniform framework and terms of service for all TIVET trainers across the country.

Mr. Speaker, Sir, since you had given me the indulgence, I will move to the second Statement.

#### NON-PAYMENT OF TEACHERS SERVING UNDER THE SCHOOLS' BOM IN NANDI COUNTY

---

**Disclaimer:** *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

Mr. Speaker, Sir, I rise pursuant to standing 48(1) to seek a Statement from the Standing Committee on Education regarding the non-payment of teachers serving school boards of management (BOM) in Nandi county.

In the Statement the Committee should-

(1) State why teachers serving under Boards of Management in schools in Nandi County have not yet been paid their salary since March despite several promises by the Ministry of Education.

(2) State the accurate position of the Ministry of Education concerning the availability of funds to pay the Board of Management teachers.

(3) Explain why the Ministry of Education has failed to cushion of BOM teachers during this COVID-19 period despite the great work they have been doing in our schools.

I thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Order, Members! For the convenience of the House, I want to rearrange the Order Paper before we come back to the Statements.

I direct that we go to Order No.9.

## BILL

### *Second Reading*

#### THE COMMUNITY HEALTH SERVICES BILL (SENATE BILLS NO. 5 OF 2020)

*(Sen. (Dr.) Zani on 4.8.2020)*

*(Resumption of debate interrupted on 6.10.2020)*

**The Speaker** (Hon. Lusaka): I order that the Division Bell be rung for two minutes.

*(The Division Bell was rung)*

**The Speaker** (Hon. Lusaka): Order, Senators! Take your seats.

Order! Take your seats. Otherwise, you will be forced to freeze where you are when I stand, and you can imagine Sen. Millicent freezing for a few minutes.

*(Laughter)*

Take your seats.

I will now put the Question, that the Community Health Services Bill (Senate Bills No.5 of 2020) be read a Second Time.

Hon. Senators, we shall proceed to Roll Call Voting. The tellers are Sen. Cherargei and Sen. Kang'ata.

*(Voting in progress)*

## DIVISION

### ROLL CALL VOTING

*(Question, that the Community Health Services Bill  
(Senate Bill No.5 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. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. (Prof.) Ekal, Turkana County; Sen. (Eng.) Hargura, Marsabit County; Sen. Iman, Garisaa County; Sen. Kang'ata, Murang'a County; Sen. Khaniri, Vihiga County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County; Sen. (Dr.) Lelegwe, Samburu County; Sen. Linturi, Meru County; Sen. (Eng.) Mahamud, Mandera County; Sen. (Dr.) Mbito, Trans Nzoia County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Olekina, Narok County; Sen. Nyamunga, Kisumu County; Sen. (Dr.) Ochillo-Ayacko, Migori County; Sen. Poghio, West Pokot County; Sen. Prengei, Nakuru County; Sen. Sakaja, Nairobi City County; Sen. Seneta, Kajiado County; Sen. Wambua, Kitui County; Sen. Wetangula, Bungoma County and Sen. (Dr.) Zani, Kwale County.

**Teller of the Ayes:** Sen. Kang'ata

**NOES:** Nil

**Teller of the Noes:** Sen. Cherargei

**The Speaker** (Hon. Lusaka): Hon. Senators, we now have the results: They are as follows-

**AYES:** 27

**NOES:** Nil

**ABSTENTIONS:** Nil

The 'Ayes' have it.

*(Question carried by 27 votes to Nil)  
(The Bill was accordingly read the Second Time  
and committed to a Committee of the Whole tomorrow)*

Hon. Senators, I want rearrange the Order Paper again. We will do Order Nos. 15 and 16, then we go back to the other business.

## COMMITTEE OF THE WHOLE

*(Order for Committee read)  
[The Speaker (Hon Lusaka) left the Chair]*

---

**Disclaimer:** *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

## IN THE COMMITTEE

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

THE SECTIONAL PROPERTIES BILL  
(NATIONAL ASSEMBLY BILLS NO. 23 OF 2019)

**The Temporary Chairperson** (Sen. Nyamunga): Order, hon. Senators! Kindly, take your seats.

Hon. Senators, can we have some order, please. We want to transact business. Kindly, let us have some order.

Hon. Senators, we are in the Committee of the Whole to consider The Sectional Properties Bill (National Assembly Bills No. 23 of 2019).

*Clauses 4-11*

*(Question, that the Clauses 4-11 be part of the Bill, proposed)*

**The Temporary Chairperson** (Sen. Nyamunga): Division will be at the end.

*Clause 12*

**The Temporary Chairperson** (Sen. Nyamunga): The Chairperson of the committee on Land, Environment and Natural Resources, do you have an amendment?

**Sen. Mwangi:** Yes, Madam Temporary Speaker.

**The Temporary Chairperson** (Sen. Nyamunga): Please, go ahead.

**Sen. Mwangi:** Madam Temporary Speaker, I beg move-

THAT, Clause 12 of the Bill be amended---

**The Temporary Chairperson** (Sen. Nyamunga): What is your point of order, Sen. Khaniri?

**Sen. Khaniri:** Madam Temporary Chair, I just want to remind the Chairman of the Committee on Land, Environment and Natural Resources that we are in the Committee of the Whole. Therefore, he should refer to you as Madam Temporary Chairperson and not Madam Temporary Speaker.

**Sen. Mwangi:** Thank you. That is why you are my friend, Sen. Khaniri.

Madam Temporary Chairperson, I beg to move-

THAT, Clause 12 of the Bill be amended by deleting Sub-Clause 5 and substituting therefore, the following new sub-clause-

Before registering a proposed sectional plan of sub-division or consolidation, the Registrar shall amend, in the manner prescribed by the regulations, the original sectional plan as endorsed by a surveyor.

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. Nyamunga): Division will be at the end.

*Clauses 13-60*

*(Question that the Clauses 13-60 be part of the Bill, proposed)*

**The Temporary Chairperson** (Sen. Nyamunga): Division will be at the end.

*Clauses 3 and 2, the Title and Clause 1*

*(Question that the Clauses 3 and 2, the Title and Clause 1  
be part of the Bill, proposed)*

**The Temporary Chairperson** (Sen. Nyamunga): Division will be at the end.

**The Temporary Chairperson** (Sen. Nyamunga): Can we get a confirmation from the whips that we can do a Division after this?

Fine, if the numbers are not favourable, we will do that next time.

Mover, please.

**The Senate Majority Leader** (Sen. Poghisio): Madam Temporary Chairperson, pursuant to Standing Order 148, I beg to move that the Committee of the Whole report progress on its consideration of the Sectional Properties Bill (National Assembly Bills No.23 of 2019) and seek leave to sit again tomorrow.

*(Question proposed)*

*(Question put and agreed to)*

CONSIDERATION OF THE NATIONAL ASSEMBLY AMENDMENTS TO  
THE COUNTY OUTDOOR ADVERTISING BILL  
(SENATE BILLS NO. 19 OF 2018)

**The Temporary Chairperson** (Sen. Nyamunga): We are now considering Order No.16, the Consideration of the National Assembly amendments to the County Outdoor Advertising Control Bill (Senate Bills No.19 of 2018).

*Clause 2*

**Sen. Halake:** Madam Temporary Chairperson, I beg to move-

THAT, Clause 2 of the Bill be amended by inserting the following definition in its proper alphabetical sequence—

“rate card” means a document containing prices and descriptions for various advertisement placement options available from a service sector, which sets out the minimum and maximum price of a service.

---

**Disclaimer:** *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

I would like to confirm that the Standing Committee on Information, Communication and Technology has considered all the amendments that have been brought by the National Assembly at its sitting on 29<sup>th</sup> June. The Committee considered the amendments by the National Assembly to the County Outdoor Advertising Control Bill (Senate Bills No.19 of 2018) and noted that the amendments by the National Assembly to the Bill did not change the objectives of the legislations and that they are not unconstitutional.

The Committee made a report to the House recommending that the Senate agrees to the amendments by the National Assembly and passes the Bill pursuant to Article 112(2)(a) of the Constitution and Standing Order 159(3)(4)(a) of the Senate Standing Orders.

Madam Temporary Chairperson, I beg to move that the amendments by the National Assembly to Clause 2 of the Bill be agreed to.

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. Nyamunga): Division will be at the end.

*Clause 3*

**Sen. Halake:** Madam Temporary Chairperson, I beg to move—  
THAT, Clause 3 of the Bill be amended—

- (a) by deleting the expression “(1)”;
- (b) in paragraph (c) by inserting the words “that has a licence from another county” immediately after the words “a moving vehicle” appearing in subparagraph (vi).

Clause 3 of the Bills sets out matters which will not be subject to the application of the Act. The Committee is of the view that the deletion of the phrase is a cleanup amendment.

Paragraph (vi) is meant to address what is currently happening where a moving vehicle employed for purposes of advertising is required to pay a fee to every county that the vehicle passes through. This amendment will ensure that the fee is paid once and not in every county. Therefore, the Committee would like that agreed to.

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. Nyamunga): Division will be at the end.

*Clause 4*

**Sen. Halake:** Madam Temporary Chairperson, I beg to move—  
THAT, Clause 4 of the Bill be amended in sub-clause (2) by deleting paragraph (b) and substituting therefore the following new paragraph—

---

**Disclaimer:** *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

“(b) the written consent of the owner of the site or any other person with an interest in the site entitled to give consent”.

The Committee wants the amendment of the National Assembly to Clause 4 be agreed to.

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. Nyamunga): Division will be at the end.

*Clause 10*

**Sen. Halake:** Madam Temporary Chairperson, I beg to move:

THAT, Clause 10 of the Bill be amended in sub-clause (2) by deleting paragraph (b) and substituting therefor the following new paragraph—

“(b) the written consent of the owner of the site or any other person with an interest in the site entitled to give consent”.

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. Nyamunga): Division will be at the end.

*Clause 15*

**Sen. Halakeh:** Madam Temporary Chairperson, I beg to move-

THAT, Clause 15 of the Bill be amended by inserting the words ‘regulate and’ immediately after the words ‘government entity shall’.

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. Nyamunga): Division will be at the end.

*Clause 21*

**Sen. Halakeh:** Madam Temporary Chairperson, I beg to move: -

Clause 21 of the Bill be amended in sub-clause (2) by deleting paragraph (b) and substituting therefor the following new paragraph—

‘(b) a rate card that shall be reviewed every seven years stating the fees and charges to be paid in respect of any matter required for the purposes of this Act’.

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. Nyamunga): Division will be at the end.

---

**Disclaimer:** *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

Hon. Senators, we are not able to carry out Division today because of numbers and it will be listed on the Order Paper tomorrow.

According to my understanding, Members have been released.

Before we announce we have already verified from the Whips. The information that we have is that we do not have numbers.

Mover, please, report for progress.

**The Senate Majority Leader** (Sen. Poghisio): Madam Temporary Chairperson, pursuant to Standing Order 148, I beg to move that the Committee of the Whole report progress on its consideration of the National Assembly amendments to the County Outdoor Advertising Control Bill (Senate Bills No.19 of 2018) and seek leave to sit again tomorrow.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

### PROGRESS REPORTED

#### THE SECTIONAL PROPERTIES BILL (NATIONAL ASSEMBLY BILLS NO.23 OF 2019)

**The Temporary Speaker** (Sen. Nyamunga): Let us have the Chairperson.

**Sen. Mutula Kilonzo Jnr.:** Madam Temporary Speaker, I beg to report that the Committee of the Whole has considered the Sectional Properties Bill (National Assembly Bills No.23 of 2019) and seeks leave to sit again tomorrow.

**The Senate Majority Leader** (Sen. Poghisio): Madam Temporary Speaker, I beg to move that the House do agree with the Committee on the said report. I ask Sen. Farhiya to second.

