

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Thursday, 1<sup>st</sup> October, 2020

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

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

### PRAYER

**Sen. Madzayo:** Jambo la nidhamu, Bw. Spika wa Muda.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): What is it, Sen. Madzayo?

**Sen Madzayo:** Bw. Spika wa Muda, je, ni haki kwa msomi kama Sen. (Dr.) Langat kukosa kuingia hapa kama umeketi bila kutoa heshima kuambatana na kanuni za Bunge hili. Anatakikana ainamishe shingo lake mbele yako ili kuonyesha heshima kwa Seneti na kwa wewe kama Spika wa kikao cha Bunge hili. Yeye amepita kiholela kama anayeenda Soko la Marikiti. Ni heshima gani hii? Tunataka utoe uamuzi kuhusu kitendo chake ambacho si cha heshima.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Sen. Madzayo, you are in order. Sen. (Dr.) Langat was out of order. He should follow the procedures when entering the Chamber.

*(Sen. (Dr.) Langat went back to the bar and bowed to the Chair)*

### PETITION

#### BOUNDARY DISPUTE BETWEEN KISUMU, SIAYA AND VIHIGA COUNTIES AROUND MASENO AREA

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Hon. Senators, I hereby report to the Senate that a Petition has been submitted through the Clerk by Mr. Nashon Ogana, a citizen of the Republic of Kenya on behalf of the petitioners and residents of the Banyore Community of Vihiga, Siaya and Kisumu counties. As you are aware, under Article 119(1) of the Constitution, and I quote:

“Every person has a right to petition Parliament to consider any matter within its authority including enacting, amending or repealing any legislation.”

Hon Senators, the salient issues raised in the said Petition are:

That, the Kisumu, Vihiga, Siaya County boundary dispute has persisted for the longest time since the boundaries were delimited on 28<sup>th</sup> February, 1963 to date.

That, the delimitation not only assured that communities were divided between the three counties, but resources allocation was skewed against minorities.

That, the community constantly sought redress through legal means and submission of requests to Parliament, but no lasting solution has been found.

That, the community has sought intervention through the Truth, Justice and Reconciliation Commission (TJRC) and the National Land Commission (NLC), but to no avail.

That, due to the alleged delimitation, the community suffers and is unable to access services due to lack of proper resource distribution and loss of culture.

That, as a result of the problem, there exists animosity between communities living in the area and, therefore, a review of the administrative boundaries be undertaken as a matter of urgency; and

That, none of the issues raised in the Petition are pending before any court of law or constitutional bodies.

The petitioners, therefore, prays that the Senate-

1. Investigates into this matter; and

2. Make appropriate recommendations with a view to –

(a) Conduct a comprehensive evaluation of the Kisumu, Siaya and Vihiga boundaries, considering the historical administration, demarcation and boundary reviews since Independence and the popular view of the community around the disputed boundary;

(b) Provide a lasting solution to the Banyore Community whose clans have been divided between Kisumu, Siaya and Vihiga counties by ensuring that they are within an administrative unit of Vihiga County to correct this historical injustice; and

(c) Ensure that the Banyore administration in Kisumu and Siaya counties are brought back into one administrative unit in Vihiga County.

Hon. Senators, pursuant to Standing Order No.231, I shall now allow comments, observations, or clarification in relation to the Petition for not more than 30 minutes.

Proceed, Sen, Khaniri.

**Sen. Khaniri:** Mr. Temporary Speaker, Sir, I thank you for the opportunity to make my comments on this very important Petition. As I do so, I thank Mr. Nelson Ogana and his team. I hail them very highly for bringing this Petition to this House.

Mr. Temporary Speaker, Sir, this is an issue that I have personally brought to the Floor of this House, not once or twice, but three times. Two times in form of a Statement and one as a Petition. This is an extremely sensitive issue and we could be sitting on a time bomb.

When I brought this issue to the Senate, it was the advisory of the Senate then, that there is nothing we can do until we operationalize Article 188 of the Constitution.

Article 188(1) is very clear and states-

“The boundaries of a county may be altered only by a resolution—

(a) recommended by an independent commission set up for that purpose by Parliament.”

After the Constitution 2010, the Independent Electoral and Boundaries Commission (IEBC) has no jurisdiction over county boundaries. They can only alter constituency and ward boundaries. It is until this Parliament operationalizes Article 188 that these matters will be resolved.

This Senate tried through a Bill that was sponsored by Sen. Mutula Kilonzo Jnr. We were told that it was a Money Bill. Therefore, it could not have originated from Senate, but the National Assembly. It is gathering dust at our neighbour's around the corner.

I have looked at the prayers of the petitioners; I sympathize with them and I stand with them to the end. However, their prayers cannot be resolved by this House until we operationalize Article 188 of our Constitution 2010.

I was told a Committee was formed to look at the Bills that have controversies between the two Houses. I urge that this one be given priority because my people are suffering. It is not just in Maseno, we have issues even at Kiboswa where we think also injustice was meted on our people.

I support this Petition in the strongest terms and also urge the Chairman of the Senate Committee on National Security, Defence and Foreign Relations, Sen. Haji, who was given the responsibility by the Speaker to summon the Governor of Kisumu to come to this House and answer to some of the issues I raised in the last Statement.

I support the Petition.

**Sen. (Dr.) Ochillo- Ayacko:** Thank you, Mr. Temporary Speaker, Sir. This Petition and Petitions similar to this have been visiting this House time and again. I fully associate myself with the sentiments of my colleague, Sen. Khaniri.

The National Assembly has stalled a Bill that would unlock such disputes. The National Assembly reckons that the Bill that was brought by Sen. Mutula Kilonzo Jnr., was a Money Bill. Whether it is a Money Bill or not, boundary disputes are very emotive.

Mr. Temporary Speaker, Sir, depending on which side of the boundary you are, you could be disenfranchised. You may want to run for office wherever you are pursuant to Article 38 of the Constitution, but because Kenyans vote along clan and tribal lines, you will be disenfranchised. You cannot exercise your right under Article 38 because you will be defeated by 8.00 a.m.

We, as a Parliament, must be offering solutions to Kenyans. If a potential solution is grounded on implementation of Article 188 and it is being stalled by the sister House, I urge you and Members of this House to engage the National Assembly to ensure such an important Bill is unlocked.

Similar disputes exist in many places. In Migori County, we have a dispute with Narok County, where part of the region in Kuria East regarding land, is being disputed. We are waiting for this kind of legislation in order to solve the dispute.

Mr. Temporary Speaker, Sir, I support the petitioner and every person who is concerned about resolution of boundary disputes in so far as they are county boundary disputes. We, as House and as Parliament, can create a framework through which resolutions of boundary disputes are can be done peacefully, legally and in a manner that promotes the dignity of Kenya as a diverse nation. We do not want our people to resort to violence and shed blood or feel oppressed because we cannot resolve boundary disputes.

I support.

**Sen. Wambua:** Thank you, Mr. Temporary Speaker, Sir, for this opportunity. If my memory serves me right, this is the second Petition this month dealing with boundaries between counties. This is a serious matter. A matter that this House attempted to resolve or provide a blueprint for a resolution of disputes arising from county boundaries.

It is a bit difficult to understand the point at which a Bill has not properly originated from the House where it is supposed to originate. The Bill to give effect to Article 188 of the Constitution sponsored and moved by the Senator of Makueni went through all the motions and the entire process of the Senate. It was passed only to get to the National Assembly and a declaration is made that it was a Money Bill and so it could not proceed.

We are dealing with a time bomb. County boundaries are not minor issues. In Kitui County, for example, we have a dispute with Tana River on a boundary along an area called Ukasi. Our people are just queuing waiting for the law to be put in place so that determination is made as to where the original beacons for those counties lie.

I urge the Chair and the leadership of the Senate led by the Senate Majority Leader - who is here - to have a serious and candid conversation with the leadership of the National Assembly to unlock some of these issues, so that we can give effect to Article 188 of the Constitution of Kenya and resolve county boundaries in this country.

If the reason that Bill cannot pass is simply because it is a money Bill, then they can adopt it. They can do whatever it is that they want to do with it, but let us have a law that will ensure that we resolve the disputes that exist and which continue to threaten the peace and order in this country.

I thank you, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Sen. Mwaruma, kindly, proceed.

**Sen. Mwaruma:** Thank you, Mr. Temporary Speaker, Sir, for this opportunity to support the Petition on county boundaries. Judging from the number of Statements and Petitions that have come to this House on boundary issues, this is a very important issue and close to our peoples' hearts.

Mr. Temporary Speaker, Sir, there is need to move with haste to solve these boundary issues that are very many in our counties. There is need to correct the boundaries. If there are boundary issues, it means that there were previous boundaries that existed. I believe various laws were passed in this Parliament that changed the boundaries.

What we, as Parliament, need to do is to work very hard to change the boundaries and also pacify the communities in areas that have boundary issues. It is a dereliction of duty on our part, as Parliament, because the duty of correcting boundaries is domiciled in here. As Sen. Wambua has said, it is ridiculous that as Parliament, we cannot pass a law to give effect or to operationalize Article 188 of the Constitution which talks about correcting boundaries.

Time and again, I have raised the issue of boundaries in my county, where there are schools that are funded by the National Government Constituencies Development Funds (NG-CDF) from my county, but they exist in other counties.

Mr. Temporary Speaker, Sir, I support this Petition. I know that the relevant Ministries and national Government departments would take this very seriously, especially the National Assembly which is required to pass the County Boundaries Bill which then gives effect to Article 188 of the Constitution. If they feel that it is a money Bill, they should take it upon themselves to originate another Bill, which would give effect to Article 188. As it is now, we are in a limbo. We cannot move because of that contest of Money Bill or Bills that concern counties.

I support.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Sen. (Dr.) Langat, kindly, proceed.

**Sen. (Dr.) Langat:** Thank you, Mr. Temporary Speaker, Sir, for also giving me this chance to support this important Petition. Issues to do with land, boundaries and so forth are very emotive.

The public still holds this House with a lot of confidence. That is why very important Petitions come to this particular House. However, I am afraid that the rate at which we are not responding effectively to them might not augur well with our petitioners.

Apart from talking about the National Assembly effecting the County Boundaries Bill as stipulated in Article 188 of the Constitution, there was also a time we had suggested that we should have an Implementation Committee. It is also my suggestion that the leadership of this particular House may consider speeding the process of coming up with an Implementation Committee, so that it might help this House to sustain the confidence that public have in us.

Mr. Temporary Speaker, Sir, these particular issues will come in form of Petitions into this House, but how we can sustain them is how we sort them out here. It is very important that we look for ways and means through which we can see to it that all the issues that come to this House, that we have discussed in our committees, recommendations and resolutions, are followed up to the effective level, so that we retain the confidence of the public.

Mr. Temporary Speaker, Sir, it is my suggestion that we follow up with the Implementation Committee that we had suggested and make sure that we have it in place, so that it can follow up on most of the issues that are stagnating the process of implementation.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Sen. (Dr.) Musuruve, kindly, proceed.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to support this Petition. I want to thank the petitioners for bringing this issue to the Floor of the House. It is their right to Petition, so that we provide solutions to their concerns.

Mr. Temporary Speaker, Sir, we have to be seen as a generation that is solving land disputes and conflicts all over the country. Historical injustices of land disputes need to be resolved, not only partially, but completely.

Sen. Khaniri has brought these issues severally on the Floor of this House. I cannot fail to comment on these issues because my grandfather and great grandfather hailed from Vihiga. When I look at the petitioners, 17 of them are Banyore and they want to get their identity. They neighbour Kisumu and Siaya counties, but have no sense of belonging. This House should ensure that it is resolved amicably.

Mr. Temporary Speaker, Sir, resolving this Petition will resolve a long-term issue. The residents of the three counties intermarry, they are friends and they have brought their children together. Therefore, there is need to resolve this conflict, so that they continue interacting amicably.

Mr. Temporary Speaker, Sir, it is very clear that the Luos and the Luhyas have many things in common in terms of socio-economic activities; trade, intermarrying *et*

*cetera*. However, when it comes to ancestral and clan issues, there is no need of compromising. The Banyore should be taken back to Vihiga where they belong.

Mr. Temporary Speaker, Sir, other conflict areas that have been brought on the Floor of this House need to be resolved amicably, impartially and in a way in which we can be one Kenya, one nation. This is our country and we have nowhere else to go. We need to interact. We need each other.

I want to suggest that the Committee where this Petition will be directed expedite and ensure that they do justice to this Petition. We do not want to see Sen. Khaniri day in, day out, asking for justice for the people of Banyore to be taken to Vihiga County.

I support this Petition.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Sen. (Prof.) Ekal, kindly, proceed.

**Sen. (Prof.) Ekal:** Thank you, Mr. Temporary Speaker, Sir, for giving me the chance. From the beginning, I support the Petition because issue of boundary dispute is common throughout the country.

Many counties are squabbling and conflicting over boundaries. This is a very important Petition. It is also emotive because changing boundaries is not easy. Sen. (Dr.) Musuruve says the people from whom you take the land assume that you are taking it from them to give it to somebody else. They would not like that.

I know that the colonialists are the ones who put us in this mess. They created these boundaries without thinking about the people that they were splitting in twos or threes. Now, these people are claiming for their identity, for instance, the Banyore people. There is not much that can be done, except to show them the boundary and let people live. They are all in Kenya.

For a large county like Turkana, this is really an issue that is painful. So many people are dying because of conflicts over boundaries. If you look at the boundary between Turkana and Samburu, there are always conflicts because people believe that this or that is their land.

I heard leadership of Samburu County claiming Marsabit County has taken part of their land. There is conflict between the two counties. There is also conflict between Turkana and Marsabit. There is also a conflict between Turkana, West Pokot and Baringo counties. These issues should be resolved in a manner that people do not have to fight and die over where the boundary is supposed to be.

There have been issues when you look at international boundaries between Kenya and Uganda, Kenya and South Sudan and Kenya and Ethiopia boundaries. As I speak today, people are dying on the boundaries.

Today, the South Sudanese have camped within Eleme Triangle which is in Kenya and a conflict is brewing. People are going to shoot each other because Turkanas feel that the South Sudanese are stepping into their grazing land. They are bound to be conflicts here.

Two weeks ago, there was a conflict on the boundary of Ethiopia and Kenya. There was an attack and four Kenyans were killed and they drove away 400 herds of cattle. These conflicts have been going on forever.

I will bring a chronology here of what has happened. Many people have died over these conflicts. It is time the Government stepped in and resolved boundary dispute

amicably. Even if the law that we should be enforcing has not been passed, the Government should protect its citizens along its borders.

I am not sure why the Government is reluctant to step in, especially when it comes to international conflicts. As I speak, the Ethiopians are moving in to claim Kibish and Natodomeri because they say they are part of their country. The Government should be stepping in.

The South Sudanese claim their border is at Lokichogio, but we know our border is at Nakoda. This is something that the Government must address regardless of whether we have the law or not, to ensure that there are no conflicts along the border. Even if the Government is not able to do something about the boundaries within the country, they should be do something about international boundaries. We cannot let people to be dying every time because of boundaries that should have been resolved long time ago.

The other day, we had a situation where somebody drowned in Mombasa and we made a big deal of it. We went out there and tried to find out what happened. However, so many people are dying in Kenya everyday along these borders and nobody is doing something about it. These are many people dying because of border dispute more than those of are dying of COVID-19 pandemic. COVID-19 pandemic struck the other day, but we are all over trying to stop it from spreading and affecting many people. Why are we not stopping the fights and conflicts that are going on between our country and our neighbours?

I support this Petition.

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

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Temporary Speaker, Sir. It will not come as a surprise that I am supporting this Petition because from a long time ago, 2013, after the dispute on Konza City, it appeared to me that Article 188 needed to be put into effect.

Secondly, the notion that counties do not have boundaries is not correct. They have boundaries. Any alteration follows the principles under Article 188. Article 188 confirms the boundaries of counties as the Districts and Provinces Act of 1992. Makueni County has an issue with Taita Taveta County. Their CECM Finance and Planning went to Mtito Andei and said and was quoted saying: "I am going to collect taxes from tomorrow."

There is no dispute on boundaries. The dispute is alteration. How do you alter a boundary now that it has been established under the Schedule?

Sen. (Prof.) Ekal talks about international boundaries. Article 5 contemplates an Act of Parliament to establish our territory as Kenya. Those who live around the boundaries of Kenya, including the Senator of Kwale cannot establish the boundaries of our international neighbours yet we do not have boundaries of counties.

