

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 23rd September, 2021

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

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

PRAYER

COMMUNICATION FROM THE CHAIR

REINTRODUCTION OF SESSIONAL COMMITTEE ON IMPLEMENTATION

The Speaker (Hon. Lusaka): Hon. Senators, I have the following Communication to make.

As you may recall, on Wednesday, 15th September, 2021, the Senator for Vihiga County, Sen. George Khaniri, MP, while making a contribution to the Report of the Standing Committee on Land, Environment and Natural Resources on a Petition to the Senate by Rev. (Dr.) Emmanuel Chemengich concerning illegal alienation of land belonging to Kitale Primary School by a private developer, noted that Standing Committees make progressive recommendations on various issues touching on the lives and livelihoods of Kenyans, but the absence of an Implementation Committee makes it difficult for the Senate to pursue the matter with Government ministries and other implementing agencies.

Sen. Khaniri's observation was supported by a number of Senators, including the Senator for Bungoma County, Sen. Moses Wetangula, MP, and the Senator for Makueni County, Sen. Mutula Kilonzo, Jnr., MP, who implored upon the Speaker to convene a meeting of the Procedure and Rules Committee, to consider proposals for the establishment of an Implementation Committee before the end of the term of the 12th Parliament.

This was not the first time that the matter of the Implementation Committee was canvassed on the floor of the Senate. Several Senators, particularly Sen. Mary Seneta, MP, and Sen. Millicent Omanga, MP, commenting on diverse matters, attributed the inefficiency in follow up on resolutions of the Senate, to a lack of an Implementation Committee in the Senate Standing Orders.

Submissions have been made to the Procedure and Rules Committee, for amendment to the Standing Orders, to re-introduce the Sessional Committee on Implementation.

Hon. Senators, the primary mandate of the Implementation Committee is to scrutinize the implementation of the resolutions of the Senate and formal undertakings given by the national Executive. Currently, this mandate is vested in respective Standing Committees as outlined in Standing Order No.218(4), which provides that:

“The Standing Committees may, in dealing with the matters assigned to them under the Second Schedule, scrutinize the resolutions of the Senate (including adopted

Committee reports), petitions and formal undertakings given by the National Executive and examine-

(a) whether or not such resolutions and undertakings have been implemented and where implemented, the extent to which they have been implemented; and whether such implementation has taken place within a reasonable time; and

(b) whether or not legislation or subsidiary legislation passed by the Senate has been operationalized and, where operationalized, the extent to which such operationalization has taken place within a reasonable time.”

(Several Senators stood in their places)

You can take your seats.

Hon. Senators, at the sitting of the Senate of Wednesday, 15th September, 2021, I assured the House that as the Chairperson of the Procedure and Rules Committee, I would convene a meeting of the Committee to consider, among others, the matter of the proposed reintroduction of the Implementation Committee. The meeting was held on Wednesday, 22nd September, 2021.

The Procedure and Rules Committee is therefore undertaking a review of the Standing Orders which is customary towards the end of the term of Parliament to address gaps and inadequacies that have been identified in the Rules of Procedure in the course of the tenure of the House.

Consequently, this is to request any Senator that has a proposed amendment to the Standing Orders to file them with the Speaker as set out in Standing Order No.253.

I thank you.

Next Order.

PETITIONS

REPORT ON PETITION: DELAYED PAYMENTS TO SUPPLIERS OF COMMODITIES TO PUBLIC SECONDARY SCHOOLS DURING THE FIRST TERM OF THE ACADEMIC YEAR 2020

REPORT ON PETITION: PROMOTION OF TEACHERS IN KAJIADO COUNTY TO LEADERSHIP POSITIONS

Sen. (Dr.) Milgo: Thank you, Mr. Speaker, Sir. I beg to lay the following reports on Petitions by the Standing Committee on Education on the Table of the Senate today, 23rd September, 2021:

(1) Report on Petition in the Senate by Mr. Elkana Kitur concerning Delayed Payments to Suppliers of Commodities to Public Secondly Schools During the First Terms of the Academic Year 2020.

(2) Report on the consideration of the Petition to the Senate by residents and teachers serving in Kajiado county no promotion of teachers in the county to leadership positions.

(Sen.(Dr.) Milgo laid the documents on the Table)

The Speaker (Hon. Lusaka): Next Order.

PAPERS LAIDFINANCIAL REPORTS OF VARIOUS
COUNTY FUNDS/COMPANIES

The Senate Majority Leader (Sen. Poghisio): Mr. Speaker, Sir, I beg to lay to following Papers on the Table of the Senate today, Wednesday, 23rd September, 2021:

(1) Report of the Auditor-General on financial statements of Kilifi-Mariakani Ward and Sewerage Company Limited for the year ended 30th June, 2019.

(2) Report of the Auditor-General on financial statements of Kilifi County Micro-finance (Mbegu) Fund for the year ended 30th June, 2019.

(3) Report of the Auditor-General on the Financial Statements of Meru County Oils Limited for the year ended 30th June, 2019.

(4) Report of the Auditor-General on the financial statements of Mombasa County Consolidated Revolving Fund for the year ended 30th June, 2019.

(5) Report of the Auditor-General on the financial statement of Mombasa County Alcoholic Drinks Control Fund for the year ended 30th June, 2019.

*(The Senate Majority Leader (Sen. Poghisio)
laid the documents on the Table)*

The Speaker (Hon. Lusaka): Let us move on to the next one. If the Chairperson of the Committee on Land, Environment and Natural Resources is not available, can the any Member of the Committee lay the documents?

Proceed, Senate Majority Leader

REPORT ON THE NATURAL RESOURCES (BENEFIT SHARING)
BILL (SENATE BILLS NO. 25 OF 2020)

The Senate Majority Leader (Sen. Poghisio): Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Thursday, 23rd September, 2021:

Report of the Standing Committee on Land, Environment and Natural Resources on the Natural Resources (Benefit Sharing) Bill, (Senate Bills No. 25 of 2020).

(Sen. Poghisio laid the document on the Table)

The Speaker (Hon. Lusaka): Next Order.

NOTICES OF MOTIONPOOR OLYMPICS RESULTS AND THE
MISHANDLING OF ATHLETES

Sen. Cherargei is not in the Chamber. The Notice of Motion is therefore deferred.

(Notice of Motion deferred)

The Speaker (Hon. Lusaka): Next Notice of Motion.

The Chairperson of the Committee on Health is not in the Chamber. However, the Notice of Motion will be read by Sen. Omanga who is a Member of the Committee on Health.

ADOPTION OF THE THIRD PROGRESS REPORT ON THE
NATIONWIDE COVID-19 VACCINE ROLLOUT

Sen. Omanga: Mr. Speaker, Sir, I beg to give Notice of the following Motion:

THAT, the Senate adopts the Third Progress Report of the Standing Committee on Health on the COVID-19 situation in Kenya and preliminary findings on the nationwide COVID-19 vaccine roll out, laid on the Table of the Senate on Tuesday, 21st September, 2021.

The Speaker (Hon. Lusaka): Next Order.

STATEMENTS

ALLEGED SHOOTING AND DEATH
OF MR. ALEX MACHARIA

Sen. Omanga: Mr. Speaker, Sir, I rise pursuant to Standing Order No.48(1) to seek a Statement from the Standing Committee on National Security, Defence and Foreign Relations regarding the alleged shooting and subsequent death of Mr. Alex Macharia, a trader at Kahawa West, Nairobi County, by the police on Wednesday, 25th August, 2021.

In the statement, I would like the Committee to:

(1) Explain the circumstances that led to the death of a trader, Mr. Alex Macharia, during a demonstration by traders to protest against the demolition of their stalls in Kahawa West, Nairobi County.

(2) The Committees should provide an update on the investigations on the use of excess force and use of live bullets against the demonstrators by police officers during the demonstration.

(3) Indicate the measures that have been put in place to ensure that the police officers responsible for the death are brought to book.

(4) Finally, outline the steps, if any, that have been taken to compensate the family of Mr. Macharia.

I thank you, Mr. Speaker, Sir.

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

Sen. Halake: Mr. Speaker, Sir, I thank you for giving me the opportunity to comment on Sen. Omanga's statement. The issue of extrajudicial killing is close to my heart. I therefore thank Sen. Omanga for not letting the candle go off on this one. Issues to do with extrajudicial killings and police brutality on innocent Kenyans who are exercising their right to picket and demonstrate peacefully is unacceptable.

I come from a group of counties that have suffered the most at the hands of police officers on issues to do with extrajudicial killings and with regards to disappearances in utter disregard of the Constitution of Kenya. Recently, an old man from my county, *Mzee Omar*, was crying that his son who is a police officer has disappeared after being picked by police officers. It is not known whether *Mzee Omar's* son will come back alive.

Throughout the country, there have been many cases of extrajudicial killings and police brutality. Sheer lack of adherence to the law is disturbing. I hope that the Committee will get to the bottom of this matter because it has piled up. We receive reports of extrajudicial killings and trigger happy police officers a lot more. The incidents of police

officers killing innocent citizens who are just out to exercise their right to picket is becoming too much.

I thank Sen. Omanga for bringing this issue up. I know that every Senator has had a chance to bring up this issue. I am happy that there will be an Implementation Committee in place to ensure that the resolutions passed in the House are implemented. There are a lot of security matters that fall in the cracks. I hope that this Statement will see the light of day alongside others that had been brought to this House.

Mr. Speaker, Sir, I support.

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

Sen. Wetangula: Mr. Speaker, Sir, I thank you for giving me the opportunity to support the very active Senator from Nairobi City County in her request for the Statement in relation to the loss of lives arising out of police misconduct. I encourage the distinguished Senator that besides making this request, she should use her office to write to the Independent Policing Oversight Authority (IPOA). I say this because I noted that after the killing of the Kianjokoma brothers in Embu, it is IPOA that took up the matter, investigated it very quickly and as a result, six police officers are in court with a charge of murder. So, IPOA will be very helpful besides the Statement coming to this House.

Mr. Speaker, Sir, as I speak on that, I want to join my colleagues in decrying the increasing cases of use of excessive force by police officers against citizens.

The rules and standing orders of the police are very clear that in the case of the police suppressing riots, controlling demonstrations and picketers they are supposed to use rubber bullets, if a bullet must be used at all. That is why the police are issued with truncheons and batons and then guns and bullets. Guns and bullets are used as a measure of a last resort when the police are in danger of being attacked by armed criminals, but not on picketers and demonstrators.

The other day when the IG of Police appeared before our Committee he said the majority of policemen and policewomen in this country are very good and I agree with him. I reminded him that Jesus had 12 disciples; 11 were good but it is the last one that caused the whole mess of Christianity. He betrayed Jesus and caused him to be crucified. The police must also be having that last one out of 12 that gives a very bad name to an otherwise good force.

The new Constitution changed the structure of the police from a force to a service and we want to see that the police are actually giving the people of Kenya good service.

In countries like the United Kingdom (UK), when you are in trouble, you are lost or under threat, when you see a policeman you become relieved. You run to the police officer to protect you. In Kenya, unfortunately, when you are in trouble and you see a policeman your troubles multiply and that should not be the case.

We want to encourage the IG of Police, Mr. Mutyambai and his team, that he came in on a reformist agenda. When we vetted him he told us that he was going to leave the police force better than he found it. We want to see that he reforms the police, weeds out the bad elements and makes the police user-friendly to the citizenry of this country.

Thank you, Mr. Speaker, Sir.

Sen. Sakaja: Mr. Speaker, Sir, I first want to take this opportunity to offer heartfelt condolences to the family of Alex Macharia, the people of Kahawa West and the traders who have lost a friend, a family member and a brother.

I am really grateful to Sen. Omanga, Mama Miradi, for bringing this issue. I am one of the luckiest Senators here because I have a very good assistant Senator---

(Laughter)

---amongst others in my delegation, who always raise issues of concern regarding the people of Nairobi.

Sen. Wetangula: On a point of order, Mr. Speaker, Sir. Is my distinguished nephew, the Senator for Nairobi City County in order to denigrate the status and standing of the very active Senator from Nairobi City County, Sen. Millicent Omanga by describing her as his assistant? Every single Senator here is here individually as a Senator. Whether you are in a delegation or not, you do not become an assistant to the head of delegation.

Sen. Sakaja: Mr. Speaker, Sir, to the contrary, I have not denigrated Sen. Omanga. In fact, I have been praising her. I have said she is a Senator who assists me and I assist her also in her work. This is because Nairobi is big. I have 17 constituencies, 85 wards and four million people. So, I am very lucky that we can assist each other, including all the Senators in the Nairobi delegation.

Back to this very important matter. Less than a year ago I brought the issue of Yasin Moyo, a 13-year-old boy who was shot at his balcony in Kiamaiko. We followed up that case, but it is still dragging in the courts. The police officer is being protected by the prosecution and by the police force. It is very sad. Then a few months later another young man was killed in the same Kiamaiko area on a balcony; he was shot by live bullets.

We brought the case of Steve Nandwa who was killed in Kasarani during protests because of the road. I thank the Government for helping us get more resources to do the road. The road has been done, but that life will never be returned. Life is important.

I remember we once had a joint sitting with the committee on Justice, Legal Affairs and Human Rights on the issue of extra judicial killings, but no action has been taken to date. I do not know whether we need to amend the law, but they are a toothless dog. There is nothing that they were able to do with respect to these cases.

The second issue is that of evictions and demolitions. I am glad again that Sen. Omanga has raised this because that is why these traders were protesting. These traders are just trying to eke out a living. They have decided not to get into crime; they have decided to find an honest way to feed their families. They have been evicted.

I am sure most of you know that area in Westlands where traders used to sell curios. They were evicted three years ago allegedly because of a road but to date when you drive there nothing has been done. Those people's livelihoods have been put at risk because of brick and mortar.

I just want to urge the Nairobi Metropolitan Service (NMS) and the Nairobi City County to look at Nairobi not just in terms of buildings, brick, mortar and development, but in terms of livelihoods and lives. We have people who depend on this trade.

There have been so many evictions in the past few months all across Nairobi and I will bring a comprehensive Statement detailing each and every one of them.

Finally, on that same issue, many residents of Nairobi today are sleeping in their homes in fear. The residents in the old council houses from Woodley, Ofafa Jericho in Eastlands and Uhuru Estates live in fear because of impending demolitions. Let this entity that we created called NMS work hand in hand with leaders and with the people. They should not just think about what they will put up, but they should carry the people along.

Mr. Speaker, Sir, I thank you for that opportunity and I thank Sen. Omanga.

Sen. (Prof.) Ekal: Thank you, Mr. Speaker, Sir, for giving me the chance to congratulate our active Senator from Nairobi for bringing this issue which is actually a countrywide problem. It is not just for Nairobi; it cuts across the entire country.

It is a sad situation when a Kenyan dies and especially in the hands of the same force that is supposed to help that particular Kenyan survive. *Utumishi kwa Wote* means that the police force must be a service force that helps *wananchi* survive and not kill them.

In this particular case it is a sad situation and I hope that some compensation will be given to the family of this person who lost his life. However, it should not happen again.

Every time something like this happens it is usually a problem of leadership and poor training of the police force. They should be trained in such a way that they understand that their prime purpose is to protect the citizens of Kenya so that they are safe wherever they may be.

I know of occasions in Isiolo when there were some skirmishes between the Turkana and the Meru communities. There was a young man there who was from the Turkana community who was supposed to act as a policeman and fire bullets into his own people who are usually on the receiving end. I remember that young man refused to fire those bullets. Guess what? He was murdered by his own force because he did not want to do that.

I remember a situation in Lodwar where there were some *boda boda* boys who were protesting about some bad incidents that were going on whereby they were being arrested for not wearing reflector jackets. During that demonstration one boy was gunned down by the police and the officer who committed that crime was actually protected by the police. That crime was protected by the police. Instances like this tell you that we do not have '*Utumishi kwa Wote*'. We have a force that has become rogue. That is usually a failure in leadership. The police are not well trained and do not know the purpose they are serving. They are supposed to serve *wananchi* with respect especially in a democratic country like Kenya which has democratic laws.

Kenyans are free to picket and demonstrate peacefully for as long as they are not causing harm to other people or breaking property. It is unacceptable to have a police force that kills.

As much as Mr. Mutyambai says that he will leave a more disciplined force than the one he found, I still think that the police force is going down in terms of behavior.

There is a lot of harassment of *wananchi* especially in my part of the world where *mamas* make *busaa* so that they cannot support their school-going children. *Boda Boda* riders also get harassed. They are supposed to pay Kshs50 for everything that they are accused of. It is sad that the police have become a force that is victimizing *wananchi*.

Mr. Speaker, Sir, I hope that the loss of lives will be compensated handsomely so that those that are left behind can live well.

Sen. Faki: Asante Bw. Spika kwa kunipa fursa hii. Kwanza, ninampongeza Sen. Omanga kwa kuleta Taarifa hii katika Bunge la Seneti. Yeye ni msimamizi wa wanyonge katika nchi yetu ya Kenya.

Swala la polisi kutoajibika limezungumziwa kwa muda mrefu hapa katika Bunge la Seneti. Wiki iliyopita, tulizungumzia swala la kupoteza Prof. Abdisalam na mfanya biashara Abdulhakim Sagar kule Mombasa.

Maajabu ni kuwa watu hao wawili waliachiliwa huru usiku wa Jumapili na Jumamosi katika maeneo ambayo ni mbali na manyumba yao na hatari kwa usalama.