**Sen. Farhiya:** Madam Temporary Speaker, I second.

*(Question proposed)*

*(Question put and agreed to)*

#### CONSIDERATION OF THE NATIONAL ASSEMBLY AMENDMENTS TO THE COUNTY OUTDOOR ADVERTISING CONTROL BILL (SENATE BILLS NO.19 OF 2018)

**Sen. Mutula Kilonzo Jnr.:** Madam Temporary Speaker, I beg to report that the Committee of the Whole has considered the National Assembly Amendments to the

---

**Disclaimer:** *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

County Outdoor Advertising Control Bill (Senate Bills No.19 of 2018) and seeks leave to sit again tomorrow.

**The Senate Majority Leader** (Sen. Poghisio): Madam Temporary Speaker, I beg to move that the House do agree with the Committee on the said report. I ask Sen. Farhiya to second.

**Sen. Farhiya:** Madam Temporary Speaker, I second.

*(Question proposed)*

*(Question put and agreed to)*

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, you are aware that we interrupted our programme. We will go back to Order No.7, which is Statements. I will allow Sen. Cherargei who has an important and urgent Statement to make at this time.

*(Resumption of Statements)*

## STATEMENTS

### THE SCHEDULED REOPENING OF SCHOOLS

**Sen. Cherargei:** Thank you, Madam Temporary Speaker, for this opportunity. My Statement is on an issue of national concern. It is about the scheduled reopening of schools.

Madam Temporary Speaker, pursuant to Standing Order No.47(1), I rise to make a Statement on the issue of general topical concern namely the scheduled reopening of schools on Monday.

The communication by the Ministry of Education on reopening of schools got parents in the country by surprise yesterday. For the past few weeks, the Ministry of Education led by the Cabinet Secretary Prof. George Magoha has been releasing inconsistent information on matters concerning education in the country with specific reference to the academic calendar.

His Excellency President Uhuru Kenyatta during his 12<sup>th</sup> Nation Address on the COVID-19 Pandemic Situation in the Country made on 28<sup>th</sup> September, 2020, informed the nation that the schools reopening was yet to be considered. The President cautioned against the incessant calls for reopening of schools and stated that the safety of the school-going children was of utmost importance.

It is barely a week since President Uhuru Kenyatta made the statement but the Ministry of Education has ordered that schools be opened for Grade Four, Class Eight and Form Four classes. There was no clarity on reopening of international schools across the country.

---

**Disclaimer:** *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

There are some parents who have already relocated to the villages because of the hard economic times caused by side effects of COVID-19 pandemic. We are all aware of the depressed state of the economy that the country is in due to COVID-19 pandemic.

Many people lost their jobs and others relocated to different places as coping mechanisms for the tough economic times. It means they relocated with their children. That means they will need to move with their children. It will affect the transition period.

We have seen in media and other forums where private schools have been turned into places that are now being used for poultry farming. Others have closed down because of hard economic times. It means that it will be hard for parents to settle and prepare their children to return to school within three days. That is not easy.

Most of our children have been eating well and have added weight. Others have misplaced their uniforms. We need to buy textbooks which are expensive. Parents also need to look for bus fare. Some parents have not been paid. Others used to depend on menial work or used to do casual jobs and therefore they have not been paid.

Our children also need psychosocial support. Some of them need to be encouraged to go back to school because they are also human beings like us and they are afraid of the COVID-19 pandemic.

It will be difficult for parents to settle and prepare their children to go back to school within three days since they are expected to pay school fees and provide shopping. Their shopping is not cheap. Children of nowadays do not like being shopped for a few things. There is what we call 'Bursar's List'.

Most bursars might say that they need sanitizers, masks, desks to be remade and infrastructural development within the schools.

It must be noted that most schools have not received their capitation from March this year, and yet you are telling them that they need to have sanitizers. You heard today in the morning when the Cabinet Secretary in charge of Energy said that most schools 'power has been disconnected because of non-payment. The teachers employed by the Boards of Management (BOM) and the subordinate staff have not been paid or resumed work.

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

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

Madam Deputy Speaker, schools need painting and to be re-configured in order to observe social distancing required as part of the COVID-19 rules and regulations from the Ministry of Health. They need to be fumigated because most of them were isolation centres. How safe are our children since most schools were being used as isolation centres? Has the Ministry of Health within three days verified this?

**The Deputy Speaker** (Sen. (Prof.) Kamar): There is a point of order from Sen. Farhiya. Is it a point of information or a point of order?

**Sen. Farhiya:** Madam Deputy Speaker, is it in order for Sen. Cherargei to debate his own Statement? The debate should come after the Committee submits its report. Allow other Senators to comment.

**The Deputy Speaker** (Sen. (Prof.) Kamar): We were on transition. I did not realize he had finished reading the Statement. Are you still reading? Finish the reading, comments will come from other Members.

**Sen. Cherargei:** Madam Deputy Speaker, Sir, under Standing Order No.47 (1) which my Statement falls under, this is a Statement based on general concern. I would advise my leader to hold her horses so that I can finish then she can comment. I am reading through my notes.

Three days is not sufficient enough for the Ministry of Health to crosscheck the fumigation process within our isolation centers which happen to be schools of learning. We are worried for our children to go back to school.

In the Rift Valley and Western Kenya, most parents have taken their children for circumcision. It is called 'tumda'. Most of them in Western Kenya did not do it in August because COVID-19 was on the rise. They are expected to complete the right of passage within 30 days. The 'tumda' process is important in our culture. It will be almost impossible to have children report back to school on Monday.

Finally, considering the tough times the country is experiencing arising from the effects of the pandemic, most if not all of our children, are not prepared psychologically or are in fear of returning to school. I, therefore, urge the Ministry of Education, Science and Technology to provide psychosocial support to school children and give a notice of 90 days for school reopening in order to enable parents and children to prepare well. We urge the Government to suspend the orders for the next 90 days so that our children can have adequate time.

Madam Deputy Speaker, I saw people making funny comments that when bars and other social joints were being opened and people were taking alcohol, why is it hard for them to allow schools to be reopen. They should understand that the situations are different.

**The Deputy Speaker** (Sen. (Prof.) Kamar): I do not see Sen. Poghisio, Sen. Halake, proceed.

**Sen. Halake:** Thank you, Madam Deputy Speaker, for giving me the opportunity. I would like to thank my good friend, the Senator for Nandi County, for bringing up this important Statement. Yesterday while watching the news, I was almost in tears as parents were crying and saying that this was an ambush. Many parents have been laid off from work. They have to figure out how to get food and other things. A bit of leeway and transition would have been better to plan for January. Stating that reopening for Grade Four, Grade Eight and Form Four will be on Monday was very hard for them.

That notwithstanding, the kneejerk manner in which the Ministry has been dealing with this issue is disturbing and concerning. Given that this is a life-threatening situation and we cannot play with the lives of our children. Also, not empathizing with the parents who at this moment hardly have anything to put on the table for the children. There does not seem to be guarantees.

Last night I was interested in this matter. Back home, I have been supporting online radio learning for children. Even now, everybody is asking what will happen to the

systems put in place for the children to access learning through radio or online learning which most parents had paid for.

This is wasteful in terms of not caring about what parents are going through and the safety measures the schools are supposed to take into consideration. Nobody is telling the parents exactly what will happen as soon as children walk through the door. Should the child contract the virus, do they have isolation rooms? Is the school locked down? What happens is not clear. We are playing with the lives of our children.

We need to be guaranteed or assured that this is not going to be a case of putting our children in danger. Can you imagine if today you are the parent whose child stays at home because you do not have anything? This is indignity of the highest order and very insensitive from the Ministry not to put in place systems where all children are given an opportunity when there is no school fees or given support in terms of books and other things. No such thing has been said and it is now back to school and up to the parents to figure everything out.

Madam Deputy Speaker, I support this and hope something will be done on this Statement even though under Standing Order No.47 (1), it can be processed further.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you, Senator. Sen. (Dr.) Musuruve, proceed. Let us be brief.

**Sen. (Dr.) Musuruve:** Thank you, Madam Deputy Speaker, for giving me this opportunity to support this Statement by Sen. Cherargei. Before I support the Statement, allow me to wish the teachers happy belated Teachers' Day. I looked for an opportunity yesterday, which I did not get. I am a teacher by profession. All the years of my life I have taught.

I have taught two years in primary school after my 'A' level. After my diploma, I taught in various secondary schools including a school for the disabled. Even after Masters and Doctor of Philosophy (PhD) degrees, I have 14 years' experience teaching at the university. I am humbled for giving me this opportunity.

As we talk about issues of school reopening, they concern me. As a teacher by profession, I know that we have to do something in terms of preparedness. I am in the Committee on Education where we have called governors to explain school preparedness with regard to reopening. It is clear that in some counties, there are no toilets and water provision.

In other counties, there are mud-walled classrooms with cow dung finishing. These are issues that need to be addressed because we are not being sincere. I raised a Statement on the Floor of the House and the Clerk should find out where my Statement is so that we deliberate on issues of COVID-19 preparedness.

It is unfair and unfortunate that the Ministry of Education, Science and Technology is not bringing the legislative arm of Government on board when it comes to addressing issues of COVID-19 and school preparedness. We have called the Ministry to appear before us and they are evasive. When they hold conferences, they do so with people who are like minded and are their allies. They disregard the legislative arm. We need to work together so that we can help children in this country.

There is need for the Ministry of Education to work with us. As I speak, the Ministry of Health clearly came out and stated the preparations they are making, but the Ministry of Education has not come out to convince Kenyans that they are ready for schools to reopen.

We cannot take it for granted that the Ministry says that we are reopening in two days or two weeks' time, and children should go back to school. They have to give us reasons and justify our curiosity that they have prepared adequately for schools to reopen. If they set money aside, what have they done for schools to reopen?

Madam Deputy Speaker, I thank you for the opportunity. I hope that when this situation is brought to the Committee on Education, where I sit, the Cabinet Secretary (CS) himself will come before us. He should not send an assistant or anybody else. We want him to come before us, so that we walk this journey together for the children of this country.

Thank you, Madam Deputy Speaker.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Sen. (Dr.) Milgo will come last.

Sen. Farhiya, and please, let us be very brief.

**Sen. Farhiya:** Thank you, Madam Deputy Speaker for giving me this opportunity. I thank Sen. Cherargei for bringing this Statement, but I have a different view on the schools reopening. I believe that we need to follow the Government's health guidelines. I do not think that Prof. Magoha, being a medic himself, would reopen schools carelessly if he thought that the risk outweighed the benefit. I have worked with the Professor at the Kenya National Examinations Council (KNEC), when he was the Chair of Kenya Accountants and Secretaries National Examinations Board (KASNEB), and I know how he works. I doubt that he would reopen---

We talk about people being economically disabled, but the more that we keep schools closed, the more--- It is six months since the Coronavirus Diseases (COVID-19) started in this country. That is long enough for people to know what is risky with COVID-19 and what is not. The more we keep schools closed, the more the economy will worsen. If we reopen schools, there will be money circulating. Those in the transport sector will be getting money as a result of people going to school. There are also people who cook lunch for kids and the subordinate staff. We are very much aware that there are some private schools that have closed down because they could not pay their own rent.

The other issue is on people complaining about school fees. Those who cannot pay school fees are the ones who are in private schools. We know that public primary schools are free in this country, courtesy of the Jubilee Government. Day secondary schools are also free in this country, again, courtesy of the Jubilee Government. Therefore---

*(Loud consultations)*

**The Deputy Speaker** (Sen. (Prof.) Kamar): Order, Senators!

**Sen. Farhiya:** Madam Deputy Speaker, the other issue is that there is a lot of child abuse that is happening as a result of schools being closed, especially to the girl child.