It is the same way we had a contradiction that every Member here knows their ward and constituency. However, when it comes to county boundaries, there is a dispute as to where your boundary is. Is that not a contradiction?

I sat here when Sen. Murkomen and Sen. Sang championed a law that would take away our jurisdiction to determine our wards and it is in the National Assembly.

Although I issued all these memoranda to Sen. Haji, this is the only jurisdiction other than the amendment of the Constitution where you will require a super majority in

both Houses. Therefore, altering the boundaries of the counties is as difficult as amending the Constitution.

The first time we find the alternative dispute resolution, which I had contemplated, I am not quite sure which Committee this one was committed to. An alternative dispute resolution to resolve the questions that Sen. Khaniri and to correct one Member who said it is the second Petition, Sen. Khaniri has read four Petitions so far about county boundaries.

I hope that the people we were working with to ensure that we have a good formula, Team Kenya, can wake up one day and speak about the boundaries of counties as an agenda for the country because it is important. Wait for the day when Kirinyaga County discovers that it has something underground. Wait for the day that Isiolo County will discover that it has an asset, or a mineral underground. Wait for the day Nakuru County will discover that it has oil; there will be war and that is what we are trying to resolve.

The former Commissioner, Eng. Abdullahi Sharawe, from the Independent Electoral and Boundaries Commission (IEBC) gave me the documents that have been used since 1963. You will be surprised that in 1962, we had a boundaries commission. It is the same framework that is in Article 188 that I had proposed. It is that commission that is proposed under Article 188 that led the National Assembly to say that this is a money Bill.

According to the Constitution, there must be an independent commission. We suggested that we can have an independent commission that waits for disputes. It is only setup when a dispute is confirmed to exist, for example, between Kajiado and Taita Taveta, Isiolo and Meru counties where many people have died.

Mr. Temporary Speaker, Sir, I cannot see the Chairperson of the Standing Committee on Lands, Environment and Natural Resources, I would prefer that this is handled by Sen. M. Kajwang', the Chairperson of the Standing Committee on Devolution and Intergovernmental Relations. This mandate should not lie with the Standing Committee on Lands, Environment and Natural Resources.

This Petition should lie with Standing Committee on Devolution and Intergovernmental Relations to the extent that we are challenging you to find an arbitration mechanism so that the Governor of Kisumu does not go and launch a city when we have a dispute. Since we do not have a framework of determining that dispute, that gap can only be filled by Sen. M. Kajwang', the Chairperson of the Standing Committee on Devolution and Intergovernmental Relations.

Sen. M. Kajwang', I know you. You are a man of your word and I know you can do it.

Mr. Temporary Speaker, Sir, the legacy of the Sen. Kajwang led Committee should be to find some framework before we find a law to sit down and tell people that they cannot do what they are doing. If the counties have disputes, they should refer the issues to the Senate's Committee on Devolution and Intergovernmental Relations. We can even amend the Standing Orders so as to give that Committee the mandate of arbitration pending the law.

Sen. Wako has proposed some amendments to the Standing Orders. The good thing is that these Standing Orders, unlike the ones that we had in the last Parliament, we can make amendments and start effecting them immediately. We have so many solutions,

but we must get to work. Kenyans continue to lament to us while we lament back at the obvious delinquency by our neighbouring House.

I thank you, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Sen. Faki, kindly proceed.

**Sen. Faki:** Asante Sana, Bw. Spika wa Muda, kwa kunipa fursa hii kuchangia ombi ambalo limeletwa Bungeni na Bw. Nashon Ogana. Kwanza namuunga Bw. Ogana na wenzake mkono kwa kuwa na imani kwamba Bunge la Seneti litasaidia kutatua ombi lao. Imani hiyo imesababishwa na kwamba sisi kama Maseneta tunayaangazia matatizo kama haya kwa njia ya haraka na kutoa suluhisho mapema kuliko taasisi zingine ambazo zimewekwa na sheria za kutatua malalamiko kama haya.

Swala kama hili likipelekwa mahakamani, linaweza kuchukua zaidi ya miaka kumi kabla ya suluhisho kupatikana. Kamati husika litakalo angazia ombi hili ishughulike kwa haraka ili kuwe na suluhisho kwa muda mfupi iwezekanavyo. Hii ni kwa sababu mizozo ya mipaka kama hii husababisha watu kupoteza maisha, uharibifu wa mali, wizi wa mifugo na mali zingine za wananchi wa Kenya.

Ni jambo la kuhuzunisha kuwa karibu miaka 60 ya Uhuru hatujaweza kutatua matatizo madogo kama ya mipaka ambayo yako kote nchini. Kuna mizozo ya mipaka kati ya Kaunti Makueni na Taita Taveta, Taita Taveta na Kwale, Taita Taveta na Kajiado, Kisumu na Vihiga, Kitui na Tana River, Garissa na Tana River na kati kaunti zingine. Mizozo ya mipaka imetapakaa kote nchini.

Bw. Spika wa Muda, hatuna tume ya kitaifa inayoshughulikia mizozo ya mipaka. Njia pekee ya kuweza kutatua na kusuluhisha mizozo kama hii ni kupitia kwa Bunge la Seneti. Naomba kwamba katika uelekezi wako, uhakikishe kwamba kamati husika iangalie swala hili kwa haraka na kuweza kutoa mwongozo ili matatizo kama haya yasiweze kuendelea katika sehemu zingine katika Jamhuri yetu ya Kenya.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Sen. Halake, kindly proceed.

**Sen. Halake:** Mr. Temporary Speaker, Sir, I rise to support the Petition by Mr. Ogana to the Senate. A good solution has been suggested by Sen. Mutula Kilonzo Jnr. that we must find a different way of dealing with petitions that pertain to land and boundary issues. I served in the Committee on Lands, Environment and Natural Resources. I can confirm that the Committee receives a lot of petitions that are land and boundary related. The boundary disputes and conflicts are so rampant that I suspect the Committee will be overwhelmed with these kinds of petitions.

This House has to look for a different ways of dealing with boundary related disputes. Even if this Petition is channeled to a different Committee of the Senate, we must think of a different way of dealing with this issue. What usually happens is that the Committee will summon the Ministry of Lands and Physical Planning, the National Land Commission (NLC), and consider all the provisions in law and commissions.

Everyone will just ping-pong between the different place. The Ministry will point the Committee to NLC while the NLC will point the Committee to the Ministry and the ping-pong will continue. This House has to look for ways in which we can do things differently so that we do not disappoint the citizens who have petitioned us.

One of the things that Article 188 of the Constitution states is that a Commission should be set up by Parliament and that two-thirds of the House should vote for it. I am not that we want to go that way. The County Boundaries Bill, 2017 that was done by Sen. Mutula Kilonzo Jnr. was meant to address all these issues in a more comprehensive

manner, but is unfortunate that the Bill was not passed on the National Assembly because it was classified as a money Bill. Whether the Bill by Sen. Mutula Kilonzo Jnr. is a money Bill or not, the Speakers of the National Assembly and the Senate need to sit down and devise a way in which we can deal with land issues.

Mr. Temporary Speaker, Sir, those of us who come from community land areas, we are very worried. You, Mr. Temporary Speaker come from Samburu County so you know the issue that face community land areas. Those of us who are from jurisdictions where community land is the main tenure of land, we are a worried lot. Boundaries as concerns the Community Land Act can be changed through gazettelement. For example, when the Government wanted to allocate the Kenya Defence Forces (KDF) land in our county, all they had to do is degazette the land from community land. Is gazettelement a legitimate way of taking away land from communities?

I am sure this Petition is personal to people who come from jurisdiction where land is community land. We should make sure that certain mechanisms are put in place to ensure that boundaries are secured. Otherwise, pastoralists' and community land will be taken away by the Government, or other entities through a gazette notice.

I am for the idea of getting better ways of dealing with the issues of boundaries and land that is different from what we have been doing. We should consider the provision of Article 188 of the Constitution outside the Bill that was sponsored by Sen. Mutula Kilonzo Jnr. We should get pointer on how to do things differently, including setting up a parliamentary commission that may consider the issue of boundaries and land disputes.

I thank you.

**Sen. (Eng.) Hargura:** Mr. Speaker, Sir, I beg to support the Petition by the residents of Vihiga County. Article 188 of the Constitution states that the views of the communities affected have to be factored in if county boundaries are to be altered. This is a clear case of a community that has been disenfranchised because arbitrary the colonial administration split one community into three counties. It is in the interest of the affected community to consolidate and have their identity and representation from one point.

This petition brings us back to the question of who is supposed to handle the review of boundaries of counties. A commission set up by Parliament should have resolved boundary disputes between counties. Sen. Mutula Kilonzo Jnr. drafted the County Boundaries Bill, 2017, which I am surprised is being referred to as a money Bill. It has become a practice of the National Assembly to refer to all Bills coming from the Senate as money Bills. Initially, they used to say the Senate only needs to process Bills that concern counties.

The National Assembly has been shelving all the Bills from the Senate then allowing its Members to sponsor similar Bills. Members of the National Assembly are taking Bills done by Senators, deliberated and passed in this House word for word as their own Bills. Our colleagues in the National Assembly need to get serious because both the Senate and the National Assembly have the same mandate in under the Constitution, to make laws. That is why Bills come from one House to the other.

I think colleagues in the National Assembly need to get serious because we all have the same mandate under the Constitution to make laws. Therefore, we have to legislate. We have to do it together. That is why Bills originate from one House and go to the other. What they are doing is not in good faith because I have seen Bills which have

come from that House which are now in Second Reading in this House like the Equalisation Fund Bill. You will be surprised if you see what is at the back of that Bill. I do not want to pre-empt debate, but that is what is going on.

We are doing disservice to Kenyans by not making the right laws. No wonder Kenyans went to the Chief Justice (CJ) to ask for Parliament to be dissolved because of the kind of games we are playing. Mine is to urge our colleagues in the National Assembly to get serious. We are serving Kenyans. This is an important piece of legislation.

We have problems as it has been enumerated by Members. In almost each and every county, there is a boundary dispute because there is no consultation. Some of the boundaries are colonial or tribal. Some of them were done in 1992 when the Districts and Provinces Act was enacted. That did not have any public participation. It was just a matter of picking the colonial boundaries and creating the Districts and Provinces Act of 1992, which we all have issues with.

As Sen. Mutula Kilonzo Jnr. has said, we have to start from somewhere. We have to adopt that Act then come up with amendments to create a commission which will address these issues. We have boundary problems, but one House of Parliament is sitting on the legislation which would have created that commission.

We empathise with the situation Kenyans are in. Parliament has to move with speed and create that commission which will deal with county boundaries. As we know, the only relevant existing commission is the Independent Electoral and Boundaries Commission (IEBC) which only deals with constituencies and wards. It does not deal with counties.

The law says we have to create a commission under Article 188 which this Senate has done by coming up with the necessary legislation. So, as to sort out the problem of Kenyans in terms of petitions and county boundary disputes, the starting point will be that commission. Even if we take the petitions, how are we going to do it because the law envisaged a commission?

We have done our part. This is now the tenth year since this Constitution was promulgated, but that commission is not in place. Kenyans still have that problem. There will be more challenges once counties continue to realise and generate their resources.

We know very well that there is a dispute in Kapedo Area between Turkana and Baringo. It might escalate once geothermal power starts being exploited around Silale because that is a disputed area. Those kind of conflicts will be there once counties start looking back to see how they can generate their own resources.

I support the Petition, but we have to, first, create the infrastructure to address these issues. We have to move with speed and get the National Assembly to wake up and realise that we are serving Kenyans and not competing as Houses, so that we sort out this kind of disputes.

I thank you.

**Sen. Shiyonga:** Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to contribute to the Petition that has been brought by Sen. Khaniri.

One does not choose a neighbour. That applies to land. If you have land, then you must have a neighbour. All the 47 counties in Kenya have neighbours. Most of the counties are experiencing border disputes which have not been resolved.

As Sen. Mutula Kilonzo Jnr. said, we need a framework to work with before we get a substantive solution. We are experiencing border disputes both at county and national level because of unnecessary arguments and pieces of land that people have occupied.

We had a border dispute between Kenya and Uganda over Migingo Island. We still have that problem to date. Land disputes are like indigenous trees which have been with us for years.

It is my plea that we should have a commission to work with, in the meantime. This is because we have Bills that aim to solve land or boundary disputes that have not been passed; there is no headway because of sibling rivalry between the two Houses. Most our Bills are being collapsed in the National Assembly by being defined as “money Bills”.

I urge this House to look for another framework that we can work with so that we sort out the problems being experienced in most of counties as a result of devolution.

Disputes are increasing and we need to look for solutions. One of them could be a framework or policy before we do something on Bills that are being collapsed in the National Assembly.

Mr. Temporary Speaker, Sir, I support because three quarters of petitions are about land issues.

**Sen. Sakaja:** Mr. Temporary Speaker, Sir, I will be brief. This Petition relates to a place I know very well, which is somehow also home.

I was listening to colleagues. The concern is that we are dealing with the same issue over time without a solution. I think this is the second petition on this matter on top of a Statement that was brought by Sen. Khaniri.

I can see Sen. Mutula Kilonzo Jnr., the Senate Majority Leader and the Senate Minority Leader are here. I urge them to find a way of resolving the stalemate with the National Assembly. In as much as Kenyans have a lot of confidence in bringing these issues here, the more they bring the same issue and it has no solution, then they will lose confidence in this House.

That same forum should discuss the matter of our Bills in the National Assembly that they have refused to deal with and declared some arbitrarily as money Bills despite the fact that we are served by the same Parliamentary Budget Office (PBO). It advises us that a Bill is not a money Bill then the same PBO says it is a money Bill. We must resolve that issue.

I am glad that the Chairperson has alluded to the fact that there is thawing of the ice and that there is a new spirit of camaraderie with the leadership in the other House. However, practically, we need a schedule of all the Bills that have gone there, including the one on county boundaries by Sen. Mutula Kilonzo Jnr. and, in addition, a plan of action as to how we are going to deal with them.

Mr. Temporary Speaker, Sir, in the previous Parliament, I chaired the Committee on National Cohesion, a joint committee of both Houses. My Vice Chair was Sen. (Eng.) Hargura. We went to Lokwar and Nakuse in Turkana. We also went to Nginyang, Loruk and Baragoi in Samburu which is your own county. That is in Nachola Ward. The solutions are there.

If you wake me up at 3.00 a.m., I will tell you about Nachola Ward in your county where the Member of County Assembly (MCA) is called Lawrence, if I am not wrong. I

will also tell you what we saw in Turkana South where the MP himself was running around with a gun. I know about the issues on Turkwel. We have the solution, but it seems that stalemate is what is holding us back.

Mr. Temporary Speaker, Sir, I urge that you take due notice. Let us convene the leadership to resolve these issues in the fastest way possible for the benefit of the people of the Republic of Kenya.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Hon. Senators, pursuant to Standing Order No.232(1), the Petition is hereby committed to the Standing Committee on Devolution and Intergovernmental Relations for its consideration.

In terms of Standing Order No.232(2) the Committee is required in not more than 60 calendar days from the time of reading the prayer to respond to the petitioner by a way of a report addressed to the petitioner and laid on the Table of the Senate.

*(The Petition was committed to the Standing Committee on Devolution and Intergovernmental Relations)*

## STATEMENTS

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Hon. Senators, Statements Pursuant to Standing Order No.51(1) (b), Chairperson, Standing Committee on Devolution and Intergovernmental Relations.

### ACTIVITIES OF THE COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS

**Sen. M. Kajwang'**: Mr. Temporary Speaker, Sir, I rise pursuant to Standing Order No.51(1)(b) to make a Statement on activities of the Standing Committee on Devolution and Intergovernmental Relations for the period commencing 1<sup>st</sup> January, 2020 to 31<sup>st</sup> July, 2020.

Mr. Temporary Speaker, Sir, you will notice that the period is in the past. This Statement has been in the Order Paper for quite a long time. However, because of the other important issues the House has been seized of, we are now forced to report for July in September.

I want to appreciate the effort of the past Chairperson of this Committee Sen. Kinyua, the Senator for Laikipia County who did an excellent job and many of the issues I will be reporting are issues that happened during his time.

During the period under review, the Committee held a total of 25 sittings and considered various issues. Regarding Statements Sen. Halake sought a Statement from the Committee regarding the burning of County Executive offices in various counties where accounting records are held.

The Committee has considered the matter, engaged the governors of the affected counties and the Senator who has been satisfied with the response. The Committee has made recommendations among which is that all the 47 counties need to come with a risk management framework and the EACC to follow up the incidences of fire in the five counties that the Committee had considered.

