

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Thursday, 24<sup>th</sup> September, 2020

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

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

### PRAYER

### PETITION

#### REPORT ON PETITION: REVIEW OF THE BASIC EDUCATION CURRICULUM FRAMEWORK BY THE MINISTRY OF EDUCATION

**Sen. (Dr.) Milgo:** Thank you, Mr. Speaker Sir. I beg to lay the following Paper on the table of the Senate today, Thursday, 24<sup>th</sup> September, 2020: The Report of the Standing Committee on Education on a Petition to the Senate by the Dr. Erick Mugambi Kinyua concerning the review of the Basic Education Curriculum Framework by the Ministry of Education.

The Petition was reported to the Senate on 27<sup>th</sup> March, 2019. The Petitioner sought to draw the attention of the Senate to Basic Education Curriculum Framework document prepared by the Kenya Institute of Curriculum Development (KICD) and launched in January, 2017 as a guide to the 2-6-3-3 system to replace the 8-4-4 education system.

The Petitioner sought intervention of the Senate to ensure that the Ministry of education oversees and review to improve the design and quality of the new curriculum.

The Petitioner further requested the Senate to direct the Ministry of Education to convene a national conference opened to the public to receive and discuss, adopt, guide and resolve 2-6-3-3 Basic Education Curriculum and direct the KICD to review and edit the Basic Education Curriculum Framework document.

The Petitioner further requested the Senate to direct that Sessional Paper on Reforming Education and Training for Sustainable Development be presented by the Ministry of Education to actualize the 2-6-3-3 Basic Education Curriculum to resolve the challenges addressed in the Petition.

Pursuant to the Provisions of the Standing Order No.232(1) of the Senate Standing Orders, the Petition was committed to the Standing Committee on Education.

The Committee observed that part of the development of Basic Education Curriculum entailed a series of consolidating processes that began in 2014. These incorporated engagement forums, trainings, seminars, validation workshops and meetings

to develop curriculum support materials and came up with a research based on curricular and curriculum support materials. They were followed by a pilot program that took place in all counties.

Mr. Speaker Sir, the Competency Based Curriculum(CBC) generally entails successive and effective training of teachers. However, by the time CBC was rolled out, majority of the teachers had not been trained. Further, there was inadequate infrastructure due to extremely high enrollment in pre-primary and primary schools, further straining the already strained learning facilities.

These serious challenges related to provision of teaching and learning resources needed to successfully implement the CBC and majority of schools facing delayed distribution and delivery of textbooks.

Based on these observations, the Committee, therefore, recommended that there was need for continuous engagement amongst all education stakeholders; learners, teachers, parents, curriculum specialists, quality assurance officers and experts to ensure that the views of the people concerned with the process of teaching and learning are taken into account during the improvement of the Basic Education Curriculum.

The Ministry of Education should expeditiously set up and equip a research, monitoring and evaluation department to carry out research and identify the problems and deficiencies in the Basic Education Curriculum and provide up to date and reliable data to different stakeholders including Parliament.

That there is need for sufficient resource allocation for continuous training and capacity building to teachers, quality assurance and standards officers and curriculum support material.

As I conclude, I thank all the Members of the Committee for their immense contributions during consideration of this Petition that culminated in this Report. The Committee wishes to thank the offices of the Speaker and the Clerk of the Senate for the necessary support extended to it to conduct and execute its mandate. The Committee further records its appreciation for the services rendered by the staff of the Senate that enabled the production of this Report.

It is my pleasant duty on behalf of the Standing Committee on Education, pursuant to Standing Order No.232 (2), to present a report of the Committee on the Consideration of the Review of the Basic Education Curriculum Framework.

Thank you.

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

**The Speaker** (Hon. Lusaka): Yes, Sen. Wetangula.

**Sen. Wetangula:** Thank you, Mr. Speaker Sir. I followed keenly as the Chair of the Committee on Education was giving her verdict on the Petition. What comes out adds to the confusion that is education management in this country.

The Government of Kenya has never told Kenyans why they moved away from the 8-4-4 system of education to the new mongrel system that does not match with the East African Community (EAC) systems.

Mr. Speaker, Sir, one would have thought that when we decided to move away from the 8-4-4 system, which was functioning quite well, we could have aligned our education system with the East African region, where Uganda, Tanzania, Rwanda and

Burundi, with whom we share common heritage and many interests, including the EAC, who are running the 7-4-2-3 system of education.

Instead, we have moved to a system that is neither 8-4-4 nor compatible with the East African region, isolating ourselves further. Can the Chairperson of the Standing Committee on Education clarify why there was a need to move away from the 8-4-4 system in the first place? Nobody had complained. The parents of this country had accepted it, and it was working.

Is it because somebody in the Ministry of Education, Science and Technology wanted to appear to be reforming something or what was the problem?

Thank you, Mr. Speaker, Sir.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to commend the Chairperson of the Standing Committee on Education for coming up with the Report.

I also want to raise the same concerns that Sen. Wetangula has mentioned; they are valid and serious concerns. I am a product of a system that Sen. Wetangula has mentioned. By the time a student was going to the university after A-Level, he or she was mature enough to cope up with university education and transit to the world of work.

As the Standing Committee on Education, we need to interrogate this because there are many issues to do with the Competency Based Curriculum (CBC) in terms of delivery and teacher competency, and it is taking in a lot of money. When you look at transition to the world of work, one is left to wonder what happens eventually.

Therefore, there is need for us, as the Standing Committee on Education, to interrogate the Competency Based Curriculum (CBC) system. This is because, initially, we had quality education with the 7-4-2-3 system, as compared to the Competency Based Curriculum (CBC) system.

There is need for us, as a nation, to appreciate that when someone comes up with a proposal to begin a new curriculum, we should not just move with the wave. This is because we are products of previous curriculum and saw how it worked. For me and many other children, who came from low socioeconomic backgrounds, it worked well.

I second the Report and support Sen. Wetangula's proposition.

Thank you.

**The Speaker** (Hon. Lusaka): I do not see any more interest. Next Order.

## PAPERS LAID

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

### PARLIAMENTARY CAR LOAN AND MORTGAGE SCHEME FUNDS (AMENDMENT) REGULATIONS, 2020

**Sen. Cheruiyot:** Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate, today Thursday, 24<sup>th</sup> September 2020 -

The Public Finance Management (Parliamentary Car Loan (Staff) Scheme Fund) (Amendment) Regulations, 2020, Legal Notice No. 184.

The Public Finance Management (Parliamentary Mortgage (Members) Scheme Fund) (Amendment) Regulations, 2020, Legal Notice No.185.

The Public Finance Management (Parliamentary Car Loan (Members) Scheme Fund) (Amendment) Regulations, 2020, Legal Notice No.186.

The Public Finance Management (Parliamentary Mortgage (Staff) Scheme Fund) (Amendment) Regulations, 2020, Legal Notice No.187.

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

REPORT ON THE OPERATIONALIZATION  
OF THE NCA (DEFECTS LIABILITY) REGULATIONS, 2020

**Sen. Kasanga:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today, Thursday 24<sup>th</sup> September, 2020 -

Report of the Standing Committee Roads and Transportation on its inquiry into the operationalization of National Construction Authority (Defects Liability) Regulations, 2020.

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

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

**Sen. (Dr.) Mbito:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today, Thursday 24<sup>th</sup> September, 2020 -

Report of the Standing Committee on Health on its inquiry into the death of a patient at the M.P. Shah Hospital, allegedly due to negligence.

*(Sen. (Dr.) Mbito laid the document on the Table)*

**NOTICES OF MOTIONS**

ADOPTION OF REPORT ON INQUIRY INTO OPERATIONALIZATION OF THE NATIONAL  
CONSTRUCTION AUTHORITY (DEFECTS LIABILITY) REGULATIONS, 2020

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

THAT, the Senate adopts the report of the Standing Committee on Roads and Transportation on its inquiry into the operationalization of National Construction Authority (Defects Liability) Regulations, 2020, laid on the Table of the Senate, on Thursday, 24<sup>th</sup> September, 2020.

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

**Sen. (Dr.) Mbito:** Mr. Speaker, Sir, I beg to give Notice of the following Motion:

THAT, the Senate adopts the Report of the Standing Committee on Health on its inquiry into the death of a patient at the M.P. Shah Hospital

allegedly due to negligence, laid on the Table of the Senate on Thursday, 24<sup>th</sup> September, 2020.

**The Speaker** (Hon. Lusaka): Next Order.

## STATEMENTS

### PAYMENT OF ALLOWANCES TO OFFICE ADMINISTRATIVE PERSONNEL WORKING IN THE HEALTH SECTOR IN COUNTY GOVERNMENTS

**Sen. Were:** Mr. Speaker, Sir, I rise pursuant to Standing Order No. 48(1) to seek a Statement from the Standing Committee on Health regarding payment of allowances to office administrative personnel working in the health sector in county governments.

In the Statement, the Standing Committee on Health should-

(1) State whether there are plans to consider this cadre of staff for payment of health workers extraneous allowance, health service allowance and risk allowance, as they are subjected to similar circumstances that warrant payment of the same to all other healthcare workers.

(2) Outline the measures, if any, put in place to ensure that this cadre is not left out in any allowance that will apply to any the other healthcare workers in the future.

Thank you.

**Sen. (Dr.) Ochillo-Ayacko:** Mr. Speaker, Sir, I thank the Senator for Trans Nzoia and Sen. Were for raising this matter. Health workers are the most mistreated workers among the cadre of county workers. They have strikes or threaten to down their tools in order to be attended to.

As the Committee embarks on finding out what is going on, it will be important for them to find out the policies that counties have put in place for promotion of health personnel. We need to know policies that have been put in place to ensure that community health workers are remunerated.

We have community health workers who attend to expectant mothers who work for no pay or consideration. This state of things is not tolerable. In my County Migori, particularly, all the community health volunteers, the ones we call “*Nyamrerwa*” have no assistance, consideration or recognition at all.

I request the Committee, through the person who will be responsible for receiving responses, to tell us what policies counties have in terms of remunerating community health workers; the ones who are volunteers. They should tell us particularly the policies we have in place to ensure that promotion is put into mechanisation to ensure a health official or worker does not stagnate in one position.

I thank you.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Speaker, Sir, for allowing me to support this Statement by Sen. (Dr.) Mbiti. This is a great concern that he has brought on the Floor of this House.

We are talking about better payment for health workers. However, we have administrative personnel as well. Those are the ones who usher patients in, collect funds and advice patients where to go and all that. We should never forget that administrative personnel in the health facilities also need to be considered.

As we urge governors to consider remunerating health workers better, let us encourage them to also think about the administrative personnel because they go to work from morning to evening everyday and they are committed.

The administrative personnel start the procedures for patients to receive treatment. It helps in ensuring that health, which is one of the Big Four Agenda, is executed in the country. Health is even enshrined in Article 43 of our Constitution, which we must defend.

The Committee that will deal with this matter should ensure that administrative workers, who most of the times are not talked about yet they contribute a lot in the health sector are incorporated.

I thank you and support.

**The Speaker** (Hon. Lusaka): Since we have a Committee Paper that will be presented, I will limit the riders, just like we did yesterday.

Let us go to the next Statement by Sen. Kwamboka.

STATUS OF GRADUATIONS IN VARIOUS  
LEARNING INSTITUTIONS IN 2020

**The Speaker** (Hon. Lusaka): Since Sen. Kwamboka is not here, that Statement is deferred.

*(Statement deferred)*

Let us go to the next Statement.

USE OF EXCESSIVE FORCE BY POLICE WHEN  
ENGAGING WITH CIVILIANS

**The Speaker** (Hon. Lusaka): If Sen. Iman is not here, that is deferred.

*(Statement deferred)*

Let us go to the next Statement by Sen. M. Kajwang’.

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

**The Speaker** (Hon. Lusaka): If Sen. M. Kajwang’ is not here, we will defer that one also.

*(Statement deferred)*

Let us go to the next Statement

OPERATIONALIZATION STATUS OF THE COUNSELLORS  
AND PSYCHOLOGISTS ACT, 2014

**The Speaker** (Hon. Lusaka): Since Sen. Mwaura is not here, that is deferred.

*(Statement deferred)*

Let us go to the next Statement by Sen. Loitiptip.

DISPLACEMENT OF SQUATTERS FROM  
HIDABWO AREA, LAMU COUNTY

**Sen. Loitiptip:** Mr. Speaker, Sir, I rise pursuant to Standing Order No.48(1) to seek a Statement from the Standing Committee on Lands, Environment and Natural Resources regarding displacement of squatters from Hidabwo Area in Lamu County. In the Statement, the Committee should-

(1) Explain the circumstances surrounding the ownership of the parcel of land in Hidabwo Area, Lamu County, and state the genuine owners of the said parcel of land.

(2) State who is behind the demarcation of the said piece of land and evicting persons who have occupied and settled on the said piece of land since 1998.

(3) State whether Lamu County Government authorised the allegedly illegal demarcation of the piece of land.

(4) Explain measures the Ministry of Lands and the National Land Commission (NLC) have put in place to protect persons who have enjoyed quiet possession of the said piece of land for a period exceeding 12 years and ensure they are not going to be rendered squatters by rogue land grabbers allowed to own the land through adverse possession.

I thank you.

**The Speaker** (Hon. Lusaka): Sen. (Dr.) Musuruve, I hope you have a Statement and not riding.

EQUAL OPPORTUNITIES FOR PERSONS WITH DISABILITIES

**Sen. (Dr.) Musuruve:** Mr. Speaker, Sir, I rise pursuant to Standing Order No. 48(1) to seek a Statement from the Standing Committee on Labour and Social Welfare regarding equal opportunities for Persons with Disabilities (PwDs). In the Statement, the Committee should-

(1) Provide statistics of PwDs and youth employed in the public service.

(2) Explain state of implementation of the constitutional provision that provides for progressive implementation of the principle that at least 5 per cent of members of the public in elective and appointive bodies are PwDs.

(3) State mechanisms put in place, if any, to monitor implementation of Article 54(2) of the Constitution in order to ensure full implementation of the constitutional provision.

I thank you.

PROVISION OF THE NEW KENYA POLICE  
UNIFORM TO POLICE OFFICERS

**Sen. Cherargei:** Mr. Speaker, Sir, pursuant to Standing Order No.48(1), I rise to seek a Statement from the Standing on National Security and Foreign Relations on the issue of new police uniforms in Kenya. In the Statement, the Committee should-

- (1) State whether there is a Kenya Police Uniform Policy Guideline in place.
- (2) Explain whether a circular is in place indicating to the police that they can purchase the uniforms on their own at the recommended retailers.
- (3) State whether the National Police Service (NPS) has provided uniform allowance to the officers to enable them purchase the uniforms on their own.
- (4) State whether the Ministry of Interior and Coordination of National Government and the NPS have set a specific timeline on the change of police uniforms.
- (5) Provide a list of companies that were awarded the tender for the supply of new police uniforms in Kenya.

Mr. Speaker, Sir, this is an important matter. When you go around the City, you will notice that ordinary retailers are now making the new police uniforms. That is a dangerous security scar because somebody can walk to a retailer and get a police uniform and wear.

We all know that military attire was banned in the country. Nowadays you can walk to a local retailer and make a police uniform. Therefore, some elements in the society can take advantage.

**The Speaker** (Hon. Lusaka): You are discussing your Statement.

**Sen. Cherargei:** I just wanted to make a rider on the issue so that---

**The Speaker** (Hon. Lusaka): Do not add a rider on your own Statement.

**Sen. Cherargei:** Okay. Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): I will only allow two Senators; Sen. (Dr.) Abdullahi Ali and Sen. Cheruiyot.

**Sen. (Dr.) Ali:** Thank you, Mr. Speaker, Sir. The issue of police uniform is becoming a problem. I am hearing that in town, everybody can, and the police officers are told that they must purchase uniforms very urgently. They can go anywhere they want. They can get them from anybody they want.

You know the way Kenyans are, they like going to people's houses during very odd hours the way the Senator for Nandi County usually says "at the wee hours" as if they are the only wizards awake. People who pretend to be police officers are moving around in uniforms and they harass other *wananchi*.

I think someone should be answerable. Police uniforms procurement should be that they should have specific suppliers, who are the only ones to provide these uniforms. If we do it for everybody, I know it is good for Kenyans, but it will be very dangerous for this country.

I thank you.

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

**Sen. Cheruiyot:** Thank you, Mr. Speaker, Sir. This is a very important issue that Sen Cherargei is bringing to the attention of the House by way of Statement.

The identification of a police officer is not only by uniform. I would wish that Sen. Cherargei had included in his Statement, which I want to request that it be added as a further issue to be discussed in that Statement by the Committee that will handle this matter.

How do you identify a police officer, yet it has become the culture and behaviour of our police officers not to show their identification nowadays?