**Sen. Madzayo:** Jambo la nidhamu, Bi. Naibu Spika.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Sen. Madzayo, there is a button to press on your desk. I have not seen the notification, but I will give you a chance.

**Sen. Madzayo:** Bi Naibu Spika, nimemskia dadangu akisema kwamba elimu katika shule za msingi ni bure. Mimi nashanga kama sisi wengine tunafanya makosa kwa kulipa. Naomba afanue ni shule gani ambayo watoto wetu walioambiwa warudi katika darasa la nne, tano ama sita--- Ni wapi, ili tujue?

**The Deputy Speaker** (Sen. (Prof.) Kamar): *Asante sana.* Point taken.

**Sen. Farhiya:** Thank you, Madam Deputy Speaker. I am talking about public primary and day secondary schools. I am not talking about people whose business is to serve in the education sector, where there are gaps. For those ones, you have to pay, but I am talking about public schools.

Madam Deputy Speaker, another arrangement that can be made is to allow the aged teachers and those who have preexisting conditions to stay at home. This is going to be the new norm until we find a vaccine. The more schools remain closed, the more the economic activities that involve schools will be shut down. How many teachers have gone back to their home counties because they cannot pay rent, especially those who are serving in private schools? They are many.

Parents can make a decision. If they cannot afford the schools that their children are going to pay, they can take their children to public schools. We also know that there are different levels of private schools. If your children were at an A Grade school, you can take them to wherever you can afford.

However, as long as this economy is shut down and schools are not open, the other economic activities will be impacted, and this will have a more harmful impact on the future of the economy of this country. Money circulates around people. The teacher who is paid will buy vegetables from the *mama mboga* and pay rent to the landlord. That is how the economy improves. We cannot say that schools should remain closed because of this pandemic. Unless a vaccine is found, this pandemic will continue.

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

**Sen. Farhiya:** Madam Deputy Speaker, allow me to finish something.

Right now, we are approaching the hot season. There are people who say that we should reopen towards January. That is when we are going close to the cold season, meaning that the cold will create an opportunity for COVID-19 to infest itself.

I support CS Prof. Magoha in reopening the schools. Let us start with this and fast-track the reopening of schools for the rest of the classes.

I thank you.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Senators, we are way past our Statements time, and I still have the Chair of the Committee, whom I promised to give a chance. If only I knew that Sen. Wako will talk for one minute, or will you forgo?

*(Sen. Wako spoke off record)*

Two minutes, please.

**Sen. Wako:** Thank you, Madam Deputy Speaker. I will take two minutes.

In the Statement that we will be given by the Ministry, can they let us know the state of preparedness for when the 8-4-4 schools reopen on Monday and the next intake? It may be a period of a month or two, I do not know. I would want to know what will happen during that period to ensure that the schools are prepared for that other intake.

I accept that the Ministry had to make the hard decision, and they made it. In fact, teachers went to schools about a week ago. Therefore, it will be two weeks before the 12<sup>th</sup>. During that period, they are supposed to have undertaken to see whether the infrastructure is right, and look into other matters that deal with COVID-19.

For example, in Busia, many schools did not have the necessary infrastructure even before COVID-19 came, and yet COVID-19 demands that there be social distancing. Social distancing demands that there be more classrooms. When I talk about preparedness, between 12<sup>th</sup> October and when the other intake takes place, will there be enough time for the extra infrastructure to be put in place? Has consideration been given to the fact that, maybe, some good tents in some areas can be used as classrooms?

**The Deputy Speaker** (Sen. (Prof.) Kamar): I will give two minutes to Sen. Wetangula then I move on to the Chairperson, Committee on Education.

**Sen. Wetangula:** Madam Deputy Speaker, the issue here is not opposing or supporting the CS for Education. It is what the President raised at the COVID19 Conference that we deal with ‘how’, then ‘when’ will follow. As I speak, the Ministry of Education has not told the country to any level of satisfaction as to what they have done to protect children who are going to school.

We should not reduce this to opposing or supporting CS for Education Prof. Magoha. We want children in school, but we want to know whether they will be safe. Are we going to have a nurse stationed in every school in case of any problem? Are we going to have water provided in schools for sanitation for the learners? Are we going to have protection for the teachers? Are we going to test the teachers regularly so that they do not infect the learners and vice versa? These are the questions.

As I speak, CS Prof. Magoha and his Ministry have not given the public any hint whatsoever as to the level of preparedness for the schools. If he says that he is calling exam classes and they finish exams by January and leave school, on what basis will the remaining classes transition to the next class? This also we need to be told so that we do not have the situation where schools are being run in a manner that is inconsistent even with public policy.

We know COVID-19 may be here longer than we expect and life must normalize. Tanzania is going on. Take a county such as Trans Nzoia which is a neighbour to both your county and mine; there is a resurgence of COVID- 19. Has he paid attention to a county such as that to see that extra care is being taken to ensure that children who will go to school will be safe?

Let not Sen. Farhiya reduce Sen. Cherargei’s Statement to a simplistic approach that we support or oppose. That is not the question. Are we ready and if so, how?

**The Deputy Speaker** (Sen.(Prof.) Kamar): Sen. Nyamunga, I am sorry I saw your name much earlier. You have two minutes, please.

**Sen. Nyamunga:** Thank you, Madam Deputy Speaker, for giving me this opportunity to add on to what my colleagues have raised concerning reopening of schools. I do not think the idea here is to oppose or support. For example, in some parts of this country, there was a lot of rainfall and floods. Classrooms were submerged and are still submerged up to now in Kisumu County, Baringo County and many other parts of the country. It is a matter of preparedness and what has been done.

I know most parents would want to have schools open. All bars are open and I see people attending political rallies, why not open schools? It is as if Kenyans believe that COVID-19 is not there. I do not know where they got the idea from. If Kenyans do not fear and they mix freely, it means they can easily infect their children. By allowing children to go back to school, we are not adding more harm to them. The issue is the preparedness. What has the Ministry of Education done? We have never received any report. In Kisumu, for example, some schools are still submerged. I do not know where these learners are going to go to school

**The Deputy Speaker** (Sen.(Prof.) Kamar): I know Sen. Cherargei used Standing Order 47(1), but I will use my discretion to refer it to the Committee on Education. Chairperson, Committee on Education I now give you two minutes because it is coming back to your docket.

**Sen. (Dr.) Milgo:** Thank you, Madam Deputy Speaker. I rise not to support or maybe oppose to a large extent Sen. Cherargei's Statement.

Despite the many challenges that have been at the Ministry of Education, I think CS (Prof.) Magoha maybe has to style up to maintain consistency in pronouncement of certain issues.

Madam Deputy Speaker, education is an important sector that can never be overemphasized, particularly in terms of providing skills and talents that spur our economy.

Already there is a directive given by the Cabinet Secretary, Ministry of Education. During this time of the COVID19, we have had a taskforce on education issues.

Parents are complaining that their children have overgrown and need new clothes and shoes. They have stayed at home for a long time and some of them are on drugs and other substances. We have seen many of our youth being misused to cause mayhem in political rallies. Some could be school going youth who are in secondary schools, colleges and universities. Many of our girls are already young mothers. How do will allow them to go back to school so that they can continue with their education?

Madam Deputy Speaker, as the country stands now, we have flattened the COVID19 curve. That is why His Excellency President Uhuru Muigai Kenyatta was able to open the economy. Earlier on, we had proposed that the economy opens on phases. However, recently he opened it.

As I said earlier, there has been a taskforce addressing itself on education issues. It has been advising the Government not to open schools until the COVID-19 curve is flattened. It had earlier advised schools be opened in June or September, but this did not happen.

As a Committee, we had recommended to the Ministry of Education to open schools in September in phases starting with Grade 4, Class 8 and Form 4. This will serve as a pilot to show whether our country is ready to bring on board all the learners.

Recently we saw the President launching 620,000 desks that will be distributed to schools in the country. These desks are being made in various counties. This project of making desks is providing employment to our youth. I heard him saying some of these desks will go to 15 very needy schools.

Last week, the CS told us that over 26,000 masks will be provided for use in schools. He also indicated to us that Ministry officials are going round the country to ascertain the level of preparedness.

We, as a Committee, are recommending that in future we have blended learning. That is online learning, virtual and maybe physical learning. As it is now, online learning is going on in some schools, but children from the marginalized areas are not learning because of lack of electricity and internet connectivity. We urge the Ministry to ensure that there is network coverage and electricity supply in the entire country.

Our second recommendation is that Parliament prepares the Budget and makes sure there is adequate funding to the Ministry of Education. As it is now, the Government requires an additional 12,000 teachers but the TSC is planning to employ 5,000 because they were given a budget of Kshs2.5 million only.

Our third recommendation is that the Ministry of Water and Sanitation should ensure there are water tanks in schools. They should also ensure there is enough supply of water across the country before opening of schools. This is a multi-sectoral issue. We need to bring all stakeholders on board to ensure our children are safe when they go back to schools.

Finally, we are calling upon the Ministry of Education to ensure that there are more day schools in the country because they are even cheaper to run. Our country should provide free tuition so that parents will have no excuse not to enroll their children. The only thing that parents are supposed to provide is food for their children and uniforms because the tuition will be free.

Lastly, the Ministry of Education should increase capitation to our schools. I support the Ministry of Education in terms of phased reopening and that is also a recommendation from the Committee on Education. Therefore, I am not supporting or opposing that Statement. We will continue to engage as a Committee to ensure that the right protocols are followed to make sure that our children are safe.

Thank you, Madam Deputy Speaker.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you, Sen. (Dr.) Milgo. Chairperson, Committee on Education, you have to go and digest what has been given through this Statement and what Members have said. You might benefit from listening to Sen. Madzayo for one minute. His name was appearing and reappearing, but I missed him twice.

**Sen. Madzayo:** Asante, Bi Naibu Spika. Sijui kwa nini jina langu linatokea katika hii kompyuta yetu halafu linazimwa ama linaondoka kwenye mtandao. Lakini hayo ni majaalio ya wale wenye teknolojia ya kompyuta.

Kwanza, ninamshukuru sana huyu ndugu yangu, Seneta wa Nandi kwa sababu ijapokuwa umri wake ni mdogo lakini ni Seneta mshupavu. Ni Seneta kijana ambaye amekomaa kabisa. Matamshi ninayosema hapa siku zote huwa ni mambo ya kumsifu.

Jambo la elimu ni muhimu sana. Kwanza lazima tujiulize maswali. Rais mwenyewe aliwauliza Wakenya---

*(Sen. Omanga held loud consultations  
near Sen. Madzayo)*

“Bi Miradi” ninamuona ameketi hapa mbele yangu, nikiwa ninaongea na yeye anaongea. Akili yangu kidogo inatafshika.

*(Laughter)*

Ninaomba yeye aniondokee itakuwa vizuri kwa sababu ana mwendo mzuri na umbo lake liko hivyo hivyo.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Sen. Omanga, you do not stand in between the Speaker and the Member who is contributing.

**Sen. Madzayo:** Namuona kiongozi wangu, James Orengo anatabasamu kwa hali ya juu sana---

*(Laughter)*

Kwa sababu alikuwa karibu na yeye na alikuwa hamuangalii; alikuwa anaongea na Petronilla hapo.

Bi Naibu Spika, ikiwa Rais mwenyewe wiki iloyopita alitambua tuweze kutafakari sisi kama Wakenya na akasema si lini shule zitafunguliwa bali ni kwa njia ipi. Jambo la kushangaza ni kwamba hata siku saba hazijapita kutokea Rais aongee msemu huo, tunamuona Waziri Magoha ametangaza kwamba watoto warudi shule.

