

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

Tuesday, 21<sup>st</sup> September, 2021

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

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

#### PRAYER

**The Speaker** (Hon. Lusaka): I will make a Communication later. Is there anybody from the Committee on Health?

Proceed, Sen. Olekina.

#### PAPER LAID

REPORT ON THE THIRD PROGRESS REPORT  
ON THE COVID-19 PANDEMIC SITUATION

**Sen. Olekina:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today 21<sup>st</sup> September, 2021-

Report of the Standing Committee on Health on the Third Progress Report on the Covid-19 Pandemic Situation in the country.

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

#### STATEMENT

INCREASE IN FUEL PRICES IN THE COUNTRY

**Sen. (Eng.) Maina:** Mr. Speaker, Sir, Standing Order No. 21(21) (a) provides that the Chairperson of the Committee may make a Statement relating to a matter for which the Committee is responsible.

I wish to make a Statement on the substantial increase of fuel by the Energy and Petroleum Regulatory Authority (EPRA) on 15<sup>th</sup> September, 2021.

Mr. Speaker, Sir, my Committee has held a series of meetings with the two Cabinet Secretaries in trying to mitigate the cost of fuel and electricity. This increase of fuel prices has had a ripple effect on the economy and has subsequently increased the cost of living and cost of doing business significantly on already burdened citizenry.

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Standing Order No.48 (1) provides that a Senator may request for a Statement from a Committee on any matter under the mandate of the Committee, pursuant to this Provision.

At the sitting of the Senate held on 15<sup>th</sup> September, 2021, Sen. Samson Cherargei requested for a Statement from the Committee regarding the increase in fuel prices as announced by the EPRA.

Following deliberations in the Senate, my Committee was directed to invite the CS, Ministry of Petroleum and Mining and the CS, Ministry of Energy to appear before the Committee of the Whole on Tuesday, 21<sup>st</sup> September, 2021, which is today.

Mr. Speaker, Sir, I convened the Committee of the Whole today, Tuesday, 21<sup>st</sup> September, 2021, but most unfortunately the two Cabinet Secretaries did not attend.

We were informed by the Clerk's office that the CS, Ministry of Petroleum and Mining was away on official duty and that he had requested the Committee to reschedule its meeting to 29<sup>th</sup> September, 2021. He chose a date.

The CS, Ministry of Energy cited Executive Order No.1 of 2018 and Executive Order No.1 of 2020 and indicated that the matters contained in our letter of invitation were outside his jurisdiction.

Mr. Speaker, Sir, the Committee of the Whole noted that the two Cabinet Secretaries abdicated their responsibilities as stipulated under Article 153(3) of the Constitution and that the Senate should find them culpable, in contempt of the Constitution and that the application of the Parliamentary Powers and Privileges Act, 2017 be enforced.

I wish to end the Statement there but I wish to add that this House should actually consider this matter seriously this afternoon. It is not just this matter, but there is the issue of fuel prices. Fuel is the core of every activity. Fuel is the core of any business that is being undertaken. Fuel is the core of living today because most families in the lower cadre of our society use fuel products like paraffin to cook their food.

When fuel prices go up, we expect the cost of everything to go up. Food prices will go up and the cost of living will go up. All of us who have interacted with our constituents are aware of the outcry of Kenyans. We are aware of the apathy and the impossible situation some families find themselves in.

I was faced with a situation where a family came to me and told me that they need assistance because their child could not go to school arising from these increments; public transport has gone up and they have no money since they had budgeted to the last cent. These are the cases that are presented to us.

This is a serious matter and the two Cabinet Secretaries are answerable to Kenyans. We are representing Kenyans and, therefore, the two Cabinet Secretaries are in total contravention of the Constitution by not appearing before this House to give their explanation of the issue. That is the purpose of reading this Statement.

The House should rise to the occasion and show Kenyans that this is the House of reason and the House that has the interests of Kenyans at heart. The Government must be sensitive to the cost of living of its citizens.

Mr. Speaker, Sir, in 1972, President Nixon brought a price control on oil in the USA where they pride themselves to be the excellence of free market economy. In the

same America, President Theodore Roosevelt brought the Anti-Monopoly law to protect the citizens of America against marketers who tend to increase prices for the sake of profit.

Even we as a country, we must and should be sensitive to the cost of living of the people. On this matter, I am calling upon this House and this country to relook at how we are going to bring the cost of living to manageable levels.

Thank you.

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

**Sen. (Eng.) Maina:** I have finished. A point of order can be on a consequential debate.

**The Speaker** (Hon. Lusaka): Sen. Cheruiyot, are you standing up to contribute?

**Sen. Cheruiyot:** No. There is a reason why the Chairperson is sitting down before his time is up. He is doing so because he knows this is not what we agreed on in the morning.

As good representatives of the citizens of this country, we gathered here today at 11.00 a.m. sharp as a consequence to your ruling. We sat here and deliberated on all the issues that had been brought before this House and the House made a resolution - I believe that was a Committee of the Whole - that this afternoon the Senate Committee on Energy would come back with a report to the House, upon whose recommendation we would give a reaction and, therefore, make a determination as a House.

I am shocked to hear the Chairperson of the Committee on Energy giving a personal Statement on this matter as if this is a personal problem. This is a serious national issue that needs us as a House to do more than just trying to score some quick points in order to be seen to have said something about it and, therefore, close up and say we have sorted the problem.

We were very clear when we met here in the morning. Therefore, as a Member of this House, I demand to know from the Chairperson of the Committee on Energy why he has departed from the resolution of the gathering of the House. All these Senators were here: Sen. Mutula Kilonzo Jnr. Sen. Orengo, Sen. Wetangula, Sen. Were. We were more than 15 Senators in this and this is not what we agreed on.

Therefore, the Chairperson of the Committee on Energy needs to tell us why he departed away from our resolution. That resolution was read more than three times.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, this afternoon we had agreed that the Committee chairperson would report to you but we would have resolutions that are actionable. We agreed that the Committee chairperson would move this House to pass resolutions under Article 110(3), which are not limited to censuring the Cabinet Secretaries. The Plenary was not supposed to accede to the adjournment sought by the CS. Not even one agency was present to say anything about the request.

Mr. Speaker, Sir, the Chairperson should not be allowed to complete that report until the resolutions of that Plenary, the committee where we were sitting are fully here.

If the Clerk needs assistance, they should have sought assistance from us. Otherwise, to continue with the report by our good friend and, I was told that he is also a businessman who was affected by this matter, to continue with this report as tabled by him is to derogate from the work that we agreed to do.

I say this to the Chairperson: You must ruffle feathers. You must speak boldly. You must speak to Kenyans because Kenyans do not want the sort of report I have seen in 411 on *Citizen* news, saying that the Committee of the Whole has been snubbed by the two Cabinet Secretaries.

It bothered us a lot that whilst in the HANSARD it is reported that the Speaker asked the Committee to summon the Cabinet Secretaries, the report that went to those Cabinet Secretaries is an invitation. We feel belittled. To add insult to injury, the Statement that I brought on the fuel prices in March is still unanswered to date.

Even if we have no mandate under the Constitution to censure Cabinet Secretaries, let us start by censuring them now because we have a mandate under the Constitution to defend the people who elected us. The fact that we have no mandate under Tax Law under 114 for Money Bills is not an excuse.

Sen. Orenge mentioned this in the morning that whilst it is not our mandate to pass finance laws, we are equally to blame for the problems that Kenyans are suffering. We would not want to sit here as if we are having a dinner speech wearing tuxedos to massage the truth. What the chairperson is doing is massaging the truth. We will not accept.

Thank you.

**Sen. Wetangula:** Mr. Speaker---

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Order, Senators. The chairperson seems to be under a lot of pressure. He has even forgotten the rules.

**Sen. Wetangula:** Mr. Speaker, Sir, the chairperson must be put under pressure. This is serious business and I want the chairperson to sit down and listen to us instead of engaging Sen. Mutula Kilonzo Jnr. The Chairperson should sit down and listen to us.

This morning up to the afternoon there were more than 20 Senators here. Members spoke candidly and seriously. The distinguished Senator for Busia was very candid in his presentation and so were all the other Senators: Sen. Orenge, Sen. Mutula Kilonzo Jnr., Sen. Cheruiyot. Before we left, we gave the Chairperson clear direction that he was going to bring a report that would deal with the issue of hiking fuel prices, skyrocketing electricity bills and above all, the conduct of two Cabinet Secretaries and their attitudes towards this House.

Mr. Speaker, Sir, it is very offensive to this House for two Cabinet Secretaries to be invited to come to the House to deal with a national crisis and none of them turns up, not even their Principal Secretaries or a representative to come and tender an apology as to why they were not here.

One CS, hon. Keter, who is a former colleague here simply sent a message that the matter does not concern him. This is serious. What the Chairperson of the Committee on Energy, Sen. (Eng.) Maina has read here is a total departure from what we agreed on. We had agreed that he brings an interim report that will trigger debate on a matter of serious national importance that is engulfing the country today.

Eighty percent of Kenyans use kerosene for their livelihoods. Even when the economy nearly collapsed in 1991/1992, and Sen. Orengo can bear me witness, *Mzee Moi* could not let the price of kerosene go up because it is the livelihood of ordinary people.

Mr. Speaker, Sir, before you make your ruling, I want to urge that the Chairperson goes back and brings the Statement that will lead debate in this House, even if we have to shelve everything to tomorrow or this afternoon. We must censure these Cabinet Secretaries and we must speak to this matter that is hurting Kenyans everywhere. When you touch fuel, you have touched the life of each and everybody in the country.

Chairperson, you have let us down and we must tell you so. We have a lot of regard for you but you have done the right thing wrongly.

**The Senate Minority Leader** (Sen. Orengo): Mr. Speaker, Sir, I was really rushing back on account of the proceedings of the Committee of the Whole which met this morning. To show the significance of a Committee of the Whole and why we borrowed this procedure for purposes of the meeting this morning, it is important to know what happens when you have a Committee of the Whole. That is found in Part 22 of the Standing Orders and I will invite Mr. Speaker to look at it.

