

**PARLIAMENT OF KENYA****THE SENATE****THE HANSARD****Tuesday, 14<sup>th</sup> September, 2021**

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

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

**PRAYER****PAPER LAID**

**REPORT ON THE PUBLIC/PRIVATE PARTNERSHIP BILL  
(NATIONAL ASSEMBLY BILLS NO. 6 OF 2021)**

**Sen. (Dr.) Ochillo-Ayacko:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today, 14<sup>th</sup> September, 2021:

The Report of the Standing Committee on Finance and Budget on the Public/Private Partnership Bill (National Assembly Bill No.6 of 2021).

*(Sen. (Dr.) Ochillo-Ayacko laid  
the document on the Table)*

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

**STATEMENTS**

**FREQUENT ROAD ACCIDENTS AT THE  
KABURENGU ROAD JUNCTION**

**Sen. Khaniri:** Mr. Speaker, Sir, I rise, pursuant to Standing Order 47 (1) to make a Statement on a matter of national concern, that is, the frequent accidents at Kaburengu Junction in Kakamega County.

First and foremost, on my own behalf, my family and the people of Vihiga County, I wish to register condolences to the families, relatives and friends of the six accident victims that occurred on Saturday, 21st August 2021.

This is an accident that claimed the lives of five family members; a Mr. Richard Osimbo, his wife, their children, his sister-in-law, their relative Nyambaka, their relative Vincent and their driver.

Mr. Speaker, Sir, losing a family member is very painful, but losing five family members at the same time is excruciating to say the least. I was able to attend the burial

of four of the victims in Ebwali Village, Luanda Sub-County in Vihiga County on Saturday, 4<sup>th</sup> September, 2021 and the sense of loss and pain was palpable. I condoled with the family and offered my contributions. It is unfortunate that a joyous activity of dowry process turned fatal. This family was travelling from Vihiga for some dowry negotiations, but they perished; they never got there.

Mr. Speaker, Sir, this matter of Kaburengu Junction stretch on the Eldoret-Turbo-Kaburengu-Webuye Highway, and accidents is a matter of great concern. Since 2017, there have been four major accidents on this stretch of road. Of greater concern to me is that of the four accidents, two have claimed lives of residents of Vihiga, and in both cases, it was just family members.

Apart from this one that happened on 21st August, 2021, another accident occurred at the same spot in December, 2017 and claimed 14 lives of my people.

Furthermore, on 24<sup>th</sup> December, 2020, a truck with faulty brakes hit a Matatu, which in turn rammed into roadside traders at the same spot, killing eight people. On the other hand, a power transformer on this spot of the road has been hit seven times since 2018.

A search of the word Kaburengu on the internet automatically connects with accident. Just try and search the word “Kaburengu” now on the internet and you will see “accidents”.

Honestly, from the above recent happenings, there is need for urgent action to protect lives. This stretch of road is not just a black spot, but a death trap to road users. Certain issues demand proper interrogation, for instance, the road design, road signage, speed bumps, road reserve, bus stops and existence of a KPLC transformer very close to the road.

During the burial of the family members, I made a promise to the community that I would raise this matter here and that the Senate, being the House that cares about the lives of the people in this country, we will investigate and see what the Government can do to rectify the spot, so that we can save lives.

There are matters that can be corrected easily by the Government through the Kenya National Highways Authority (KeNHA), Kenya Power and the County Government.

Mr. Speaker, Sir, in conclusion, I believe a Committee of this House should conduct a proper interrogation of this stretch of road and recommend corrective measures. As much as we are celebrating big infrastructure programmes in the country, there is need to look into the safety of pedestrians and all types of vehicles.

There is a general concern in the country that the current roads have ignored making provisions for pedestrians, Persons with Disability (PWDs), cyclists, motorbikes, bus stops and footbridges.

Thank you, Mr. Speaker, Sir.

**Sen. Wetangula:** Thank you, Mr. Speaker, Sir. I enjoin the distinguished Senator of Vihiga to decry the rampant accidents of loss of lives at Kaburengu. Kaburengu is very close to Bungoma. It is the last small market before one crosses River Nzoia into Webuye, Bungoma.

This stretch has claimed many lives, as the Statement provider has said. The area starts from a downhill stretch at a market called Chimoi and winds dangerously down towards the valley of River Nzoia for about five kilometers.

I do not know who tells most truck drivers that they save fuel when they engage free gear. When they are on that downhill stretch, they disengage their gears and run into what is commonly called free gear. There is even signage there warning motorists against driving on free gear. However, they will engage that free gear, which automatically dismembers the hydraulic system of the truck. When they encounter an emergency, the brakes just do not work.

Last year, a truck hit a Matatu, lost control and ploughed through helpless women traders by the roadside, killing over a dozen of them. The last one that Sen. Khaniri is talking about, of the family from Embwali in Bunyore, killed a whole family. Many others have happened.

Mr. Speaker, Sir, we do not want every time there is an accident to see high ranking national and county government officials rushing to the scene to shed crocodile tears about how dangerous the place is and how we have lost people who we cannot replace. There must be action.

It is a very busy trading centre. Mr. Speaker, Sir, you know it because you come from the area. Why can the County Government of Kakamega not build a market and get traders away from the road? That will put them out of danger.

The women and young people who sell tomatoes, potatoes, maize and onions keep on running after vehicles and some get knocked down. Those single fatalities never count. We are counting the ones that are massive. Every other week, a trader is knocked down either by a speeding Matatu or truck at Kaburengu.

We urge that this Statement does not just pass through this House. I request that you recommend it to the Committee in charge of roads and transportation, so that they can see how to contain this black spot. There should be proper signage, speed control bumps and any other measures that can be taken including cyclist and pedestrian lanes, so that we can protect our people.

More importantly, the County Government of Kakamega – and I hope Governor Oparanya is watching these proceedings - must go to Kaburengu, build a public market and get our people out of the roadside trading. This is so that we can take them out of harm's way and danger.

I also send my condolences to the family that lost their entire loved ones and all others that have died at this black spot. We have lost too many lives and we urge the Government to bring this to an end, so that road users can be controlled from their reckless behavior.

Thank you.

**Sen. (Dr.) Lang'at:** Thank you, Mr. Speaker, Sir. I also stand with Sen. Khaniri to condole with the families who lost their six members. It is so sad that the people who were very healthy and going for a celebration - I hear it was a wedding - perished in a road accident at Kaburengu. It was so sad.

Secondly, the greatest challenge we have in our country, as I have always said, is behaving reactively. Our Government takes action once an accident or an unfortunate thing has happened. Last week, we were talking about the incident that is happening in Laikipia. A day after, we saw several General Service Unit lorries headed there. Yesterday, at least, we could see some action having been taken, especially when the Senate Committee on National Security, Defence and Foreign Relations went to the

place. I congratulate that Committee because when they went there, they saw the reality on the ground.

Most of the accidents are preventable. In fact, we can see possible accidents spots whenever you drive on the highways in this country. Most of the bumps that are raised by *wananchi* whenever accidents occur are not marked. Public works officers do nothing to those places and the black spots more often are not marked with signs.

Even in Bomet, we have experienced so many accidents because of roads that are not marked. Sometimes bumps are raised and there is nothing to indicate that there are bumps ahead. Vehicles and motorcycles run over them, hence contributing to many accidents.

The Government should bring this to rest. I think, just as other countries especially developed ones, we should come up with a legislation that whenever such things happen, the Government should take responsibility of ensuring those families are supported to meet their challenges.

In some countries, whenever an accident occurs where the government is responsible, the burden goes to the government so that they feel it and make sure the roads are in good condition.

Sen. Khaniri, if possible, you can organize us, so that we raise something in support of those bereaved families.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Proceed Sen. (Dr.) Musuruve, and be brief.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Speaker, Sir, for giving me this opportunity. I thank Sen. Khaniri for bringing this Statement. I condole with the families that lost their beloved ones in the Kaburengu accident.

This is not the first time the issues of Kaburengu is coming to the Floor of this House. There is need for road signage along the road. When one is travelling on that route, it is very difficult to see a bump and rumble strips clearly. The bumps and the rumble strips are not clear.

Kaburengu Junction is central. It connects people going to Webuye from Lugari, Eldoret, Kakamega, Kisumu and Bungoma. Therefore, there is need for the contracting authority to come up with rumble strips and bumps that are clearly marked.

Mr. Speaker, Sir, there are children who cross the road along that junction all the way from Lugari to Eldoret, yet there are no people to guide them. Therefore, there is danger of school children being knocked by vehicles. Business people who sell along that road are also at risk of being involved in accidents. Therefore, there is need for the Government to ensure that justice is delivered and that rumble strips are erected there.

If there is any contractor that had received money to construct that road, he or she should be put to task to ensure that there are signages that are clearly marked. There is also need to have pedestrian walkways. For example, people living with disability are likely to lose their lives or get knocked. This must be corrected before it happens.

Thank you, for the opportunity. I support the Statement.

**The Speaker** (Hon. Lusaka): Finally, Sen. (Dr. Ochillo-Ayacko.

**Sen. (Dr. Ochillo-Ayacko:** Thank you, Mr. Speaker, Sir. I thank Sen. Khaniri for raising this matter that is tragic, sad and has wasted the lives of a family. I condole with that family. I am in solidarity with them and my prayers are for them.

Accidents that kill people are so many, particularly on the road that Sen. Khaniri has raised. We have a similar situation in Migori, along the Kisumu-Isibania Road is under construction by *Agence Française de Développement* (AFD).

There are certain sections of that road, from Rongo Constituency all the way to Isibania, where there are no signs or bumps along the road. What appear to be bumps are things that are made of murrum and are quite high and uneven. There are no sidewalks for people walking along the road and there is no provision for people with disabilities. Last month, accidents were prevalent next to Ranen Market, Komolo Rume Market and Awendo Market and many families lost their loved ones.

Mr. Speaker, Sir, as you refer this matter to the relevant Committee, I request that it considers this nationally and finds a lasting solution from Government as to what is being done about signs, bumps and policing along those roads.

In Migori County, we harvest and transport cane. Our tractors do not have indicators or anything to indicate that they are tractors. Therefore, when you drive at night along those roads, you may overtake, ram into a tractor and get killed. Therefore, it is important that the prevalent causes of accidents are investigated and a solution provided in Bungoma and other parts of the nation where such accidents are prevalent.

**Sen. Omanga:** Thank you, Mr. Speaker, Sir---

**The Speaker** (Hon. Lusaka): Sorry. I direct that the Committee on Roads and Transportation takes up the matter.

**Sen. Omanga:** Thank you, Mr. Speaker, Sir---

**The Speaker** (Hon. Lusaka): Take your seat. I am still communicating.

The Committee on Roads and Transportation should take up that matter. I come from that area, and what has been raised is serious. It needs to be investigated and remedial measures put in place to save the lives of people. Therefore, the Committee should take up the matter.

#### ALLEGED INCREASED RATE OF KIDNAPPING OF CHILDREN

**Sen. Omanga:** Thank you, Mr. Speaker, Sir. As an active Member of this House, I have many Statements, but two have appeared on the Order Paper today.

I rise pursuant to Standing Order No. 48(1) to seek a Statement from the Standing Committee on National Security and Foreign Relations.

In the Statement, the Committee should-

(1) State progress made by authorities on the investigation of recent kidnapping of children across the country.

(2) Outline plans put in place on protection and prevention against children violence across the country.

(3) State whether physical, moral and counselling support has been given to the families and the affected children.

#### ALLEGED EVICTION OF RESIDENTS OF NAIROBI CITY COUNTY STAFF HOUSING UNITS

Mr. Speaker, Sir, my second Statement is in regard to alleged illegal eviction of residents living in Nairobi City County staff housing units in Eastleigh and Pumwani.

I rise pursuant to Standing Order No. 48(1) to seek a Statement from the Standing Committee on Devolution and Intergovernmental Relations regarding the illegal eviction of residents from Nairobi City Water and Sewerage Staff Quarters at Eastleigh Section 3 and the Pumwani Maternity Staff Quarters at Meru Road in Nairobi City County.

In the Statement, the Committee should-

(1) Explain the circumstances surrounding the eviction, subdivision and allocation of the parcels of land belonging to Nairobi City County Government by a private developer.

I hope that the Chairperson of the Committee is listening.

(2) Provide the current survey plans and title deeds of the said parcels of land.

(3) State the plans that have been put in place by the Nairobi City County Government and Nairobi Metropolitan Services (NMS) to ensure protection of county institutions and property from illegal acquisition.

**Sen. Cherargei:** Mr. Speaker, Sir, I thank one of the most active Members of this House, Sen. Omanga, for the two Statements.

I have two observations on the Statement on eviction. There is a steady rise of infrastructural evictees. In the past, we used to discuss the forest evictees and Internally Displaced Persons (IDPs). It is unfortunate that infrastructural evictees continue to rise, especially in Nairobi City County among other towns.

The biggest problem that we are facing as a country is that there seems to be a miscommunication between the agencies and the county governments. The notorious agencies of Kenya Urban Roads Authority (KURA), Kenya National Highway Authority (KeNHA) mostly do the evictions within the City because of expansion of roads and road reserves.

The Committee on Roads and Transportation should go beyond and understand the multi-agency in the coordination of KURA, KeNHA and National Construction Authority (NCA).

Yesterday, a building collapsed in Kisumu, yet NCA has been given authority to provide standardization and ensure that compliance is done. There seem to be no proper coordination between KURA and KeNHA when it comes to evictions that we are seeing in the city.

I thought the Government said that there should be no evictions during this period of the COVID-19 pandemic. It could be dysfunctional, but let us assume that there is a functional Government. You can imagine evicting people at this time.

According to the Kenya National Bureau of Statistics (KNBS), last year, 1.7 million Kenyans lost their jobs. If those Kenyans are evicted, where will they get jobs and rent? The Committee on Roads and Transportation must tell us about the evictions that happened in Ruai, Kawangware and many other parts of the country, including Meru. They must tell us the communication that was made by the Ministry of Health and the Ministry of Interior and Coordination of National Government regarding evictions during this period of COVID-19 pandemic.

Finally, regarding the first Statement, I just want to make two comments. Of late, the issue of kidnaping of children has become rampant and it is a worry to many parents, especially in Nairobi. We have heard of cases where children are kidnapped for various reasons, but the Directorate of Criminal Investigations (DCI) has been doing nothing.

When the issue of Laikipia came up, the Cabinet Secretary for Interior and Coordination of National Government, the Inspector General of Police and the DCI just sent some secretaries to appear before the Committee on National Security, Defence and Foreign Relations. When it is the National Assembly, the Cabinet Secretary and his entire team, including the ones who put on their uniforms, normally appear before the National Security Committee of the National Assembly.

I hope when this Statement on kidnapping is sent, the Cabinet Secretary for Interior and Coordination of National Government, the DCI, the Inspector General of Police and other relevant persons, including the person in charge of children services in the Government, will appear in person before the Senate Committee on National Security, Defence and Foreign Relations.

Mr. Speaker, Sir, this is a request to you. You need to re-emphasize why the heads of those departments must appear before the Committee because we cannot operate that way. When it is the National Assembly, they appear without quarrels, but when it is the Senate, they sent their secretaries and private assistants to appear before our committees.

I think you need to re-emphasize that when you indicate that somebody should appear as per the provisions of the Constitution of Kenya, they must do so. The Constitution is very clear. It does not say a Chief Administrative Secretary (CAS) should appear.

I was disappointed that when the Senate Committee on National Security, Defence and Foreign Relations invited the Cabinet Secretaries, they decided to send some busybodies within those Ministries. That should stop. They should appear before our committees when required, so that we function. If they think that they should not appear, then it is contemptuous of the Senate of the Republic of Kenya.

I thank you.

**Sen. (Eng.) Mahamud:** Mr. Speaker, Sir, let me also add my voice to the Statement requested by Sen. Omanga concerning the issue of kidnapping of children. This is a serious matter that has been going on for a while. In fact, it was rampant a month ago.

It is not only affecting children. Recently, a prominent scholar called Abdulwahab was kidnapped by unknown people who had a vehicle with an unknown number plate in Eastleigh. Nobody knows his whereabouts from 8<sup>th</sup> September up to now.

We need our security forces to up their game, unless they are the ones behind it. When things like those happen, they should address them urgently. It is worrying that somebody can be kidnapped and taken away by people driving luxurious cars in broad daylight, and nobody knows where they are. That was on 8<sup>th</sup> September and today is 14<sup>th</sup>. Those are five days.

They used to kidnap children. Now, they are going for prominent people and scholars. He is a scholar in the Horn of Africa matters. He is still missing and that is very worrying. We must deal with this matter. Our security forces must up their game.

I thank Sen. Omanga for requesting this Statement.