Mr. Speaker, Sir, back in the days, and I know you know very well, having worked with them in your previous career, it was mandatory for police officers to display



their force number. Nowadays, as you rise in rank, you prominently display your name and rank. That culture seems to be disappearing yet it played a very important role.

This is because we know and we have seen people pretending to be police officers or police officers themselves, by virtue of the fact that they had police uniforms, were able to get away with criminal activities or do things that are unconstitutional.

Mr. Speaker, Sir, therefore, it is important that when a response is brought to this House, we are told, in this new phase and the new identification practices that are being introduced in the police service, what is the Inspector-General doing to ensure that citizens can easily identify the police officers that are attending to them either by way of arrest or providing police services to them including the officers from the Directorate of Criminal Investigations (DCI) unit who are known to walk in civilian clothes?

We have seen in the recent cases where citizens are being arrested by people and you are told, "I am a DCI officer", and that is supposed to be sufficient explanation. They do not display their identification. This is an issue that I feel citizens of this country are concerned about.

When a response comes to this House, it needs to be properly explained, how do you identify and what is the modus operandi of an arresting officer who is not dressed in police uniform?

Thank you.

**The Speaker** (Hon. Lusaka): I had said I was going to limit the riders, but let me allow Sen. Wetangula, Sen. Olekina and Sen. (Dr.) Musuruve. Just the three.

**Sen. Wetangula:** Thank you, Mr. Speaker, Sir. The Statement by the distinguished Senator for Nandi County is very important. How we handle and reform our police force as a civil authority that protects *wananchi* is very critical.

Recently, a group of about 10 to 15 people dressed in police uniform terrorized traders in Bungoma; from Bungoma Town all the way to Chwele carrying their televisions (TVs), taking everything like stocks in bars and so on. When the report reached the police station, we were told; "these are not our officers. We do not have any such officers".

Mr. Speaker, Sir, police uniform like Army uniform should not be easy to imitate. It is dangerous if what Sen. Cherargei is saying is true, that police officers are being told to go to tailors, fit and make their own uniforms.

We have known police officers being given uniform that is made centrally with particular features that are difficult to imitate, so that they are easily identifiable. Not to be identified for people to run away from them, but identified for people with problems to go to them to be assisted.

I want to urge the Committee chaired by Sen. Yusuf Haji - I believe it is the Committee that you are going to give this question to deal with - to advise the House and the police force at large, that even today, when you look at the police force, they are wearing two different sets of uniforms.

There are those in blue and those in old uniforms. The moment you transitioned from old uniforms to the new uniforms, one would have thought that the old uniform is outlawed altogether so that we have a police force that when you see the uniform, you can tell this is a Kenyan policeman or woman and go to them for support.

Therefore, how we handle the police officers - as I finish - is very important for the confidence the public have and the confidence the police themselves have in the themselves in giving us civil security.

Mr. Speaker, Sir, housing for police officers is a matter that needs to be looked at. I heard an announcement that police officers are now given a few shillings and told to go and look for residences in suburbs of Nairobi, for example, Ongata Rongai or wherever. This is very dangerous.

A person carrying a weapon going to live in the midst of a place that they do not, or even if they know, they cannot guarantee their own security does not augur well for our civil authority in this county.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Speaker, Sir, for giving me an opportunity to support this Statement. This Statement is very important. I have written a Motion to this effect. I am sure that when the Motion comes to the Floor of the House, we will give greater contribution on this. It is unfair for police officers to be told that they have to buy their own uniforms they had not prepared for.

The police officer's job is good in this country. They are charged with security of human life, property, *et cetera*. There is need to ensure that we also give them some form of reinforcement.

Mr. Speaker, Sir, recently, police officers were told that they had to look for their own accommodation. Some of them are living in the slums of Nairobi and other parts of the country because the house allowance they get is too little. For them to be told to buy uniform is not right. Uniform is a form of patriotism.

When police officers are in uniforms, it identifies them as being patriotic, people we can trust in security and governance. There is need for them to be given uniform allowance. In the Motion, I am recommending that the Government should give them three pairs of uniform in a year, so that they are also neat as they execute their duties.

I hope that when the Motion that I have proposed comes to the Floor to this House, once you clear it, Members will even give more information about what they think on this issue of police buying uniforms.

I support.

**The Speaker** (Hon. Lusaka): I had said the last was Sen. Olekina. I am minimizing---. I made that ruling so that we have more Statements and we have---

**Sen. Olekina:** Thank you, Mr. Speaker, Sir. I rise to support the Statement by the distinguished Senator for Nandi County.

I want to believe that what is being said out there is not true; that the police service, men and women, who protect our lives are now being asked to go and buy their own uniforms.

Mr. Speaker, Sir, I recently listened to the police spokesperson, Mr. Charles Owino, stating clearly that uniforms were available and directing the police officers to go and collect the uniforms.

I also heard the Regional Commander, a Mr. Rashid Yakub warning the police against allegations that he had directed them to purchase uniforms from authorized tailors.

Our police officers live in deplorable conditions. If you go to their houses, you will be surprised that human beings can survive in such conditions. If the Government cannot provide them with uniform and housing, how do we expect them to protect us?

You wonder why some police officers kill themselves using their guns. It is because of frustrations. Despite some of information being shared, which may not correct, it is important that the Committee on National Security, Defence and Foreign Relations takes the issue as a security threat to the Republic of Kenya.

Mr. Speaker, Sir, no wonder yesterday the President ordered all Government helicopters be under the military. If the military are being given uniforms, the police officers might decide not to fix their choppers when they break down so that they can use that money to buy uniform. If it is true that the KPS is being asked to buy their own uniform, Parliament must venture into uncharted territory and ask questions.

Every year a lot of money is allocated to departments in the Office of the President, but they do not want to account for it. This Senate must enact legislation which will compel them to account for billions of shillings allocated to them and set aside 10 or 20 per cent to improve the life of the policemen and policewomen.

I hope this Statement will be taken seriously so that we allow our police officers to do their job effectively. It is okay if they arrest us because they are doing their job. However, they are human beings. We must make sure their welfare is taken care of because they are our brothers and sisters.

I support the Statement.

**The Speaker** (Hon. Lusaka): I said we are minimizing riders. Let us we go to the next Statement. We are trying to clear the backlog of Statements.

Sen. Loititip, proceed.

#### ENCROACHMENT OF LAKE KENYATTA RIPARIAN LAND IN LAMU COUNTY

**Sen. Loititip:** Thank you, Mr. Speaker, Sir, for giving me this opportunity.

I rise pursuant to Standing Order No.48 (1) to seek a Statement from the Standing Committee on Lands, Environment and National Resources regarding the alleged encroachment of Lake Kenyatta riparian land in Mpeketoni Lamu County.

In the Statement, the Committee should-

(1) State whether Lamu County allowed due process in licensing of Lake Kenyatta Beach Management Unit (LKBMU), which has been given the responsibility of managing areas of beach reserved for hippopotamus to graze as well as recreation areas for fishermen and the public.

(2) Explain whether Lamu County Government authorized demarcation of the said area and subsequently allocated the beach area to Lake Kenyatta Beach Management Unit.

(3) State whether the title deeds of the land in question which are in hands of LKBMU are genuine, and if so, did the National Land Commission (NLC) conduct due diligence before issuance of the same?

(4) Lastly, explain what measures the Ministry of Lands and Physical Planning is putting in place to ensure that areas around water bodies used as grazing area for wildlife are protected.

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

**Sen. Madzayo:** Asante, Bw. Spika. Kama kuna eneo ambalo limeonewa tokea Uhuru hadi leo, ni Pwani. Haki za watu wa Lamu zimezoroteshwa. Ninataka kumuunga mkono ndugu yangu mdogo Sen. Loitiptip kwa swala hili.

Sisi tunajua watu wanaoishi Lamu ni Waamu na Wabajuni. Lakini ukienda Lamu, utaona mashamba yao yanamilikiwa na watu wengine. Watu hawa wana stakabadhi bandia walizopata kutoka kwa Wizara ya Ardhi.

Bw. Spika, ninataka ndugu yangu Sen. Mwangi ambaye ni mkakamavu na Mwenyekiti wa Kamati ya Ardhi kuangalia kwa undani usimamizi wa LKBMU. Tunajua upeo wa baharini ni wa burudani. Lakini utaona upeo ulio katika ziwa la Kenyatta umetolewa stakabadhi na kupewa watu binafsi ambao hawajulikani.

Sisi tanawajua watu hawa. Mwenyekiti akileta ripoti yake, mimi nitatoboa na kusema ni akina nani waliopewa ardhi ya watu w Lamu iliyo chini ya LKBMU. Wakati huo ukifika mimi nitasema. Watu wa Lamu ni unyonge kwa sababu ardhi yao ilinyakuliwa.

**Sen. Kinyua:** Kwa jambo la nidhamu, Bw. Spika.

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

**Sen. Kinyua:** Bw. Spika, watu wa Lamu wanaendelea kusunoneka kwa shida, ilhali Seneta kutoka Kilifi anajua vizuri watu walionyakua ardhi yao. Ni vizuri angelisema mbele wa Bunge hili, badala ya kungoja, ilhali wale ndugu zetu wanaendelea kusunoneka na kuishi kwa umasikini. Kama angelisema angelisaidia zaidi na Seneta wa Lamu angefurahi pamoja na wanaodhulumiwa na mabepari.

**The Speaker** (Hon. Lusaka): Seneta, ninaona unalia kuliko aliyefiwa. Seneta wa Lamu mwenyewe yuko hapa na amesema atawajali wakati muafaka.

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

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

**Sen. Olekina:** Bw. Spika, jambo ambalo mwenzangu Seneta kutoka Laikipia amelizungumzia sio jambo tunaloweza kulizungumzia hapa. Wewe kama Spika una jukumu---

*(Loud consultations)*

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

**Sen. Olekina:** Bw. Spika, kama utaweza kupendekeza swala hili lishughulikiwe na Kamati inayohusika na masuala ya ardhi. Ni mbele ya Kamati hiyo ambapo majina yanaweza kutolewa. Kuyatoa majina hayo mbele ya Bunge wakati huu haitakuwa vizuri. Kufanya hivyo ni kama kutoa *premature* kama wasemavyo Waingereza.

**The Speaker** (Hon. Lusaka): Conclude Sen. Madzayo, we move on.

**Sen. Madzayo:** Bw. Spika, shukrani. Swala hili linaweza kutatuliwa vizuri kama ile Ripoti ya Ukweli, Haki na Maridhiano itatolewa na kuwekwa wazi kwa wakenya wote.

Tunasikia vuguvugu tu, lakini ikitolewa wazi kwa wananchi, nina hakika iko na majina, maeneo ambayo yanachukuliwa kupitia njia ya dhulma. Ninaongea nikijua historia ya Kenya, kwamba mashamba hususan ya Pwani yalichukuliwa kwa njia ya dhulma.

Taarifa kama hii Seneta wa Lamu ameuliza ni muhimu kuona ardhi iliyochukuliwa kwa njia ambayo ni kinyume na sheria, kuonewa na kupokonywa, imerudishiwa wenyewe.

Hadi leo, watu wanaenda kufukuzwa katika mashamba yao na kuambiwa kwamba, shamba limepeanwa. Shamanba limepeanwa kwa nani ilhali sisi tumeishi hapa zaidi ya miaka hamsini?

Tume ya Ukweli, Haki na Maridhiano iliandika Ripoti zamani, na hadi sasa Serikali bado haijaiweka wazi. Ripoti ya Tume hiyo inafaa kuwekwa parwanja ili kila mtu aisome na ajue ni nini iko ndani yake, na ni kwa sababu gani Serikali haitaki kuifichua.

**The Speaker** (Hon. Lusaka): Next Statement by Sen. (Dr.) Musuruve.

#### ACCESSIBILITY OF KWS SERVICES/FACILITIES TO PWDs

**Sen. (Dr.) Musuruve:** Thank you, Mr. Speaker, Sir, I rise pursuant to Standing Order No.48 (1) to seek a Statement from the Standing Committee on Tourism, Trade and Industrialization regarding compliance of the Kenya Wildlife Services (KWS) with the requirements to ensure accessibility of the Nairobi Animal Orphanage by Persons with Disabilities (PWDs).

In the Statement, the Committee should-

(1) State measures taken, if any, to ensure that, persons with disabilities, specifically the physically challenged, the visually impaired and the deaf and hard of hearing, can access services at the Nairobi Animal Orphanage.

(2) Outline the provisions put in place to ensure that wheelchair users, crutch users and the visually impaired can access the washrooms while visiting the animal orphanage.

(3) Explain strategies put in place to ensure that persons living with disabilities are catered for on a near equal basis to others in enjoying the facilities offered by the KWS.

Thank you.

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

**Sen. Chebeni:** Thank you, Mr. Speaker, Sir. I congratulate Sen. (Dr.) Musuruve for coming up with this Statement. As a country, it is time for us to start thinking about accessible tourism. Persons living with disabilities face great challenges whenever they want to enjoy tourism destinations in this country.

Every person in this country has a right to enjoy visiting and experiencing all the tourist destinations that we have in Kenya, especially now that we are talking about domestic tourism. Even persons with disabilities want to visit new places and identify places where they can relax and enjoy in this country.

Therefore, I support this Statement and the fact that there is need to put proper strategies in place to ensure that persons with disabilities get to enjoy the domestic tourism in this country.

I support.

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

**Sen. (Dr.) Ali:** On a point of order, Mr. Speaker, Sir. I just want to state that while I support the Statement from my Vice-Chairperson, I think that, that Statement should go to the Committee that deals with wildlife. That comes under Lands, Environment and Natural Resources. It is addressed to the KWS, and the KWS does not fall under the Committee on Tourism, Trade and Industrialization.

Thank you.

**The Speaker** (Hon. Lusaka): Thank you. You are right. Let us go to the next Statement by Sen. Wetangula.

**Sen. Wetangula:** Thank you, Mr. Speaker, Sir. I have two Statements following each other on the Order Paper, Nos. (xi) and (xii). I want to drop the one on (xi), because it was covered in the Statement that I sought yesterday.

Allow me to seek the one in (xii).

#### STATE AND OPERATIONS OF NZOIA SUGAR COMPANY

**Sen. Wetangula:** Mr. Speaker, Sir, I rise pursuant to Standing Order No.48 (1) to seek a Statement from the Standing Committee on Agriculture, Livestock and Fisheries, concerning the state and operations of Nzoia Sugar Company.

In the Statement, the Committee should-

(1) Explain the reasons for the dissolution for the Board of Directors of Nzoia Sugar Company on 3<sup>rd</sup> August 2020.

(2) Explain the reasons for the delay in the constitution of the Board and when a new one will be constituted.

(3) Explain measures put in place, if any, to ensure smooth operations of the company, especially on matters regarding the approval of management decisions, policy directions and responsibility in oversight in the absence of the Board of Directors.

**The Speaker** (Hon. Lusaka): Thank you, Sen. Wetangula. We go to Statements under Standing Order No.51 (1) (a).

The first one is from the Chairperson of the Standing Committee on Roads and Transportation.

#### OPERATIONALIZATION OF THE NATIONAL CONSTRUCTION AUTHORITY (DEFECTS LIABILITY) REGULATIONS, 2020

**Sen. Wamatangi:** Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No.51 (1) (a) to issue a Statement regarding the consideration of a Statement on the Operationalization of the National Construction Authority (Defects Liability) Regulations, 2020.

In June 2020, Sen. Kasanga, who is also the Vice-Chairperson of the Committee, requested for a Statement from my Committee regarding the operationalization of the National Construction Authority (Defects Liability) Regulations, 2020.

In that Statement, she specifically sought-

(1) An explanation as to why public participation and adequate stakeholder engagement was not conducted during the development and prior to the gazettelement of those regulations.

(2) The Committee provide adequate information on the ambiguous and contradictory interpretations that potentially invalidate construction contracts in Kenya.

(3) To elaborate on the measures put in place to ensure the construction environment as well as the ongoing projects at national and county levels will not stall unnecessarily due to these regulations.

(4) The Committee provide detailed plans and projects of which, the Ministry intends to address by these regulations.

Mr. Speaker, Sir, the Committee held several sittings to consider these matters. We invited stakeholders and included the relative Ministry of Transport and Infrastructure. We also invited other stakeholders who included the Joint Building and Construction Council, the Architectural Association of Kenya, the Kenya Private Sector Alliance, the Institute of Engineers of Kenya, the Institute of Construction and Project Management of Kenya, the Kenya Property Developers Association and the Institute of Quantity Surveyors.

During those deliberations, the Committee was informed that these regulations were in operation and that public participation on the regulations had not been undertaken.

The Committee, consequently, sought the evidence from the Ministry of Transport and Infrastructure. After scrutiny, the Committee received evidence and information provided by the National Construction Authority and made the following observations -

(1) The National Construction Regulations were published in the Kenya Gazette Notice of 20<sup>th</sup> April 2020 pursuant to Section 42 of the National Construction Authority Act.