However, just to emphasize the point, when the Committee of the Whole meets, it may not adjourn until it considers fully the matter that is placed before it. Standing Order No.177 states as follows:

“When all matters referred to a Committee of the Whole have been considered, the chairperson shall be directed by Motion to report to the Senate.”

This morning what actually we were asking the Chairperson--- I know the Clerk might be referring to the fact that the Committee of the Whole normally applies when you are dealing with Bills. However, I am saying that it is not for every reason that a Committee of the Whole House sits. It is important that the Committee of the Whole House---

I want to correct the Chairperson here because I saw in that report he is saying that he is the one who convened the Committee of the Whole. You do not have powers to convene a Committee of the Whole. There is no way you can do that. The Committee of the Whole can only be convened upon the resolution of the House over the direction of the Speaker.

I want to say without doubt that if need be, we could even adjourn the House for 15 or 20 minutes so that a proper Motion or report is put before the House for discussion.

This is a matter, if we leave it today without talking about it fully then we will not be fulfilling our mandate to the people. Even where I was in the last one hour the question that people were asking me constantly was: What are you doing about this increase of fuel and the burden that it is placing on the ordinary people?

Mr. Speaker, Sir, it was said that taxation without representation is equal to tyranny. However, I want to say that when people are overtaxed it is like slavery. It is enslavement what we are doing to the people of this country.

I would request that if it is possible we adjourn for 20 or 30 minutes so that we bring a proper report with resolutions. This is a matter that we cannot discuss generally.

We must discuss it with certain resolutions. I think that is the direction we should go. If we leave it until tomorrow, I think all the urgency will have been lost.

I take issue with the clerk who was sitting this morning because I remember - I want the Clerk to hear this - we asked him to assist the Committee of the Whole come up with an appropriate report on two issues with resolutions: On the question of non-compliance by the Cabinet Secretaries. It is actually contempt of the House; constant repeated contempt of the House.

Secondly was our resolution on the question of the increase and the taxation measures that have been taken. I submit that we should adjourn for a few minutes if somebody can appropriately come up with a Motion to adjourn.

**Sen. Olekina:** Mr. Speaker, Sir, I rise pursuant to Standing Order No.32 which states clearly that the Senate may at any time for reasons stated, seek leave to move that the Senate do adjourn now to be able to discuss this matter in detail.

I sat here in the morning and I was perplexed as to what we were doing in this House if we cannot be able to put our foot on the ground and ensure that Cabinet Secretaries respect the Constitution.

Article 153(3) is very clear as to what the Cabinet Secretary must do when called upon by this House. We cannot continue taking the blame when the Executive which is supposed to ensure that they implement the laws that we pass in this House, continue violating them.

I do not want to deliberate further on this matter. I would seek that we adjourn and I would like to ask Sen. Cheruiyot to second.

**Sen. Cheruiyot:** Mr. Speaker, Sir, I second.

**The Speaker** (Hon. Lusaka): Order, Senator. I know this matter is extremely important and urgent, but let us do it properly.

I put the question that the Senate do now adjourn.

*(Question proposed)*

*(Question, that the House do now adjourn, put and agreed to)*

The Senate will adjourn for 30 minutes.

*(The House adjourned temporarily at 3.10 p.m.)*

*(The House resumed at 4.35 p.m.)*

#### PRAYER

**The Speaker** (Hon. Lusaka): Hon. Senators, let me welcome you back from the adjournment. We have taken longer than we hoped because there were things that were still being sorted out. We accept that, sometimes, flexibility is allowed, especially with a serious matter like this.

The Supplementary Order Paper has been circulated on your gadgets; you can check. We now have a new Order No.6, and I will, therefore, ask---

Sen. Murkomen, you still want your point of order?

**Sen. Murkomen:** Mr. Speaker, Sir, you have anticipated my point of order. My point of order is on the adjournment of the House. You ruled that we were adjourning for 30 minutes. If the HANSARD will bear me witness, we have done more than one hour. It is actually one-and-a-half hours since we adjourned. What is the time now? Yes, we adjourned for more than one-and-a-half hours. The one hour beyond the 30 minutes of adjournment would have served us debating other very important issues as we wait for the Committee on Energy to be ready.

For purposes of the future, when the Speaker says that we adjourn for 30 minutes, what is the status of the Senate for the time between the end of the 30 minutes and time we resume? Who is going to be held responsible for that time, considering that the Speaker cannot violate his own rules and the Speaker's ruling is taken very seriously? If this is going to be the practice, what will stop a future Speaker from saying that we will adjourn for 30 minutes, but then we resume the next day? We just appear the next day.

**The Speaker** (Hon. Lusaka): Thank you, Sen. Murkomen. That is why I said that we have precedent. It is not every day that we do that. We must allow for some flexibility, like now. This is a serious matter. We do not want to come here with something that is not properly looked at and have to adjourn. That flexibility is allowed, and there is precedent.

Clerk, proceed.

### NOTICE OF MOTION

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

**The Senate Minority Leader** (Sen. Orengo): Mr. Speaker, Sir, I beg to give notice of the following Motion-

THAT AWARE, that on 15<sup>th</sup> September, 2021, a Statement was requested under Standing Order No.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 (CSs) of the Ministries of Petroleum and Mining, and Energy, to appear before the Committee on Tuesday, 21<sup>st</sup> September, 2021 to appraise 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 CSs, pursuant to Article 153 (3) and 153 (4) of the Constitution to appear before the Committee on Tuesday, 21<sup>st</sup> September, 2021 at 11.00 am;

NOTING that the said CSs 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 Coronavirus Disease (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-

- (i) 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,
- (ii) 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.

**The Speaker** (Hon. Lusaka): Distinguished Senators, that was a Notice of Motion. For us to be able to discuss the matter in details, take notice and we will discuss it tomorrow at 2.30 p.m.

## COMMUNICATION FROM THE CHAIR

### BREACH OF BROADCAST RULES BY MEDIA HOUSES

**The Speaker** (Hon. Lusaka): Hon. Senators, I have a Communication to make concerning breach of broadcast rules by media houses.

As you may recall, on Wednesday, 15<sup>th</sup> September, 2021, the Senator of Murang'a County, Sen. Irungu Kang'ata, CBS, MP, rose on a point of order pursuant to Rule 6(2) and (3) of the First Schedule to the Standing Orders.

Sen. Kang'ata drew the attention of the Senate to the Plenary proceedings of Tuesday, 14<sup>th</sup> September, 2021, when he had been given the Floor via video conferencing, to seek a Statement from the Standing Committee on Tourism, Trade and Industrialization, concerning the operations of the Murang'a County Creameries.

In the Point of Order, the Senator for Murang'a County informed the Senate that on that day, upon being given the Floor through the *Zoom* video conferencing platform, there was a challenge with regard to his settings, occasioning the Speaker to rule that the Senator relocates to a more appropriate location before seeking the Floor again.

The Senator thereupon complied with the Speaker's directive and proceeded to the Senate Chamber and made the request for the Statement from the Floor of the Senate.

Sen. Kang'ata brought to the attention of the House, a recording of the proceedings of the Senate, capturing the exchange between the Honourable Speaker and



himself, at the point at which the Speaker was trying to establish the location of the Senator before giving him an opportunity to seek the Statement.

Sen. Kang'ata stated that there was in circulation a version of the recording that had been manipulated to introduce a voice-over, in which an unknown person is heard stating that Sen. Kang'ata was at 'Sabina Joy,' a bar in Nairobi, from where he was attempting to address the Senate.

The Hon. Senator complained that the manipulated recording, which had been circulated in various social media platforms, and was calculated to malign him and cast him in bad light in the eyes of the public.

Sen. Kang'ata claimed that the complained of recording had also been aired and reported as news by four mainstream media houses; namely, *Citizen TV Digital*, *the Star Online Digital*, *K24 TV* and *Kameme TV*, thereby giving it undeserved legitimacy. This, the Senator alleged, to be a contravention of Rules 5 (3), 6(2) and (3) of the First Schedule to the Standing Orders on broadcasting rules.

Hon. Senators, a number of Senators rose in support of Sen. Kang'ata's Point of Order. They included the Senator for Kitui County, Sen. Enoch Wambua, MP, the Senator for Bungoma County, Sen. Moses Wetangula, MP, the Senator for Makueni County, Sen. Mutula Kilonzo Jnr., MP, the Senator for Wajir County, Sen. (Dr.) Abdullahi Ali, MP, the Senator for Kericho County, Sen. Aaron Cheruiyot, MP, and the Senator for Taita-Taveta County, Sen. Johnes Mwaruma, MP.

The Senator of Kitui County observed that professional ethics on the part of the media houses required that they verify any information received, to ascertain its accuracy and authenticity, before publishing it as a news item. The Senator further observed that the dignity of the Senate had been undermined and the Senate brought into disrepute on account of the publication of this false recording as a news item by the media houses.

The Senator for Bungoma County, pointed out that a number of Senators who were in the House on the material day saw Sen. Kang'ata as having been in a moving vehicle, and that he shortly thereafter walked into the Chamber and subsequently prosecuted the Statement, which he had earlier attempted while on the *Zoom* platform.

The Senator of Bungoma also stated that those in the Chamber did not hear anyone call out "Sabina Joy" when Sen. Kang'ata was on the online platform. He called for the media houses to apologize to the Senator of Murang'a County, the Speaker of the Senate and the Senate.

The Senator of Makueni County called for the correct video recording to be released to the media houses by the Parliamentary Broadcasting Unit (PBU), in order to curtail further circulation of the offending recording.

Hon. Senators, that being the first time the matter was being brought to my attention, I undertook to make a ruling on the matter today. The sum of the question on which I was called upon to rule was whether the recording in question and the manner in which it was carried by the media houses amounted to a violation of the Standing Orders, and if so, what action was appropriate to be taken by the Senate against the offending media houses.

In making a determination on this matter, therefore, I directed the Office of the Clerk to submit to my office, the alleged recording, the HANSARD recording in both audio and print, and the PBU recording for Tuesday, 14<sup>th</sup> September, 2021.

In addition, Hon. Senators will recall that I was, myself, presiding at the time the offending recording was purportedly made and I am, therefore, also able to recollect what transpired.

