

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Wednesday, 17<sup>th</sup> November, 2021

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

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

### PRAYER

### COMMUNICATION FROM THE CHAIR

#### VISITING DELEGATION FROM GAMBIA NATIONAL ASSEMBLY

**The Speaker** (Hon. Lusaka): Hon. Senators, I would like to acknowledge the presence, in the Speaker's Gallery this afternoon, of visiting members of the secretariat from the National Assembly of Gambia.

The delegation is undertaking a one-week study visit on preparation of Parliament's budget, development of budgets of parliamentary committees, engagement mechanism between Parliament and the National Treasury, regulations governing the Parliamentary Service, accountability mechanisms for the Service and facilities accorded to parliamentarians.

The delegation comprises the following and I will ask them to stand as I read their names-

1. Mr. Momodou A. Sise - Clerk of the National Assembly
2. Mr. Daniel Cardos - Deputy Clerk, Legislative Business
3. Mrs. Isatou Kassama - Director, Research and Library
4. Mr. Gibairu Janneh - Director, Communications
5. Mr. Alhagie Dumbuya - Director, Hansard

Hon. Senators, in our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them and, on behalf of the Senate and on my own behalf, wish them a fruitful visit.

I thank you.

*(Applause)*

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

## PETITIONS

ILLEGAL ALIENATION OF EMBU MUNICIPALITY  
LAND NO.375 BY THE CWSK

**Sen. Ndwiga:** Mr. Speaker, Sir, I have a petition from the Catholic Diocese of Embu.

We, the undersigned citizens of Kenya and in particular representatives of the Diocese of Embu, trustees of the Catholic Church and the community managers of the St. Angela Embu Children's Home and residents of Embu County draw the attention of the Senate to the following:

THAT the Diocese of Embu Trustees is currently the owner of the piece of land, Embu/Municipality/375. They hold a lease dated 13<sup>th</sup> July, 2012, as evidence of ownership. The lease is for 99 years from 13<sup>th</sup> July, 2012, and the Diocese of Embu Trustees has been running a children's home on the said plot under the name St. Angela Embu Children's Home from 1960 to date.

The children's home has always been under the custody, occupation and management of the Diocese of Embu from pre-independence days at independence and post-independence. When the Diocese applied for a lease of the land where the home now stands, the lease was gladly given by the Government on 13<sup>th</sup> July, 2012 for 99 years.

THAT to the dismay of the Diocese, individuals calling themselves Child Welfare Society of Kenya (CWSK) led claim to the home by force, but this was resisted and repelled. There was a court intervention, and the invaders were pushed out and law and order restored.

The CWSK has never run the home even for one day since its inception to date. Again, to the dismay of the diocese, its attention was drawn to two items appearing in the *Kenya Gazette*; one dated 22<sup>nd</sup> January, 2016, and the other dated 17<sup>th</sup> July, 2017.

THAT in the *Gazette* of 22<sup>nd</sup> January, 2016, item No.17, titled Embu/Municipality/375 belonging to the Catholic Diocese of Embu was revoked apparently by the National Land Commission (NLC) of Kenya at the insistence of the CWSK.

THAT in the *Gazette* of 17<sup>th</sup> July, 2017, item No.30 titled Embu Municipality/375, the Chief Land Registrar was directed to revoke title held by Catholic Diocese of Embu. The property is vested in the CWSK. The notice was given by the NLC of Kenya.

THAT the CWSK boiled by the two publications again attempted to force their way into the home but this was repulsed by the diocese.

THAT the current position is that the Diocese is the legitimate and legal owner of Plot No. Embu/Municipality/375. They are in possession of the home; they run it and have the unexpired lease. The Diocese is concerned that their lease to Embu Municipality No.375 was declared canceled by the National Land Commission (NLC) of Kenya after the existence of the Child Welfare Society of Kenya (CWSK).

The purported act of the alienation continues to threaten the petitioners since the NLC has solemnly assured the CWSK that it has revoked the title and recommended a new lease be issued to them.