(2) The National (Defects Liability) Regulations 2020 were in operation despite the provisions of Section 42 (3) of the National Construction Authority Act.

The Committee also observed that those regulations were not transmitted to Parliament for consideration, contrary to Section 11 (1) of the Statutory Instruments Act (No. 23 of 2013), which obligates that every Cabinet Secretary (CS) responsible for a regulation making authority will transmit a copy of the Statutory Instrument to the responsible Clerk within seven days after publication.

Mr. Speaker, Sir, the seven sitting days lapsed on 26<sup>th</sup> May, 2020 for the Senate, and 11<sup>th</sup> June, 2020 for the National Assembly. We also observed that the same regulations on Statutory Instruments require that each Statutory Instrument be considered on its own, and not be combined with any other in order to avoid confusion to stakeholders, so that adequate input is given to each Statutory Instrument.

The Committee observed that the implementation of the National Construction Authority (Defects Liability) Regulations, 2020 was rushed and not subjected to a meaningful public participation, contrary to Article 10 of the Constitution, Section 42 (3) of the National Construction Authority Act of 2011 and Sections 5, 6 and 11(1) of the Statutory Instruments Act, No.23 of 2013.

Mr. Speaker, Sir, the Committee then made the following recommendations: -

(1) That the Cabinet Secretary, Ministry of Transport, Infrastructure and Housing withdraws the operationalization of the National Construction Authority (Defects Liability) Regulations, 2020 for failing to meet the legal threshold of Sections, 5, 6 and 11(1) of the Statutory Instruments Act, No.23 of 2013.

(2) The Committee recommended that the National Construction Authority initiates a fresh process for public participation to ensure that the process will be all-inclusive, adequate and specific to the National Construction Authority (Defects and Liability) Regulations, 2020.

In conclusion, in order for the recommendations by the Committee to be actionable, the Committee resolved to table a report to this House, which was done earlier in this Sitting.

In summary, the Report that has been tabled will be coming substantively to this House. I believe that the necessary debate and discussion will ensue and Members will be informed of the process that we will then pursue to correct that anomaly.

Thank you, Mr. Speaker, Sir.

**Sen. Kasanga:** Mr. Speaker, Sir, if I can just say a thing or two. I know that the Motion is coming for debate, but allow me to thank my Chairman and the rest of the Committee Members for the expediency in which we have handled this matter because it is very grievous matter. On the issue of regulations, we have a very big problem here as a House.

Even today in our *Ad Hoc* Committee, we have realized that the Government has a way of gazetting regulations without following the due process, and that is something we have captured in our 9<sup>th</sup> Progressive Report. This is one of the situations that we need to address as a House. We need to put a stop to some of these things. We have to be true to our Constitution and these regulations require public participation.

For something as technical as this one of the construction industry, stakeholders are always there at hand, ready to engage with the Government so that they can help with the crafting of proper regulations that can help the ease of doing business in the industry.

I want to thank my fraternity, the Architectural Association of Kenya, for bringing it to our attention. They are gazetted almost in a secret manner, as if they are done at night, so that we do not get to know what is happening.

I am very grateful to the Committee and we are waiting for the debate, so that we can speak a little bit more to it.

Thank you, Mr. Speaker, Sir.

**Sen. (Eng.) Hargura:** Thank you, Mr. Speaker, Sir, for giving me this opportunity. I am also a Member of the Committee. I was checking and cannot see the report of the Motion on the Order Paper. Therefore, I do not know when we will debate it.

**The Speaker** (Hon. Lusaka): It was on notice.

Next Statement. I do not see the Chairperson of the Committee on Agriculture and Devolution. Therefore, on that area, we conclude with the Chairperson of the Committee on Energy. Is Sen. (Eng.) Maina not here?

Let us go to the Statement under Standing Order No.52 (1) by the Senate Majority Leader.

BUSINESS FOR THE WEEK COMMENCING  
TUESDAY, 29<sup>TH</sup> SEPTEMBER, 2020

**Sen. Dullo:** Mr. Speaker, Sir, pursuant to Standing Order No.52(1), I hereby present to the Senate the business of the House for the week commencing Tuesday, 29<sup>th</sup> September, 2020.

On Tuesday, 29<sup>th</sup> September, 2020, the Senate Business Committee will meet to schedule the business of the Senate. On that day, the Senate will consider Bills scheduled for Second Reading and those at the Committee of the Whole stages.



The Senate will also continue with consideration of business that will not be concluded in today's Order Paper, including Motions, petitions and statements.

On Wednesday, 30<sup>th</sup> September, 2020, and Thursday, 1<sup>st</sup> October, 2020, the Senate will continue with the businesses that will not have been concluded on 29<sup>th</sup> September, 2020.

A total of 20 Bills are due for Second Reading and other 17 Bills are at the Committee of the Whole stage. The Senate Business Committee will prioritize these Bills accordingly. In this respect, I urge the relevant Standing Committees to expeditiously conclude consideration of the Bills and table reports, pursuant to the Standing Orders, for purposes of enriching debates at the Second Reading stage and 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 Senate Business Committee to schedule the Bills accordingly.

Respective 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 consideration and smooth transition into the next stage.

Mr. Speaker, Sir, Senators will note that the Senate has received and continues to receive quite a number of petitions and Statements on diverse issues affecting the public, which are referred to the relevant Standing Committees for consideration.

Let me take this opportunity to thank standing committees that have filed reports on petitions and Statements. I also urge respective committees to expeditiously conclude these pending businesses and table reports, pursuant to the Standing Orders.

In conclusion, I urge Chairpersons of standing committees to be in the House whenever Statements pursuant to Standing Order No.51 (1) (a) and (b) are listed in the Order Paper.

I hereby lay the Statement on the Table of the House.

Thank you, Mr. Speaker, Sir.

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

#### ACTIVITIES OF THE COMMITTEE ON ENERGY

**Sen. (Eng.) Maina:** Mr. Speaker, Sir I rise pursuant to Standing Order No.51(1)(b) to make a Statement on the activities of the Committee on Energy for the period commencing 1<sup>st</sup> January to 31<sup>st</sup> July, 2020.

During the period under review, the Committee held a total of 12 sittings, considered two Statements and made several inquiries. Regarding Statements, pursuant to Standing Order No.48, two Statements were referred to the Committee during the period under review.

Sen. (Dr.) Abdullahi Ibrahim Ali requested for a Statement from the Committee on 19<sup>th</sup> May, 2020, concerning frequent electric power outages in Wajir County that have lasted since 2017.

The Committee received a response from the Ministry of Energy and, in the response, the Ministry of Energy indicated that Wajir has an installed capacity of 4.2 Megawatts against an estimated demand of 2.7 Megawatts. There were two generators

that are out for maintenance and out of service. The work on the first unit of 1 Megawatt commenced on 4<sup>th</sup> June, 2020, to be completed around 12<sup>th</sup> June, 2020, while the second unit of 1 Megawatt will be repaired in July, 2020 after receipt of the spares, whose delivery is expected then.

Sen. Cherargei requested for a Statement from the Committee on the issue of loss of Kshs7 billion in penalties paid to investors on Lake Turkana Wind Power Project. The Statement was sought on 21<sup>st</sup> July, 2020.

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Order! Please, let us consult in low tones. There is an illegal---

**Sen. (Eng.) Maina:** Thank you, Mr. Speaker, Sir. We need the House to be civilized.

The Committee received responses and shared the same with Sen. Cherargei. The Committee held meetings and adjudicated this matter. The Ministry said in their response that the Auditor General's report is already out, which are waiting to receive. The payment to the Project was done in accordance with the signed contract, and that everything was above board. Sen. Cherargei who was in the meeting seemed satisfied with the answer.

During its inquiries, the Committee followed up on a Statement that was sought on 15<sup>th</sup> May, 2019 by Sen. Mutula Kilonzo Jnr., on the oil spill in Kiboko area, in Makueni County.

Sen. Mutula Kilonzo Jnr. knows how much energy and time we took to take the interests of his people at heart. Finally, the area was cleaned up, tree planting is going on and the water was cleared for personal use. Other benefits were pushed by the Committee for Sen. Mutula Kilonzo Jnr.'s people. He was very passionate about the affair. I can report to the House that the cleanup was done and everybody now is at ease.

During the period under review the Committee met with the Cabinet Secretary for Energy on three occasions and deliberated on the following issues-

The reduction of high electricity tariffs levied postpaid and pre-paid consumers: I must inform the House that the issues of billing of electricity in this country has been our concern from the begging. Yesterday, we had a meeting and adjudicated this matter thoroughly. It is our view that we will keep on pushing because *wananchi* are complaining that their bills have sometimes been overestimated. We will get to the bottom of this matter. Things have improved, but the Committee is continuing.

The Committee also interrogated the Cabinet Secretary on the impact of the COVID-19 pandemic in the operations of rural electrification and renewable energy. We were assured there had been little effect and the works in regard to the service to people is continuing.

The Committee has also met with the Cabinet Secretary for Petroleum and Mining on three occasions to deliberate on the following issues-

The net effect on the collapse of oil prices worldwide and in particular Kenya and whether these benefits had passed to *wananchi*, and plans initiated by the Ministry of Petroleum and Mining to distribute free cooking gas cylinders and burners to households, to discourage them from using charcoal and wood.

The project has not taken off as successfully as required and the Committee is in pursuit of ensuring that the Ministry accomplished it and extends it to other areas.

As I conclude, the Committee intends to carry out the following activities during the next quarter-

Conduct an induction of all its Members and visits of its Members to various project installations, to ensure that the power service to this country continues. We shall continue pushing to ensure that *wananchi* get the right billing for their electrical supply.

We also looked at the financial status of the National Oil Corporation of Kenya (NOCK), which is not in very good state. The CS is yet to come and assure the Committee on how NOCK will be able to perform.

The Committee intends to meet the Ministry of Energy as well to deliberate on the lowering of the cost of electricity in Kenya, which is quite high. This could lead even to undesirable effects on our theme of industrialization.

On the financial status of the Kenya Power Company, the Committee will continue pursuing the operations of the Kenya Electricity Generating Company (KenGen) and the Kenya Electricity Transmission Company (KETRACO).

That is the Statement. I wish to assure the House and this country that we will continue to ensure that service is given to *wananchi* at an affordable and fair pricing.

I thank you, Mr. Speaker Sir.

**The Speaker** (Hon. Lusaka): What is it, Sen. (Dr.) Ali? We have run out of time.

**Sen. (Dr.) Ali:** Mr. Speaker, Sir, I would like to remind the Chairperson of the Committee on Energy that with all due respect, nothing is working in Wajir. The generator does not work, and we have been cheated several times. The Kenya Power Company and Ministry of Energy have lied to this House, and nothing has happened to date. I assure that nothing is there and Wajir is in darkness.

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Order, Members! Our time is up; I seek your indulgence.

What is it, Sen. Farhiya?

**Sen. Farhiya:** Mr. Speaker, Sir, I thank the Committee for taking up this matter, but even in their response, I see a gap. They were clearly told that there were two generators, one that is One Megawatt. The needs of the town are more than that.

The question they have not answered is: First of all, nothing has happened from July; they are still in darkness. The Committee should have asked how they are meeting the gap in terms of demand in the first place. None of the two generators is working. That town is still in darkness. I think the Ministry of Energy is not taking the deliberations of this House seriously. You cannot be in darkness continuously and nothing is done.

**The Speaker** (Hon. Lusaka): I think we have summoned the Cabinet Secretary and his team on Tuesday. Therefore, many of those issues will be canvassed then.

Let us have Sen. Mutula Kilonzo Jnr., finally.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, although the Chairperson of the Committee on Energy says that the people of Kiboko are happy, there is one component that the Committee has been afraid to handle. I say so with tremendous respect to the Chair.

**The Speaker** (Hon. Lusaka): He is not even listening.

Sen.(Eng.) Maina, please, listen.

**Sen. Mutula Kilonzo Jnr.:** The new pipeline was supposed to have something we call a leak detection system, which was part of the contract. That issue was never addressed by the Committee because I am told that the person who was doing this contract is a known cowboy contractor.

Since the Committee never handled this issue, there is now huge oil spillage in Mombasa. Fuel products are gushing out and people are collecting with oil cans *et cetera*. The danger that the people of Mombasa are being exposed to is because I raised this issue a year ago and they never addressed it.

While the area of Kiboko was cleaned and I did not agree with the clean-up, the question of the leak detection system and the cowboy contractor, who caused a contract of US\$52 million to be done without leak detection to Nairobi, must be addressed.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Thank you. I hope that when we meet on Tuesday, the Chairperson of the Standing Committee on Energy will fill us in.

Please, be brief.

**Sen. (Eng.) Maina:** I am not a man of many words.

**The Speaker** (Hon. Lusaka): Actually, it is the contrary.

*(Laughter)*

**Sen. (Eng.) Maina:** Thank you, Mr. Speaker, Sir. I want to assure Sen. Farhiya and Sen. (Dr.) Ali that, indeed, if that is the situation in Wajir, I am a person of action, and I am ready to do all that needs to be done.

Regarding the issue of leak detection by Sen. Mutula Kilonzo Jnr., since inception, the Standing Committee on Energy has stated on several occasions that the leak detection should have been part and parcel of the new pipeline from Mombasa. We are now assured that they have just put money for leak detection, but that does not make sense to me to lay a pipeline with no leak detection at this time and age because of the cost of oil being high and the dangers that can occur when there is a leak.

Sen. Mutula Kilonzo Jnr., I want to assure you that there is nothing like cowboy contractors. This is a word coined by people who want to arm-twist contractors for other gains. I request you not to be fond of that name because it is not the right way.

**The Speaker** (Hon. Lusaka): Hon. Members, I wish to rearrange the Order Paper because there is a matter that has been pending for a long time and we want to sort it out.

Let us go to Order No.9.

## MOTION

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

**Sen. Dullo:** Mr. Speaker, Sir, I beg to move the following Motion -

THAT, the Senate adopts the Report of the *Ad Hoc* Committee on Managed Equipment Services on the inquiry into the Managed Equipment

Services Project by the Ministry of Health, laid on the Table of the Senate on Tuesday, 8<sup>th</sup> September, 2020.

Hon. Senators will recall that on 19<sup>th</sup> September, 2019, the Senate adopted a Motion and resolved to establish the *Ad Hoc* Committee to Investigate the Managed Equipment Services (MES) Project. The Committee was mandated to investigate and establish the facts surrounding the leasing of specialized medical equipment in the then 119 beneficiary hospitals countrywide, including: -

(a) whether county governments were involved in prioritizing the medical equipment in accordance with their needs;

(b) the details of the companies from which the equipment was leased;

(c) the viability and benefit of leasing versus outright purchase;

(d) the availability of adequate numbers of health human resource to provide specialized health services as envisaged in this project;

(e) the operation, training and maintenance facilities in place for the equipment;

(f) the terms and period of the lease of each piece of equipment, where the equipment was supplied, the lease amount, and who bears the cost of the residual value of the equipment at the end of the lease term;

(g) the schedule of equipment supplied to each hospital, and the cost thereof, including proof that the monies disbursed were utilized for the intended purpose; and,

(h) the results of the exercise, considering that the terms of the contract end in 2022, when equipment has remained unused in some counties despite the county having paid annually for the installation, maintenance and utilization of the same since 2015.

Mr. Speaker, Sir, the following Senators were appointed to serve in the Committee —

(1) Sen. Dullo Fatuma Adan, CBS, M.P.	-	Member
(2) Sen. Moses Wetangula, EGH, M.P.	-	Member
(3) Sen. Mary Seneta, M.P.	-	Member
(4) Sen. Paul Githiomi Mwangi, M.P.	-	Member
(5) Sen. (Dr.) Christopher Langat, M.P.	-	Member
(6) Sen. Stewart Madzayo, CBS, M.P.	-	Member
(7) Sen. Judith Pareno, M.P.	-	Member
(8) Sen. Millicent Omanga, M.P.	-	Member
(9) Sen. Enoch Wambua, M.P.	-	Member

*(Loud consultations)*

Mr. Speaker, Sir, in fulfilling its mandate, the *Ad Hoc* Committee on Managed Equipment Services, was guided by the Constitution, the Parliamentary Powers and Privileges Act, 2017, the Public Finance Management Act, 2012, the Public Procurement and Asset Disposals Act, 2015, the Senate Standing Orders, among others.

Article 125 of the Constitution empowers both Houses of Parliament, and any of its committees, to summon any person to appear before it for the purpose of giving evidence or providing information. Article 125(2) of the Constitution further empowers a House of Parliament to enforce the attendance of witnesses and examine them on oath, affirmation or otherwise; compel the production of documents, and issue a commission or request to examine witnesses abroad.

The *Ad Hoc* Committee on Managed Equipment Services applied these legal provisions to deliver on its mandate.