After going through the official records of the proceedings of Tuesday, 14<sup>th</sup> September, 2021, against the recording in question, I have no difficulty in finding that the offending publication was an amateurish and poor counterfeit of the authentic recording of the proceedings of the Senate by the super-imposition of a voice-over introducing the words complained of. It is a clear manipulation and a misrepresentation and fabrication of the sequence of events and proceedings of the Senate held on that day.

While it is lamentable that certain individuals using the anonymity of various social media platforms contrived, for reasons known to themselves, to produce and purvey this fabricated recording, it is unfathomable that mainstream media houses could join such a bandwagon.

This is not the first time that the conduct of media houses covering Parliamentary proceedings has come under scrutiny. Some Hon. Senators will recall that in the 10<sup>th</sup> Parliament, *The Standard* newspaper published a picture carried on Page Six of its *Crazy Monday* pullout of Monday, 22<sup>nd</sup> March, 2010, that became the source of the complaint.

In a ruling made on 30<sup>th</sup> March, 2010, the then Speaker, Hon. Kenneth Marende, observed that-

“... the purpose of media coverage of Parliamentary proceedings as envisaged in the Standing Orders and Broadcasting regulations and as would be reasonably expected is to relay fair and responsible presentation of Parliamentary proceedings to the public”.

The then Speaker further noted that-

“...the spirit behind the provisions permitting media coverage of Parliament is really no more than that the public is entitled to follow the proceedings and conduct of their representatives in the Legislature. Media coverage should not be used to serve any other purpose”.

These words ring as true today as they were then. Parliament is mandated under the Constitution, at Article 118, to conduct its business in an open manner and to facilitate the involvement and participation of the public in its legislative and other business.

It is for this reason that the Standing Orders, at Standing Order No.239, provide for the proceedings of the Senate to be broadcasted and the rules for such broadcasting provided for in the First Schedule.

1. Rule 5(1) and (3) of the Broadcasting Rules provide that-

5(1) Officers of the Parliamentary Broadcasting Unit shall conduct themselves in a professional and impartial manner, giving a balanced, fair and accurate account of proceedings.

5(3) Recordings of Senate proceedings may not be used for purposes of political party advertising, ridicule, commercial sponsorship or any form of adverse

publicity.

2. Rule 6 of the Broadcasting Rules that specifically make reference to external media houses state that –

(2) No external media house or other person may broadcast any proceedings of the Senate except as received from the broadcast feed provided by the Parliamentary Broadcasting Unit or with the permission of the Speaker.

(3) A media house that receives a broadcast feed from the Parliamentary Broadcasting Unit shall broadcast it without any manipulation or distortion.

Hon. Senators, these rules of engagement were put in place in recognition of the strategic position that the media plays in information dissemination and reaching a much wider spectrum of the public than Parliament would otherwise. The work of the media in complementing the work of the Senate in democratic governance of the country cannot be gainsaid. The media plays a fundamental role in influencing and shaping public discourse and opinion, and in building trust in public institutions.

Section 35 (1) of the Media Act provides that the media shall

“...inform the public on issues of public interest and importance in a fair, accurate and unbiased manner whilst distinctly isolating opinion from fact...”.

The media, in executing its work, must keep and maintain high professional and ethical standards and shall, at all times, have due regard to the Code of Conduct set out in the Second Schedule to the said Act. In this specific instance, no inquiry on its veracity was sought from the Parliamentary Broadcasting Unit, the Office of the Clerk or indeed the Office of the Speaker before the publication of the complained of recording as a news item.

The media and the Senate have a longstanding mutual and complementary relationship. It is worth noting that Parliament is open to the media and has always engaged the media through existing legal and institutional structures, including the Media Council of Kenya and the Editors Guild. In particular, the Media Council, which is established under the Media Council Act of 2013, is established to, among other things, promote and enhance ethical and professional standards amongst journalists and media enterprises. In furtherance of their mandate, the Media Council should ensure enforcement of the standards and code of conduct of the media at all times.

In the present case, the conduct of the media houses in publishing the fictitious and fabricated recording of the proceedings of the Senate without due diligence and appropriate verification, was a clear breach of the Standing Orders and the rules as I have recited above. It is an abuse of the privilege and responsibility vested in the Fourth Estate to cover Parliamentary proceedings. The media houses abdicated their professional ethics by rushing to air a cheap and sensational fabrication without crosschecking and verifying the facts and authenticity of the clip.

In this respect, Hon. Senators, Rule 7 (1) of the Broadcasting Rules provides that

–

“Any person who fails to comply with these Rules shall be liable to such penalty as the Senate may on the recommendation of the Committee on Privileges consider appropriate”.

Before pronouncing myself on the appropriate recourse in this matter, I wish to inform the Senate that it has come to my attention. I am, therefore, able to take what in legal circles is known as ‘judicial notice’ of the fact that on Wednesday, 15<sup>th</sup> September, 2021 and on Thursday, 16<sup>th</sup> September, 2021, *The Star Online Digital*, *Citizen Digital*, *K24 TV* and *Kameme TV* either pulled down and/or apologized to Sen. Irungu Kang'ata and the Senate for the complaint of recording. These media houses acknowledged that they had aired a manipulated video and went ahead to broadcast the correct version of the proceedings. These are acts of contrition, and I will take them into account as mitigating factors.

The apology and retraction by the media houses was the right decision under the circumstances. In my view, the apologies rendered constitute an admission of guilt and make it unnecessary for me to refer this matter to the Committee on Privileges for its consideration and recommendation in the manner contemplated by Rule 7 (1) of the Broadcasting Rules. In this case, the facts are no longer in dispute and a further inquiry and escalation of the matter may not be a productive use of limited parliamentary time, and may not even be in the public interest.

That said, it needs to be noted that the conduct of the media houses in breaching the rules on broadcasting was serious and should be treated as such. This conduct is particularly worrying and must be nipped in the bud, coming as it does, at the advent of the electioneering season. At this time, more than any other, the media needs to act with utmost circumspection and caution lest careers are destroyed, institutions are debased and even the whole country is endangered on account of lapses of professional judgment.

Taking all the relevant factors into consideration, including the apology and retraction I have referred to earlier, I consider it appropriate that a reprimand be issued to the four media houses for contravention of Rule 5 and 6 of the Broadcasting Rules.

Accordingly, the following media houses are reprimanded and cautioned that a repeat of the offending conduct will invite more severe action.

They are-

- (a) *The Star Online Digital*;
- (b) *Citizen Digital*;
- (c) *K24 TV*; and,
- (d) *Kameme TV*.

Let me conclude by calling on all media houses and, indeed, all persons including bloggers and other commentators on social media and other public spaces to exercise caution and utmost responsibility in reporting on parliamentary proceedings. The democratic process will not be served by falsely and maliciously reducing the Legislature, which is the apex representative of the sovereignty of the people, into an object of scandal and ridicule.

I thank you!

(Applause)

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

**Sen. Olekina**: On a point of order, Mr. Speaker, Sir. I am troubled as a Member of the Committee on Energy. The Communication that you have given is quite in order;

that media houses should respect this House and the responsibility that they should carry. However, I would be lying to myself to say that I am comfortable with the direction you gave.

When we adjourned temporarily, I expected the Chairperson of my Committee to prepare a report and table before the House. However, when we got back here, the Senate Minority Leader tabled a Notice of Motion to discuss a very important matter. The two Cabinet Secretaries who were supposed to appear before this House today is what we were going to discuss here this afternoon.

I am not comfortable with the fact that we are now going to make it a debate. I am not so sure what that debate will result to, yet we have not completed the work that we are supposed to do. This issue really bothers me. It also makes me realize and support everyone who talks about a system that is mixed, where the Cabinet Secretaries sit in the Houses of Parliament, so that they can be made accountable.

The Cabinet Secretary in the Ministry of Petroleum and Mining, Hon. Munyes and the Cabinet Secretary for Energy, Hon. Keter, are making a mockery of this House. We cannot just fold and decide to discuss other issues such as how the media behaves. By doing that, it also makes us unaccountable.

Mr. Speaker, Sir, we have a task that we are supposed to complete as the Committee on Energy. You gave a direction on the task and we have not completed it. We now have a Notice of Motion to come and discuss the two Cabinet Secretaries tomorrow. What happens to the issue of fuel prices? Will it change once we discuss the two characters tomorrow? What should we be doing this afternoon? I am bothered because I do not want to be unaccountable like those Cabinet Secretaries.

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

**Sen. Murkomen:** On a Point of Order, Mr. Speaker, Sir. Is Sen. Olekina in order to mislead the public that the Motion brought by Sen. Orengo discusses merely the two Cabinet Secretaries? To the contrary, the Motion puts precedence on the question of discussing the grave concern on the unprecedented increase in fuel and electricity cost and the adverse effects that they have on the economy and the livelihoods of the people of Kenya. That is the first issue that we will debate tomorrow before we even discuss anything about the Cabinet Secretaries.

Secondly, when a Motion has been brought to this House, like the one the Senate Minority Leader has brought, if there are things that a Member of this House wants to add to that Motion, they can amend the Motion and improve it tomorrow. I do not think my colleague, Sen. Olekina, took his time to look at the issue.

In fact, I find it misleading that he is trying to refer to your ruling, which was on a different matter on the media issue, which we have rested, and convolute it with the discussion tomorrow on this implementation Motion. If there is something he wants to add, nothing stops him from amending the Motion tomorrow.

**The Speaker** (Hon. Lusaka): Yes, Senate Majority Leader. You do not have to respond.

*(Sen. Olekina spoke off record)*

Order, Sen. Olekina!

**The Senate Majority Leader** (Sen. Poghiso): Mr. Speaker, Sir, I join you in congratulating yourself and the ruling.

*(Laughter)*

You can congratulate yourself. Let us use this opportunity to congratulate you, notwithstanding what the Senator is raising because the point of order should have followed your ruling and not the point of order on a matter that has been passed. We are already on another order, and so, he cannot be raising a point of order on an Order that was two days ago.

I think you had invited Sen. Olekina to know that the Speaker's ruling is the matter that is current. That is what we should be discussing. You raised a point of order on that matter. If the Speaker is making a ruling, there will be nothing out of order.