THAT the matter has been in court severally, but never resolved. It is the CWSK that triggers this court intervention by force attempts at occupation, alienation and eviction.

THAT the petitioners have made effort to have the matter addressed by the relevant bodies all of which have not been fruitful.

THAT currently there is no dispute pending in court of law, constitutional or any other legal body.

THEREFORE your humble petitioners pray that the Senate investigates this matter and initiates a process to ascertain the true owners of the parcel of land, Embu Municipality No. 375 or Diocese of Embu trustee.

Recommend for the cancellation or otherwise set aside the contents of two gazette notices, specifically *Gazette Notice* No.6 of 22<sup>nd</sup> January, 2016 and *Gazette Notice* No. 87 of 17<sup>th</sup> July, 2017.

Petitioners also recommend for prohibition of the CWSK from further making claims, harassing or otherwise making attempts to enter the petitioners' children home.

The relevant Committee makes a visit to St. Angela's Children's Home to see how the home is run and the developments made over the years by the petitioners.

Recommend that a plot be allocated to the CWSK for the purpose of building their own home away from that of the petitioners, in view of the many homeless children in Embu County.

**The Speaker** (Hon. Lusaka): Take your seat, Sen. Ndwiga.

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

Proceed, Sen. Wetangula.

**Sen. Wetangula:** Thank you, Mr. Speaker, Sir. First, I enjoin you in welcoming our visitors from the Gambia, a country that is an active member of the Commonwealth and the African Union (AU) and that has enjoyed a good relationship with Kenya. Feel welcomed. I hope you will pick something from us as your bigger brothers in continental politics. Allow me to remember, Ann Bensouda, who was my classmate in the Kenya School of Law (KSL) and who remains a very good friend.

Mr. Speaker, Sir, I have listened to this Petition carefully and it paints a poor picture of the NLC. I have no doubt that the distinguished Senator from Embu County, a respected Member of this House, a former Cabinet Minister, the facts he has read out to us are plausible and reasonable.

If the NLC can issue a title to an institution without carrying out a thorough inquiry and listening to the Catholic Diocese of Embu then it is a sad affair indeed. We are told the diocese has owned this property pre-independence, at independence and post-independence. With developments thereon, this other profit making organization called CWSK is obviously a trespasser and an intruder.

I encourage the Committee on Land, Environment and Natural Resources to appreciate the role the Catholic Church and all churches have played in the social development and welfare of our country. They have provided schools which are well managed and health facilities which are sometimes much better than those offered by the Government and above all, looking after and protecting dispossessed and destitute children.

That an organization that is profit driven can enter their property and lay false claim and then be aided and abated by the NLC is something this House cannot condone.

I urge the Committee to move quickly and restore the proper rights of the Catholic Church. The Catholic Church has a long positive history in this country and has never been cited in any situation where they encroached or grabbed anybody's property. In this case, it is clear that they are the aggrieved victims and have sought protection in this House.

I urge that we support our colleague from Embu in giving justice, not only to the church, but the children under their tutelage and care. This is because they do many positive things that even the national Government does not do.

I urge the NLC to be careful not to dispossess institutions that command proper and thorough respect from the people of Kenya.

Mr. Speaker, Sir, I support.

I volunteer to my brother that I will sit in this Committee as a friend of the Committee to defend the interests of the church, which also happens to be my church.

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

**Sen. Mutula Kilonzo Jnr.** Thank you, Mr. Speaker, Sir. I also declare my interest, which is that part of my family and particularly my wife is Catholic. Therefore, I support this Petition.

More importantly, the 2016 gazette notice must have been in the previous Commission chaired by Prof. Swazuri. I must say this frankly, that was a very bad Commission. We must call it out. It cannot be that they can revoke a title belonging to a church in a Gazette notice without notifying them. The National Land Commission Act requires that you issue a notice based on a complaint.