Mr. Temporary Speaker, Sir, Sen. (Dr.) Ochillo-Ayacko sought a Statement from the Committee regarding the status of project funding and implementation for Rongo Township, Awendo Township and Migori Municipality. The Committee is considering the matter and has sought a response from the Ministry of Devolution and Arid and Semi-Arid Lands. This has taken quite some time; I have had a conversation with the Senator for Migori and assured him that in the next two weeks we shall get a response on this.

The Committee considered a request for conferment of city Status on Nakuru Municipality. On 20<sup>th</sup> February 2020, the Committee met with the Governor of Nakuru County. The Committee also visited Nakuru County and received submissions of the public on the matter. The Committee is currently considering its report on the matter for tabling. I can assure the House that in the next three weeks the Committee shall bring its report to the House.

In the period under review, the Committee has continued to consider the matter of the transfer of functions from the Nairobi City County Government to the national Government, particularly in light of the decision of the Employment and Labor Relations Court in Petition No. 52 of 2020 (Okiya Omtatah versus the Nairobi Metropolitan Service and three Others).

Mr. Speaker Sir, in that matter, the Employment and Labor Relations Court of Nairobi, issued the following Orders on 18th June 2020-

(a) A declaration that the creation of the Nairobi Metropolitan Services was done in violation of the law and the Constitution;

(b) The deployment and secondment of the persons as chief officers to the Nairobi Metropolitan Service was done in contravention of the law and the Constitution; and

(c) A declaration that secondment of the 6,052 staff to the Nairobi Metropolitan Service from the Nairobi City County was done with consultation between the Public Service Commission and the Nairobi County Public Service Board. The reasons were noble, but in contravention of the County Government Act.

Mr. Speaker Sir, the Court suspended the orders from taking effect for a period of 90 days in which period—

(a) The Nairobi Metropolitan Service was to be established by law and the instrument of its establishment made;

(b) the Nairobi County Assembly, the Nairobi County Public Service Board and the Governor, Nairobi City County should be part of the process; and

(c) Secondment and deployment of staff would be addressed and the authority responsible in this exercise would action proper secondment and deployment letters.

Mr. Temporary Speaker, Sir, you note that the orders having been suspended for 90 days. Those 90 days have lapsed. We take judicial notice that there are certain measures and steps that the Government has taken to ensure the legality of the Nairobi Metropolitan Service.

Arising from this, the Committee has scheduled a meeting with Cabinet Secretary, Ministry of Devolution and Arid and Semi-Arid Lands. During the meeting, it emerged that it was important for the Committee to engage other stakeholders, including the Nairobi Metropolitan Service head, the Governor, Nairobi City County, the Attorney General to brief the House on measures taken to comply with the orders of the Court. The

Kenya Revenue Authority (KRA) to inform the House on the transfer of revenue collection and the County Assembly to appraise them on their role on the matter.

Mr. Temporary Speaker, Sir, the Committee is also been seized of the matter of the impasse between the County Executive and the County Assembly of Kirinyaga County on the County Budget Estimates for Financial Year 2020/2021. On 21<sup>st</sup> July, 2020, the Committee held a meeting with the Governor, Kirinyaga County and the Controller of Budget. Thereafter, on 22<sup>nd</sup> July, 2020, the Committee met the County Assembly Majority Leader, the Chairperson of the County Budget and Appropriations Committee and the Controller of Budget.

The Committee continues to be seized of the matter as it works towards reaching an amicable solution in the matter. We take judicial notice that the two parties have since declared a truce and have pronounced that a solution has been found to the impasse.

However, it is important that the Devolution Committee brings a report to this House. The impasse in Kirinyaga brought to the fore various issues. We had a situation where the governor procured a court order to stop the enactment of a law by the Assembly. It has been the view of the Committee that the court cannot stop coming into effect of law and should pronounce themselves once the law takes effect.

There has been a concern around the 1 per cent limit for amendment of budgets by the County Assembly. There is also concern about the 7 per cent allocation to County Assembly vis-a-vis the ceilings we have put in County Allocation of Revenue Act (CARA)

There are issues that came out of that impasse; issues to do with when a county assembly shoots down a memorandum from the governor and the governor still insists on that memorandum. We shall bring a report to the House which can then form a basis to inform other counties.

As I conclude, aside from the ongoing business that I have alluded to, the Committee intends to carry out the following key activities during the next quarter-

(a) We shall be talking to the Intergovernmental Relations Technical Committee to get a status update on transfer of functions in accordance with the Fourth Schedule to the Constitution. As an example, libraries are supposed to be functions undertaken by county governments, but we still have a Kenya National Library Service that is providing this service at the centre without having handed over the services, infrastructure and personnel to county governments. We shall be following that up

(b) The status of the transfer of assets and liabilities of the defunct local authorities. The Public Accounts Committee has always pronounced itself on this matter. Expediting the transfer of assets and liabilities, The Devolution Committee will be holding a meeting with the Intergovernmental Relations Technical Committee to get a status update on this.

(c) The disbursement and oversight of conditional grants. I am glad to note that some Committees have started asking questions about conditional grants. The Roads and Transportation Committee has been asking questions about the road maintenance levy fund and other conditional grants that go into infrastructure. I want to encourage other comities, particularly Health Committee to look into the conditional grants going to counties relating to health and different conditional grants we have proposed.

d) Policy on the regional blocs; and

e) The implementation of the report on Capacity Assessment and Rationalization of the Public Service (CARPS).

We will also be following up the resolutions that were arrived at past devolution conferences and passed legislative conferences. We take note that because of the COVID-19 pandemic we have not have the Devolution Conference and the Legislative Conference. However, from past conferences, there has been resolutions and action points that the House is expected to have undertaken. The devolution Committee will look into it.

Finally, we are coming up with proposed amendments to the Intergovernmental Relations Act, particularly to guide the transfer of functions between the different levels of government, the County Government's Act and the Urban Areas and Cities Act. I thank you and allow me to express the gratitude to the leadership of Senator for Laikipia because many of the issues I have reported happened during his time as chair.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): The Chairperson of the Standing Committee on Finance and Budget to make a Statement.

#### ACTIVITIES OF THE COMMITTEE ON FINANCE AND BUDGET

**Sen. Kibiru:** Mr. Speaker, Sir, I stand pursuant to Standing Order No.51 (1) (b) to make a Statement on the activities of the Standing Committee of Finance and Budget for the period commencing 1<sup>st</sup> January to 30<sup>th</sup> June 2020.

Mr. Temporary Speaker, Sir, during the period under review, the Committee held a total of 31 sittings, considered six Bills, two Petitions, and five Statements.

In respect to Bills, the Committee considered the following two Bills and tabled reports in the Senate; the Division of Revenue Bill (National Assembly Bills No.3 of 2020), and the County Allocation of Revenue Bill (Senate Bills No. 7 of 2020)

The Division of Revenue Bill (National Assembly Bills No.3 of 2020) was approved and assented to. Regarding the County Allocation of Revenue Bill (Senate Bills No.7 of 2020), the debate on the second reading of the Bill was adjourned to allow the Senate to conclude debate on the Third Basis for sharing revenue among counties.

Mr. Temporary Speaker, Sir, you will realize that we are reading a Report whose events have already taken place. The Committee also considered the following: The Public Finance (Amendment) Bill (National Assembly Bills No. 63 of 2019), and adopted its report for tabling in the Senate.

The Committee also considered the Public Finance Management (Amendment) Bill (National Assembly Bills No. 51 of 2017), conducted public hearings, and is considering its report for tabling in the Senate. I can report that we are almost ready with the report, and we shall be tabling it as soon as possible.

The Committee conducted the hearing for the Prompt Payment Bill (Senate Bills No. 3 of 2020) and is considering the report for tabling. This has already been passed through the Second Reading.

The Committee conducted the hearing for the Equalization Fund Bill (National Assembly Bills No. 43 of 2019), and is considering its report for tabling in the Senate. I can confirm that the Senate Majority Leader is supposed to move the Motion on the Equalization Bill.

The Committee also considered and tabled a report regarding the implementation status of the Senate resolution on county governments infrastructure projects comprising county executive headquarter offices, assembly chambers, and county state officers' residence.

Mr. Temporary Speaker, Sir, regarding the Statement pursuant to Standing Order No.48 (1), five Statements were referred to the Committee during the period under view. The Statements were by-

- (1) Sen. Cherargei concerning disbursement of funds to county governments.
- (2) Sen. Mwaruma concerning the approved budget for Taita Taveta county government submitted to the Controller of Budget.
- (3) Sen. (Dr.) Ochillo-Ayacko, concerning financial fiscal intervention by the Government to safe public owned sugar mills.
- (4) Sen. Halake concerning feasible challenges of meeting the deadlines in filing the 2019 income tax returns by taxpayers in the country.
- (5) Sen. Cherargei concerning pending bills of the casual staff who worked during the 2019 population and housing census.

The Committee is considering the matters raised and will table the report once the matter is concluded. I can report that most of them have been concluded and reports tables.

Mr. Temporary Speaker, Sir, with regard to Petitions, the Committee considered two Petitions. The first Petition was by Sen. Wambua on behalf of the Petitioners on the non-payment of Kitui county executive pending bills incurred during the year 2015/2016. I can report on Sen. Wambua's Petition. It is completed, and we tabled the Report.

The second Petition was made by Mr. Edward Mwangi, regarding the unpaid bills for the National Youth Service (NYS) to contractors and service providers. The Committee considered the Petition and tabled the Report in the Senate.

Mr. Speaker, Sir, in the period under review, the Committee considered the Third Basis for Revenue Sharing Formula. The Committee had consultative meetings with the National Treasury, the Commission on Revenue Allocation (CRA) to the third generation basis.

To ensure equitable consultations, adequate consultation was done on the Third Basis formula. The Committee analyzed a consultative meeting where all Senators were invited. The Committee adopted its report and tabled it in the Senate. We all know the story of this issue, and it is good that it has been sorted out.

The Committee also considered the 2020 Budget Policy Statement and the medium term debts management strategy and tabled its report. The report was considered and approved by the Senate.

Mr. Temporary Speaker, Sir, the Committee has planned to undertake the following key activities in the next half of the period-

- (1) Consideration and adoption of the report on the Equalization Fund (National Assembly Bills No. 43 of 2019), which we have done.
- (2) Consideration and adoption on the report of Prompt Payments Bill (Senate Bills No. 3) of 2020. We have also done that.
- (3) Consideration and adoption of the report on the Public Finance Management (Amendment) Bill (National Assembly Bills No. 51 of 2017). We are working on that one and shall be tabling the report soon.

(4) Consideration of the Policy on County Governments Own Source Revenue.  
We also endeavor to table a report on the same.

(5) Consideration of the report of the office of the Controller of Budget on county government budgets implementation.

Mr. Speaker, Sir, I thank the Committee, and most sincerely the former Chairman, who did a lot of work. I hope that we shall be able to fit in the shoes of the former Chairman and members.

Thank you.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Hon. Senators, the Statement by the Chairperson of the Standing Committee on Health is, therefore, deferred.

#### ACTIVITIES OF THE COMMITTEE ON HEALTH

*(Statement deferred)*

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Next is the Statement pursuant to Standing Order No.52 (1).

The Senate Majority Leader.

#### BUSINESS FOR THE WEEK COMMENCING TUESDAY, 6<sup>TH</sup> OCTOBER, 2020

**Sen. Kibiru:** Mr. Temporary Speaker, Sir, these are signs of things to come. I was asked to read this as Member of the Senate Business Committee (SBC) by the Senate Majority Leader.

Pursuant to Standing Order No.52 (1), I hereby present to the Senate the business of the House for the week commencing Tuesday, 6<sup>th</sup> October, 2020.

On Tuesday, 6<sup>th</sup> October 2020, the SBC will meet to schedule the business of the Senate. On that day, the Senate will consider Bills scheduled for the second reading, and those at the Committee of the Whole stages.

The Senate will also continue with the consideration of business that will not be concluded in the day's Order Paper, including Motions, Petitions and Statements.

On Wednesday 7<sup>th</sup> October, 2020, and on Thursday 8<sup>th</sup> October 2001, Senate will continue with business that will not be concluded on Tuesday 6<sup>th</sup> October, 2020.

Mr. Temporary Speaker, Sir, a total of 23 Bills are due for the Second Reading. Another 18 Bills are at the Committee of the Whole stage. The SBC will prioritize these Bills accordingly.

In this report, I urge the relevant Standing Committees to expeditiously conclude consideration of these Bills and table reports pursuant to the Standing Orders for purposes of enriching debates at the Second Reading stage, and to effectively navigate amendments during the Committee of the Whole stage.

All Senators who may have amendments to Bills are encouraged to file the same in good time to allow the SBC to schedule the Bills accordingly.

Respectively, Movers of Bills, Standing Committees and Senators who have already filed amendments to Bills are also encouraged to be in the House whenever the

Bills are scheduled. This will facilitate speedy considerations and smooth transition to the next stage.

Mr. Temporary Speaker, Sir, I thank you and hereby lay the Statement on the Table of the House.

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

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Hon. Senators, the Statement pursuant to Standing Order No.48(1) is deferred.

OPERATIONALIZATION STATUS OF THE COUNSELLORS  
AND PSYCHOLOGISTS ACT, 2014

*(Statement deferred)*

Next Order!

**MOTION**

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

**Sen. Kasanga:** Mr. Temporary Speaker, Sir, I beg to move the following Motion:

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

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

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

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

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

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

Mr. Temporary Speaker, Sir, maybe I will just give a little background and brief of what the Committee has so far achieved. As you are aware, when we started there was no other Committee that was sitting. Actually, we were the first Committee to sit virtually and, therefore, discover the efficiency of virtual meetings.

At that time, we were able to hold very many meetings. In a day, we would hold and meet with many stakeholders. Therefore, we were able to do quite a bit because Members were also not engaged in the other Committees. Later on, slowly by slowly, the other Committees also started engaging in their work and all them are now active.

We are fully aware of the fact that COVID-19 is here to stay with us. As it continues to evolve all standing Committees are now fully briefed on the issues that we have presented and tabled here and they have been adopted.

We want to begin to wind up by handing over to the standing Committees, which is why we are requesting for this 30-day extension, to enable us receive the remaining requests we have made to the various Ministries, as well as the Auditor General's reports, as we have mentioned as we were moving the Motion.

Six months was a short time. It was what we were given at the beginning, but I believe we were able to canvass a good amount simply because at that time everything had come to a standstill. Even when we requested for information from the Ministries, we were able to get it quite fast. Now that things are going back to normal, things have slowed down a little bit.

For that reason, we are yet to receive the Auditor General's reports and requests to several Ministries, as our second round of engagements had already started. We need to consider this and give our recommendation to the Standing Committees as we hand over.

Mr. Temporary Speaker, Sir, we have tabled in this House eight reports and all of them have had very good recommendations. We have had a lot of wins. This Committee, with its very committed Members, was able to represent the House at a time when Kenya needed to have its legislative Members participate in the COVID-19 pandemic.

One of the biggest achievements this Committee did was The Pandemic Management and Response Bill. We did a lot of stakeholder engagements. Over 160 stakeholders participated in the making of that Bill, and we were able to make our submissions and put our work in the form of themes. We had five thematic areas. We were dealing with the health issues; economic and financial issues, including micro-economic effects, impact of businesses, trade, facilitation and measures to cushion borrowers and financial institutions.

We also looked at social public order and human rights, including protection of vulnerable persons and groups, protection of women and girls at risk of domestic abuse, measures to enable learners to continue with studies, enforcement of nationwide curfew, access to justice and decongestion of prisons. The fourth thematic area was access to food, water and other basic commodities. Support services was the fifth thematic area.

I wish to remind the House of some of the wins we had. In the Third Report that we tabled on 20<sup>th</sup> April, 2020, we were able to give recommendations for the continued enforcement of containment measures by the Government at that time. We called for better monitoring of COVID-19 cases at the county levels. Although some of the counties were still protected by some of the containment measures, we were worried on their level of preparedness.

We called for the fast-tracking implementation of the Universal Health Care Coverage Scheme and also the release of funds to the counties. By then, Ksh5 billion had been pledged, but had not yet been sent to the counties. We were also calling for the quick availing of the Personal Protective Equipment (PPE) for health workers in the counties. Now we know where they are. With all the investigation we are doing, we now know why there was a problem even at that time.

We also called for guidelines by the Government on disposal of masks. We had already started identifying that masks were going to become a big environmental issue at that time.