**The Speaker** (Hon. Lusaka): Since Sen. Kang'ata is not here, his Statement is deferred.

**Sen. Kang'ata:** I am online, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Okay, proceed, but we cannot see you.

**Sen. Kang'ata:** I am online and my video is on.

**The Speaker** (Hon. Lusaka): We cannot see you.

**Sen. Kang'ata:** I do not know if it is because I am reading the Statement or the settings, but I am ready to read it.

**The Speaker** (Hon. Lusaka): We want to see you. Put on your video.

**Sen. Kang'ata:** Just a minute, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): We can now see you. Where are you?

**Sen. Kang'ata:** I am in my office.

**The Speaker** (Hon. Lusaka): No, that is not an office, Sen. Kang'ata. I am sorry, we cannot allow that. The rules are very clear on where you should be. So, you are out of order.

**Sen. Kang'ata:** I apologise, Mr. Speaker, Sir. Maybe you can defer it for five minutes.

**The Speaker** (Hon. Lusaka): I will give you an opportunity when you are in an appropriate place. Let us have Sen. Kwamboka.

#### ALLEGED DISCRIMINATIVE ENFORCEMENT OF THE NATIONWIDE CURFEW

**Sen. Kwamboka:** Mr. Speaker, Sir, I rise pursuant to Standing Order No.48(1) to seek a Statement from the Standing Committee on National Security, Defence and Foreign Relations regarding the enforcement of the nationwide curfew in containment of the COVID-19 pandemic. In the Statement, the Committee should-

(1) Explain why there is discriminatory enforcement of the curfew hours in the country in general and within Nairobi City County, in particular where restaurants in Nairobi West Area are forced to close by 7.00 p.m., while the other facilities in Eastlands operate until 9.00 p.m.

(2) State the challenges faced by security officers in enforcement of curfew hours nationwide.

(3) Apprise the Senate on the actions being taken by the Ministry of Interior and Coordination of National Government to ensure that officers enforce the curfew and related guidelines effectively and uniformly across the country.

I thank you.

**Sen. (Dr.) Milgo:** Mr. Speaker, Sir, let me support the Statement by Sen. Kwamboka regarding security issues when it comes to the curfew time.

Indeed, COVID-19 is a challenge to our country and the curfew has assisted in curbing the spread of COVID-19. However, in most cases, we have had a lot of challenges when it comes to implementing the rules of the curfew time by our security forces.

We have had people beaten up. Some are bundled into the vehicles in various areas inhumanly. We end up not achieving what was intended. The curfew has affected market hours and sourcing of food. We have had complaints from various quarters that curfew hours are not followed. We call upon the national Government to look at how the curfew is enforced.

For example, recently, the western part of our country was under lockdown. Bomet County, which is far away from that area, was also included, despite the fact that



we had a small number of COVID-19 cases. That brought a lot of challenges in terms of working hours, sourcing of food and schooling for our children.

Mr. Speaker, Sir, this is an important Statement that does not only affect Nairobi City County, but all other areas because of the curfew. This should be looked into further. I thank Sen. Kwamboka for bringing it.

I thank you.

**Sen. Madzayo:** Asante, Bw. Spika. Kwanza ningependa kumpa kongole dada yetu, Sen. Kwamboka, kwa kuleta hii Taarifa. Kulingana na vile sisi na wananchi wanaona, Mheshimiwa Rais aliweka mkazo ili watu wawe wameenda nyumbani ikifika Saa Tatu.

Lakini, tunaona kuwa kuna shida ya kutekeleza agizo hili kwa sababu kwa upande mwingine, wafanyabiashara wa aina mbali mbali wanafunga maduka yao Saa Mbili ili waweze kwenda nyumbani Saa Tatu na wafike kwa nyumbani Saa Nne. Wafanyabiashara wamepata taabu kwa upande wa ubaguzi.

Ukiangalia upande wa Nairobi West, utaona kwamba watu wanalazimishwa kufunga biashara zao, na kwingine, watu wanaruhusiwa kuendelea. Hii yote inaletwa kwa sababu ya kuzembea kwa kutengeneza sheria kwamba ikifika Saa Tatu, kila mtu anatakiwa kufunga biashara yake.

Kuzembea huku hauko Nairobi pekee, bali katika sehemu za Pwani pia. Upande wa Kilifi kuna maeneo mengine ambayo yanaruhusiwa baa kuendesha shughuli zao mpaka Saa Tatu. Ni wazi kabisa mbele ya polisi wakiona, ilhali kuna biashara zingine zinasimamishwa mapema sana.

Maduka ambayo watu wanaweza kununua vitu yanafungwa mapema ili watu waende nyumbani kutekeleza wajibu wa kuzuia watu wasitoke usiku. Inafahamika wazi kabisa kuwa kuna watu wengine wanaruhusiwa kuendelea kufanya biashara zao.

Kwa hivyo, sheria ya COVID-19 inayofanya watu wazuiliwe na wanaambiwa kuwa Saa Tatu wawe wameenda iwe inafanywa kwa usawa. Ikiwa ni Saa Tatu, biashara zote zifungwe Saa Tatu. Sio eti wengine wanafunga Saa Moja na wengine wanafunga Saa Tatu.

Asante, Bw. Spika.

**The Speaker** (Hon. Lusaka): Sen. (Prof.) Ekal.

**Sen. (Prof.) Ekal:** Thank you, Mr. Speaker, Sir. I also support this Statement by Sen. Kwamboka. The Coronavirus Disease (COVID-19) is here with us, and is out there throughout the world. It is really affecting our country by the fact that business is closed, as Sen. Madzayo just said. So many people are forced to go home, and in the process, it is actually affecting the economy of our country.

In my view, I do not think we are going to eliminate this disease. When you are faced with a problem like this, we need to think about how we can work with COVID-19, accept it as a normal way of life now, and see how we can deal with it. It is the new normal. We can deal with it, while living our usual lives and running our businesses as usual, but taking care to stay healthy.

Mr. Speaker, Sir, secondly, I have traveled a number of times on our main roads, coming from Lodwar to Nairobi and vice versa, and the traffic on the roads is just as usual. The question is: If people are being controlled to control the spread of COVID-19, who are those people on the roads at the wee hours of the night or around 11.00 p.m. and 12.00 a.m.? Who are the people on the road?

Those same people are the ones that are probably getting through by giving a little money to those who are supposed to stop people from travelling. Therefore, they travel and spread the disease. It does not make sense to say that we should close our bars at a certain time and go home, because there are others who are still traveling and spreading the disease in the process.

That somehow brings a dilemma. Should we close all the roads at a certain time and only leave them for ambulances and essential services, or should we just go with what I said? Let us live our normal lives, while taking care that we do not get sick. Let us get things going so that we manage this disease by living our lives normally and taking care that we do not get sick.

Mr. Speaker, Sir, I support this Statement and hope that something progressive will come out of it.

Thank you.

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

**Sen. Faki:** Asante, Bw. Spika, kwa kunipa fursa hii kuunga mkono Taarifa iliyoletwa Bungeni na Sen. Kwamboka. Hivi majuzi, mahakama ilitangaza kuwa kanuni za *curfew* ni haramu na hazifai kutekelezwa. Amri hiyo ilitolewa na High Court hapa Nairobi, na kuendelea kutumika kwa kanuni za *curfew* ni kinyume cha sheria na amri ya mahakama.

Jambo la pili ni kuwa kanuni za *curfew* zinazotangazwa mara kwa mara ni lazima ziletwe Bungeni ili ziingaliwe, zichunguzwe, na kupitishwa kama inavyosema *Statutory Instruments Act (2013)*. Kutoka mwaka jana tulipomaliza na kamati maalum ya COVID-19, mpaka sasa sijaona *regulations* zozote ambazo zimeletwa hapa Bungeni zinahusiana na mambo na *curfew* au jambo lolote linalohusika na mwelekeo wa mambo ya COVID-19 katika nchi ya Kenya.

Kama Mwenyekiti wa Kamati ya *Delegated Legislation*, hatujaletewa kanuni zozote. Kwa hivyo, kanuni zinazotumika kwa sasa ziko kinyume cha sheria na haifai Bunge kunyamazia jambo kama hili.

Asante, Bw. Spika.

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

**Sen. Wetangula:** Thank you, Mr. Speaker, Sir. I also support this Statement by calling upon the agencies of the state to have an even approach in handling the issues of COVID-19 restrictions. Last week, I heard the Inspector-General directing the removal of roadblocks that had become toll stations every time COVID-19 restrictions are enforced at the curfew time.

More importantly is the shock effect on small businesses. We have been told that COVID-19 is the new normal. If it is the new normal, then we must go back to normalizing as many sectors of our economy and social life as we possibly can; one, by the mass testing of Kenyans, and two, by the mass vaccination of those eligible for vaccinations.

Mr. Speaker, Sir, if you look at countries like Israel, they are giving third round vaccinations to the entire population. The United States of America (USA) has vaccinated almost two thirds of the population. Here, we are still lagging behind. We understand that the Government is receiving a lot of donations and acquisition of vaccines, but we need extraordinary measures.

The luxury of saying that you get vaccinated if you agree--- We previously had a case where a sect called the *Akorino*, who constantly refused to go to hospital, used to be prosecuted whenever they kept their sick in the houses when they refused to take them to hospitals. If it is Government policy that all people eligible to be vaccinated are citizens of Kenya, you cannot speak from both sides of your mouth and say that vaccinations are important and must be done, but they should be voluntary.

If this disease is so dangerous that we are vaccinating the whole world, then we cannot have the luxury of telling any Kenyan who is eligible to be vaccinated that it is voluntary.

The moment we say it is voluntary, we will have people who will be constantly spreading this virus to others and causing untold death, harm and slowing down our economy.

Mr. Speaker, Sir, thirdly, I want to urge the Government - and Sen. Faki is right in citing the law - that whenever we want to have restriction of movement of Kenyans, Parliament has the ultimate say. That is why I said last week, when Senators were calling for the KDF to be deployed to Laikipia, that we cannot do that unless we have express authority from Parliament, because our military cannot be used for internal order. It is for protecting our territory.

As we continue battling with COVID-19, the Government must realize that there are so many small businesses that have collapsed. In fact, it is not just small businesses. I saw on TV last night five-star hotels that have closed down in Nairobi. The five big hotels that were closed are Intercontinental Hotel next to Parliament, Radisson Blu Hotel, The Norfolk, which is a very iconic hotel in Nairobi, and many others. All this is because of COVID-19. How do we take measures to reopen the economy?

The CS for Health and the multi-sectoral and multi-agency groups that have been put together must now be designing to tell Kenyans the little dos and don'ts that will normalize life, so that the Matatu industry does not collapse; the small eateries that employ young single parents do not collapse, and the transportation industry taking food to markets does not collapse. We want to run a 24-hour economy, so that our economy can sustain our needs as a nation.

I support the Statement and urge the police to be fair, just and open in enforcing these restrictions. We cannot have situations where in some places the police are knocking as soon as it hits 8.00 p.m., whereas we have been told of places in certain privileged parts of this City that are open 24 hours. This biased application of the law does not auger well for a good society.

Thank you, Mr. Speaker, Sir.

**Sen. Cherargei:** Thank you, Mr. Speaker, Sir. I want to commend Sen. Kwamboka for bringing this timely Statement. Last time, we had a discussion and I thought that the Chairperson of the Senate Committee on Health should have been updating the House on the issues of the status of COVID-19 pandemic in the country, just like the Council of Governors have been doing, so that they can be telling us the status.

I agree with colleagues that in modern countries, they are now administering the booster after the other doses of the vaccination. However, it is unfortunate that the curfew, amongst other containment measures, was done in good faith, but the implementation has been done maliciously.

I think the biggest beneficiaries of this curfew are the rogue police officers. I know there are good officers, but the wayward police officers, the criminal ones within the Police Service, have been using the issue of curfew to do the unthinkable.

We agree with the containment measures that have been put in place, but there are rogue police officers within the service. You remember the killings of the Kianjakoma brothers. You remember, in Lessos, a police station was burnt after the police killed a motorbike operator for not wearing a mask. We have seen enormous cases where extortion is done in broad daylight because of this curfew. We agree that containment measures should be put in place, but it should not be a license for extortion by rogue police officers.

One interesting thing with the curfew is that the police are so efficient when it comes to implementing the curfew, but when you are attacked and you go to a police station, they tell you that there is no fuel. You are told to give them Kshs1,000 or Kshs2,000, so that they can attend to a case of insecurity in a certain place. I saw the Inspector-General of Police engaging Kenyans on *Twitter*, which is good, but he is yet to answer to the country on the issue of roadblocks

Mr. Speaker, Sir, yesterday, I was privileged to be in your county and I can assure you that all is well. However, I still saw police officers on the road. There are many roadblocks next to Webuye. The sad thing is that curfew roadblocks are even being put in the villages and small roads that are used by *boda boda*.

As I was driving through Bungoma, all the way to Eldoret and Nandi, I saw roadblocks. I would like to ask the Committee on National Security, Defence and Foreign Relations to take up this matter with the IG of Police and ask him what is happening, so that all of us can be safe.

Finally, we agree that the night economy has been killed. In the past, you could buy *Mutura* in those small shops in the evening. Those were people who were making money. There are other businesses that used to be done at night, like carwash and others; these have been affected.

The curfew has also affected prayers. Nowadays, you cannot go for *Kesha*, and yet, we need people to pray, so that COVID-19 can go away. Those are many businesses of the night economy that have been destroyed. Nocturnal activities have been affected greatly. All these things have been---

**The Speaker** (Hon. Lusaka): Senator, you seem to be dwelling so much on nocturnal activities.

**Sen. Cherargei:** Mr. Speaker, Sir, I am not affected, but just indicating that by and large, the night economy has seriously been affected. The people who used to go out to relax in the evening have been affected.

I want to urge that this matter should be treated urgently. I agree with what Sen. Kwamboka has said that in the high-end estates in this country people operate up to around midnight, but the police enforce the curfew promptly in the middle income and low income estates like the slums. We need uniformity in the implementation of the curfew, and I hope this matter will be taken seriously.

I want to thank the many colleagues who prayed for me, and Sen. Wetangula is here, because finally, the politically-motivated charges that were imposed on me because of the Kabuchai by-election have been dropped by the DPP. It shows by and large that political persecution and political blackmail continue to be a threat to open and free

democracy. I want to thank Sen. Wetangula when he said that I have learnt a few lessons on how the game should be played.

I thank you, Mr. Speaker, Sir.

**Sen. (Dr.) Ochillo Ayacko:** Thank you, for the opportunity, Mr. Speaker, Sir. Arising from what Sen. Cherargei has said, it is very difficult to enforce curfew in police cells because you are already inside there.

I want to say from the outset that these curfew regulations were intended and continue to be intended to regulate our lives and make us safe. However, the enforcement of these regulations has not been aligned to common sense. In fact, these regulations have been enforced so ridiculously that many people continue to suffer because of the manner in which the police are enforcing them.

Two months ago, we lost both the father and wife of my campaign manager. One body was in Nairobi and another body was in Kisumu. So, we flew the body from Nairobi to Kisumu and expected the bodies to be ferried in one hearse. When we reached Kisumu, owing to these curfew unrelated regulations, we were told that bodies cannot travel at night. We cannot transport bodies at night because of curfew. We had a hearse having a body and a family parking in front of a mortuary with passengers because it could not transport home bodies of a man and a woman. I had to look for the powers that be in this nation to have them ferry a man and a woman who had died together with their children. That shows you how ridiculously these regulations are being enforced.

One may drive from Nairobi to my village which is six hours and get a puncture somewhere in Bomet or Kisii. As they try to fix it, curfew times arrives. How does one explain that to the police and survive in places where one cannot get accommodation? One can see how ridiculously these regulations are being enforced.

I come from a county called Migori which is largely rural. We may have emergencies at home and we do not have ambulances. I am somewhere in North Kanyamkago using *boda boda* or *kitanda* trying to ferry my patient to hospital. The police will ask for money not caring whether you are attending to an emergency.

The Committee concerned should find out how ridiculous these enforcements are. Kenyans must continue to live. The regulations are good, but the enforcement is not aligned to common sense. We are a common sense nation. Therefore, ridiculous enforcement of regulations will make us suffer for nothing.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to support this Statement by Sen. Kwamboka. She has brought food for thought to this Floor.

COVID-19 pandemic is not going away anywhere soon. In many parts of the world, life has gone back to normalcy. For example, in Turkey and Dubai, people are going on with their business. The business is as usual. Why are they doing so? It is because more than 70 per cent of the citizens have been vaccinated. The countries have taken it upon themselves to ensure they come up with a sustainable solution to this pandemic. There is no sustainable solution to this pandemic other than the vaccination.