Mr. Speaker, Sir, before I delve into the Report, I would like to express my gratitude to the Members of the *Ad Hoc* Committee on Managed Equipment Services for their commitment and dedication through the long hearing and sittings. I would also like to thank the Members of the Senate for their magnanimity in extending the term of the Committee whenever the Committee requested an extension.

I further extend my appreciation to the various institutions and members of the public who either appeared before the *Ad Hoc* Committee on Managed Equipment Services or sent their submissions in the form of written memoranda.

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

**Sen. Sakaja:** Thank you, Mr. Speaker, Sir. This is an extremely important Report and the Committee has taken a lot of time in working on it.

I understand the COVID-19 protocols in terms of documentation. I am asking by the leave of the Speaker to instruct that hard copies of this Report be available to every Member. We want to go through it with a fine toothcomb; every comma and dot, and have more time in discussing it.

Mr. Speaker, Sir, I request that you can relax the rules and allow us to each have a copy of this Report.

**The Speaker** (Hon. Lusaka): The Report is 400 pages.

**Sen. Sakaja:** Mr. Speaker, Sir, bigger reports have been printed in this Parliament and the Senate Business Committee (SBC) will tell you. For those Members who want, we can get a copy. Otherwise, you cannot flip through 400 pages on your iPad. We cannot vote today because we need to go through the details.

**The Speaker** (Hon. Lusaka): Sen. Sakaja, that is not your decision. The decision has to be made by the House.

What is it, Sen. Cheruiyot?

**Sen. Cheruiyot:** Just in furtherance of what Sen. Sakaja is proposing, this is an extremely important report. We have been trying to read what is on our iPads because it was uploaded today.

Mr. Speaker, Sir, in making that decision, which Sen. Sakaja purports to make on your behalf and you have rightly informed him that he does not have leverage, please, bear in mind how long it will take for us to read 400 pages.

**Sen. Murkomen:** On a point of Order, Mr. Speaker, Sir. Procedurally, I thought the Motion should be moved and seconded first before such a request can be made.

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

**Sen. Dullo:** Thank you Mr. Speaker, Sir, I wish to proceed. As we all know, health is a devolved function under Paragraph 2 of Part 2 of the Fourth Schedule of the Constitution. Further, the First Schedule of the Health Act provides that Level 1, through to Level 5 health facilities shall be managed by the county governments.

It is also important to note that funds for the MES Project form part of the conditional grants allocated to counties from the national Government share of equitable allocation. Indeed, according to the County Allocation of Revenue Act (CARA), dating back to the FY 2015/2016, county governments have been allocated, through conditional grants, monies under the title “Conditional Allocation for Leasing of Medical Equipment.”

According to the Act passed in the FY 2015/2016 to FY 2017/2018, each county government was allocated Kshs95,744,981 in each financial year. However, the grant as recorded in the CARA for 2018 increased in the FY 2018/2019 to Kshs200 million per county before marginally dropping to Kshs131,914,894 in the FY 2019/2020.

If I may bring this to the attention of Members, during investigation, there was a lot of hullabaloo whether the money belongs to the national Government or county governments. The Ministry argued that the money belongs to the national Government and not county governments.

Members of this House know very well that the MES budget appeared in the CARAs throughout the financial years. Those challenges were there as far as the issues of budget were concerned. The National Treasury confirmed that the money is from the county governments.

Pursuant to Articles 94 and 96 of the Constitution, it is incumbent upon the Senate, as the protector of devolution and the constitutional body charged with overseeing national revenue allocation to county governments, to investigate the changes, anomalies and irregularities that arose during the course of the implementation of the MES Project.

Throughout the Committee's tenure, we held hearings with various public officials, both past and present, from the Ministry of Health. We also met with public officials from the National Treasury, the Controller of Budget (CoB), Office of the Auditor-General (OAG) and public officials from national Government agencies such as the Kenya Medical Supplies Authority (KEMSA), the Pharmacies and Poisons Board (PPB), Kenya Bureau of Standards (KeBS), the county governments, the MES contractors and civil society. The Committee also engaged in site visits to some of the beneficiary counties, hospitals and headquarters offices of one of the MES contractor in the Kingdom of Netherlands.

The Committee considered both oral and written submissions of the witnesses in determining the issues and preparing this Report.

In the course of the investigation, the Committee established that the MES Project was meant to serve Level 4 and 5 county health facilities and selected national health referral facilities as beneficiaries of the services under the contract.

The Committee notes that the MES Project was a classic case of a good idea with potentially high benefits for the people of Kenya that was bungled up during implementation due to irregularities and outright unlawful acts. Accordingly, the MES was a good idea, but badly implemented as far as the Committee is concerned.

Mr. Speaker, Sir, with your permission, I will now proceed to highlight some of the findings of the Committee. We wanted to know whether the Ministries did a needs assessment as far as the project is concerned. We interacted with both the Ministry of Health and the Council of Governors (CoG).

What transpired at that particular time is that Ministries were saying that the needs assessment was done, but Gov. Oparanya who represented the CoG as the Chair, said that the needs assessment was not done. The counties also said that they were not involved from the beginning as far as needs assessments was concerned.

We looked at the needs assessment simply because we wanted to know how prepared the counties were as far as the project is concerned and how the equipment was placed. Unfortunately, most counties said that needs assessment was not carried out.

The Committee, while undertaking its enquiry, established that the supply of medical equipment to Level 4 and Level 5 facilities in the counties was initially conceptualised as Public-Private Partnership (PPP).

The total cost of the project, including infrastructural support, was to be Kshs4.3 billion, then per year, over a period of 10 years. Out of Kshs4.3 billion, the national Government through the Ministry of Health, was to pay Kshs1 billion. The national Government, through the National Treasury viability gap finding, was to pay Kshs2 billion, while the county governments were to pay Kshs1.5 billion, translating to roughly Kshs31 million per county. Those were the laid out figures if the project was to be a PPP.

By a letter dated 22<sup>nd</sup> June, 2015, the Ministry of Health informed the National Treasury that the Ministry of Health was proceeding to drop the PPP and opt for MES Project to be procured under the public procurement laws, which according to the investigation and the finding of the Committee, shows that there was no clear explanation how the Ministry moved from PPP to public procurement laws.

There was no policy document or public participation that informed this conversion. Accordingly, the Committee concluded that this conversion was not in the public interest because whereas under PPP the total cost of the infrastructure support was Kshs4.3 billion per year over a period of 10 years and counties would have paid Kshs31 million for seven years, the conversion resulted in counties paying Kshs95 million per county per year in the FY 2014/2015 to FY 2017/2018, Kshs200 million in the FY 2018/2019 and Kshs131,914,894 for the FY 2019/2020 for the project that runs for seven years.

In the circumstances, the Committee concluded that there was no value for money and, therefore, recommends that the circumstances for the changes be investigated and any person found culpable prosecuted. Where it is established that the Government suffered financial loss, the National Treasury should commence recovery proceedings and damages against culpable officers for the loss suffered, as provided for under Section 232 of the PFM Act.

The Committee further recommended that culpable officers, who bear the greatest responsibility, be barred from holding public office. The Committee also noted with concern the opaque manner in which procurement under the MES project was done.

Article 227(1) of the Constitution provides that-

“When a state organ or any other public entity contracts for goods and services, it shall do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective.”

From the investigations, the Committee established that the Ministry of Health procured the services of financial and legal consultants directly and in a manner that did not conform to the constitutional and legal provisions. For instance, the Law Firm of Iseme, Kamau and Maema was procured as legal transaction advisors without the approval of the Attorney General.

Section 17 of the Office of the Attorney General Act obligates the Government Ministries to seek the approval of the Attorney General before procuring the services of an external legal consultant.

Mr. Speaker, Sir, the Committee also noted with concern the opaque manner in which procurement under MES project was done. Article 227 (1) of the Constitution provides that when a state organ or any other public entity contracts for goods and



services, it shall do so in accordance with the system that is fair, equitable, transparent, competitive and cost effective for the investigations. Therefore, clearly, you will see that the Ministry sought the service of the legal firm before obtaining the authority from Attorney General's Office.

Mr. Speaker, Sir, if you look at the Report, you will see that the advert for this particular project is that the contractors who were supposed to apply for this contract were to be original manufacturers. However, we found out as a Committee that there are some contractors who were not original manufacturers, for example, General Electric (GE) East Africa Services Limited. General Electric East Africa Services, which was not original manufacturers, applied for the contract and they got it. There are instances where you will find that some of the companies that obtained powers of attorney to sign those contracts much later after the contracts had been signed.

Another important issue to note relates to Note 7 under comprising radiology equipment. This equipment was delivered by GE East Africa Services Ltd. The tender required original equipment manufacturers, but GE East Africa, a subsidiary of the original manufacturers, bid on its own name, was awarded the tender and signed the contract in contravention of the Public Procurement and Asset Disposal Act, 2015. The Act requires that the tender evaluation be conducted according to the criteria set out in the tender document.

In this case, GE East Africa should have been the original equipment manufacturer. It is important to note that the number of faults recorded was higher in the equipment they supplied. Indeed, the PKF Report stated that the number of equipment breakdown with regard to radiology equipment in 2018 increased from 918 faults to 1,291 faults.

Mr. Speaker, Sir, the GE East Africa were not cooperative in their submissions. They consistently lied to the Committee that they had power of attorney from its parent company General Electric based in Netherlands, but were unable to produce the alleged power of attorney. After three consecutive sessions, they finally admitted that they did not have the power of attorney and ordinarily had the right to bid due to their affiliations with the parent company. The Committee notes that, that was false because being a subsidiary does not bequeath upon a subsidiary the same standing as the parent company because these are two distinct legal entities.

Mr. Speaker, Sir, when GE appeared before us, they severally came with their lawyers. The first time when they appeared before the Committee, they said that they had power of attorney to have signed the contract. We gave them 10 minutes because they requested for 10 minutes, so that they could go and bring the power of attorney. Unfortunately, they came and requested for a week to go and work on it. We gave them a week. On several sessions, they appeared before us, they had excuses for not having the document and all that. However, at the end, they said that they do not have the power of attorney, and they ended up signing the contract.

The Committee, therefore, recommended that the circumstances under which the tender was awarded to GE East Africa is in contravention of The Public Procurement and Assets Disposal Act and the requirement in the tender document be investigated.

Mr. Speaker, Sir, as for the financial advisors, the Ministry of Health retained the services of PKF and SPA, who developed the public sector comparator that formed the basis for the awarding of contracts under MES. Further, the Committee noted that PKF

submitted the value for money assessment in a record three days and were paid Kshs1.108 million for an assignment that required them to visit counties. It is clear that there were no county visits that were conducted by these companies to inform the public sector comparator because the report was ready and submitted within three days of signing the contract, where they were clearly paid three days after they submitted the report.

Mr. Speaker Sir, the Committee also established some irregularities in the procurement of the contractors, for instance, an unauthorized person who signed contracts in several instances without the power of attorney. Clearly, the Committee recommends that the Ethics and Anti-Corruption Commission (EACC) should commence investigations into the process of procurement and award of contracts under the MES project, with a view to taking action against the officers found culpable.

Mr. Speaker, Sir, in respect to the viability and benefit of leasing versus outright purchase, the Committee established that the MES project was carried out using a Managed Equipment Service model and not leasing, as was originally envisaged.

The Committee established that the MES is a flexible and specialized partnership with a private sector service provider, to provide access to innovative medical technology and equipment in order to ensure the effective and efficient delivery of health services. All equipment concerns throughout the entire contract lifetime, including ownership, provision, purchase, installation and commissioning, user training and asset management, maintenance and ongoing replacement.

The Committee also established that most equipment supplied under the MES project did not require frequent changes in technology, while all these were captured within the contract at the beginning. As such, there was no value for money by acquiring the equipment through the MES project. Instead, value for money could have been attained through outright purchase of that equipment.

Accordingly, in order to conclusively determine the viability and benefit of leasing versus outright purchase, the Committee has recommended that the Office of the Auditor-General undertakes an urgent audit of the entire project, including the manner in which the funds paid so far by the county governments have been used, the state of the equipment and the extent to which the project has met its objectives and make appropriate recommendations to the Senate on its viability and the best way forward. This audit should be undertaken immediately and a report submitted to the Senate within six months from the date of tabling this Report.

Mr. Speaker, Sir, in respect to the cost of the equipment supplied to each hospital, including proof that the monies disbursed were utilized for the intended purpose, the Committee recommends that the Office of the Auditor General undertakes an urgent audit of the entire project, including how the funds, so far, paid by the county governments have been used, the state of the equipment and the extent to which the project has met its objectives, and recommend to the Senate the best way forward and report back to the Senate within six months from the date of this resolution.

Mr. Speaker, Sir, the Committee during the inquiry established a blatant violation of the Constitution and the laws. For instance, the Office of the Controller of Budget (CoG) has consistently authorized the withdrawal of funds for the MES Project without first having the funds deposited in the County Revenue Fund (CRF), as required under

Article 207(1) of the Constitution and Section 109(2) of the Public Finance Management Act.

Secondly, as already noted, the Ministry of Health procured legal services consultancy without seeking approval from the Office of the Attorney-General as required by Section 17 of the Office of the Attorney-General Act.

Further, during the conceptualization and procurement of the MES Project, the Ministry of Health never involved county governors, in direct contravention of Articles 6, 187 and 189 and the Fourth Schedule of the Constitution. Indeed, there was also no public participation at all. Throughout the MES Project, there was no public participation and proper consultation with the county government

Mr. Speaker, Sir, Article 3 of the Constitution obligates every person to respect, uphold and defend the Constitution. Further, Article 6 (2) provides that the governments at the national and county levels are distinct and interdependent and shall conduct their mutual relations based on consultation and cooperation.

Article 189(1)(a) provides that the government at either level shall perform its functions, and exercise its powers, in a manner that respects the functional and institutional integrity of the Government at the other level, and respect the constitutional status and institutions of Government at the other level and, in the case of county government, within the county level.

To this end, the Committee implores all State officers - public officers and Government agencies - that whatever the importance or urgency of an undertaking, the constitutional principles relating to functions and status of government at either level must be observed. They must not derogate from the Constitution.

Mr. Speaker, Sir, at this juncture, allow me to make some observation in relation to county governments. The Committee was very perturbed at the level of leadership exhibited by county governors. County governors consistently denied being involved in the MES Project. They, however, committed themselves and signed a Memorandum of Understanding (MoUs), accepted and received the equipment in their institutions under their watch.

A few of the governors embraced the project and have done very well. The Mombasa County Governor stands out in this respect. The county government embraced the project and put the equipment into immediate use.

During the county visit, the Committee was informed that the Coast General Hospital raises roughly Kshs40 million from the equipment, an amount which they plough back into health services. Why can other counties not follow suit? Some counties received the equipment and have still kept them in boxes, five years down the line.

County governors must stand up and perform their duties as expected under the Constitution and the law. County governors must not double speak, so that when something favors them, they support and when it appears it is against them, they run all over lamenting. The quality of leadership in the counties must improve.

In the counties we visited, most of the equipment is still in the boxes. Governors have signed MOUs that transfer the responsibility of infrastructure to them. You will find that certain counties where three-phase electricity is required with a budget of Kshs1.2 million, most of the hospitals have not installed electricity. Members of the public are not getting services.

The Committee recommends that county governors take charge and embrace the MES equipment, and put them to proper use. In any event, the governors committed themselves by signing the MoUs. It is important to note that counties like Mombasa have embraced the MES Project and are reaping the benefits of the equipment. In addition, the dialysis equipment has been accepted and proved to be very helpful to the public.

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Please, let us consult in low tones.

**Sen. Dullo:** Mr. Speaker, Sir, the dialysis equipment in the whole country is working. Now that the Project is on its fifth year, the Committee recommends that county governors do whatever is in their power and operationalize the use of the equipment for the benefit of the public.

As already noted, the Committee has established that county governments have not embraced the MES Project with the exception of a few. The Committee directs the county governments to utilize the equipment that is lying unused in county hospitals.

The Committee further urges county governments to urgently put the equipment to use for the benefit of the public. The Committee recommends that each county government files with the Senate a status report of all equipment received, status of functionalities, how they intend to use them in the remainder of the period and how they are going to deal with the equipment post-MES Project. The Report should be filed within six months.

Mr Speaker, Sir, we went to Meru County where their equipment is still lying in Netherlands, while the county pays Kshs200 million every year. The Ministry was unable to explain to us where the money is going. We were told that the budget has increased from Kshs95 million to Kshs200 million because of HCIT, Lot Three and Four, which were not awarded. Unfortunately, during our investigation, we did not lay our hands on how the budget is being utilized.

As already noted above, MES is a classic case of a good idea executed badly. It is without doubt that there are gains that have been made from the MES Project. Moving forward, the Committee notes that a thorough audit be undertaken, so that as the Project nears the end, a fresh engagement be considered to salvage what is remaining of the Project. In the event that the contract is not extended, there needs to be a post-MES strategy, so that the investment does not go to waste.