(Sen. Cherargei consulted loudly)

Ndugu yetu Sen. Cherargei, hafai kuzungumza na Seneta mwingine wakati amekupa mgongo.

The Speaker (Hon. Lusaka): Sen. Cherargei, these nomadic tendencies are disturbing.

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

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

Sen. (Dr.) Ali: Mr. Speaker, Sir, nomads are very important people in the country. We should not have been denigrated.

The Speaker (Hon. Lusaka): I did not mean to denigrate them. They are people who move from one place to another in search of pasture.

Sen. (Dr.) Ali: Yes, Mr. Speaker, Sir. We are happy with that. You should tell him that as a farmer, he should not walk around farming.

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

Sen. Faki: Bw. Spika, utenda kazi wa polisi umekuwa ukimulikwa mara mara na Bunge la Seneti. Hadi hatua muhimu zichukuliwe dhidi ya polisi, hakuna jambo lolote litafanyika kwa sababu, kila wiki, visa vya kutowajibika kwa polisi vinaongezeka. Mwezi ulioisha ilikuwa ni Mombasa, juzi ikawa Nairobi na tena Nairobi, na mwezi huo mwingine ilikuwa Laikipia. Visa bado vinaendelea kutokea.

Kwa hivyo, ninaomba swala hili lijadiliwe sio na Kamati ya Usalama pekee yake lakini pia Kamati ya Sheria na Haki za Binadamu. Yale yanayotendeka sio kinyume cha usalama pekee, ni kinyume cha Katiba yetu. Kwa hivyo, Kamati husika inafaa ichunguze swala hili.

Hapo awali nilipokuwa kwenye Kamati hii, tulizunguka katika sehemu tofauti tofauti kuchunguza maswala ya kuuliwa kiholela kwa raia wa nchi ya Kenya. Hadi leo, ripoti hiyo haijajetwa Bungeni.

Kwa hivyo, nina omba uamrishe Kamati ya Sheria ilete ripoti ili tuijadili na kutoa mwongozo vipi sheria itatekelezwa.

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

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

(Sen. Were consulted loudly)

Sen. Wambua: Madam Temporary Speaker, I have heard Sen. Were say something about me, but I will not repeat it.

I take this opportunity to thank, Sen. Omanga, who has declared herself the most active Senator in the Chamber. She is active and for good reason.

Article 37 of the Constitution of Kenya 2010 guarantees every person anywhere in the country a right to assemble, demonstrate, picket and present petitions to public authorities.

First, picketing is not a crime. It cannot be that the price for picketing is loss of life. The Act that establishes the National Police Service (NPS) gives officers a duty of care and responsibility, to enforce the law and the Constitution. To the extent that a police officer would pull the trigger and cause the death of a human being on account of picketing is a serious violation of the Constitution of Kenya, of basic rights and the right to picket.

Secondly, I join Sen. Wetangula and say that when the Inspector-General (IG) of Police took office, he promised far-reaching positive changes in the operations of police officers in ensuring law and order across the country.

I ask him from the Floor of this Senate to look at the oath of office that he took; the promise that he gave the people of this country and the records of the operations of police officers since he took office. He will be surprised to learn that we are slowly but surely sliding back to the dark days of police brutality.

Madam Temporary Speaker, from the Floor of this House, we must condemn that act and hold officers responsible to account for that loss and other losses. However, at the end of the day, the buck stops with the IG who is the head of the NPS.

With those remarks, I support the Statement.

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, we are aware that we had decided at some stage to limit comments on Statements. I see interest in this Statement. So, I will give only two Senators a chance then we come to the end of Statements.

(Sen. Cherargei consulted loudly)

Proceed, Sen. (Dr.) Lang'at. You have two minutes. You can donate some to Sen. Cherargei.

Sen. (Dr.) Lang'at: Madam Temporary Speaker, I will consider that.

First, I condole with the family of this particular man from Kahawa West who was killed by the police. It is sad that the police whom we expect to assist us to save lives have ironically turned to be the risk in the society.

We have been speaking here every week on several Statements concerning police brutality in our country. It is time we get into another serious position as the Senate so that we save the lives of innocent Kenyans who are killed by the police.

Madam Temporary Speaker, I plead with you that the Committee that will take over this matter to take it seriously. If possible, we could call the Inspector-General of Police, Mr. Mutyambai, to appear before the Committee of the Whole so that most of the questions that we have in our minds and hearts may be answered by him. If he cannot, we should call upon him to resign. I think that he is defeated.

We are ashamed that when he was appointed, we showered him with a lot of praise. We had a lot of expectations from him. It is very unfortunate. Killings in this country are rising every now and then and this is quite sad. I call upon him to resign if possible and give another person who is capable of controlling all these issues to take over and bring peace to this country. If it is getting to this high rate at this time, what about next year during the campaigns and elections? It will be worse.

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

The Temporary Speaker (Sen. Nyamunga): Sen. Poghisio.

The Senate Majority Leader (Sen. Poghisio): Madam Temporary Speaker, I want to begin by conveying condolences to the family, friends, and business partners of the late Mr. Macharia.

Whatever happened in that situation is not to be condoned, it is to be condemned. Any human life is precious, and that is our job. The Constitution provides the rights of all Kenyans. I commend Sen. Omanga for bringing this case to us. This should go to the right Committee, and I think that the Members of that Committee will do a good job like they have done. We take this very seriously. I agree that we need an Implementation Committee so that such things can be followed to their conclusion.

I thank you.

The Temporary Speaker (Sen. Nyamunga): Sen. Malalah.

Sen. Malalah: Asante, Bi. Spika wa Muda. Kwanza ningependa kutuma risala za rambirambi kwa familia ya marehemu Macharia kwa kumpoteza mmoja wao. Jambo la pili ni ningependa kumshukuru Sen. Omanga kwa kuleta swala hili katika Bunge.

Swala hili si la Nairobi pekee wala halijafanyika wakati huu pekee. Swala hili ni la kitaifa. Tuko na askari ambao wametumia nyadhifa zao kudhulumu wananchi. Ni muhimu sana tuanze kuangalia mfumo wa masomo ya askari wanapoenda katika chuo chao kule Kiganjo baada ya kuchukuliwa kama askari.

Mfumo huo lazima unaangaliwe kwa ndani. Ni lazima tuangalie ni vipengele gani wanafunzwa wakiwa kule. Tuko na vipengele kama saikolojia. Askari wetu wako na shida za saikolojia. Ni lazima tuhakikishe kwamba masomo ya kisaikolojia imekita mizizi katika vyuo vya kufunza askari.

Jambo la pili ni lazima tuangalie wanakaa aje katika kambi zao. Askari wengi wako na *mental health problems*.

(The red timer went on)

Nimeona nimewashiwa taa ya kuonyesha kwamba nafaa kuwa natimiza maongezi yangu. Ningependa kuomba tu dakika moja.

Wacha nimalize kwa kusema kwamba ni lazima tunaangalie ni nini kinawasumbua askari wetu, na tuangalie jinsi tunaweza kutatua swala hili kuhakikisha kwamba askari hawadhulumu wananchi wa nchi yetu.

Bi. Spika wa Muda, ningependa kusema kwamba tuzidi kuhakikisha kwamba tumeweka hawa askari. Hata wakati wa maandamano baada ya kupiga kura, kuna watu wengi waliaga dunia na kudhulumiwa. Wafuasi wetu wa National Supper Alliance (NASA) waliaga dunia, lakini hakuna jambo ambalo limefanyika.

Tungependa pia idara za Director of Public Prosecutions (DPP) na Independent Policing Oversight Authority (IPOA) ziangalie kwamba wale askari ambao wanakosa nidhamu katika utendakazi wao wana chukuliwa hatua iwezekanavyo.

The Temporary Speaker (Sen. Nyamunga): Sen. Cherargei.

Sen. Cherargei: Thank you, Madam Temporary Speaker. Mine is just to condemn and expect the Committee on National Security, Defense and Foreign Relations to do its work.

You are aware that the Cabinet Secretary (CS) for Interior and Coordination of National Government was supposed to appear on the issue of Laikipia. As we talk, one person has been killed and 30 heads of livestock stolen in Ole Moran. This issue is continuing to happen.

When I was the Chairperson of the Committee on Justice, Legal Affairs and Human Rights, we were working on reports on extra judicial killings and enforced disappearances. I do not know whether that report has been tabled and if it has, what are the recommendations of the Committee so that we do not see such occurrences in future.

What is happening in Ol Moran, in other parts of the country and the Kianjongoma brothers is becoming a challenge in this Republic. I hope that this Statement by Sen. Omanga will include others. The Committee can table its own Motion to try and come up with measures that can deter rogue police officers. I believe that there are police officers who are good, but there are others who are rogue and should be rooted out of service.

I thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. Nyamunga): Finally, Sen. Murkomen.

Sen. Murkomen: Bi. Spika wa Muda, nashukuru kwa nafasi ambayo umenipa. Nitaanza kwa risala za rambirambi kwa jama na marafiki wa Bw. Alex Macharia, ambaye kwa lugha ya kisasa tunasema kwamba ni *hustler*.

Imekuwa jambo la kusikitisha sana kuona kwamba miaka baada ya kupitisha Katiba mpya, bado polisi wetu wanatumia nguvu kuumiza wananchi wa kawaida. Tunajua kwamba

Katiba yetu inalinda haki ya mwananchi kutetea haki yake kwa njia ya maandamano, kama vile wanabiashara waliokuwa na Bw. Alex Macharia walifanya kutetea haki yao.

Bi. Spika wa Muda, kubomoa biashara na manyumba za watu ni njia duni nchi kama yetu iliyo na demokrasia inaweza kutumia askari wake kuumiza wanachi wake. Ingewezekana, tungepata Kamati inayo ongozwa na Sen. Outa. Angechukua hatua kali sana kuhakikisha kwamba mkuu wa polisi na Waziri wa Interior and Coordination of National Government wana wajibika. Tusikuje hapa kusoma Taarifa hii kwa Bunge na kuonekana na wananchi na hakuna haki ina tendeka. Tunataka tuone kwamba polisi wetu wanawajibika kwa njia ambayo wanafanya kazi yao na wanalinda maisha ya mwananchi wa kawaida.

Bi. Spika wa Muda, nashukuru Sen. Omanga kwa kuchukua nafasi hii kutetea Bw. Macharia, familia yake, na wale wote ambao wamekandamizwa kwa polisi kutumia nguvu.

Asante, Bi. Spika wa Muda.

The Temporary Speaker (Sen. Nyamunga): Thank you, Senators. That brings us to the end of comments on that Statement. The Statement stands committed to the relevant committee.

The next Statement is by Sen. Sakaja.

STATUS OF MBAGATHI HOSPITAL

Sen. Sakaja: Thank you, Madam Deputy Speaker. I rise pursuant to Standing Order No. 48(1) to seek a Statement from the Standing Committee on Health on the status of Mbagathi Hospital in Nairobi City County.

There have been numerous complaints on the quality of services being offered in this facility and concerns about some of the structures that need urgent rehabilitation and renovation.

Currently, because of the centralized procurement, there is shortage of drugs. As we speak, I am sure today that there is no nitrous oxide that is used in the theater, and basic supplies

This facility serves thousands of residents of Nairobi City County especially those from informal settlements and low income areas, but has been neglected and not given priority as required despite the huge budgetary allocations on health. The Nairobi Metropolitan Services (NMS) should be held accountable as the health function is their responsibility.

I request the Chairperson in his detailed response to address the following specific issues that requires urgent attention-

(1) Give an explanation as to why there is a shortage of nurses and critical care specialists and what action is being taken. There is only one special critical care specialist and there is a shortage of nurses.

(2) Explain why the two Intensive Care Unit (ICU) machines and equipment have been gathering dust at the stores at Mbagathi and have not been installed yet that is a critical service that the residents deserve to be getting.

(3) State what the NMS is doing to ensure there is a consistent supply of pharmaceutical and non-pharmaceutical supplies at the hospital. As I mentioned, basic drugs and supplies such nitrous oxide are not available.

(4) Give a timeframe as to when the tent that is being used for isolation and treatment of COVID-19 patients will be sorted.

Madam Temporary Speaker, if you go there today, you will see the status is deplorable starting from the floor to everything around it.

I brought this Statement because in addition to the issues today---

The Temporary Speaker (Sen. Nyamunga): Do you want to debate your Statement?

Sen. Sakaja: No, I am giving you the context.

The Temporary Speaker (Sen. Nyamunga): You just read the Statement and others will make comments.

Sen. Sakaja: No, I am not talking on the same.

The Temporary Speaker (Sen. Nyamunga): Okay.

Sen. Sakaja: The Members of the Committee on Health will tell you that today the NMS came to the Committee and they were giving answers to a similar question from Sen. Kwamboka who is also one of the Senators whom we assist each other in Nairobi, but the answers were vague and one line.

That is why I have now brought this in detail so that we do not let go without giving detailed responses. That is the only context I am giving.

I thank you.

The Temporary Speaker (Sen. Nyamunga): I will allow very few comments---

Sen. (Dr.) Ali: On a point of order Madam Temporary Speaker

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

Sen. (Dr.) Ali: Madam Temporary Speaker, it is a point of information. I want to inform the hon. Senator---

The Temporary Speaker (Sen. Nyamunga): Are you informing him while he is already through?

Sen. (Dr.): It concerns the same issue because I am a Member of the Committee. We disagreed with what the NMS brought. We told them that in the next two weeks they should come up with a proper response, very well informed and detailed.

The Temporary Speaker (Sen. Nyamunga): Was it on the same subject?

Sen. (Dr.) Ali: Yes, it was on the same subject of Mbagathi hospital. We had a meeting with the NMS this morning, but they did not come with proper answers. We told them we did not want one line answers, but proper and comprehensive ones concerning the ICU, oxygen and everything that happens in it. In the next two weeks, we will have a response.

The Temporary Speaker (Sen. Nyamunga): I will allow a few comments because we have a lot of business before us.

Sen. Murkomen: Bi. Spika wa Muda, swali hili lililoletwa na Sen. Sakaja ambaye ni Seneta wa Kaunti ya Jiji la Nairobi ni la maana sana. Kwanza kabisa hali ya afya katika kaunti zetu, si Nairobi tu, iko na shida kubwa sana.

Sijui hali ya Kisumu Kaunti unapotoka, Bi. Spika wa Muda, lakini Elgeyo Marakwet ninakotoka, kazi iliyofanywa na serikali za kaunti katika muhula wa kwanza wa ugatuzi ilikuwa bora kuliko wale wamefanya katika muhula wa pili hasa magavana wanaomaliza muhula wao wa pili.

Nilikuwa Elgeyo Marakwet mwishoni mwa juma. Hospitali kuu ya Iten iko katika hali hatari sana. Wagonjwa wengi wanalala sakafuni na kukusanywa pamoja, walio na COVID-19 na wasio. Hali ni vivyo hivyo katika kaunti ya Kitui.

Sen. Wambua alitonyesha na pia kupitia vyombo vya habari kwamba hata mbuzi wanaishi katika hospitali za Kitui. Wagonjwa wamerundikwa katika chumba kimoja. Nilishangaa juzi kuwa Gavana wa Kitui amenunua malori ya kusafirisha mbuzi lakini hana magari ya kupeleka wagonjwa hospitali.

Bi. Spika wa Muda, unajua ni kwa nini kaunti nyingi haziweki pesa nyingi kwa mambo ya afya na hospitali? Ni kwa sababu zile dawa hazileti kandarasi za kuwawezesha

kuiba pesa. Hii ni kwa sababu kazi ya afya haina njia ya kuiba kupitia ujenzi. Wengi wao wanaiba pesa ya kununua dawa moja kwa moja kutoka akaunti ya kaunti.

Sen. Sakaja ameleta taarifa nzuri sana. Ningependa nimkumbushe siku ile nilikuwa hapa katika Meza hii ya Siwa nikisema kwamba serikali ya kaunti haiwezi kuendeshwa na mwanajeshi. Hakuna uwajibikaji katika serikali ambayo haiendeshwi na raia. Kaunti inanunua vitu bila kuzingatia sheria za ununuzi.

Ni nani atamjibu Sen. Sakaja? Hatuwezi kuleta mwanajeshi kukaa katika Chumba hiki. Gavana wa Kaunti ya Jiji la Nairobi anashughulikia mambo ya ununuzi na kuhakikisha hospitali zinaendelea. Anawezaje kuletwa hapa---

The Temporary Speaker (Sen. Nyamunga): What is your point of order, Sen. Cherargei and under which Standing Order?

Sen. Cherargei: Bi. Spika wa Muda, ningependa Seneta ambaye ni mwalimu wangu--

The Temporary Speaker (Sen. Nyamunga): Under which Standing Order?

Sen. Cherargei: Kwa Kiswahili ni hoja ya nidhamu. Sen. Murkomen anamaanisha nini anaposema jeshi kwa sababu Kenya hii tuna Jeshi la Wokovu, Jeshi la 'mahustler' na kadhalika. Ni vyema afafanunue ili Wakenya wasichanganyikiwe.

The Temporary Speaker (Sen. Nyamunga): Sen. Murkomen, be clear.