In our Fourth Report, we were able to make interventions to the National Transport and Safety Authority (NTSA) because they had a problem, where all motor vehicle inspections had stalled for not appreciating technology. We were able to push for digitalization of functions at NTSA. This was a very big win. This was an issue that later picked up by the Committee on Roads and Transportation, which we left for them to monitor the situation.

We had interventions with Inspector General (IG) of the Nations Police Service. We were requesting for alternative facilities for detention for those found breaking curfew rules because we realized that they were also at risk of contracting COVID-19, where they were being detained.

The Fifth Report was on economic and financial issues. This is where, in our second round of engagement, we are still waiting for letters to come from the various Ministries. On this one, we recommended for the operationalization of regulations for establishing micro and small enterprises development fund, as well as accountability oversight over COVID -19 Emergency Fund. Disbursement of funds to counties at that time had not been done, but now it has. We also dealt with cushioning of people who had lost jobs due to COVID-19.

This is an outstanding area of which we want to receive reports, so that we can consider them before we hand them over to the standing Committees. As you know, this a critical issue in Kenya today. Many people have lost their jobs. We still do not know what the Government has done about stimulus packages; we are still waiting to hear.

Today, I had the pleasure of meeting with some of the *Jua Kali* workers and some of their leaders. Other than now that the education sector is calling for desks and things like that, they have not seen any other major intervention by Government to help them at this time to cushion the fact that they have lost their jobs. This is a key outstanding area and we are waiting to hear from the relevant Ministries, so that we can hand that over again.

Mr. Temporary Speaker, Sir, as part of that engagement, the Committee urged the Government to consider a stimulus package and debt relief mechanisms that could assist people with small businesses to get back on their feet, as well as provide emergency relief to most vulnerable elderly poor persons in the rural areas and informal settlements.

We are aware of some of the programmes that have been rolled out. The Cabinet Secretary for Labour and Social Welfare gave us his initial report, which we had included in the Fifth Report that we tabled. We are now waiting to see and hear from them on the status as of now and whatever else the Government has been able to do for Kenyans.

On the Sixth Report, we addressed social, public order and human rights. We tabled this Report on the 19<sup>th</sup> May, 2020 and recommended for a wage fund relief for the Financial Year 2020/2021.

It was in this Report also that we pushed the Judiciary to adopt virtual court and e-filing mechanisms. That was a really big win for our Committee because we really pushed them.

It was also in this Report where our recommendation that the Independent Police Oversight Authority (IPOA) to ensure that police officers using excessive force on citizens are prosecuted. As you remember, we had a lot of challenges when it came to enforcement of containment measures.

It was in this Report where we had asked the Ministry of Education to fast track a digital literacy syllabus, which unfortunately, did not happen. This still remains an outstanding area, but we are aware now that the Standing Committee on Education has picked up on the education matters, we might not need to go into this. We will leave it to the Standing Committee on Education.

The enrollment of *Inua Jamii* program had been presented to us. We had a problem with it because it was reported during the meeting by the Cabinet Secretary (CS) of the Ministry of Labour and Social Protection, that the Inua Jamii register had not been updated at the time they were starting to roll out the program. We need to hear the status right now and what has happened to these vulnerable people who might have been left out of the program. It is important that we receive the report.

In the seventh and eighth progress report, which we tabled on the 9<sup>th</sup> of June, 2020, and the 7<sup>th</sup> of July, 2020, progressively. This included the fact-finding missions that we did in Isiolo and Meru Counties to check on their preparedness and response.

On the eight report, we are half way through our mandate. We checked on general issues on accessibility especially accessibility of basic needs by most of the people and how food was being distributed to the vulnerable by the national Government and also what the county governments were doing towards that.

We observed that there were a lot of measures needed to be put into place because of these issues. Since there were floods at around that time, and locust invasion, we were worried about counties that are not easily accessible.

Mr. Temporary Speaker, Sir, we also lauded heavily. We Commended the efforts of private sector initiatives because we came across those in a big way. Private sector came out at a time of COVID-19. We realize that Kenyans have their own solutions. What they need is to be given the space to participate in creating solutions.

The Nineth Report was tabled on 23<sup>rd</sup> September, 2020. There was a bit of a distance between the Eighth and the Nineth report. As you are aware, the House was very busy on other activities. It was somewhere in between there Sen. Sakaja resigned from the Committee. It took a bit of time to reconstitute. We lost some time there.

Our ninth report is heavily to do with our county visits. We were able to finally ask the Seat of the Speaker to allow us to do more county visits. This is because by then, the focus for COVID-19 had moved to the counties. Money had already been disbursed to the counties. We considered the Controller of Budget (CoB) report on how counties had prepared for, budgeted and spent their COVID-19 funds. We needed to go and see how they approached all the five thematic areas that we were oversighting. We were able

to visit the Coastal Region. We have put that in our Ninth Report, which hopefully will be adopted today.

It is also the Ninth Report that we engaged with the health frontline workers especially at the county level. We were able to see the challenges they have. Because of the challenges that they have and most of them you have seen them articulated on media. You have heard the doctors really complain. The strikes are now almost becoming like everyday news.

Mr. Temporary Speaker, Sir, these issues, as a Committee in the Ninth Report, we want to recommend that the Senate Committee on Labour and Social Welfare, which is headed by Sen. Sakaja, will have to pick this up. There are some perennial issues that our frontline workers have to go through every year and now it is worse because of the pandemic. They really need to be cushioned. All those and the rest are there captured in the Ninth Report which we shall hopefully have a chance to debate today.

Mr. Temporary Speaker, Sir, as I call on Sen. Halake to Second this Motion, I have to take this opportunity to thank my Committee Members for the level of commitment that they have shown. We have sat for a total of 92 sittings. We have visited five counties. We are ready to even do more if the Speaker would have helped us. We are ready to do more given that it is a pandemic. It is unusual times. I must thank my fellow Committee Members for all their commitment well as the Secretariat. The Secretariat has worked tirelessly. At a time when all the Committees are active, we know they are stretched, but they still managed to give us what we need.

Mr. Temporary Speaker, Sir, I beg to Move and I call upon Sen. Halake to Second.

**Sen. Halake:** Thank you very much, Mr. Temporary Speaker, Sir. I rise to support this Motion and the report of the *Ad Hoc* Committee of Senate on measures to oversight the response to COVID-19.

Mr. Temporary Speaker, Sir, as you have been told, this Committee had had - I think I will correct my Chair - 94 sittings and 95 as of yesterday. In the 94 sittings, as you have been told, this Committee did have so many oversights, representation, legislative interventions and initiatives that could not have been possible without the good leadership of our Chairperson.

I would like to thank both the previous Chairperson, Sen. Sakaja, who left us in good place and our Vice-Chair, who stepped into his shoes very ably and very well and steered this Committee with distinction.

Mr. Temporary Speaker, Sir, a lot of appreciation goes also to your office for the support we have received and our colleagues who have sacrificed. We used to sit a total of five or six times in a week, a couple of times a day. We have met a total almost 143 different stakeholders and processed inputs from those stakeholders.

Mr. Temporary Speaker, Sir, you will remember the time that we were in lockdown, it was this Committee that was oversighting things like testing, quarantine, isolation centers, Intensive Care Unit (ICU) facility functions within the country and human resource for health, drug supplies, infection prevention measures under the thematic area of health which the Chairperson had described. We organized our work in very strategic thematic areas which we felt would have the most impact if we oversighted, represented and if we worked within those strategic areas of focus.

Mr. Temporary Speaker, Sir, under the strategic area of focus of health and health issues, we did so much to ensure that the citizens got the drugs they needed, were treated fairly in their isolation centres where they were put, and their issues were escalated including people that were aboard.

This Committee was so instrumental in the airlifting of our citizens from India and from other parts of the world where we highlighted to the authorities and to the Ministry and made sure that we played the ball between those authorities to ensure that our citizens got the dignity and the support they needed to come back home like testing to quarantine, to isolation to universal access to community health issues, day time statistics, and even to some of the issues around projections. We made sure that we kept the ball on that area.

The thematic areas of access, finances and thematic area of social economic, this Committee, as you remember, was in the news for having supported the most vulnerable people in our informal settlements to ensure that the land laws did not chase them away or did not throw them out. I know that was a bit controversial but that did a great deal to ensure that the dignity of our most vulnerable community members was taken care of by virtue of our representation on their behalf.

Mr. Temporary Speaker, Sir, under social order, social justice and public order when the policemen were highhanded, this Committee ensured that human dignity was observed and human rights were not violated. Even where such violations happened, the people were put to account. You will remember that we made sure that the Cabinet Secretary for Interior and Coordination of National Government and the Cabinet Secretary for Health were invited. They were held accountable and that they did the right thing.

As you were told by the Chairperson, this Committee met diverse stakeholders from the private sector health workers and public sector healthcare workers. They also met community healthcare workers, associations of nurses and doctors, Kenya Medical Research Institute (KEMRI), among others. We ensured that under the thematic area of health issues, that all our health workers, including insurance companies such as NHIF covered the people that were not able to take care of medication or isolation for themselves.

I think this Committee did very well. In terms of legislation, because this is a House of legislation, we made sure that the Pandemic Response and Management Bill was developed in record time with one of the most comprehensive public participation ever given that it was done online. Also, we had a lot of submissions in this Chamber from different stakeholders.

In my opinion, the Pandemic Response and Management Bill is one of the most participated in and the most comprehensive Bill that any House could have done. Unfortunately, this Bill is now gathering dust at the National Assembly having been declared a money Bill. However, this House has done and dispensed its duties with distinction once again.

We kept our accountability to citizens through continuous media reports. If you recall, we braved the pandemic to come out here on the steps of this House to make sure we would give the nation a very comprehensive report as to where we are with the response of the pandemic, support of the vulnerable communities and frontline workers.

We also give a report where we are with the response to social order, social justice and with our oversight.

Mr. Temporary Speaker, Sir, as you have been told, the Ninth Report had to do with counties. Our focus had shifted to counties and we visited some of them. Those counties were chosen for their vulnerability, for the questions that were before us as a House and for sampling. Therefore, a lot of consideration was made on that. Unfortunately, as the Chairperson has said, we could not go to all the counties. Wajir County is one of them that we did not visit, but our term has come to an end.

Even as we request to be given more time to finish the Report, it is not the wish of this Committee to continue because the emergency is over now and the routine has set in. We have Standing Committees that can take over the rest of the routine work that has been put in place. We have nine reports. I am sure that there will be the tenth one which will be the major Report.

Mr. Temporary Speaker, Sir, we kept the nation, this House and all the stakeholders abreast of what this House has done towards oversight, representing and ensuring that as the Senate kept the ball rolling. We made sure that we held ourselves and others accountable to give the best service to our citizens in the five thematic areas that we had we had identified.

Sometimes people think that when you have a platform or have something you want to stay on, it is not the wish of this Committee to do so. However, it is the wish of this Committee to do the quality of work that this House is accustomed to, the quality of work that has become the standard unit for our Committee and ourselves as individual brands. For that reason, we had asked for a bit more extension of time not to continue to do the work, but to finish the Report.

Some of the reasons this Report has not been finalized is because of the need for certain forensic audits, especially as regards to oversight of funds to counties, national Government, Ministry of Health and Kenya Medical Supplies Agency (KEMSA) where we felt that we wanted to do a thorough investigation through a forensic audit. The Report on KEMSA was submitted to us two days ago.

For that reason, we would like to make sure that our final Report reflects that important information. Therefore, it is the reason why this Committee had asked for more time to ensure that we enrich our Report with those facts that are from the forensic audit as performed by the Auditor-General.

I do not want to speak too much. The Chairperson made a fantastic job in enumerating what this Committee has done, the approach we took in terms of how we organized our work and what we did in terms of making sure that we went to the ground to ensure that the information we received from our stakeholders was corroborated on the ground as well. That sampling is satisfactory enough for the Committee so far even if we did not manage to visit as many counties as we would have wished to.

We hope that the Standing Committee on Health and Committees on different thematic areas that we identified can be assigned some of the routine work that will have to continue because this pandemic will be with us for a long time.

Mr. Temporary Speaker, Sir, I wish to thank all of you; the Office of the Speaker, for the support that was given to us, our colleagues for the vote of confidence that we could do this work under the circumstances that were very new to all of us and to our previous Chairperson for the good job he did to steer us for the period he was our

Chairperson and for our Vice Chairperson who took over and did a sterling job in ensuring that this country, this House and the people that rely on us for services got what they deserved.

I hope this House will find a way or a solution, not just of the Pandemic Response and Management Bill, but to all the Bills that held in the pipeline or crosshairs between the two Houses. What this is doing is beyond the supremacy battle between the two Houses, but it is affecting the lives of our citizens and service delivery in our counties. This is a solution that we must find.

During the Petition, I know we talked about the Boundaries Bill and other numerous Bills that are now gathering dust. I hope the Pandemic Response and Management Bill can be fast tracked knowing that pandemic being matter of life and death. I hope that this House will find a solution to that.

I also want to thank the Secretariat of the *ad hoc* Committee on COVID-19. We could not have asked for a better team. We got the most amazing support from them. We give them a lot of credit for the quality of work that we have been able to do and efficiency with which we have executed our mandate. I thank everybody as I look forward to when we handover our Report to the different Committees.

I second.

*(Question proposed)*

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Sen. (Dr.) Ochillo-Ayacko, kindly proceed.

**Sen. (Dr.) Ochillo-Ayacko:** Mr. Temporary Speakers, Sir, I would to congratulate the *Ad Hoc* Committee on COVID-19 Situation in Kenya for doing a good job. The Committee has been very productive and dedicated to their work. I would like to start by appreciating Sen. Sakaja, who was the first Chairperson of the *Ad Hoc* Committee. I would also like to appreciate the current Chairperson and Vice Chairperson. There is a saying that, 'What a man can do, a woman can do better'.

*(Applause)*

The performance that we have seen so far is a conformation of the saying. I am looking forward to a day when we shall have a women president. We are most vulnerable when we are in serious difficulty and that is when we look up to women to take care of us out of such difficulties. The first woman that we all look up to in times of difficulties is our mothers. We also look up to our wives, daughters and sisters to take care of us. When it comes to rewarding women, we do nothing. In fact, this Parliament is at the threat of dissolution for not legislating what the Constitution expected us to do regarding gender matters. Although gender matters are not just woman, right now, it is women who are disadvantaged. We keep on seeing committees and commissions appointed but we do not see the presence of women who when things are difficult; when chips are low, we look up to them for solution.

I sincerely thank the leadership of this *Ad Hoc* Committee. I just wish that they have asked for more time because there is a lot of work that needs to be done. Nationally, it has been reported that we have COVID-19 millionaires and billionaires. We would like the Committee to expose the COVID-19 millionaires and billionaires in our counties. The

money that was meant to fight COVID-19 was disbursed to counties so the Senate, which is the House responsible for overseeing counties, should be told how the money was utilized.

The *Ad Hoc* Committee on COVID-19 Situation in Kenya had requested the Auditor-General to give a report on how the funds were utilized in the counties so the House expects that out of the report, we will see footprints and direction on who took our money and misused it. Other Committees of the Senate such as the County Public Accounts and Investment Committee and the Committee on Health will also have occasion to pick the lead from the report *Ad Hoc* Committee. The citizens of Kenya and other organizations would like to know how their funds and donations were used in the counties.

Health is a devolved function. Therefore, our health facilities were expected to match the emergency that engulfed the entire world for all this period. In the report that will be presented by the *Ad Hoc* Committee, we expect to know the state of our health facilities. The COVID-19 emergency that we have been responding to was an eye opener, a warning or a shot to the entire nation to be prepared for anything. We have been dealing with COVID-19 but maybe COVID-20 is in the offing. It is therefore important for the *Ad Hoc* Committee to include in its report the state of our emergency response to highly infectious diseases that are easily transmitted and keep moving around like wild fires killing many people.

It will be important for this Committee to capture the state of our health response and health facilities. I would also like to see in the report that will be presented by the *Ad Hoc* Committee how the national and county governments co-ordinate in times of trouble. The COVID-19 is an international pandemic but the responsibility for fighting for and saving Kenyans is a national function. The theater where this responsibility is exercised is in the counties.

It will be very important for the *Ad Hoc* Committee to give us information as to how the coordination was done between the National and the county governments so that we will have something upon which to improve as a nation. If there is no coordination between the national and county Governments, and for example one level of Government such as the National Government or the county governments was responsible for dropping the ball, we would consider the report and ensure that in the chain of responses, we have dealt with the weakest link. It is important to know where the link is weak so that we fix it because a nation is a continuous entity that is there to stay.