Hili ni jambo la kusikitisha kwa sababu hivi sasa Rais hajasema kwamba ugonjwa huu wa COVID-19 umeisha au katika Kenya si janga tena. Hatuwezi kucheza karata na maisha ya watoto wetu. This is very serious. Tutaanza kuona makaburi ya watoto wadogo yakitapakaa kila mahali nchini. Itakuwa jambo la aibu kuona ametoa amri kama hii, watoto wetu warudi shule na hatimaye tuanze kuzika vifaranga. Hili ni jambo la kutafakari na kufikiria zaidi.

Jambo la pili, yeye akisema hivyo kwamba ameregesha, wakati huu tumempatia kutokea mwezi wa tatu, mpaka sasa tumefika mwezi wa kumi. Je, tujiulize ni matayarisho gani Wizara ya Elimu imefanya kuhusikana na hawa watoto wa darasa la nane ambao imesemekana warudi shule, kwa sababu wanatarajiwa kufanya mtihani mwezi wa tatu mwaka ujao?

Kutarajia kufanya mtihani ni kama utafika na ugonjwa ukiwa umekupata je? Tunaambiwa wazi kabisa ya kwamba hawa watoto wadogo wakienda kucheza hawaangaliani vile wanacheza. Wanakumbatiana, wanacheza mpira na wanaongea. Hawana ile mambo tunayoita social distancing. Ni madawati gani yametengenezwa

katika hayo mashule ambayo watoto wetu watarudi na wapate madawati ya kisawa sawa, waweze kukaa na kuwe na social distancing?

Ni elimu gani Serikali imeweza kuwafanyia hawa watoto wetu kuona ya kwamba mara tu wakirudi shule wameweza kuzingatia mambo ya kuweza kujitenganisha na kuweza kusoma wakiwa ndani ya darasa.

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

**Sen. Madzayo:** Bi Naibu Spika, kama ungenipatia dakika moja kumaliza---

**The Deputy Speaker** (Sen. (Prof.) Kamar): Your time is up.

**Sen. Madzayo:** Kama ni amri yako unajua mimi siwezi kukupinga lakini nilikuwa nina mengi ya kuwaambia Wakenya.

Asante, Bi Naibu Spika.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you, Sen. Madzayo. The Report is going to come back to this Floor. It is a very urgent one and we are giving them only 14 days.

*(The Statement was committed for consideration  
to the Committee on Education)*

Hon. Senators, we are way past Statement time. So, we will defer the balance of the Statements to tomorrow, Thursday, October 8<sup>th</sup>, at 2.30 p.m.

#### ACTIVITIES OF THE COMMITTEE ON HEALTH

#### ACTIVITIES OF THE COMMITTEE ON INFORMATION AND TECHNOLOGY

#### ACTIVITIES OF THE COMMITTEE ON JUSTICE LEGAL AFFAIRS AND HUMAN RIGHTS

#### ACTIVITIES OF THE COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES

*(Statements deferred)*

Next Order.

### **BILL**

#### *First Reading*

#### THE GEOLOGISTS BILL (SENATE BILLS NO.17 OF 2020)

*(Order for the First Reading Read - Read the First Time –  
And Ordered to be referred to the relevant Senate Committee)*

---

**Disclaimer:** *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

**The Deputy Speaker** (Sen. (Prof.) Kamar): Hon. Senators, Order No.9 has been dispensed with. Next Order is Order No. 10.

### MOTION

#### ALTERATION OF THE SENATE CALENDAR

THAT, notwithstanding the Resolutions of the Senate made on 27th February, 2020 (approval of the Senate Calendar) and on 15th September, 2020 (alteration of the Senate Calendar), and pursuant to Standing Order 29(4), the Senate resolves to further alter its Calendar (Regular Sessions) for the Fourth Session, 2020, in respect of Part IV, to proceed on Recess starting on Friday, 9th October, 2020, until Monday, 2nd November, 2020, and thereafter resume sittings on Tuesday, 3rd November, 2020, as set out under Part V of the Calendar, and that the Senate Calendar (Regular Sessions) for the Fourth Session, 2020, be altered accordingly.

**The Deputy Speaker** (Sen. (Prof.) Kamar): I would like to inform Senators that following consultations with the leadership, we have deferred that Motion on the Order Paper to tomorrow, 8<sup>th</sup> October, 2020.

*(Motion deferred)*

Next Order.  
Chairperson, Standing Committee on Health.

### MOTION

#### ADOPTION OF REPORT ON INQUIRY INTO DEATH OF A PATIENT AT M.P. SHAH HOSPITAL DUE TO ALLEGED NEGLIGENCE

**Dr. Mbiti:** Madam Deputy Speaker, I beg to move:

THAT, the Senate adopts the Report of the Standing Committee on Health on its inquiry into the death of a patient at the M.P. Shah Hospital allegedly due to negligence, laid on the Table of the Senate on Thursday, 24<sup>th</sup> September, 2020.

Madam Deputy Speaker, the House may recall that this Statement was referred to the Standing Committee on Health. We were tasked to investigate whether contrary to Article 43(1)(a) of the Constitution and Section 7 of the Health Act, whether M.P Shah Hospital caused the untimely death of the late Mrs. Virginia Asaph by putting commercial interests before her well-being.

---

**Disclaimer:** *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

To this end, we as a Committee, held several meetings with the Members of the family of the deceased, officials from the Ministry of Health, Kenya Medical Practitioners, Pharmacists and Dentists Union (KMPDU) officials and National Hospital Insurance Fund (NHIF). Basically, we wanted to clarify the circumstances that led to the death of the patient as well as understand the broader legal policy and regulatory ethical factors that may have contributed to the unfortunate and untimely death.

Madam Deputy Speaker, in quick summary, the Committee found that M.P Shah Hospital failed to provide definitive emergency treatment to the late Mrs. Virginia Asaph and failed to provide it in adequate and timely manner that is Percutaneous Coronary and Coronary Angiogram Intervention.

We recommended that M.P Shah Hospital be investigated by KMPDC on this issue of failing to give the emergency treatment to this patient.

Madam Deputy Speaker, on the issue of penalty, the Committee recommended that M.P. Shah Hospital having failed to give emergency treatment and ultimately causing the death of the patient, it should be surcharged Kshs3 million in accordance to Section 7 (3) of the Health Act, 2017 and Section 26 (e) of the Medical Practitioner and Dentists Act for negligently failing to conduct a life-saving Percutaneous Coronary Intervention, CPI Angiogram in a timely manner as per the recommended clinical practice and guideline.

This matter was tabled before this House and it was debated extensively. I am kindly asking the House to adopt this Motion. I will ask Sen. Shiyonga to second.

I thank you, Madam Deputy Speaker.

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

**Sen. Shiyonga:** Thank you, Madam Deputy Speaker, for allowing me to Second this Motion.

Madam Deputy Speaker, I totally agree with sentiments by Sen. (Dr.) Mbito, the Chairperson of the Standing Committee on Health. Indeed, it is very unfortunate that untimely death of Mrs. Virginia Asaph was due negligence. This is not the first time this has happened to our fellow Kenyans.

Madam Deputy Speaker, death due to negligence is more hurting than death by an accident. My condolences to the family of Mrs. Virginia Asaph and our fellow Senator, Sen. Beth Mugo, who brought this particular Statement on the Floor of the House.

This particular death was occasioned by staff of M.P Shah Hospital on 26<sup>th</sup> May, 2020. By then I was still a Member of the Standing Committee on Health. If the staff of that hospital acted humanely, this death would not have occurred.

I support the recommendations in the report by the Committee. Kenyans go to a private hospital or a public hospital for treatment. Nobody wishes to die in any health facility, but it happens in accordance to God's will. However, we say a big no death due negligence in any hospital in the country.

Madam Deputy Speaker, as I second this Motion, I urge that in future we impose stiff penalties to any facility which causes death due negligence.

*(Question proposed)*

**Sen. (Dr.) Mwaura:** Asante sana, Bi. Naibu Spika. Nasimama kuunga mkono ripoti hii. Tumeona kwamba watabibu mara nyingi wanazembea kazini. Siku hizi mambo ya afya wanaangazia zaidi sana mambo ya fulusi. Wakati mwengine, inawezekana kwamba si watu wote ambao wana bima za afya na iwe bado idhini kutolewa kutumiwa wakati mtu amefika hospitalini.

Hili swala halijawaadhiri tu wananchi wa kawaida. Hata hapa katika Bunge tumeona viongozi wakiwa ziara za nchi za kigeni wakikosa kupata huduma mwafaka kwa sababu hawawezi kugharimia matibabu wakizingizia kwamba idhini hazijapatikana.

Juzi kulikuwa na kesi ya mama mmoja aliyepata mtoto nje ya Hopistali ya Pumwani bila kusaidiwa na wauguzi. Walipoulizwa kwa nini hawakumsaidia, walisema kwamba kazi yao si kazi ya bure au ya sulubu. Walisema ni lazima wapate haki zao.

Katiba yetu inasema lazima mgonjwa apate matibabu ya dharura anapofikishwa hospitalini. Baadaye swala la pesa lishughulikiwa baadaye.

Bi. Naibu Spika, swala hili halimhusu tu mama Virginia aliyeaga bali linahusu gharama ambayo watu wengi hupata katika hospitali nyingi za kibinafsi. Wakati mwengine wananchi wa kawaida huhitajika kununua dawa ambazo haziambatani na magonjwa yao.

Ni swala zima la ubora wa afya katika nchi hii. Na tathmini ya kwamba sasa hivi afya inapatikana tu kwa wale walio na hela; maskini hana chake. Hatujui kama utakuwa na fedha leo na kesho hauna.

Mwenyekiti wa Kamati, Sen. (Dr.) Mbiti na aliyekua mwanakamati, Sen. Shiyonga, wamesema kuwa kazi yetu isiwe tuko na hii ripoti na mapendekezo yasiwe hayana mashiko yoyote. Tunafaa kuangalia swala zima la afya. Mtazamo huu pia unaangazia zaidi kwa sababu kama tungekuwa na hospitali za umma ambazo zinafanya kazi, basi hakungekua na biashara kubwa ambayo inaendelezwa na hospitali kama MP Shah.

Ni kweli kuwa hospitali za kibinafsi zimeweka kukidhi akidi ambayo iko inayotokana na kutokuwa na huduma bora katika hospitali za umma. Hata ukiangazia mradi NHIF, bado utapata kuwa hospitali za kibinafsi zinafaidi.

Napigia upato ripoti hii na ningemuomba Mwenyekiti, Sen. (Dr.) Mbiti kwamba isiwe kama zingine. Ripoti hii inafaa kuwa kielelezo kwamba mwananchi yeyote ana haki ya kupata matibabu yanayofaa.

Tutakuja kuzungumza mambo ya fedha baadaye ili tusipoteze maafa mengi. Maafa mengi yametokea lakini huyu ni Mkenya ambaye aliweza kufikia Sen. Mugo. Ni Wakenya wangapi ambao wanakufa na kunyanyaswa kutokana na kutokuwa na sauti au hawafiki wenzetu katika Bunge hili la Seneti?

Naunga na kusema kuwa hii ripoti isisitizwe na iwe kielelezo katika nchi hii.

**Sen. Farhiya:** Thank you, Madam Deputy Speaker, for giving me this opportunity.

What happened in MP Shah Hospital is not acceptable. In the private sector, medical fees have increased. A doctor has an obligation because he or she swore to

protect lives. When the doctors in the same spirit see a person die because they were not able to pay or they delayed, it is sad. When a person comes to the hospital at 3.00 a.m., they are in desperate need of medical attention. For a person to be kept in the hospital until a deposit is made is unheard of and very unfair.