Sen. Murkomen: Bi. Spika wa Muda, unajua kwamba kaunti ya Jiji la Nairobi inasimamiwa na meja jenerari wa jeshi la taifa la Kenya. Si kwamba amestaafu bali sasa hivi ni meja jenerari. Tulipoambiwa kuwa kaunti ya Jiji la Nairobi imewekwa kuongozwa na meja jenerari nilileta taarifa hapa nikauliza, "inawezekanaje tulete wanajeshi wetu ambao wanaheshimika dunia nzima waingie katika nyanja za siasa na kufanya mambo ya executive na kusimamia ununuzi?"

Itawezekanaje Sen. (Dr.) Mbiti kuita meja jenerari aje kuulizwa maswali katika Chumba hiki? Kwa muda wote tangu kaunti ya Jiji la Nairobi iwe na NMS hakuna siku meja jenerari ameitwa na Kamati yoyote ya Seneti na akaja.

The Temporary Speaker (Sen. Nyamunga): Sen. Halake, I gave you an opportunity, but you did not even get to the point of order.

Sen. Halake: Madam Temporary Speaker, my point of order is on the issue of relevance. How is the fact that somebody is in the army relevant to execution? The one execution that is perfected around the world in procurement is actually military procurement. We cannot say that the military is not relevant.

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

Sen. Sakaja: Bi. Spika wa Muda, nina hoja ya nidhamu. Ingawa nakubaliana na mambo kadha wa kadha aliyonena Sen. Murkomen, singependa ampotoshe Maj. Gen. Badi kuwa hafai kualikwa na kufika mbele ya kamati za Seneti. Maj Gen. Badi lazima awajibike. Katiba inaruhusu Seneti kualika mtu yeyote ili kuangazia mambo yanayo athiri wananchi. Maj. Gen. Badi alijiwasilisha mbele ya Kamati ya Afya ya Seneti mapema leo. Maj. Gen. Badi anapaswa kufahamu kuwa lazima awajibike na kujibu maswali ya viongozi walichaguliwa kuwakilisha wananchi. Tulimpa Maj. Gen. Badi kazi na kwa hivyo hana budi ila kuwajibika na kujibu maswali kuhusu yote yanayo waathiri wakaazi wa Kaunti ya Nairobi.

Naomba Sen. Murkomen kutomptosha Maj. Gen. Badi kufikiria kwamba hafai kuwajibika. Lazima mkuu wa NMS aje mbele ya kamati yoyote ya Seneti itakayo mualika kuangazia jambo lolote. Nimeona Kaunti ya Nairobi inakumbwa na changa moto kadha wa kadha. Hivyo nimeamua kuwania kiti cha gavana wa Kaunti ya Nairobi mwaka ujao kama raia wa kawaida. Mimi sio mwanajeshi hivyo nina imani kuwa nitaendelea kazi vizuri.

Sen. Murkomen: Bi. Spika wa muda, nakubaliana na Sen. Sakaja kuwa kisheria, hakuna yeyote ambaye hawezi kualikwa mbele ya kamati yoyote ya Senenti kuwajibika. Kwa hivyo ni lazima Maj. Gen. Badi afike mbele ya kamati yoyote ya Bunge itakayo mualika kujibu maswali. Hata hivyo, ni jana tu tulikuwa tunajadili hoja ya kuwashutumu Mhe. John K. Munyes, Waziri wa Petroli Na Uchimbaji Madini na Mhe. Charles Keter, Waziri Wa Kawi, ambao walikosa kutambua mwaliko na kuja mbele ya kamati za Seneti. Kama mawaziri, ambao ni wananchi wa kawaida, hawatambui mwaliko wa Seneti, je Maj. Generali, ambaye ni mwanajeshi, atambua mwaliko kweli?

Ni kwa sababu ya changamoto kama hizo zinazokumba Kaunti ya Nairobi zinafaa kutatuliwa mara moja. I wish Maj. Gen. Badi was a retired general.

(Loud Consultations)

The Temporary Speaker (Sen. Nyamunga): Sen. Murkomen, you are now spoiling.

Sen. Murkomen: Bi. Spika wa muda, ingekuwa Maj. Gen. Badi ni mwanajeshi mstaafu, ingekuwa rahisi sana kwake kufanya kazi za raia wa kawaida. Lazima tuwaheshimu wanajeshi wetu kwa kuwaondoa katika siasa kama hali ilivyo hapa Kaunti ya Nairobi. Natumaini kuwa katika miaka ijayo, hatutakumbwa na shida iliyoko katika Hospitali ya Mbagathi hivi sasa. Natumaini kuwa Kamati ya Afya inasikiliza mapendekezo yetu na itayashughulikia.

(Sen. (Dr.) Ali spoke off the record)

Sen. (Dr.) Ali, alikuwa na cheo wakati mmoja katika Kamati ya Afya. Alikuwa Naibu Mwaneyekiti wa Kamati ya Afya wakati nilikuwa kiongozi wa walio wengi hapa Seneti. Sasa hivi Sen. (Dr.) Ali ni mwanakamati wa kawaida tu. Naomba Kamati ya Afya na kamati zinginezo zihakikishe kwamba watu wote wanajibika. Ni lazima Kamati ya Afya ihakikishe kwamba kaunti zote zina zingatia afya kikamilifu ili kuendeleza taifa letu.

(Sen. (Dr.) Ali stood on his feet and consulted loudly)

The Temporary Speaker (Sen. Nyamunga): Sen. (Dr.) Ali, I have not given you an opportunity yet you are already on your feet. Kindly take your seat because I will be guided by the intervention buttons.

(Sen. (Dr.) Ali took his seat)

Proceed, Sen. (Dr.) Ali.

Sen. (Dr.) Ali: On a point of Order, Madam Temporary Chairperson. Is the Senator for Elgeyo Marakwet in order to claim that I have been demoted when I have been promoted to be the Chairperson of the Committee on Trade and Tourism and remain in the Committee on Health as a Member? In any case, I would like to inform the distinguished Senator that the head of NMS, Maj. Gen. Badi has appeared before the Committee on Health severally and will continue to appear before our Committee anytime we invite him.

The Temporary Speaker (Sen. Nyamunga): Sen. Murkomen, be informed accordingly. What is your point of order, Sen. Murkomen?

Sen. Murkomen: On a point of order, Madam Temporary Speaker. Is it in order for Sen. (Dr.) Ali, the Senator for Wajir County, to mislead the House on what I said? I clearly stated that in my days, Sen. (Dr.) Ali was the Vice-Chairperson of the Committee on Health and that by him moving from a Vice-Chairperson of the Committee of Health to an ordinary Member is a demotion within that Committee.

(Loud consultations)

The Temporary Speaker (Sen. Nyamunga): Sen. Murkomen, you are now getting out of order.

Sen. (Dr.) Ali, your point has been noted. You have been promoted to be the Chairperson of another Committee.

I will give two more Senators opportunity to make brief comments before we move to the next order.

Proceed, Sen. Olekina.

Sen. Olekina: Madam Temporary Speaker, I rise to support this Statement that is quite timely. May it be noted that the NMS has been violating the Kenya Medical Supplies Authority (KEMSA) Act because for the last 16 months, they have not purchased their medicine or pharmaceutical products from the KEMSA.

This House passed a legislation directing every single county government to purchase their pharmaceuticals from KEMSA. There was also a directive given by the President. I do not know whether a directive given by the President supersedes an Act of Parliament. It will be noted that this is a violation of the law because for the last 16 months, KEMSA has indicated that the NMS has never purchased anything from them.

The other reason that I know that there is shortage of medicine in the public hospitals in Nairobi City County and all around is because Nairobi City County owes Kshs382 million to KEMSA. This is the time when this House must become bold and ensure that the legislations passed by this House are implemented. There is no reason why there should be a directive from the President yet an Act of Parliament supersedes a presidential directive. That is the reason there is a shortage of nurses; they are not getting paid well.

I have always stood by the fact that the NMS is an illegal entity. It has no business working in this Government. The situation in Nairobi is not good. This Government has put up very many hospitals yet the funds used have not gone through the sharable revenue. That is illegal. I can tell you that after 2022, when the ground will be fully leveled, there are some people who will rot in jail because Article 226(5) will go after them. I hope that whoever the leadership will be after 2022 will uphold the rule of law so that we can bring all these nonsenses to an end.

There is no point why we should be crying that our people are not getting medicine yet we sit here in Parliament as their leaders. Any governor in his right sense of mind should prioritize hospitals. I am a Member of the Committee on Health and I can tell you that you will be shocked by the find of things that we see and hear. Whenever I push for an item to be brought to the full House, I know what I am talking about.

The Temporary Speaker (Sen. Nyamunga): Sen. Olekina, your time is up.

Sen. Olekina: Madam Temporary Speaker, you had given me only two minutes but I appeal to you to add me one more minute because I am a Member of the Committee on Health and I have useful information that I would like to share with this House.

The Temporary Speaker (Sen. Nyamunga): Sen. Olekina, since you are a Member of the Committee on Health, you will have all the time to make your comments in the Committee.

Sen. Olekina: Madam Temporary Speaker, kindly give me 30 seconds and I will count it down.

The Temporary Speaker (Sen. Nyamunga): Sen. Olekina, kindly conclude.

Sen. Olekina: Madam Temporary Speaker, I thank Sen. Sakaja for bringing this statement to the House. However, the truth of the matter is that the NMS should not even appear before the Senate because it is the County Government of Nairobi that should be

appearing before committees of the Senate. What business do we have dealing with a person who is supposed to be submitting his status report on the functions that have been transferred to him by the Executive coming to answer to the Senate. That is why we need to differentiate who should appear before committees of the Senate. The same way we resolved that we shall not entertain principal secretaries, in place of Cabinet Secretaries, we should take a similar position with the County Government of Nairobi City. So, in this one the right person for us to ask is the Executive, if there is an executive in Nairobi City County.

The problem is that we put ourselves in this hole and---

Sen. Sakaja: On a point of information, Madam Temporary Speaker. I am glad that Sen. Olekina has brought out a very interesting aspect. Article 187 of the Constitution which talks about the transfer of functions, states that:

“The constitutional responsibility for a function that is transferred remains with the entity of the level of government that has transferred it.”

What that means is that even in this inquiry it is the Nairobi City County Government that should appear and they can come with the NMS as an implementing agent, but not the NMS on their own. So, I hope the Health Committee takes note of that, that you invite the Nairobi City County Government and the NMS but the person who takes the constitutional responsibility remains the Nairobi City County Government as it exists.

Unfortunately, I do not know if we have a governor who is active. The county government is an entity. It exists in perpetuity. However, they come together with the implementing--- In the same way if you asked a question on water, you would ask the Nairobi City County Government to come and they can come, for instance, with the Nairobi Water and Sewerage Services.

Thank you, Madam Temporary Speaker.

Sen. Olekina: Madam Temporary Speaker, to conclude what Sen. Sakaja said is one of the things that all of us in this House should actually be pushing for. This is something which will haunt us forever.

The first question which is being asked here is why do we have equipment which we have paid for lying somewhere collecting dust, yet people are getting sick every day? The ICU beds are very few in this country.

Madam Temporary Speaker, I request that from your seat you can give us proper guidance. I am happy with what I heard while I was coming in that we are now looking into having the Implementation Committee. Each committee has been self-implementing, but this is a matter that we now need to follow up because even though we killed the report on NMS--

The Temporary Speaker (Sen. Nyamunga): Senator, we have been very lenient with you. Kindly just wind up.

Sen. Olekina: Madam Temporary Speaker, I thank you.

Sen. Wambua: Thank you, Madam Temporary Speaker. I am hoping and praying that I will get the same leniency as Sen. Olekina.

Sen. Sakaja, I want you to listen to this because it is important. This is not just about health. This must be about all the functions that have been transferred from the County Government of Nairobi City to the NMS.

I say this because today Senators will contribute to this Statement on account of how they are aligned, either with the NMS or with the County Government of Nairobi City. However, when finally the chips are down somebody will be held accountable on both the process and the outcome.

I say this because of the Article that Sen. Olekina has made reference to, Article 187(2)(b) that if a function of power is transferred from a government at one level to a

government to the other level, constitutional responsibility for the performance of the function or exercise of the power shall remain with the government to which it is assigned by the Fourth Schedule. The Fourth Schedule assigns health to Nairobi City County Government. The Fourth Schedule does not know any institution called NMS. So, even as committees entertain contributions and submissions from the NMS, they must be guided by that Article.

Secondly, and I will ask for 30 seconds, on the health status in Kitui County, I brought a Statement here two weeks ago to the Committee on Health. I demonstrated how goats, sheep and donkeys are taking refuge in facilities that are supposed to be health centres and dispensaries. The Committee on Health committed to visit the county and bring to this House a report on the status of health in Kitui County.

The people of Kitui County are still waiting for that report of that visit. They do not care who the chairperson of the committee is; who the vice-chairperson of the committee is; who has been demoted or promoted. They want health services and a report from this Senate.

I thank you.

The Temporary Speaker (Sen. Nyamunga): That brings us to the end of that Statement and it stands committed to the relevant committee.

Next Statement, Leader of Majority.

The Leader of Majority (Sen. Poghiso): Thank you, Madam Temporary Speaker.

Some of the things to take note of before I read this Statement, some of the Members who are speaking to this matter are Members of the Committee of Health and they have all the opportunity to go and deal with this matter. They are speaking to themselves and the matter is going to be referred to them. So they should take note and then go and deal with it.

BUSINESS FOR WEEK COMMENCING
TUESDAY, 28TH SEPTEMBER, 2021

Madam Temporary Speaker, I have a short Statement by the Senate Majority Leader on the business of the week.

Pursuant to Standing Order No.52(1), I hereby present to the Senate the business of the Senate for the week commencing Tuesday, 28th September, 2021.

On Tuesday 28th September, 2021, the Senate Business Committee (SBC) will meet to consider and approve the business for the week. Subject to the approval by the Committee, the Senate will consider Bills at Second Reading Stage, Bills at the Committee of the Whole Stage and Motions on reports filed by select committees.

On Wednesday, 29th September, 2021 and Thursday, 30th, September, 2021, the Senate will consider business that will not have been concluded on Tuesday 28th and Wednesday 29th, September, 2021, respectively and any other business scheduled by the SBC, including Petitions and Statements.

There are nine Bills due for Committee of the Whole Stage, three of which have been captured in today's Order Paper at Orders Nos.17, 18 and 19. There are 22 Bills due for Second Reading of which a number have been captured in today's Order Paper, from Order No.9.

Additionally, Motions filed by committee chairpersons and individual Senators have also been listed in the Order Paper. These Bills and Motions have been allocated slots on the weekly programme of the SBC. However, for one reason or another the Senate is unable to proceed as scheduled in the weekly programme. I therefore, urge respective movers to be available in the Senate whenever their business is listed in the Order Paper to ensure that the business is transacted before the close of the Fifth Session in December, 2021.

Standing committees are encouraged to hasten consideration of Bills referred to them and to table reports thereon. Committee chairpersons and individual Senators proposing amendments are urged to be available in the Chamber to move the same at the Committee of the Whole.

I wish to applaud committees for their efforts in processing filed Statements and Petitions referred to them. However, there is still a high number of Petitions totaling 48 still pending conclusion in the Senate. I urge respective Standing Committees to expedite consideration of the Petitions and any other pending business and table reports pursuant to the Standing Orders.

In conclusion, the Senate leadership is consulting on the proposed reconstitution of select committees. This is obviously a matter of interest to every Senator and I assure the House that the changes proposed are geared towards enhancing efficiency and effectiveness in the committees. I request for patience as the leadership of the House finalizes on this matter.

Madam Temporary Speaker, I thank you and hereby lay this Statement on the Table of the Senate.

(Sen. Poghiso laid the document on the Table)

The Temporary Speaker (Sen. Nyamunga): What is your point of order, Sen. Kajwang’?

POINT OF ORDER

RECONSTITUTION OF THE COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS

Sen. Kajwang’: Madam Temporary Speaker, I rise pursuant to Standing Order No.191 that talks about composition of select committees, which goes further to say that a select Committee shall consist of an odd number of Senators being not less than seven and not more than nine.

The Senate Majority Leader has requested for patience as the leadership consults on reconstitution of committees. However, the Committee on Devolution and Intergovernmental Relations is not functional as a result of that Standing Order.

It lost Sen. (Dr.) Kabaka, Sen. Prengei and Sen. Mwaura. So, we are unable to hold meetings. The Committee on Devolution and Intergovernmental Relations could be among the most important committees in this House.

I request the leadership that if the matters of allocating Members to other committees is taking time and requires consultations, let them bring a Motion next Tuesday specific to the Committee on Devolution and Intergovernmental Relations so that we are able to handle Statements and Bills.

We are currently handling Bills relating to transfer of functions which was the point of discussion in the Statement brought by Sen. Sakaja. I urge the Leadership to prioritize the Committee on Devolution and Intergovernmental Relations so that other issues of moving people from one Committee to the other can take as much time as the House wishes.

Sen. Kinyua: Madam Temporary Speaker, I agree. This is because the core mandate of this House is devolution. Our work is to protect the interests of our counties.

From where I sit, if that Committee which I was chairing is not functional, it means that this House is almost grinding into a halt. Therefore, I request the Senate Majority Leader to fill the Committee on Devolution and Intergovernmental Relations as he tries to consult on others. He can put Members in that Committee so that it continues to run.

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

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

Sen. Cherargei: Madam Temporary Speaker, you were on the seat when the Senate Minority Leader requested for those Motions to be deferred then we go to *kamukunji* so that we build consensus. May be, Sen. Kajwang' was attending exigencies of duties and he might not have gotten the memo.