I congratulate the Speaker on the matter he raised on the media. The matter of fuel prices will come tomorrow. The issue we should be talking about is the misleading media report that caused a problem to a Member of this House.

*(Loud consultations)*

Order!

We can then raise the matter of our friend, Sen. Kang'ata, who was misrepresented. The media raised issues about Sen. Kang'ata and the Speaker has made a ruling. Mine is to support the Speaker on the matter. When I was in the Ministry of Information, I created the Media Council of Kenya, which is responsible for the rules that bind the media. This means they cannot misreport, just as I heard Sen. Wetangula speak. He said that even if Sen. Kang'ata had problems with anybody, we would defend him when it comes to being misrepresented and misreported.

As your friend, I am here to say that my business is to defend a Member of this House at any cost. Let us defend each other. The Speaker has raised the matter, and I think I have seen the media houses have apologized. I know some have apologized, but some have not. Some of the people who started this matter need to apologise. I agree with you that you do not have to pursue it any further than that. They have been warned and let us have a Member of this House respected, whatever his status is. We have a situation in our hands and this House needs to be respected by the media.

Let me come down to the matter present on the fuel prices. It is the first thing on the Order Paper tomorrow. We will get prime time tomorrow when the media is on and we have live coverage. That is the moment we can discuss this matter. For today, let us finish the business of the order of the day. Tomorrow, at 2.30 p.m., we will be able to proceed.

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

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, allow me to raise the two issues that the Senate Majority Leader has spoken about. Sen. Kang'ata was not misrepresented; he was defamed. It is not the same thing. Now, speaking like a lawyer, listen. Even when you withdraw an offending video from a platform, it has circulated. Sen. Kang'ata has been defamed. Do not say and do not caveat him because he has a right. I have

represented so many people. He has a right to seek civil remedy for the damage to his reputation.

Lastly, I thought that procedurally – and we are learning – the Motion by Sen. Orengo--- I thank him for being bold. It is only bold people who do bold things. When you bury your head in the sand, you cannot rise at some point. Somebody has buried their head in the sand and that is why we have a Motion as opposed to a report. It would have been nice to have a report tabled, highlighting some of these things, so that you complete the process properly, following your direction, and then we have a Motion.

Chairman, for how long will your Committee hide its head in the sand? For how long are you going to treat Cabinet Secretaries (CSs) with kids' gloves, so that Sen. Orengo then appears the bold one? You have now thrown it to the Minority, so that it does not look as if Government is attacking Government. That is cowardice.

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): There is a point of order by Sen. (Eng.) Maina.

**Sen. (Eng.) Maina:** Mr. Speaker, Sir, I rise on a point of order because we have arrived, and the direction taken on this matter was after consultation with the House. The Committee has achieved and done its best. From March to September this year, there was no increase in fuel prices. My Committee kept pushing these people against fuel prices. Nobody can come here and rhetorically pretend to be talking of bravery. Brave men are on the warfront and not on rhetoric. That is where my Committee has been fighting.

*(Several Senators stood up on points of order)*

**The Speaker** (Hon. Lusaka): Order! I have your names here. I will give you an opportunity. I am following.

**Sen. (Eng.) Maina:** Mr. Speaker, Sir, I beseech you for heaven's sake, do not be carried away by some dictionary words.

*(Laughter)*

Get people online to state the facts. Do not get them to be throwing rhetoric here and there as if they are beating drums.

*(Several Senators raised their hands)*

**The Speaker** (Hon. Lusaka): Just use your card. Do not raise your hands.

*(Laughter)*

Sen. Wetangula, proceed.

**Sen. Wetangula:** On a point of order, Mr. Speaker, Sir. We are mixing up two things. You have given a ruling on the issue of Sen. Kang'ata and how he was not misrepresented, but defamed. Your ruling is laudable.

I beseech you that Standing Order No.94 restricts us from anticipating debate. Sen. Orengo has rightly given a Notice of Motion and we have gone past that Order. The Debate is coming tomorrow and I am happy. Having waited this long, it would have been so constraining. We would have some Senators saying everybody speaks for two minutes. What can you speak for two minutes? You have given us tomorrow. We urge Senators to be here tomorrow from 2.30 p.m. and fully debate fuel, electricity and the misconduct of the two CSs snubbing the Senate. We should not flog that issue anymore. In fact, we are out order if we debate that Notice of Motion.

Secondly, I join you in the ruling on media houses. We need media. We need the media because they give us coverage and tell Kenyans what we say. However, they have no right to malign a distinguished Member of this House on a matter that was not there.

Mr. Speaker, Sir, as we do so, many people have been asking whether strangers are also hooking on the Zoom platform when we have our debates. It does appear that there could be infiltration by strangers on the Zoom platform when proceedings are going on.

Your office and the office of the Clerk needs to check the provider of that platform to see that it is unfilterable and is a closed circuit. If there are Senate proceedings, there is no stranger who can come here and talk while proceedings are going on. If a stranger out there can infiltrate and utter unprintable words about a Senator, it is wrong.

I saw that at least one or two media houses tendered an apology immediately after the matter was raised and played the correct version. I encourage those that did not to take the cue from those who did and do the same thing. It is always good to let the chips lie where they fell, so that we can proceed to deal with more important national issues that we will debate tomorrow.

Mr. Speaker, Sir, as I sit, I want to encourage Sen. (Eng.) Maina that Shakespeare said ‘uneasy lies the head that wears a crown.’ Once a crown is put on your head, you must be ready to be stoned, besmirched, slighted, and sometimes abused or flogged because you are a leader.

As the Chairperson of the Committee, he should not have a short fuse, but take everything in stride. Some Members will attack him because they are frustrated, others because they do not like him, others because he is in a position they wish to be in. He should just take it in stride. We will continue telling him that he acted incompetently this morning. This does not mean that I hate him. It is because it is true and we must be ready to take this criticism.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Sen. Orengo, you still want to speak?

**The Senate Minority Leader** (Sen. Orengo): Mr. Speaker, Sir, we had passed this Order as rightly put by Sen. Murkomen and Sen. Wetangula. However, I beseech the House that we are a House of records. I will give an example of when Josiah Mwangi Kariuki was murdered. The matter was raised in the House, but because they needed to put on record material which would then move to the appropriate authorities to take some action, they came by way of a Motion after the matter had been raised informally.



I have heard a lot of what people have said. For example, the Senator for Nandi talked about the price of fuel in other jurisdictions. That is very important material that we should put before the House when we have a debate on this matter. People have noticed. We should have some material that we place before the House during that debate, instead of just having a general debate. I think that we need to put some material before the House on the two issues.

Mr. Speaker, Sir, the work of the Committee will go on. The Committee is still seized of the matter. However, there are two things that have arisen. One is the contempt by the Cabinet Secretaries (CSs) on which we need a resolution. In order to get there, we must have some material on what happened before.

Secondly is the question of what the country is feeling now. Sen. Sakaja toured Nairobi and it was a lavish issue wherever he went. When we debate this matter, it is not just for any Member to stand up for two minutes and say that people are suffering. If you go out there, people will tell you that they are suffering. However, we need to put some material as we debate so that when we make a resolution, there will be some record that we had justification in bringing this Motion forward. I plead with the House, particularly Sen. Mutula Kilonzo Jnr. In this one, there is no question of cowardice. We will see cowards when we are voting, not when we are proposing the Motion. That will come another time.

Mr. Speaker, Sir, I can assure you that on my part, I will turn up to move the Motion when it is called tomorrow. I am assured that it is will be there tomorrow. In order to make sure that we have no doubt about this matter, if you can all, I think there should be a House Business Committee (HBC) meeting, so that the Motion will be indeed the first business tomorrow.

No Member of Parliament (MP) should be told that they are going to speak for two minutes. Everybody should speak on this matter for a minimum of 10 minutes. If I start now, I intend to take one and half hours because I have material, especially on this issue of contempt by the CSs. We want to demonstrate what happens in other parliaments when CSs do not appear before parliament and for it to be put on record.

The other example I want to give is that when some CSs refused to appear before a judge, the judge said that he could not order policemen to arrest them, but had one tool, which he used. The CSs had to obey because they knew the consequences. Tomorrow, we will also talk about what tools we have. If we talk now, it will just be a *baraza*. We do not want to be a *baraza*.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): I can see some interventions. Please, let us not discuss the Motion because it is coming up tomorrow.

**Sen. Sakaja:** Thank you, Mr. Speaker, Sir. I know that this is not the most ideal way of dealing with this issue. I understand the wisdom and the need to have this censure Motion, but remember that you directed that these CSs appear. On top of expressing concerns, which is what we are going to do--- Kenyans have expressed concerns about the fuel prices. We want to get a solution for Kenyans. That is the intention.

I urge that you further direct that those CSs still appear, whenever it is. They still have to come. The matter is not away from the Committee. The Committee might

imagine that since we have a Motion tomorrow, their work is done. You still need to further direct that they appear. In fact, they should now be summoned to appear to answer---

Sen. Orenge has rightly said what Kenyans want. The other day in Korogocho and Kariobangi, everyone expressed that concern. They have a lot of confidence and faith in this House. They expect a solution from the Senate. That is what we want to discuss more than just expressing concerns.

Mr. Speaker, Sir, I ask that you further direct that the Committee still holds that meeting after our Motion tomorrow. The Chairman says that they have material and have discussed this from March. Could they furnish us with that material before the Motion? Otherwise, people will just say how fuel is expensive, then what? Kenyans want solutions. That is my kind plea to you.

**The Speaker** (Hon. Lusaka): Finally, Sen. Cheruiyot, so that we conclude on this.

**Sen. Cheruiyot:** Thank you, Mr. Speaker, Sir. I join the rest of my colleagues in appreciating a very wise ruling that you gave this afternoon. It is well considered and very balanced. Many of us who are keen followers of media practice in this country will record that this is a time that our media has sunk at its lowest ebb in terms of its standards of practice; be it in its reporting of political issues or anything else that is of grave concern to the country.