When we talk about curfew all the time, our economy continue dwindling. We have to look for ways and means of ensuring our economy springs back to normalcy. Our children must continue with their education. Therefore, they must remain in school.

As I speak, there are so many children even with disabilities who have not been vaccinated. The Government must make sure that those children are vaccinated because

they are vulnerable of the vulnerable. The elderly, children living with disabilities and teachers must be vaccinated.

We are only talking about enforcing curfew regulations without coming up with a lasting solution. In the process of enforcing these regulations, police are harassing and senselessly beating up our citizens without letting them go on with their business as usual.

I support.

**Sen. Olekina:** Thank you, Mr. Speaker, Sir. I rise to support this Statement by Sen. Kwamboka. The issue of curfew is quite saddening because of the way it is being enforced. Some of us traverse counties days and nights because of the nature of our work.

There are so many Kenyans who work late at night, for example, those who work in the construction industry. Sometimes when they close their jobs at around 2.00 a.m. or 3.00 a.m., they are arrested as they go home. We are trying to prevent Kenyans from contracting COVID-19, but we are making it difficult for them to earn a living. Even in law, there should be no double jeopardy because you cannot be tried twice. One is already in trouble and they put you in big trouble.

We just need to reason and see how best we can assist our people. I support police a 100 per cent in doing their job. However, we need also to find a way so that the senior police officers can also be humane and understand that our people are not exposing themselves to danger, but they are coming from their places of work.

In Nairobi, for example, we have joints where some of us, politicians, drink until the wee hours without considering COVID-19 regulations. Other joints are closed at 7.00 a.m. It is upon us as leaders to make sure that we do not allow that extension of our fun.

In Kilimani, Village Market and Ruaka, there are pubs which are open almost 24 hours daily for the whole week.

**Sen. Madzayo:** Mhe. Bw. Spika, nasimama kwa hoja ya nidhamu. Sen. Olekina ni rafiki yangu sana, lakini ikifika kuendesha ratiba ya Bunge sawasawa tunatengana. Amesema kwamba yeye kama mmoja wa wale viongozi katika taifa hili kuna mahali wanapokwenda kustarehe mpaka saa kumi alfajiri na polisi wanapajua. Hatutaki kujuwa wanajivinjari na nani?

Wanajivinjari mpaka saa hizo na wale ambao hawajiwezi, kwa mfano, wanaojivinjari pale Nairobi West, wanaambiwa wafunge hizo baa au sehemu za kustarehe saa moja jioni. Kama alivyosema wao hustarehe hadi saa nane ya usiku.

Ukisema jambo kama hilo Bungeni ni lazima utaje mahali hapo. Je, ni haki kwake kuongea bila kutaja mahali hapo? Je, anaweza kueleza Bunge hili ni watu gani hao wanaoketi mpaka saa tisa alfajiri na polisi wanaogopa kwenda kuwashika?

**The Speaker** (Hon. Lusaka): I can see another point of order from Sen. Cherargei. You can respond to both.

**Sen. Cherargei:** Mr. Speaker, Sir, is it in order for Sen. Olekina to say leaders drink up to 3.00 a.m., yet he knows very well that not all leaders drink? He should be specific. I think he is casting aspersions by saying that all leaders drink up to 3.00 a.m.

I think as Sen. Madzayo has said, he should state these places where leaders drink up to 3.00 a.m. while the “hustlers” drink for only one hour from 6.00 p.m. to 7.00 p.m. Is he in order to say “all leaders” while most of us here at this time only go for *kesha*?

**Sen. Olekina:** Mr. Speaker, Sir, my good friend, the Senator of Kilifi’s mask fell off because he knows very well I am saying the truth. So, he was not being honest.

My colleague, Sen. Cherargei, should pay attention next time when I am speaking because I said ‘some of us leaders’.

I will give you the exact date. About a year ago, a colleague here, Sen. Sakaja, was arrested in a pub in Kilimani called Ladies Lounge. Is Sen. Sakaja not a leader among some of us as I said? This is the truth. One day, I was coming from Narok at around 10.30 p.m. and I passed through Ruaka. I do not remember the name of a pub that I saw there because I do not visit it but it was open.

When I arrived at Gigiri, I told the cops instead of them stopping the cars, they should go and close the pub. However, they told me that, it is a different jurisdiction.

The Statement raised by Sen. Kwamboka did not name any pub. In fact, she gave a general Statement and said ‘explain why there is discrimination in enforcement of curfew hours in the country in general and in Nairobi City County and in particular, where restaurants in Nairobi West area are forced to close at 7 p.m.

That is a general Statement. Since we are seeking clarification, when you stand here to support a Statement, you either seek more clarity. I would have asked my good friend, Sen. Kwamboka, to tell me the names of the restaurants. This is because the curfew in Nairobi is at 9.00 p.m.

To be honest, some of the things that this Committee on National Security and Foreign Relations should tell us when they expound further is, when will we open the economy? That is the most important thing. This is because fingers are not the same size. May be, I am speaking in tounques but literally, there are people who live in affluent neighbourhoods. We are not equals.

I know that Sen. Cherargei likes to talk about ‘hustlers’ and all that but the truth of the matter is that Kenyans are suffering. This is because hypothetically pubs are closed at 9.p.m. We now hear that some close at 7.p.m. therefore, there are people who cannot be paid a full salary. They cannot continue to work because businesses are hurting. So, we know that the economy is bleeding.

I always say ‘we’ because I hope that someday, we will reflect on our roles as leaders. Right now, we are taxing our country to posterity. All we are doing is killing it. It is Covid-19 times and we are attacking the police who stand from 5.30 a.m because they have to clear you.

Mr. Speaker, Sir, if you go to Karen where you live, the police will stand there and clear you. If they know you are coming to work, they will clear so that you come here. So, we also need to think about them as humans and then find a way to pass a legislation to regulate this issue of curfew.

In the Statement, I would like the Committee on National Security and Foreign Relations to tell us what happened with the High Court judgement.

I know that the Law Society of Kenya (LSK) filed a case challenging curfew regulations. What happened? We need to be fair.

We constantly hold political rallies but when police try to enforce the laws, we say that we are being sidelined and it is only a few of us who are regulated while others are not.

Finally, as I support this Statement---

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

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

**Sen. Cherargei:** Is it in order for Sen. Olekina to say that ‘we’ politicians continue to hold rallies? He is speaking from a high moral ground yet yesterday he was in *Azimio la Umoja* meeting where, as we watch in the news, people were crowded in a room and he was speaking? So, he should lead by example by avoiding the meetings.

Is he in order to cast aspersions?

**Sen. Olekina:** Mr. Speaker, Sir, my friend needs to understand English. I said ‘us’. I did not point. He is not the only politician here. It is all of us. So, it is our responsibility to lead by example which we are not. So, that was not a point of order, it was a point of disturbance.

**The Speaker** (Hon. Lusaka): He said that, as much as you are preaching that we must lead by example, you are not doing it yourself. So, you need to do that before you preach to others. That is the point he is raising.

**Sen. Olekina:** Mr. Speaker, Sir, I will not use the word that I wanted to use because he will be up in arms and we will continue with this Statement forever.

Mr. Speaker, Sir, the economy is hurting. We also need to realize that the police are humans. So, when we give instructions for implementation of the curfew, rules and regulations, we need to be sober enough.

I call upon the Ministry of Interior and Coordination of National Government to think about the welfare, of not only the police, but of Kenyans.

On the issue of pubs, if we allow them to close at 9.a.m, let it be uniform. So, my plea to the Committee on National Security and Foreign Relations is that when they are giving responses to Sen. Kwamboka, they should go further and tell us that, for example, in the entire country, the time to close pubs or restaurants is 9.00 p.m. or 7.00 p.m. so that it is uniform.

Secondly, in those pubs and the businesses that we have, most Kenyans who do not have a voice, suffer. I am sure that we speak as the voice of Kenyans. This is because if they are mistreated in those businesses and they want to find out who the owner is, they will not be told. So, it is important for businesses to display their ownership and clearly indicate the owners of the business so that they have a complain mechanism.

**The Speaker** (Hon. Lusaka): Thank you. Your point has been made. It was a good Statement about uniformity in enforcement of the law.

Sen. Wambua had two Statements which I defer.

#### PLIGHT OF ECDE TEACHERS IN THE COUNTIES

#### PLIGHT OF VILLAGE ADMINISTRATORS APPOINTED BY RESPECTIVE CPSBS

*(Statements deferred)*

So, Sen. Kang’ata, you are now properly in the Chamber.

**Sen. Kang’ata:** Mr. Speaker, Sir, first, I apologise for being in an office which has a safety belt.



## OPERATIONS OF MURANG'A COUNTY CREAMERIES

I rise pursuant to Standing Order No. 48(1) to seek a Statement from the Standing Committee on Trade, Tourism and Industrialization regarding the operation of Murang'a County Creameries.

In the said Statement, the Committee should-

(1) State the ownership structure of Murang'a County Creameries including the share of the creameries owned by farmers;

(2) Inform the House on the level of farmer's representation in the running and management of Murang'a County creameries and cooling plants in the dairy sector value chain in the county particularly, in regard to the decision-making process;

(3) Spell out the reasons why Murang'a County Creameries is not operational taking into account that milk is perishable and therefore requires a steady market;

(4) Explain why the creamery has not paid farmers their arrears for milk deliveries as well as transport costs and rental arrears for cooling plants.

Mr. Speaker, Sir, Murang'a County Creameries which is owned by Murang'a County Government owes Murang'a farmers millions of shillings. They are complaining and that is why I have brought this Statement so that this House can intervene and ensure that the farmers of Murang'a are duly paid.

Milk is currently being produced by almost 70 per cent of households in Murang'a. We need an explanation as to why there are delayed payments and why farmers cannot be paid Kshs42 per liter which is currently the market price for milk.

**The Speaker** (Hon. Lusaka): That brings us to the end of Statement Hour. Although we had passed Notices of Motions, I will use my discretion to allow distinguished Sen. Dullo to issue Notices of Motions.

## NOTICES OF MOTIONS

**Sen. Dullo:** Mr. Speaker, Sir, I wish to give Notice of the following Motions-

## RECONSTITUTION OF STANDING COMMITTEES

THAT notwithstanding the resolution of the Senate made on 14<sup>th</sup> December, 2017; 14<sup>th</sup> February, 2018; 21<sup>st</sup> February, 2018; 21<sup>st</sup> November, 2018; 20<sup>th</sup> March, 2019; 19<sup>th</sup> June, 2019; 28<sup>th</sup> April, 2020; and 24<sup>th</sup> June, 2020 on the approval of Senators to serve in the various Standing Committees of the Senate, and pursuant to Standing Order Nos.189 and 218 and the Second Schedule of the Standing Orders, the Senate approves the following Senators nominated by the Senate Business Committee (SBC) to serve in the Standing Committees of the Senate as follows –

(i) **Committee on Agriculture, Livestock and Fisheries**

1. Sen. (Prof.) Margaret Kamar, EGH, MP to replace Sen. (Eng.) Ephraim Mwangi Maina, MP;

2. Sen. Haji Abdul Mohammed, MP to replace Sen. (Dr.) Mbito Michael Maling'a, MP;
3. Sen. (Dr.) Gertrude Musuruve Inimah, MP to replace Sen. Boy Issa Juma, MP; and
4. Sen. Agnes Kavindu Muthama, MP to serve as a Member.

**(ii) Committee on Devolution and Intergovernmental Relations**

1. Sen. Njeru Ndwiga, EGH, MP to replace Sen. Aaron Cheruiyot, MP.
2. Sen. Samson Cherarkey, MP to serve as a Member;
3. Sen. Irungu Kang'ata, MP to serve a Member; and
4. Sen. Agnes Kavindu, MP to serve as a Member.

**(iii) Committee on Education**

1. Sen. Naomi Shiyonga Masitsa, MP to replace Sen. (Dr.) Gertrude Musuruve Inimah, MP; and
2. Sen. Boy Issa Juma, MP to replace Sen. (Prof.) Imana Malachi Charles Ekal, MP.

**(iv) Committee on Energy**

1. Sen. Susan Kihika, MP to replace Sen. Abshiro Halake, MP;
2. Sen. Kipchumba Murkomen, EGH, MP to replace Sen. John Nderitu Kinyua, MP;
3. Sen. Haji Abdul Mohammed, MP, to serve as a Member.
4. Sen. Moses Wetangula, EGH, MP to replace Sen. (Prof.) Imana Malachy Ekal, MP

**(v) Committee on Finance and Budget**

Sen. (Prof.) Samson Ongeri, EGH, MP to replace Sen. (Dr.) Sen. (Dr.) Ochillo-Ayacko-, EGH, MP.

**(vi) Committee on Information, Communication and Technology**

1. Sen. Samuel Poghisio, EGH, MP to replace Sen. Gideon Moi, CBS, MP;
2. Sen. (Eng.) Mahamud, Mohamed Maalim, CBS, MP to replace Sen. Susan Kihika, MP;
3. Sen. Moses Kajwang', MP to replace Sen. Petronilla Were Lokorio, MP; and
4. Sen. (Dr.) Gertrude Musuruve Inimah, MP to replace Sen. Mercy Chebeni, MP.

**(vii) Committee on Justice, Legal Affairs and Human Rights**

Sen. (Eng.) Ephraim Maina, EBS, MP to serve as a Member.

**(viii) Committee on Labour and Social Welfare**

1. Sen. Ledama Olekina, MP to replace Sen. Johnes Mwaruma, MP; and

2. Sen. Philip Salau Mpaayei, MP to replace Sen. Paul Mwangi Githiomi, MP.

**(ix) Committee on Land, Environment and Natural Resources**

Sen. (Dr.) Alice Milgo, MP to replace Sen. Ndwiga Peter Njeru, MP; and further that Sen. Gideon Moi, CBS, MP ceases being a Member of the Committee.

**(x) Committee on National Cohesion, Equal Opportunity and Regional Integration**

1. Sen. Abshiro Halake, MP to replace Sen. (Dr.) Christopher Andrew Lang'at, MP; and
2. Sen. (Dr.) Sen. (Dr.) Ochillo-Ayacko, EGH, MP to replace Sen. (Dr.) Gertrude Musuruve Inimah, MP.

**(xi) Committee on National Security, Defence and Foreign Relations**

1. Sen. Gideon Moi, CBS, MP to replace Sen. (Eng.) Mahamud, Mohamed Maalim, CBS, MP; and
2. Sen. Paul Mwangi Githiomi, MP to serve as a Member.

**(xii) Committee on Tourism, Trade and Industrialization**

1. Sen. Aaron Cheruiyot, MP to replace Sen. Philip Mpaayei, MP;
2. Sen. (Prof.) Imana Malachy Charles Ekal, MP to replace Sen. (Dr.) Agnes Zani, CBS MP; and
3. Sen. Petronilla Were Lokorio, MP, to replace Sen. Mercy Chebeni, MP.

APPROVAL OF SENATORS TO SERVE IN THE  
COMMITTEE ON POWERS AND PRIVILEGES

THAT, NOTWITHSTANDING the resolutions of the Senate made on 14<sup>th</sup> February, 2018, and 24<sup>th</sup> June, 2020, on the approval of Senators to serve in the Committee of Powers and Privileges, and pursuant to Section 15 (1) (b) (ii), of the Parliamentary Powers and Privileges Act, and Standing Order 189, the Senate approves the following Senators nominated to serve in the Committee of Powers and Privileges –

1. Sen. (Canon) Naomi Waqo, MP to replace Sen. (Dr.) Alice Milgo, MP;
2. Sen. Christine Zawadi Gona, MP to replace Sen. Kipchumba Murkomen, EGH, MP; and
3. Sen. Haji, Abdul Mohammed, MP to replace Sen. Kimani Wamatangi, MP.

APPROVAL OF SEN. JOHN NDERITU KINYUA, MP,  
TO SERVE IN THE SPEAKER'S PANEL

THAT, pursuant to Standing Order 17, the Senate approves the nomination of Sen. John Nderitu Kinyua, MP, as a Member of the Speaker's Panel; and further, to be elected to preside over the Senate in the absence of the Speaker and the Deputy Speaker, pursuant to Article 107(1)(c) of the Constitution and Standing Order 15 of the Senate.

APPROVAL OF SEN. ONGERI TO SERVE IN THE SESSIONAL  
COMMITTEE ON DELEGATED LEGISLATION

THAT, NOTWITHSTANDING, the resolution of the Senate made on 30th March, 2021 on the approval of Senators to serve in the Sessional Committee on Delegated Legislation, and pursuant to Standing Orders 189 and 219, the Senate approves the nomination of Sen. (Prof.) Samson Ongeru, EGH, MP to replace Sen. Erick Okong'o Omogeni, SC, MP as a Member of the Sessional Committee on Delegated Legislation.

I thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Let us go to the next Order.

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

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

**The Deputy Speaker** (Sen. (Prof.) Kamar): You seem to have heard me silently. I think you had not finished contributing. Carry on Sen. Faki.

**Sen. Faki:** Madam Deputy Speaker, I would have loved to move this Motion in Kiswahili. However, due to the technical nature, many Members will be lost.

## MOTION

ADOPTION OF REPORT ON THE PUBLIC FINANCE  
MANAGEMENT (SINKING FUND) GUIDELINES, 2021

**Sen. Faki:** Madam Deputy Speaker, I beg to move-

THAT, the Senate adopts the Report of the Sessional Committee on Delegated Legislation on the Consideration of the Public Finance Management (Sinking Fund) Guidelines, 2021.

Madam Deputy Speaker, let me give the background before delving into the content of the said report. The Public Finance Management (Sinking Fund) Guidelines, 2021, were published by the Cabinet Secretary of the National Treasury on 25<sup>th</sup> May, 2021, pursuant to Regulation 206(3) ---

**The Deputy Speaker** (Sen. (Prof.) Kamar): Sen. Faki, you did not complete moving the Motion. Please complete so that everything is on record. Read the all the terms of the Motion.

**Sen. Faki:** Sorry, Madam Deputy Speaker. I beg to move-

THAT, the Senate adopts the Report of the Sessional Committee on Delegated Legislation on the Consideration of the Public Finance Management (Sinking Fund) Guidelines, 2021, laid on the Table of the Senate on Wednesday, 8<sup>th</sup> September, 2021, and that pursuant to Section 18 of the Statutory Instruments Act, Section 205 of the Public Finance Management Act, and Standing Order 221(4)(b), annuls in its entirety, the Public Finance Management (Sinking Fund) Guidelines, 2021.

Madam Deputy Speaker, the Public Finance Management (Sinking Fund) Guidelines (2021) were published by the Cabinet Secretary (CS) of the National Treasury, on 25<sup>th</sup> May 2021, pursuant to Regulation 206 (3) of the Public Finance Management (National Government) Regulations (2015), and are intended to be applied to the management of the Sinking Fund established under Regulation 206 (1) of the Regulations.

The guidelines were submitted to the Senate by the CS of the National Treasury on 3<sup>rd</sup> June 2021, pursuant to Section 11 (1) of the Statutory Instruments Act (2013). The guidelines were then tabled before the Senate by the Senate Majority Leader on 6<sup>th</sup> July 2021, and subsequently committed to the Senate Sessional Committee on Delegated Legislation.

The Sessional Committee on Delegated Legislation considered the guidelines and received submissions from the National Treasury on 1<sup>st</sup> September, 2021, and the Central Bank of Kenya (CBK) on 7<sup>th</sup> September, 2021. The guidelines are made pursuant to Regulation 206 (3) of the Public Finance (National Government) Regulations and are intended to be applied to the management of the sinking funds established under Regulation 296 (1) of the said regulations.

Madam Deputy Speaker, a sinking fund is created and set up purposefully for redemption of Government loans and securities. A certain amount of money is regularly set aside to finance both the principal and interest of a public debt before its maturity date reaches. The objective of the fund is to mitigate future cash flow challenges arising from heavy repayment of debts whose grace periods have expired. This shall facilitate paying off maturing public debts, buying back bonds when the interest is low, and retire some of the debts early to avoid higher costs in future.

Capital of the fund. Sources of the fund to include; the Consolidated Fund Budget vote for redemption of debts and other debt related expenses from the Exchequer to be remitted to the fund continuously; monies appropriated by Parliament for the purposes of the fund; fees and commissions earned by the Public Debt Management Office (PDMO) in execution of its mandate; income invested from the balances of the fund; foreign exchange gains from external loans to the National Government; and any monies accruing to or received by the fund from any other lawful source with approval of the CS; and any other source provided for by an Act of Parliament.

Expenditures of the fund. Payments out of the fund shall be for redemption of Government loans and payment of expenses incidental to the loans. Other administrative expenditures shall be on the basis of annual work plans and cost estimates shall be prepared by the administrator of the fund, recommended by the Committee and approved by the CS at the beginning of the financial year to which they relate.

Establishment of the sinking fund advisory committee. It is proposed that the committee membership shall be made up of; the Principal Secretary (PS) in charge of finance as the chairperson, Director General, PDMO as Secretary, Director-General Accounting Services and Quality Assurance, Director-General Public Investment and Management Portfolio.

The key functions of the advisory committee shall include; providing advice on administration of the fund, and reviewing and recommending the revenue and expenditure estimates of the fund to the CS in each financial year. The fund administrator shall be the head of the PDMO

Madam Deputy Speaker, some key observations made by the Committee on the guidelines were as follows-

- (1) Kenya set up the first sinking fund in the 1960s under the Internal Loans Act (Chapter 420 of the laws of Kenya)
- (2) The fund remained dormant and the process of winding up the fund is currently before the National Assembly
- (3) Section 50 (8) of the Public Finance Management (PFM) Act permits the CS in charge of the National Treasury, with the approval of Parliament, to establish such sinking fund or funds for the redemption of loans raised under this Act by the national Government.

Despite this, Regulation 206 (2) of the Public Finance Management (National Government) Regulations (2015) limits the scope of the fund to payment of expenses of or incidental to redemption of an issue of Government securities and the redemption of an issue of Government securities.

Despite the limitation above, the guidelines as currently drafted as per Guideline 3 (2) expand the scope of the fund to include national Government loans that are not envisaged in Regulation 206 (2) of the Public Finance Management (National Government) Regulations (2015).

Conflict with the CBK Act. Section 4A (1) of the CBK Act mandates the CBK to formulate and implement foreign exchange policy and hold and manage its foreign exchange reserves. It further observed that Guideline 5 (e) of the guidelines provides that one of the sources of the fund shall consist of foreign exchange gains from external loans to the national Government.

The Committee noted that the National Treasury is not mandated to hold foreign exchange reserves, and as a result, Guideline 5 (e) of the guidelines is inconsistent with Section 4A (1) of the CBK Act. The Committee further observed that the guidelines failed to take into consideration Clause 4A (1) (e) of the CBK Act, which mandates the CBK to be the fiscal agent of the Government.

The Committee observed that it was unclear how foreign exchange gains from external loans to the national Government shall be realized when the sinking fund is comprised in local currency. This observation was made on the basis that the CBK informed the Committee that whereas the sinking fund is in local currency, Kenyan Shillings, the guidelines under Guideline 5 (e) provide for the realization of foreign exchange gains from external loans to the national Government.

The Committee was further informed that the realization of foreign exchange gains from external loans to the national Government would not ordinarily happen unless

the amount of local currency accumulated was more than that needed to offset the external loans obligations at the prevailing exchange rate.

Madam Deputy Speaker, the guidelines propose the establishment of a sinking fund advisory committee which is proposed to consist of the PS in charge of Finance as the chairperson; the Director General of the PFMO as the Secretary; the Director-General of accounting services and quality assurance as the director, and the Director -General of Public Investment and Portfolio Management.

The Committee observed that the CBK is not a member of the Committee, yet under Section 4A (1) (e) of the CBK Act, the Bank is the fiscal agent of the government.

Consultations before making the instrument. As per Sections 5 and 5 (a) on proof and demonstration of sufficient public consultation, the National Treasury, in the explanatory memorandum indicated that it had invited interested members of the public to submit written memoranda and comments on the draft guidelines. The National Treasury did not however provide proof such consultations made in the development of the guidelines.

From the presentation made by the CBK, a key player in the public finance sector with a constitutional responsibility to formulate monetary policy, it was clear that it had not been consulted in the making of the regulations. There is therefore need for effective consultations to be undertaken with the relevant stakeholders.

Madam Deputy Speaker, it is the basis of these observations that the Committee recommends that the Senate resolves that the Public Finance Management (Sinking Funds) (2021) be annulled. I just wish to add that Kenya, throughout its existence, has not defaulted on any of its loan obligations. Therefore, the setting up of this fund will deprive the economy of useful funds that could be channeled into very useful income generating projects, unlike the present situation where the fund proposes to reserve the funds for payment of future loans.

The other aspect of the matter is that at the moment we have experienced situations where there is delay of disbursement of funds to the counties. So we cannot afford at this particular time, funds being set aside yet counties are suffering because they are not receiving any funds.

I beg to move and ask Sen. M. Kajwang to second this Report.

Thank you, Madam Deputy Speaker.

**Sen. M. Kajwang:** Madam Deputy Speaker, I rise to second the Report of the Committee on Delegated Legislation that has recommended the annulment of the Sinking Fund Regulations that have been brought before the House.

In agreeing with the Committee on Delegated Legislation which we have given the responsibility of considering and getting to the details of all the regulations brought before this House, I am satisfied that the Committee in recommending annulment has reached out to the relevant stakeholders; has looked at the merits and demerits of the action that they propose the House to adopt and in doing so, they have put the best interests of the Nation first.

A sinking fund is not a new thing. The sinking funds were first established in the United Kingdom in the 1700s. A sinking fund is established by a sovereign entity and they set aside revenue over a period of time to fund a future capital expenditure or repayment of a loan.

The sinking fund is generally funded by revenue surplus or budgetary surpluses. In our country over the last couple of years since the Kibaki days we have never had a budget surplus. We are in constant budget deficit. So we cannot have a surplus that we can set aside and say that this money is saved for a specific day when we will be repaying our loans.

In fact, it is quite an oxymoron that a country that does not have adequate resources to finance its development and has to go to foreign lenders to advance its loans would then set aside funds for payment of those loans. If we had the money in the first place, we would not even be going for those loans.

I think that the thinking is a little bit warped. Even though the PFM Act has provided the space for the CS, Treasury to establish a sinking fund, we must remember that this country has had a sinking fund that was established in the 1960s under the Internal Loans Act. From the 1960s to date that sinking fund has not been operationalized and currently there is a process of winding it down.

It would be important for the Treasury to tell us what they will do differently to ensure that this sinking fund is viable. As we have said we do not have a surplus that we can set aside for this.

Madam Deputy Speaker, I agree with the Committee on Delegated Legislation especially in its finding that the Central Bank of Kenya has not been appropriately consulted and represented in the proposed oversight and advisory board of the sinking fund.

The Central Bank of Kenya is a fiscal agent of the Government of Kenya and in many respects they have done well. It is my view that when it comes to the monetary policy the Central Bank of Kenya has done exceedingly well.

I want to laud the Governor of the Central Bank of Kenya and I know that he has been working hard to ensure that he builds the capacity of the CBK. Recently, he tapped into a very experienced person when it comes to matters of economics, a gentleman called Prof. Mudida to head the research department of the CBK. I believe if the CBK tells us that this sinking fund as proposed by the Treasury is not viable then we need to listen to them. The CBK as a fiscal agent of the Government, as the entity that manages the forex reserves of this country cannot be left out of the advice, operations and oversight of this sinking fund.

I want to conclude as I support the Committee by also saying that we have so many other budgetary priorities but ring-fencing funds and setting them in a pot somewhere for payment of loans might not be feasible. What we need to do is to ensure that our budget goes to fund productive sectors of the economy. If the wealth of a Nation is measured by the services and goods it produces what we should be doing is to fund and finance productive sectors, dairy livestock, agriculture, aquaculture, tourism and manufacturing. Those are the sectors that will generate wealth. It is through that wealth that we are going to get taxes, and through those taxes that we are going to get money to repay our debts.

Setting aside funds in this manner even though it is an economic practice sounds lazy to me. I think that the CS, Treasury should very much be concerned about enhancing the productivity of this economy so that we grow our GDP and our wealth.



Madam Deputy Speaker, I thank the Committee on Delegated Legislation because time and time again they have confirmed that the Senate is not a walkover when it comes to legislation through regulation.

I want to encourage the chairperson of this Committee to continue scrutinizing all the regulations that are brought to this House and bring back the reports in a timely manner because when they delay some of those regulations take effect automatically.

I want to urge the House to support the Committee in its findings. I want to ask the Treasury to go back to the drawing board; have a conversation with the CBK and all stakeholders; look at the bigger picture of growing the pie rather than ring-fencing and keeping money in a pot somewhere so that when they bring back regulations to this House, they will be regulations that will not be contested by key stakeholders within the sector.

Madam Deputy Speaker, I second.

*(Question proposed)*

**The Deputy Speaker** (Sen. (Prof.) Kamar: Sen. Olekina.

**Sen. Olekina:** Madam Deputy Speaker, I must admit that you caught me unaware and I am not fully ready but let me give the few points that I wanted to give.

**The Deputy Speaker** (Sen. (Prof.) Kamar: I will start with Sen. Ochillo-Ayacko.

**Sen. Olekina:** That would be really good.

**Sen. (Dr.) Ochillo-Ayacko:** Thank you, Madam Deputy Speaker for giving me an opportunity to make my remarks regarding this matter.

I would like to give accolade and positive tribute to the able chairperson of this Committee my learned friend and colleague and also a person we went with to the same university, for chairing this Committee, looking at the delegated legislation in time and making recommendations that show the independence of this Committee and this House.

The Senate and Parliament generally including the National Assembly are the ones that are empowered to legislate. We are the ones who are constitutionally given the responsibility to legislate. Delegated legislation is a short leash extended to certain entities to come up with legislation that would perfect or enable them discharge functions that arise from substantive legislation that is associated with performance of their function.

Madam Deputy Speaker, it is not their business or their core function to legislate.

Therefore, it is important for Parliament - the Senate and National Assembly - to be watchful of what they intend to do to encroach into the legislative mandate of the Senate.

Madam Deputy Speaker, I am happy with this Committee that is chaired by my able colleague and learned friend, Sen. Faki, when they have recommended that a thorough look needs to be made to this proposal by the National Treasury.

The National Treasury as an institution particular in this epoch has been very opaque. I am in the Senate Committee on Finance and Budget as Vice-Chair, and so, I speak with authority that National Treasury have never come forth been open or transparent when it comes to funds under their control and discretion.

We have something called the Equalization Fund that we have been completely unaware of or seen how it has been implemented. The Fund is something that has come

into being and was established pursuant to law. It has associated regulation and never been implemented or benefited anybody. You can see the opacity with which they have handled that fund. I doubt whether their handling of this fund they intend to set will be any different. If we are permitting the establishment of this fund under the same environment, I do not think the output would be any different.

I am in agreement with the Committee that we need to be watchful, not just with our two eyes, but with all our organs. We need to be watchful with our ears as we listen to what has been happening. We need to look at the history of the behavior of this National Treasury and to be sure that when we authorize this, it will be for the benefit of Kenyans.

Secondly, as you look at the economy and its performance today, everybody knows we are indebted up to our hair. We owe monies left, right and centre. We are forced to go to predictable sources for taxes such as fuel and others, in order to meet our financial revenue targets.

Why and what makes it urgent to establish a fund when how to put money into it is in doubt? Is it a priority to establish a fund now when we do not have funds and have so many pending bills that we are not paying? Where will we get money and resources to sink into this sinking fund?

Since it appears that we do not have excess funds for sinking into this sinking fund, I doubt whether it is our priority to establish this Fund, unless a magic wand would emerge from the current National Treasury to put money into this fund.

Madam Deputy Speaker, looking at our public institutions that are expecting funds from the National Treasury, the Judiciary is crying foul and screaming for quick disbursement of what is in their budget. All these 47 counties, including your own Madam Deputy Speaker, Uasin Gishu, have not been funded, and workers out there in Uasin Gishu have not got their share of revenue.

In Migori County where I come from, the county assembly is yet to pay Members and staff, workers have not been paid and pending bills are heaped and lying there without being paid. Why is it that the National Treasury are in a hurry to establish a sinking fund, when in the first place they do not have funding and are unlikely to have funding to put there?

I smell mischief. I believe there is no urgency. We should listen with all our organs, including our intuition, ears, stomachs and senses, to know why these regulations are of such an urgent nature that we need to establish the sinking fund. My gut feeling says that what the Senate Committee on Delegated Legislation has smelled is what we all need to smell.

I support the position of the Senate Committee on Delegated Legislation has arrived at with my mind, spirit and belief and agree with them in entirety that we send this proposal back to the National Treasury and ask them to come out and tell us what we have not been told about it.

I beg to support.

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

**Sen. Olekina:** Thank you, Madam Deputy Speaker for allowing me to compose my few words. I rise to support the Report by the Senate Committee on Delegated Legislation in terms of their findings with regard to setting up of a sinking fund in this country.