As far that I know, we agreed that the reconstitution of committees should be done with consensus. However, if it comes like this, I assure you that it will fall flat like before. If they try to bring it now, we will respectfully shoot the same Motion down.

Sen. Wambua: Madam Temporary Speaker, I hear what Sen. Kajwang' is saying. In fact, as it stands now, the Committee on Devolution and Intergovernmental Relations is critical.

The Government is in the process of distributing relief food and the Drought Mitigation Fund across the country. We do not know the criteria being used. I saw yesterday, the Cabinet Secretary (CS) for Devolution and ASALS distributing food to some counties and my county was not in that list.

I ask Sen. Kajwang' to bring a Motion if that is what needs to be done for his Committee to be properly constituted irrespective of what the Senate Majority would do on the other committees.

The Committee on Devolution and Intergovernmental Relations needs to get down to work and ensure that all Kenyans who are deserving get the Drought Mitigation Fund, as the Senate Majority Leader prepares to do whatever else he wants to do with the other committees.

Sen. Wetangula: Madam Temporary Speaker, while I share the concerns of Sen. Kajwang' the distinguished Senator for Homa Bay County, about the Committee on Devolution and Intergovernmental Relations, I discourage the piece meal approach in doing business of the House.

The Senate Majority and Minority Leaders are in the House and their Whips and other leadership cadres are available. Instead of allowing young Sen. Cherargei to display rage and shout '*tuta angusha*', we need to work as a House.

The purpose of the Whips is to consult Members on whether they want to move from one Committee to another and whether they are comfortable to be in this or that Committee. That is the work of Whips. That is how we did things in the last Parliament.

This House has cultivated some tremendous public confidence and respect. For us to degenerate into altercations, quarrels and shouting at each other over committees is beneath our dignity.

I truly encourage the Leadership that this is a matter that we can do within an hour so that Members who have been assigned new committees can get to work.

The issue is once a Member sees his or her name on the Floor that he has been moved from one committee to another, they stop going to that committee where they have been indicated to have been moved out of. So, the committees suffer because of the delay in making the decision. They cannot go to the committee they have been assigned because the House has not approved the movement. So, it cuts both ways. As the Committee on Devolution and Intergovernmental Relations is suffering, other committees are also suffering.

Even if a Committee is properly constituted but meetings are constantly attended by only three Senators, it undermines its credibility and confidence. So, I urge the distinguished Senators for West Pokot and Siaya, as the Leadership of the House, to get their Whips in order and get things done.

Sen. Orengo had suggested a *kamukunji* which is a good idea. Those who have rage and anger like young Sen. Cherargei can ventilate and be brought to order through explanation, so that we can move forward.

The Senate Minority Leader (Sen. Orengo): Madam Temporary Speaker, I speak to this only because on Tuesday, when the matter came before the Chamber, I was here and there were separate Motions for committees and the panel. The Motion regarding the panel went through. That is why Sen. Kinyua was sitting on the Chair yesterday. I assure you that had we moved with the Motion in respect of other committees, including the Committee on Devolution and Intergovernmental Relations, it would have been shot down.

I could see the sense of difficulty. It is not that Senators were malicious. There were some legitimate concerns that were raised. For example, when we had a *kamukunji* out here, Sen. Halake raised some legitimate questions which we cannot ignore.

We were supposed to consult and have a *kamukunji* this week, but it is not possible. If the Senate Majority Leader and I are given time until Tuesday afternoon, the job will be done.

There is a difference between this House and the other one. In the National Assembly the Leadership determines where you go. I prefer the system in the Senate because the House approves. So, however much the Leadership works on this Committees and the membership of the House does not approve, it amounts to nothing.

I plead with Sen. Kajwang', who I know the pain he is undergoing. In fact, I talked at length about the Committee on Devolution and Intergovernmental Relations. I said it does not have sufficient Members. Let us have the spirit of constituting these Committees as Committees of the House, but not to look for individual or sectarian interests. When that happens, it becomes very difficult when constituting them.

Madam Temporary Speaker, I am also a culprit as far as that question is concerned. Sometimes you move somebody from a Committee without consultation and you do not know that, that person has a professional or devotional interest to it. When you make that movement, it becomes extremely difficult. I hope that working together with the House and the Senate Majority Leader, we will accomplish this process by Tuesday afternoon.

Thank you.

The Temporary Speaker (Sen. Nyamunga): Finally, the Senate Majority Leader.

The Senate Majority Leader (Sen. Poghisio): Madam Temporary Speaker, mine is just to concur with the rest of the Members as they have spoken on the importance of the Committee on Devolution and Intergovernmental Relations and the whole purpose of consulting so that we can agree on who serves where.

Madam Temporary Speaker, there is headache for the Whips and the Chairpersons of Committees. Something that we should address in that *Kamukunji* is the fact that Members do not attend Committees. There are Members who want to be in four or five Committees and they hardly appear in any of them. I want us to look at that. If we do---

(Loud consultations)

Madam Temporary Speaker, what have I said that is out of order? I just wanted us to agree here that that when that *Kamukunji* comes--- That is okay. I can take a point of information.

The Temporary Speaker (Sen. Nyamunga): Sen. Wetangula.

Sen. Wetangula: Madam Temporary Speaker, I just want to inform Sen. Poghisio that I agree with him. In the last two or three years, in the Committee on National Security, Defence and Foreign Relations, there is a Member who never attended even one of the

Committee meetings we ever had. We have since removed that Member. However, when a trip came to Canada, we found him already there.

(Laughter)

The Senate Majority Leader (Sen. Poghiso): Madam Temporary Speaker, you know miracles still happen. I agree with Members. Please, let us not have the desire to have more Committees than we can handle. Let us make sure that every Member belongs to at least two Standing Committees. There needs to be a general agreement with the other Committees. I agree and look forward to the time when we can conclude with this matter.

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

The Temporary Speaker (Sen. Nyamunga): Sen. Farhiya, what is your point of intervention?

Sen. Farhiya: Thank you, Madam Temporary Speaker. I just want to commend on a comment that was made that the Committee on Devolution and Intergovernmental Relations needs to distribute relief food. Please, we should not distribute relief food. It is better to distribute cash to people.

Research has been done by the organization that I used to work for and it was found that distribution of foodstuff is more expensive than distribution of cash. People are much more empowered when they get cash. Once you are given the cash, you determine your prioritization.

Where I come from, people are sometimes given maize and they do not eat maize. They used to boil it and give it to goats. Giving of food as relief has been overtaken by events.

(Sen. Wambua spoke off record)

The Temporary Speaker (Sen. Nyamunga): Hon. Members, you must know the procedure. Sen. Farhiya is on a point of order. Let her complete it then you can make yours.

(Loud consultations)

Now you want to start arguing? Hon. Members, can we please have some order?

Sen. Wambua: Madam Temporary Speaker, with all due respect, Sen. Farhiya's address is directed to the wrong people. What she said gives credence to the argument on the Floor that the Committee on Devolution and Intergovernmental Relations should be properly constituted to say those things to the Cabinet Secretary (CS).

She is telling us that we should not distribute food. We do not distribute food. We only monitor the distribution, whether it is food or cash transfers. She is speaking to my point that we should constitute the Committee on Devolution and Intergovernmental Relations properly so that they can tell the CS the things that Sen. Farhiya is telling us.

I thank you.

The Temporary Speaker (Sen. Nyamunga): Sen. Orenge, did you have a point of intervention?

The Senate Minority Leader (Sen. Orenge): Now that the point has been made, I want to inform Sen. Farhiya that what she said is a big conversation in the international community. The experience is if they give money, the money is stolen. It is easier to steal money in the process than stealing food.

The Food and Agriculture Organization (FAO) normally gives foodstuff. They will not give cash. Therefore, until we learn how to deal with corruption in our midst, these things

are going to be extremely difficult. It is not the debate for now, but I am just telling her that it is a crisis out there.

The Temporary Speaker (Sen. Nyamunga): I think that that case is settled. We need now to hear from Sen. Cherargei.

(Sen. Farhiya spoke off record)

That is okay. You have one minute.

Sen. Farhiya: Madam Temporary Speaker, there is a package that has been invested in some places and, it can even be escalated. Right now, you can actually give Safaricom the money and the charges. It is very clear where that money goes. The reason why money is much more important is because it generates an economic activity around the relief while relief food does not do the same.

Madam Temporary Speaker, I know that it was in the---

The Temporary Speaker (Sen. Nyamunga): She is on a point of order, please. Just finish your sentence.

The Temporary Speaker (Sen. Nyamunga): Madam Temporary Speaker, I know that it was in the context of the Committee on Devolution and Intergovernmental Relations. We have even convinced the organization that I worked for; the World Food Programme (WFP), to distribute cash instead of relief food. It was found that if you distribute relief food, the number of people that it is adequate to serve is one and a half times less than if you did cash distribution because of the cost implication of relief food.

(Loud consultations)

I am talking about Kenya.

The Temporary Speaker (Sen. Nyamunga): Order, Senators. Hon. Senator, please bring that to a conclusion because it has been canvassed enough. The Committee should be put in place so that they handle their matter. That brings us to the end of Statements.

Next Order.

MOTION

CENSURE OF HON. JOHN K. MUNYES, CS FOR PETROLEUM AND
MINING AND HON. CHARLES KETER, CS FOR ENERGY

THAT AWARE that on 15th September, 2021, a statement was requested under Standing Order 48(1) regarding the recent increase of fuel prices by the Energy and Petroleum Regulatory Authority (EPRA);

AND WHEREAS the Speaker of the Senate directed the Standing Committee on Energy to invite the Cabinet Secretaries of the Ministries of Petroleum and Mining; and Energy to appear before the Committee on Tuesday, 21st September, 2021 to apprise the Committee and the entire Senate on the unprecedented escalation of fuel prices in the country;

AND WHEREAS the Standing Committee on Energy invited the two Cabinet Secretaries, pursuant to Article 153 (3) and (4) of the Constitution, to appear before the Committee on Tuesday, 21st September, 2021 at 11.00 am;

NOTING that the said Cabinet Secretaries failed to honour the invitation to attend the meeting of the Committee;

COGNIZANT of the fact that the sharp increase in fuel prices in the country has had a ripple adverse effect on the economy leading to a rise in the cost of living and the cost of doing business on an already overburdened citizenry grappling with the effects of the COVID-19 pandemic;

FURTHER AWARE that this increase in fuel prices has outraged a majority of Kenyans who bear the brunt of the effects of the increase such as high cost of transportation, high food prices, high cost of electricity among other adverse effects on most sectors of the economy;

NOW THEREFORE the Senate: -

1. Expresses its grave concern on the unprecedented increase in fuel and electricity costs and the adverse effects that these have had on the economy and livelihoods of the people of Kenya; and
2. Expresses its dissatisfaction with the conduct of the two Cabinet Secretaries, namely- Hon. John K. Munyes, Cabinet Secretary for Petroleum and Mining and Hon. Charles Keter, Cabinet Secretary for Energy in failing to appear before the Senate to address these urgent issues thereby abdicating their responsibilities as set out in Article 153 (3) and (4) of the Constitution.

(Sen. Orengo on 22.9.2021)

(Resumption of debate interrupted on 22.9.2021)

The Temporary Speaker (Sen. Nyamunga): Sen. Cherargei. Are we still on 10 minutes? We will continue with 10 minutes. There is still a lot of interest.

Sen. Cherargei: Thank you, Madam Temporary Speaker, for this opportunity. When I rose to seek a Statement on the rising cost of fuel in the country, I thought that it was in the interest of all Kenyans. I thought that the CS concerned, Hon. John Munyes would have given---

As my colleagues said yesterday, the cost of fuel will always drive up the cost of living.

I agree with colleagues that the CS of Petroleum and Mining should and must be censured. However, the Constitution, Article 153 (3) is very clear that any CS can be invited by this House.

We were shocked and I raised four issues then; what were the reasons that led to the increase through EPRA, which is mandated to do their job? What was the role of Petroleum Levy Fund that should have been used to cushion whenever there was rise in fuel cost in the country? I even went ahead and wanted to know the proceeds of Ngamia I in Turkana.

There was even a research that was done by a consulting firm called Gaffney and Cline Associates that indicated that there were 500 million or thereabout barrels of commercially viable oil in Turkana Ngamia 1 project.

There was fanfare when that project was being launched by the President. We remember the hue and cry that followed from the locals because of the revenue. We have never known where that fuel goes; whether it was used as cooking oil or *mafuta ya kujipaka*. Kenyans knew we were getting fuel from Ngamia 1.

There were even plans to construct 845 kilometers of pipeline all the way from Turkana to Mombasa through the famous LAPSET projects. Those were the four issues that I wanted to know in my Statement.

I thank the Mover of the Motion, the Senate Minority Leader for saying that the cost of fuel in the country is higher than in Tanzania and Uganda yet they get their fuel through the Port of Mombasa.

I am a bit cautious when it comes to censuring the CS of Energy, hon. Keter. This is because I did some research where I looked at the Executive Order No.1 of 2016. That docket was under CS hon. Keter. I do not know why Sen. Olekina is looking at me. However, at the time of the Executive Orders of 2018 and 2020, the State Department of Petroleum was moved to CS, hon. Munyes.

When that reorganization was done, the following dockets were moved: The Ministry of Petroleum and Mining - petroleum policy, strategic petroleum market, marketing oil and gas, imports and exports, licensing, marketing and handling of petroleum products and quality control These were reorganized through Executive Order No.1 of 2018 and No. 1 of 2020. It was CS, hon. Keter that even had the courtesy of sending a letter to the House to try and explain. Of course, he did not read Article 153(3) where it says Parliament could invite or summon him.

In all fairness and honesty, this issue of petroleum lies squarely on the Ministry of Mining and Petroleum. Therefore---

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

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

Sen. Cherargei: Madam Temporary Speaker, why is the Senator of Wajir shouting? This is not a market place. I thought it was the Speaker controlling the debate. Is it a point of order or information?

Sen. Wetangula: Thank you, Madam Temporary Speaker. I want to inform the distinguished young Senator and my good friend - a very objective one at that - that the censure on CS hon. Keter is not about petroleum. The HANSARD will inform you and bear the House and Mover of the Motion out. While you brought your Statement on petroleum, matters ensued in the debate allowed by the Speaker that apart from fuel skyrocketing in prices; the cost of electricity in the country was unbearable.

The Speaker, not anybody else, directed that the Committee of the Whole invite the two CSs of Petroleum and Mining and, Energy. Sen. Keter was being invited to come and answer questions on the high cost of electricity.

To crown it all, a copy of the HANSARD was also sent to him accompanying the invitation to tell him what exactly he was coming to answer. He never turned up, sent a representative, explained or apologized. We only saw him on Television waving an Executive Order that was totally irrelevant to the circumstances.

Sen. Cherargei: Thank you, Madam Temporary Speaker. I would take that information with a pinch of salt. That notwithstanding, it was why I was insisting on the four issues.

I remember the Chair of the Committee on Energy Sen. (Eng.) Maina indicated there was a letter from CS, hon. Keter saying that he did not know why he was being summoned before the Senate. Summons and invitations are different. I do not know if you were there, but you raised the issue of electricity then. The Chair of the Committee confirmed that CS, hon. Keter has been appearing before this Committee. He has given so many answers to the Committee.

The only CS the Committee flagged out was hon. Munyes. I think the Clerk of the Committee indicated that there was a letter from CS, Hon. Keter saying he did not know the

reason he was being summoned. It was not an invitation. The Powers and Privileges Act is very clear on summons as opposed to invitation.

My learned senior, Sen. Orenge should have been very clear. I read the HANSARD that was given and I have it here courtesy of your office is that, the Speaker directed it. It was in the same HANSARD but there were not specific questions as to what the CS of Energy was to come and do as opposed to the CS of Petroleum and Mining.

I agree that this House has the power to summon according to Article 125 but we must also be honest and follow the law. Everybody has faith in Senate.

The point I am trying to raise is that---

The Temporary Speaker (Sen. Nyamunga): Senator of Turkana you have a button for intervention. If you want to rise on a point of order you just have to press it without carrying up your hand. I give you the opportunity. Sen. Cherargei, you will have your final minute.

Sen. (Prof.) Ekal: Sen. Cherargei, I see you are making a lot of huff about CS, hon. Keter, being summoned by the Committee on Energy. He was summoned because we wanted him to come and answer questions about the high electricity tariffs that are affecting Kenyans.

The high electricity tariffs are affecting Kenyans by shutting down our businesses and economy. It is for those reasons that the two Cabinet Secretaries were summoned but did not appear. Since we are operating on the orders of the High Court, he got what he had to have according to the law.

I thank you.

The Temporary Speaker (Sen. Nyamunga): Sen. Cherargei, kindly finalize.

Sen. Cherargei: Madam Temporary Speaker, you need to appreciate that my time has been eaten away.

The Temporary Speaker (Sen. Nyamunga): Sen. Cherargei, you only had one minute left before you were interrupted. Kindly conclude.

Sen. Cherargei: Madam Temporary Speaker, being that our counties are neighbors, I hope that you will add me two more minutes.

We must follow the rules and procedures set. The Senate summoned the two Cabinet Secretaries as opposed to inviting them. If the Speaker has invited the two Cabinet Secretaries, it would be different as opposed to summoning them. Being summoned is totally different from invitation.