On the day that we were handling the issue of Sen. Kang'ata, I pointed out instances where mainstream media, not just bloggers--- Nowadays, some of these bloggers are even more accurate than the mainstream media and the kind of things that they say. You gave the kind ruling that you have given reminding them that they are the Fourth Estate outside the three, one of which is Parliament.

The media plays a very important role in the country in terms of forming the psyche and how you build up a nation and emerge to be a respectable democracy.

The kind of things we are nowadays seeing---. I know if there are still ways through which I can make the request I had made that day. My request at that time was to have Members of the Committee on Information, Communication Technology (ICT) have a sitting with the Media Council of Kenya and ask them about the proliferation of fake news in our country and how it is becoming a common practice.

Is it for want of sufficient laws to put many of these media houses to check or is there something we can do as a House to have them checked? This is so that we have the media do that right thing, report what is factual, be unbiased and professional. It is not too much to ask.

Thank you, so much Mr. Speaker, Sir for that ruling. I guess those who are keen followers of the media such as Wambua and a few others can still caucus and find a way through which we can get that exercise done by this House. I believe it is something we need to do as a House.

*(Loud Consultations)*

**The Speaker** (Hon. Lusaka): Distinguished Senators, consult in low tones.

**Sen. Cheruiyot:** Finally, allow me to make a comment on the other issue where everybody has already done so. I am quite clear in my mind what we want to achieve out of this exercise.

During the *Kamukunji* when we took a break, many of us said that if this House can rise to the occasion and solve this issue of fuel, electricity and the debt crisis, we can close this House and say we have met our purpose in terms of what we needed to do and rise up to the challenges we are facing as a nation.

I know we have had a distraction in the failure by the Cabinet Secretaries to appear before us but I believe tomorrow when we speak--- First, you need to direct that all Members of the Committee on Energy including my good friend, Sen. Olekina, to be here with a pen and paper and record the comments and concerns of Members so that when they interact and engage with those CSs, if we are invited again because you had accorded us the opportunity to come as Members of the House, we will be asking those questions.

Tomorrow, we will just first express our displeasure but second and most importantly, to frame the questions we expect those people to address when they appear before the Houses of Parliament in terms of the concerns Kenyans have with regard to the cost of fuel and power.

I do not feel that anything has been lost. We shall be caucusing to make our thoughts known until we bring the cost of fuel and electricity down. If we achieve that, we will have served our purpose as a House.

*(Sen. Cherargei consulted with Sen. Kinyua)*

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

**The Senate Minority Leader** (Sen. Orenge): Mr. Speaker, Sir, is it in order when Sen. Cheruiyot is making a very important point that Sen. Cherargei is on his feet throughout and engaging two Senators?

In fact, I have noticed that whenever Sen. Cherargei is speaking, Sen. Cheruiyot is always dead quiet. I do not know what he has against the Senator of Kericho, that as soon as he starts speaking, he feels that he must talk to somebody.

*(Laughter)*

**An hon. Senator:** It is a border issue.

**The Senate Minority Leader** (Sen. Orenge): No, it cannot be a border issue and he cannot be bonding unless he is firmly in bed with somebody.

Sometimes when there are rules in the House, it is good to obey them. Sen. Cherargei was on his feet throughout and talking. Even Sen. Murkomen who started listening was drawn away by Sen. Cherargei and I think that was not right.

**The Speaker** (Hon. Lusaka): The Senate Leader of Minority is raising a very pregnant point. I would expect that we conduct ourselves within the laws and the rules of this House. It is important to listen to what is going on. That is how we make informed

decisions. Sometimes you do not listen and then wake up and say something that has already been said by somebody else. Let us try to observe our rules.

We want to conclude. As I gave direction, tomorrow, we will have all the time to discuss it. As for the Committee, I think you should continue because the CSs gave some timeframe. Time is not a strategy because it will come and they will obviously appear.

**Sen. Wambua:** Mr. Speaker, Sir, I had sought your permission to make a comment on your ruling relating to the broadcast against Sen. Kang'ata. Your ruling was reasonable; not punitive. You have given the right direction on this matter.

I sit in the Senate Standing Committee on ICT. As Sen. Cheruiyot has pointed out, it would be important for this Committee to have a serious special meeting with stakeholders in the media industry especially the Media Council of Kenya, the Editors Guild and the Media Owners Association, to address ourselves to the question of how the mainstream media houses react and operate within an environment where there is so much pressure from alternative media.

I also take this opportunity and say that a time has come for us as a Senate to also ask ourselves a very candid question regarding the safety of the online applications that we are using to transact official Senate business.

When we said we were going to have online meetings for the Senate, I thought the decision was that the Senate was going to procure a system that was almost tamper proof with sufficient firewalls around to ensure that we are not easily infiltrated. I am not certain that Zoom would provide that solution to us. As a Senate, we should also be asking ourselves whether we can do better in terms of the online platform that we want to use to carry out hybrid Senate Sittings.

**Sen. Murkomen:** Mr. Speaker, Sir, I think the rules that apply to this House as rightly captured by yourself are particularly different from the ones that refer to a general discussion by media houses on our performance as leaders, even outside there.

The question of defamation of Sen. Kang'ata from the context of which you issued a Communication, your part of this Communication is not to defend Sen. Kang'ata from defamation. Yours is to protect the integrity of the House. Reading from your Communication, you focused more on protecting the integrity of the proceedings that emanate from this House. This is because HANSARD is a very important source of information for many years down the line.

Those who distorted that clip are one part of this conversation but the other part is those who shared. What is not captured in your Communication is what the relevant Government agencies are going to do to establish the source of that distorted clip. That is very important because this can be repeated many times.

Personally, I was not in the Chamber but the way it was distorted, in spite of being a Senator, I thought there was a colleague in the Chamber until I found the real record of the Senate. What about members of the public?

I thought in your further observance of this matter, this House and the Speaker should write to the Director of Criminal Investigations (DCI) to establish the source of the distorted clip.

Mr. Speaker, Sir, there is a criminal culpability that can be found on that clip based on the Data Act that deals with matters data as well as the Media Act. I request

your office to go a step further beyond just protecting and informing the public about the authenticity of the statement of Sen. Kang'ata but also what the criminal culpability is and how the people who worked on the statement can be brought into account.

Mr. Speaker, Sir, the integrity of our media houses is in question because there is always a competition among the media houses to be the first ones to share what appears to be sexy news or sensational. That clip was looking very attractive and sensational to the point that media houses which are respected by all of us were the first ones to share. A warning should go to the media houses for them to go back to the traditional required standards of media practice of verifying information. That applies to not only the kind of news that touched on Sen. Kang'ata. Sometimes the media houses break the death of prominent people without recourse for a family member who has suffered due to receiving news of the death of their loved one only to find that it was fake news. These are some the things that the media houses should deal with; some within the law while in some instance, the Editors' Guild should be engaged as we have done before for them to appreciate that integrity is more important than being sensational.

I thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Proceed, Sen. Omogeni.

**Sen. Omogeni:** Mr. Speaker, Sir, I would like to fortify what my learned colleague, Sen. Murkomen, has submitted before you this afternoon. About three years ago, this country enacted a law, the Computer and Cyber Crimes Act that was specifically meant to deal with these kinds of offences. The point being made by Sen. Murkomen is that there is a criminal somewhere who is the author of the video that has been circulating. Unless the police officers are able to trace and track down that particular person, somebody else will do it tomorrow. You can reprimand the media houses but what about these unscrupulous characters out there who are waiting for any opportunity to manipulate the proceedings of this House and even other entities taking into account that cases in courts are being heard online.

We need the Directorate of Criminal Investigations (DCI) to conduct thorough investigations to ensure that the author of the video is arrested and action taken against him. That video has circulated all over. Some of us saw the video miles away from this country. If we let the issue to go unpunished, we will not have deterred the person behind the video. We should reign down on the media Houses. However, the person that this House should go after is the one who authored it because there was malice. It is clear that the video was done with a malicious intent. It was not done in good faith. Somebody somewhere wanted to damage the character of Sen. Kang'ata. I request that the Directorate of Criminal Investigations (DCI) does investigations that the culprits who authored that video are brought to book and action taken against him or her.

**The Speaker** (Hon. Lusaka): Hon. Senators, your sentiments are noted. We will make a follow up so as to establish the origin of that video clip. I agree with what Se. Murkomen said, the media has in some cases killed prominent people by stating that they are dead when they are still alive. In such instances, even if they issue an apology, the damage is usually already done. I instruct the Directorate of Criminal Investigations (DCI) to get to the bottom of that video clip so that we know where it came from.

Let us move to the statements now. The first statement is by Sen. Sakaja.

## STATEMENTS

## STATUS OF THE NEW DANDORA STADIUM

**Sen. Sakaja:** Mr. Speaker, Sir, I rise pursuant to Standing Order 47(1) to make a statement on the status of the new Dandora Stadium in Nairobi City County.

Mr. Speaker, Sir, the Dandora Stadium has for many years been a community stadium where young people in Nairobi have engaged and many who have had sterling careers in soccer and other sporting activities have considered it home.

The new Dandora stadium in Embakasi North Constituency was commissioned in 2018 by the County Government of Nairobi and it was to be completed in 24 months. However, up-to date, the stadium is yet to be complete. The project has been marred by controversies in its procurement process and allegations of poor workmanship by the contractor who was awarded.

The delay in the completion of this facility is a great disservice to thousands of talented young people who had hopes that it will be of use to them in enhancing their talents especially in sports. For those are familiar with Dandora, due to the closure of the Dandora Stadium, there are many young people who I know that have gone back to a life of crime while some have lost their lives through extra judicial killing.

Mr. Speaker, Sir, this delay has also been occasioned by the ongoing investigations on the procurement irregularities by the Ethics and Anti-Corruption Commission (EACC) which is yet to give its outcome. In February this year, the President of the Republic, Hon. Uhuru Kenyatta, directed that the ongoing works of which 20 per cent or less work was left, be completed within a matter of weeks. However, that did not happen. I took time to speak to the Director General of the NMS and the Acting Governor of the Nairobi City County Government who only gave lip service. I did that because the young people of Dandora were going to storm the stadium and open it themselves because they are happy with the works so far done.