Mr. Temporary Speaker, Sir, in conclusion, I would like to state that the COVID-19 pandemic is with us to stay therefore as the *Ad Hoc* Committee winds up its activities, I am sure that the Standing Committee on Health and other Committees must be ready to take the button from where the *Ad Hoc* Committee has left. I hope that the Standing Committees that will take up the work of the *Ad Hoc* Committee on COVID-19 Situation in Kenya, will not do a shoddy job. The emergency will continue being around so we must not let our guard down. As President Uhuru stated in his last address to the nation as well as observing the global trends, the COVID-19 pandemic is not going away. As a House, we must not close our eyes, block our ears and shut down because one Committee has done a brilliant job. We must urge the succeeding Committee to continue the good work for the benefit of all Kenyans.

I thank the *Ad Hoc* Committee on COVID-19 Situation in Kenya, the House and every Kenyan for doing what they have done to ensure that we are alive and healthy. We are alive courtesy of many people who observed the COVID-19 guidelines, the people who loved their neighbours and the people who made it their responsibility to protect themselves and others.

I thank you, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Sen. (Dr.) Musuruve, kindly proceed.

**Sen. (Dr.) Musuruve:** Mr. Temporary Speaker, Sir, I thank you for giving me the opportunity to support this Motion. The *Ad Hoc* Committee on COVID-19 Situation in Kenya has been doing a good job. I comment them for the many reports that they have been tabling and the work that they continue to do with regard to visiting the counties to monitor what is going on.

The thematic areas that the *Ad Hoc* Committee has been focused on are very crucial in this country. They have given elaborate details on health. We heard that there are COVID-19 billionaires and millionaires. That was brought on the Floor of this House. This is a good indicator of work well done because it has come to the attention of all of us. The Committee needs to go a notch higher and dissect other thematic areas.

I would like to speak on the thematic area of education because I am a teacher by profession. Education cannot wait. The Committee needs to find out what is happening in the education sector because it is clear that the legislative arm of the Government has been left out on matters of COVID-19 and education.

I know very well that in the Committee on Education, where I am a Member, we have tried to bring the Ministry of Education on board, so that we walk the same journey, but it has not been fruitful. Many times we called the Cabinet Secretary to appear before us so that we engage for the purpose of ensuring that we break the ice in the education sector because it cannot wait. However, it has not been easy.

In the Committee on Education, we deliberately engaged county governments to see what is happening in the Early Childhood Development Education (ECDE) centres. That sector is still wanting. Some counties have no ECDE classrooms, while others do not have toilets and water. Sometimes one is left to wonder.

We are talking about COVID-19 preparedness, yet some schools do not have toilets. I am talking about public schools. I do not want to deliberate on issues of private schools because they are different categories. In many public schools, we realised that there is no water and toilets, yet we are talking about COVID-19 preparedness.

The Ministry of Education has been inactive in addressing the issue of COVID-19 preparedness. There is need to interrogate if any funds were given to the Ministry of Education by other partners and donors to address the issue of COVID-19 because it has been silent.

When the Ministry holds conferences, they need to bring the legislative arm of Government on board, so that we engage and see the legislative gaps and how they can be filled for the purposes of ensuring that we support the children of this country. Most of the time, conferences are held without the legislative arm of Government being brought on board. Those who attend are allied stakeholders. There is need for the Committee led by Sen. Kasanga to have its time extended, so that they can address issues in this area.

The situation in some counties is pathetic. You will find classrooms made of mud and smoothed with cow dung. Sometimes children are infested with jiggers because of mud and cow dung. There is a lot that needs to be done in the area of education. There is a lot of uncertainty with regards to opening of schools because of lack of preparedness for COVID-19.

I remember the Cabinet Secretary announced that schools will open in June. He then changed to September before announcing that it will be in January. Later, he said it will be in October. That lacks believability because of lack of preparedness.

There is need to investigate the amounts that have been allocated. There is also need to audit what is exactly happening in the counties and find out whether money was sent to the counties. If we purchase desks before schools open, where are we going to take them? Is it in mud walled classrooms? Priorities must be set right. We should start with the infrastructure, so that classrooms and other facilities are there.

If the person at the helm of the Ministry is uncertain, then other people will be uncertain with the pronouncements they make. After they made the pronouncement that schools would open, in that panic, the Teachers Service Commission (TSC) decided to recall teachers. It was just performing its mandate of ensuring that there are teachers in schools.

There is need for the Ministry of Education to do what it is mandated to do because education cannot wait. We cannot gamble with the lives of our children. There is also need to investigate how much money has been set aside to support children with disabilities from their households because most of them have been getting support from the Government in terms of physiotherapy and medicine. We have children who have developmental issues. What has the Ministry done?

What came out clearly from the Ministry was that they are ready to loan private schools Kshs7 billion. I want to say before Kenyans that those are priorities upside down. What about schools whose classrooms are made of mud and finished with cow dung? What about teachers who have not been paid? Even if it is a sessional loan, that is upside down in terms of priority.

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

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

Mr. Temporary Speaker, the Ministry of Education should come before the whole House and tell us exactly what they have done. We need to go to the ground and see what they are saying, and if it corroborates with what is on the ground. This is because most of the time when information is sought from the Ministry, we just get desk responses, where somebody decides what they will tell us. There is need for interrogation. Universities needed to open like yesterday because of research. The Ministry cannot do research like universities would do.

There is need for the Committee led by Sen. Kasanga to have a matrix of operation, where they are going to look at information from schools and see that programmes are running well. The emphasis should be on children with disabilities. They could tell you that they have sign language interpreters, but we have different and varied

categories of disabilities. All types of disabilities need to be addressed because we have children with disabilities in households whose parents do not know what to do with them.

The Ministry of Education has not communicated to schools. If you ask heads of schools, they will tell you that no communication has come from the Ministry. They should tell Kenyans exactly what they have done in terms of preparing to reopen. Let them not talk about desks because it is irrelevant in a situation where there is no infrastructure or classrooms and where classrooms made of mud are falling on the learners. Let them tell us clearly because the children of the common man must be our concern.

As a Senate, we must make a difference by ensuring that the children not only go back to school, but also get quality education and are safe in the learning environment.

I thank this Committee and their time should be extended. As the Committee on Education, we are not able to have a breakthrough with the Ministry and the relevant stakeholders.

I support.

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Asante sana, Sen. (Dr.) Musuruve. Waheshimiwa Maseneta, kwa sababu bado kuna wengi ambao wangependa kuzungumzia Hoja hii, naomba tupunguze muda.

Najua kwamba kila mtu anaweza kuzungumza kwa dakika 20, lakini ili tuweze kumpa kila mtu nafasi, naomba tuzungumze kwa dakika tano kwa sababu hii sio kura ya maamuzi bali ni ushawishi wa kuongeza muda.

Kwa wakati huu nampa Naibu wa Spika, Sen. (Prof.) Kamar.

**Sen. (Prof.) Kamar:** Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to express my appreciation to the wonderful Committee that has done a great job over these few months, that is, the *Ad hoc* Committee on the COVID-19 Situation in Kenya.

I congratulate the Committee for a job well done. This is a Committee that has highlighted a number of issues, making the COVID-19 situation an opportunity for us to analyze the state of the health sector in this country.

Mr. Temporary Speaker, Sir, I appreciate them because within the short time, they have visited counties, talked to governors, the County Executive Committee (CEC) members and looked at the facilities.

Until you visit our counties, you do not know what you have. This morning I received a call from a resident of Uasin Gishu, who was talking in one of the radio channels and asking whether it was true that the County Government of Uasin Gishu does not have an Intensive Care Unit (ICU) facility, which is true.

This is something that all of us must start looking at. What it means in our case is that our referral hospitals and the private hospitals are the only facilities that have ICUs, but the other facilities do not have.

I want to thank this Committee because they are able to expose the state of our facilities. Health is a devolved function and it should confirm why some of us were fighting for more resources for our counties. This is a devolved function, but we do not have the devolved facilities.

Those of us with extremely vulnerable population have had a rough time, let alone this time we are talking about COVID-19. The issue that the Committee has brought out

is important as far as the availability of facilities in terms of ventilators and basic oxygenation equipment are concerned.

These are important facilities that any country in the 21<sup>st</sup> Century should have, but we still have problems, which brings it to us, because this is at our doorsteps as Senators. Health being devolved, we must start looking at the facilities that are being offered to our people at the county level. If they are not sufficient at the right level to deal with COVID-19, we must think afresh and start talking to the Council of Governors (CoG) on where the priorities in the counties must take care of some of these issues, which are rights to Kenyans.

According to our Constitution, health is a right. If we cannot afford health, then there is very little that we can afford. As we wait for their report, I am hopeful that they will hand over the various sectors to various Committees.

I want to thank the Committee on Health because they managed to visit Uasin Gishu twice on the same issue of Level IV and V hospitals. When they came to Uasin Gishu for the Senate *Mashinani* sittings, they were able to raise some of those issues.

This Committee has gone further to expose more issues that we need to address. I thank the Committee and support the Motion to extend their mandate by 30 days and encourage them to prepare key areas that other Standing Committees must take over, so that it is clear where the report is going. We cannot afford to leave it hanging. It is going to be very helpful.

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Asante sana, Naibu wa Spika. Fursa hii ni ya Seneta wa Makueni, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr:** Thank you, Mr. Temporary Speaker, Sir. I rise to support this Motion to extend the mandate of this Committee. However, allow me to say a few things.

First, it is during the tenure of this Committee that a Member of this Senate was arrested and resigned for violating rules they had drafted. This Committee has put us on the limelight for many reasons; good or bad. It is during the life of this Committee that racketeers, pretending and purporting to import masks and Personal Protective Equipment (PPEs) caused so much havoc at Kenya Medical Supplies Authority (KEMSA) that there was Kshs7 billion or more lying there. Somebody wonders whether these profiteers and racketeers were hoping that the pandemic would last long.

We were alive when the Governor of Murang'a purported to build a hospital in two months. We were alive when the Governor of Machakos turned the stadium into a hospital or an isolation facility. We were alive when the Ministry of Health finally decided that dead bodies cannot walk out of the coffins, and therefore, COVID-19 cannot be transmitted in sealed coffins.

We were alive when the Ministry of Education got so confused about COVID-19 that they are not sure when the schools will reopen. We were alive when the tourism sector is literally on its knees. I got a message yesterday that workers of Laico Regency, the famous hotel, have not been paid for the last four months.

Whereas this Committee is talking about COVID-19 and Kenyans are back to 'reggae' and doing whatever they feel like, including the famous group of politicians of whom I am happily amongst, the Board of Management (BOM) teachers of Kenya have not been paid for six months.

The Ministry of Health has given such stringent positions on the reopening of schools - and I am a chairman of one BOM - that it would require us to build new schools in doubles for purposes of complying with COVID-19 regulations. The Ministry of Education has not sent money to workers, teachers and schools for any financing, and since March, schools are grinding to a halt.

It is not enough to extend the mandate of this Committee unless we can speak about education. For the first time, the press says that the Ministry of Education is indecisive, which is strange because the Cabinet Secretary was hired for being decisive. Are schools going to reopen?

The Committee on the COVID-19 Situation in Kenya, before you end your term, I expected a statement today. You should state clearly the position of the COVID-19 Committee on reopening of schools.

Do we open or not open schools? That is the question. Answer that question. The Cabinet Secretary (CS) says that we should open schools in October when our classes are crowded and children are going to play together, our public schools do not have water or sanitizers, and where we will not have social distancing. That can only happen when the CS does not have children in public schools.

I know because I sit in the Committee that was discussing the extension of this Committee, that the people who are afraid of the audits of the Coronavirus Disease (COVID-19) funds do not want to see the term of this Committee extended. I must say that very clearly.

I know that these cartels are operating on our corridors here. We want a special audit of the COVID-19 funds as soon as possible, because if we do not get it done--- What is the magic about four months? Is COVID-19 going to end in four months? No!

Mr. Temporary Speaker, Sir, I support the extension.

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Asante sana, Sen. Mutula Kilonzo Jnr. Sasa hivi nampa fursa Sen. Farhiya.

**Sen. Farhiya:** Thank you, Mr. Temporary Speaker, Sir. I am happy and proud to see you on that seat. You are the only Chair who speaks in Kiswahili throughout. That is another plus, because there are two official languages in this country; Kiswahili and English. I am happy that you are the only one who does that. Now add me two minutes for praising you.

*(An. hon. Senator spoke off record)*

That is just on a light note. It is in the afternoon and people are tired, so they need something to laugh about.

Mr. Temporary Speaker, Sir, I am happy with the Committee on the COVID-19 Situation in Kenya, although I have a little bit of an issue. They have worked diligently and had a lot of media coverage. I think that they have done a good job.

I accept that they should continue, but I had a request a long time along that they should have visit Wajir County to gauge its preparedness for COVID-19. Despite the fact that my county has spent the COVID-19 money to the last cent, unfortunately, we have nothing to show for it on the ground.

Sometime back, somebody died of COVID-19 because there was no simple thing like oxygen. That is somebody who had worked in the health sector for 30 years, and he died for lack of oxygen. The Senator for Wajir and I had requested this Committee to

visit Wajir County, and I feel a little bit let down on that ground. However, other than that, I think that all of you are stars. You have done us proud.

There are many counties that still do not have Intensive Care Unit (ICU) beds. You wonder what happened to the COVID-19 money that was given to governors. Up to now, we all do not know exactly what happened to that money. I think that if there is any fund that we need to do a special audit on, before this Committee closes, they should order the---

How many minutes do I have?

**The Temporary Speaker** (Sen. (Dr.) Mwaura): One minute.

**Sen. Farhiya:** The Auditor-General must carry out a special audit on COVID-19 money in all the 47 counties. These are people who are spending money on behalf of sick Kenyans, and they do not want--- I am glad and it is through the grace of God that Kenyans are not dying in numbers. It is not because county governments have worked hard, but just that God has felt that Kenyans should not die.

Mr. Temporary Speaker, Sir, this is one of the things that the enemies of devolution use against counties; that people are wasting money to have counties set up yet, they are not doing that they are meant to do.

I support and approve the extension of this Committee but, please, leave a legacy in terms of the COVID-19 money. Even if they need a little but more time, they just let us know. We will approve, but their term must not end without a report on what happened to the COVID-19 money.

Mr. Temporary Speaker, Sir, I thank you.

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Asante sana kwa vile umezungumza vizuri. Hata hukuhitaji muda wa ziada.

Wakati huu nitampa fursa Seneta wa Taveta.

**Sen. Mwaruma:** Thank you, Mr. Temporary Speaker, Sir. Just to correct you, it is the Senator for Taita-Taveta. When the people of Taita people hear you say, "the Senator for Taveta," they will be a bit disgruntled, because the county is Taita-Taveta, with that mixture.

Let me start by supporting the Motion that seeks to extend the mandate of the *Ad hoc* Committee on the COVID-19 Situation in Kenya. Secondly, let me congratulate them for their sterling performance in their mandate, which was a real gargantuan task that was geared towards managing and monitoring the pandemic.

The Committee has said that they are seeking for the extension not because they are desperate to remain there, but because there is some work that is remaining, especially work to do with report writing. We are waiting to see the type of report that they will give us, that is, the 10<sup>th</sup> report.

We have so far gone through nine very good reports, and I know that the final report will be the best one. I would want to see the recommendations therein, especially the recommendation that would include the handing over of the work that is remaining to the various Standing Committees.

For example, we know that during the COVID-19 period, there were very many people who lost jobs. Some of them must have lost their jobs without the regulations being followed. We are waiting for the recommendations on this, especially in the Committee on Labour and Social Welfare, to see the people who were denied employment, without following the right procedure.

Mr. Temporary Speaker, Sir, most of these things are happening in our counties. The management of COVID-19 and its ravaging results were happening in our counties. There are people who have not been paid their salaries because of one reason or the other. We would want to know what type of recommendations would come from that Committee.

Most importantly, is the issue of corruption that has denied the counties health facilities. Given that health is devolved, we would want to see the action points in terms of recommendations, because we are waiting for the Auditor-General's reports on how the money was used by the counties. Therefore, we would want to know the people who are culpable, and how the Committee would recommend how those people will be dealt with.

Additionally, the economy was really affected by COVID-19. There are so many people who lost businesses, yet they have huge loans at the Small and Medium Enterprises (SMEs), banks, cooperatives, and so on. We would want to see what the Committee would propose as the recommendations on how the poor people in the villages will be assisted.