I agree that the danger we have in this country is the high cost of fuel which must be addressed. The issue of high electricity bills must also be addressed---

The Temporary Speaker (Sen. Nyamunga): Sen. Orenge has an intervention.

The Senate Minority Leader (Sen. Orenge): Madam Temporary Speaker, is it right that a lawyer who has been admitted to the High Court the other day, to confuse what is before the House today? This is not a matter of the Power and Privileges Committee. This is a Motion on censure and one can be censured on anything.

I know that the Committee on Powers and Privileges has already acted on the basis of powers under the Constitution and sanctioned hon. Keter, the Cabinet Secretary in the Ministry of Energy. The Committee has fined him Kshs500,000. There was a process where hon. Keter should have gone to defend himself. However, the process that is before this House is not about powers and privileges. This is a censure Motion. It is not about a punishment. Sen. Cherargei is absolutely out of order to misunderstand what is before the House today. This is not the Powers and Privileges Committee.

Sen. Cherargei: Madam Temporary Speaker, the Senate Minority Leader has misunderstood what I just said. I am arguing on the issue of rules and procedure. We may not like the people in those offices but we have a responsibility to defend them.

In conclusion, Sen. Orenge knows that the reason that we have high prices of fuel and electricity is because of the 'Handshake' Government. They are the ones who should be addressing these things instead of defending the culprits. Let us put the blame where it---

The Temporary Speaker (Sen. Nyamunga): Sen. Cherargei, your time is up.

Proceed, Sen. Kajwang, the Senator for Homa Bay County.

Sen. M. Kajwang: Madam Temporary Speaker, I rise to support the Censure Motion against the two Cabinet Secretaries. I also rise to support the first part of the Motion where the Senate is expressing its concern over the increasing price of fuel and the attendant costs of living.

Before I delve into the details of the Motion, allow me to convey my condolences to the families that lost loved ones in the tragic boat accident that happened in Homa Bay Town. Currently, eight bodies have been recovered and search and rescue efforts are still ongoing. Once we settle all these issues, this will form a good basis for discussion on the preparedness of our county governments, to cope with such disasters and the utilization of emergency funds that are established by Statutes, because we have witnessed politicians finance search and rescue efforts yet each and every county government is allowed by the Public Finance Management (PFM) Act, 2012 to establish an emergency fund to respond in such situations.

Coming back to the Motion, I visited Mfangano Island in the course of last week. The Mfangano Island relies on diesel power to light it up since it is very far from the main land, cables cannot be laid from the traditional grid. When the price of fuel is increased, where will the fisher folk in Mfangano Island go to?

For one to move from the mainland to Mfangano Island, you have to take a boat. Due to the long distance on water and because of the fury of the wind and waves in that part of the lake, we no longer use paddled canoes. We have to use motorized boats.

For some reason, the people of Mfangano are wondering why it makes sense for the Government to provide free ferries at the Coast in Likoni and not provide Government ferries for the people of Mfangano. Why must it be left to the private sector who are making and fleecing the residents of Mfangano Island?

It is almost impossible to build a house in Mfangano Island. Cement is bought in the main land and by the time you transport it to Mfangano Island the cost goes up to Kshs1,000 yet the people on the mainland can buy cement at Kshs600.

When the price of fuel goes up, we are hurting the people of Mfangano Island. The grid in Mfangano is not expansive; that means that more people are still using paraffin to light. All the children in Mfangano Island who aspire to get out of that land into a life in Nairobi or the other cities of light, have to use paraffin to light. Therefore, when the price of paraffin goes up, it means that more girls in Mfangano Island would prefer to get married to the local fishermen rather than stay in school and study.

Madam Temporary Speaker, the increase in fuel prices is hurting the fisher folk, perhaps more than any other person in this country because almost everything that we do requires fuel. For the fisher folk to fish *omena*, fuel is required. *Omena* has found its way on our tables all over the country. The delicacy is fed to the chicken that we eat in KFC and the likes. The chicken that we eat in the fast food restaurants are raised on *omena*. The dog food that we also feed out dogs is also made from *omena*. *Omena* has found its way in the value chain of any other nutritional aspect.

Omena can only be fished at night and lanterns are required to attract the *omena* in the lake. We are hurting the people of Mfangano; the *omena* fishers. Once *omena* is fished from the lake, the people of Mfangano have not power to preserve it. The national Government has instead decided to take billions of shillings to Sagana instead of putting money in the lake which produces close to 90 per cent of Kenya's fish output. The Lake Victoria region has no

cold storage facilities. Our women are therefore forced to fry that fish or find other ways of preserving the fish, which are all energy intensive.

Madam Temporary Speaker, I would hear how conflicted Sen. Cherargei was on the subject of the Cs for Energy, hon. Keter. However, the CS for Energy must tell us why there is so much regulatory overreach in the energy sector. Not too long ago, in Remba Island which is also adjacent to the Mfangano Island, investors decided to set up a solar firm to provide energy, power and lighting to the residents of Remba because the Government has failed the people there.

The people of Remba Island pay taxes and therefore, they expect that they are going to get electricity just like the people of Gatundu, Nandi or Mombasa. However, they have never received electricity power since Independence. An investor set up a solar firm but guess what the energy regulator did; they came and shut it down saying that the investors had not paid tariffs and taxes. What kind of a Ministry is that? What kind of an overreach is that? This is the kind of conversation we need to have with those Cabinet Secretaries.

On the hills where we have the Sondu Miriu hydrogenating plant, an investor from the United States of America (USA) intended to set up a 40MW solar firm. When the Kenyan delegation went to the United Nations General Assembly a few years ago, they signed an agreement on the sidelines of the UNGA. The American Government was willing to finance the project. However, the investors were frustrated and so they eventually picked their things and went back to the United States of America (USA).

The energy regulator could not agree with the investor on the power purchase agreements yet 40 MW of solar would have created employment, not just for the people of Homa Bay and Kisumu counties who fall along Nyakwere, but also for many of our budding graduates from Jomo Kenyatta and Nairobi universities who are studying electrical and electronic engineering and they do not have---

The Temporary Speaker (Sen. Nyamunga): Sen. Cherargei, what is your point of intervention?

Sen. Cherargei: Madam Temporary Speaker, my point of intervention is on relevance. I appreciate what Sen. Kajwang is saying but if you read the HANSARD that was taken to the Ministry of Energy, it did not include the issue of regulation within the energy sector.

Is he relevant to allude that the CS, Energy has refused to provide clarification and answers whenever needed on the issue of regulation as he is talking about the solar energy?

Sen. Olekina: Madam Deputy Speaker, I rise on a point of order on the relevance of the point of order by Sen. Cherargei. If Sen. Cherargei is keen to listen to the way Sen. M. Kajwang is explaining the role of the Ministry of Energy---

Yesterday I stood here and pointed out the role that the CS, Energy plays when it comes to the issue of EPRA. I think Sen. Cherargei is missing the point. What Sen. M. Kajwang is telling us is that when a CS is summoned to appear before this House, they must respect that. That is issue number one. Let us not miss the point.

Sen. M. Kajwang is also explaining clearly how Kenyans are suffering everywhere. I think this is what we should be listening to because we are here to represent our people. The relevance is that people are suffering and I think that is the point that you should be taking home.

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

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

Sen. M. Kajwang: Madam Deputy Speaker, if you allow me to proceed, the first resolution that this Motion sought was that the Senate expresses its grave concern on the unprecedented increase in fuel and electricity costs.

(Sen. Cherargei spoke off record)

Sen. M. Kajwang: If Sen. Cherargei---

The Deputy Speaker (Sen. (Prof.) Kamar): Senator for Nandi, can you allow Sen. Kajwang to finish his presentation? The reason I am saying that is that I have also been following this debate and I think we have two issues that are coming into conflict: Your Statement and the Motion on Censure. These are two different issues. If you look in the HANSARD, they are different. The Motion of Censure is looking at the two Cabinet Secretaries for two different agendas. However, your Statement had nothing to do with energy.

So, do not apologize for the CS, Energy because the CS, Energy was part of the Motion of Censure. I wanted to say that for your information because I think that is what we have been arguing about.

Sen. Cherargei, I understand you but what we are saying is that a Censure Motion is a freelance Motion. Let people express themselves.

Sen. M. Kajwang: Madam Deputy Speaker, I hope my time, which has been taken up by the disruptions of Sen. Cherargei shall be compensated.

The Deputy Speaker (Sen. (Prof.) Kamar): We will compensate you---

Sen. Cherargei: On a point of order, Madam Deputy Speaker.

The Deputy Speaker (Sen. (Prof.) Kamar): What is it? Is it information? Do you understand first where we are coming from?

Sen. Cherargei: I understand---

An hon. Senator: No! Do not exchange words with Madam Deputy Speaker.

The Deputy Speaker (Sen. (Prof.) Kamar): Give him the microphone and preserve the time for Sen. M. Kajwang.

Sen. Cherargei: Madam Deputy Speaker, I hope this House is run by you not people who are shouting as if they are in a market place.

My point of concern was that in the HANSARD that was presented before the two Ministers, it talked about the issue of electricity bills and what have you. What Sen. M. Kajwang is alluding to is that the CS, Energy has refused to answer some of the questions on issues of regulation within that Ministry. Therefore, he is not being relevant. That was my only contention because the relevancy is in the Motion that was presented by the Senate Minority Leader. That is my contention.

I understand that the CS, Energy had nothing to do with my Statement on issues of petroleum and increase in fuel prices. My point is the relevance on what is in the Motion so that we do not mislead Kenyans by telling them that the CS, Energy or the CS, Petroleum and Mining have refused to answer any questions apart from what we are debating on the Floor of the House.

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Cherargei, we are not going to correct ourselves on contributions on a Motion of Censure. A Motion of Censure is freelance in the way you talk. You say what you feel. So, let us get to know what Sen. M. Kajwang thinks about this Motion of Censure. Censure is censure and the language has to be that of censure. The Motion was moved very well. Let us give Sen. M. Kajwang two minutes.

Sen. M. Kajwang: Madam Deputy Speaker, Sen. Cherargei has taken away close to five of my minutes on irrelevancies while lobbying for relevance.

In this Motion the Senate is expressing its grave concern over increased electricity prices. When I give the illustration that the Ministry has frustrated investors who wish to put up a solar firm, we all know that solar would be cheaper than the power that is generated using diesel and those other opaque power-sharing agreements.

Sen. Cherargei, you can filibuster and hold brief for CS, Keter in another forum and not in the Senate because, otherwise, it brings shame and demeans this House on a very important Motion.

Going forward, there is the issue of Executive accountability and---

(Sen. Cherargei spoke off record)

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Cherargei, you had your opportunity to speak.

Sen. M. Kajwang: Sen. Cherargei, you are obviously holding brief for people.

The Senate Minority Leader (Sen. Orenge): Madam Deputy Speaker, I did not mean to say anything but when I press the red button you know exactly what I wanted to do or to say. I am rising on a point of order that the conduct of the Senator for Nandi is now disrupting the whole debate and this is a serious debate.

What I was taught is that you can make noise or make comments or keep on talking when it is another Member talking. However, when the Speaker is speaking the House must always listen in silence. I pray to you, otherwise, we can never have debate in this House.

Madam Deputy Speaker, it is not only Sen. Cherargei who can keep on shouting "point of order! Point of order!". We can also do it. However, the effect of it is that it is disrupting debate. We are trying to follow a very eloquent speech from Sen. Kajwang. Please give us time and space to listen to him.

Sen. Cheruiyot: Madam Deputy Speaker, two wrongs do not make a right. First, the House was enjoying the very brilliant presentation by Sen. M. Kajwang and we need to put it on record that he went to the best university in this country; Moi University, which you are also associated. That is why he is doing so well.

The Deputy Speaker (Sen. (Prof.) Kamar): That is where eloquence comes from.

Sen. Cheruiyot: Madam Deputy Speaker, I wonder where Sen. Cherargei picked his bad habit from because he also went to that university. To save this House, I want you to issue a ruling that any time somebody rises on a point of order, let them cite the relevant Standing Order that the Member they are interrupting has fallen foul of so that we end this business of people rising on needless points of orders.

Having said that, I only regret that Sen. M. Kajwang my good friend, lost his cool and said something about Sen. Cherargei that should not be left on record. It is not fair to say that a colleague is holding brief for a Cabinet Secretary. We may hold different opinions but that is not fair on Sen. Cherargei. I know he can do many things but holding brief is not one of them. If Sen. M. Kajwang could withdraw and apologize, then we can proceed peacefully.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Sen. Cheruiyot. This is because of too many points of order from Sen. Cherargei. I did not hear what he said.

Proceed, Sen. Wetangula.

Sen. Wetangula: Madam Deputy Speaker, I rise to counsel my distinguished young Senator and friend. Experience counts. Sometimes, you may think that by engaging in obstruction of debate, you are gaining some points and relevance, you are not.

You brought a Statement to the House. The rules of the House say that once you bring a Statement to the House you do not own it; it becomes its property and takes its own life. So,

do not try to chaperone and navigate the debate towards a desired goal that you have come with.

You sat in this House from yesterday including one of the most eloquent debaters on your side, the Senator for Kericho, whom I have a lot of regard for. I am sure he could have been driven by the same intention that is driving you to say the things that you are saying. However, he saw the bigger picture; the nation. He did not say those things, he spoke and touched people's hearts. I encourage you to learn.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Sen. Wetangula. The point of order from Sen. Cheruiyot nullifies those ones. Advising colleagues is not part of the Standing Orders either.

Sen. Cherargei, I did not hear you. However, if you said somebody is holding brief, it is dangerous for this House.

Sen. Kajwang', please finish up.

Sen. Kajwang': Madam Deputy Speaker, it would be dangerous for a Member to hold brief for a member of the Executive.

The manner in which this House----

The Deputy Speaker (Sen. (Prof.) Kamar): What exactly did you say?

Sen. Kajwang': Madam Deputy Speaker, I agree with you that it is dangerous for a Member to hold brief for a member of the Executive.

The Deputy Speaker (Sen. (Prof.) Kamar): I would like to study the HANSARD later.

Sen. Cherargei, you will get your right if he actually said that. Unfortunately, I did not get that.

You have two minutes to finish.

Sen. Kajwang': Madam Deputy Speaker, the experience that we have had with the two CSs has helped us to see how this House can hold the Executive in a presidential system to account.

If we continue to use the Committee of the Whole as a tool for holding the Executive to account, it could be a brilliant idea that we can achieve halfway of what we have in the Prime Minister's questions.

Instead of calling the CSs before Plenary, the Speaker can call the House as a Committee of the Whole and designate a day every week where Members of the Executive can come here.

We can have a good protocol for questioning such that there are no hecklers and supporters of the Executive and allow the Leadership of the House to put the questions in advance, grill and roast members of the Executive without going into that small Committee thing.

Yesterday, many people spoke about the deficiencies and inefficiencies of the Committee system. I hope that the next Senate will use the Committee of the Whole approach to hold the Executive to account.

Madam Deputy Speaker, nothing stops this House from calling even the President to appear before a Committee of the Whole. This is because the Constitution gives Parliament the power to summon anybody, including the Presidency.

Every time we reconstitute our Committees, we do not think of the Committee on Delegated Legislation as an important Committee of this House.

Today, fuel prices keep shifting because of some regulations that were passed by Parliament. We need to strengthen the Committee on Delegated Legislation not just the Membership but also the technical competence and capacity that comes from the Office of the

Clerk. They will be dealing with regulations on petroleum and the next day, on agriculture and the next day on health.

I realized that the Executive is now doing many legislations through regulation. Therefore, we need to strengthen that Committee.

The formula that we are currently using is opaque algorithm. This is because in 2020, when global oil prices were at a negative, we never saw a corresponding fall in oil prices in the country. That regulation needs to be reviewed.

As we talk about the other levies and taxes, we need to make sure that the Committee on Delegated Legislation and the Committee on Energy come back with a solution.

In the last two days, we have been whining as a House. We have not offered solutions to the nation. I hope that after this censure Motion, we shall get down to work and come out with good suggestions that can guide this country and offer hope to the residents of Remba Island, Nyakwere, Mfangano Island and that young girl who is forced to drop out of school because she cannot afford paraffin for her studies this evening.

Unfortunately, these are former Senators. The CS for Petroleum and Mining used to have good manners. In fact, when he was the Chair of Ford-Kenya, he used to have better manners. These bad manners must have started when he defected and went into the wilderness.

I support.

Sen. (Dr.) Milgo: Thank you, Madam Deputy Speaker, for giving me this opportunity to speak to this Censure Motion. I thank the Senate Minority Leader, Sen. Orengo for bringing it.

This is a matter of great concern because it touches on power and fuel which affects three-quarter of the populous in the country. This is a challenge which comes on the hills of Covid-19 which has destroyed livelihoods and broken the chains of business. People are unable to meet their basic needs.

Fuel and power are commodities that touch each and every area of the livelihoods of our people. They affect activities such as movement, food prices, schooling, health, production and investments. If this continues, there will be many cases of suicide, just like what we have been seeing lately. There is an increase in mental health cases because people cannot meet their basic needs.

Many investors have moved to our neighbouring countries because the prices of fuel and power have been escalating, which affects investment activities. However, the prices of fuel in other countries such as Tanzania and Uganda are low. This has taken away the investors that we are supposed to get in the country. This also makes our youth, who constitute, three-quarters or 75 per cent of our population to lose jobs. As the price of fuel continues to escalate, it touches many sectors including farming.