COVID-19 has now become a business. Sometimes people are kept in isolation places by hospitals longer than necessary for financial gains. Due to COVID-19 pandemic, there has been improvement in health because hygiene has improved. The number of people who are getting sick has become less and when you go to the hospital for treatment, they keep a person for a long time. I had an experience like that two weeks ago and it is not pleasant.

The hospitals have to be very vigilant in terms of how they do their business. Yes, it is a business and the business of business is business as by Adam Smith said. However, we should have a humane heart as we apply our business ideals.

**Sen. Halake:** Thank you, Madam Deputy Speaker. I rise to support this Report from the Standing Committee on Health. This is a sad situation. It is not only sad for that particular person, but the fact that this is rampant everywhere since our hospitals have become callous, they cannot treat anybody and people are suffering in this country.

At the Kenyatta National Hospital, recently we saw health workers on strike. People had to go and literally treat their people. How many of those have died?

In my county Isiolo, many people have had their arms and limbs amputated because of negligence. People are left with injuries and other forms of illnesses without care. I sometimes wonder what became of the oath that our doctors have taken. Are these hospitals owned by doctors, or by business people?

We need to have some sort of legislation where if one owns a hospital, he or she must take an oath as a doctor. This is because we are seeing disconnect between the humanity of health and the businesses in our hospitals.

What this House needs to do for a long term and sustainable solution to some of these issues is to come up with some sort of legislation where there is a basic minimum service that must be given to anybody who shows up in any hospital regardless of the money they will give. If somebody has to come up with a hospital as a private sector investor, there must be a content of a doctor who has gone through training and taken oath.

Madam Deputy Speaker, it is unacceptable during this day and age, especially during this COVID-19 times to find people being turned away and told to go home with life threatening diseases and when they die, nothing happens. There has never been a consequence for medical negligence or people mishandling the citizens.

The person who was neglected in this manner was not a poor person or a person who is at the bottom of the social strata. It was a person like you and I. Can you imagine what the common *mwananchi* goes through on a daily basis that is not highlighted in this House? For that reason, this House should look into this and come up with certain a legislative or legal framework that will protect the poor.

I support and submit.

**Sen. M. Kajwang’:** Madam Deputy Speaker, I rise to support the Motion by the Standing Committee on Health. The question is: Why would someone go to MP Shah Hospital and not to a public hospital? Obviously, it is because our public health sector has collapsed. In many of our counties, our medical workers could be on strike for an entire month without noticing.

Not too long ago, health workers in my county were on strike for an entire month and there was no outrage. In fact, when I sought to intervene in the matter, there were those who thought I was being a busybody.

We have run down our public health sector to a level where people do not care and people do not recognize it. This person could have gone to a public health facility if our priorities were right as a country. There are certain social public goods and services that we cannot play with.

Privatization has gone too far. When it comes to healthcare, education, provision of security and provision of food are things that responsible governments are supposed to guarantee and provide to their citizens. Unfortunately, because of warped up policies in this country, these sectors have largely become privatized.

Many of us are just one medical bill away from poverty. Those who call themselves middle class, if they did not have medical insurance or NHIF, one medical bill or invoice will send them to poverty that will last for more than one generation. When you are so poor that you cannot take your children to school because you have used all the money to pay medical fees, your children are put in the same penury and vicious cycle of poverty.

Madam Deputy Speaker, we need to rethink the private health sector in this country. They need to be better regulated. This takes me to the second point on the role of regulators and the role of overseers. Parliament is an oversight institution. We have established regulatory agencies and bodies by law and they report to Parliament. I have heard the Chairperson of the Standing Committee on Health, Sen. (Dr.) Mbiti, recommend that this hospital ought to be fined a certain amount.

When I look at the powers of Parliament to impose a fine on a private or public citizen, that power seems only to be found in the Parliamentary Powers and Privileges Act where you are going to fine somebody for contempt of Parliament and defiance of summons. I do not know whether this is becoming legislative overreach. When you recommend that MP Shah Hospital be fined a certain amount of money, are we taking the role of regulator? We are supposed to do it. I hope that the Motion that we are discussing is crafted in such a way that it is not the Senate that is imposing the fine, but the regulatory agency that is imposing the fine.

Finally, this is more of an in-house issue. I think we need to reorganize our reports fairly well. Many of us have struggled to get a copy of this Report. It has far-reaching implications not just for M.P. Shah Hospital. It has implications that will guide the relationship between this and other private health service providers. If we would have had a much detailed consideration of the Report, perhaps we would have made much informed decisions.

As I support, I congratulate the Committee on Health that has gone out of its way under very hostile circumstances. Recently they talked to the County Government of Homa Bay to find out why health workers are not being paid in Homa Bay while in other counties they are being paid.

I thank the Chairperson and encourage him to keep up the good work. I believe that the same passion that he applied in the other assignment also went into this Report on M.P Shah Hospital.

To the family that is suffering and has become the subject of our conversation today, let them know that the Senate cares and it will do everything to ensure that they are indemnified. We cannot recover the losses, particularly human losses that have been suffered, but this is a Senate that is sympathetic and empathetic.

I hope that this will not be the end of the matter. We will hold hands as they pursue further remedies from the regulatory bodies and the judicial system.

I support.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Sen. Madzayo, you have two minutes.

**Sen. Madzayo:** Bi Naibu Spika, nami pia naunga mkono Ripoti hii ya Kamati ya Afya. Ni jambo la kusikitisha na aibu kwa Wakenya ikizingaitiwa kuwa mama alipoteza maisha yake.

Kabla ya mtu kufuzu kuwa daktari, yeye huapa kuokoa maisha. Hospitali hiyo haikupewa leseni kufanya vitu kama hivyo. Waliapa kuokoa maisha ya binadamu kwa kuwapa matibabu. Hawafai kuweka pesa mbele kiasi ya kwamba mgonjwa anayekwenda kupata matibabu anakaa kwa muda mrefu akiangaliwa tu. Hatimaye maisha yake yanakatika muda unavyozidi kwenda. Hospitali hiyo imekiuka kiapo cha kuokoa maisha wanachokula madaktari.

Huu ni mwaka wa 2020. Kuna maswali tunayofaa kujiuliza sisi kama Wakenya. Je, ni haki kuweka pesa mbele? Licha ya kuwa kuna hospitali za kibinafsi na za umma, je, tuna utu wa kuhudumia wagonjwa maskini au matajiri katika hospitali zetu?

Unawezapata mtu ameumwa na nyoka na kupelekwa hospitalini bila pesa. Huenda akawa kwa maumivu na wakati huo sumu inaendelea kupanda. Hata hivyo, utapata kuwa mtu huyo anaangaliwa tu akigeuka rangi na hatimaye kupoteza maisha. Ni lazima tuzingatie mapendekezo ya Ripoti hii.

Jambo la mwisho ni kuwa uzito unatokea wakati wa malipo ya madaktari, wahudumu wengine wa afya na wanaofanya kazi katika fuo za hospitali za umma. Kuna watu wanaofanya kazi bila vifaa. Kwa mfano, juzi tumeona wahudumu wakiandamana kwamba wapewe vifaa. Sasa hivi kuna janga la COVID-19 ilhali hawana mavazi ya kuwakinga. Hata kama mtu anafanya kazi ya kusafisha hospitali, ni lazima awe na vifaa vya kumkinga kutokana na ugonjwa. Serikali inafaa kutafakari haya.

Ikiwa kuna watu wanaotakiwa kuangaliwa, ni wale wanaofanya kazi katika hospitali kwa sababu wanashughulikia maisha ya Wakenya. Ni jukumu la Serikali kuona kwamba hakuna migomo katika sekta ya afya

Mara nyingi tunamwona Katibu wa Kudumu wa Chama cha Wahudumu wa Afya wa Kenya, Bw. Seth Panyako, akiteta kwa sababu ya malipo duni ya wahudumu wa afya.

Huo ni ukweli. Ni jambo la kusikitisha kuongeza mishahara wa madaktari na kuwanyima wahudumu wa afya ilhali wao hufanya kazi pamoja. Vile vile, kuna wale wanaofagia na kusafisha wodi.

Ni lazima wale wanaofanya kazi katika vituo vya afya wawe na vifaa wanavyohitaji.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Sen. (Dr.) Musuruve, you have two minutes.

**Sen. (Dr.) Musuruve:** Thank you, Madam Deputy Speaker, for giving me an opportunity to support this Motion. When doctors or clinical officers graduate, they take the Hippocratic Oath. They swear to take the patient's life first before anything else.

I condemn the act that happened at M.P. Shah Hospital. It is unfortunate that a mother lost her life and it is painful. That is something that ought to have been arrested.

We have such cases in many of our hospitals. There is a case at Pumwani Maternity Hospital where a mother delivered on the ground. Thank God that the woman did not die, but both the mother and infant would have died.

I would like to give my experience as a cancer survivor. When I went to India in 2013 and was diagnosed with it, it was a desperate situation. I had to sell a lot of things, including my family property.

I talked to my children and they agreed that I should sell whatever plots I had and everything as long as I remained alive. I went to India for limb saving surgery. I thank God because I still have my left limb and I am sure I will be buried with it.

It is unfortunate that when I was pleading in India that I had no money and told them that I had sold whatever I had, I was told that everyone who goes there sells their house, plot or everything. So, it is normal. Sometimes medics do not have feelings for patients. In such cases, patients should move on because they should be strong-willed.

Madam Deputy Speaker, there is need for us to come up with a policy that will protect and indemnify patients who die in the careless hands of medics so that medics become more careful when it comes to handling patients.

We also have Kenyans with chronic diseases like cancer and high blood pressure. Such chronic diseases should be factored in so that there is even a stipend for patients with cancer. The reality is that there are many cancer patients who languish in their homes with no help at all yet a lot of money lies in the health docket. There is need for the Government to do something for patients with cancer.

I know of one cancer patient who is languishing in Githurai. She keeps calling and telling me that she is in a lot of pain, but she does not know what to do and there is no one to take care of her. So, the reality on the ground should reach the highest authority so that people with cancer are helped.

I know there is a county that gives stipends for people with cancer. There is need for all counties to have such preparations. We need to feel the pain that Kenyans suffering from chronic diseases go through.

I support the Report and hope that the NHIF will cover patients who go through cancer and dialysis, so that it is free. We have to abide by the Abuja Declaration that 50

per cent of the national revenue collected should go to health. This should be practical on the ground, so that there is service delivery to Kenyans.

I support the Report.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you. Lastly, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Madam Deputy Speaker. I thought the Committee would give the Report earlier. However, since they have made their Report, we commend them for taking good action. From my experience, which Sen. Orengo can confirm, medical negligence cases are the most difficult, if not the hardest, cases to seek compensation. If you doubt, look at the Chief Justice Z.R. Chesoni case versus Silverstein, and see how difficult it was. Mr. Ken Walibora died in hospital because he could not get attention. A friend of mine died in Nairobi Hospital in the triage because it took too long to get medical care.

The secret to making sure that we do not end up with these cases is to improve public health. The private sector in health is doing business; they do not care about people. Their work is to make money. When you die, your bills are higher than when alive. It is easier to remain alive than be sick in Kenya. The bills that are sent to us by our constituents when they are unwell or detained in hospitals all over the country, including the Kenyatta National Hospital, are disturbing. The Committee on Health both in the National Assembly and the Senate give Kenyatta National Hospital so much money, yet Kenyans are being detained.

Every time there is a small case, you see the Committee running there to get one or two patients released, but the reality is that there are patients all over. People have left their loved ones in Kenyatta National Hospital Mortuary because they cannot afford the bills. The negligence of our medical fraternity is something that is of national concern because I have seen what it has done to families.