We would also want to see how to revamp the education sector, given that our people literally 'ate' the money that was supposed to be used for the fees. What will happen to these children who are supposed to be going back to school---

**Sen. (Dr.) Ochillo-Ayacko:** On a point of order, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Ni jambo lipi la nidhamu ambalo uko nalo, Sen. (Dr.) Ochillo-Ayacko?

**Sen. (Dr.) Ochillo-Ayacko:** Mr. Temporary Speaker, Sir, since this is a House of record, would I be in order to request my very good neighbour and brother to explain what it means by 'eating the fees'? How is fees eaten, since it is not food?

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

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

**Sen. Olekina:** Bw. Spika wa Muda, lile jambo ambalo limemchanganya mwenzangu ni kuwa wewe unaongoza Seneti hii leo kwa lugha ya Kiswahili. Wakati anasema "kukula ile hela", ali *translate directly* kwa Kizungu kusema "*ate the fees*"

**Sen. Mwaruma:** Mr. Temporary Speaker, Sir, I have been speaking in English, and as you can judge for yourself that it was the Queen's English. It is only that if you go to the social media, most of the people are saying 'the fees has been eaten.'

On a more serious note, people have already expended the monies that were supposed to be for school fees. We would want proposals that would be geared towards maintaining the learners in school as the parents look for money to pay the fees.

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Asante Sana, Sen. Mwaruma, Seneta was Wadavida na Wataveta wote kule Timbira, Bura na kwingineko na pia ana shahada ya *Masters* ya Agha Khan University katika Chuo cha Dar es Salaam. Kwa hivyo, amesoma na kuboea.

Sasa hivi nampa nafasi Seneta wa Mandera, Sen. (Eng. Mahamud).

**Sen. (Eng.) Mahamud:** Thank you, very much Mr. Temporary Speaker, Sir. I also join my other colleagues in supporting this Motion for the extension of time for the *Ad Hoc* Committee on the COVID-19 Situation in Kenya.

The world almost came to an end when the pandemic struck, Kenya not excluded. When the history of this country will be written, it will record what institutions in this country have done in dealing with this pandemic, Parliament included.

We are happy that the Senate, in its own wisdom, decided to form the *Ad Hoc* Committee to deal with this matter, so that we know they are seized of it and the nation can see what needs to be done. The Committee has done very well. I congratulate both the former and the current Chairperson, and the team for a job well done.

The Committee has given us progress reports several times. Now, I think they are dealing with the Ninth Report. In fact, their report will be completed if we know what happened to the funding that was given to the counties by various institutions; the national Government and the donors.

It has become clear that this pandemic has thrown this country into some crisis and the worst place affected is the education sector. Our children have been at home from March. In fact, the likelihood of going back to school again is bleak. The Ministry of Education has been giving a lot of confusing reports. I think they either do not know what they are doing or do not want to do anything.

The Report dealt with many thematic areas; health, financial, social, justice and policies order issues, access to food, water and sanitation and other crosscutting issues. It will be important for this Committee to finalize its report, awaiting also the report of the Auditor General as far as how funds have been utilized. When that report will be received by this Committee, we will have a way forward, where we will submit the report to various standing Committees. This is so that it the issues that have affected this country can be taken to their logical conclusion. This country will require a recovery plan after COVID-19; it is not over yet.

We are told that the curve has been flattening, but only after we were told that “COVID Billionaires” appeared, suddenly the curve flattened. Again, as of yesterday, we can see the numbers have increased. I think there are 150 or so people who were COVID-19 positive. The way we are moving now, the country has been partially opened. The curve is still on, but I think we are far from dealing with the effects of the pandemic.

Mr. Temporary Speaker, Sir, we need the Committee, in those extra 30 days, to come with the recommendations that are actionable. Of course, that will go to the standing Committees. Our report must be powerful so that this Government is told what needs to be done at its various levels.

The worry is that we are told, with the pandemic, there appeared some “COVID millionaires”. It is shame on the system that benefits from people's misfortunes. When the report comes, let us not whitewash, so that we shame those people who are behind it.

Apart from the COVID-19 funds given to counties, we need also to audit the funds given to the national Government. We are told that even donations have been stolen. We also heard that the Kshs4.5 billion was being borrowed daily in the name of COVID-19. Due to all this, the work that has been done by the Committee must be finalized and recommendations put into actions that will guide this country on how to proceed thereafter. We do not want the things that happened.

Last night, I watched the debate by President Trump and former Vice-President Joe Biden on how the President dealt with it. It was one of the main agenda, which was a big crisis. Going forward, the way this country dealt with COVID-19, the leadership in the counties, the Executive and various Ministries should be an issue for this country. It

must be an issue so that if a crisis of this nature appears another time, we will know how to deal with it.

It should not be just whitewashed. I know that this House, unlike the other House, has decided to come up with this Committee. I was sitting in the Senate Business Committee when this idea was brought. The idea was that after we do this, we have a Joint Committee with the National Assembly. Of course, they did not want it. Let us run away with this. We have a fantastic job. Let us make sure that our report is something of substance; a report that can be actionable.

I support.

**The Temporary Speaker** (Sen. (Dr.) Mwaura: Asante Sana, Sen. (Eng.) Mahamud. Mimi na wewe tulifurushwa kutoka Kamati ya Fedha na Bajeti baada ya Mkurupuko ambao ulitokana na Mgao wa Tatu wa Fedha.

Sasa ninampa Seneta wa Kwale, Sen. (Dr.) Zani.

**Sen. (Dr.) Zani:** Thank you, Mr. Temporary Speaker, Sir. I congratulate this Committee on the exemplary work they have done, right from the time it was chaired by Sen. Sakaja and later by Sen. Kasanga. She has got to the steering wheel, and is steering this Committee to greater heights.

It is only fair that they have come and requested for time. We have always extended time in this House for various Committees. It should be so especially to this Committee. If there is a Committee that has stayed true to their mandate and done work that was clear for everybody to see at a very difficult time, it is this Committee. Right from the onset, they presented their reports on time and even proposed a Bill.

Money Bills is going to be quite an issue for both the Eleventh and Twelfth Parliament. One way or the other, we have to solve it because some of the issues addressed in that Bill are very critical for the way we live. This Committee looked at all the facets of life; economic, social, health, education and the way----This Committee looked at and tried to intervene on behalf of the Senate to ensure that these issues are heard very clearly.

This Committee has run out of time at its most crucial point. They have mandated the Auditor General to undertake a special audit on the utilization of funds allocated and appropriated by the 47 county governments. This is a very serious issue. It has been alluded to by everybody. Almost in all sectors, there are more questions than answers that are coming through. For example, Sen. (Dr.) Musuruve and Sen. (Eng.) Mahamud elaborated quite clearly on the education sector.

We know from the Committee on Education that some of the schools are not ready. They are meant to have masks for the learners, sanitizers and social distancing. It becomes very critical. We have been meeting various county officials and asking them the level of preparedness for the opening of the schools. Most of them are saying that most of the funds that were meant to go to them have not been received.

Mr. Temporary Speaker, Sir, this is worrying. When we saw this pandemic unfold, we saw some countries, for example, China, putting up very fortified forward movement in trying to address the issue. We saw countries such as Germany and Sweden going out of their way to ensure things worked appropriately.

It has been said already that there is a lot to be done. There is the idea of monitoring and oversighting to ensure that the evolving COVID-19 situation in Kenya is addressed properly. This is very critical. Thirty more days will allow them to do that. The

heart of most of what we are waiting for from this Committee is going to be the most relevant and exciting part. I hope that the Auditor General will give a very special audit report that is clear. That gives us even a chance to follow through.

I suspect that after the 30 days, we might even need a few more days for this Committee to extensively look at that report, because it will be major. This Committee touched on everything right through health, education and all other relevant areas. We are looking forward to their final report.

Let this Committee be given some time, so that by the time this audit report is received, it will be received within a context of a Committee that is already seized of the various matters. They will be able to articulate and present these views to the Senate. I think 30 more days is appropriate.

I support that they be given the extension of time, so that they can complete their work. We are proud of this Committee because it has worked very well. Their engagement with various stakeholders has made the Senate heard on the matter of the COVID-19 situation in Kenya appropriately.

I thank you, Mr. Temporary Speaker, Sir,

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Asante sana, Sen. (Dr.) Zani. Wewe umetoka katika familia ambayo ina waandishi wakuu wa lugha ya Kiswahili. Kwa sababu hiyo, ninakuomba uwe na uzoefu wa kuzungumza lugha hii unapochangia hapa Bungeni, ingawa nafikiri kulikuwa na mchakato mkali sana hapa Bungeni kuhusu neno “mzungumzishi.” Hata hivyo, nawasihi tuwe na uzoefu wa kutumia lugha hii. Wengine wetu tulipokuwa katika shule za msingi tulifundishwa Kiswahili na Bw. Zacharia Zani and Bi. Teresia Zani. Tuendeleo kutukuza lugha hii katika Bunge la Seneti.

Sasa hivi nampa fursa Sen. Chebeni.

**Sen. Chebeni:** Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to also add my voice on this. I support this Motion on the extension of the time for the Committee. Sen. Kasanga, as the Chairperson, has really done a good job. Sen. Sakaja did a good job as well when he was the Chairperson.

The Committee has consistently updated this House on matters of the COVID-19 situation in the country. They have given us reports on the various sectors that we have in our country, including matters to do with our county governments.

I appreciate the efforts in exposing the level of preparedness in the health sector in our counties. We have had reports of how our health facilities were in a bad state. However, over time, they have improved. We have seen that a number of Intensive Care Unit (ICU) beds are available.

Mr. Temporary Speaker, Sir, the other issue that they have also brought to the fore is the issue of KEMSA and supply of Personal Protective Equipment (PPEs). They have exposed this matter. Therefore, they have done a good job. We are also looking forward to the audit of the COVID-19 funds. We want to know where this money has gone to. Have our counties utilized this money as intended? The COVID-19 pandemic is still an issue globally. There is a lot of work to be done. Therefore, this Committee needs to have its term extended.

Mr. Temporary Speaker, Sir, in our education sector, there is a lot of confusion and anxiety. Our children do not know when schools will be reopened. There is the issue of preparedness. We do not know whether our schools are prepared. Do we have masks, sanitizers and water? Therefore, there is need for a lot of things to be done in the

education sector. How do we protect our teachers and students when we open our schools?

The other issue that the Committee needs to look at is the issue to do with post COVID-19 interventions. We need to come up with strategies on how to revive our economy. How do we resuscitate our tourism sector? How do we have our youths running their Small and Medium-Sized Enterprises (SMEs) again?

I support this Motion.

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Asante sana, Sen. Chebeni, mkimbiaji hodari sana.

Sasa hivi nampa nafasi Sen. Okongo Omogeni, Seneta wa Kaunti ya Nyamira.

**Sen. Omogeni:** Thank you, Mr. Temporary Speaker, Sir. I also rise to support the Motion that is before the House. This Committee was set up to act as a link on the oversight role and on how effective the Government has put in place measures to combat the COVID-19 pandemic.

We all can take judicial notice of the fact that the COVID-19 pandemic is still causing serious negative effects on our country, including loss of lives. Today, we received reports that we have lost the dear lives of seven Kenyans, and 184 Kenyans have tested positive. Yesterday, we lost the dear lives of four Kenyans, and 151 Kenyans testing positive. That is evidence that COVID-19 pandemic is still with us and we still need to put the Government on toes, to tell us, as the people's representatives, what measures we continue to put in place to effectively deal with this pandemic. There is really evidence that we still need this Committee to act as an interlink between this House and the Government.

Mr. Temporary Speaker, Sir, the biggest challenge we are still facing is how effectively governors used money that was meant to combat this pandemic. You will be surprised that this Committee has been able to only visit two regions; that is, Meru region and Coast region. I am sure there are several parts of this country where this Committee needs to visits to see whether there is any evidence on the ground confirming that money that was meant to put in place measures to combat COVID-19 was utilized for that purpose.

Mr. Temporary Speaker, Sir, I remember that we had a meeting with the Cabinet Secretary (CS) for Education and he assured the Committee that there is piped water available for all the students attending school in this country. I had requested the Committee to start by making a visit to the County of Nyamira, so that we ascertain the position on the ground.

I would like to know whether Girigiri Primary School in my village has piped water connected and flowing. I would like to know whether Nyakeore Primary School, where my mother was born, has piped water connected and flowing. We must put the Government on oversight. We must test the truthfulness of what they tell this House.

We want to know whether it is true that a hospital was put up in two months in Murang'a County. That way, the final report that will come to this House will help this House to draw a conclusion whether the Government has put in place measures to effectively tackle the COVID-19 pandemic.

If you look at the best international practices, an equivalent Committee that was set up by the Senate in Australia in April is still receiving views up to now from the citizens, to ascertain whether the Government is effectively combating the COVID-19

pandemic. It is only fair, just and in the best interest of this country that we extend the life of this Committee for another 30 days.

I support.

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

Nampa fursa hii Sen. (Eng.) Hargura.

**Sen. (Eng.) Hargura:** Thank you, Mr. Temporary Speaker, Sir. I would like to join my colleagues in applauding the work that has been done by Members of the *Ad hoc* Committee on the COVID-19 Situation in Kenya. As you remember, when the COVID-19 situation struck us, there was a lot of uncertainty. We did not even know how to conduct our business as the Senate.

The legislative oversight role was an issue because whatever happened, we could not abandon our oversight role. The *Ad hoc* Committee on COVID-19 became a crucial way of us oversighting the executive on how they were responding to the COVID-19 pandemic as it was unfolding.

I would like to thank the Members because they had to learn quickly how to do their meetings online. They did over 90 meetings. They produced their reports while meeting online, managed to do county visits, interact with different sectoral actors in terms of seeing what was going on and how each sector was responding and come up with good reports which were tabled and discussed in this House.

We are still in the COVID-19 pandemic period and not yet out of the woods. That is why I am thinking that the 30 days may not be enough for the Committee to finish its task because this is an unfolding task. You can see what we are going through.

As we continue, we have come to a situation where funds are being misappropriated. The Committee must have taken a lot of time to interrogate the Kenya Medical Supplies Agency (KEMSA) issue and how the COVID-19 funds were used.

We know that counties were provided with these funds. We need a report on how they utilised the funds. The Committee has asked the office of the Auditor-General to carry out audits, and we need to discuss that report once it is ready.

I commend the Committee through its leadership, Sen. Sakaja and now Sen. Kasanga, because I like listening to the British Broadcasting Corporation (BBC), which is international media, where they have been having interviews. They have brought out important issues, especially the KEMSA saga.

That way, the world will know that we may not be a sensitive nation. If we are misappropriating funds that are intended to save lives of Kenyans during these trying times, then we are not a sensitive nation. Be it as it may, we expect to get a report from the Auditor-General, and I expect this Committee to be there.

We formed the *Ad hoc* Committee when the Standing Committees were there. Therefore, the issue of handing over to Standing Committees might be a breakdown in facilitating the follow up on the issue of COVID-19. So, I think it is better that we extend.

I support the extension of time. Even if they need more than 30 days, we need to extend until we conclude.

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Asante sana mhandisi, Sen. (Eng.) Hargura, kwa hayo maoni yako.

Lakini nafikiri Mwenyekiti ameomba ruhusa ya siku 30.

**Sen. Were:** Asante sana Bw. Spika wa Muda. Niruhusu nionge kwa lugha inayo--

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**The Temporary Speaker** (Sen. (Dr.) Mwaura): Sen. Were, hakuna lugha ambayo haikubaliki. Bora iwe ya heshima, sio lazima uongee kwa ufasaha.

**Sen. Were:** Thank you, Mr. Temporary Speaker, Sir. You spoke in Kiswahili and I got into the mood for Kiswahili, then, I realized that I cannot sustain the conversation beyond two sentences. Allow me to continue in English.

I join my colleagues in supporting the extension of the time for the *Ad hoc* Committee on COVID-19 Situation in Kenya.

When we had our first case of COVID-19, we did not know how to behave, as presented by Sen. (Eng.) Hargura. There were arguments of whether or not we should sit, as a Parliament, in the midst of this. We argued that since the Executive arm was not closing down, why should the Legislative arm close?

Since Kenyans were going to suffer and would face deaths, we decided that we needed to respond to the needs of Kenyans. Therefore, the idea of the *Ad hoc* Committee on COVID-19 Situation in Kenya was agreed upon.

Mr. Temporary Speaker, Sir, I want to agree that they have done a tremendous job; having 92 meetings, coming up with several reports because they have had a report for us every week, in which they elucidated and divided the issues into various themes. They gave us a good oversight report on the management of the virus at the county and national levels.