I would therefore like to inform this House that we will invite the Director General of the NMS and the Acting Governor of the Nairobi County Government before my Committee for them to give a full status report on the progress made towards the completion of the project, the costs incurred and when the stadium will be opened.

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

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

Mr. Temporary Speaker, Sir, the people of Dandora cannot wait any much longer for the opening of the stadium.

I cannot request this statement to be given to my committee because I Chair the Standing Committee on Labour and Social Welfare. It is for that reason that I have taken time to inform the House on the action that my Committee will take. The Nairobi County Government and the NMS has had enough time and there is no more time for them.

Mr. Temporary Speaker, Sir, I thank you.

**The Temporary Speaker** (Sen. Kinyua): Thank you, Sen. Sakaja.  
Next statement.

ALLEGED SHOOTING AND DEATH OF  
MR. ALEX MACHARIA

The next statement is by Sen. Omanga but she is not in the House. The statement is therefore deferred.

*(Statement deferred)*

Let us move to the next statement by Sen. Sakaja.

STATUS OF BOREHOLES ACROSS  
NAIROBI CITY COUNTY

**Sen. Sakaja:** Mr. Speaker, Sir, pursuant to Standing Order No.48 (1), I rise to seek a Statement from the Chairperson of the Committee on Land, Environment and Natural Resources on the status of the boreholes installed by the Nairobi Metropolitan Services (NMS) across Nairobi City County.

There have been concerns by residents of Nairobi City County, especially in the informal sector, that majority of the boreholes sunk and launched with a lot of pomp and pageantry in the last 24 months, are no longer functional. Therefore, they are not serving the intended purpose of alleviating water shortage in the informal settlements.

In his detailed response, I would like to request the Chairperson to address the following:

(1) Give a report on the functional status of all boreholes sunk by NMS and the cost incurred.

(2) Give a report on the quality of the water from these boreholes and if the water is still fit for human consumption.

(3) Clarify on the alleged issues. I have received allegations from Nairobians that some of these water points and boreholes have been taken over by unknown individuals and institutions, which are now charging residents' access to the water. The entire plan from the time it was planned during COVID-19 was to have Nairobi City County residents access this water for free.

**The Temporary Speaker** (Sen. Kinyua): Thank you. The Statement is committed to the Standing Committee on Land, Environment and Natural Resources.

Next Statement is by Sen. Cherargei.

**Sen. Cherargei:** Thank you, Mr. Temporary Speaker, Sir. Before I read my Statement, kindly allow me to congratulate you on being a Member of the Speaker's Panel. I wish you well and hope that you will guide this House with Solomonic wisdom when called upon to make decisions. I wish you the best. We are proud that you are now a Member of the Speaker's Panel. It allows all of us to grow and learn rules and procedures of the House. Since you have mastery of Kiswahili, we hope that in the near future, you will be guiding the House in Kiswahili. I wish you well.

My request for Statement is on malpractices by players---

Sorry, Mr. Temporary Speaker, Sir. I picked the wrong Statement. I think I am excited by you being in the Chair to the point of disorganising the statements.

**The Temporary Speaker** (Sen. Kinyua): Thank you. Give him the correct Statement.

DELAY BY KSL TO PROCESS GAZETEMENT  
OF STUDENTS WHO HAVE GRADUATED

**Sen. Cherargei:** Mr. Temporary Speaker, Sir, I rise pursuant to Standing Order No.48 (1) to seek a Statement from the Committee on Justice, Legal Affairs and Human Rights, on the delay by the Kenya School of Law (KSL) in processing gazetement for students from all over the country who have completed training.

In the Statement, the Committee should:

(1) State why the names of over 900 students, who completed training at KSL in August, 2021, have not been forwarded to the Council for Legal Education (CLE) for gazetement.

(2) Explain why there is lack of coordination between KSL and the CLE to ensure that students are gazetted on time since there is no time on the same legally or through a policy.

(3) State why CLE released General Notice No.13 of 2021, indicating that the gazetement of qualified candidates would only be done in March, June, September and December, but without any adherence, so far, after issuing that Gazette Notice.

(4) Provide a comprehensive report from KSL indicating the number of students who have completed training in 2021 and before; and their names forwarded for gazetement through the *Kenya Gazette*. Also, provide a report of those who have completed, but their names have not been forwarded for gazetement, stating the reasons for the failure to forward those names.

**The Temporary Speaker** (Sen. Kinyua): Thank you, Sen. Cherargei. The Statement stands committed to the Standing Committee on Justice, Legal Affairs and Human Rights.

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 16.9.2021)*

**The Temporary Speaker** (Sen. Kinyua): Sen. Sakaja, you had 33 minutes left to move that Bill.



**Sen. Sakaja:** Thank you, Mr. Temporary Speaker, Sir. I had begun moving this Bill. However, allow me to also congratulate you for assuming the Chair. I think it is a coincidence that you have gone to the Chair for the first time when I am speaking. When Sen. (Dr.) Mwaura joined the Panel and first sat on the Chair, I was on the Floor. So, there is a probably a blessing that comes when I am on the Floor. You should invite me more often when I make a request. Congratulations! I know you are up to the task and I know you have been in that position before. We hope that you will continue being objective as you guide this House in its deliberations.

Mr. Temporary Speaker, Sir, we have been talking about the matter of Cabinet Secretaries. Allow me to inform the House that tomorrow, the Cabinet Secretaries for the National Treasury and Labour and Social Protection will attend the sitting of the Committee on Labour and Social Welfare on the matter of the one-off honorarium to former councillors. That is a matter that is also close to your heart and the hearts of many Members in terms of how it is to be dealt with. I will share the credentials on the official page of the Senate for Members who will be available to join.

Mr. Temporary Speaker, Sir, this Disaster Risk Management Bill is extremely important. As I mentioned last week, this is a Bill whose process had begun. The Senate had passed it together with the Co-sponsor, Sen. Mutula Kilonzo Jnr. However, it went through the plight of all these other Bills that had to be republished due to the court ruling in the favour of the Senate. So, this is the second time we are discussing this.

In that same spate of time, our friends in the other House also took liberty to copy and paste – to plagiarise – our Bill. The Ministry has also tried to plagiarise our Bill and it is ongoing as well in the other House. However, we will stick our guns to this because this Bill has come out of a lot of discussions, research and experiences that we have gone through.

Yesterday, there was a fire in Ofafa Jericho Secondary School. Five students were taken to Metropolitan Hospital for check-up after inhaling fumes. The fire started at 6.45 p.m. and the first response was an NMS fire engine at 7.50 p.m. That is an hour later. The fire was put off by the students. The fire engine did not have to do anything. Students had to take buckets and put out the fire. There was no firefighting equipment in that school. The nearest fire station could not serve these students.

The school has been closed and there has been loss of many facilities, including I think 11 sections of the dormitories. Property has been lost, but we are glad that there has been no loss of life. We wish a quick recovery to those who have been injured. Personal effects of around 22 boys were completely burnt and, of course, you know how these things go. I will have to start coming around to you to give me something to take to them.

Mr. Temporary Speaker, Sir, that is what we are trying to address in this Bill. Just a few weeks ago, it was Gikomba. There have been so many fires in Gikomba that, personally, as the Senator for Nairobi City County, I have stopped going at the response of a fire. Even the public think we enjoy to go and look as heroes at the scenes of fires. However, if we do not go, they will say that we do not care. These things put us in such awkward positions.

I am glad in some of these incidences, well-wishers assisted a lot. When there was the last one in Kamkunji, I really pushed the Cabinet Secretary (CS), Dr. Matiang'i, and his Principal Secretary (PS), Hon. Kibicho who gave us resources which we distributed to the victims. In Gikomba as well, I was not able to go, but I quickly called Hon. Yusuf who gave us some resources. However, it cannot be about who you can call and what you can in the case of fire or any other disaster.

Mr. Temporary Speaker, Sir, this Bill seeks to create a legal framework that will address such disasters from the early warning signals to the disaster mitigation and to making sure that we train people. How would these young people know what to do in case of fire in their school? What will my people in Kibagare do?

A few weeks ago, I had also another fire there. Fortunately, a young man, a very good coordinator of mine called Sean called me. I was able to get through to the county government. In less than 15 minutes, the fire engines were there and they had water. Many times you will call them and they come without water as if they are coming to watch the fire as well.

Mr. Temporary Speaker, Sir, the way disaster risk has been managed in this country has been a disaster. If a county like Nairobi City with more resources than most counties have these challenges, what about other counties like Bomet or Makeni?

What we have done and we are proposing first is coordination from the national level and the county level. That coordination must be done. There is need to have a single authority at the national level that deals with disaster.

Mr. Temporary Speaker, Sir, a few years ago, that must have been 2015 or 2016, I remember spending three nights at Huruma where a building collapsed. Where the building had collapsed is just a few metres from the National Youth Service (NYS) headquarters, but no one was able to come at that time because of the protocol.

I thank again my friends who came through. All I had done was to buy milk and bread and load it in my car and went there to say what we need to do. It is the young people from Ngei Ward in Mathare who came to rescue the victims. I was able to organise them and we rescued some people.

Mr. Temporary Speaker, Sir, it was so sad. You can imagine the tool that was used to cut the steel bars in a collapsed building, I had to purchase from a hardware store yet the officers were just looking. I really pity the officers because there is nothing they can do themselves. The most painful part of it was to see officers carrying 21 bodies on the third day of children who could have been rescued on the first day if there was proper disaster risk management.

There have been incidences and I know I have shared this with my co-sponsor Sen. Mutula Kilonzo Jnr. where the site of the disaster, you have three Government agencies staring at each other in the eyes. You have the National Disaster Management Authority (NDMA), National Disaster Operations Centre (NDOC) and National Disaster Management Unit (NDMU). They are looking at each other. There is no single command.

Mr. Temporary Speaker, Sir, if anybody has dealt with disaster risk, you know that the first few minutes are the most critical. That is when you save lives and property. We are not creating a new entity. This entity is bringing them together. People have complained we have too many agencies and it is true.

We do not want to create many more, but we are bringing them together with the resources they have under single command at the national level. At the county level, there shall also be the County Disaster Risk Management Committees (CDMCs) which bring as well the county and national government.