The doctors are happy because unlike lawyers who are prepared to testify against one another, doctors do not give evidence against their colleagues. They will not because it is an expert opinion. Since we know they will not agree - they protect their own - we need to make sure that we get the best medical care. Of importance is emergency care.

We must find somewhere in the Health Act to have emergency care for accident victims, persons found on the roadside or shot accidentally, so that they do not have to recognize your face or the face of a Kenyan they know, so that they treat them.

Lastly, NHIF is the biggest scandal in Kenya. It is worse than Goldenberg. They collect Kshs40 billion. What they do for us is ridiculous. They pay Kshs2,000 for a bed. Which bed costs Kshs2,000? If you spend a week in hospital the most NHIF is paying is Kshs14,000.

The Committee on Health, we are calling upon you to find a way that we can deal with this sector, which is absolutely rotten. We thank you for standing firm with the Statement by Sen. Mugo, who rarely brings such issues. For a matter of this nature to be brought to the Senate by Sen. Mugo, who we know very well would have used other sources to go to this hospital, is a vote of confidence on this Senate.

I hope that our recommendations can be followed up. Since this Senate does not have an implementation Committee, I wonder how our decisions are implemented. However, I have learnt to live with whatever we have.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you. Finally, the Senator for Mombasa, Sen. Faki.

**Sen. Faki:** Asante Bi. Naibu Spika kwa kunipa fursa hii kuchangia Taarifa iliyoletwa Bungeni na Kamati ya Afya. Kwanza naunga mkono mapendekezo ya Kamati ya Afya kuhusiana na kifo cha mamai katika Hospitali ya M.P. Shah.

Visa vya Wakenya kufariki katika hali kama hii vinaendelea kuongezeka kutokana na ajizi ama utepetevu katika hospitali zetu na pia madaktari ambao viapo vyao hawawezi kuvitekeleza kikamilifu. Imekuwa ni biashara kubwa kufungua hospitali, lakini huduma zinazotolewa mara nyingi huwa haziridhishi.

Ndugu yangu, Seneta wa Makueni, amezungumzia kifo cha Mwalimu Walibora ambaye alikuwa mwalimu wa Kiswahili mwenye tajiriba kubwa. Maisha yake ilimalizika katika chumba cha wagonjwa mahututi katika Hospitali kuu ya Kenyatta wakati waliposhindwa kumpa huduma muhimu ambayo alikuwa anahitaji ili kuokoa maisha yake. Wakati huu tukiwa tunazungumza katika Bunge hili, kuna wengine wanaopoteza maisha yao katika hali kama hii.

Naipongeza Kamati ya Afya kwa kulishughulikia swala hili kwa muda mfupi na pia kutoa mapendekezo, kwamba iwapo hospitali nyingine itatokea kufanya utepetefu kama huu, kuna sehemu ambayo watu wanaweza kulalamika na malalamiko hayo yakachukuliwa kwa uzito, na haki kupatikana.

Kama alivyotangulia kusema Seneta wa Makueni ni kwamba madaktari wanalindana katika taaluma yao kupitia chama chao cha KMPDU. Hawako tayari kumtoa kafara daktari mwenzao kwa jambo lolote linalotokana na utepetefu katika kazi yao. Wengi wanalindana na kuteteana. Hivyo basi, inakuwa ni vigumu kwa mhusika kuweza kudhibitisha mbele ya mahakama kwamba kifo kilitokana na utepetefu ama ajizi ya daktari yule.

Bi. Naibu Spika, Ripoti hii ningependa ichukuliwe kwa uzito na Bunge hili, kuhakikisha kwamba mambo kama haya hayawezi kutokea tena katika nchi yetu. Shirika la NHIF linakataa kutoa malipo kwa wagonjwa wa ugonjwa wa COVID-19 ambao umezuka katikati ya mwaka. Kwa hivyo, hawawezi kupata bima ingine ambayo itawalinda na maswala kama haya.

Hii Ripoti inafaa kutekelezwa kikamilifu ili tuhakikishe kwamba wale wanaofanya utepetefu katika kutoa huduma za afya na kusababisha vifo vya Wakenya hawaachwi kuwa huru nchini.

Asante Bi. Naibu Spika.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you, Senators. May I now ask the Chairperson to respond. You have a right of reply.

**Sen. (Dr.) Mbiti:** Thank you, Madam Deputy Speaker. Let me thank the Senators for their contributions towards this Motion and the support they have given this serious matter. It is my hope that it will go a long way into informing other hospitals that we need to offer emergency services. It will also go a long way to inform the Ministry of

Health that we must put the Emergency Services Health Bill and other emergency protocols in place.

I thank the House for the support.

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

**The Deputy Speaker** (Sen. (Prof.) Kamar): Hon. Senators, I have looked at this and it does not involve counties. For that reason, we shall vote by voice.

*(Question put and agreed to)*

Next Order.

## BILL

### *Second Reading*

THE EQUALIZATION FUND BILL  
(NATIONAL ASSEMBLY BILLS NO. 43 OF 2019)

*(Sen. Poghiso on 6.10.2020)*

*(Resumption of Debate interrupted on 6.10.2020)*

**The Deputy Speaker** (Sen. (Prof.) Kamar): Hon Senators, we were at the point of seconding. Sen. Orengo still has 48 minutes as the Secunder of this Bill. We are however sure that you know that your colleagues would like to have few more minutes, so you will use your wisdom.

Sen. Orengo.

**The Senate Minority Leader** (Sen. Orengo): I can see my brother from Wajir is ready to go, so I will oblige.

Madam Deputy Speaker, I had talked about several issues in the few minutes that I had yesterday. I have the benefit of looking at the report of the Committee. Some of the notes that I had made in relation to the Bill are covered in the report. To that extent, it will make my work on the contribution to this Bill a lot easier.

There was something that I was dealing with yesterday. First was the question of the role of the Executive in appointing the Board. My observation was that the Executive was responsible for the appointment of the board through nomination of the chairperson by the President. The appointment of the rest of the members of the board is by the Cabinet Secretary (CS) of the National Treasury. The other appointments are statutory appointments that depended on those holding certain positions in the Executive.

I have since looked at the report by the Committee, and I largely agree with their recommendations, including the one that I talked about yesterday on the Council of Governors (CoG) wanting people to be represented. It has been reduced to two persons.

I am hoping that as we appoint the board, there must be a role to be played by the Senate. Having seen what happened with the formula, this is the other entry point for the

Senate in trying to determine matters that relate to the Equalization Fund, which is very important.

During the debate on the formula, I remember that many of the people said that we can pass the formula as it was and wait for the passing of this Equalization Fund. This meant that this Equalization Fund was going to address some of the issues in relation to areas that were marginalized, and so on, and so forth. Therefore, it is still my belief that the board must have the approval of both the National Assembly and the Senate. If not the two Houses of Parliament, then at least the Senate should approve.

The other suggestion that was made by the Committee that I beg to differ with is that the chairperson of the Commission on Revenue Allocation (CRA), or a representative designate invited by the chair should be a member of that board. The commission has a constitutional role which is clearly spelt in the Constitution. They are the ones who sit down and make recommendations to the board. The same independent constitutional body is going to sit in that committee and have a voice in whether to accept or reject the recommendations of the CRA. I thought that was like making the prosecutor sit in the judgement throne.

We have seen the problems that we had with the CRA. I support the fact that we should have an independent constitutional body, but we had issues when it came to their reports. We were able to do that because we are sitting in judgement over their recommendations. If they are going to be part and parcel of determining whether the recommendations of the CRA is accepted by the board, I think that this will result in the committee being driven by the CRA, rather than having an independent committee which would look at the recommendations of the CRA.

I hope that the Committee would agree with me on that question. If you look at the role of the CRA under the provisions of Article 204 of the Constitution, they are not ordinary responsibilities. There are responsibilities that require them to do certain things. Even on matters of appropriation in relation to this Fund, the recommendations of the CRA must have some import in the decisions of Parliament.

This issue was contested in the High Court, and the decisions of the National Assembly were not accepted by the court on the basis that they were required to follow the recommendations of the CRA. That is a matter that I hope we will have some kind of consensus on when we go to the Committee stage.

The Controller of Budget also made some recommendations, which I think the Committee has generally accepted. We are creating too many bodies, which will consume public funds. This Equalization Fund is supposed to have a structure starting from the ward up to the national level, which is a replication of what is there in regards to the National Government-Constituencies Development Fund (NG-CDF), to the structure of the county governments, and the structures of provincial administration. These structures can be very costly to the taxpayer. I hope that the recommendations of the Committee will find favour with the Senate when we come to making a decision on this particular Bill.

Finally, Madam Deputy Speaker, we are going through a very trying period in this country. You can see how much we fight when it comes to resources. You can see that

the stability of the country is critical in many ways. Modern governments that are based on democracy operate very well when institutions work the way they should work.

Whenever I read British history, I am normally very excited about the rivalry between Disraeli and Gladstone as prime ministers. Those were probably the two greatest prime ministers of the modern British era. People think that Churchill was the greatest Englishman that ever lived and others think it is Shakespeare. Some people say Shakespeare was not because of some of his views in his plays like Merchant of Venice, which was characterized as anti-Semitic.

In British politics, the view between the Tories and the Opposite party led by the Disraeli and Gladstone were democracy at work. All we are doing even in passing this Equalization Fund Bill is that there will be contrary opinion and there should be contestation. Things tend to move very smoothly so long as those contestations happen within democratic structure and framework.

I think we are reaching a stage where we have to think twice. In the words of Abraham Lincoln, we must try to determine whether this House will stand rather than fall. The greatest challenge now is that when the House in Government is divided, it brings a terrible situation in the life of a nation.

I want to say this without fear of contradiction, you can have a country with a very strong opposition, but so long as intuitions work, it will stay intact. In Kenya, we have a situation where the Government in power is divided. I think it is an open secret that the Government is not intact. With that situation in the country, we have to think twice. We do not want a Samson where Delilah cut Samson's hair and the only solution was to bring the whole house down. We do not want a Delilah or Samson in Kenya.

The debates we have here, including the one on this Equalization Fund Bill, are very important. We want to talk about ideologies and principles. Nowadays, even where we go to churches as politicians I do not think anybody is talking about the idea of the Big Four Agenda, yet, that is a central objective of the Jubilee Government. The question of this Equalization Fund finds its place in relation to the Big Four Agenda. I think the primary principle is to make life affordable, take development where it is required and so on and so forth.

Madam Deputy Speaker, without taking too much time, God gave to us together this 'temple' called Kenya. Let not one Samson with a Delilah bring it down. I do not know who is Delilah or Samson, but they all were responsible for bringing the house down.

I like my son here called Sen. Mutula Kilonzo Jnr. When he has a point of view, he will pursue it passionately. When we sit with him and there is disagreement, I accept it because he has nothing behind it, but just to let ideas win. If I differ with anybody even in business, you can dissolve a company. If there is disagreement in the Government, you can dissolve it and restructure it. I do not know how you can dissolve and restructure in the current constitutional arrangement.

If it reaches a situation where people within that Government are attacking it, I think the best thing to do in a democracy is to find ways of parting ways so that you spare us this pain every day and giving people images of 'Tangatanga' and 'Kieleweke.' If you

want to find out the principles dividing these two movements, you cannot determine. It is embarrassing and shameful. We should bring to an end to make room for us to deal with things that matter.

*(Question proposed)*

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

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

**Sen. (Dr.) Mwaura:** Thank you, Madam Temporary Speaker. I rise to speak on the Equalization Fund Bill. From the onset, I am very surprised about the way in which this Bill is drafted because we had a similar attempt in the Eleventh Parliament that I was very proud to have defeated it where monies from the Equalization Fund were supposed to be allocated to the Constituency Development Fund(CDF) which at that time had not been converted into the National Government Constituency Development Fund(NG-CDF).