Sometimes I ask myself whether what is written on paper can become practical in this country. Looking at the current devolved government structure, many of the county governments are complaining that employees and Members of County Assemblies (MCAs) have not been paid. Up to last week, most counties were not sure of when they would ever get money. But, here, we have the National Treasury working on their own without consulting even the Central Bank of Kenya (CBK), decide that the Kenyans economy is doing so well such that we have extra money we can set aside to pay for future loans. Currently, we are struggling to pay the existing loans.

I am very happy with the work done by the Committee because they have made it easy for Kenyans to understand what is happening in this country. In layman terms, a sinking fund is where one sets money aside that does not earn any interest. It means you have so much money that you are capable of paying all the current loans and you have a perfect economy. It also means that everyone in the 47 counties is being paid their salary on time and doctors are not striking because the county governments are not able to meet their contracts.

In fact, in basic terms, it means you are setting money aside for a Christmas holiday in the Bahamas. You have enough money right now. You want to wait until Christmas time when you do not have to save money then but can go back to the sinking fund to get money for enjoyment.

National Treasury should be telling that because they do not have a lot of money they want to work with CBK such that they can negotiate on either current or future loans and can restructure their loans.

Last year, when we were having the debate on the debt ceiling, the National Treasury gave the reason they wanted to increase the debt ceiling. They told us they were doing so to restructure their loans. Today, they are telling us that they are doing so well such that they have paid everyone, sent money to county governments on time and now they have enough to set up a sinking fund. Is that not an oxymoron?

I think we need to be alive to the fact in this country what is written on paper is not the reality out there. We have so many ways that we should be exploring. Instead of putting aside money that does not earn any interest, we should ask ourselves whether we are biting more than we can chew.

We have never had a problem paying for these loans since Independence. In fact, if it is on a credit report, our credit is good. It is not like the millions of Kenya who are listed in Credit Reference Bureau (CRB). Currently, every country wants to do business with Kenya because we pay our loans. The moment we start setting money aside to pay future loans, we will have problems in meeting our obligations.

Madam Deputy Speaker, I am requesting the National Treasury that before they come up with any regulation to consult. I know there is a parastatal called Kenya Institute for Public Policy Research and Analysis (KIPPRA). They should sit with that body and the Central Bank of Kenya utilize the intelligence of its members and find out what we are doing wrong.

Everyone talks about the issue of this country being broke. When did we stop being broke such that we have enough money to set aside?

Last year, we kept our counties waiting to receive money and we were engaged in a debate where we voted for more than 10 times on the revenue formula. Most of us who were in the 'no' and could sit down and do mathematics were asking ourselves where we

will get the extra Kshs42 billion to send to counties. Cleverly, the Executive played with our minds and added Kshs70 billion. What they did not tell us is that they were taking all the conditional grants and lumping all the money and giving it out to the counties.

I am happy that this Senate is alive to the fact that conditional grants cannot be sharable revenue. That is the reason why we had to come up with the conditional grant legislation. It enabled us to be sending money to the counties as conditional grant.

Madam Deputy Speaker, I fully support this report.

This will fall into the Committee of my good friend, Sen. Faki. I appreciate what he has done. He has saved this country and the future generations. Let us not just do things for the sake of it.

Earlier on, I stated on the Floor of this House that we can never tax Kenyans for posterity. The taxes that we are increasing on our Kenyans are killing them. I send this message to the National Treasury, if we have enough money such that we can set up sinking fund, let us start by cutting down taxes that we are taxing Kenyans.

Madam Deputy Speaker, if you buy a simple product from abroad, it will you Kshs50,000. However, here in Kenya, it will cost you Kshs150,000.

Look at fuel as an example. The cost of bringing fuel into this country is Kshs56, but we end up paying Kshs110 per litre because of taxes. This is the debate we normally have every 14<sup>th</sup> of every month.

I believe that my good friend, Hon. Ukur Yattani, means well for this country. Before forwarding anything to Parliament, he should sit down with his people and tell them 'no, it is enough'.

Madam Deputy Speaker, if there is anyone out there who does not notice this country is bleeding and that every single penny which is out there should be sent to counties to fix roads rather than putting it aside, that person needs to wake up. We must learn to live within our means and stop the utopian thinking that if we set up some money aside, we have taken care of everything.

With those few remarks, I support and fully appreciate the work of Sen. Faki on this matter.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you, Senator. There being no other request, I call upon the Chairperson of Delegated Legislation----

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

**The Deputy Speaker** (Sen. (Prof.) Kamar): Sen. Wetangula, you had not pressed earlier.

**Sen. Wetangula:** Madam Deputy Speaker, I was in some discussion with some Senators there.

I support this report and thank the distinguished Senator for Mombasa County for a well-done job.

Our country has done well, but it has not done so well in many respects. We have done well to the extent that we are not one of the notorious loans defaulters. In fact, we are not a loan defaulter in any way in our borrowings. However, we have not done so well because we borrow heavily to the extent that in the 1990s, we were spending over 35 per cent of our Gross Domestic Product (GDP) in debt service and now we are spending even more.

Debt service is a heavy burden on our economy. When we have such burden on our economy, we cannot enjoy the luxuries of having a Sinking Fund by putting money in

an escrow account. It lies there, earns no interest and no purpose other than when we are under stress, we can use it to service our debts and when we are not a defaulter and when there is no lender threatening to take us to the Paris Club, the place where many defaulting countries get arraigned.

The conspiracy of international capital is that a default of payment loans to Germany, France, United States of America (USA), United Kingdom (UK), China or Japan are all arraigned before an informal sitting called Paris Club where you are blacklisted. If the Germans blacklist you, automatically you are blacklisted by all the Western lenders.

This money that has been in this account has not been run transparently or earning interest. As the Constitution, 2010, requires we need free flow of information, particularly to Houses of Parliament.

One would expect the National Treasury to bring a Statement of this account to Parliament annually for the House to know how much money there is. When such a Fund is established and when money is taken out, they need the authority of Parliament. However, we have never had any such engagements with them. So, the wisdom of Sen. Faki and his team to annul the regulations that sets out this Fund is laudable.

As the Senator for Narok County has said, medics are crying that they are not being paid. Counties are crying that money is not going there in good time. Projects are stalling because there is not enough money to keep them going yet there is money lying in an account that is idle and does nothing.

It is like what they do in the Ministry of Energy when you want to use the pipeline, you put a million litres of fuel called dead stock which is to fill your void in the pipeline. You do not use it nor benefit from it, but it is there. That is a luxury nobody in business can afford.

I strongly support this report. It will lift a lid on a discomfort that I am sure that even the National Treasury has been suffering by putting money somewhere and they do not touch it.

What I expect and I thought that my colleague from Narok County would go that far is that what we need is to create structures for our sovereign fund to keep proceeds from our extractive industries, including oil and minerals, with a maturity period that is strict just like the way Sweden and Norway have done.

Once money is put in the Sovereign Account, it matures after 50 years. The economies of Norway and Sweden are awash with monies maturing from the time they started their oil exports and wealth generation.

Madam Deputy Speaker, we need the Committee on Finance and Budget and Sen. Faki's Committee to start engaging the National Treasury on how to craft very tight regulations for creation of a Sovereign Fund that will be handy in future.

The good thing with a Sovereign Fund is that if you open an interest earning account, you do not touch it until maturity. When it matures, it is then released to boost the economy. That way, we will be using our resources more prudently than putting our money in a Sinking Fund.

I support the report and thank the Committee for a well-done job.

**The Deputy Speaker** (Sen. (Prof.) Kamar): I can see another Member who wants to contribute. Proceed, Sen. Madzayo.

**Sen. Madzayo:** Asante Bi. Naibu wa Spika. Kwanza ningependa kumpa kongole Seneta wa Mombasa, Mohammed Mwinyihaji Faki kwa kuleta Ripoti hii kuhusu hii Hazina.

Nina sababu tatu za kumuunga mkono. Kwanza ni kwamba hii ni Hazina ya Kuzama kwa sababu ni kitu ambacho kinatarajiwa kwa kuwa si kitu cha hivi sasa. Inasemekana kwamba Hazina hii itatuwezesha kulipa madeni ama mikopo ya siku za usoni. Hilo si jambo sawa kwa sababu huwezi kuchukua pesa sasa hivi ukaziweka kwenye shimo kisha useme kuwa zitakuwezesha kulipa madeni ya siku za usoni.

Jambo la pili ni kwamba hakuna hata siku moja ambapo Serikali ama nchi yetu imeshindwa kulipa madeni yake. Huwa tunafanya mipango ili madeni yote yalipwe. Sasa hivi kuna mabwenyenye wanaotumia akili. Kanuni za Hazina hiyo zinazotakikana kuwekwa na Benki Kuu ya Kenya ziko katika Hazina Kuu ya Taifa.

Kuna watu katika Benki Kuu ya Kenya wanaotakikana kuhusika katika Hazina ya Kuzama. Wanafaa kuchangia na kuona kwamba sheria mwafaka zinafuatwa. Jambo la kusikitisha ni kwamba hawahusiswi katika kuangalia mambo ambayo yanaendelea katika Ofisi ya Fedha.

Sababu ya mwisho ni kwamba usimamizi unaotakina kuangalia matumizi ya pesa sharti ufanywe kwa kuhusisha taasisi mbili. Kuna Benki Kuu ya Kenya na Hazina ya Taifa. Kulingana na sheria, ikiwa taasisi moja haihusiswi katika kamati inayoangalia jinsi pesa zinavyotumiwa, basi kutakuwa na shida kubwa kwa sababu hao ndio wanaoweza kuangalia matumizi ya pesa ama jinsi madeni yanavyolipwa.

**The Deputy Speaker** (Sen. (Prof.) Kamar): I can see another request by Sen. (Prof.) Ongeru.

**Sen. (Prof.) Ongeru:** I thought I heard Sen. Cherargei. That is why I did not stand up immediately. I was looking at him.

Madam Deputy Speaker, this is a good decision by the Committee on Delegated Legislation. Let me take the earliest opportunity to thank the Senate Business Committee (SBC) for having allocated me to be a Member of that Committee. Obviously, I will play my role.

One of the major elements in these regulations is in respect of the Sinking Fund. Normally, a Sinking Fund is a good idea. It is not a strange idea to anybody. Even at a family level, when you want to save for a specific purpose such as holiday or buying your spouse or children something specific, you set aside some funds so that when the time comes, you are able to buy it, or do it with ease. However, there is an issue that arises in these particular guidelines of 2021. The idea of Sinking Fund was set at Independence in 1963. Up to date, it has never been operationalised. What we are witnessing today is piling up of pending bills.

When I was the Chairperson of the CPAIC, one of the issues that we noticed was that there are so many pending bills that have not been paid by either the national or county governments or defunct local authorities. Therefore, it is a carryover from the past to the present. That is why it becomes very difficult to operationalise the current budgets, whether national, county governments or parastatals because of the pending bills.

One of the biggest impediments to the growth of the economy is non-payment of bills that have been incurred by very good suppliers who give their goods or do their services properly, but they are not paid. As a result, many of them have become bankrupt.

What is the need of setting up a Sinking Fund which has not been operationalised since 1963? Today, we intent to come up with new guidelines to operationalise it? What objective do we want to achieve?

We have been crying about our debt ratio all the time and that the ceiling is so high and that it will be dangerous at this stage. Of importance is that we have the Central Bank of Kenya Act which is obviously in conflict with the guidelines being set out by the National Treasury.

One of the other elements that we need to be cagey and wary about is how the National Assembly or the Senate can have access to oversight these funds. When you give a carte blanche to the National Treasury to spend money that they have put aside when their own regulations are in conflict with the Central Bank of Kenya Act, how will the National Assembly or this Senate oversight those funds being set aside for a specific purpose?

I want to thank the Chairperson of the Committee on Delegated Legislation for having taken this timely action because if we do not do so, it will be one way of putting money to a sinking hole. People will gather the money and one morning, somebody will wake up and apply it to a specific item.

They will say that it was a decision of the officials and mandarins of the National Treasury. Therefore, they decided that this money must go to specific item without any plan, oversight or audit whatsoever. There is no indication on how that money is going to be spent in one level or the other.

Madam Deputy Speaker, I see it as a very dangerous process. If we allow this to proceed the way it is now and these guidelines are carried through, it will be very dangerous for us. We may be creating another hole where money will be sunk without the knowledge of the legislative arms of this Government.

I support the cancellation of these regulations because they have no basis upon which they must exist.

I thank you, Madam Deputy Speaker.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Finally, Sen. (Eng.) Hargura.

**Sen. (Eng.) Hargura:** Thank you, Madam Deputy Speaker. I would like to support the Committee on Legislated Devolution's position on the Sinking Fund Regulations. I would like to join my colleagues in stating that the law has been in place for a very long time, but it also takes long to come up with the legislation.

If you look at the kind of budgets we have been operating for the last few years, we have been having a very high deficit. We continuously had to borrow. We have been going into debt because of that borrowing. However, the idea behind this fund is supposed to be setting aside funds that can be used in future to pay debts and redeem bonds.

As it is now, we do not have that luxury because we have a lot of deficit. Instead of living within our means, we have always been having budgets where we are servicing debts of up to a trillion shillings and still borrow about a trillion shillings each year to service our budget while we are still paying debts.

I do not know how someone will be thinking of setting aside funds when we are not even living within our means. We are still digging ourselves deeper into debt instead of concentrating on how to come up with a budget which we can sustainably finance.

From experience of what we have been seeing in this country, if we create these kind of funds, they might be subject to other abuses which will not meet the intended purpose.

Madam Deputy Speaker, I support the Committee's decision to reject these regulations. Instead, we urge the National Treasury to concentrate on how to come up with a budget that we can sustainably fund. They should see how we can make sure that we only budget for what we can sustain with our own funding, and see how we are going to manage the debt which we have dug ourselves into. In future, once we get to a surplus budget, we can be thinking of these funds.

Otherwise, it might be suspect coming up with these regulations at this time. We might be setting aside regulations which would have gone ahead to improve the economy of this country and provide employment so that the economy itself will generate the extra funds which will now necessitate these kinds of funds. At the right time, we can have this kind of legislation.

I support the Committee's position.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you, Senators. May I now call on the Chairperson of the Committee on Delegated Legislation to give a response.

**Sen. Faki:** Thank you, Madam Deputy Speaker. First of all, I wish to thank all the Senators that have contributed to this Motion. I want to assure the Senate that we shall consider all other regulations that come to our Committee impartially and to the best interest of the country.

Secondly, I want to thank the Governor of the Central Bank of Kenya (CBK), Dr. Njoroge, for his able presentation before the Committee. When we met the Governor on the 7<sup>th</sup>, he took time to take us through the regulations and the fears that the CBK had concerning them.

He was unequivocal that at the moment, the country does not need this fund. He said that what was needed was a proper strategy to manage our debt so that the debts that we are incurring are ably utilized properly and the country achieves economic prosperity as we move along.

He also informed us that there were many alternatives that can be applied to manage the debt as opposed to the sinking fund which will result in setting aside funds to lie idle without any economic activity. He informed us that he will be meeting the Senate Committee on Finance and Budget soon to discuss the debt issue. I will invite Members of the Committee on Finance and Budget and any other Senator that will be available to attend this meeting because it will be an eye opener on the work that we do in this House.

Madam Deputy Speaker, I finally want to thank the Speaker and the Secretariat of the Committee for their able assistance to the Committee in the consideration of these regulations and any other regulations that are coming to this Committee. Pursuant to Standing Order 61 (1), I beg to move that the putting of the question be deferred to a later date.

Thank you, Madam Deputy Speaker.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you, Senator. I will defer the putting of the question.

*(Putting of the Question on the Motion deferred)*

Next Order.



I will request the Clerk to read all the Committee of the Whole orders so that we report all of them at the same time. We shall now move to the Committee of the Whole.

### COMMITTEE OF THE WHOLE

*(Order for Committee read)*

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

### IN THE COMMITTEE

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

#### THE COUNTY GOVERNMENTS GRANTS BILL (SENATE BILLS NO. 35 OF 2021)

**The Temporary Chairperson** (Sen. Nyamunga): Hon. Senators, we are now in the Committee of the whole. The first Bill we will consider is the County Governments Grants Bill, (Senate Bills No.35 of 2021).

#### *Clause 3*

**Sen. (Dr.) Ochillo-Ayacko:** Madam Temporary Chairperson, I beg to move-  
THAT the Bill be amended in Clause 3-  
(a) by deleting the phrase “187(2) and” appearing immediately after the words “to Article” in paragraph (a); and  
(b) by deleting paragraph (b) and substituting therefor the following new paragraph-  
(b) facilitate the transfer of conditional and unconditional allocations made to counties under this Act from the Consolidated Fund to the respective County Revenue Funds and special purpose accounts.

*(Question of the amendment proposed)*

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

#### *Clause 4*

**Sen. (Dr.) Ochillo-Ayacko:** Madam Temporary Chairperson, I beg to move:  
THAT the Bill be amended by deleting Clause 4.