I can imagine if that happens. I have seen it happens my county. The county government is doing one thing and the county commissioner or regional commissioner for the case of Nairobi City County is doing the complete opposite thing. We end up losing a lot of precious time to deal with these disasters.

Mr. Temporary Speaker, Sir, we have put those transitional provisions, how the staff of the NDOC, NDMU and the Department of Special Programmes will now come together under this authority to work together and have resources. I do not know how it works with other counties. When we have had disasters in Nairobi a lot sadly, we have to call a certain individual who sits at the store to give you maize and beans from the Government.

If you are in the good books of Government, you might get. If you are not, they will not give you. It is not for you. I am not going to eat all that maize. I am taking it to my people in the slum. When I ask for *mabati* where people have lost their structures, it is not for me. That subjective way of dealing with disaster is what must stop.

That this Department of Special Programmes, where sometimes somebody has been changed and you agreed that this is good it will help me. Then another comes. I would like to tell them; it is not us you help. The CSs and PSs you must know that when I come to your office as a Senator, I am not coming for my own interest. I am representing the people of Nairobi City County who have been affected by disaster.

Mr. Temporary Speaker, Sir, two weeks ago we had a disaster in Kawangware, Gatina, it pained me to see that it was individuals who were assisting. I saw Hon. Musalia going to take things there. I have sent things myself. Now all the Members of County Assembly (MCA) aspirants are asking me to give them things to take. We must divorce disaster from politics. It cannot be that we dance on the grave of Kenyans or on their misfortune.

This is one of the Bills that will really make a mark if we pass it. It will give us a lasting solution because that unsustainable way of dealing with disasters that becomes a photo opportunity for politicians will change.

Mr. Temporary Speaker, Sir, we saw fire hydrants in Nairobi all over our estates and in town. I am sure even the young people do not know what those are because they have not seen them working. We need to have that coordination.

There are many types of disasters even terrorist activities sometimes. I remember very well and I am repeating this during the Westgate Attack, at that time I used to be the patron of the National Gun Owners Association (NGOA). This association is of many gallant men and women who are heroes, including our colleague, Sen. Abdul Haji. He was one of those first responders who went as a civilian.

It was a Saturday and normally we train. These days we train in our own range, but we used to train that time with the General Service Unit (GSU) in Ruiru Exit 13. When word came out that this attack has happened, the civilians were able to leave and

go to Westgate, but the officers had to wait for orders to come from one level to another. They came late because of that. There was no ability to quickly respond.

Mr. Temporary Speaker, Sir, GSU, police and military officers came. Unfortunately, one of our friends, Mr. Munene, from the GSU was killed by the military because of lack of a coordinated response. May God rest his soul in peace. This Bill intends to sort out such issues.

We know we have early warning signals. We cannot be going to Budalangi every year to give money and solutions for floods. We know there will be floods even this year. We cannot be always taking resources to Huruma and Mathare. Every month, there is a fire. We know. If you are mitigating these things, you know what the cause of that disaster is. The cause of those fires, for instance, is electric faults.

Mr. Temporary Speaker, Sir, I have tried with the former leadership and now Kenya Power and Lighting Company (KPLC) has too many changes. I was trying with the former Chief Executive Officer (CEO) to let them have safe and cheap electricity for the slum dwellers. If you are charging them the same tariffs like us, they will have illegal connections which causes a lot of fires.

There is this market that we always go to. The fires are caused by three reasons majorly. The first one, of course, is a group of people who claim they have a title deed to Gikomba, the 12 acres. We said it is a public land and there is no title. There is a notion that if I burn structures in that area, I will get people to move. The second is, of course, the electric faults and accidents. The ladies who are my very good friends who cook *githeri* overnight. Sometimes as it is cooking overnight unattended, accidents happen. We also have street boys who are basking at that fire.

Mr. Temporary Speaker, Sir, the third one is some unscrupulous traders. I always tell them. It is not all of them. It is a few of them who deliberately go and set fire because of insurance. When they are running out of stock, they set fire. Those ones must also be dealt with in one way or another. You have an agency that is trying to mitigate these risks. That is why this place always has a fire. They will investigate.

To date, there has been no single Directorate of Criminal Investigations (DCI) report on the cause of any single fire in Gikomba. For Solai Dam tragedy, we did the report again with Sen. Mutula Kilonzo Jnr. Before the tragedy happened, there were warnings.

There was warning that this thing the way it looks; it is going to burst its banks. The structural integrity is bad. Since there is no single one stop place to go and report these things, would you go to tell the County Executive Committee Member (CECM) of Environment, look for Water Resources Authority (WRA), National Environment Management Authority of Kenya (NEMA) or the governor. Kenyans do not know where to report. That is why we lost all of those 47 children in Solai.

Mr. Temporary Speaker, Sir, we want to make it a thing of the past because it is extremely important. Today there is a fire where you live. Do you know who to call? I think you will call the Senator for Nairobi City County because there is no number and you do not know it. What is the hotline when there is a disaster in Nairobi City County or Makeni County? Kenyans do not know. It is really embarrassing for us to say this that Kenyans do not know what to do if there is a terrorist attack.

The 9/11 Attack was being commemorated the other day. There is a documentary on Netflix where people are being told this is what you are actually supposed to do. Now they are doing those drills. Today if a plane flew into a building in this City, God forbid, do you know what to do? Do you know how to behave? Are our children being taught how to behave in schools in case of a disaster? Through this Bill we are creating an entity that is supposed to coordinate all of that.

Mr. Temporary Speaker, Sir, we really hope that we will get the support of Members to pass this Bill. This Bill will be very consequential. Sen. Mutula Kilonzo Jnr. I am sure he will go into further details of how we intend for the national and county to coordinate and how the coordination will be within the national level.

I thank our teams from both our offices together with the Office of the Clerk and with United Nations Office on Drugs and Crime (UNODC) and all these other agencies that came and gave us one or two ideas that we hope we have incorporated. We asked the public to participate in improving this Bill.

Let us then change how as a country we deal with disasters. It is talking about disaster plans, how you mitigate and even create a fund. We have not created the fund, otherwise our noisy neighbours will say it is a Money Bill. We have provided a provision for the Cabinet Secretary (CS) through the Public Finance Management Act to create that fund so that when it happens, there is no lack of resources.

There are many ways to do it. If you look at all the levies people are being charged, it is very terrible. I have made noise about it in Nairobi City County. Today Nairobi businesspersons in stalls are being charged almost ten different levies. They are told to pay Music Copyright Society of Kenya (MCSK) and Performers Rights Society of Kenya (PRISK) for music. The worst is that if you have a shop in Nairobi, you are told to pay Kshs4,500 for fire license. That Kshs4,500 you pay, you are just given a certificate. How will that help the fire?

Even if they were charging them Kshs4,500 then they give you a fire extinguisher for that amount at least it will help. How does having a certificate help you in your stall here on Moi Avenue? You paid and you were given a document showing that you paid for fire. It does not make sense.

Mr. Temporary Speaker, Sir, I will bring that issue of these levies in another matter because my people are now being harassed completely. I have seen women being bundled into these vehicles by Kenya Revenue Authority (KRA) because they have not paid Kshs50 on the market. It is the KRA who are now doing it.

On this one on a disaster matter such as fire, why give someone a document? You should make sure they have complied with it. In fact, if I find you with a fire extinguisher, my work is to teach you how to use it to make sure you have ways to get out in case of a disaster. Many of the places where we have watched houses burning a fire engine cannot get there because of encroachment on the roads.

Mr. Temporary Speaker, Sir, no one is focusing on how to deal with that. I thought my good friend and sister, Hon. Anne Kananu who is now the acting Governor of Nairobi City County would have really put this front and centre. She was the Chief Officer in charge Disaster Management before she became the deputy governor. There

should be improvement in Nairobi City County at least in that one area because she knows that it very well.

I want to give a chance to Sen. Mutula Kilonzo Jnr. to second. With those many remarks because I had also spoken last week, I urge my colleagues to pass this Bill before we finish this session so that we can have a proper legal framework of dealing with disasters in this country.

Mr. Temporary Speaker, Sir, I beg to move.

**The Temporary Speaker** (Sen. Kinyua): Thank you, Sen. Sakaja. I call upon Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Temporary Speaker, Sir. I rise to second this Bill. Allow me to make a few disclosures. First, Sen. Sakaja and I agreed on this Bill way before ‘the Handshake.’ At that time, the two of us conceived that the minority and majority can work together harmoniously for purposes of things like these ones which are crosscutting and help the country without necessarily looking as if we are fighting amongst ourselves.

Secondly, it is extremely disappointing that since Independence, the country does not have a Disaster Risk Management Bill or Act. Through this Bill, the Ministry got itself working and they drew a policy which was a kneejerk reaction to this framework.

Mr. Temporary Speaker, Sir, what is even more disappointing is that the country has participated in what you call regional conferences. Kenya has participated in what is now commonly referred to as the Sendai Framework which was done in 2015. In 2005, Kenya has also participated in Hyogo Framework for Action (HFA).

Although throughout there in the general world we pontificate that this is a matter that is close to our hearts, Sen. Sakaja will tell you in Kenya we have the National Disaster Operations Centre (NDOC) sitting in a different office, the National Disaster Management Unit (NDMU) sits in the Office of the President on a different floor. The National Disaster Management Authority (NDMA) sits on a different floor. Everybody has got its own command and it is a typical Kenya thing that please do not close my tap. It does not help.

Mr. Temporary Speaker, Sir, through this framework and the work that we did with Sen. Sakaja, we were invited to visit Brazil. Unfortunately, Sen. Sakaja did not go with us to Brazil.

The other one before I forget is that this Bill was proposed by Sen. Sakaja and I before the Solai Dam Tragedy. It actually came in the process. The initial Bill was done on 9<sup>th</sup> of March. It is important to note that because the Handshake was on 19<sup>th</sup> March, and the disaster happened in May.

You cannot imagine the things that I witnessed. Let me explain to you how we got into a place called Brumadinho which happened after Solai Dam tragedy. It was a dam disaster where a company which was storing what would be the industrial waste in a dam which was concealed and then they plant grass. It was overwhelmed and it broke killing thousands of people and buried so many in the mud.