The reason I support the extension is because COVID-19 is with us. We still need them to focus, rather than having these issues taken to a Standing Committee on Health, for example, where many other matters are handled. It is better that we maintain this Committee that is chaired by Sen. Kasanga who has done a great job.

We should give this Committee time to continue focusing on the issues because COVID-19 is still here with us. In fact, it is now being declared an endemic and not just a pandemic. This means that we are going to learn to live with it.

Most importantly, we need to know what happens after COVID-19. How is our life when it becomes an endemic? The post COVID-19 life, for example, opening of schools and churches for over 200 people, how are we resuming our lives? How is the Government coming in to cushion the small and medium enterprises that have been hard hit by COVID-19? How are we going to make sure that Kenyans are back on their feet and we resume our lives?

This Committee still has some work to do. We should give them more than 30 days when they call for it.

Thank you.

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Asante, Sen. Were. Nampa fursa hii Sen. Olekina.

**Sen. Olekina:** Thank you, Mr. Temporary Speaker, Sir. This House pronounces itself through Motions. The 31<sup>st</sup> March, 2020 was a very interesting day, when this House saw it necessary to set up the *Ad hoc* Committee on the COVID-19 situation in Kenya. Today, 1<sup>st</sup> October, 2020, which is six months down the line, we are sitting again to discuss the issue of extending the mandate of this Committee.

One of my biggest pet peeves is that in this country, Parliament is taken for granted. Earlier this week, I witnessed what was called the COVID-19 Conference to discuss the way forward in terms of preparedness of this country. That was essentially a time for the Executive to praise and rate themselves for what they have done.

I expected on that day, 28<sup>th</sup> September, 2020, this *Ad hoc* Committee on COVID-19 would be given an opportunity to tell the country what they have done in all the thematic areas that this House mandated them to play the oversight role.

On matters health, this country has failed. The interest has been more on commodity rather than the interest of the people. The *Ad hoc* Committee on COVID-19 has attempted to pierce all those interests, but because of limitations, they have not succeeded. Health workers have died because of the supposed lack of Personal Protective Equipment (PPE) but from what we know, a lot of PPEs are rotting at the Kenya Medial Supplies Agency (KEMSA) warehouses because of lack of accountability.

We will be told by the Executive that they set aside billions of shillings to cushion small traders. However, the truth of the matter is that most of our people are jobless and cannot afford to pay their mortgages and rent yet we still talk about our Committee doing work. We may need to start looking at things differently. We must be pragmatic in our way forward. Initially, I was against the 30 days that are being sought by the *Ad Hoc* Committee on COVID-19 Situation in Kenya but I would like to plead with the Chairperson, Sen. Kasanga, to use the 30 days well and come up with a way that this House can put its feet done on issues of oversight.

The key focus area for the *Ad Hoc* Committee is social, public order and human rights which will be affected most by the challenges that we are facing. If the Executive rated themselves as having done very many good things yet from the audit report that we received in the Joint meeting between the Committee on Health and the *Ad Hoc* Committee, one of the things that came out is damning. I am pleased with the current Auditor-General because she went out and did a thorough investigation. She came up with a damning report that if I were the investigating officer or prosecution officer in this country, the first things that I would do is to move to court just as they have been doing with the governors and seek orders that the entire board and management of KEMSA are out office. Why are the investigative agencies being selective?

This House pronounces itself thorough Motions and Bills. The *Ad Hoc* Committee on COVID-19 Situation in Kenya came up with a Bill which was termed by the National Assembly as a money Bill so we could not succeed through that angle. Moving forward, for all these thematic areas to make sense and for us to say that we did not spend money in vain in the *Ad Hoc* Committee, it is about time that we take these reports and pass recommendations. We should thereafter a Motion to adopt the final report of the *Ad Hoc* Committee.

I am happy to note that the thematic areas that the *Ad Hoc* Committee is concentrating on do not just touch the Committee on Health, the Committee on Finance and Budget and the County Public Accounts and Investment Committee. The report from the *Ad Hoc* Committee should be handed over to Committees with timelines where we expect to get feedback on the way forward. Otherwise, we will just be spending taxpayer's money like we did in the *Ad Hoc* Committee on MES and at the end of the day come up with a report that will not help us move forward.

Mr. Temporary Speaker, Sir, in conclusion, I would say that it is about time that we pay attention to issues that will help us move forward. We must be pragmatic and honest. Most importantly, all the people who are tasked with the responsibility of ensuring medical personnel are provided with enough resources and not getting into a

scheme that is selective. If you read the report on the COVID-19 funds that was presented before our Committee by the Auditor-General, you will cry.

The entire procurement process was supplier driven. The suppliers would make deals with the people at KEMSA. The people at KEMSA went as far as dipping their hands into the universal health care fund in the pretext that they are funding COVID-19 expenditures yet the supplies are rotting in the KEMSA stores now. How can we claim that we are playing our role when such things are happening before our eyes?

The Executive, Parliament and Judiciary must now have a conference where all the three arms of Government will be given enough time to state the rot in each of those institutions and find a way to have milestones on how we can cure the entire rot. Otherwise, five years after having diligently served this House, some of us will go on to become governors, others will come back to the Senate, others will go back to their professions while others will go to the National Assembly and we will not have done anything for Kenyans. We will just have lined our pockets for five years and enjoyed being called '*waheshimiwa*'. The end result is that we will be cursed for failing in our duties and for generations, we and our children will pay because when we had an opportunity to be honest and pragmatic, we failed.

Mr. Temporary Speaker, Sir, I thank you and hope that the 30 days' extension of the mandate of the *Ad-Hoc* Committee On The COVID – 19 Situation in Kenya will mean something to Kenyans.

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Asante Sana, Sen. Olekina, kwa mchango wako mzuri lakini ningependa kukumbusha kwamba kila kitu kina bei, kwa hivyo ni vyema kujiangazia kama Seneti.

Sioni Seneta yeyote anayetaka kuchangia Hoja hii, hivyo namwalika Sen. Kasanga ambaye ni mwenyekiti wa Kamati maalum inayoangazia maswala ya COVID-19 kujibu.

**Sen. Kasanga:** Mr. Temporary Speaker, Sir, I am honestly overwhelmed by the sentiments of all the Senators who have made contributions to this Motion. I was truly worried that the House would not give us an extension.

We have initially sought a six months extension when we started because we realized that we needed to visit a few more counties. The Senator for Wajir County, Sen. (Dr.) Ali, had specifically requested that we visit Wajir County. That that is why I feel his frustration. The Senator for Taita Taveta County had also expressed his frustration that even after making a request for a statement, we had been unable to visit his county when we visited the Coast Region. Being in the Senate, the highest level one can occupy in this country, I have come to realize that the level of lobbying is unbelievable.

I thought that once you put a request, is you should automatically be granted because you are doing a good job. I was informed that I would not be granted a six months extension because there is no budget and that some Members do not want the *Ad Hoc* Committee to continue with its work. I have to say the truth because the 30 days we have been granted will only be for report writing. There are many requests out there for the work that we should have done. However, that said, we are happy to handover. We pledge to do a proper handing over. I like the suggestion from Sen. Olekina that we should give recommendations to each of the Standing Committees with clear timelines so that we are sure follow-up is going to happen.

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

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

I have to give credit to my Committee Members because we are the ones who pulled the lead on what is happening at KEMSA. We are going to take credit for that because fit was in our first interactions where we brought out the issue of pricing at KEMSA that the Committee on Health is now seized of and investigations are on-going. I am sure that we shall leave the Committee on Health handling the issues on KEMSA. I am hopeful that they will do justice to it because we have Senators like Sen. Olekina who are keen to unearth the truth about how tax payer's money is used. I am hopeful that we shall see the end of this circus.

The investigations of procurement at the KEMSA are now in full view of the public. The report that was tabled by the Auditor-General yesterday was very detailed so I can say that we look forward to her audit of the use of COVID-19 funds. If the details that she unearthed yesterday in the preliminary report are anything to go by, we can look forward to a detailed report. Senators need to be seized of these reports to put their governors to task over some of these issues.

Sen. Mutula Kilonzo Jnr. brought up the issue of education which we should have spoken on. There is a lot of confusion and clarity is not there.

Madam Temporary Speaker, when I was invited to the conference that happened on Monday, it was with a lot of disappointment because we did not get a chance to interact because conferences are supposed to allow for Question and Answer so that we ask a few questions. Some of us were ready with our notes to interact but I realised there was no time to interact. All we had was the Government scoring itself and not giving us an opportunity to weigh in on some of the challenges.

The issue of education is delicate. Our children are out there and there is push that schools should reopen. Many of our children have been affected because of being at home. A lot of gender-based violence has happened to many of our children. They have also been affected by hunger because many of them rely on school food. There are many other issues that are forcing the Government to be put to pressure for schools to open but the President pronounced himself.

We had not discussed this issue but I would like to give a personal opinion. For the 30 days we were given, it would not be possible to answer in detail the question that Sen. Mutula Kilonzo Jnr. raised. We shall happily leave it to the Committee on Education. We shall give our recommendation on this particular issue with timelines to the Committee on Education so that it reports back to the House.

I am happy and thank Senators for their contributions towards the work that the committee has done. Once again, committee Members have been committed to this call which was not easy. We have had 92 meetings and probably we are going to have another four, five or six before we wind up and table our final report.

I pray that the Office of the Speaker will give us the support we need for us to finish our work well.

Madam Temporary Speaker, I urge Members to vote for the extension.

I thank you.

**The Temporary Speaker** (Sen. Pareno): Hon. Senators, I note that this is a matter that does not affect counties. Therefore, I will proceed to put the question.

*(Question put and agreed to)*

Let us go to the next Order.

## BILLS

### *Second Reading*

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

**The Temporary Speaker** (Sen. Pareno): Hon. Senators, this one should go to Division. So, it is deferred.

*(Bill deferred)*

Let us go to the next Order.

### *Second Reading*

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

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

*(Resumption of debate interrupted on 30.9.2020)*

**The Temporary Speaker** (Sen. Pareno): Sen. (Dr.) Musuruve, you had a balance of 13 minutes but you can keep it short so that the rest can also contribute.

**Sen. (Dr.) Musuruve:** Thank you, Madam Temporary Speaker, for giving me this opportunity to support this Bill by Sen. (Dr.) Zani. This Bill is handy at a time like this when we are talking about the Big Four Agenda where health is one of them. As a Senate, we have to ensure that services are delivered in the counties.

This Bill is in line with international legal instruments. The Abuja Declaration states that 15 per cent of the national revenue should go to health. Kenya is one of the signatories of the Abuja Declaration. Apart from that, Kenya also ratified the Alma Ata Declaration which stresses the need for individual and community participation in planning and implementation of issues to with health. People-led initiatives become sustainable because people want to own and be part of the project. With that, the attitude is positive.

This Bill will ensure sustainability of community health services at the grassroots. One of the things we must cherish as a Senate in this Bill is the aspect of community involvement in community health services. Once they are owned by communities, then they will be successful.

In the second Strategic Plan, the Ministry of Health shifted its focus on health issues from the national and cascaded it to the county level. It affirmed that there is need to emphasise that issues of health should be devolved to the counties.

The Ministry also asserted that community health services should be in the level one category. That is what they suggested. However, there was no legal framework on that and it was not enshrined in law. This Bill seeks to bring the legal framework by ensuring that community health services fall in level one category. They should be operational and supported fully by the county governments.

This Bill seeks to ensure that county governments are actively involved in ensuring that health services are offered to the common man. The Bill also seeks to bring services closer to the communities. Apart from that, it also gives provision for capacity building at the county level. This is because community health workers have a role to play.

This Bill also helps workers and community workers to have a role to play. When it comes to health services at the counties, the people on the ground before people go to Level 2 and Level 3 facilities are health workers, who are known in the community.

I support this Bill because it empowers the community to choose health workers in a *baraza*. There is no single time a County Executive Committee (CEC) Member will arrogate the work to himself because the community will be involved. Public participation and community involvement are important. You will find children below the age of five years in the village die because of poor nutrition. Sometimes we have maternal death simply because of lack of advice.

The community health workers come on board to give advisory opinion on issues of disease and nutrition. In the counties, when people are harvesting maize, you will find expectant mothers and lactating mothers feeding on maize in the morning, lunch and supper without knowing the need of a balanced diet. These workers come on board to advise on the best nutrition.

Sometimes people are not aware they have a balanced diet around. In a situation where you can eat maize and beans; maize is carbohydrates and beans are a source of protein. Avocados contain Vitamin C and vegetables are a source of roughage. This brings out a balanced diet to children. There are instances where people do not have this advice. Therefore, the community health workers brings on board this advice, which is important.

This Bill closes the gap of maternal health. If implemented, it will bring maternal mortality rate down and infant mortality rate will also drop. What I like about the Bill is that it obligates the county government to be involved in issues of health. There is no way the county government will abdicate its role because it will be enshrined in the law. Constitutionally, the county government cannot say that it does not have money to pay community health workers. The county government is allowed to source resources and look for ways of having its own resources, in order to provide services on the ground.

In the Bill, the community health workers are supposed to be paid. I would like to suggest to Sen. (Dr.) Zani that we can have a standard form of payment to community workers. This can be good for the Bill because some counties can end up paying Kshs35,000 to community health workers, while others will pay Kshs15, 000 and others less than Kshs5,000.

Sen. (Dr.) Zani sits with me in the Committee on Education, where we have seen disparity when it comes to payment of Early Childhood Development (ECD) teachers. Some counties are paying Kshs34,000, others Kshs15,000, while some as low as Kshs10,000. A standard payment could be indicated in the law, so that there is a specific amount of money that is paid.

This Bill accords employment opportunities to health workers back at home and ensures that community health workers are sensitized in terms of technical information. The national Government will be mandated to give technical information when it comes to issues of health. Both levels will work together in developing policies. The county government needs to have budgetary allocation for community health workers. This is because they are not supposed to be in the periphery, but extension workers in the medical field. They are important.

I believe that my fellow Senators will speak and ventilate on this Bill and ensure that it goes to the next level and becomes law for the purpose of ensuring that we are delivering, not only for the child and mother, but all communities in the county.

Madam Temporary Speaker, I support this Bill.

**The Temporary Speaker** (Sen. Pareno): Sen. Olekina, you have the Floor.

**Sen. Olekina:** Thank you, Madam Temporary Speaker. I am not sure whether I want to support the Bill the way it is. However, because of my good friend, Sen. (Dr.) Zani, I will support the Bill with various amendments for it not to be utopian.

Having community health workers versus volunteers is a huge burden to counties. I want us to be pragmatic when it comes to finances in our counties. We spent three years trying to come up with a revenue formula. In fact, I thank the Parliamentary Budget Office. I hope that in subsequent years the Parliamentary Budget Office can be divided into two, where the National Assembly will have its own office and the Senate its own. This is because most of the Bills that we work so hard to pass end up at the Parliamentary Budget Office, and when they are scrutinized on their implication financially, they are referred back and decided that they are money bills.

When we talk about community health workers, what this Bill does is to separate the community health workers from formal health workers. What troubles me is that you see that there are structures in place when it comes to reporting mechanism and governing structures. The Bill is putting community health workers aside without considering the budget.

Let me break it down so that we can all understand what we are dealing with. A county like Kakamega will need a minimum of 8,000 community health workers, who will have a head - the person in charge - who will report directly to the CEC Member for health. Remember that community health workers serve Level I hospitals. When you go to the formal structure, that is, Level 2, Level 3, Level 4 and Level 5, their reporting mechanism is defined in the Health Act. They go all the way to the director of medical services and eventually, end up at the CEC Member in charge of health where they can discuss. When you come up with a financial burden--- In this country we are alive to the fact called minimum wage, particularly to a health worker.

**The Temporary Speaker** (Sen. Pareno): Order, Senator! There is an intervention by Sen. Were.

**Sen. Were:** Madam Temporary Speaker, I do not want to interrupt the flow of thought of Sen. Olekina. However, I would like to raise a point of information and inform him that community service volunteers---

**The Temporary Speaker** (Sen. Pareno): Sen. Olekina, I hope you want to be informed by Sen. Were.

**Sen. Olekina:** Absolutely.

**The Temporary Speaker** (Sen. Pareno): Proceed.

**Sen. Were:** Thank you for acknowledging that you do not know everything. The Community health volunteers are not at Level 1, but at household level. The people at Level 1 are community health extension workers, who are in the system and are enjoying leave, pension, medical insurance *et cetera*. What the Bill is talking about are the ones at the household level. The only connection they have with Level 1 is reference. When they come to a household and find that somebody has had fever for two or three days, they refer them to Level 1 facilities.