On the face of it, Senator for Embu, my good friend, Sen. Ndwiga, you can consider that an illegal activity conducted by people who know the law, but misread it for ulterior motives. If they issued another title, for all intents and purposes, it is illegal. I hope the Committee that will handle this, the Committee on Land, Environment and Natural Resources chaired by Sen. Mwangi will get to this matter quickly.

The second Commission that came into office is not the same as the first Commission. However, those ones are worst because they are not reporting to office, they are not working, they are afraid of jurisdiction and offices. It has come to pass that we now wonder why it was necessary to have them.

Sen. Ndwiga, I would like to you to know that when I raised the question of historical injustices on the Floor of this Senate in the last Parliament, our neighbour House went and amended the jurisdiction of the NLC to the extent that the Commission is such a toothless bulldog. There is nothing they can do about illegal activity concerning public land.

Remember, the title to the church was not public land. So, on what basis did they revoke the title of the Catholic church yet it is not public but private land? That is why I am saying that it is good that the Swazuri-led Committee came and went. However, this Committee should also interrogate the jurisdiction of the NLC so that we know whether Kenyans can trust it to address historical injustices.

Sen. Wetangula was in the Serena team. They are the ones who came up with these amendments to include the NLC. We must ask and a report must come to show whether we, as Kenyans, are satisfied that this Commission has fulfilled what we wanted

it to do in the Big Four Agenda. That is, visit the question of illegal activities concerning land.

This has come at a good time because the question of land always comes up during elections. We must call them out because people will lose or be chased from their land, so that people can grab those pieces of land. Therefore, I hope that we can resolve this matter quickly. You have my support just like Sen. Wetangula. Call us so that we can read the riot act, if not the 10 commandments to the NLC.

**Sen. (Dr.) Langat:** Thank you Mr. Speaker Sir, for giving me this opportunity to strongly support this particular Petition from the people of Embu that has come through their hardworking Senator.

As my fellow Senators have said, the NLC in country has failed to measure up to their duties. It is during this time in history that we are realizing that the Commission is so reckless to the point that they are many duplication of title deeds.

Where I come from, it is unfortunate that you can get a plot today and tomorrow someone else has a title deed and you also have another one. This Commission is marred with a lot of corruption. It is a great shame and something must be done by the respective Committee of this House.

Mr. Speaker Sir, this is the time that we have realized the highest numbers of land evictions. In Nairobi, there are many illegal evictions. People are evicted today and tomorrow yet they have title deeds to show that they are the rightful occupants of particular areas of land.

During the time of the Swazuri Commission and the current one, in Kericho and Bomet, we were shocked to realize that they have already leased the land to the multinational companies without involving the locals. There was no public participation. To make the matters worse, they used the leasing rates of 1960s. They almost leased our land to multinationals for free. The many cases that are coming up during this time are very alarming.

Concerning the case of Embu, every one of us must have been touched by the Catholic Church, in one way or another. Particularly myself, I attended a Catholic-sponsored primary school. When we were young, it was the only church which was closer to us. That is where we had our foundation of Christianity.

We have seen how hard working the Catholics are in as far as supporting education and homes for the needy in this country. So, to allow an idling society to come and grab the land from the Catholic Church should not be allowed. This one is unacceptable in our society.

I encourage the Committee to take this issue seriously and interrogate the NLC to see if they are still necessary in our country or we should change and get something else that will help Kenyans streamline land issues.

I support this Petition. I sympathize with the fraternity of the Catholic church for the land that has been grabbed.

**Sen. Sakaja:** Mr. Speaker Sir, the people of Embu should know that they are blessed to have Sen. Njeru Ndwiga. I thank him for bringing this Petition.

The Bible says in the book of James that true religion is taking care of widows and orphans at the time of need. This is a Statement that we must all support so that we get proper resolutions from the Committee on Land, Environment and Natural Resources.

As the delegation from Gambia leaves, I officially welcome them to Nairobi as the Senator for Nairobi City County.