As we speak, to plough a piece of land which used to cost Kshs3000 has now gone up to Kshs6500. This means that farmers will give up, which will make the country become food relief because of lack of food production. As we speak, the second payment of tea that is popularly known as 'bonus' in Kericho and tea growing areas has been released. However, the prices are low. The reason is that the price of production has gone up because of high prices of fuel and power.

I am sure that farmers will end up either uprooting the crop or letting it grow without tending to it. We have been saying that farming tea, coffee and such crops improves the economy of our country.

Madam Deputy Speaker, more often than not, when we summon our Cabinet Secretaries (CSs), it is quite unfortunate that they rarely attend to our summons and meetings.

Some ask us why they should have duplications. When the National Assembly summons them over certain issues, they feel that they should not come to the Senate.

Article 125 of the Constitution gives power to either House or its Committees to summon anybody to provide evidence and information on any matter. This Article also gives power such as that of the High Court. In this case, it makes the CSs not attend to our summons. Sometimes you get to the offices of others and they turn you back even before you enter, as if you are going to attend to your own issues.

Madam Deputy Speaker, despite the fact that we represent the people of this country, some of the CSs have taken it upon themselves to pledge loyalty only to their appointing authority. They leave out any other issues that we take to them as representatives.

This House has been having a challenge very much similar with this one with the governors. However, that was cured by the Civil Appeal (2004) a 2015; case that made the governors realize that they can delegate duties and not abdicate their supervisory and accounting role. That is why, right now, we can summon governors with ease, unlike the CSs.

Madam Deputy Speaker, these CSs ignore the fact that even Article 35 of the Constitution allows this House and the people of this country to get information from any institution on things affecting their lives, like when we have fuel prices going up.

This Censure Motion has come at the right time. It will become game changer. I am sure that it will serve as an example to the rest of the CSs, so that when we summon them next time, they will attend to our summons. Furthermore, they are holding institutions on behalf of the people of this country, just like the representatives of Parliament.

Madam Deputy Speaker, every Kenyan is suffering right now. These two issues are a matter of grave concern. I hope that at the end of this, something shall be done, so that these two CSs will appear in this House and speak to the issues on fuel and power. Otherwise, the life of the people of this country---

The Coronavirus disease (COVID-19) is still ravaging the lives of people. It has brought challenges to our people. We shall see even more challenges. We will not be speaking only about food. We will speak about health matters because we have people breaking down as a result of not managing to meet their basic needs.

I support this Motion.

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, we must reach the end of this Motion today. I appeal that if you are able to do five minutes, it will help us a lot. We have been given coverage yesterday and today. We will not be given coverage tomorrow. It would have gone stale. We want to finish and everyone to have an opportunity to say what they would like to say.

Sen. Malalah, five minutes, please.

Sen. Malalah: Madam Deputy Speaker, if I can. I stand to support this Censure Motion moved by Sen. Orenge on a matter that is very sensitive to this country at the moment. It is sad that Parliament can summon a CS and that CS refuses to come. Articles 125 and 153 of the Constitution gives Parliament the mandate to call for any evidence and also compel the CSs to appear before that relevant Committees of Parliament.

I want to remind the CSs who were summoned before this House - to be specific the CS for Petroleum and Mining and the CS for Energy - that we have had more powerful CSs, who have served in their dockets and have honoured summons to this very important House. I want to remind them that in the previous dispensation, we had even the Vice President leading the Government business and responding to questions brought by people who had been elected.

Article 1 of this Constitution is very clear that the sovereign power of the people be delegated to elected leaders and certain organs of this Government. The Executive is not an

exception. The powers that the CSs are exercising are delegated to them under Article 1. It is, therefore, important for them to know that when they are summoned to come to Parliament, they should honour the summons, because they are coming to be accountable to the people of Kenya.

Madam Deputy Speaker, that said and done, Kenyans were unhappy when the Energy and Petroleum Regulatory authority (EPRA) announced an increase in the price of petroleum products. The pump prices of petrol went high by Kshs8 and by Kshs12 for kerosene.

It is sad that as we speak, the *boda boda* riders in Kakamega are unable to get their money. Most of these *boda boda* riders in Kakamega have taken their motorcycles on loan. They pay on daily basis. Some of these *boda boda* riders are supposed to pay Kshs300 daily, yet they cannot even manage to get that money when they do their business. Any increase in petrol prices is really affecting the young people who are doing the *boda boda* business.

It is very sad that as I speak, kerosene prices have been hiked. We have old women who do not have electricity in their houses. When you go to the slums of Shibale in Mumias, you will get women using *korobois*. If you increase the price of kerosene, you are oppressing the very people who depend on us.

Madam Deputy Speaker, therefore, it is our responsibility as legislators to cushion these people who elected us to represent them. What are the issues that we need to be tackling, so that this incident does not recur in the subsequent months? The taxation regime on petroleum products must be reviewed. It is sad and baffling that almost 70 per cent of the pump price comprises of taxes. It is important for Kenyans to know that in every litre that we sell to Kenyans, we have Kshs21.95 as Excise Duty and Kshs18 as Roads Maintenance Levy. We have not seen it being used appropriately.

As the people of Kakamega are paying Kshs18 per litre for Road Maintenance Levy, the Lurambi-Navakholo Road has stayed for 10 years without being completed.

As the people of Kakamega County are paying Ksh18 per litre, the Lurambi-Navakholo Road has stayed for 10 years without being completed. As they pay Road Maintenance Levy, the Mumias-Bungoma Road is very narrow and has never been expanded. Therefore, these monies we are charging the common *mwananchi* must be accounted for.

Madam Temporary Speaker, we have the Petroleum Development Levy (PDL) per every litre. We know very well that Tullow Oil is no longer working. We have duplication of taxation in this formula. Therefore, I am calling for a review and a transparent way in which we are going to come up with formulas to be charged on our people.

We must remind Kenyans that in the Financial Year 2018/2019 when we were passing the Finance Bill, the 8 per cent levy on all petroleum products was passed in the National Assembly. I thank Sen. Orenge for coming up with this Motion, but also remind him that his party was part of the people who passed the 8 per cent on all petroleum products.

As he brings this Censure Motion, let us see the sincerity in leaders in this country when speaking and acting. Were it not for those Legislators in the National Assembly that passed the 8 per cent increment, we would not be suffering these painful fuel prices.

It is important that as we move forward, we do not degenerate this discussion into wanting to cushion the CS who is inclined to a certain political affiliation and favourable to certain people. I have seen hon. Members here trying to absolve certain people from blame. I think this matter is beyond party affiliation.

As I speak right now, let us defend Kenyans in general. Kenyans are not divided. I like what Sen. Sakaja always says that a child in Turkana suffers the same hunger as a child in Shamakhokho in Vihiga County. A mother in Uasin Gishu County has the same labour pains as a mother in Kirinyaga County. A Kenyan is a Kenyan. When we bring important matters

on the Floor of this House that affect the common *mwananchi* let us not degenerate our arguments and debate into political party affiliations.

I join my colleagues in saying that CSs are not above the law. Article 154(2) (b) is the genesis of this problem whereby a CS can only be dismissed by the appointing authority who is the President. Moving forward, these are some of the issues that we shall be looking into.

I know some of the solutions were already encapsulated in the Building Bridges Initiative (BBI) proposals. However, that process was mismanaged and there we are still at the same place. I believe that the young leaders of this Republic, the likes of Sen. Sakaja and Sen. Cherargei, not forgetting Sen. Wambua from Kitui County, will one day change this Constitution. We will one day remove all its inconsistencies so that we cushion our people.

We have seen CSs wanting to lecture elected leaders. I was elected by 438,000 votes in Kakamega County. An appointee cannot purport to lecture me on issues of representation. Let them know that we are mandated to oversight them. Article 96 of the Constitution gives me as the Senator of Kakamega County the mandate to oversight the Executive. When I summon a CS to this House, let him park his files quickly and come running to this House because I have the power of the people.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Senator. You have taken your ten minutes.

Sen. Wambua: Thank you, Madam Deputy Speaker. From the word go, I stand in support of this Censure Motion by the Senate Minority Leader. I have very few things to say because my colleagues have said a lot.

Governments across the world exist to cushion citizens from hardships of life, secure the lives and property of their people and to make the day after today better for everyone. Any government that acts otherwise is in the business of losing its legitimacy.

Allow me to clarify something although I do not see Sen. Cherargei here. We are not here to defend any sectarian interest or affiliations. On this matter, we speak of representatives of the people of Kenya from our respective counties who are suffering by decisions made by the Executive.

It is important to note - it is a shame of association - that the two CSs that we are talking about today are former Senators. They sat in this House to represent the people that had brought them here. Now that they are seated elsewhere, they think they have become more special and powerful than the Senate in which they served.

I wish to draw the attention of CS hon. Keter and CS hon. Munyes to the provision of Article 129(2) of the Constitution on the principle of Executive authority. It says-

“Executive authority shall be exercised in a manner compatible with the principle of service to the people of Kenya, and for the well-being and benefit”

Article 93 and 94 that establishes the Parliament of the Republic of Kenya talks about Parliament manifesting the diversity of the nation, representing the will of the people and exercising their sovereignty.

In requiring the CSs to appear in a Committee of the Whole was simply in exercise of the sovereign authority of the people of Kenya, the Senate sought to understand why fuel prices have gone so high and why the cost of electricity is unbearable. That was the only thing we sought to know from the CSs.

Madam Deputy Speaker, one of the CSs responsible for Petroleum and Mining, hon. Munyes has presided over an increase of fuel prices. The other CS has presided over the high cost of electricity. When they are called to account and to shed some light for the benefit of Kenyans, they refuse to turn up and begin to give all manner of excuses.

I stand on the Floor of this House to say: Shame on them! The power they think they have is derived from the people and must be exercised it for the benefit the benefits of those people who have left us in this struggle.

Madam Deputy Speaker, the other Cabinet Secretary has presided over the high cost of electricity. What is annoying is that when they are called to account and shed some light for the benefit of Kenyans, they refuse to turn up and begin to give all manner of excuses for non-appearance.

I stand on the Floor of this House to shame the two Cabinet Secretaries because the power that they think they have is derived from the people. It must, therefore, be exercised for the benefit of those people. The only persons who are elected representatives of the people in the Executive, is the President and the Deputy President. Cabinet Secretaries are just appointees of the President.

The worst enemies of the Jubilee Government are to be found within the Cabinet Secretaries because they are giving the Government a very bad name; that when they are called upon to account for the decisions made in their ministries, they do not want to turn up.

In conclusion, my political party, the Wiper Party, has gone into a working agreement with the Jubilee administration. The purpose of that agreement is to push the Government agenda for the benefit of the people of Kenya in Parliament and out of Parliament. Anything else that speaks contrary to development, the rights and welfare of the people, our party is not part of that decision. We cannot be seen to be pushing forward an agenda, which we strongly believe is not for the good of this nation.

In conclusion, the high cost of fuel and the high cost of electricity in this country has made life almost unbearable for the people of Kitui. I stand here as the Senator for Kitui County to deliver their message. They people of Kitui County have said that to the extent that they have a Government, that the party they support has said is in corporation with, they want to see the price of fuel coming down as well as a decrease in the cost of electricity. That is the message that I am here to deliver from Kitui County loud and clear.

I beg to support.

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

Sen. Halake: Madam Deputy Speaker, I rise to support the censure Motion that was brought to the House by Sen. Orengo. I associate myself with the contents of the Motion. As much as the censure Motions are not necessarily binding as a vote of no confidence, it nonetheless gives us an opportunity on behalf of the people of this country to criticize or point out some of the injustices or lack of accountability by most of our Cabinet Secretaries who stand the Committees of the Senate on various occasions.

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Sakaja, what is out of order?

Sen. Sakaja: On a point of order, Madam Deputy Speaker. I know the Standing Orders like the back of my hands because I have been a Member of Parliament for 10 years. First, I would like to state that my point of order is beyond the Standing Order; it is in the Constitution. Contrary to Article 96 of the Constitution, is it in order for my good friend, Sen. Halake, to say that the Motion being discussed by the Senate is not binding? Are we discussing a suggestion? I believe this is not a talk shop.

I would like to inform Sen. Halake that the Motions of this House are binding and are therefore to be taken seriously. This may not be an impeachment Motion but any Motion in this House is a binding resolution and that is why after any Motion, a vote has to be taken.

After we are done discussing this Motion, a vote will be taken for Senators to state whether they support the Motion. The Senate Minority Leader, Sen. Orengo, is not idle to bring a Motion to this House for purposes of a picnic.

Madam Deputy Speaker, you need to rule whether this Motion is just child's play or binding.

Sen. Halake: Madam Deputy Speaker, while I respect the fact that Sen. Sakaja is trying to insist that the Censure Motion is binding, the truth is that it is not binding. A Censure Motion is not necessarily binding. Let us not lie to the citizens of Kenya that it is binding. We have every right as the Senate to make sure that we follow up on the resolutions that we make as a House. I am making that clear so that we do not set up ourselves for expectation that we cannot fulfill.

Can Sen. Orengo perhaps guide us?

(Loud Consultations)

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, I would like Sen. Halake to conclude her contribution.

What is your point of order, Sen. Sakaja?

Sen. Sakaja: On a point of order, Madam Deputy Speaker. This is a Censure Motion. When we say that it is not binding, it means that the Senate could have censured or not. If we pass a Censure Motion, it means that we have censured those Cabinet Secretaries. Perhaps Sen. Halake needs to be told what censure is; an expression of dissatisfaction and disappointment is a binding expression. It may not mean that we are removing the two Cabinet Secretaries from office, which would be done through an impeachment Motion.

Sen. Halake cannot say that not anything discussed in this House is binding. That is the kind of disrespect for this House that we talking about. We cannot be the ones downplaying what we do. Why would you be sitting here at this time if nothing mattered?

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Halake might have misunderstood the meaning of the word 'censure'. Sen. Sakaja has given a good explanation of the word censure because when we pass the Motion, we will have censured the two Cabinet Secretaries.

Sen. Wambua has a point of information. Sen. Halake, would you like to be informed by him?

Sen. Halake: Madam Deputy Speaker, I would like to be informed.

Sen. Wambua: Madam Deputy Speaker, I would like to inform Sen. Halake that Article 94(5) of the Constitution states that:

"No person or body, other than Parliament, has the power to make provision having the force of law in Kenya except under authority conferred by this Constitution or by legislation".

Whenever the Senate considers any legislative business, which has no basis in law by just having a talk show, we are setting up this House for failure and disrespect in this country. I therefore ask my sister, Sen. Halake, to refrain from making that kind of statement, which insinuates that we are just passing time.

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Sakaja clarified the issue very well. It was a matter of semantics. When we approve a Censure Motion, it means that we have censured whoever is under discussion. If the Motion is not passed, then the two Cabinet Secretaries will not be censured.

I now request Sen. Halake to go into the material contribution that she had on this Motion so that we allow the Mover to respond

Sen. Halake: Madam Deputy Speaker, the assertion has a bearing on the content or material of my debate and that is the reason I say that---

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Were has a point of Order.

Sen. Were: Madam Deputy Speaker, I would just like the Mover, the Senate Minority Leader of Minority, when he comes to reply, to explain to us what he meant by “censure” in this context and if we vote “yes” to censure, what that means, so that we avoid this confusion.

The Deputy Speaker (Sen. (Prof.) Kamar): Complete your presentation, Sen. Halake.

Sen. Halake: Madam Deputy Speaker, as much as we wish to run away from some facts, facts are very stubborn. When I talked about not binding, I did not mean that we have no right to censure. I meant that, perhaps, the outcome we want as this House, mainly, for instance, a punishment or some consequence for non-appearance of these Cabinet Secretaries, may not be realized because this is not a Motion of ‘No Confidence’ and that, that may be short of it.

However, can we criticize and broadly make sure that we, on behalf of our electorate and the country, criticize and put to account? Of course, yes. One of things my debate was going to take us towards is to say, what are some of the outcomes that are going to form part of this censure Motion?

Yes, I am a first timer; I am not going to pretend that I have been here for 10 years. However, what I am observing, which I am not going to retract from, is the fact that what outcome this is going to give us.

It has given us the opportunity, as this House, to make sure we do what we do best; representation of our people and to hold accountable some of the arms of Government that we work with. We are doing that very well, but we cannot sit here and pretend that we are going to have certain outcomes or hope that this censure Motion is going to give us what we wanted to do, for instance, bring these people here. It has not done that.

That having been said, I am not here to belittle our House. I am part of it and I take responsibility for the entire matter. I am in the committee that has made sure today that we summoned the Cabinet Secretaries. We will do what we can, so that we air our views and ensure that we hold the Executive accountable. With regard to consequences, maybe Sen. Orenge will give us an advisory opinion and tell us what exactly will happen. However, to my knowledge, I do not see us being able to use a censure Motion to get the outcomes we want; maybe I can be corrected on that.

Having said that, the material of my presentation, as I support the censure Motion, is that it is about time we looked at other innovative approaches as to how to work with the Executive because we have been told, and everybody has said that this fuel price hike, the taxation on renewable energy, for instance, which I also brought a Statement to this House to that effect, was gross injustices to the poor of this country. The fact that they cannot even come before us to tell us that this is the reason and this is what occasioned these things, is blatant disregard for the rule of law and the House of Parliament.