Accordingly, the Committee recommends that an audit be undertaken and a fresh engagement commenced in order to streamline the national Government and county governments, to analyze and formulate a way forward on the MES Project.

In undertaking this audit, the Committee proposes the establishment of a multi-sectoral committee comprising a representative of the Ministry of Health (MOH), representation of the Council of Governors (CoG), a representative of the Pharmacy and Poisons Board (PPB), a representative of the Kenya Bureau of Standards (KeBS), a representative of the National Treasury, a representative of the Office of Auditor General (OAG), Department of Justice (DoJ ) and representatives of civil society groups operating in the health sector to undertake a valuation of the equipment supplied under MES Project, in order to validate the viability of the equipment in respect to the life cycle

model in the contract and, at the end of the contractual term in 2022 and, advise on the way forward. The multi-sectoral committee should revert to the Senate within six months.

Mr. Speaker, Sir, finally, the Committee during its investigation, established that the public bodies that are charged with checking that imported goods meet the safety and quality standards prescribed by legislation, failed to do so and thereby, putting the life of Kenyans at risk.

In the circumstances, the Committee recommends that a thorough audit of the legal framework governing these bodies, including the PPB and the KeBS be undertaken with a view to strengthening the role of these institutions. Further, the Committee recommends the urgent operationalisation of the proposed single regulatory body provided for under Section 62 of the Health Act.

The report is very long. What I am giving to the House is an overview of the Report. If you read through, the Report captures everything from the inception of the contract of the Managed Equipment Scheme (MES) up to the current status. I urge Members to look at the Report and read it properly because it is quite useful.

Mr. Speaker, Sir, with those few remarks, I beg to move. I call upon Sen. Wetangula to second the Report.

Thank you.

**Sen. Wetangula:** Thank you, Mr. Speaker, Sir, for the opportunity to second this Report and the Motion. Those who were here in the last Parliament like Sen. Mutula Kilonzo Jnr., Sen. Orengo, Sen. Dullo, Sen. Murkomen and Sen. (Prof.) Kindiki spent a lot of man hours trying to unravel the MES Project.

The matter came to the House many times, and serious questions were asked, including given the fact that this is a fixed term contract, for seven years, how do the allocations of money keep shifting from Kshs95 million per county per year to Kshs200 million per county per year and Kshs131million per county per year? Those questions were never answered.

Mr. Speaker, Sir, I want to start by thanking the House for giving us the confidence to allow us to investigate this matter through the *Ad hoc* Committee. If we all read and understand this 400 paged Report, it puts to rest and gives serious answers to serious questions about MES. In the course of our investigations, one can say that - if you remember the movie by Clint Eastwood - we literally encountered the good, the bad and the ugly. We had witnesses who were excessively arrogant, rude and did not even care that this House can investigate them.

However, we came up with a report that I would like to urge every Member to read, understand and appreciate. This is because as leaders of your delegations, Senators must appreciate that counties are being taxed at source. A small county like Lamu is paying the same amount of money as a big county like Nairobi; Kshs200 million per county per year.

Mr. Speaker, Sir, in the course of the investigations, there was a spirited attempt by the Ministry of Health to tell the Committee that this money does not belong to the counties; it belongs to the national Government. The Cabinet Secretary (CS) for Finance and the National Treasury, Hon. Ukur Yatani, appeared before the Committee - and I thank him for this - and said these monies are conditional grants to the county governments, and once you give conditional grants, they become money for the counties. They do not remain to be monies for the National Government. Thirdly, under Section

109 of the Public Finance Management (PFM) Act, every Conditional Grant given to counties must be deposited in the County Revenue Fund (CRF) account.

Mr. Speaker, Sir, not a single shilling on the MES project has ever been deposited in the CRF account. The money is retained and appropriated at the Ministry of Health in a very opaque manner. For example, when we questioned Phillips Medical Systems, based in Eindhoven, the Netherlands, they told us that the money they are paid for providing the stethoscope, the oldest medical equipment you can find, is Kshs5,000. However, the Ministry of Health is levying from counties over Kshs1.6 million for a stethoscope. Phillips Medical Systems said that they are receiving the value of what they have provided, but the Ministry is taking over Kshs1.6 million for a stethoscope of Kshs5,000. Where does the difference of the money go? There is no explanation.

When you look at the MES project - and we had experts who did the calculations - Senators would know that if this project was executed honestly, each county would be paying only Kshs31 million per year for the seven years contractual period. Instead, we are paying Kshs95 million, then Kshs200 million and Kshs131 million. We do not even know what we will pay next year, because the figures keep on changing, yet it is a fixed term contract.

As the Chair of the Committee has elucidated, so many things went wrong. For example, there is a company called PKF Kenya. This company was contracted by the Ministry of Health to do an awareness and assessment on the viability and readiness of the counties to absorb the MES Project. What happened was like a theatre of the absurd.

First of all, the Auditor-General questioned the manner in which they were procured, because they were single-sourced with no explanation. They were then given a job to carry out a needs assessment countrywide. They were to go to Kiambu and check whether they have a theatre, they can take radiology equipment, they have a room where they can keep dialysis machines, enough power to power these machines and water, because you need water for dialysis machines.

Mr. Speaker, Sir, it is bizarre. The PKF Kenya was contracted to carry out a nationwide needs assessment and they handed back their report to the Ministry in exactly three days. In three days, how could they have gone to the terrain of Elgeyo-Marakwet, Turkana, Bungoma and Lamu and found out what these hospitals have, and whether they can take this equipment? In a record three days, their report was ready. It is obvious that they did not carry out any needs assessment.

That is why you find that in Garba Tula, in Isiolo County, the equipment is still in cartons for three years. It has never been opened because there is no capacity to use them. In Endebess, in Trans Nzoia, it is the same thing. In Malindi, we found that the equipment was delivered, but they have no three-phase power. We wanted to find out from this company what they assessed for them to say that the counties were ready for the equipment. They could not answer. For that shoddy job, they were paid close to Kshs10 million, and they walked away happy.

Mr. Speaker, Sir, in the process of investigating, we found a lot of missteps between agencies of the Government. There is a law firm called Iseme, Kamau and Maema Advocates (IKM) that was contracted by the Ministry of Health. The Attorney-General eventually said that they can work for the Ministry of Health. However, once you analyze the contracts and see what they did, you will see what a shoddy job this company did.

In inviting for contacts, the Ministry of Health was very clear---

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

**The Speaker** (Hon. Lusaka): What is your point of order, Senator? Your microphone is on.

**Sen. Olekina:** Mr. Speaker, Sir, I just wanted a clarification. I was listening to the Mover of this Motion and the Mover had alleged that the Attorney-General was not consulted when the law firm was being appointed. I have just heard the seconder saying that eventually the Attorney-General gave approval for this law firm to be able to work for the Ministry. Could the seconder clarify his position just so that we can follow clearly?

Thank you, Mr. Speaker, Sir.

**Sen. Wetangula:** Mr. Speaker Sir, if the Senator for Narok had even let me finish the sentence, he would have understood me. They were procured by the Ministry without the authority of the Attorney-General. Eventually, the Ministry kept on writing letters to the Attorney-General until he said they can act. However, the Auditor-General has even questioned and given an opinion that is not controverted, an adverse opinion, that their procurement was irregular and single-sourcing.

With these lawyers on record, the documents for procurement read in part: -

“The Ministry of Health now invites field tenders from original equipment manufacturers who can also undertake Managed Equipment Services.”

With these lawyers on record, it is not rocket science for them to advise the Ministry that Philips is an original equipment manufacturer, that Schenzhen Mindray are original equipment manufacturers, that Belco SRL are original equipment manufacturers but General Electric East Africa is a trading outpost in East Africa. It is not an original equipment manufacturer. In fact, it does not manufacture any equipment. Despite this, General Electric proceeded to execute the contract, taking 52 percent of the MES project value. They are not original equipment manufacturers. They were unable to satisfy the Committee in any way or at all as to how they won the contract.

They appeared before the Committee. They said, we have a power of attorney, we can bring it in five minutes. They were accompanied by some local lawyers. After 10 minutes, the lawyer vanished. They came again, appeared several times and eventually wrote some scandalous letters saying the Committee had made it impossible for them testify, yet as a comparison, Philips Eindhoven based in the Netherlands are original equipment manufacturers of the equipment the lot was given to them in the contract.

They have Philips East Africa operating in Kenya. Philips East Africa could not tender because they are not original equipment manufacturers although they are a subsidiary of Philips Eindhoven.

So, Philips Eindhoven themselves had to tender, win the contract and within the framework of the contract, could only contract Philips East Africa as a sub-contractor to do their work. Why was it different for General Electric? That is why we have said investigate. Let EACC, DCI and Auditor-General come on board.

We are talking of a company that has been paid or is going to earn in the seven years, over Kshs24 billion, taxed at source from each county.

Mr. Speaker, Sir, we want to urge this House to approve these recommendations so that investigations can be carried out and those found to be culpable must be dealt with within the law.

We have also as a Committee dealt with the issue of a company called Seven Seas. According to Minister Cleopa Mailu who testified before the committee, the nerve centre of MES is Healthcare Information Technology (HCIT). How is it a nerve centre? It was a component that was meant to make sure that in real time, a diagnosis in Mandera is transmitted to a nerve centre in Nairobi at Kenyatta National Hospital where there is a conglomeration of experts who will be able to read the images, interpret the images and in real time, send back the information to Mandera, Turkana or wherever for patients to be assisted. A very good idea.

We went to Tana River. We found that when they take images they send physically, a runner to Mombasa to take the images for reading and interpretation and then return for attention.

HCIT, the contract was first given to General Electric - the same contentious General Electric - at a cost of Kshs11 billion then the Ministry changed its mind and said we will tender this contract separately.

A local company competitively participated called Seven Seas Technologies and they won the contract at Kshs4.9 billion, less than half what General Electric was getting.

The Ministry of Health made it impossible for this company to do its work. The day Seven Seas appeared before the Committee, the next day, the Minister for Health and her PS terminated the contract unilaterally and sent them away. To date, the nerve centre for HCIT at Kenyatta National Hospital is still there, with early works done, non-operational.

Mr. Speaker, Sir, may I request that if my Chairperson, the Mover did not exhaust her time, you will give me a few more minutes so that I can finish.

**The Speaker** (Hon. Lusaka): How many?

**Sen. Wetangula:** If you give me an extra 10 minutes, I will be very happy.

**The Speaker** (Hon. Lusaka): All right. Proceed.

**Sen. Wetangula:** Thank you, Mr. Speaker, Sir. The Minister for Health appeared before the committee and said very outrageous things. One, this company was given a contract that was different from other contracts. We checked all the contracts and found that they were identical. This company was seeking a letter for support from the Government that was not part of the contract. Each company was given a letter of support.

As a result, the MES project where it's working and we want to salute the management of health services in Mombasa, I do not know if the Senator for Mombasa is here, it is a shining example of the MES success. We went to Mombasa hospital and every bit of equipment was working optimally yet in other areas, nothing is working. So, HCIT crumbled and now people have to keep running from Lodwar to Eldoret with X-ray images to be interpreted yet it could be done within minutes.

We have recommended that those who terminated this contract did an unlawful act and action must be taken against them.

Then we have the issue of our governors. Governors in the MES project have behaved like poor actors in a bad play. The Chairman of the CoG, Gov. Oparanya of Kakamega, appeared before the Committee and said he signed the contract under duress. When we asked him what the duress was, he said a chief went to a funeral and announced that a person had died because he had not signed the contract. Can that amount to duress? This is like the theatre of the absurd!



In doing so, the governors abdicated their responsibilities completely. If governors paid attention to MES, if governors participated properly in the MES project, our counties would not be ripped off the amount of money that we are talking about.

You can imagine a county like Tharaka Nithi, even in the new formula, the gain they got is only Kshs289 million and they are creaming off Kshs200 million every year for MES, for their county. The governors told us that they were blackmailed into signing the agreements.

To date, governors have not come up with any clear direction apart from lamentations on how they can make MES Project to work. Look at Malindi, to fix a three phase power in a big town such as Malindi would not cost more than Kshs1.5 million. The equipment is lying there because there is no three phase power.

This is a dereliction of duty and governors will also have to be held accountable for this kind of reckless behavior in the management of public affairs.

We have government agencies such as Kenya Bureau of Standards (KeBS) and Pharmacy and Poisons Board. Some of these equipments have very high levels of radioactive material. You cannot believe that the Pharmacy and Poisons Board has no capacity even to test a blade for operation. All they do is look at documents, sign and say, "Endelea."

We have recommended that this House and the National Assembly need to look at the legislation that governs these agencies. When you talk to KeBS they tell you: "Ours is just to check whether the goods were checked at the point of source." The Pharmacy and Poisons Board say: "We are not resourced, so we have no capacity."

A company can bring any equipment. Some may even be reconditioned or factory rejects and put at the disposal of Kenyans to work on our bodies. No wonder we are having so many health complications.

In our recommendations, we have been informed clearly by the Office of the Director of Legal Services that as a Committee we find culpability, errors, shortcuts and shortcomings but the right procedure and have heard some colleagues complaining on why we did not recommend that so and so be prosecuted.

The President dropped a list on the Floor of Parliament last term that destroyed people. Eventually he came round and said, "No. I did the wrong thing." I have no doubt in my mind that what we have done is the right thing. We have made a specific recommendation on each item and we have said where culpability lies, we not only want the Ethics and Anti-Corruption Commission (EACC) and the Director of Criminal Prosecutions(DCI) to investigate but to report to this House within 60 days or whichever so that this House can be able to keep abreast with the implementation of this very important report.

Mr. Speaker Sir, let me mention some of the things that we encountered that we think things do not just work well in Government, and our Government must style up. The Attorney General was drafted in to approve something called a letter of support. His opinion was that the letter of support for particularly General Electric and Philips amounted to sovereign guarantees. Members, you know that nobody other than Parliament can give a sovereign guarantee in any transaction.

I believe the Attorney General was truly bullied because letters were flying over and over and eventually he said, "Go ahead and execute." One, it was a weakness on his part they ended up executing powers of attorney that were amounting to sovereign

guarantees. Secondly, those letters of support contravened the Constitution. The office of the Attorney General must stand up and resist any attempts from any agency of Government from pushing them to do something that is unlawful. We hold that they take full responsibility for this kind of conduct.

Members, the list of pricing was not picked from the suppliers or from the air. This Annex 14 was brought to the Committee by the then Minister of Health, hon. Sicily Kariuki. When you look at how they priced things into this MES Project, it is saddening. It is a sad day for our country. Imagine a spotlight that you can pick from a supermarket. It is a torch. Perhaps when you say a spotlight, it reminds you of the good old days when Africans were called rat killers and *Mzungus* were called rodent officers.

Mr. Speaker Sir, a torch was procured for Ksh1.4 million and a stethoscope for Kshs1.6 million. An oven, and we saw some of them- they are not any different from the microwave ovens you use in your houses. That you can walk to Carrefour and pick for Kshs7000 - they were procured for Kshs1.2 million. A washbasin which even if it was made of marble that you use in your sitting rooms and dining halls was procured for Kshs1.3 million for one.

A baby cot was procured for Ksh1.4 million. An electric kettle, and it is not one from the moon. It is the electric kettle where you put water, hook on power, boil and use is being procured for Kshs1.2 million. A patient stretcher was procured for Kshs2.1 million when the average market price which the Committee got was Kshs30,000.

A linen trolley, *kitu cha kusukuma nguo* from one ward to the laundry for cleaning is being procured for Kshs300,000. It ordinarily costs just about Kshs15, 000 to 20,000.

All these obscenities are eating into the taxpayers' money. They are eating into money from our counties that can hardly make ends meet. People are dying in queues at hospitals because there are no anti-malaria drugs. You saw a woman delivering on the road in Pumwani. People are drinking dirty water and money is being used in such an obscene manner.

This House should stand up and be counted and bring to an end the MES saga. It was a good idea executed horribly; a good idea abandoned along the way because probity and accountability flew through the window.

The contractors who participated in this were contracting with the Government of the Republic of Kenya. Where was due diligence from the Government of the Republic of Kenya? In every contract there is the superior party. The procurer of goods and services has to take into account, Sen. Mutula Kilonzo Jnr., the doctrine of *caveat emptor* which means buyer be aware. You cannot just go and buy a torch at over Kshs1 million and say you have value for money.

That is why we have said this company called PKF that assessed and gave green light to this project and all that participated be held accountable.

Unlike many other inquiries, we have said that agencies of investigations must within the next three months report back to this House what they have done in furtherance of our recommendations so that this House does not, should not, and should never act in vain.