Mr. Temporary Speaker, Sir, the Committee went to the site on day 256. We found people looking for bones. I witnessed bones being excavated and put in a polythene bag. They knew that they were not going to find everybody, but they were

keen to ensure that no bone of a person will be left on that site. The company that got itself, the polluter, of course, was responsible, catering for every expense. This gentleman in Solai, Mr. Perry Mansukh is a hero for nothing. He should be taking care of the expense of restoring the environment.

Why is this Bill important and the concept? It is not just the preparedness, but it is also about post recovery. You must go to Ofafa Jericho and sort of counsel those children. I am a chairman of a school in Nairobi City County. These boys became cleverer than they should be and caused a fire in the dorm. What they did not realise was that we had installed CCTV and we watched all of them do whatever they wanted to do. It was extremely traumatising to see one boy who was left behind and was struggling to get out, but miraculously survived. The family was so traumatised and he was transferred to another school.

This Bill proposes even post-trauma counseling. There was one of the victims of the Solai Dam tragedy. This gentleman told me that he lost his wife and his children did not want to live in Solai again. Although Red Cross built homes for them, they did not want to go and live there again. This gentleman became so dependant that he could not even know how to boil water. He described it in such a way because of the trauma of losing his wife.

Mr. Temporary Speaker, Sir, there was a report in Solai about two boys; one Kalenjini and one Kikuyu, who in the process of being carried by water they hanged on a tree stump and survived.

Therefore, they watched as some of their family members and others being swept away. What do you think goes on in the minds of those young Kenyans every time there are floods?

Sen. Sakaja talked about hydrants. When we were growing up, there were hydrants in Nairobi. The idea of running out of water is like living in stone age. The Nairobi Dam was supposed to take care of fires; that is why it is next to Kibera. We are supposed to be prepared.

There is no reason why the Nairobi Fire Brigade is on Tom Mboya Street when the fires are happening in Kibera and Gikomba. It is illogical. There is no reason why the Government budgets for Kshs7 billion in what they call contingencies yet when there is a disaster, there are no ambulances or fire brigades.

We have included even non-State actors because an organization like the United Nations (UN) management framework team sits in Nairobi City Country. It is for that reason that Sen. Sakaja and I got maximum public participation.

I must confess that the gentleman who initially proposed this Bill, did it in 2005. Can you imagine that this Bill has been in the pipeline since 2005? The initial Bill that he proposed was adopted by Ethiopia. I recently met that man because our children go to the same school. He has now been poached and works in Ethiopia on disaster management. I also met another young gentleman from Nandi County in Japan who went there to study architecture. That man is in charge of disasters in Japan; his work is to design buildings to take care of earthquakes.

Mr. Temporary Speaker, Sir, we live by grace that we do not have some of the natural disasters that occur in other countries such as hurricanes, earthquakes and so

many others. Sen. Sakaja is right in sentiments. Can you imagine somebody constructed a building that was leaning like the tower of Babylon in a country where such kind of things are not supposed to happen?

The idea of a disaster management framework is to make sure that you do not have buildings which are leaning like the one that was constructed in Kinoo. It is surprising that somebody can construct a building that is leaning yet the authorities have turned a blind eye. That is the purpose of this Bill.

When we travelled to Brazil, we went to Brumadinho, before we went to Rio de Janeiro. However, there is something that happened in Brumadinho, that has never escaped my attention. When the disaster happened, the people who were rescuing the victims made themselves available so quickly that a chopper flew into the site of the Brumadinho, Brazil, so quickly. If you Google the Brumadinho Disaster in Brazil, you will see a chopper flying so low to rescue people who are stuck in mud. That is what Sen. Sakaja was talking about. That rescue helicopter was made available possibly within 15 minutes.

Mr. Temporary Speaker, Sir, if there is a fire in Ofafa Jericho, the fire brigade will come after one hour yet the fire station is just about four kilometres. There is a problem about a country that cannot prepare for disaster. There is a problem about a country that does not see that it is important to have these things in legal framework. This Bill attempts to do that.

There is something that has come to our attention about the Solai Dam disaster. The Government of Kenya through the Kenya Defence Forces has trained experts on disaster management in Israel. We asked the then Cabinet Secretary of Defence a fundamental question, ‘Why is it not possible to avail to his people to train disaster management in counties through a framework since those military officers were trained using taxpayer’s money?’

So, how many of our military officers are trained to manage disaster? The CS says this is a secret. How can that be secret?

Mr. Temporary Speaker, Sir, this framework also anticipates that we need to train young people. One time I was invited to Starehe Boys Centre and I was very impressed with what was going on there. I do not know whether Sen. Sakaja is aware that St. John’s Ambulance has trained a specific cadre of students in Starehe Boys Centre, whose work is primarily to deal with emergencies in the school, for example, fires or when somebody has collapsed.

If somebody had an accident on Mombasa Road, chances are that people will waste so much time trying to watch what has happened. I lost the Nguu Masumba Ward Member of County Assembly (MCA) on the notorious black spot near Salama on Mombasa Road. I watched people trying to gain entry into the car while some took videos and others tried to cut into the car. In fact, I thought if they managed to get to him, the actions of those people on that scene could have easily caused the death of that MCA. There was no training.

There is no reason why along Mombasa Road – the busiest and most notorious Highway in terms of accidents – you do not have a trauma hospital or an ambulance. *Ole wako* if you get an accident somewhere in Salama. You will have to wait for an



ambulance to come from Machakos County or Wote in Makueni County to take you to hospital. Chances are that, in the process of waiting, you can lose your life.

I pray that we never get the sort of disaster I saw in Solai Dam. In fact, if it was not for some of the green houses, this water was headed to Solai Secondary School, a boarding school. That is how bad that disaster would have been. Up to now, the gullies that were left by that water have never been addressed. If you touch this issue, you will most likely get into Nakuru County politics because the owner is a big man and there are others in the national Government who think this man is untouchable.

That is the problem about the country not having a plan about anything. We do not have prevention. When it is happening, you do not have control. Lastly, when it is recovering – like the CSs who were supposed to answer the questions of Fuel Levy – they go to a famous song we used to dance to when I was younger; ‘*It wasn’t me*’. I do not know. This Bill is important to that extent.

I will not go into many details of this Authority because Sen. Sakaja has mentioned. I hope that we can get to firefighting, crucial infrastructure, disaster and so on.

As I finish, the country is very proud of the sort of highways that the national Government is constructing on Mombasa Road. Now, nobody has factored in the construction of these roads, the high-level accidents, like people flying from the road is not contemplated. Therefore, I hope that this Bill and the people who matter, can understand that even in the turf wars in Parliament, this is one of those Bills that are people-driven to take care of Kenyans.

I have said this before and I must repeat to the powers that be; a Government is supposed to - at the very least, even if it does not feel – pretend it cares about its citizens. It is sad that Sen. Sakaja has to use his resources to go to Gikomba every other time there is fire, when that fire can be prevented or taken care of.

Now that we have drought, I have no doubt in my mind that we are going to have a series of floods in Kenya and the cycle will continue. We will look for Mr. Abbas to donate food.

In the case of Solai, the food was siphoned by the provincial administration for their own purposes. Since we censured them and said they should be removed from office, they have never been removed from office. I think that some of them were possibly promoted.

Mr. Temporary Speaker, Sir, I second this Bill and hope that it will not suffer the fate that it has suffered before. I think that it is high time that we not only prevented disasters, but planned to deal with them when they happen, whether it is terrorism, floods or even the locusts that visited us from Ethiopia or many other disasters that are not contemplated.

Funny statements were made by Cabinet Secretaries (CSs) who do not understand what they are supposed to do. I pray that we never have things like tremors or earthquakes in Kenya. Just like Sen. Sakaja, I bothered to watch a documentary on the 9/11 Attack and statements by survivors.

There were even more statements by people who, in the middle of those buildings collapsing, were running into the buildings to try and rescue people. It broke my heart

because I had never seen the inside of that tower until last week. Documentaries showed people who went to those places to make sure that they rescued as many people as they could.

Mr. Temporary Speaker, Sir, I second and hope that the country can adopt this framework that Sen. Sakaja and I agreed to co-sponsor as one of those ‘handshake’ Bills that we thought would be useful for the country at the time.

I second.

*(Question proposed)*

**Sen. Were:** Thank you, Mr. Temporary Speaker, Sir. I rise to debate The Disaster Risk Management Bill that is ably sponsored by the ever energetic Sen. Sakaja and Sen. Mutula Kilonzo Jnr. They represent the future of this country. We wish them well because they are able to see ahead.

I also want to congratulate you. It is the first time that I am seeing you on the seat as the Speaker. I have worked with you in all the Committees that we have been together. I know your capability and commitment to work. You will do a good job. Congratulations.

Mr. Temporary Speaker, Sir, the Disaster Risk Management Bill is a good thing that is coming in now, but should have been here as we established the Government. Risks and disasters have always been part of a community. To imagine that there is no law that is specifically geared towards risk and disaster management, is a sad thing.

I will point out three things that this Bill seeks to set up. One is the Disaster Risk Management Fund, which will focus on putting resources together, so that when there is a disaster, we do not ignore it or try to set up ways of getting money. There will be money and resources ready to have that disaster managed, develop the activities that will help deal with that disaster, and have minimal or no effect on the community where that disaster has happened.

Mr. Temporary Speaker, Sir, this Bill will set up the National Disaster Risk Management Authority. It is some sort of parastatal that will help coordinate and deal with issues of preventions, preparedness, mitigation, response and recovery activities in case there is a disaster. Currently, we have disaster management as a unit mainly in the Office of the President or what we used to call the provincial administration.

**The Temporary Speaker** (Sen. Kinyua): Order! Sen. Were will have a balance of 17 minutes.

### ADJOURNMENT

**The Temporary Speaker** (Sen. Kinyua): Hon. Senators, it now 6.30 p.m., time to adjourn the House. The Senate, therefore, stands adjourned until tomorrow, Wednesday, 22<sup>nd</sup> September, 2021, at 2.30 p.m.

The Senate rose at 6.30 p.m.