I support the censure Motion because it gives us the opportunity to make sure that our stance is known as this House and we can look at other innovative ways of taking our accountability to the next level and make sure that even as we censure them, what outcome we will get. This is where I was going with that debate; to say that we have had our say for two days now, but *Wanjiku* is still in the same situation; the *boda boda* guy is still in the same situation; the people in northern Kenya who are taxed heavily for portable solar panels are still in the same situation. Their electricity bills are out of hand. What are we going to do to achieve the outcomes that the people of Kenya deserve? That is the reason for some of the binding things we do. We are not just doing things for the sake of it; we are doing things so that we achieve results.

While I am cognizant of the fact that every effort that a Member of Parliament makes will eventually lead to awareness or certain actions, we must devise methods and make sure that we are not just a talk shop. We must ensure that we put our money where our mouths are.

One of the things - perhaps it is politics, perhaps it is not - is that it is better to say a beautiful lie than to say the truth and lose votes. Our electorates are smart enough to know that no matter how much we say we have the powers to A, B, C, D, if we do not have, we do not. It is better we say that we cannot and then we do what is in our ability, to make sure that we start to change the game from just appearing good, to actually doing good.

I support.

Sen. (Eng.) Hargura: Thank you, Madam Deputy Speaker. I would like to support this Censure Motion that was brought by the Minority Leader.

First of all, the content of the Motion is very clear. The issue of rising fuel prices and electricity bills is very real and has affected Kenyans of all walks of life. The issue is in public domain.

As the representatives of the citizens, this House decided to call the two Cabinet Secretaries to come and explain because they are the ones who are in charge of this docket. It was very clear that the Speaker of the Senate had directed the Committee to send invitations to the Ministers. It was very clear that they did not turn up and did not give any reason. That is why this censure Motion is here.

Also looking at what is required of the Senate, we have grave concern on the unprecedented increase in fuel and electricity costs, which concern the two Cabinet Secretaries. What we wanted from them was an explanation why Kenyans are being taxed and facing the high cost of energy, which is resulting into high cost of transportation and increased food prices, a hike in electricity bills and adverse effects on other sectors of the economy.

Fuel cost is mainly because of the taxes and is a product of Parliament, that is, the Energy Regulations, 2010. I do not see any reason these Ministers had a problem in coming to address Parliament and explain that there has been a hike in fuel prices because of the regulations that Parliament passed. I do not know what was so difficult about them coming to explain that.

They did not come and that is why they need to be censured. Even though the issue concerns both of them, none of them sent a representative or went to the media to explain that the issue that was raised does not concern them. It is very clear that the electricity falls under the CS for Energy.

If you look at the issue of fuel prices, it is very clear that the cause is taxation. A country like Uganda imports its fuel through our Port, transports it on our roads and sells it cheaper than we are selling it here. This is because of the taxation. You will find that more than 50 per cent of the cost of that fuel is taxed. There are seven levies and two taxes, which are added there and we do not even know what these taxes are used for at the end of the day.

Sometimes this year, we were discussing the Roads Maintenance Levy. Funds that are taxed specifically for road maintenance have been used in the counties in equitable share. Therefore, the funds are not even going to road maintenance in some cases. The 15 per cent that goes to the counties is not used for road maintenance.

On the issue of Petroleum Regulatory Levy, which has been said to be about Kshs30 billion in the last 10 months, is supposed to cushion, but it is not there. This means that it is being diverted. Therefore, there are things that these Cabinet Secretaries need to come and explain. If they do not come, then we have no other option but to censure them.

The Railway Levy, the Kerosene Anti-Adulteration Levy, Petroleum Development Levy, Roads Maintenance Levy are all levied on a litre of petrol we are buying. Therefore, there is need for the Cabinet Secretaries to come and explain this.

If they do not, we have no option than to censure them. This is because it is clear that Parliament has the authority to summon them. They have a duty, in law, as per the

Constitution, which they swore to uphold, to appear before Parliament anytime to answer to any question.

In regards to the electricity aspect, early this year or late last year, Sen. Wetangula asked a question to the CS for Energy on the issue of prices of electricity from the point of the so called cheap energy, the Lake Turkana Wind Power (LTWP) firm.

It was clear that the cost of energy, which we are experiencing now, is because of mismanaging of Kenya Power, which is still a monopoly. It has been making profit and declining until 2019. It had a loss of Kshs7 billion last year. This clearly shows that the institution is mismanaged. There are serious corruption scandals and interference of the running of the corporation by the boards.

The other issue is how they are balancing the different sources of power. We are told that they are supposed to move from thermal energy using the expensive generator to renewable energy. Geothermal has been improving and it is cheap. There is hydropower that is because the climate change may not be reliable. However, there is also an introduction of wind and power.

There is no movement towards this cheaper energy. Even where it says it should be cheap, if you look at the kind of power purchase agreements that are signed with these people, they are skewed.

In the case of LTWP, which Sen. Wetangula was following, we paid Kshs15 billion without that company supplying a unit of electricity. I would have asked the CS about it if he had come. This is because I have the written reply.

Sen. Wetangula asked: "Will you pay more than the Kshs6 billion that you have said so far?" He said 'no.' However, the country went ahead and paid an extra Kshs9 billion without being supplied a single unit of power.

Continuously, the power purchase agreement says 'take or pay'. If the generating capacity of the LTWP is 310 megawatts and they are doing 60 per cent, which is 200 megawatts, even if you do not uptake the 200 megawatts, you have to pay. It is constant. We are paying between Kshs12 billion to Kshs15 billion to LTWP each year, whether we are getting that power or not.

When Kenya approached World Bank to finance that project, it refused. They said we do not have the capacity to absorb the 300 at once, we should do it in phases of 100. The Government of Kenya refused and went to the Africa Development Bank and some European banks.

We are now paying for power that we are consuming. This is because most of the power is generated at night when the wind is fast and we are not a 24-hour economy. Therefore, we are wasting it that way. However, we are paying for each and every unit of power, which they are supposed to have produced; not forgetting the power line that costed over Kshs30 billion, while it would have costed half of that. This is because of mismanagement of not doing due diligence, contractors go bankrupt then we run into problems.

The power purchase agreement with the thermal energy generators, whether they produce or not, we are still paying until those agreements end. Therefore, we are paying for power, which is not being supplied. That is why the cost of power is not reducing.

These are the things that the CS should have addressed and we would have seen how to get Kenyans out of this situation. However, when the CS does not come nor send anybody, we are unable to question him. That is why we need to censure him.

If there is a stronger way to express ourselves, we need to look at that. If censure will not be enough to make them wake up and do their work, we need to look at other means that we have in law, so that these public officers work and become accountable.

Madam Deputy Speaker, because of that, some serious energy consumers in the country have decided to generate their own power. Today, I was reading that Devki, which is one of the major consumers of power, decided to generate their own power from coal. This is because the power from Kenya Power is unreliable and expensive. You have to make your own way. Kenyans want to use the solar system, but they are taxed and it has become expensive.

If you look at the way power is generated, you can easily generate solar power and connect the towns of Lodwar, all the way to Wajir, Mandera, Marsabit and Garissa in Northern Kenya because they are off grid. However, Kenya Power insists on diesel generators, which are expensive. People there are exposed to expensive and dirty energy because somebody cannot allow them to---

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Senators. I now ask the Mover to reply.

The Senate Minority Leader (Sen. Orengo): Madam Deputy Speaker, I wish to thank all distinguished Senators who have participated in this debate. I emphasize that this Motion has been bipartisan in the sense that it has received support from both sides of the House.

I want to demonstrate, particularly to Sen. Halake, the importance of a censure Motion. Normally, in parliamentary democracies, a censure Motion would never get to the Floor of the House. This is because the ruling party would never allow it to come to the Floor because they know its consequence.

They would never allow a censure Motion against their own to be given priority. Therefore, the impact of a censure Motion is important in the sense that Governments that operate in Parliaments know the stigma of being censured, be it a Cabinet Secretary or Government. It is something that the electorate would take seriously.

We were in Bahamas recently. The discussion that was going on was about the conduct of the Government in power and what the Ministers were doing. Some who had Motions like this presented before the Parliament in Bahamas. You would predict, from the people of that country, that the Government was going to lose that election and they lost thoroughly because of Motions like this.

You will notice that this Motion was prioritized, which means that it has the support of both sides. It was taken before the Leadership and the Plenary of the House. In fact, it was in the middle of a debate in Plenary that many Members unanimously said that they needed a substantive Motion to discuss the conduct of CSs and also express their concerns on the escalating rise of fuel and electricity.

That is not enough. In parliamentary democracies, and it has happened here, many people will not wait for the censure Motion to hit the Floor. The moment they hear that there will be a censure Motion, unless their side, be it the Government or opposition will offer resistance, then the particular person would resign from that position.

I gave the example of the former Vice President, Josephat Karanja. It was a Motion like this. He was not obliged to resign. However, because the censure Motion had been brought before Parliament, he had no alternative but to resign from that position. Nobody forced him; he made a decision to resign. It has been cited.

There was Motion that was brought before Parliament, and as a result of that Motion-- - Although he resisted resignation, the Government of the day said that they could not have him until that matter was properly cleared because of the decision that was made by the National Assembly at that time.

Madam Deputy Speaker, more importantly, in our own constitutional order, we have set a basis for removal. Once you have been found to be in contempt and have disobeyed the

law, under Article 153, a Cabinet Secretary (CS) can be removed for a violation of the law and if there is belief that, that person has committed a crime under international law.

We have seen many cases where impeachment Motions have come before this House based on prior events that had nothing to do with the impeachment. An example is being found to have abused the procurement process by the Auditor-General. That is then used as the basis for the impeachment process of the Governor.

This is a serious matter. Those who have gone through administrative law will find categories of punishments or sanctions. It is even within our Statutes. Even an admonition or a warning is punishment. A censure is even more serious, particularly when it comes from the Senate.

Madam Deputy Speaker, there are many things that have been said before this House; I do not want to repeat them. I appreciate the material that was placed before this Senate in regards to the pump prices of oil and the cost of electricity. They have been mentioned here.

In relation to importation of oil are several taxes and levies that are normally imposed. They include the Excise Duty, Merchant Shipping Levy, Import Declaration Fee, Roads Maintenance Levy - which many people have talked about - the Anti-adulteration Levy, the Petroleum Development Levy, the Petroleum Regulation Levy, the Railway Development Levy and the Value Added Tax (VAT).

If you put these things into totality, petrol stations in essence become tax collection centers. According to the Energy and Petroleum Regulatory Authority (EPRA), the cost of landed petrol, super, diesel or kerosene is about half what you pay for at the petrol station. In effect, petrol stations are then very important as tax collection stations.

Madam Deputy Speaker, the same goes to electricity. There is the fuel cost, inflation adjustment, forex adjustment, Enterprise Resource Planning (ERP) Levy, VAT and the Water Resource Management Authority Levy. There is even a levy for the rural electrification programme. All these costs put together, put Kenyans in a category where we are paying more than we need to pay for electricity.

I wanted us to look at this thing in a non-political way. I see the Senator for Murang'a here. The farmer in Murang'a and the farmer in Siaya are in exactly the same position despite our politics. The impact of these costs is the same for a man from Ukambani, who is staying in Kibra and a man from the Coast, who is staying in Mathare. There is no way they can run away from those costs, as we have discussed here.

Madam Deputy Speaker, the other day, I was looking at the example of simple things that we may take for granted. Over the period of the last eight months, the cost of three tomatoes was about Kshs10. If you go to Mathare or Kibra, one tomato will now cost you about Kshs10. As I said yesterday, for somebody who is earning Kshs15,000 and you find what that household needs and the costs that have risen out of electricity and fuel costs, you will find that their situation is completely unbearable.

In future, Parliament must be very cautious when we pass legislation on matters to do with power and fuel. This is because they are costs that cut across production, consumption, supply and distribution. It is, therefore, important that we are very careful not to overburden our citizens.

Madam Deputy Speaker, as we think of how to manage public affairs in this country, it is issues like these that should be under discussion. How we are dealing with this issue should be under discussion. Right now, in the Congress of the United States of America (U.S.A.), within the Democratic Party itself, they have arguments going on about the infrastructure programme that President Biden wants to pull through as one of his legacy programmes. People are having various inputs in that debate.

In Kenya, we should also try as much as possible. At the end of the day, what is governance for if it is not to make peoples' lives better and the cost of living cheaper? At the end of the day, we should be happy when we pass legislation that a Kenyan can stand up and say that they truly live in caring society.

Unfortunately, all these matters are sometimes lost in translation. For example, now, we are looking towards 2022. If you allow these kinds of things to happen, I do not think that whoever is going to take over Government in 2022 will have good nights' sleep. They will not because this has an impact on debt, and debt has an impact on these rising costs.

Why would the Government need to make Kenyans pay twice as much as they should pay for a gallon of petrol? It is because we are living beyond our means, we have over borrowed, or corruption has become a way of life that we have to budget for. Instead of making people's lives better, we are trying to give subsidy to corruption, waste and bad governance.

Madam Deputy Speaker, I do not want to take any longer on this matter because there has been a very robust debate. I thank the Seconder, Sen. Wetangula, because I gave him very short notice and he did justice to this Motion.

I could take my time to congratulate every single Member. I will take a record of the deliberations of this House on this matter. If I have space in my autobiography, some of these discussions in this debate will, on my part, go down as a debate that I was very proud of in the manner in which every Senator approached this matter.

Madam Deputy Speaker, I just want to conclude. Some people have said that this is because of the 'handshake.' It cannot be because of the 'handshake.' I think that is trying to politicise a purely economic and governance issue. I do not want to stand here and say that this Motion was brought for any political purposes. This Motion was just brought to speak for the common man; the Kenyan people.

As you say that Sen. Orengo brought this Motion, I did not bring it. When we were meeting here as a Committee of the Whole House, it was because of those discussions that came in the Committee of the Whole House. The Committee said that this matter must be raised in Plenary in the afternoon. It was the House in Plenary that decided. In fact, we went for an adjournment that a substantive Motion should be brought to discuss this matter. Therefore, it is not my Motion. I was simply carrying out the directions of the House.

Madam Deputy Speaker, as I sat here, nobody has opposed this Motion. If they are not going to do a voice vote--- It is a Motion where if you wanted to vote by your feet, that will not count. In essence, the vote for this, in my view, has been unanimous even for those who are not here because of the other duties they are performing.

I thank you and the House. I beg to move.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Senator. Hon. Senators, I would like to confirm that this is not a matter affecting counties, in accordance with Article 123 (4) of the Constitution. Therefore, there will be a voice vote.

(Question put and agreed to)

Next Order!

BILL

Second Reading

THE DISASTER RISK MANAGEMENT BILL (SENATE BILLS NO.14 OF 2021)

(Sen. Sakaja on 16.9.2021)

(Resumption of Debate interrupted on 21.9.2021)

The Deputy Speaker (Sen. (Prof.) Kamar): The Senator who was on the Floor was Sen. Were.

You have 17 minutes.

Sen. Were: Thank you, Madam Deputy Speaker. I rise to support The Disaster Risk Management Bill that is ably sponsored by the champions of change; that is, Sen. Sakaja, ‘super Senator’ and Sen. Mutula Kilonzo Jnr.

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

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

Mr. Temporary Speaker, Sir, as I had indicated earlier on, I will go through the introduction, again. Welcome Temporary Speaker, Sen. Kinyua. This Disaster Risk Management Bill seeks to do a number of things. I will point out three that are crucial to me. First of all, this Bill seeks to set up a Disaster Risk Management Fund (DRMF). This is important because, then, we are sure there is always a kitty to deal with issues of disaster.

For example, when Coronavirus disease (COVID-19) hit us, we had to set up quickly a national COVID-19 Fund to fundraise money to deal with the effects of COVID-19. If there was money ready in place, then we would be able to handle disasters that strike us; not just pandemics or diseases, but things like floods, bomb blasts when they hit us, earthquakes and landslides that are very common in the Rift Valley and Mt. Kenya area, for example.

Mr. Temporary Speaker, Sir, there will be a fund set up ready and money always put into it to deal with these issues. This money can also be used to provide social safety networks or initiatives to cushion Small and Medium Enterprises (SMEs), for example, the vulnerable groups of society. This is the one attractive thing about this Disaster Risk Management Bill. This Bill, therefore, sets up a framework for the coordination of disaster risk management activities.

The second thing that it does is that it sets up the National Disaster Risk Management Authority (NDRMA) that is at the national level. Since we have the reality of devolution that is never going away, it has also set up the County Disaster Risk Management Committees (CDRMC). These authorities will be run by boards, and therefore, they are accountable.

Most importantly, they will be the ones that will seek to set up or develop a disaster risk management strategy or plan. This is so that when there is a problem or disaster, there is a plan or strategy in place ready to implement or deal with that disaster. This is so that people are not grappling in the dark, or it is not just left to the military.

For example, when there was a bomb blast in 1998, and most of the people here were born, it is the military that saved the day. From their training, they have developed strategies to deal with disasters. I remember the late Agoyi - God rest his soul in peace - who passed on last month. He led the management of that disaster of 1998.

Mr. Temporary Speaker, Sir, once we have an authority in place that sets up a strategy and plan that already envisages a disaster and how it will be dealt with, then, we are able to manage some of these issues when they happen. Even the ones that come occasionally like landslides, as it happened in Solai when the dam collapsed and floods that happen frequently in areas in Nyanza and Western.