*(Question of the amendment proposed)*

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

*Clause 5*

**Sen. (Dr.) Ochillo-Ayacko:** Madam Temporary Chairperson, I beg to move-  
THAT the Bill be amended by deleting Clause 5.

*(Question of the amendment proposed)*

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

*Clause 6*

**Sen. (Dr.) Ochillo-Ayacko:** Madam Temporary Chairperson, I beg to move-  
THAT the Bill be amended by deleting Clause 6.

*(Question of the amendment proposed)*

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

*Clause 7*

**Sen. (Dr.) Ochillo-Ayacko:** Madam Temporary Chairperson, I beg to move: -  
THAT the Bill be amended by deleting Clause 7.

*(Question of the amendment proposed)*

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

*Clause 8*

**Sen. (Dr.) Ochillo-Ayacko:** Madam Temporary Chairperson, I beg to move-  
THAT Clause 8 of the Bill be amended –

(a) in subclause (1) by-

(i) inserting the words “share of revenue” immediately after the words  
“from national government” in the introductory phrase;

(ii) deleting the word “Second” appearing immediately after the words  
“Column B of the” in paragraph (a) and substituting therefor the word “First”;

(iii) deleting the word “Second” appearing immediately after the words  
“Column C of the” in paragraph (b) and substituting therefor the word “First”;

(b) in subclause (2) by –

(i) deleting the word “Third” appearing immediately after “Column B of the” in  
paragraph (a) and substituting therefor the word “Second”;

(ii) deleting the word “Third” appearing immediately after “Column C of the” in  
paragraph (b) and substituting therefor the word “Second”;

(iii) deleting the word “Third” appearing immediately after “Column D of the” in  
paragraph (c) and substituting therefor the word “Second”;

(iv) deleting the word “Third” appearing immediately after “Column E of the” in paragraph (d) and substituting therefor the word “Second”;

(v) deleting the word “Third” appearing immediately after “Column F of the” in paragraph (e) and substituting therefor the word “Second”;

(vi) deleting the word “Third” appearing immediately after “Column G of the” in paragraph (f) and substituting therefor the word “Second”;

(vii) deleting the word “Third” appearing immediately after “Column H of the” in paragraph (g) and substituting therefor the word “Second”;

(viii) deleting the word “Third” appearing immediately after “Column I of the” in paragraph (h) and substituting therefor the word “Second”;

(ix) deleting the word “Third” appearing immediately after “Column J of the” in paragraph (i) and substituting therefor the word “Second”;

(x) deleting the word “Third” appearing immediately after “Column K of the” in paragraph (j) and substituting therefor the word “Second”;

(xi) deleting the word “Third” appearing immediately after “Column L of the” in paragraph (k) and substituting therefor the word “Second”;

(xii) deleting the word “Third” appearing immediately after “Column M of the” in paragraph (l) and substituting therefor the word “Second”;

(c) by inserting the following new subclause immediately after subclause (3)-

(3A) A county government’s allocation under subsection (2) shall be transferred to the respective county revenue fund in accordance with a payment schedule published in the Kenya Gazette by the Cabinet Secretary in accordance with section 17 of the Public Finance Management Act.

(d) by deleting the words “subsection 1(b)” appearing immediately after the words “allocations under” and substituting therefor the words “subsections (1) and (2)”; and

(e) by deleting subclause (6).

*(Question of the amendment proposed)*

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

*Clause 9*

**Sen. (Dr.) Ochillo-Ayacko:** Madam Temporary Chairperson, I beg to move -

THAT, Clause 9 of the Bill be amended by inserting the words “by the 15<sup>th</sup> day of each subsequent month” immediately after the words “Secretary shall publish”.

*(Question of the amendment proposed)*

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

*Clause 10*

*(Question that Clause 10 be part of the Bill, proposed)*

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

*Clause 11*

**Sen. (Dr.) Ochillo-Ayacko:** Madam Temporary Chairperson, I beg to move-  
THAT, Clause 11 of the Bill be amended-

- (a) In paragraph (c) by deleting the words “or framework” appearing immediately after the words “the intergovernmental agreement; and
- (b) in paragraph (d) deleting the words “of framework” appearing immediately after the words “an intergovernmental agreement”.

*(Question of the amendment proposed)*

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

*Clause 12*

**Sen. (Dr.) Ochillo-Ayacko:** Madam Temporary Chairperson, I beg to move: -  
THAT clause 12 of the Bill be amended –

(a) in paragraph (a) by deleting the marginal note in the proposed new section 42 and substituting therefor the following new marginal note - Consideration by Parliament of Bills allocating revenue and additional allocations.

(b) by inserting the following new paragraph immediately after paragraph (a) –

(aa) by inserting the following new sections immediately after section 138 –

Intergovernmental agreements. 138A. (1) The National Treasury shall enter into an agreement with the respective county government for the transfer of the respective conditional allocation made to the county government pursuant to this Act.

(2) An agreement under subsection (1) shall set out any conditions that may be attached to the conditional allocations made under this Act.

(3) Where a county government intends to enter into an agreement under subsection (1), the county executive committee member shall submit the agreement to the respective County Assembly for approval.

(4) The County Assembly shall, within fourteen days of submission of an agreement under subsection (3), approve or reject the agreement.

(5) Where a County Assembly fails to consider an agreement under subsection (3) within fourteen days, the agreement shall be deemed to be approved.

(6) An agreement under subsection (1) shall set out all conditions attached to an allocation made under this Act.

(7) The respective county government shall forward the agreement approved under this section to the Controller of Budget within seven days of approval.

Public participation. 138B. The county executive committee member shall facilitate public participation on any agreement made pursuant to section 138A.

Execution of agreement for conditional allocation. 138C. An agreement under section 138A shall be –

(a) signed by an authorized person or officer; and (b) published in the Kenya Gazette within a period of seven days of the agreement.

Submission to Senate. 138D. (1) The National Treasury shall, within seven days of entering into an agreement under section 138A, submit to the Senate and the Controller of Budget, the agreement together with any other documents relating to the agreement.

Requisition of funds (2) The National Treasury shall publish and publicize all agreements entered into pursuant to section 138A. 138E. Requisition of funds from the county revenue fund for the purposes of a conditional grant shall be supported by the intergovernmental agreement approved under section 138A.

(c) by deleting paragraph (b) and substituting therefor the following new paragraph- (b) in section 191 by-

(i) deleting the marginal note and substituting therefor the following new marginal note Bills allocating revenue and additional allocations.

(ii) deleting subsection (1) and substituting therefor the following new subsection- (1) Each year when the Budget Policy Statement is introduced, the Cabinet Secretary shall submit to Parliament a Division of Revenue Bill, a County Allocation of Revenue Bill and a Bill relating to the allocation and transfer of additional allocations under Article 202(2) of the Constitution prepared by the National Treasury as provided in this Act for the financial year to which that Budget relates.

(iii) deleting subsection 3(b);

(iv) inserting the following new subsection immediately after subsection (3)

(3A) A Bill making allocations under Article 202(2) of the Constitution shall specify any other allocations to the counties from the national government's share of that revenue and any conditions to which those allocations shall be made.

*(Question of the amendment proposed)*

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

*New Clause 13*

**Sen. (Dr.) Ochillo-Ayacko:** Madam Temporary Chairperson, I beg to move-

THAT the Bill be amended by inserting the following new clause immediately after clause 12-

13. (1) The requirements under sections 138A to 138D of the Public Finance Management Act shall not apply to the 2021/2022 financial year.

(2) The conditional grants for the financial year 2021/2022 shall be disbursed in accordance with the provisions of the Public Finance Management Act.

*(New Clause 13 was read a First time)*

*(Question, that New Clause 13 be read a Second Time, proposed)*

*(Question that New Clause 13 be part of the Bill proposed)*

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

*First Schedule and Second Schedule*

*(Question that First Schedule and Second Schedule be part of the Bill, proposed)*

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

*Clause 2*

**Sen. (Dr.) Ochillo-Ayacko:** Madam Temporary Chairperson, I beg to move— THAT the Bill be amended in clause 2 –

(a) in the definition of the term “agreement” by deleting the word “subsection” appearing immediately after the words “into under”;

(b) in the definition of the term “conditional allocations” by deleting the words “revenue raised nationally” appearing immediately after the words “governments from” and substituting therefor the words “the national government’s share of revenue”;

(c) by inserting the following definitions in their proper alphabetical order— “authorized person”-

(a) in relation to the national government shall be the principal secretary responsible for matters relating to finance or a person appointed by that principal secretary in writing;

(b) in relation to a county government shall be the county executive committee member responsible for matters relating to finance or a person appointed by that county executive committee member in writing.

*(Question of the amendment proposed)*

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

*Long Title*

**Sen. (Dr.) Ochillo-Ayacko:** Madam Temporary Chairperson, I beg to move—

THAT the Bill be amended by deleting long title and substituting therefor the following new title—

AN ACT of Parliament to provide for the additional allocations to county governments for the 2021/2022 financial year; the responsibilities of national

government and county governments pursuant to such allocation; and for connected purposes.

*(Question of the amendment proposed)*

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

*Clause 1*

*(Question that Clause 1 be part of the Bill, proposed)*

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

**Sen. (Dr.) Ochillo-Ayacko:** Madam Temporary Chairperson, pursuant to Standing Order No.148(1), I beg to move-

THAT the Committee of the Whole do report to the House its consideration of the County Governments Grants Bill (Senate Bill No.35 of 2021) and seek leave to sit again tomorrow.

*(Question proposed)*

*(Question put and agreed to)*

THE MENTAL HEALTH (AMENDMENT) BILL  
(SENATE BILLS NO. 28 OF 2020)

*Clauses 2, 3 and 4*

*(Question that Clauses 2, 3 and 4 be part of the Bill, proposed)*

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

*Clause 5*

**Sen. (Dr.) Mbiti:** Madam Temporary Chairperson, I beg to move-

THAT Clause 5 of the Bill be amended in the proposed new section 2E (5)

by—

(a) deleting paragraph (e) and substituting therefore the following new paragraph—

(e) is removed by the county executive committee member for being unable to perform the functions of the office by reason of mental or physical infirmity.

(b) inserting the following new sub clause immediately after sub clause (5)

(5A) Before the removal of a member under subsection (5)(e), the county executive committee member shall request the Council to—

(a) investigate the circumstances giving rise to the proposed removal; and

(b) make recommendations on whether or not the member should be removed from office.

*(Question of the amendment proposed)*

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

*Clauses 6 and 7*

*(Question that Clauses 6 and 7 be part of  
the Bill, proposed)*

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

*Clause 8*

**Sen (Dr.) Mbiti:** Madam Temporary Chairperson, I beg to move -

THAT Clause 8 of the Bill be amended by deleting the proposed new section 4B and substituting therefor the following new section—

Removal of Member of Board from office for —  
4B. (1) A member of the Board may be removed from office—

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct;
- (c) incompetence or negligence of duty; or
- (d) any other ground that would justify removal from office under any written law.

(2) Before the removal of a member of the Board under subsection (1)(a), the Cabinet Secretary shall request the Board to—

- (a) investigate the circumstances giving rise to the proposed removal; and
- (b) make recommendations on whether or not the member should be removed from office.

*(Question of the amendment proposed)*

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

*Clauses 9-14*

*(Question that Clauses 9, 10, 11, 12, 13 and 14 be  
part of the Bill proposed)*

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

*Clause 15*



**Sen. (Dr.) Mbiti:** Madam Temporary Chairperson, I beg to move-  
THAT Clause 15 of the Bill be amended -

- (a) in the proposed new section 9D by inserting the following new paragraph immediately after paragraph (e)—
  - (ea) the number of mental health patients admitted on an emergency basis that the mental health facility or unit has discharged, are still under its care or have died in the course of treatment;
- (b) in the proposed new section 9F(2) by inserting the words “side effects” immediately after the words “likely duration” in paragraph (b).

*(Question of the amendment proposed)*

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

*Clauses 16-31*

*(Question that Clauses 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31 be part of the Bill, proposed)*

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

*Clause 32*

**Sen. (Dr.) Mbiti:** Madam Temporary Chairperson, I beg to move-

THAT clause 32 of the Bill be amended in the proposed new section 20A (2) by inserting the following new paragraph immediately after paragraph (b) —

- (ba) a supporter of the person with mental illness;

*(Question of the amendment proposed)*

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

*Clause 33*

**Sen. (Dr.) Mbiti:** Madam Temporary Chairperson, I beg to move-

THAT Clause 33 of the Bill be amended in the proposed new section 21 by inserting the words “A person” immediately before the word “with mental illness” in subsection (2).

*(Question of the amendment proposed)*

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

*Clauses 34-37*

*(Question that Clauses 34, 35, 36 and 37 be part of the Bill, proposed)*

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

*Clause 38*

**Sen. (Dr.) Mbiti:** Madam Temporary Chairperson, I beg to move—  
THAT Clause 38 of the Bill be amended by deleting paragraph (a) and substituting therefor the following new paragraph—

(a) subsection (1) and substituting therefor the following new subsection—

(1) The person in charge or a mental health practitioner in charge of any patient shall enable communication by the patient through letters, telephone calls and emails to the recipients where practicable.

*(Question of the amendment proposed)*

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

*Clauses 39-49*

*(Question that Clauses 39, 40, 41, 42, 43, 44, 45, 46, 47, 48 and 49 be part of the Bill, proposed)*

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

*Clause 50*

**Sen. (Dr.) Mbiti:** Madam Temporary Chairperson, I beg to move—  
THAT the Bill be amended by deleting Clause 50 and substituting therefor the following new clause—

Amendment of section

54 of Cap. 248.

50. The Principal Act is amended by deleting section 54 and substituting therefor the following section—  
Regulations.

54. The Cabinet Secretary shall, in consultation with the Board and the Council of County Governors, make regulations—

(a) prescribing the form of the supportive decision making agreement;

(b) generally regulating the equipping, administration, control and management of mental health units;

(c) for the care, treatment and rehabilitation of person with mental illness;

(d) prescribing the procedure of admission of out-patient patients; and (e) for the better carrying out of the provisions of this Act.

*(Question of the amendment proposed)*

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

*Clauses 51-52*

*(Question that Clauses 51 and 52 be part of the Bill, proposed)*

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

**Sen. Kasanga:** Madam Temporary Chairperson, pursuant to Standing Order No. 148(1), I beg to move-

THAT the Committee of the Whole do report to the House its consideration of the Mental Health (amendment Bill) (Senate Bill No.28 of 2020) and seek leave to sit again tomorrow.

*(Question proposed)*

*(Question put and agreed to)*

**The Temporary Chairperson** (Sen.) Nyamunga): Let us have the Chairperson, Senate Committee on Education, Sen. (Dr.) Milgo).

THE BASIC EDUCATION (AMENDMENT) BILL  
(SENATE BILLS NO.4 OF 2021)

*Clause 3*

**Sen. (Dr.) Milgo:** Madam Temporary Chairperson, I beg to move-

THAT Clause 3 of the Bill be amended in the new Clause 38A by inserting the following new sub-clause immediately after sub-clause (3)—

(4) The Cabinet Secretary shall put in place measures to ensure that alternatives to milk are available for learners who are lactose intolerant.

*(Question of the amendment proposed)*

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

*Clause 2, the Title and Clause 1*

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

**The Temporary Chairperson** (Sen. Nyamunga): Division will be at the end.  
Sen. Olekina, you are reporting on behalf of Sen. Kwamboka.

**Sen. Olekina:** Madam Temporary Chairperson, pursuant to Standing Order No. 148, I beg to move that the Committee of the Whole do report progress on its consideration of the Basic Education (Amendment) Bill (Senate Bills No.4 of 2021) and seek leave to sit again tomorrow.

*(Question proposed)*

*(Question put and agreed to)*

**The Temporary Chairperson** (Sen. Nyamunga): Hon. Senators, we are now proceeding to the County Licensing, (Uniform Procedures) Bill (Senate Bills No.32 of 2020).

Sen. Chebeni will move the amendments on behalf of the Chairperson of the Committee.

THE COUNTY LICENSING (UNIFORM PROCEDURES) BILL  
(SENATE BILLS NO.32 OF 2020)

*Clause 3*

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

(a) deleting paragraph (a) and substituting therefor the following new paragraph-

(a) the need to protect consumers of goods and services, ensure public safety and promote environmental protection;

(b) in paragraph (b) by inserting the word “not” immediately after the words “manner that does”; and

(c) in paragraph (c) by inserting the words “and in accordance with the provisions of the Access to Information Act” immediately after the words “and licensing procedures”.