**The Speaker** (Hon. Lusaka): You time is up!

**Sen. Wetangula:** Mr. Speaker, Sir, I beg to second and urge Members to read this Report. In my opinion, it is a wonderful Report. I was part of the maize investigations. I have been part of this, and I am very grateful.

Allow me to thank the members of staff who worked with us. We have some wonderful officers in this Parliament. There is a young officer called Dr. Christine Sagini; she is like an encyclopedia on medical issues. She did a wonderful job.

Any Member with any doubt and would want a clarification on any matter relating to this matter, ask Dr. Christine Sagini.

Thank you, Mr. Speaker, Sir.

*(Question proposed)*

**The Speaker** (Hon. Lusaka): I was ambushed by two amendments which I had not read and so did not approve them using Standing Order 64.

**Sen. (Dr.) Kabaka:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to air my views with regards to this obnoxious, illegal and unreasonable scam contract.

As a commercial practicing lawyer in this country for many years, it is very amazing that a country which has a principal legal advisor to the Government; that is the Attorney General, could let go a contract of this magnitude without proper legal input. He stands guilty and liable. The Attorney General, or whoever it was then, should be behind bars.

Secondly, when I was a Member of a Committee with Sen. Mutula Kilonzo Jnr., Sen. Wetangula, Sen. Nyamunga and others plus Sen. (Eng.) Mahamud as the Chairperson, I remember asking to be given a certified copy of that contract so that I would take the matter to court. Unfortunately, we could not get that document to date. That means that the principal parties to that contract must have had an upper hand even in this Senate. As a Member of that Committee, I wondered why that important legal document could not be availed to me.

It is taught in the law of contract that where a contract is painted with vitiating factors like illegality, influence and so forth, it is a contract which is not enforceable.

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

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

Madam Temporary Speaker, this country has lost over Kshs26 billion through this project. To date, counties continue to pay more money. The only way out is that every contract can be discharged on performance, non-performance, frustration or breach. In this regard, money was illegally paid to these persons and their companies. Therefore, it is high time they refunded all the money plus damages. The equipment should be removed or there be renegotiation of the same so that counties buy it.

These are leased equipment for seven years. This project is a rip off, which is more than Goldenberg, Anglo-leasing and other scandals in this country combined. It is high time those persons faced the music. The directors of these companies which entered into this contract with the Government are known.

There is a doctrine in companies law called the doctrine of lifting of corporate veil. Once corporate veil has been lifted in circumstances of this nature where contracts

of this calibre are illegal, then there is no limit in law to have directors arrested and charged.

Madam Temporary Speaker, it is very sad that in this country, people get free money and taxpayers suffer at a time when we have very professional persons in Government. Instead of protecting the Government, such persons are employed to steal from the members of the public.

As I sit down, it is a big shame for persons in public positions not to protect the interests of *mwananchi*.

**Sen. Kang'ata:** Thank you, Madam Temporary Speaker. I rise to make my comments on this Report. Let me first congratulate the Committee for the good work they did.

*(Loud consultations)*

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, kindly consult in low tones so that we can also listen to the proceedings.

**Sen. Kang'ata:** Madam Temporary Speaker, as I said, I take this opportunity to congratulate the Committee because they came up with a detailed and voluminous Report. It is one of the largest reports that have ever been tabled before this honourable House. To the best of my knowledge, it is a Report of about 400 pages. It means that so many witnesses were heard and a lot of evidence was taken into account. To that extent, let me congratulate the Chairperson and the Vice Chairperson. They are eminent lawyers who are very competent. No wonder they were able to come up with a fairly comprehensive report.

Be it as it may, allow me to oppose this Report and urge my colleagues to reject it for the following reasons.

I have seen some of the firms that have been mentioned in this Report. They did not come and tender evidence to rebut some of the allegations that have been made against them. I understand there is one company that was given opportunity to come and make a presentation but did not. Be it as it may, in my opinion, I think some of those companies ought to have been given a fairer chance to be heard.

I will give one example. Let me give particulars of one entity that has been mentioned adversely in that Report. I strongly think there is no enough evidence to support that conclusion. I will give an example of a law firm called---

**Sen. Omogeni:** On a point of order!

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, there is a way of requesting for a point of order, instead of just putting up your hands and shouting. What is your point of order, Sen. Omogeni?

**Sen. Omogeni:** Madam Temporary Speaker, this House has spent a lot of time and energy to address this issue of MES Project. I have heard my good friend, the Majority Whip, making an allegation that this Report constitutes a lot of companies that have been named adversely yet they were not given an opportunity to be heard.

Would it be in order to make a generalised statement without naming the companies that have been named adversely which were not given an opportunity to appear before the Committee? He should also explain whether there is a reason given in the Report why those companies did not appear.

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, we have said it several times that if any Senator has to rise on a point of order, they must quote the Standing Order. I urge the Senator on the Floor to be specific.

**Sen. Wetangula:** Madam Temporary Speaker, is it in order for the distinguished Senator for Murang'a to make an allegation that companies were mentioned adversely without being given a hearing and further to point out that IKM Advocates were not given a proper hearing?

I am a senior advocate of over 35 years standing. IKM Advocates did not appear before the Committee on their own but were represented by Senior Counsel Paul Kibugi Muite and we heard them for half a day from 9.00 a.m. to 1 o'clock. Has he read the Report?

**The Temporary Speaker** (Sen. Nyamunga): Sen. Kang'ata, just be specific. You may need to go through the Report before you make some statements, so that we do not contradict each other.

**Sen. Kang'ata:** Madam Temporary Speaker, I urge colleagues who have raised the two points of order to give me a few minutes to complete canvassing my case, then they will get the opportunity to see whether I have illustrated or not.

Madam Temporary Speaker, now that I have been invited to give better particulars, allow me to make my case in respect to the law firm called IKM Advocates. The Report seems to suggest that IKM Advocates were responsible for many things which, in my opinion, are beyond the scope of their original letter of instructions.

There are two components to this entire arrangement from a legal point of view. We have what we call the commercial transaction and the financing transaction. The original scope of this arrangement was the commercial element where the law firm was procured to provide legal services.

One issue that was raised in respect to IKM Advocates is that the law firm was procured to offer legal services on this matter. The law firm was procured with the consent of the Office of the Attorney-General. In fact, there is a correspondence in the Report showing that the Attorney-General had given consent for the IKM law firm to come on board.

**Sen. Dullo:** On a point of order!

**The Temporary Speaker** (Sen. Nyamunga): Sen. Dullo, I do not think I am going to give you an opportunity because I have just said it a minute ago. Instead of shouting or carrying up your hand, please just indicate that you need to make an intervention. That is the procedure that we should follow. If you have an intervention, please press the right button.

**Sen. Dullo:** Madam Temporary Speaker, is it in order for Sen. Kang'ata to mislead this House that IKM Advocates were contracted to guide the procurement process? They were unprocedurally procured simply because they were single-sourced and they started working even before they were given authority by the Attorney-General.

Instead of Sen. Kang'ata rubbishing this Report, he should read it properly before defending them.

**The Temporary Speaker** (Sen. Nyamunga): Sen. Kang'ata be advised.

**Sen. Kang'ata:** Madam Temporary Speaker, allow me to reiterate that point. The Deputy Senate Majority Leader has raised two issues. I agree that IKM Advocates were contracted to guide the process from a legal point of view. That one is conceded.

Secondly, concerning whether they were properly given instructions, I hold my view that they were correctly procured to offer legal services on this matter. There is no doubt that IKM law firm appeared in the prequalification list of the Attorney-General as at that time.

We also have a letter from the Officer of the Attorney-General which is part of the annexures contained in this Report, affirming that IKM law firm was properly procured to offer legal services and specific reasons were given.

When you have an emergency, you can procure a supply under direct procurement. The Attorney-General affirmed that it was an emergency. Therefore---

**Sen. (Dr.) Kabaka:** On a point of order!

**The Temporary Speaker** (Sen. Nyamunga): What is your point of order, Sen. (Dr.) Kabaka? Please, quote the Standing Orders because this way, we are not going to make any progress.

**Sen. (Dr.) Kabaka:** Thank you, Madam Temporary Speaker, for giving me this opportunity. I have read the Report. Can the Majority Whip point where he is getting that aspect? It is not enough just to allege and not substantiate.

**Sen. Olekina:** Madam Temporary Speaker, I rise on a point of order requiring substantiation of statements of fact. Sen. Kang'ata has repeatedly indicated that the law firm---

Earlier on when the Speaker was in that Chair, I rose to inquire whether IKM law firm was procured legally by the Ministry of Health through the advice of the Attorney-General. This is because the information that was given by both the Mover and Seconder of the Motion contradicted each other. I think it will be best for us to move forward

Secondly, I have heard Sen. Kang'ata repeatedly say that procurement laws allow you to use direct procurement when it is an emergency.

Madam Temporary Speaker, I want to find out whether, factually, this issue of Medical Equipment Leasing Scheme was an emergency. So that we can be able to prosecute these matters with facts, he should clarify whether it was an emergency. It is proper.

Madam Temporary Speaker, this is why earlier on, I was actually of the view that because we have engaged in the revenue formula for quite some time--- I must have read it, but most of us have not read this Report. That is why I was even inclined to request that this matter be adjourned until next week, so that over the weekend, we get to read, understand this issue so that when we are hearing, we do not start doubting. We are talking about public funds here. These are billions of shillings and there are issues, which are being raised.

When I was listening to the Seconder of the Motion, there are issues, which were being raised and when I asked myself to define leasing versus buying, I found out that they were contradictory.

Therefore, can he---

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senator, are you debating or are you on a point of order?

**Sen. Olekina:** Madam Temporary Speaker, I am on a point of order on Statements of facts. Can Sen. Kang'ata substantiate that this Medical Equipment Service Leasing Scheme was an emergency, so that when it is on HANSARD, it can remain factual?

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, I do not know how you want us to move forward because there are so many interventions. Sen. (Dr.) Ochillo-Ayacko, please be brief and to the point because we need to make progress.

**Sen. (Dr.) Ochillo-Ayacko:** Thank you, Madam Temporary Speaker, would I be in order to request you to protect every person. I have heard the Mover and the Seconder and I am digesting the points.

Sen. Kang'ata is opposing, and he has hardly even spoken. A person like me, who would like to hear both sides, I have been unable to hear him because every so often, there is a point of order. I do not know what he is saying and why he is opposing. Can you protect both sides, so that we hear them and participate in an informed way?

I thank you.

**The Temporary Speaker** (Sen. Nyamunga): Sen. Kang'ata, kindly, continue. I am not going to accept any interventions until he is through because we need to move forward.

**Sen. Kang'ata:** Madam Temporary Speaker, allow me to finish.

*(Loud consultations)*

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, we need to give the Senator an opportunity to be heard. He cannot even make one statement.

**Sen. Kang'ata:** Madam Temporary Speaker, thank you for protecting me.

Section 74 of the Public Procurement and Asset Deposal Act does allow circumstances under which a procuring entity can do direct procurement.

With all due respect, I agree that direct procurement has its own problems and it should not be encouraged. There are instances in this country where direct procurement has led to corruption, but in this instance, if there was an issue, the person who should have been culpable, in my view, is the Attorney-General because he gave the concurrence. If there was a problem with direct procurement of that law firm, the State Law Office should have said, no, this is illegal and it should have refused that situation.

Madam Temporary Speaker, another reason why we have an adverse finding against that law firm is because there is an allegation that there were some funds, which were paid to that law firm by the suppliers. When you look at the original contract, it did not anticipate something called self-financing.

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

**The Temporary Speaker** (Sen. Nyamunga): Sen. Olekina, what is your point of order?

**Sen. Madzayo:** Hoja ya nidhamu, Bi. Spika wa Muda.

**The Temporary Speaker** (Sen. Nyamunga): Sen. Olekina is on a point of order. Just give him a minute.

**Sen. Olekina:** On a point of order, Madam Temporary Speaker. This is a House of procedures. I rose on a point of order and I requested the distinguished Senator for Murang'a County to substantiate the allegations he made, that the Medical Equipment Leasing Scheme was an emergency.

For us to be seen to be following procedures in this House, can you please give a ruling on that? Can he substantiate that issue, so that we move on?

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, I had already given that direction that, the Senator who is contributing should follow the procedure, and if any Senator has an issue, you have to substantiate. I said it and I do not know how many times I am expected to repeat the same thing. The Senator on the Floor knows that.

Sen. Mutula Kilonzo Jnr., kindly, proceed.

**Sen. Mutula Kilonzo Jnr.:** Madam Temporary Speaker, Sen. Kang'ata is not just the Senate Majority Whip, but also a distinguished lawyer.

Madam Temporary Speaker, the question of procurement is a question of facts. Under the procurement law, where in a position that you can procure directly, or you procure because it is an emergency, it should be supported by minutes. That is the substantiation that Sen. Kang'ata ought to table.

Otherwise, he is just making a statement of fact, which is not supported. That is the sort of direction you had to give him. He might be aware of information we do not know. From the fact that he operates in places we do not operate, he sits with people we do not sit with in places where we do not go, it is possible that Sen. Kang'ata has more information than we have?

Maybe, it is also possible that the information he has was not disclosed to the Committee because possibly, he spends time with the Attorney-General and other powers that be, therefore, he might know something that we do not know.

Could you direct the Senator for Murang'a County to table the minutes showing that procurement of Medical Equipment Leasing Scheme was an emergency?

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, I said that before.

Sen. Kang'ata, kindly, please follow the rules and the procedures of the House.

Sen. Dullo, kindly, proceed.

**Sen. Dullo:** On a point of information, Madam Temporary Speaker. I said here earlier that Sen. Kang'ata should read the Report. This is because in our Report, it is very clear that the Auditor-General raised a concern that IKM and PKF were single sourced.

Secondly, IKM were appointed much later after they had engaged the Ministry of Health. Sen. Kang'ata did not sit in this Committee. He should not contradict us. That is why I am saying that he needs to read the Report and contribute, based on the facts and from an informed position.

I thank you.

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

## POINT OF ORDER

### ADMISSIBILITY OF AMENDMENTS TO THE MES REPORT

**Sen. Cherargei:** Madam Temporary Speaker, I do not know whether you will allow me to raise my point at this stage. This is because you made a ruling earlier on, on the amendments in line with Standing Order No. 64.

I read an amendment that you disapproved earlier on, or you had not approved at that point in time. I was seeking a substantive ruling as per Standing Order No. 64, on the fate of my amendment that I had raised earlier against this Report.

I thank you.

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



**Sen. Cheruiyot:** Madam Temporary Speaker, I beg to be allowed to speak at this point because I also had an amendment. The Speaker, before the commencement of debate on this Motion, ruled that under Standing Order No. 64, he had decided not to approve.

This Standing Order has been in operation in this House for a while, though in the two terms that I have been here, I have not seen a Speaker exercise his authority. It is one that he sparingly uses, whereas, opinion can be both ways.

The nexus of this Standing Order is that you can drop an amendment if in the opinion of the Speaker, whatever you want to amend has already been covered in the Report. I strongly feel we need a detailed ruling from the Office of the Speaker as to why my amendment was dropped because it will determine my decision on this Motion. I agree with the entirety of the Report, but I am bothered by some recommendations. The recommendations are not commensurate to the crime committed by various public officers and the companies. I want to understand the basis upon which the Speaker made that ruling.

Madam Temporary Speaker, before that is determined, I plead with you not to put this matter to vote until we are satisfied and given a response from your office.

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, we cannot move backwards because the Speaker is already seized of that matter.

**Sen. Sakaja:** Madam Temporary Speaker, allow me to respond to the questions raised.

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

**Sen. Sakaja:** Madam Temporary Speaker, it will be good to advise Sen. Cherargei where he is because he is not in Nandi. Earlier I had asked Members be furnished with copies of this Report. I am glad I have a copy. I know that many other Members do not have a copy of this Report. Based on the nature of the discussion, we have a Committee that has sat for eight months. They used resources of this Parliament and have gone round the country. Last time, they were in Isiolo. You have called people from outside the country.

Madam Temporary Speaker, there have been requests to amend the Report by two or three Senators, but they have been denied a chance to do so. It is now the property of the House. Therefore, the decision to amend it lies on Members and they can choose to amend it or not. As the Senator for Nairobi City County, I feel that my right to make a decision on whether to accept the amendment or refuse it, is being denied. This debate might conclude, but it cannot go on until a full clear ruling on that issue is brought to the fore. The debate and the right of any Member to look at this Report and amend it, is being stifled. What is happening to Parliament?

I am not saying that I agree with the amendment, because I have not seen it. However, I have a right as any Member to raise an issue or bring an amendment. This debate cannot go on until we have concluded the issue on amendments and we have been able to read it. Until now, this Report is not on our iPads; Members are not seeing it. We are discussing something that we have not seen. Please, give us a substantive ruling or defer it until we have a ruling on that.