The Bill required a two-thirds majority to pass. One of the reason we defeated it was that Members of the National Assembly who would have benefited were bragging that they had an extra kitty. I remember one of my colleagues then saying that he was going to have Kshs300 million extra.

This Bill is drafted as another CDF. Looking at the composition of the Board at the national level, it mimics the national Government Board and also the constituency committees. When you go further to the definitions of the areas of application, it is very domiciled in certain jurisdictions.

There was an understanding in the drafting of the Constitution that there were about 14 marginalized counties. The Commission for Revenue Allocation (CRA) tended to interpret these to mean sub location level. In my opinion, I beg to differ on that much as we are sharing the pie. This is because it would end up decimating the macro-effect of resources so allocated for purposes of equalizing communities that hitherto have not benefitted from the largesse that is Government.

One can see in the definition of terms the import of who are traditional communities, marginalized communities and all of that. I like that definition because it locates the problem where it is. I have a problem though with the location of the application at the constituency level.

Madam Temporary Speaker, from a cursory look, if we were to get a half of our ordinary revenue and situate it at about Ksh1.5 trillion, we would end up with slightly above Kshs22.5 billion. That is the amount of money this Equalization Fund should accrue if we were to go by the revenue collected in the last or so years. It is always over projected, but I am optimistic that get about 15 per cent of our National Gross Domestic Product (GDP) in terms of our ordinary sharable revenue.

This is a humongous amount of money if well utilized because if you were to compare the rival kitty that is CDF, it is about Kshs35 billion the last time I checked. An

---

**Disclaimer:** *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

amount of Kshs22.5 billion is money that can really make a difference in the lives of Kenyans who have not had the advantage of government. If I was asked, I would persuade this House that I would rather this money went to the county level, rather than the constituency level because there are also economies of scale.

At the constituency level you will end up with the amount that I had suggested about Kshs300 million to Kshs400 million or less. Then the question would be, what are those projects that you are going to do that would be transformational?

Article 204 of the Constitution requires that these monies only focus on electricity, health, water, roads, services, about four or five of them. I think that is not a preserve of a constituency. There is a way in which we have actually made a mockery of resource-sharing so that then the opportunity cost is lost.

We do not just want to create another kitty for people to tenderpreneur. I think it is important that this Senate be seized of this matter. There is a reason why this Bill has come to us. I know this is part of the national Government share because that is what the Constitution so anticipated. That leads me to the next matter.

Madam Temporary Speaker, I see from the Bill, it proposes that the Report goes only to the National Assembly. I am persuaded to think that this matter also concerns counties. Therefore, that Report should also be tabled here so that Members of the Senate can as well debate about the Report and also how such monies shall be used.

I think it is important and I have not had an opportunity to thoroughly go through the Report of the Committee. It was just handed over to me as I was waiting to speak. However, I think these are some of the recommendations that should go to mediation so that you augment the role of the Senate with regard to the Equalization Fund. Why? This is because the Equalization Fund is a consequence of Article 203 about the equitable share, the basis for sharing of resources.

So, it cannot be left to be out of the benevolence of the National Government. I think this is where the Senate is required to ensure that its footprints are felt in terms of the National Policy that affects the people who live in counties. I think that is another issue that I would want to flag out.

Another issue, before I come to the philosophical aspects of this Bill is that, yes, it is actually drafted in a normal way a National State Agency is created. We must ask ourselves this question because there is sunset clause to this Fund. It's not in perpetuity. It has been breached since the advent of the new Constitution.

It is expected that the National Treasury will demonstrate the deposits that have not been utilized as a result of lack of this enabling legislation and the data that has been collected by those Principal Secretaries and Ministers who have flown around to check who is marginalized and who is not.

When those monies are actually accounted for or rather demonstrate that they actually exist and have not been used, then the question would be there needs to be a Marshall Plan that then says what are we going to do? Then you are likely to come up with mega- projects that are trans-county.

It still takes me back to the issue of; this Fund should not be constituency-based in terms of the administration. That is critical. I can hear my good sister Sen. Farhiya saying

that that has been changed by the Report of the Committee. I stand with you in that regard because I think that was not the spirit of the Constitution.

Finally, so that I can give my fellow colleagues a chance, like Sen. Mutula Kilonzo Jnr. who is eager to comment, is that we had a serious conversation in this august House with regards to where we want to take this country. The battle as I had said earlier was between nationalism and countyism and it is being demonstrated here as well. We have to ask ourselves because if you look at the agrarian society - and Sen. Orengo has just left - it stratified the society economically where you had the monarchy, the aristocrats and you had the nobility and the gentry and of course the members of the Third Estate and the masses.

We ask ourselves, in the making of this Nation, how has economics and tribalism stratified our society? This marginalization that we are addressing here is ethnic-based. There is no pretention about it; the law itself recognizes that.

Therefore, it seeks to address historical grievances. I think there is a further conversation to it by trying to address the fact that if you develop the whole country, it is actually unlocking the potential for everyone to thrive. That in itself, helps inspiring economic growth, equalizing opportunities for economic development so that we are not seeing this Fund as an end in itself because of the direct outputs that may accrue for those that may have the proximity towards its operationalization and utilization.

It should be seen as a wider picture of trying to spur growth and progress in terms of the country being able to meet the needs and demands of its citizenry with regards to opportunities.

Today people apply for tenders for various projects. I was just sent a photo of one of the situations of government where a whole room was full of applications. The question is people are looking for opportunities.

So, this Equalization Fund is not about who gets what tender to drill a borehole or to put an electricity line to extend the grid. It is about the multiplier effect of places that were seen to be not as productive, now being able to contribute to the national kitty.

We must agree as a country that God never made a mistake of putting us together. There was a reason why we became Kenya the way we are.

This Kenya is drawn as if it is a head of a cow. Those Berlin conferencers, whatever cartography that they utilized to make the Somalis, Kikuyus, Kambas and everybody else to live together, I think for me that was a divine moment.

We were just talking with Sen. Farhiya and she was reminding me that the biggest consumers of miraa and tea are actually the Somali nation.

So, when we are developing this country, it is for our benefit. The conversation that we had earlier on between nationalism and devolution and now we can say counties according to me, both of them are right.

I am very happy that actually it was resolved. Since I can hear my good friend Sen. Cherargai saying "summarize", I want to say that this is a timely Bill but it must go to mediation. I do not think we should pass it as it is. When we go to mediation I would ask of us because I am sure some that are present today will be in that small group of respected legislators, please argue for Kenya. Do not allow the issue of just designating

resources for the sake of people feeling like nowadays “more money in my constituency” override the bigger picture of ensuring that that then we have a wider economic opportunity.

I believe that even the Equalization Fund, maybe that should also be part of your recommendation; it should also be informed of the priorities of the National Development Plan by the Kenya Vision 2030, but also the various medium term plans. There is a disconnect between our national plans and what actually happens on the ground.

I really want to support and I say it is a timely Bill, it should have come earlier. May it help Kenya to grow and to become the First World of the African Continent.

Madam Temporary Speaker, I contribute.

**Sen. Wako:** Thank you, Madam Temporary Speaker for giving me an opportunity to speak on this very important Bill. One of the shame in implementing our Constitution has been this section on Equalization Fund. This requirement by our Constitution to have an Equalization Fund to cover marginalized communities; marginalized because of the history of those communities, indigenous communities, pastoral communities and so on.

This is an Article of our Constitution that ought to have been implemented right from the word, go. The Constitution requires that 0.5 per cent of the revenue collected by the national Government must each year be paid into the Equalization Fund.

Madam Temporary Speaker, maybe had this been operationalized and Equalization Fund given on a very regular basis, then it may not have been all that difficult to get the formula which took us many months, in fact, a year or two to arrive at it with a lot of emotion. If you listened to the contributions of those counties which were losing out, most of them touched on issues such as roads, access to electricity and health facilities.

I remember very clearly, my namesake Sen. (Rev.) Waqo, saying that at one time she wanted to have an access to a health facility. It took her almost a whole day to get to that facility. Therefore, that was really giving a lot of motivation to fight for the rights to have funds.

Madam Temporary Speaker, had this fund been operational on a yearly basis and so on, maybe the access to health facilities would have improved a bit in the last ten years. However, as it is, it is this Equalization Fund, which is supposed to provide for basic services such as water, roads, health facilities and electricity to marginalized areas. It is to bring those areas to the level where the rest of the country is. It has not been operationalized.

Because the fund was provided for in the Constitution, even the Treasury could have given effect to this Article in the Constitution. It did not necessarily have to wait for this Bill to come. Now that we are where we are, it is good that we are having this Bill.

Madam Temporary Speaker, when I was trying to get the figures, it appears that particularly our Parliamentary Budget Office (PBO) here, every year for the last ten years, have been allocating funds to the Equalization Fund. However, those funds have not been disbursed.

In fact, if I may check, they have allocated more than Kshs9 billion, but those have not been disbursed. Now this section has not been implemented. Had it been implemented in the last ten years, at least the marginalized areas would have gotten something.

When the Commission for Revenue Allocation (CRA) began implementing this particular section, they made a mistake. They thought marginalized areas were marginalized counties. The Constitution does not talk about marginalized counties. It talks about marginalized areas.

Madam Temporary Speaker, this is a very important Bill. That is why I have stayed up to now at least for my voice to be heard that we have not implemented this Article. Now that we are doing it, I hope it will be on a regular basis so that the persons in marginalized areas can benefit.

At the time this Constitution was being done, it was marginalized communities which were in the “have nots” if I may say so, within Kenya. Since Independence, other groups have arisen and not necessarily those. In my opinion, we may require an amendment of the Constitution to provide for another fund, which will take care of the urbanized poor.

They are those who stay in slum areas which are everywhere even in Busia County, Nairobi City County and Mombasa County. They are everywhere where there is an urban area. We need to have a specific fund also targeting those particular areas.

Madam Temporary Speaker, if I may now go a bit professional, I noticed that in the Bill, they have been very careful in defining marginalized community and giving a definition of that. They have been very careful in simply copying the marginalized community as enshrined in our Constitution to be the definition here. I think that was good.

In the process of doing that, they forgot the marginalized group, which is also part of that community which is also referred to in the Constitution. I would want maybe at the Committee Stage or wherever, somehow the marginalized groups also be taken into account and not to be left out.

Madam Temporary Speaker, when the Constitution was being drafted, it deserved only 0.5 per cent with a population that we now have.

**The Temporary Speaker** (Sen. Nyamunga): What is your point of order, Sen. (Dr.) Mwaurea?

**Sen. (Dr.) Mwaurea:** Madam Temporary Speaker, I have been listening to the Attorney-General Emeritus, Sen. Wako, from yesterday and today. I have noted with consistency that he has been using the term “Madam Speaker, Sir”. Is it not a misnomer both genders in the same statement yet Madam Temporary Speaker you are a very able lady Speaker of this House?

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

**Sen. Wako:** Madam Temporary Speaker, I am reminded. Thank you very much for reminding me on that one. I am reminded that when anybody became a governor during the colonial times, they were given the title “Sir”. That also applied to ladies at

that time. I have to catch up with time and come into the age of the “*Mzungu*” so that I just refer to you as “Madam”.

Let me just come briefly. I have mentioned the point about marginalized groups which I feel should also be taken into account. I was coming to the point of 0.5 per cent. I think time has now come maybe in a constitutional amendment to increase this 0.5 per cent to 1 per cent. I think 0.5 per cent is a bit too low taking into account the magnitude of the problems that marginalized communities have.

Madam Temporary Speaker, if this House comes to amend the Constitution, I would recommend that we earmark this so that it is 1 per cent rather than 0.5 per cent.