*(Question of the amendment proposed)*

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

*Clauses 4, 5 and 6*

*(Question that Clauses 4, 5 and 6 be part of the Bill, proposed)*

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

*Clause 7*

**Sen. Chebeni:** Madam Temporary Chairperson, I beg to move-  
THAT Clause 7 of the Bill be amended-

(a) by deleting subclause (2) and substituting therefor the following new subclause-

(2) A licensing authority shall, within three years of the commencement of this Act, put in place mechanisms to enable the electronic application for, renewal, transfer or replacement of a licence or a variation of a condition for the issuance of a licence.

*(Question of the amendment proposed)*

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

*Clauses 8-15*

*(Question that Clauses 8, 9, 10, 11, 12, 13, 14, and 15 be part of the Bill, proposed)*

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

*Clause 15*

**Sen. Chebeni:** Madam Temporary Chairperson, I beg to move-  
THAT clause 15 of the Bill be amended in subclause (1) by inserting the words “in writing” immediately after the words “shall inform”.

*(Question of the amendment proposed)*

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

*Clauses 16-18*

*(Question that Clauses 16, 17 and 18 be part of the Bill, proposed)*

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

*Clause 19*

**Sen. Chebeni:** Madam Temporary Chairperson, I beg to move-  
THAT clause 19 of the Bill be amended in subclause (2) by inserting the words “and through such other media as the authority shall consider appropriate” immediately after the words “nationwide circulation”.

*(Question of the amendment proposed)*

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

*Clauses 20 and 21*

*(Question that Clauses 20 and 21 be part of the Bill, proposed)*

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

*Clause 22*

**Sen. Chebeni:** Madam Temporary Chairperson, I beg to move-  
THAT Clause 22 of the Bill be amended by deleting paragraph (b).

*(Question of the amendment proposed)*

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

*Clauses 23-28*

*(Question that Clauses 23, 24, 25, 26, 27 and 28  
be part of the Bill proposed)*

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

*Clauses 23 24, 25, 26, 27 and 28*

*(Question that Clauses 23, 24, 25, 26, 27  
and 28 be part of the Bill proposed)*

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

*The Title*

*(Question that the Title be part of the Bill proposed)*

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

*Clause 1*

**Sen. Chebeni:** Madam Temporary Chairperson, I beg to move-  
THAT the Bill be amended by deleting Clause 1 and substituting therefor  
the following New Clause-

Short title and

1. This Act may be cited as the County Licensing (Uniform

Commencement.

Procedures) Act, 2021 and shall come into operation upon the expiry of six months from the date of assent of this Act.

*(Question of the amendment proposed)*

**Sen. Chebeni:** Madam Temporary Chairperson, pursuant to Standing Order No.148, I beg to move that the Committee of the Whole do report progress on its consideration of the County Licensing (Uniform Procedures) Bill (Senate Bills No.32 of 2020) and seek leave to sit again tomorrow.

*(Question proposed)*

*(Question put and agreed to)*

**The Temporary Chairperson** (Sen. Nyamunga): Hon. Senators, we will now proceed to the Salaries and Remuneration Commission (Amendment) Bill (Senate Bills No.31 of 2020). It was committed to the Committee on Finance and Budget. Sen. (Dr.) Ochillo-Ayacko is the Mover.

THE SALARIES AND REMUNERATION COMMISSION  
(AMENDMENT) BILL (SENATE BILLS NO.31 OF 2020)

*Clause 2*

**Sen. (Dr.) Ochillo-Ayacko:** Madam Temporary Chairperson, I beg to move- THAT Clause 2 of the Bill be amended by deleting the word “twenty-eight” appearing immediately after the word “within” and substituting therefor the word “fourteen”.

*(Question of the amendment proposed)*

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

*Clause 3*

*(Question that Clause 3 be part of the Bill proposed)*

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

*The Title and Clause 1*

*(Question that the Title and Clause 1  
be part of the Bill proposed)*

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

**Sen. (Dr.) Ochillo-Ayacko:** Madam Temporary Chairperson, I beg to report that the Committee of the Whole has considered the Salaries and Remuneration Commission (Amendment) Bill (Senate Bills No.31 of 2020).

**The Temporary Chairperson** (Sen. Nyamunga): Senator, I think you are reading the wrong one.

**Sen. (Dr.) Ochillo-Ayacko:** Sorry, Madam Temporary Chairperson. Pardon me for not wearing my glasses.

Madam Temporary Chairperson, pursuant to Standing Order No.148, I beg to move that the Committee of the Whole do report to the House its consideration of the Salaries and Remuneration Commission (Amendment) Bill (Senate Bills No.31 of 2020) and seek leave to sit again tomorrow.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

**The Deputy Speaker** (Sen. (Prof.) Kamar): Hon Senators, let us have the reports by the Chairperson. We will begin with the County Governments Grants Bill (Senate Bills No.35 of 2021)

### **PROGRESS REPORTED**

#### THE COUNTY GOVERNMENTS GRANTS BILL (SENATE BILLS NO.35 OF 2021)

**Sen. Nyamunga:** Madam Deputy Speaker, I beg to report that the Committee of the Whole has considered the County Governments Grants Bill (Senate Bills No.35 of 2021) and seeks leave to sit again tomorrow.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Let us have the Mover.

**Sen. (Dr.) Ochillo-Ayacko:** Madam Deputy Speaker, I beg to move that the House do agree with the Committee on the said report.

**Sen Chebeni** seconded.

*(Question proposed)*

*(Question put and agreed to)*

**The Deputy Speaker** (Sen. (Prof.) Kamar): The next Bill is the Mental Health (Amendment) Bill (Senate Bills No.28 of 2020).



THE MENTAL HEALTH (AMENDMENT) BILL  
(SENATE BILLS NO.28 OF 2020)

**The Deputy Speaker** (Sen. (Prof.) Kamar): Let us have the Chairperson.

**Sen. Nyamunga:** Can I have the microphone?

Madam Deputy Speaker, I seek to report progress on the Committee of the whole, that the Committee of the Whole has considered the Mental Health (Amendment) Bill (Senate Bills No. 28 of 2020), and seeks leave to sit again tomorrow.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Mover.

**Sen. Kasanga:** Madam Deputy Speaker, I beg to move that the House to agree with the Committee on the said report and request Sen. Olekina to second.

**Sen. Olekina** seconded.

*(Question proposed)*

*(Question put and agreed to)*

THE BASIC EDUCATION (AMENDMENT) BILL  
(SENATE BILLS NO. 4 OF 2021)

**The Deputy Speaker** (Sen. (Prof.) Kamar): Chairperson.

**Sen. Nyamunga:** Madam Deputy Speaker, I beg to report progress that the Committee of the Whole has considered the Basic Education (Amendment) Bill (Senate Bills No. 4 of 2021) and seeks leave to sit again tomorrow.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Mover, Sen. Olekina.

**Sen. Olekina:** Madam Deputy Speaker, I beg to move that the House do agree with the Committee on the said report.

*(Question proposed)*

*(Question put and agreed to)*

THE COUNTY LICENSING (UNIFORM PROCEDURES) BILL  
(SENATE BILLS NO. 32 OF 2020)

**The Deputy Speaker** (Sen. (Prof.) Kamar): Chairperson.

**Sen. Nyamunga:** Madam Deputy Speaker, I beg to report progress that the Committee of the Whole has considered the County Licensing (Uniform Procedures) Bill (Senate Bills No. 32 of 2020) and seeks leave to sit again tomorrow.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Mover, Sen. Chebeni.

**Sen. Chebeni:** Madam Deputy Speaker, I beg to move that the House do agree with the Committee in the said report. I request Sen. Kasanga to second.

**Sen. Kasanga** seconded.

*(Question proposed)*

*(Question put and agreed to)*

THE SALARIES AND REMUNERATION COMMISSION  
(AMENDMENT) BILL (SENATE BILLS NO. 31 OF 2020)

**The Deputy Speaker** (Sen. (Prof.) Kamar): Chairperson.

**Sen. Nyamunga:** Madam Deputy Speaker, I beg to report that the Committee of the Whole has considered the Salaries and Remuneration Commission (Amendment) Bill (Senate Bills No. 31 of 2020) and seeks leave to sit again tomorrow.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Mover. Sen. (Dr.) Ochillo-Ayacko.

**Sen. (Dr.) Ochillo-Ayacko:** Madam Deputy Speaker, I beg to move that the House do agree with the Committee on the said report. I ask Sen. Chebeni to second.

**Sen. Chebeni:** Madam Deputy Speaker, I second.

*(Question proposed)*

*(Question put and agreed to)*

**The Deputy Speaker** (Sen. (Prof.) Kamar): Hon. Senators, I congratulate you. We have done a great job. Five Bills have passed in our hands within a very short time. I congratulate the Movers.

Hon. Senators, I would like to defer the following Orders for the convenience of the House.

Next Order.

**BILLS**

*Second Reading*

THE LAW OF SUCCESSION (AMENDMENT) BILL  
(SENATE BILLS NO. 15 OF 2021)

*(Bill deferred)*

*Second Reading*

THE PUBLIC PRIVATE PARTNERSHIP BILL  
(NATIONAL ASSEMBLY BILLS NO. 6 OF 2021)

*(Bill deferred)*

*Second Reading*

THE COUNTY HALL OF FAME BILL  
(SENATE BILLS NO. 9 OF 2021)

*(Bill deferred)*

*Second Reading*

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

*(Bill deferred)*

*Second Reading*

THE HEALTH (AMENDMENT) BILL  
(SENATE BILLS NO. 6 OF 2020)

*(Bill deferred)*

**MOTIONS**

PROVISION OF COLOSTOMY BAGS TO COLON CANCER  
PATIENTS AND SURVIVORS IN COUNTY HOSPITALS

THAT, AWARE THAT the colon is part of the digestive system with a major role in the absorption of water, minerals and elimination of waste;

FURTHER AWARE THAT colon cancer can cause serious blockage of the colon that may necessitate removal of parts of the colon, the entire colon or the entire colon and the rectum;

COGNIZANT THAT persons who have gone through ileostomy, colostomy and urostomy need to use a bag to empty their wastes for the rest of their lives post-surgery;

CONCERNED THAT urine bags, adult diapers, artificial breasts, colostomy or ileostomy bags are not listed as goods exempt from tax or zero rated in the First and Second Schedules of the VAT Act 2013, and therefore attract 16 per cent value added tax and customs duty;

ACKNOWLEDGING THAT Article 43(1a) of Constitution of Kenya states that everyone has a right to the highest attainable standards of health, and health is a devolved function and therefore under the mandate of the county governments;

NOW THEREFORE, the Senate calls upon the Ministry of Health and) in partnership with the Council of Governors to:

1. create and maintain a register of all the colon cancer patients and survivors in county hospitals, including the biodata of the histology of the patients;
2. provision of colostomy bags for those who are permanent users;
3. include the purchase of palliative care products in the health budgets of all county governments;
4. ensure all county hospitals stock these palliative care products to enable increased access and lower commercial prices; and
5. engage the Treasury and Kenya Revenue Authority (KRA) to waive taxes on long-term health consumables such as colostomy bags, prosthesis and others in the upcoming budgetary cycle to ease the burden on Kenyans.

*(Sen. (Dr.) Musuruve on 8.9.2021)*

*(Resumption of debate interrupted on 9.9.2021)*

**The Deputy Speaker** (Sen. (Prof.) Kamar): Hon. Senators, the Member who was on the Floor was Sen. Cherargei. He had done only two minutes. I do not see him. Any other Member who wishes to debate this Motion on the provision of colostomy bags to colon cancer patients and survivors in county hospitals?

Yes, Sen. (Dr.) Zani.

**Sen. (Dr.) Zani:** Thank you, Madam Deputy Speaker. I beg to support this Motion from Sen. (Dr.) Musuruve. Over time, we have heard Sen. (Dr.) Musuruve give us experiences about how she is cancer survivor. This might be part of the reasoning that helps her come up with some of these issues, especially the ones concerning cancer. For the longest time, we have tried to address the issue of cancer comprehensively.

I remember a lady who passed a way as a result of cancer some time back. She said how she wished we had better care for cancer patients, that we did not have to go out of the country for this particular treatment. I think she had to leave the country and go to India. In fact, she had gone to India to escort her husband who had cancer.

When she was at the Indian hospital, she decided to get a normal checkup for herself. When she did, she was diagnosed with cancer. She came back and said that she really wished we could have a place where we could be tested, know what is happening, and have better cancer care.

I think that we have improved. This was about three or four years ago. I think we have improved in the sense that we now have more of the private hospitals giving these services.

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

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

However, we know that especially where chemotherapy has been given and when a patient has not performed very well, it becomes very difficult. It is not only difficult in terms of the health outcome, but also in terms of the specific provision that is given in

terms of the medication. That is how expensive it is and the family having to be involved and people having to come in to make a lot of contribution.

Madam Temporary Speaker, more and more, we are relying on friends and relatives for this sort of contribution, but it is becoming more difficult. We can call it the cancer of cancer, if we wish. This is really pertinent.

In this Motion, Sen. (Dr.) Musuruve is specifically focusing on colon cancer. It happens at the part of the digestive system, which is in charge of absorption of water, minerals and elimination of waste. There are many people who suffer as a result of colon cancer. This cancer causes blockage of the colon. It might necessitate the removal of part of or the entire colon or the entire rectum indeed.

Madam Temporary Speaker, this makes it serious because we know as part of the digestive system, then the colon becomes critical even for the survival of any human being. When this part is having a problem, then that creates quite a situation.

There are many patients who would go through, for example, a colostomy or urostomy. Due to the part where the cut is done, it means that they need to have some bags to aid them empty their waste for the rest of their lives post-surgery. Many times, when we are going through our usual health matters, everything seems straightforward in terms of health until somebody has a problem. The person who is well and walking around does not realise how serious it is to be in a situation.

Madam Temporary Speaker, some of the people who suffer the most are because of body fluids that are emitted from their bodies and they have no control over this. We have various severe cases for this including, for example, a delivery for certain women. This is where they have fistula and this has been addressed through various organisations. I know that at Kenyatta National Hospital (KNH), they have a system where they can operate on ladies with fistulas, guide and help them.

We have other people, for example, who overtime, for one reason or another, find that they cannot empty their wastes all through their lives. Some people even have issues with urine. There are people who have leakage in urine. There are people who need dialysis. Therefore, it is a sector of healthcare that is important and expensive.

Madam Temporary Speaker, for many Kenyans, they cannot have private insurance or arrangements for them to go to hospital to be treated. Many people end up being taken care of by families, friends, communities, or relying on community health workers to do most of the work happening in that area. Even the healing process, be it from the people who have had for example issues with cancer of the breasts or any other cancer, it becomes very painful. Many people watch their loved ones just dying as a result of this.

The question is: Is there a way to make them a little bit more comfortable and give them dignity as human beings, so that they are not leaking away especially in public life? Is there a way that they can be brought out to still intermingle?

I remember one particular lady who had a case of fistula. For the longest time, I had not had an experience of discussing such an issue with somebody. However, one time when we were discussing, she just gave me a narration of how miserable her life is. She was not able to control after child birth and it became problematic. She said: "I wish I could find a solution for this." She did find a solution. She came to KNH and did the operation. Five years later when I met her again, she was a completely changed person with a lot of dignity.

This Motion is about giving dignity to people who are sick generally and also specifically, for those who are suffering from colon cancer, ileostomy and urostomy. This is urine or colostomy, which is the issue of colons. For them to have that dignity, they need to have, for example, urine bags, adult diapers or other bags to help them do this.

Madam Temporary Speaker, most of these materials have very expensive tax rate on them. These bags are not listed as goods exempted from tax or zero-rated in the First and Second Schedule of the Value Added Tax (VAT) Act 2013. Therefore, they attract 16 per cent VAT and customs duty. By waiving this tax as per the VAT Act, specifically for this group of people who are already suffering and have to pay medical bills, go to hospital and quite a lot on them--- It becomes important to have a way to address this issue.

The suggestion she makes and prayer to the Senate is a call upon the Ministry of Health, in partnership with the Council of Governors (CoG), to create and maintain a list and register all the colon cancer patients. This is important and they can come out, be identified and their specific needs can be identified and pulled out, if there have been survivors. There needs to be some bio data and histology of these patients put out. There also needs to be provision of colostomy bags for those who are permanent users. This is where a VAT exemption of 16 per cent is to be given, so that it is zero tax rated.

Madam Temporary Speaker, it also includes the purchase of palliative care products in the health budgets of all county governments. This is critical. When you put the context that most of the time when people are recovering, they have been in hospitals for the time when they are dire. Either they will be in High Dependency Units (HDU) or Intensive Care Units (ICU). However, when they leave and have to be taken care of by the parents and relatives, it becomes expensive.