If we conclude this debate - I am glad you are listening – and it was found that, that ruling was faulty, then the decision made in this House will be unconstitutional. This

is because you have denied an elected or a nominated Member a chance to bring an amendment, which will be voted in either way. Please, consider that seriously.

*(Loud consultations)*

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, let us have some order. We are going to follow procedure. Let me give my take on the issue that has been raised on the postponement of the debate.

Standing Order 63 (1) says-

“The proposer of an amendment to a Motion shall, before moving it, hand the proposed amendment in writing, signed by the proposer, to the Clerk at least two hours before the Order is read.”

I do not know if such a request was forwarded to the Clerk because it has not reached me. Secondly, I do not know or understand why the Speaker did not agree with the amendment.

Sen. Cherargei, we are still on points of order. Please, be brief and to the point.

**Sen. Cherargei:** Sen. Olekina can go first.

**The Temporary Speaker** (Sen. Nyamunga): I have already given you an opportunity. Do not direct Sen. Olekina to go ahead of you. I have given you the opportunity. Go ahead.

**Sen. Cherargei:** Madam Temporary Speaker, I have read Standing Order 63. The matter was brought to the attention of the Speaker yesterday evening. I notified him. In line with Standing Order 64, I agree with what Sen. Sakaja has said that we need a substantive ruling on this. If we disallow these amendments, it means that we are stifling the Members in debating this issue. This is why we are requesting a substantive ruling as per Standing Order 64.

**The Temporary Speaker** (Sen. Nyamunga): Sen. Olekina, what is your point of order?

**Sen. Olekina:** Madam Temporary Speaker, I am glad that, in your own wisdom, you referred us to Standing Order 63. Standing Order 63 (2) says-

“Despite paragraph (1), the Speaker may, in exceptional circumstances, allow a Senator to move an amendment to a Motion before the Senate at any time during consideration of that Motion.”

Madam Temporary Speaker, Standing Order 64 (1) says-

“Every amendment shall be relevant to the Motion that it seeks to amend and shall not raise any question that, in the opinion of the Speaker, should be raised by a substantive Motion after notice given.”

What Sen. Sakaja has said, which I agree with, is that we do not know what these amendments are all about. These are exceptional circumstances. I beseech you to give these distinguished Senators an opportunity to submit their amendments, and we look at them.

This House has risen to a senior position in this country. We spent a lot of time dealing with the issue of revenue. Last year, I sat in the Mediation Committee with Sen. Sakaja and Sen. Mutula Kilonzo Jnr. We proposed to remove the Kshs6 billion that was allocated to MES.

We are now dealing with a lot of money. I do not know why we should be in a rush to conclude this debate, if we have Members who feel we should listen to them. We do not know what the amendments are. For the interest of the nation and the distinguished Members who were elected by their constituents to represent them here, to feel like they are not being given an opportunity for them to exercise what they came here for, it is unfortunate. We should postpone debate until a further date. Let us accommodate their amendments, then we know which direction this is going to take us.

The moment we vote, we want to know exactly what we will be voting for. Most of us have not read this Report, and it was evident from the submission of Sen. Kang'ata. Please, look at those two Standing Orders. These are exceptional circumstances and we must support each one of us.

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, I do not understand what we are doing. First of all, we are still debating. However, looking at the numbers, we may not conclude debate today. I do not know what the big problem is. The Speaker is coming back, and maybe, he will make another decision on it. Can we be patient and give ourselves time? This is because Members who want to speak are many. Let us debate and hear your views.

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

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

**The Speaker** (Hon. Lusaka): Sen. Kang'ata, continue.

**Sen. Kang'ata:** Mr. Speaker, Sir, allow me to read one of the findings in that Report in response to an issue that has been raised. It provides that the direct procurement of the law firm contravened Section 73(3) of the Public Procurement and Disposal (PPDA) Act (2005). As the procurement of the MES equipment was not so urgent as to render competitive procurement measures for legal advisory services impractical.

That is a finding in the report. My rebuttal is this. I bring to the attention of this House to a letter to the Attorney General---

*(Sen. Cherargei stood up in his place)*

**The Speaker** (Hon. Lusaka): Take your seat, Sen. Cherargei. When you have a point of order, there is a way you do it, please.

**Sen. Kang'ata:** Mr. Speaker, Sir, there is a letter from the Ministry of Health dated 2<sup>nd</sup> July 2014, and another one dated 31<sup>st</sup> July 2014. They cited the following grounds---

**The Speaker** (Hon. Lusaka): Order, Sen. Kang'ata! You were just concluding.

**Sen. Kang'ata:** They cited the following grounds warranting urgent procurement--  
a.) There was an urgent need to improve the access to quality healthcare, and particularly---

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

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

**Sen. Kang'ata:** (b) The budgetary position---

**The Speaker** (Hon. Lusaka): Order, Sen. Kang'ata!

**Sen. Cherargei:** Mr. Speaker, Sir, this House is a House of rules and procedures. Sen. Mutula Kilonzo Jnr. and Sen. Olekina raised an issue that Sen. Kang'ata must substantiate why he is saying the leasing of medical equipment was an emergency issue. That matter has not been disposed of until Sen. Kang'ata proves that it was an emergency. That is where we should start from.

**The Speaker** (Hon. Lusaka): Order, Sen. Cherargei! That is a point of debate.

Sen. Kang'ata, conclude.

**Sen. Kang'ata:** Mr. Speaker, Sir, I conclude by citing two letters from the Ministry of Health, one dated 2<sup>nd</sup> July 2014 addressed to the Attorney-General. The second one is dated 31<sup>st</sup> July 2014, addressed to the Attorney-General. Those two letters indicate grounds for the urgency. That is in response to those who are questioning my conclusion that this issue was urgent. It is not me speaking, but the Ministry speaking, directly addressing that issue to the Attorney-General.

Mr. Speaker, Sir, I also want to bring to the attention of the House the Attorney-General's opinion dated 18<sup>th</sup> August 2014. That opinion is very clear.

Look at that letter dated 6<sup>th</sup> May 2014, which was written by the law firm to the Ministry of Health. All those letters have been annexed to this report. They show the rationale of why this procurement was urgent.

We may disagree with those findings, but we have documentary evidence which seems to disclose grounds for the urgency of this procurement. Therefore, I hold the view that I make reliance on this---

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

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

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

**Sen. Cheruiyot:** Mr. Speaker, Sir, before you resumed, Sen. Cherargei rose on a point of order and I followed through and was supported by a few of our colleagues, that we need a substantive ruling on the application of Standing Order 64, which denied two of us the right to amend this Motion.

I made the request because my amendment will determine how I vote on this Report. While I agree with the findings of the Committee, I am disappointed by the recommendations. I want them to give more stringent recommendations on each of the public officers and the entities that were involved in this exercise.

Mr. Speaker, Sir, since you are now on the seat, can we get your assurance that before this matter is put to the vote, you will give us your reasoned ruling as to why you denied us the opportunity to amend the Report.

**The Speaker** (Hon. Lusaka): Order, Senators! First of all, the amendments were brought when I was sitting here. That was the first time I saw them. Standing Order 64 (2) says:

“No amendment shall be permitted if in the opinion of the Speaker, it presents a direct negative on the question proposed.”

I have already made a ruling on that. If you want a reasoned ruling, I will give it in future. I have made a ruling.

Sen. Were, proceed.

**Sen. Were:** Thank you, Mr. Speaker, Sir. I rise to contribute to this Report by the *ad hoc* Committee appointed to investigate the MES. MES was started with a very noble objective. The objective was for us to be able to procure medical equipment in a central

place, so that we get a better prices or what we call economies of scale and that the quality of this equipment is standardized.

I was previously in the Committee on Health. We went around hospitals inspecting the equipment procured through this scheme. I want to confirm that much of the equipment that was in these hospitals was working. I want to specify on the dialysis machines. In almost all these hospitals, dialysis machines were working properly and were well maintained. Reagents came when they were required. In fact, if there was any breakdown of any machine, it was sorted out within 24 hours by the people who supplied these machines.

Mr. Speaker, Sir, these machines have also generated income for counties. Therefore, most counties have been able to increase their own source revenue and reduce their over reliance on the national sharable revenue that disturbed us in this House for over three months.

Mr. Speaker, Sir, however, there are gaps that I have noticed in this scheme that we need to look at as a Senate. One of them is an inadequacy of an existing law that can work as a framework for procurement of capital intensive medical equipment. The laws that we have now are not adequate to take care of equipment that is capital intensive.

The second gap was the role of counties. Counties were not involved in this process, yet money is deducted at source and it is also increased habitually. Those are the two gaps in the law to guide capital intensive medical equipment procurement and the role of counties. This process was too centralized, yet the implementation was at the county level.

With that, I commend the Committee for the work that they did. I agree with their findings, especially on the machines that are working in the counties. It is now up to counties to make sure that these machines in their counties are fully utilized.

**The Speaker** (Hon. Lusaka): Sen. (Eng.) Mahamud.

**Sen. (Eng.) Mahamud:** Thank you, Mr. Speaker Sir. Let me also add my voice to this Report of the *ad hoc* Committee on the MES. This has been a very interesting project. In fact, for the last three years, during the budgeting process both at Budget Policy Statement (BPS) and the Division of Revenue Act (DORA), the Committee of Finance, of which I was a Member then, were really concerned with this project.

The Committee has highlighted a lot of issues. This project was initially conceived as a Public Private Partnership (PPP) and later on converted by the Government to a--

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

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

**Sen. (Eng.) Mahamud:** The idea of a project would have been---

**The Speaker** (Hon. Lusaka): Sen. (Eng.) Mahamud, there is a point of intervention.

**Sen. Cherargei:** Mr. Speaker, Sir, with all due respect, I am still not satisfied.

**The Speaker** (Hon. Lusaka): Order, Sen. Cherargei!

**Sen. Cherargei:** Mr. Speaker, Sir, I have not said what I am dissatisfied with. With all due respect, can you please allow me?

I am still not satisfied with your direction on Standing Order No.64 because this is a House of records and procedures. This matter is so critical to the issues of counties.

We are investigating billions of shillings that was used across 47 counties and Kenyans did not get value for money.

With all due respect, I would request that since this matter will come up for voting and I had an amendment, it will influence the way I will vote. Is it too hard and overwhelming to give us a ruling which is substantive, so that when we eventually vote, I can make a decision based on the ruling under Standing Order No.64. That is just basically because I have heard you have ruled on the matter of Sen. Cheruiyot, but you have not ruled on my amendment.

For your information, I brought this matter before your office yesterday. If it has not come to your attention by now, I do not know because your officers are the ones that have been approving from the inception stages up to the time it came to your attention. I agree with the findings of this Committee, but I do not agree with the recommendations. If you tell us take it to EACC or DCI, you are giving them an open cheque to harass ordinary Kenyans by telling them to write statements.

I wish you would give us a substantive ruling so that it guides us in future when we want to amend a Motion.

This is not the first time we are amending a Motion. We amended the one on Revenue Formula and you allowed it. With all due respect, kindly give us the proper direction on this matter to allow us to be able to rely on these issues in future.

I thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): I have given a ruling on that matter and I have told you that I will give a substantive ruling in future; “future” can even be immediately I finish talking.

*(Laughter)*

Who was on the Floor?

**The Senate Minority Leader** (Sen. Orengo): On a point of order, Mr. Speaker, Sir. I know you have made a ruling on this matter and I accept the invitation to a ruling coming at some time in the future. You are being asked to review your ruling, which you had already made, but you are generous enough to say you are going to give a substantive ruling.

I want one matter to be clear when you give that ruling. If you read Standing Order No.63, the proposer of an amendment to a Motion shall before moving it, hand the proposed amendment in writing signed by the proposer to the Clerk. The significant two words are to “the Clerk” so that for purposes of the future, as opposed to when the Speaker gets notice, one may have to determine when the Clerk got the---

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

**The Speaker** (Hon. Lusaka): Sen. Orengo, do you want to be informed?

**The Senate Minority Leader** (Sen. Orengo): Yes, Mr. Speaker, Sir.

**Sen. Cheruiyot**: You can be informed at any time of the debate. I would like to inform the Senate Minority Leader that I like the question he has raised because it is extremely important. I want to further inform him that actually with regard to my amendment, I handed it to the office of the Clerk at 10.00 a.m. this morning. It is the first business that I did when I came to Parliament.

**Sen. Kang’ata**: On a point of information, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Sen. Orengo was on a point of order. What do you want to raise?

**Sen. Kang'ata:** Mr. Speaker, Sir, I agree with my colleague from Kericho. I also want to bring to your attention as you make your ruling to the fact that the notice from the Senator of Nandi was not addressed to the Clerk. It was addressed to the Speaker, meaning, most likely it was offending the Standing Order.

**The Senate Minority Leader** (Sen. Orengo): Mr. Speaker, Sir, actually you are being asked for a review---

*(Sen. Kang'ata laughed loudly)*

**The Speaker** (Hon. Lusaka): Order, Sen. Kang'ata!

**The Senate Minority Leader** (Sen. Orengo): Mr. Speaker, Sir, you know such behaviour, especially from a Whip--- He should be thrown out. The point I am making is very important. Unfortunately, Sen. Kang'ata does not understand the point because a Motion, whether it is addressed to the Clerk or the Speaker, is still a Motion. The fact of the matter is that it is a Motion so recognized. The administrative process is also clear, if it is received by the Clerk, then it is sent to the Speaker. If the Clerk sits on it, then it will be dereliction of duty.

What I am simply asking is that, that understanding is required, particularly in circumstances where sometimes in the day you may get a revised Order Paper or a Supplementary Order Paper and, probably, that Motion was not in the initial Order Paper. In those circumstances, what does one do? It is a very complicated question. It is not as simple as it looks, hon. Kang'ata. It is a very complicated process.

Mr. Speaker, Sir, you need not give that ruling now because I think it is an important point, but I hope that it will be covered in the ruling.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, I want to bring to your attention and I want Sen. Orengo to hear this, during the Goldenberg saga Mr. Kamlesh Pattni became very clever through his lawyers and used to go to court to obtain injunctions. What used to happen after those injunctions were issued, was that the court files used to disappear. Injunctions were obtained in perpetuity. It led to amendments to the civil procedure where you could only obtain an injunction for a limited period of time.

In relation to your ruling, your ruling might be issued after this Motion has passed. I am encouraging you and I am doing this with tremendous respect, that your future date be a date before we conclude this Motion.

Thank you, Mr. Speaker, Sir.

**Sen. (Eng.) Maina:** Mr. Speaker, Sir, mine is very brief. As you consider the decision you said you will give in the future, there is a worrying thing that is already happening now.

The order in House is by your decisions. No matter how one feels about those decisions, we are bound by them. You have exercised your generosity and your fatherly regard to everybody and listened to everybody. You had even promised sometime in the future, maybe when this House is not in session that you will give your ruling.

*(Laughter)*

No, hear me, my dear countrymen!

Mr. Speaker, Sir, mine is just to appeal to you, do not be swayed into vacating what your decision was. You are like a Judge, once you make your decision, the man goes to the guillotine.

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

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

**Sen. Murkomen:** Mr. Speaker, Sir, I am totally surprised by my colleague, Sen. Mutula Kilonzo Jnr. insisting that a ruling should be given on this matter. This is because on a similar situation a few months ago, him, Sen. Orengo and others shouted me down.

*(An hon. Senator spoke off record)*

You do not even know the situation I am raising.

When I attempted to request your ruling which you promised me on 12<sup>th</sup> May, 2020, that you were going to give substantive ruling, which is five months down the line. You said you will rule in future and I am patiently waiting. What is good for the goose is good for the gander or for the duck as some Member of Parliament (MP) said.

Mr. Speaker, Sir, what we want to do is, respectfully, being a leader in this House, once the Speaker says he will give a substantive ruling, we wait for him to make it patiently.

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Order, Senators! Let us make progress. All points of order are important.

Let me tell you that I am your Speaker. Even as I will give that opinion, it says, “in the opinion of the Speaker”. I have an opinion, hon. Senators.

*(Applause)*

Do not assume that as a Speaker, I will just rubberstamp things that come to my table. I have an opinion and that is why the Standing Orders say “in the opinion of the Speaker.” Unless you are saying I have no opinion, which is not right.

Sen. (Eng.) Mahamud, continue.

**Sen. (Eng.) Mahamud:** Mr. Speaker, Sir, thank you very much. I will be quick. This project could have been a very important project for this country, but the way it was conceived and implemented leaves a lot to be desired.

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Order, Senators! Let us listen to Sen. (Eng.) Mahamud. Most of you are talking. I will give you an opportunity, please be patient.

**Sen. (Eng.) Mahamud:** Mr. Speaker, Sir, this project was ideally supposed to be funded so that it could help the counties overcome their health challenges.

*(Loud consultations)*



**The Speaker** (Hon. Lusaka): Sen. Olekina, why do you not give our colleague an opportunity to finish. He has not even contributed.

Continue, Sen. (Eng.) Mahamud.