I notice that under Clause 8, the details of the qualifications of the Chairperson of the Equalization Fund Board have rarely been detailed to a great extent. However, the Chief Executive Officer (CEO) who is also provided for here is the person who is in charge of the day to day running of the Board and so on. The qualifications of the CEO have been left out.

Madam Temporary Speaker, I feel that, that should not just be left to the Board to prescribe the qualifications of the CEO. If we thought that the qualifications of the Chairperson were necessary in the legislation, it also becomes important that the qualifications of the CEO are also prescribed in the legislation.

Madam Temporary Speaker - I will not say “Sir” this time - I have noticed that on the board, there are the Principal Secretaries representing Water, Roads, Health, and of course, “*mtu wa pesa*”, the National Treasury. In Article 204 of the Constitution, the areas that will be the target of the use of this Fund include of course water, roads and health facilities. That has been provided for.

However, they also include electricity. I would think that the Cabinet Secretary (CS) for Energy or the department in charge of electricity should also be added to the board. This is since there is a specific requirement of the Constitution that those areas be provided with electricity.

Madam Temporary Speaker, the other area particularly on the board, is the persons to represent the marginalized communities; that they be appointed by the CS. I would like to add there that maybe they should be appointed by the CS through a transparent and accountable process; not just somebody sitting in Nairobi and appointing a person to represent the marginalized communities, without the necessary consultation and so on of those marginalized communities. Those are some of the small points that I wanted to raise on this matter that should be taken into account, particularly during the Committee stage.

Madam Temporary Speaker, this is a very important Bill. It is good we are now operationalizing it. I hope that when it is enacted, the Government will make sure that every year, the marginalized communities get what is due to them under the Constitution.

Thank you.

**The Temporary Speaker** (Sen. Nyamunga): Sen. (Eng.) Hargura, proceed.

**Sen. (Eng.) Hargura:** Thank you, Madam Temporary Speaker, for giving me this opportunity to contribute to this very important Bill. This Bill attempts to provide

legislation for the implementation of the Equalization Fund. It is a very important Fund, such that even when we are talking about the formula, it was being suggested that, that Fund needs to be used to offset the concerns of the marginalized areas that were losing money because of factors like population, which are not their favor. However, as you can see, this Fund has been there for the last ten years, and it has not been used.

Looking at Article 204 of the Constitution, I do not know whether it was a Bill that was required to operationalize this fund or it was somebody somewhere who did not want to implement the Fund. If you look at the way the Article is set out, it states the purpose of the Fund.

*(Loud consultations)*

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, it is good to consult in low voices because this is a very important Bill. Many people are interested in listening and following it.

**Sen. (Eng.) Hargura:** Thank you, Madam Temporary Speaker. Article 204 gives very clearly a breakdown of how that Fund is supposed to be used. It even states very clearly that the national Government could even use the funds directly to address the areas stated out very clearly in the Bill, that is, water, roads, health and electricity in the marginalized communities.

I do not know what prevented the national Government all this time to have given these funds indirectly to the counties. That would have been a very clear and easy route to go because the Commission on Revenue Allocation (CRA) has indicated in Article 204 (4) to be consulted before that Fund is used.

Madam Temporary Speaker, in the last Parliament, I remember CRA came up with criteria of establishing the marginalized areas, although they came up with 14 counties. After that, they even revised their identification formula, then came up with a longer list.

I can remember they even proposed the last on that list was a ward in Murang'a County, which is getting Kshs4 million. You wonder how that Kshs4 million was to be implemented. If you were to go through a committee, how will a committee sit to identify a project that will cost Kshs4 million.

Madam Temporary Speaker, if you look at what you have here as a committee or the structure given here, I do not think what was lacking was a Bill like this. What was lacking was the goodwill of the national Government to operationalize this Fund. This is because it is very clear that this Fund has a time limit of 20 years. Already ten years are gone.

I hope that Parliament will use Clauses 7 and 8 to extend the life of this Fund. It says that Parliament may extend by a simple majority. It will not have that much of a problem because it requires simple majority in both Houses to pass an extension. Even the Controller of Budget (CoB) is supposed to make sure that nothing is withdrawn without the consent of the CoB.

Madam Temporary Speaker, coming back to the Bill, I think this Bill was done in very bad faith by the National Assembly. Look at the memorandum at the end,

---

**Disclaimer:** *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

where normally you have to state whether this Bill concerns counties. The Mover of the Bill writes very clearly that this Bill does not affect the functions of county governments as set out in Fourth Schedule of the Constitution and is, therefore, not a Bill concerning county governments.

The Fourth Schedule gives the functions of the county governments. It is very clear that water, health and roads at that level are county government functions. I do not think that the roads we are talking of are highways. We are talking of rural accessibility.

Madam Temporary Speaker, those are all roads under the county governments. We are trying to open up areas where people could not access. These are county government functions. When somebody says that this Bill does not concern counties, then that is drafted in very bad faith.

The other aspect is the way the Bill is set out. It establishes a board. Look at the membership of that board. It is like a standard board where many Principal Secretaries sit in or assign people. However, this is supposed to be a Fund that has a time limit and supposed to have very little bureaucracy. As the Bill says, what they are trying to do is to cut down on bureaucracy, but they are creating more.

Madam Temporary Speaker, I agree with the Committee in their Report that we only have the representative of the PS for Finance and National Treasury and the PS for Devolution and Arid and Semi-Arid Lands (ASALs). This is all about development and devolution, which is all about counties and we have that.

The Council of Governors (CoG) needs to have representation there because these are county functions. The other one is the board itself. The way it is set, it should have professionals in it, for example, from the accounting profession.

If you look at the areas it covers, that is where you will have maybe somebody from the Engineers Board of Kenya (EBK). This is because it covers roads, which are mainly dealt with by engineers. Even health is still mainly dealing with infrastructure. It is all infrastructure based and not about the drugs and all that. Water also is about infrastructure. We need people from the EBK because of the technical aspect.

Madam Temporary Speaker, in the management of that fund, we already have boards which manage funds dealing with infrastructure. For example, the Kenya Roads Board (KRB), we already have funds from there which are sent to counties as conditional grant as the Road Maintenance Levy Fund (RMLF).

They have very clear guidelines on administration of that fund and how the fund is spent. They do technical and financial audit of that fund. The board we expect should ensure that that fund is used prudently. It should have a technical capacity to audit the funds. We do not need to reinvent the wheel. They can get the systems which are being used by those other boards. This is so that the funds are given to the counties as conditional grants.

Madam Temporary Speaker, we do not need to have the constituency-based committees. This is just a duplication of National Government-Constituencies Development Fund (NG-CDF). I do not know whether Sen. (Dr.) Mwaura was right when he said that in the last Parliament, when the Members of Parliament (MPs) tried to transfer this fund to CDF, it was defeated at the National Assembly.

I remember it came here and it was defeated in the Senate. The National Assembly, which could not raise two thirds on many issues including the Gender Bill could raise two thirds on moving Equalization Fund to CDF. It was the Senate which shot it down. In fact, we did away with it in the Second Reading. It did not move because we did not like that way. This is now a back door of doing the same thing. It is creating another NG-CDF.

Madam Temporary Speaker, the members the way they are being selected, they are approved by the National Assembly. It does not come to Parliament. It goes to the National Assembly. It is good that we do away with that constituency level committee. The board should be strengthened and have the proper technical arm so that they can easily look at the projects which are being.

When it comes to KRB, they have very clear guidelines of even how you identify your roads and how to make sure that whatever roads you start, you complete. This board must have a proper technical arm because it deals with technical issues. Water, health and roads are infrastructure.

Madam Temporary Speaker, even on electricity, there are many parts of this country which are marginalized which are off-grid. Going up north, the national grid ends at Isiolo. Isiolo is 600 kilometers from the border at Moyale. That is further than Nairobi to Mombasa. There is no national grid on that side.

Even the power we generate like the Lake Turkana Wind Power does not serve that part of the country. It is evacuated to Suswa in Narok, then connected to the national grid. Because of that, electricity in this case will remain off-grid.

Madam Temporary Speaker, each center, and unfortunately, there, centers are far apart between 40 kilometers and 60 kilometers. Each one requires its own mini-grid and already we have seen some being done by Rural Electrification Authority (REA) together with some donors. They do off-grid, hybrid of solar-wind and solar-thermal. Those kinds of electricity systems can be covered by this fund.

The Bill as it is, I do not support it. It is just another CDF. It is just another way of making sure that funds end up under the control of the MPs which I do not think is the right way to go. That is why we have devolution. I am somebody who even feels CDF should not be there. This is because CDF was there because there was no devolution.

Madam Temporary Speaker, once devolution is there, then CDF should exit. However, to survive, they had to just limit it to national Government functions. All these are not national Government functions. They should not be having anything to do with it.

The other aspect is the extension and even the amount of the fund. Look at what we have. If the CDF is 2.5 per cent and it is around over Kshs30 billion, then 0.5 per cent will be about seven and something million at most. Much as in the scope that CDF covers the whole country and this one is only to some limited areas.

Madam Temporary Speaker, the infrastructure which this fund is supposed to cover and the gap it is supposed to bridge is so big that we cannot cover it with 0.5 per cent. We need to increase it at least to one per cent which will be about Kshs15 billion.

That will have more impact than the 0.5 per cent. However, that is not a subject of this Bill. This Bill is just trying to see how the fund can be started to be utilized.

The other one is the Commission on Revenue Allocation (CRA) which has a very clear role to play in this fund. They also need to be realistic because they need to make sure that the fund is not spread so thin the way they have done it in their second proposal. That you can give four million shillings to a sub location and say you are trying to mitigate some marginalization.

Madam Temporary Speaker, the first one was better where they had even checked marginalization within the counties then they just tap it at 14 counties. Their reasoning was that whatever can be done has some effect. In that case, I remember a county like Marsabit was to get Kshs800 million. That would be substantial if it is limited to those areas. That is if it is not spread thin at that level.

What they get before and what was to be implemented was also spread thin. It was not doing any major infrastructure and that would not be good. For example, what I was thinking was that if it is a road, then it should be a major gravel road which can open up a bigger part of that county. If it is a water project, it is bigger and can cover at least a wider area in terms of population. This is so that at the end of the day we can see this is what we have been able to do with this fund.

Madam Temporary Speaker, otherwise if we do not do that then we will run the risk of spreading again this fund thin on the ground. However, those are now technical issues which this board needs to take into account. If it does not do that also, we will run the risk of just ending up with a fund which is not useful on the ground. That way the purpose of curing marginalization will not be there.

I support the Bill with amendments.

**The Temporary Speaker** (Sen. Nyamunga): Sen. Mutula Kilonzo Jnr., you can start your address and then continue in the next sitting.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Madam Temporary Speaker. Let me say at the beginning that it would have been nice if our Chairperson had moved this Bill. Many concerns raised by the Senators have been addressed in our amendments to this Bill. We have considered many of the proposals that Senators have made.

The second thing is that in the last Senate since I was in the Committee on Finance and Budget, we made several recommendations on the changes that we thought should be done and regulations made by Treasury. They did not agree with us but finally the court has firmly said the position of the Equalization Fund. Perhaps in the next session, I will succinctly point out those sections particularly Section 18 of the Public Finance Management Act that has given us a solid footing on Equalization Fund.

**The Temporary Speaker** (Sen. Nyamunga): Sen. Mutula Kilonzo Jnr., you will have a balance of 17 minutes next time the Bill is listed.

**ADJOURNMENT**

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, it is now 6.30 p.m., time to interrupt the business of the Senate. The House, therefore, stands adjourned until tomorrow Thursday, 8<sup>th</sup> October, 2020 at 2.30 p.m.

The Senate rose at 6.30 pm.