**The Temporary Speaker** (Sen. Pareno): I hope you are well informed, Sen. Olekina.

**Sen. Olekina:** Madam Temporary Speaker, I am very grateful because it is in line with my submissions. We have got these chiefs who are now made by this Bill to report directly to the County Executive Committee Member (CEC) in charge of health bypassing the entire formal structure, where they are supposed to work. The chiefs want to be the head of these community health workers. This Bill is proposing to pay these community health workers a wage at least at minimum of Kshs14,500.

We have a huge burden in our counties. We know and we are alive to the fact that health is devolved. However, health being devolved and money stays in the Ministry of Health here. How is Kakamega County, as an example that I used, going to afford on an annual basis Kshs1.4 billion to pay the community health workers who are in the households?

Madam Temporary Speaker, this Bill has very good intentions. My thinking was that before we even proceed so far in terms of discussing this Bill, I sit in the Committee on Health. I had a lot of problems trying to understand how each county is going to afford to pay these community health workers.

If this Bill was proposing just to find a way to have them as volunteers, it would make sense. Also, put them through the formal structure and make sure that everything in this Bill is aligned to existing laws such as the Health Act.

Madam Temporary Speaker, one of my biggest problems that we have in this country is that these institutions and the three arms of Government; Executive, Legislature and Judiciary all want to do good for this county. However, we do not talk to each other. If today, the Ministry of Health would loosen up its grip on revenue and we devolved more funds, we can guarantee that these community health workers.

When we pass this Bill in this House, these people will become pensionable. Where will we get that money? These people will have a right to join a union or even form a union. We will end up having the same problems we are having today in this country. Two days ago, a patient died in the queue of Kenyatta National Hospital because that patient could not get medical support. The patient died because the health workers there were not happy with what they are supposed to be paid.

Madam Temporary Speaker, I just think that before we proceed further, it will be important for the sponsor of this Bill to sit down with Parliamentary Budget Office (PBO) and get proper advice in terms of the financial implication.

Secondly, we need to look at the existing health Acts which are there. This is to see whether this Bill which now wants to treat the community health worker separate from all the others from Level One, Two, Three, Four, and Five whose structures are already clear

That is unless we can give counties conditional grants where we sit down and talk to the national Treasury when it comes to the issue of the County Allocation of Revenue Act and Division of Revenue Act (DORA). We should be very clear and say we have got Kshs47 billion, which Kshs1 billion is for every county to fund these community health workers. This country will not afford that.

Madam Temporary Speaker, let us be realistic. We have had a big challenge. I want this Bill to make sense. As we go like today, Members of the Committee on Health, whom I happen to be one of them are in Mombasa. They are going through the public participation matrix to understand what did those stakeholders who participated and gave their views in terms of this Bill.

What were their objections or pros and cons? What were their contributions? What did they want changed so that we ensure this Bill sees the light of the day? This is so that it does not just become just another piece of legislation that is there and it becomes impossible to operationalize it.

Madam Temporary Speaker, I sit in the County Public Accounts and Investments Committee. Every time a governor appears there, the first question we ask is: How much of your budget have you given to the health department? Most governors would say between 30 per cent and 40 per cent. Now without coming up with additional funds, we want to take more money again to these counties. Now say for each county health is important and gets 50 per cent of your budget. What happened to all the other services? It is imperative that we become pragmatic and realistic when we propose very good things. For them to make sense, we must be pragmatic.

This House is now in limbo somewhat because of the two third gender rule. The other day, I was having a good discussion with my dear, Sen. Farhiya. I said this issue of gender has completely been defined differently now. It is not the traditional man and woman that we knew. It now comes in into the issue of where it is a social construct. You say I view myself more as a man or as a woman. In fact, if you look at the population census, we had a lot of intersex in this country. Things are changing. Let us not just push things which becomes difficult to ensure that they can be implemented. This is because then we will be wasting our time.

Madam Temporary Speaker, I summarize by saying the following, for us to make an informed decision in this House and for this Bill not to be killed in the "Lower House", we must involve the PBO. Secondly, before we conclude debate on this Bill, it will be important for all the 67 Members and particularly the 47 delegations which will be voting for this Bill to read the Committee Report and understand what the challenges are. This is because we have got procedures.

This is why earlier on even in the House Business Committee (HBC) we said it would be important that before a Bill is moved, we have the Committee report and go through it.

**The Temporary Speaker** (Sen. Pareno): Senator, please, try to wind up. I want to reduce time after you so that others can also speak. We have a whole list of seven waiting.

**Sen. Olekina:** Madam Temporary Speaker, how many more minutes?

**The Temporary Speaker** (Sen. Pareno): Just try to wind up.

**Sen. Olekina:** Madam Temporary Speaker, five minutes. Within the five minutes, I was finishing but I am looking at my notes here. I reiterate what I said that let us not be utopian.

Let us be realistic to the facts. In Laikipia County alone, 60 per cent of its wage bill is on the health services. I have not heard the Senate Majority Leader say that he will lobby for a conditional grant for all counties. For example, Narok County to get Kshs2 billion and also Kakamega County get Kshs2 billion because of the population. In absence of that lobbying, this will not make sense.

Madam Temporary Speaker, I hope the sponsor of the Bill will consider some of these issues and make sure these community health workers are in the same line with all the other health workers.

Let them follow different steps. The Senate Majority Leader will tell you that you cannot wake up one day and decide to run for Presidency. He has been a Member of the National Assembly before he joined the Senate and maybe he might run for President in future.

Madam Temporary Speaker, we have been dealing with a lot of Bills related to health issues in this House. In the next one or two weeks, we are expected to debate the Reproductive Health Bill which is controversial and I hope we will kill it once it is tabled before this House. Now we are taking away the importance of a doctor to advice and bringing in somebody who has got basic training. We are putting them there to decide whether somebody should live or die.

I would plead with the sponsor of the Bill to spend time with the Parliamentary Budget Office (PBO) so that we can know the real financial implication on it. Secondly, delete the word “workers” and make them volunteers. When you bring someone in as a worker, you have to think about their pension. They can decide to join a union to demand for their rights. They will continue doing their work without any interference.

I rest my case there.

**The Temporary Speaker** (Sen. Pareno): The Senate Majority Leader, proceed.

**The Senate Majority Leader** (Sen. Poghio): Madam Temporary Speaker, thank you very much. I would like to support this Bill because it speaks about community health workers. The infrastructure of the health sector should be buttressed by the level of the community primary health situation.

You have seen that since the COVID-19 protocols were introduced where we wash our hands, keep social distances and wear masks, certain common diseases are no more. People have stopped going to hospitals for basic ailments. It means that we need a level at the community that will just help people understand some of these basic things. .

Madam Temporary Speaker, I am a product of a parent who used to be a community health worker. My father was the first in the category called the dresser those days. It was on the same level as the community health worker. They were trained to identify health issues and dispense certain basic drugs. He is the first person to introduce modern medicine in Kacheliba Constituency. His home was always a health conscience

home. He would move around the villages telling people build pit latrines. We had those issues taken care of. I am a very big proponent of community health workers.

Madam Temporary Speaker, I come from a community that is mobile and nomadic. We can tell from our own lifestyles that there are basic things around our lifestyles that just require somebody in those homes and villages to tell us about clean water and how to wash our hands. We need health workers to tell us what to do when we start showing symptoms of certain diseases like Malaria and others. For the same reason that we need mobile schools, we need people who are in the community who are going to identify.

I also resonate with some views of Sen. Olekina of Narok County has said here. The input of our PBO is always very important. Any time you introduce any money into a Bill in terms of creating an employment, it always very important to get the input of PBO. That determines how that Bill will be enacted. It will be taken to the National Assembly and it might be termed as a money Bill and we lose it.

Madam Temporary Speaker, I support what Sen. Olekina said about the importance of PBO---

**Sen. (Dr.) Zani:** On a point of information, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Pareno): There is an intervention by Sen. (Dr.) Zani.

**The Senate Majority Leader** (Sen. Poghio): Madam Temporary Speaker, is it information?

**The Temporary Speaker** (Sen. Pareno): Is it information? Do you want information from Sen. (Dr.) Zani?

**The Senate Majority Leader** (Sen. Poghio): Yes.

**Sen. (Dr.) Zani:** Thank you, Madam Temporary Speaker. Sen. Poghio, I did not mean to interrupt your thoughts. However, having listened to Sen. Olekina and Sen. Poghio on the issue of money Bill, I have been a victim of this money Bill for a long time. I am very aware that any Bill, we try as much as possible to circumvent so that it is not a money Bill.

The way this Bill is structured is so that we deal with what has been already appropriated to the counties. We are not asking the PBO to do the appropriation from here. The counties already have a fund. Many of the counties even already have Bills and they are paying those community health workers. We are asking them to do is a framework.

Madam Temporary Speaker, Sen. Omogeni here is asking me, how have you circumvented the money Bill. I just thought that I mention this even as we go on. That it has been conditioned in there so that we have the money that has already been appropriated to the counties. We need a framework put in place so that we streamline what the governors are already doing as far as these community workers are concerned.

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

**The Temporary Speaker** (Sen. Pareno): Do you want more information from Sen. Farhiya?

**The Senate Majority Leader** (Sen. Poghio): Madam Temporary Speaker, alright as long as my time is considered.

**Sen. Farhiya:** Madam Temporary Speaker, I want to correct the assertion that “money Bill” is any appropriation from the Consolidated Fund and not from the county

funds. That is still our mandate. That is the way a “money Bill” is identified. The National Assembly would like to put everything as money Bill, but the interpretation we got of money Bill is that it is money from Consolidated Fund. However, this one is from county funds.

**The Senate Majority Leader** (Sen. Poghio): Madam Temporary Speaker, thank you very much for all that information. I know that as soon as it smells and speaks of money, it goes to the other House, there is always a challenge.

I want to emphasize this point that we need this Bill. We must make this Bill work. At Third Reading stage, we must bring out whatever we need to bring so that we make it credible, so that it can be supported and not lost.

Madam Temporary Speaker, as we have spoken, the other thing is that we should never leave a Bill to the mercies of the County Executive Committee Members (CECs). They are political animals as well. With regard to recruitment, we must find a way of qualifications that do not require any opportunity for anyone to be biased against anybody. I am not comfortable with the suggestion that these workers be picked from a public *baraza*. We may have to really think of a more critical way of engaging them. This is because a *baraza* can decide and politics can be brought to play and segregation can come in. We need to have another way of making sure that we have a credible list of the community health workers.

Madam Temporary Speaker, there is absolutely no reason why counties cannot even budget for community health workers. It helps them. It reduces the number of referrals and congestions in our hospitals. It reduces congestion at Level One and Two let alone Level Three, Four and Five.

Whatever it takes and I think there are those who have amendments to it. When we come to Third Reading, we must bring our minds together and reinforce this particular Bill for it to succeed. I support.

Thank you, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. Pareo): Sen. Omogeni, proceed.

**Sen. Omogeni:** Madam Temporary Speaker, thank you for also giving me a chance to make my contribution to this very good initiative of coming up with the Community Health Services Bill by Sen. (Dr.) Zani. I had the opportunity to listen to contributions that were made by stakeholders during public participation. I also know that this Bill has quite some support across the country.

However, I want to be very pragmatic. In a way, I want to make a proposal to my good friend Sen. (Dr.) Zani that going forward, you should consider the views that are being expressed on this Floor. This is so that you can actually save this Bill. The Senate Majority Leader, Sen. Poghio will tell you that we had so many meetings. I was privileged to be the one who was trying to have discussions between the National Assembly and the leadership of the Senate.

Madam Temporary Speaker, that was bringing together the Speakers and leadership of both Houses in trying to deal with this animal called money Bill and what is a money Bill in line with Article 109 (5) and Article 114. We were unable to agree. That is what led us to go to court and argue that issue before the High Court with a hope that for once and for all, the High Court will come up with a definition that creates some clarity on what is a money Bill.

I am saying this because you know that we have passed very progressive Bills. I sympathize with my friend Sen. (Arch.) Kasanga. She came up with a fantastic mental health Bill. We debated and thought it was a very good idea. When it went to the National Assembly, it was killed on that excuse that it was a money Bill.

I remember in our discussions we tried to understand where the National Assembly is coming from. They argued that any Bill that emanates from the Senate and creates new offices that will create new salaries and positions, according to them, that will be a money Bill. If we allow this Bill to pass, because I have looked at it and it is creating a number of offices. It will certainly meet the same fate like what befell the Bill that was brought by Sen. (Arch.) Kasanga.

Madam Temporary Speaker, you remember we came up with the Pandemic Response and Management Bill with fantastic ideas. It was a very progressive Bill that was providing solutions on how we deal with Coronavirus disease (COVID-19) pandemic. Again, when it reached the National Assembly, return to sender and it died.

If we are not careful, Sen. (Dr.) Zani and process this Bill the way it is, it will go to the National Assembly. I assure you they will send it back. Lawyers in the House will tell you we were converting the volunteers. I know in Nyamira County we have so many of these volunteers in thousands. Currently, they operate through a scheme of volunteerism. They are not paid.

Madam Temporary Speaker, I can tell you that the moment we convert them to workers, they become employees of the county governments. You must put them on salary. A person called a worker, if you go to the Employment Act, they have rights and privileges. They must belong to a trade union and agitate for their minimum wages and all these. You will have actually killed, in my view. If we convert these volunteers to workers, we would have killed a very good idea.

I know some of them, especially, in my county, are retired workers. They are people who have retired, but they do not want to stay idle at home. They come out to render services to the people. They are people who enjoy a lot of respect within the community. The question that arises is; how are we going to convert these retired Kenyans to become workers within our employment system of our counties? That creates problems.

Madam Temporary Speaker, the first thing is for us to look for ways of removing the word “workers” from the Bill. You ensure that they remain what they are, “volunteers”. Secondly, we know that there is a big problem of wage bill. I do not know what is the position from where the Senate Majority Leader comes from in West Pokot County. However, in my county, we have surpassed the ceiling by far.

If we convert these volunteers into workers and put them on the payroll, I can assure you like in my county Nyamira, I will require one billion shillings to pay these workers. The moment they are workers as I have said, there are lawyers waiting. The counties will be taken to court and sued.

Madam Temporary Speaker, they will be told you have employed people here. You have new cadre of workers in the county and you are not paying them minimum wages. You have not allowed them to join trade unions. That will create a major problem. In fact, it will be a messy affair than what we have currently. Let us also be careful that we do not overburden counties.

In my county, the request from the department of health, the County Executive Committee Member (CEC) of Health requires about Ksh211 million for adequate supply of medicine to hospitals. We are only able to give him Kshs26 million. If we again take a lot of money from the health budget, we will be doing a big disservice to our counties.

Madam Temporary Speaker, finally, we have an existing structure within our counties where the person that is the boss in matters dealing with health is the CEC for Health. If you create another office of director of community workers, you have totally changed the existing structure within the counties. That will create problems within the counties. There will be somebody who will come in, get a new title and then get on a higher position than the existing positions within the county then report direct to the CEC.

If we address some of these concerns, this is a fantastic Bill. I am happy to note that the Senate Majority Leader here was raised by a community health worker. Therefore, these are people that we need to recognize and appreciate them for the good work that they are doing within the counties. We must do this in a manner that we do not kill this Bill once it goes to the National Assembly and we do not create a financial burden from our counties.

Madam Temporary Speaker, there is another issue. When you create an office of a worker, as you know, the national values under our Constitution, these are positions that you must recruit competitively. There is no way you can call people workers within the county and then you do not give equal opportunity for people to apply. The qualification for you to be a community health worker, you need some minimum academic qualification.

The moment you call these people workers, you must advertise those positions and give equal opportunity to anybody within the community who feels that they are qualified to apply for those positions. They should be interviewed and recruited into those positions. If we do not do that, you will face problems. Remember Article 27 in our Constitution says you cannot discriminate.

**The Temporary Speaker** (Sen. Pareno): Order, Senators! Sen. Omogeni, you will have a balance of 11 minutes when this matter comes next.

## ADJOURNMENT

**The Temporary Speaker** (Sen. Pareno): Honorable Senators, it is now 6.30 p.m. time to interrupt the business of the Senate. The House therefore stands adjourned until Tuesday, 6<sup>th</sup> October, 2020 at 2.30 p.m.

The Senate rose at 6.30 p.m.