There are people who just even need to use diapers, for example, but these are very expensive to even maintain. Even as we speak about this issue, we have young girls, who for hygiene reasons, are not able to have monthly cycle of utilities that are needed for them. It is a provision and understanding and looking to find ways and means to address these issues within the sector. There is need to include a purchase of these in the health budgets of county assemblies and governments. Of course, county assemblies will also be critical in this in bringing legislation for the same.

Madam Temporary Speaker, indeed, even the issue that Sen. (Dr.) Musuruve has brought will be something the House can propel. She can be encouraged to come up with legislation. This will call for an amendment for this specific VAT Act, 2013. Therefore, maybe within the relevant Committee and processes, we will begin to see how best this can be implemented. It is something that will give more sympathy, care, understanding and aid not only in the financial, but even the health burden for so many Kenyans.

Her prayer also requests that county hospitals stock these palliative care products to enable increased access and lower commercial prices, so that everybody can have these accessible to them. Therefore, this Motion categorises those who are still in hospitals and outside.

Madam Temporary Speaker, last is to engage the National Treasury and the Kenya Revenue Authority (KRA) to waive taxes on long-term health consumables such as colostomy bags, prosthesis and others in the upcoming budgetary cycle to ease the burden on Kenyans.

Generally, the prayers for this Motion is to make a concerted effort and a lot of involvement from the Ministry of Health, the Council of Governors (CoG), county assemblies and various levels for making this decision. This is hinged on Article 43 (1) of the Constitution that says that everybody has a right to the highest attainable standards of health.

Madam Temporary Speaker, health is a devolved function as we know it and therefore under the mandate of county governments. Therefore, more action, stimulus and sympathy from the county governments. The prices for those specific colostomy bags and urostomy bags need to be identified, given out and taken care of. They need to actualise this process of giving dignity.

This Motion is about giving dignity. It is very specific and it is a good idea. Most of the time when we speak in this Senate, we talk about devolution and problems of health. We crop them all up together whatever perspective we are having.

If it is shortage of drugs and generally personnel, for example, community health workers and how they need to be handled. We have very many issues. However, this is an issue that is very specific on the supply of the materials that is much needed within the health curative sector.

Madam Temporary Speaker, therefore, once somebody is in hospital, they can be catered for. More importantly, when they have left the hospitals and have gone home, they can also get these materials at cheaper prices.

I can imagine with economy and level of unemployment that we have in this country and many Kenyans not being able to meet some of the basic necessities that are there. This automatically becomes one of the things that is pushed to the core. It is not looking like a mandatory thing. The people probably look for other materials or any intermediary care that they can come up with. We need to focus on this.

Madam Temporary Speaker, we did this in many of the sectors especially in the non-governmental organisations (NGO) world to do with menstrual cycle and hygiene products for the girls. We came up with policies for the production of these materials. The NGOs came in and many leaders went to the schools and they were able to do this.

I am happy Sen. (Dr.) Musuruve is here. I urge her that more thrust needs to be put into this issue at the levels of NGOs, Government and various players in cancer. There was a cancer Bill that was pushed on the Floor of this House and the National Assembly. These are some of the issues that must be already there in one form or another.

Madam Temporary Speaker, Sen. (Dr.) Musuruve would be advised to try and make an amendment to the specific Act and try to link these two pieces of legislation to enable this supply of these simple products that are key. Many Kenyans might not afford. Many Kenyans are sometimes not able to afford basic medicine. When it comes to the issues of healthcare, people feel that it is their responsibility. Let them find a way. However, we have to remember that some of these people suffering are some of the most productive members of the society. Some of them are experienced and have been professionals.

I remember we had one lady lecturer at the University of Nairobi with cancer aged about 60. She had lots of experience and she had done a lot of work. She is a cancer survivor and she did not pass away. You can imagine how much input is coming as a result of her professionalism and the work that she is doing.

Madam Temporary Speaker, in other sectors also. I have just picked on one sector. However, in other sectors, these are people who can be productive. To put the weight onto this Motion, it is important to even tabulate the losses that comes as a result of losing health outcomes for such categories.

Another point is that by taking care of these issues, we help to equalise people and reduce inequalities. Health inequalities indeed lead to economic inequalities to regional and also even to cultural inequalities. Once such inequalities are addressed so that we do not have health inequalities, it will help to take us to a level where we can propel this country in terms of development and each play our role.

Madam Temporary Speaker, I support.

**The Temporary Speaker** (Sen. Nyamunga): Thank you, Senator. Sen. (Dr.) Ochillo-Ayacko, proceed.

**Sen. (Dr.) Ochillo-Ayacko:** Madam Temporary Speaker, thank you for giving me an opportunity to make my contributions to this Motion.

I will commence by congratulating Sen. (Dr.) Musuruve for extending sympathy in her work to victims of cancer and people who are suffering from cancer and to remind us that we are all potential candidates for that suffering.

As we sit in the comfort of this House, as others sit in the comfort of public offices, it is not just about the individual who is suffering from cancer. It is about those who have feelings for that individual. If you have a patient who is cancerous in your family and you take time to sit next to them to go with them through the suffering that is visiting them, the subsequent suffering that you will get involved in may inhibit or lower your productivity.

Madam Temporary Speaker, you may have a child, spouse, brother, sister, aunt, grandmother or parents who are suffering from cancer. In this country in households, there are very few people who are engaged in productive work. Not because they do not want to be engaged in productive work but because productive work is not found. These are hardworking Kenyans.

Like in Migori County where I come from, we have people who are fishermen and women by profession. We have cane cutters, gold diggers literary digging barrows to look for gold and crushing rocks to extract gold from them. We have people who ride bicycles long distances to look for cows in Tanzania. We have women and men who do household chores. They wake up at 5.00 a.m., work the whole day, old and young women carrying children on their back. They work 24/07. However, because these kinds of work do not give economic returns, they are poor but they are people and they are part of our families.

Madam Temporary Speaker, you will find that a family unit is poor. Where we are in this House, we have poor members of our family who are the majority. When we have a patient who has cancer, we as members of this family are called upon to assist them. When they have colon cancer and chronic diseases, this assistance must continue for life. It makes you unproductive and suffer emotionally. It makes the entire poor families connected to you, your church, village and family to suffer.

To ease this burden and suffering because of the structure of African families, it is important that the Government gets involved. The Government must get involved not just in the manner in which the Motion is structured but in the assistance at the time of diagnosis, treatment and support for your entire life.



Madam Temporary Speaker, I am talking about cancer because this is the context in which the Motion is brought but there are other chronic ailments like renal failure, diabetes and many others that are not respectful of your social status. You are poor, there it is. You are, rich there it is.

A time has come in this nation when we must change policy to have an established a fund or an entity that supports all Kenyans.

We should not pretend that this kinds of ailments, specifically cancer that affects only the rich. We who are in this House, we who are in high echelons in public service have insurances. Unfortunately, when you look at yourself stationed high up in public service, you seem to forget that majority of Kenyans cannot afford insurance.

When we look around for a champion for Kenyans; a person who will speak for people who are voiceless or persons who will speak for sufferers who undergo this suffering, but do not have a voice in any place where decisions are made, you will find that such champions are few.

We are fortunate as a House that we have Sen. (Dr.) Musuruve who is a champion for these people who are suffering. I think we should all join her team of champions so that we can use our platform to bring change. We use this platform to alleviate the plight of those who are victims of cancer.

Madam Temporary Speaker, it is good to support victims of cancer by providing these bags and other support. In counties, for instance, Migori County, I am yet to meet in public health facilities any doctor, or any health provider who has knowledge of how to diagnose, treat and manage cancer and how to advise people to access this. I wonder what is happening to my people in Migori County the ones in Kuria East and Kuria West.

If I look at the Kurian population in its totality or numbers, it comprises about 300,000 people. That is for Kuria East and Kuria West. If I look at the entire population of Migori County, we are made up of 1.2 million people. We do not have any doctor, medical personnel or facility in our public health providing facilities that is capable of identifying cancer; let alone colon cancer. If we have them, half the time they are not functioning.

For a place like Migori County or the neighbouring counties like Homa Bay County and Kisii County has something. Most of us continue raiding the physical space, the facilities and human resource that Kisii County has for such treatment because we do not have this.

There is need for champions beyond here, particularly in the Executive to take their time and find how chronic diseases treated in public hospitals in counties. Some people may say that there is National Hospital Insurance Fund (NHIF) so you can get NHIF to go to private hospital. Even the private practitioners in Migori County do not have the expertise. We cannot find expertise or people who may be called physicians. If you ask me how many physicians are in Migori County, I will tell you that they are less than three.

My father is elderly and he has to visit physicians most of the times. When we look around for physicians who may attend for his ailments, we find them in Kisumu County. Since he is an elderly person and he has to be taken to Kisumu in a comfortable vehicle, I have to cause my vehicle to take him to Kisumu.

I am giving myself as an example of people who have elderly parents. I am talking here well aware of the fact that I am a privileged person. How about Atieno in

Kanyamkago and Anyango in Uriri and Boke in Kuria who do not share the same privilege as myself? I wonder how they take their parents and relatives to facilities in Kisumu. If for one reason or other, everybody else in western region took their patients to Kisumu, where will the people of Kisumu County go to?

Madam Temporary Speaker, I am supporting this Motion because it is an indicator that when it comes to provision of medical services and health for chronic patients, we are given tokenism. We are not true champions from the fact that we are victims. Sen. (Dr.) Musuruve, is a survivor of cancer. She is perhaps feeling it right from her bone and makeup.

I wanted to request that each of us who has a privilege should take time and share the experience that survivors and victims have had. This is so that they know how this is a suffering that has spiral effect that is of economic pinch and that is hurting many people. It should be our duty to make sure that we are able to create an environment and set aside resources to support people who are victims of chronic diseases.

Madam Temporary Speaker, we should provide everything requested for in this Motion and go beyond this. We should look at other categories of cancer and other chronic ailments and ensure that the provision of health we offer to our people is the kind of health that we would offer to ourselves.

In the holy book it is said that do unto your neighbour what you would want to be done to yourself. The question is who your neighbour is. If 99 per cent of the people in your neighbourhood need this service, so who is your neighbour? A time has come that we should align our duties and thinking to the holy people of the past and future.

Madam Temporary Speaker, with those very many remarks, I congratulate Sen. (Dr.) Musuruve for leading us in terms of empathising, sympathising and supporting people who are victims of cancer and who need the help of us individually and collectively as an institution.

Thank you very much.

**The Temporary Speaker** (Sen. Nyamunga): Thank you, Sen. (Dr.) Ochillo-Ayacko. Can we ask now the Mover, Sen. (Dr.) Musuruve to reply?

**Sen. (Dr.) Musuruve:** Thank you, Madam Temporary Speaker for giving me an opportunity to reply. I would like to thank fellow Senators for supporting this Motion. I thank Sen. Wambua who seconded the Motion. I thank Sen. Cherargei, Sen. (Dr.) Zani and Sen. (Dr.) Ochillo-Ayacko who contributed. - I would like to thank all these colleagues for their valuable contributions towards this Motion. It is clear from their contributions that they have encountered one or two incidents of people with cancer even in their own families.

I am never ashamed of saying that I am a cancer survivor. I am happy that by the grace of God I am alive to share tory on the Floor of the House. This is so that I can also raise awareness to fellow colleagues. When it comes to the issue of cancer, everyone is a candidate. It can affect anyone without a notice.

Madam Temporary Speaker, from contributions by my colleagues, we need to do something as legislatures to ensure that county governments are able to identify people who are suffering from colon cancer and cancer generally. Also, ensure that there is provision of the necessities that they require like colostomy bags for those who are permanent users. They need to also create awareness about issues of cancer.

The Kenya Revenue Authority (KRA) also needs to come out and waive tax for palliative healthcare products and also prosthesis and such products that cancer patients and survivors may need.

Madam Temporary Speaker, I am truly humbled that my colleagues have come out strongly on this Motion. I believe that when this Motion goes to the relevant office, it will be a self-executing Motion. This is so that it is not just a Motion that will lie somewhere in the shelves. The county executives need to ensure that even in their county budgets, they are able to provide for issues of colostomy bags and palliative care products and all that.

When we are talking about the issue of cancer and colostomy bags, it should be something that we are working on from the national government cascading to even the county governments. This is to ensure that cancer patients and colostomy bag users get the right support that they need. We need to be empathetic about those who use colostomy bags.

Madam Temporary Speaker, it is unfortunate that nobody ever makes a follow-up on them to see how they are faring on. Even those who are cancer survivors, it is rare that you would find anyone making a follow up to see how they are getting on with life yet they are alive and need to be productive members of the society.

I thank all my colleagues for supporting cancer survivors and the use of colostomy bags. Thank you very much. I beg to reply.

*(Question put and agreed to)*

ADOPTION OF REPORT ON IMPASSE ON THE 2020/2021  
BUDGETARY ESTIMATES FOR KIRINYAGA COUNTY

THAT, the Senate adopts the Report of the Standing Committee on Devolution and Intergovernmental Relations, on the impasse on the budgetary estimates for financial year 2020/2021 for Kirinyaga County, between the County Executive and the County Assembly, laid on the Table of the Senate on Tuesday, 25th May, 2021.

**The Temporary Speaker** (Sen. Nyamunga): We defer that Motion.

*(Motion deferred)*

**The Temporary Speaker** (Sen. Nyamunga): Next one.

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

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

**The Temporary Speaker** (Sen. Nyamunga): The Chairperson is not there. So, we defer that one also.

*(Motion deferred)*

FAST TRACKING CULTURAL DEVELOPMENTS IN COUNTIES

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

**Sen. Kasanga:** Madam Temporary Speaker, I beg to move the Motion-

THAT, WHEREAS Kenya is a multi-ethnic and multi-racial country with rich and diverse cultural resources such as traditional medicine and foods, arts, craft, music, dances, dress among others;

AWARE THAT, the Constitution, in its preamble acknowledges the cultural diversity of the Kenyan people who are determined to live in peace and unity as one indivisible sovereign nation whilst, Article 11 of the Kenyan Constitution recognizes culture as the foundation of the nation;

NOTING that, while the Department of Culture under the Ministry of Sports, Culture and Heritage has been playing some of the key roles in promotion of cultural integration, formulation of policies and standards that will guide the development of culture, little information has been available to the Kenyan public;

ACKNOWLEDGING, that culture performs a significant role in the life of a child, the cultural background in which a child is brought up affects the totality of his or her life's activities;

CONCERNED, that our children are losing their sense of identity due to the negative influences due to inadequate cultural identity catalysed by globalization which has led to catastrophic consequences to the next generation as experienced in our country where a majority of young people are showing symptoms of feeling suicidal, anxious, feeling of hopelessness, anger, violence, feeling isolated, and paranoia;

NOW THEREFORE, the Senate urges the Cabinet Secretary (CS), Ministry of Sports, Culture and Heritage to: -

- a) Formulate cultural development policies and initiatives to inculcate stronger community values, safeguard Kenya's heritage, recognize local heroes and promote socio-cultural opportunities in the counties; and
- b) Formulate strategies to create an enabling environment for protection and promotion of diversity of cultural expressions in all counties.

Madam Temporary Speaker, this Motion speaks to itself. In this day and age with all the social media, globalisation and the fastness that the world is moving at, we are losing an opportunity to celebrate our culture and diversity. In the process of catching up with how fast the world is going, our children are left behind in the history which has made us the great people that make up this nation that we love so much and we call this country Kenya.

This Motion is calling out for us to look back a little bit especially when it comes to celebrating the values. We speak of values so much amongst ourselves when we are

politicking. It is the one thing that we are saying we need to look back to how our forefathers were doing things.

Madam Temporary Speaker, this is especially now that the House has looked into the Mental Health (Amendment) Bill. At least we have done the Third Reading waiting for Division. We have to think on why the escalation on mental health issues. Some of it boils down to how we do our things back at home. The value of the family and community living which we have lost. We are becoming so westernised quickly that what is remaining is just the family unit.

Whereas when you look back at how we grew up and our parents grew up, our parents' parents grew up, the value of community living speaks a lot to how we hold each other's hands, how we bring up our children. Children are brought up within a community as a community project. This is where we cared about the next person. You can imagine at a time like this, we are looking at reintegrating our community spirit by things like *Nymba Kumi* because we have lost it.

Madam Temporary Speaker, we are saying we should not lose some of the best things about our culture in as much as we are appreciating the global---

**The Temporary Speaker** (Sen. Nyamunga): Sorry, honourable Senator. Next time the Motion is listed you will have a balance of 16 minutes.

#### ADJOURNMENT

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, it is now 6.30 p.m., time to adjourn the House. The Senate therefore stands adjourned until tomorrow Wednesday 15<sup>th</sup>, September, 2021 at 2.30 p.m.

The Senate rose at 6.30 p.m.