This National Disaster Risk Management Authority (NDRMA) at both the national and county level will also create public awareness campaigns, for example, some form of drills. This is so that Hon. Members are always aware that in case something like a landslide happens in the area, what is the expected reaction? This is so that people do not respond with panic to avoid more deaths or injuries. That makes the impact of the disaster higher than it should have been.

Mr. Temporary Speaker, Sir, the authorities will also create linkages with various Ministries, departments and agencies, community service organisations. Look for ways also of identifying a hazard before it occurs. For example, they can have a team or experts that can tell that the former Central Province, for example, is prone to landslides.

I am using landslides more because the short rains are coming. That is one disaster that we expected to have landslides and floods. They will tell that the landslide or flood will happen in such a place at a particular time and in such a manner and alert the people in time.

Mr. Temporary Speaker, Sir, I support this Bill and this NDRMA, a form of a parastatal that is going to organise and deal with disasters in this country in a more organised manner. Right now, what we have is a National Disaster Management Unit (NDMU) that is rubbed by the Office of the President or what was formerly the provincial administration. They lack funds and a budget that is specifically dedicated to them.

They are considered an emergency. If the emergency does not happen, then that money is not spent. Even the little money that they are given will be taken away in case there are other burning issues. However, once it is an authority and not just a unit or department within some Government office, then we will deal with disasters in a better and organised manner in this country.

Thank you, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Kinyua): Thank you, Sen. Were. Sen. Kang'ata from Murang'a County, proceed.

Sen. Kang'ata: Mr. Temporary Speaker, Sir, allow me to congratulate the drafters and Movers of this Bill, reason being that Kenya has had several disasters. Therefore, it was important that we come up with a Bill that tries to collate various measures that are used by Government to remedy those disasters.

Those disasters include floods and terrorism related cases, which can cause some form of disasters. They also include hunger. We all know that there is a huge region in this Republic of Kenya that is very exposed to disasters, which arise out of various natural phenomenon. To that extent, we need to laud the spirit that underlines this Bill.

Mr. Temporary Speaker, Sir, allow me to express my reservations, which I have no doubt the good drafters will definitely consider taking into account. The Republic of Kenya has about 350 parastatals, that is, state bodies. Every time Kenyans see a new parastatal being created, their blood must run cold, the reason being that we all know that state bodies and parastatals are avenues for people to enter into those offices.

They get allowances and push governments for more opportunities through which they can conduct corruption. Therefore, I am a little bit reluctant to support a move where this Bill is proposing to create a standalone state entity.

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

The Temporary Speaker (Sen. Kinyua): Sen. Kang'ata, do you want to be informed?

Sen. Kang'ata: Yes, Mr. Temporary Speaker, Sir.

Sen. Sakaja: Thank you, Mr. Temporary Speaker, Sir. I want to humbly inform my esteemed colleague from Murang'a County that this Bill does not seek to create a new agency. If you go through it, it brings together the many different small units that have been dealing with disaster because there has been lack of coordination.

We have the National Disaster Operations Centre (NDOC), the National Disaster Management Unit (NDMU) that currently exists and many other bodies dealing with management of disasters in this country. There is a department under the Ministry of Special Programmes that normally comes in to give food and other items. In this Bill, we are bringing them together under one body.

Mr. Temporary Speaker, Sir, there will be a lot of savings because we are not creating a new entity *per se*. Sen. Kang'ata, if you look at the transitional provisions, it provides for how the staff who are currently employed in those three entities will transition to this amalgamated agency.

The Temporary Speaker (Sen. Kinyua): Sen, Kang'ata, proceed.

Sen. Kang'ata: Mr. Temporary Speaker, Sir, thank you. I am very happy with that intervention from one of the drafters of this Bill - I think they are two. If I get his intervention and information right, he says that this Bill is creating a body to bring together functions. Maybe the clarification that I may require is to know is whether those other entities, as they currently exist, are established by a statute. Are they departments within a Ministry?

I say so because when you look at proposed Section 3 of this Bill, it clearly provides for the establishment of the NDRMA. I get the impression once I read this that we are creating an authority with all the powers, just like the way we have done in the roads sector. We have Kenya Rural Roads Authority (KeRRA), Kenya Urban Roads Authority (KURA) and Kenya National Highways Authority (KeNHA). Those are the kinds of entities we are talking about.

Mr. Temporary Speaker, Sir, in actual sense, it is a form of upgrading of the existing department that deals with disasters. That is good idea and I agree because maybe to that extent it is correct. However, those are the advantages, I would imagine, that exist currently when you have what you call downgraded entities. They are not fully-fledged parastatals, and therefore, there will not be a Director General or a board.

From where I sit, and allow me to disclose my political persuasion, I belong to the political theory of small governments; the idea that the Government should remain small and efficient. Every time we create a parastatal, we create a fully-fledged state body. I am not so sure that is when we are increasing the efficiency. I get the impression that it is when you are creating more opportunities for "big boys" to get jobs and Kenyans to be taxed more; that I do not agree with. I get that impression.

Maybe I will be persuaded, definitely, once I hear the response from the promoters of this Bill, and I say this with a lot of respect, not only for this Bill, but also for many Bills I have seen that, particularly even in the National Assembly, every time there is a legislative proposal, there is an embedded idea to form a board.

I will give you an example. Currently, we have a standalone board that deals with Female Genital Mutilation (FGM). With all due respect, surely, I do not want to go that stain, but I am just trying to imagine. A standalone board that deals with FGM is fine.

Let me give you another example; the human rights body. We have an overall body called the Kenya National Commission on Human Rights (KNCHR). It is a Government body that deals with human rights.

Then, we have another separate entity that deals with women rights. Again, I think it is also Government funded. I thought women rights are human rights. Another entity deals with children matters. I thought children rights are human rights. If we want a lean and efficient Government maybe, can we not consider, as Kenyans, to collate and amalgamate all those entities? This is so that we have fewer people we are paying using tax money.

Mr. Temporary Speaker, Sir, let me give you another example. Look at the tourism sector. How many entities do we have in the tourism sector? We have the Tourism Fund and many other bodies and boards that are dealing with a singular sector called tourism.

The Temporary Speaker (Sen. Kinyua): What is it, Sen. Sakaja?

Sen. Sakaja: On a point of order, Mr. Temporary Speaker, Sir. I sincerely hope that Sen. Kang'ata is not opposing for the sake of it. This is the last time I will interrupt him. Is it in order for him to mislead the House and contradict himself? He has given us an example of human rights, where there are many bodies. He has said on record that we should amalgamate them. He is talking about tourism where there are many bodies. We should amalgamate them.

What this Bill is doing is bringing together three different bodies. The National Disaster Operations Centre (NDOC) was established by an Act of Parliament in 1998 after *El Niño*. It is established by a Statute. The same applies to the National Disaster Management Unit (NDMU). There is now the Special Programmes Department, where you have to call people to ask them for food and *mabati* when there is a disaster. We are bringing them together. His own argument against bringing them together is what he is using to propose that the human rights entities should be brought together.

What we are doing is bringing tourism entities together. I would just urge him that maybe he should have spent some more time with the Bill to understand it a bit, not to oppose for the sake of it. What he is pushing for is exactly what this Bill is actually doing for the benefit of the people of Kenya. In fact, it will be cheaper.

The economies of scale demand one entity doing one thing, instead of three entities going against each other doing the same thing. There is a lot of wastage there. That is what we are trying to do. That is the last time I will interrupt him. I will give more details when I reply.

Thank you.

Sen. Kang'ata: Mr. Temporary Speaker, Sir, can I continue? There is information.

The Temporary Speaker (Sen. Kinyua): Sen. Orenge, proceed.

The Senate Minority Leader (Sen. Orenge): Mr. Temporary Speaker, Sir, the way Sen. Kang'ata came in here, I knew he was coming for this Bill. When he comes for a Bill, he has made up his mind in many ways. However, I want to inform him one of the good things about this Bill. The way we deal with disaster in this country is disorganised. This is creating a framework, not only to bring people together, but also how to react to it.

One of the things that happened when there was that *Katrina* Hurricane in the USA, where we have many competent authorities, but when they come together there was confusion. I just want to urge him that this little time we are taking away from you, look at it a little bit better. I would wish that you support.

Sen. Kang'ata: Mr. Temporary Speaker, Sir, first is to thank my colleague, Senior Counsel Sen. Orenge and Sen. Sakaja for that intervention. I think I now see where the problem lies.

I want to concede that I think the problem lies in the drafting. Why do I say so? It is because if there is an existing authority that is created by an Act of Parliament. Then somewhere in the Bill, you needed to clearly, and in express terms, provide that you are repealing certain sections.

I have looked at this Bill and the mention of NDOC, NDMU and the Department of Special Programmes. The three entities are not in the substantive law to the best of my knowledge, unless I have missed something; I stand to be corrected. They are in the Memorandum of Objects and Reasons. Maybe what we needed to do---

Mr. Temporary Speaker, Sir, Clause 39 talks of bringing staff together. You get the point. However, the question is: where are they coming from? Are they coming from a body that is established, in express manner, by a Statute? Do they have a board? If they have a

board clearly provided for in an Act of Parliament, you need to insert a clause here saying that we are repealing the Act of Parliament by passage of this. Otherwise, you will have a situation where you have a board that is still there with its own disaster management thing.

You have another board that is now created by this Bill. The staff have gone legally because, often, the law will provide that the board is a perpetual succession entity. It will still exist independent of this other one.

Mr. Temporary Speaker, Sir, you get the point, particularly taking into account what my colleague has said; that these other bodies are created by statutes. I do not know, but I heard him say that. If they are created by statutes, maybe---

The Temporary Speaker (Sen. Kinyua): What is it Sen. Sakaja?

Sen. Sakaja: Mr. Temporary Speaker, Sir, Sen. Kang'ata is an advocate; I am not one. I know what we call the doctrine of implied repeal. The doctrine of implied repeal, which takes precedence in many of the laws we have done in this country, including this Parliament, is simple. An Act of Parliament or another legislature that conflicts with one that is new, the new one takes precedence and that is only relating to NDOC. That is the doctrine of implied repeal.

You do not have to necessarily put a clause saying that this, therefore, now repeals the NDOC Act that was there. Even then, it will cost us nothing to add it. However, I just want Sen. Kang'ata to speak to that doctrine, which we have used in many legislations. In fact, if we did not do that, then it means we need to change many of the Acts that we have passed in Parliament.

Mr. Temporary Speaker, Sir, the latter Act takes precedence once it has been passed. I am sure Senior Counsel Sen. Orenge, Sen. Cherargei and professor know that the doctrine of implied repeal is very present in Kenya's legal jurisprudence. I cannot contradict him. He is ahead of me in terms of law, but I am also a very good law student, and I know that doctrine.

The Temporary Speaker (Sen. Kinyua): Sen. Sakaja, are you trying to question that the Speaker does not know that?

Sen. Kang'ata, proceed.

Sen. Kang'ata: Mr. Temporary Speaker, Sir, anyway, I think the point I was trying to bring into focus is that the drafters just took into account the idea of creating several parastatals; to the extent, if at all, there are two ways to look at it.

Assuming what my colleague is saying is the correct position, we can in express terms provide that we are repealing a certain Act, so that you do not put any ambiguity. That would be number one possible remedy to this problem I am talking about. The other option would be you go into that original Act of Parliament. You increase various roles if you think the roles are not sufficient. Maybe that would be another point.

Mr. Temporary Speaker, Sir, however, my point was only that I hold the view that we need to reconsider, as a country, the whole idea of creating several parastatals. Personally, I have an issue with that. I say so with all due respect not only for him. From my experience as a Member of the Public Accounts Committee in the National Assembly, I used to notice the so many negative reports that used to be tabled before the Committee.

I got the impression that the fewer the State bodies that exist in this Republic the better it is for this country. The more resources go into capital expenditure, the more they will not go into paying allowances for board members. I would imagine the country will progress when we have fewer parastatals.

Mr. Temporary Speaker, Sir, that was the only issue, but I support the gist and spirit of this Bill. The idea to amalgamate and bring everything together under one roof makes sense. As long as we are not adding bureaucracies, I will definitely support this Bill, if my colleague considers those views.

I beg to support, but with those few ideas.

The Temporary Speaker (Sen. Kinyua): Thank you, Sen. Kang'ata.

Sen. Orenge, proceed.

The Senate Minority Leader (Sen. Orenge): Mr. Temporary Speaker, Sir, thank you very much. First, congratulations for sitting on that Chair. I should be speaking in Kiswahili. You are one of the people who demonstrate that for a language you do not need to be born as part of that community. You can speak the language so effectively. When you speak Kiswahili, I do not want to hear what you say, it is just the way you speak it. I feel so good about it.

Let me congratulate Sen. Sakaja and Sen. Mutula Kilonzo Jnr for bringing this Bill. If you look at what is happening in the world now, this Bill is so critical. Disaster now in the world is an everyday event. Look at a power like the USA, how to deal with disaster. Even with the laws they have, they have to keep on revising how they deal with disaster.

Mr. Temporary Speaker, Sir, there are many forms of disaster. There are manmade. The worst of it can be terrorism when a building is brought down in Nairobi and that has been done before, like in the West Gate Attack and, of course, what happened in Garissa. How do you deal with that disaster? More so, the disasters that are being experienced in the world are natural disasters. They are saying just as we take lightly the question of climate change.

Climate change now in many parts of the world is a source of many problems. Volcanoes that used to be dormant are now erupting. Where we live, in the Great Rift Valley, is in two formations in this country. The Great Lakes of this country are in the Rift Valley. We have craters like Longonot.

Mr. Temporary Speaker, Sir, at the end of the day, we have to make sure that the question of disaster is not something that is left to security agencies or the Non-Governmental Organisations (NGOs) or the Red Cross to deal with the questions of disasters. We must be sure of what happens when a disaster happens?

Like what I expect from what Sen. Sakaja has done because there is provision for regulations to be made. We should have regulations that set out a protocol. That when there is a disaster, what do first responders do? If, for example, there is a disaster in any part of Nairobi and the police, fire brigade, Red Cross, and army are there. How is that disaster going to be dealt with and who will be in control in terms of dealing with that disaster?

Mr. Temporary Speaker, Sir, now that we have devolution, and I heard Sen. Sakaja rightly point out that this is a shared responsibility between the national and county governments. What happens when that disaster takes place?

In Homa Bay County, and Sen. M. Kajwang' talked about it, there is a major disaster that has happened. People have died in the lake and the bodies are still being recovered in the lake. Rescue operations are going on. At the end of the day, there is an appeal to political leaders to contribute, because they do not know how to take these people to hospitals and where they would go. Where is the appropriate place to take them? How do we operate that rescue operation?

Mr. Temporary Speaker, Sir, in the lake now, we are very small in terms of having equipment and tools, and even men and women properly trained on how to deal with disaster in the lake. This is not the first one; there have been many.

You find local people with small boats trying to rescue their own. The Government agencies come two or three days later or when they come, they come as observers. This in all reality is the kind of legislation and Bill that when it is brought before the Senate, we should think about improving rather than opposing it. It has come at the right time.

Mr. Temporary Speaker, Sir, as somebody who went - although not as a first responder but a very peripheral person - when the disaster happened at West Gate, you could

see the confusion that was taking place there. Even within the security agencies, they would not even determine whether it is the Army that should be in control, the police or General Service Unit (GSU)? There was all that confusion, even how to deal with the media. Some horrific pictures went out into the world media about what had happened at the West Gate.

There is an architectural structure that comes out in this Bill that I like. First of all, recognition of all the players, Government agencies and parastatals. If you look at this properly, it gives entry points to all those players, both at the national and county levels. At the county also, how then do you organise and create structures within the county to deal with the question of disasters?

Mr. Temporary Speaker, Sir, just a minute ago, I thought that was like a preamble to a debate, which started some time ago when Sen. M. Kajwang' was speaking. I thought he would stay and contribute to this Bill.

However, knowing that we are likely to continue, I hope he can bring to this Chamber, next week, real life experiences as to what is happening in Homa Bay County. The worst thing that happens is when there is a disaster and you feel helpless. The Government authorities and people feel helpless.

Sen. Sakaja, I was thinking that even in terms of this Bill, if people are talking about disaster management, even Nairobi is very well unplanned for disaster. Somebody told me one time that there are some high density populated areas in Nairobi that is there is disaster, how to get first responders; you want to get fire machines there and the roads are narrow. You want to bring other equipment into that place.

Mr. Temporary Speaker, Sir, therefore, this Bill is going to change our thinking. If you want to live in safe neighbourhoods and where we can respond to disaster, like is being proposed in this Bill, how do we plan our cities and buildings? That is to ensure that we can effectively deal with the issue concerning disaster and management of it.

I do not know how many minutes I have left. I would bring with me the copy of the Bill; I had made some notes. I think there has been a lot of thinking. That is one of the things you can trust Sen. Mutula Kilonzo Jnr. and Sen. Sakaja; that once they come up with anything of this nature, there has been some thinking about it.

The Temporary Speaker (Sen. Kinyua): The Senate Minority Leader, you have a balance of 51 minutes.

ADJOURNMENT

The Temporary Speaker (Sen. Kinyua): Hon. Senators, it is now 6.30 p.m., time to adjourn the House. The Senate, therefore, stands adjourned until Tuesday 28th September, 2021, at 2.30 p.m.

The Senate rose at 6.30 p.m.