**Sen. (Eng.) Mahamud:** Mr. Speaker, Sir, whereas the funding of this project is budgeted for and funds disbursed through the national Government, there is nothing which the counties do apart from being shown as the receivers in both the Division of Revenue Act (DORA) and the County Allocation of Revenue Act (CARA) every year.

The project funding has also been fluctuating the way the Committee Report has said. This project is very controversial. Over the years, the Committee on Finance and Budget when I was the Chairperson and Member there, during budget and also during the mediation last time, we recommended that the project be deleted from the budget process unless we get---

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

**Sen. Sakaja:** Thank you, Mr. Speaker, Sir. We respect your opinion and that you have an opinion. The reason I am asking is for you to come before. This debate will continue. We would like to know---

*(Applause)*

I have not even made a point and you are applauding.

*(Laughter)*

Let me make the point. The reason why we need the ruling of what guided you is because according to the Standing Orders, we still have opportunity to bring amendments. We would like to know maybe our amendments might also get the same fate.

**The Speaker** (Hon. Lusaka): No, why are you anticipating?

**Sen. Sakaja:** Mr. Speaker, Sir, it is to guide because we also have amendments. We want to understand. It takes time to put it together. That is why we just want the ruling so that we do not make the same mistakes that Sen. Cheruiyot and Sen. Cherargei could have made.

**The Speaker** (Hon. Lusaka): Order, Senators! I thought I am very audible. I have a voice that is very audible and with the aid of a microphone, everybody gets what I am saying. I have said I will give a ruling then you start asking the same thing.

Sen. (Eng.) Mahamud, proceed.

**Sen. (Eng.) Mahamud:** Mr. Speaker, Sir, I understand the sentiments of my colleagues because this is a very important project to the country. That is why my colleagues are asking for the clarification. I personally think that---

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

**Sen. Olekina:** Mr. Speaker, Sir, I sincerely appreciate you allowing me to raise this point of order. I do not wish to question you or vary your ruling. The Standing Order you quoted says the amendment should be relevant to the Motion. With all due respect, that will be in anticipatory that the amendments which will be brought will not be relevant to the Motion.

This is why I had raised an issue under Standing Order No.63, which the distinguished Senator and the Minority Leader raised. I was hoping that he can go to Standing Order No.63(2) which I had raised earlier on. It says “despite paragraph (1)” and the amendments to be in writing. It is despite Paragraph (1).

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

**Sen. Olekina:** Mr. Speaker, Sir, the point of order is this. I just want to be sure that the ruling that you are going to give is not in anticipatory of what the amendments will be. When I read this, it says “amendment to be relevant to the Motion.”

My interpretation, with all due respect, is that you have already seen the amendments that have been brought and because you said you would give a ruling in future, you have already decided that they are not relevant.

I was seeking your indulgence in looking at Standing Order No.63 (2) which says-  
“Despite paragraph (1), the Speaker may, in exceptional circumstances, allow a Senator to move an amendment to a Motion before the Senate at any time during consideration of that Motion.”

Mr. Speaker, Sir, I am getting confused because we are talking about a ruling being given in future. Is this ruling going to be in anticipatory of an amendment which we do not know? With all respect, just allow us to know what the ruling is going to be.

*(Applause)*

**The Speaker** (Hon. Lusaka): Order Senators! Let me repeat for the last time. The wrong assumptions you are making is that I do not read these things. I read and understand them. I have given an undertaking to give a ruling. The future can even be immediately I finish talking. Why do you not be patient? Why are you trying to put pressure on me to make a ruling on something I have already given a direction?

Sen. (Eng.) Mahamud, continue. I am not entertaining debate on that again.

**Sen. (Eng.) Mahamud:** Mr. Speaker, Sir, my time has been messed up by colleagues.

**The Speaker** (Hon. Lusaka): The Senate Minority Leader wants to say something.

**The Senate Minority Leader** (Sen. Orengo): Mr. Speaker, Sir, I am so sorry. However, I think we are also getting into the habit of badgering the Speaker. I am rising under Standing Order No.93 (4) which reads as follows-

*(Loud consultations)*

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

**The Senate Minority Leader** (Sen. Orengo): Mr. Speaker, Sir, Standing Order No.93 deals with points of orders and how they are to be handled. Standing Order No. 93 (3) says:

“The Speaker shall either give a decision on---

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Order, Senators! Let us consult in low tones. The Senator for Trans Nzoia County, take your seat. It is a very important point of order that is being read.

**The Senate Minority Leader** (Sen. Orenge): Mr. Speaker, Sir, I think badgering the Speaker is also wrong. Once a Speaker has made a decision, when you keep on badgering him, I am beginning to feel a little bit uncomfortable. Once he makes a decision; it is a decision. I may like it or not. It is very clear in Standing Order No. 93(3). It says-

“The Speaker shall either give a decision on the point of order forthwith or announce that the decision is deferred for consideration after which the Senator who was speaking at the time the point of order was raised may continue to speak.”

Mr. Speaker, Sir, under this Standing Order and I am being reminded by the distinguished Senator of Bungoma County on Standing Order No.93 (4). It says-

“The Speaker or the Chairperson shall order any Senator who unnecessarily and persistently interrupts proceedings or consults loudly and disruptively to withdraw from the Chamber and Standing Order 116 (*Disorderly conduct*) shall apply to any such Senator.”

Mr. Speaker, Sir, the point I want to make is that, once you make a decision, it is a decision. If I walk into a court of law and it makes a ruling, I may like it or not, but it is a ruling. If I want to review it, there is the procedure. However, we are not going to have a Chamber.

We can have a system like in South Africa, which is Parliamentary. We used to have it here, where you can speak any time and make any noise. The other party comes in red uniforms and helmets. There are parliaments where you can do so, but unfortunately, in our system, when the Speaker makes a decision, then it is final.

**The Speaker** (Hon. Lusaka): Sen. (Eng.) Mahamud, proceed.

**Sen. (Eng.) Mahamud:** Mr. Speaker, Sir, I was saying this is, maybe, a very noble idea, but something went wrong. This project has been controversial in our budget system. At one stage, we said that it should be suspended until we are through with these investigations.

The Committee has done some substantial work for the last eight months. It will be very fair to this Senate if this Report pinpoints culpability to various institutions. That is, the contractors themselves and Government officials that took part in this whole process.

The recommendation from the Committee is for further investigations. As we investigate, we must be able to say that this project has drained the public finances and wasted resources. It is totally inequitable in the sense that equipment was delivered and not even utilized for all those years. Someone somewhere must be held responsible and accountable. The investigations being asked for are very light that we should audit further.

*(Loud consultations)*

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

**Sen. (Eng.) Mahamud:** Mr. Speaker, Sir, we should further audit the very institutions that were responsible for this mess. Whereas, this would have been a good idea---

**The Speaker** (Hon. Lusaka): What is your Point of Order, Sen. (Dr.) Mbito?

**Sen. (Dr.) Mbito:** On a point of order, Mr. Speaker, Sir. Will I be in order to ask the Mover be now called to reply?

**Hon. Senators:** No, no!

**The Speaker** (Hon. Lusaka): Order, Senators! Sen. Cherargei, please, learn to sit in one place.

*(Laughter)*

Continue, Sen. (Eng.) Mahamud.

**Sen. (Eng.) Mahamud:** Mr. Speaker, Sir, this is not a small matter. It is a very important issue for this country. We do not need to be rushed because every Member here must contribute and the country must hear that we are doing something.

From the inception of this project to the lack of need assessment by the Government up to what we are doing and even when we had some invalid memorandum between counties and national Government, everything is wrong in this project. We must understand the Report thoroughly so that the recommendations given by the Committee must be actionable and culpability be apportioned to various organizations in this country.

*(Applause)*

Mr. Speaker, Sir, maybe in the Report, we are told some companies refused to appear. There were some companies which were protected. One of them is called General Electric, which has 52 per cent of the contracts according to what Sen. Wetangula said. We must shame those people who made this terrible mistake.

There is no way you can buy a torch for a Kshs1 million. There is no way you can buy a telescope for Kshs1 million. This is robbery. The recommendations from the Committee are very mild because they are talking about audit.

We want to candidly say, 'investigate this particular Principal Secretary (PS) or Cabinet Secretary (CS). We should not lie. If there is need for amendments from Members so that we can enrich this Report, let it be so. Let us enrich this Report from our Committee. The Committee has sat for eight good months and come up with this Report. It is not fair that in two hours of a sitting, we say, 'put the vote'. That is wrong. We are not rushing anywhere.

Mr. Speaker, Sir, the Committee has done a good Report. However, Members have the right according to the Standing Orders to bring amendments, so that we can enrich it. Let us enrich this Report so that when we finalize it as the Senate, it is something we can own. MES is a disaster in this country.

It was described by the Committee as a criminal enterprise. A criminal enterprise is a strong word. If it is a criminal enterprise, let us make strong recommendations for investigations by the EACC and the DCI, so that the work we have recommended can be actionable.

Mr. Speaker, Sir, with those many remarks, I wish to support the Report of the Committee, but with further amendments so that we can enrich it.

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

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Speaker, Sir. Allow me to begin from where Sen. (Eng.) Mahamud left and state as follows: We have been here long enough and no Committee has made a finding that a project or any activity is a criminal enterprise. A criminal enterprise is perpetuated by criminals.

Allow me to say that while I applaud this Committee, there are certain fundamental questions which they should have answered. These questions are as follows and I would like them to take notes: Who signed the contracts? Who negotiated the contracts? It is a person. Who was the CS at the time the contract was negotiated? Who was the CS at the time it was varied? Who was the lawyer at the time this was negotiated? Who is the person in the Ministry of Health who negotiated with these lawyers? Who is the person who procured PKF Kenya? Who is the person who approved the payment of PKF Kenya after three days?

Mr. Speaker, Sir, these questions cannot be answered in the manner the Committee has answered them. This is what I call powdering the nose of criminals. They say that “the Committee observes”. It is like writing a love letter and then perfuming it, like we used to do in high school. It says:

“The Committee observes that whereas the implementation of MES Project may have been well intended, it also provided opportunities”.

Mr. Speaker, Sir, listen to this. This is what is called a love letter. I am surprised they did not put a love note. That it also provided opportunities for some officers to defraud the public. Who are you fooling? There are no ‘some officers’. Those officers are known. The Committee’s view, therefore, is that some of the issues raised as established in the inquiry process, merit further investigations.

The recommendation is as follows:

“The Committee recommends that EACC investigates these matters”.

You know there are words referred to as ambiguity and circumlocution. “These matters” is an ambiguous statement for a very clear statement. This criminal enterprise - I said this in Kitui County. I told these Committee Members that if they are not prepared to meet face to face with the mafia, scandal and criminals, they should step down from this Committee. How is it that somebody who is a director of a company refused to attend a Committee that has Sen. Dullo, a lawyer; Sen. Wetangula, a lawyer; Sen. (Dr.) Mbiti, the Chairperson of the Committee on Health; and, Sen. Madzayo? What are you saying?

Let me tell you what is worse. Ladies and gentlemen, these criminals are omnipresent, ubiquitous and operating even in our corridors out there. These criminals are everywhere. Let me tell you how a criminal enterprise operates. Like mafia, it has a judge, lawyer, parliamentarian, doctor and a priest to pray for them. It also has a don.

*(Laughter)*

Mr. Speaker, Sir, either this Senate agrees to face these people head on or we abandon, coil our tails, bow down to the Speaker and take off. Imagine the former Attorney General, Prof. Githu Muigai, comes and says: “I disagreed with the procurement of these contracts, I do not know who signed. The former Solicitor General, Mr. Ken Ogeto, who was also my teacher, comes and says: “I never authorized this.” What does that tell you?

It is either this Committee agrees that we go off-camera and they tell us that they were intimidated, they fear whoever they found or these people have told them: "Just go and do a general report. The EACC will take care of the business." This is because it is unusual.

Mr. Speaker, Sir, in the case of Ruaraka, and Sen. Murkomen - now I can have his attention - knows what happens when it came to the voting. We named and cited those people. There is a reason that we have a protection of Parliament. When we write reports, there is no action on us for defamation. We cannot be cited for defaming any person by citing their name in reports. We are privileged. We cannot obfuscate things and keep them nice like love letters. We cannot pamper them, powder their noses, massage them with oil, and say 'further investigations.'

These public officials are known. Those companies have directors who are known. If you wanted CR12s, they would be here. These people would be named. I say so because I moved an amendment to the Public Procurement and Asset Disposal Bill when it came here in 2015. The then Senate Majority Leader, Sen. (Prof.) Kindiki, made sure that half of the amendments were rejected, but only one went through.

That amendment is that if you find a person who has procured for public purposes making the sort of mess that is here, you blacklist them. You can only blacklist these characters by naming the directors, so that they never receive work in Kenya.

Mr. Speaker, Sir, these people have committed more offences under the Public Finance Management (PFM) Act and other laws than any person could procure. It is only the mafia that can make a contract of this nature to be varied by more than 200 per cent. Do you think, Sen. Dullo, that EACC is waiting for you to make these recommendations? Do you think they are waiting for our resolution to make this recommendation? Do you think they do not know the perpetrators of Ruaraka Land Scandal and Solai Dam Tragedy? They know. We name them and deal with the consequences.

This is because at the county level, the governors have said so many things about us. When we get an opportunity, under the jurisdiction which we have, like we did with the Formula, we should not feel shy to make strong recommendations.

*(Loud consultations)*

Ladies and gentlemen; Senators, please, can I have your attention? One contractor is receiving Kshs28 billion. That is the sort of money that we distributed to over ten counties as sharable revenue. That person refuses to show up, sends you written submissions and you do not say something adverse about him. Surely!

Mr. Speaker, Sir, I like everything and let us give credit where it is due. This Committee has not spared any effort in identify chapter by chapter as to the mistakes that were done, step by step. They have. Even if Sen. Kang'ata stands here and says everything that he wants to say about IKM Advocates, the fact of the matter is that in law you cannot rectify retrospectively a mistake that has been committed or a criminal charge. That crime was committed when you awarded them the tender without following the process. Even if the Attorney General, and he is right for the first time, sanctions, we should name the Attorney General.

Dear Members, for the amount of money we have spent as a country in this, we would have bought ventilators and a lot of thing as has been pointed out by Sen. Wetangula. Let me tell you why you should name these people. Somebody procures on

leasing a linen trolley. Omondi in Burma Market can make linen trolleys for us at a limited cost.

The cost that has been incurred here is not enough to attach the assets of such people. It is not enough to prosecute them or raid their houses. I am waiting for a time, like Smith & Ouzman, where the father and the son go to jail. Their property is confiscated and sold, and ambulances are purchased.

Mr. Speaker, Sir, I will not take long; I hope I can finish with this. This is the criminal enterprise. Dear Senators, these people are going to spend money even in this Senate, so that we do not say these things. Let me just put them on record, just in case they were thinking of giving me money not to say this.

The cost of an instrument trolley is Ksh15,000, and they sold it to Kenya at Kshs269,000. The cost of a linen trolley is Kshs25,000, and they sold it to Kenya at Kshs306,000. The cost of a patient stretcher is Kshs30,000, and they gave it to us at Kshs2 million. A resuscitation trolley is Kshs50,000, and they gave it to us at Kshs1.6 million. A stitching removal set is Kshs5,000, and they gave it to us at Kshs398,000.

A drip stand that can be made by *Jua Kali* artisans and *Kazi kwa Vijana* at Kshs5,000 cost, they gave it to us at Kshs398,000. A drip stands at Kshs5,000 and a spotlight at Kshs800, was given to us at Kshs1.4 million. A stethoscope is Kshs12,000 and they gave it to us at Kshs1.2 million. A microwave was imported at Kshs20,000 and they gave it to us at Kshs1.2 million. That is unbelievable. The washing basin that you find in Burma Market at Kshs800, they sold it to us at an average cost of Kshs1.3 million. A baby cot that you find in Burma Market at Kshs25,000, they sold it to us at Kshs1.4 million.

An electric kettle that costs Kshs15,000, they sold it to us at Kshs1.2 million. You fail to name these people. You are taking them to EACC? Unless you want Rev. Wabukala to pray for these characters as we are shooting them. These people must be named on the Floor of this Senate.

Mr. Speaker, Sir, thank you and I support.

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Order, Senators! Sen. Mutula Kilonzo Jnr., you will have 13 more minutes when we resume. I direct that on Tuesday, when we resume, this will be the first Order in the agenda, so that everybody has an opportunity to discuss it and then we take a vote.

*(Applause)*

## ADJOURNMENT

**The Speaker** (Hon. Lusaka): Hon. Senators, it is now 6.30 p.m., time to interrupt the business of the Senate. The House, therefore, stands adjourned until Tuesday, 29<sup>th</sup> September, 2020, at 2.30 p.m.

The Senate rose at 6.30 p.m.