Mr. Speaker, Sir, it does not make sense how an organization that has run this institution from pre-independence towards the independence period and after, can get their status revoked for an organization that has never, at any one point, taken care of these children or had anything to do with that land. That needs to be resolved very quickly.

I want to add onto and echo the sentiments of Sen. Mutula Kilonzo Jnr. I hope the Committee on Land, Environment and Natural Resources is listening. I cannot see the Chairperson or the Members. We have brought many issues here that need resolution. The essence of having the NLC was to remove that authority from the Ministry because there had been a lot of corruption, cartels and centralization of this work within the Ministry of Land for a long time. The reason was to bring the NLC to make sure that land held in trust by the people, for the people, by the county and national governments is safe.

Mr. Speaker Sir, I have brought many issues on Gikomba Market. Part of the reason there are fires in Gikomba Market is because somebody somewhere is holding a title of the 12 hectares of Gikomba. He tries to burn it to keep pushing these people. They must say in a resolute manner that the land is public.

Mr. Speaker Sir, just last week, thousands of homeless people in Mukuru kwa Njenga were evicted. There were feeder roads being done, but they went on and demolished beyond the feeder roads. You wonder how many *mabatis* and food to send.

Mr. Speaker Sir, as we speak today, in Kamukunji Constituency, California Ward, there is a settlement scheme called Kinyago and Kanuku LR. 209\20721. The residents do not know the status yet when the President gave titles the other day, big people got those titles. That is why even the title of Mukuru kwa Njenga is in the hands of one individual. One family has a title of the entire Mukuru kwa Njenga yet the residents of a settlement scheme like Kinyago cannot get. We know the company that was given that title.

A former colleague from the National Assembly has been going round collecting Kshs400,000 from poor residents so that they can stay there and not get their houses demolished. So, when the feeder roads were being demolished, they took advantage and went on to demolish houses of innocent Nairobians.

Mr. Speaker, Sir, right now thousands of residents of Kamae in Roysambu are fearing to be evicted because the NLC has not pronounced itself on Kamae.

I just urge that, as the Committee on Land, Environment and Natural Resources looks at this matter, they should please summon the NLC. We have issues of life, death and livelihoods of the people we represent, yet people are getting allowances, salaries and driving big Prados in the name of the NLC.

Finally, this matter of railway pensioners came to my Committee. It was brought by Sen. Khaniri. The Green Park, which was taken by the Nairobi Metropolitan Service (NMS), the railway pensioners were supposed to be given Kshs1.2 billion over more than 12 months arrears. We agreed, they started giving and then they went quiet. Where is the NLC in all this?

As we solve the issue of Sen. Ndwiga which is pretty straight forward for them to say that the status of that land is under the Catholic Church, they must give us an account of these issues of life and death and the livelihoods of our people.

**Sen. Wambua:** Thank you, Mr. Speaker Sir. I take this opportunity to thank my senior colleague, Sen. Ndwiga, who is also the Chairperson of the Agriculture, Livestock and Fisheries Committee where I am the Vice-Chairperson for bringing up this Petition on behalf of the trustees of the Catholic Diocese of Embu. I will say three things.

One, from this Petition and linking it with what other colleagues have said, it is very clear that the National Land Commission (NLC) is the worst enemy when it comes to land disputes. Instead of the NLC ensuring that there is propriety in land ownership, they are perpetrating what would easily amount to criminal acts.

I say this because it is unimaginable how the NLC would issue a title deed to the Catholic Diocese of Embu in 2012 for a lease period of 99 years and then four years down the line, they are revoking the title deed and issuing the same to another private institution.

What is even more baffling is to learn from the Petition that the Diocese of Embu has been running the children's home on that land for many years. At no time has the Child Welfare Society of Kenya (CWSK) been involved in the running of that home. All over a sudden, the Society comes in and lays a claim on the land and the home. The NLC tries to justify that by issuing a title deed.

Personally, I have had run-ins with the NLC on the issue of compensation of land for persons affected by the road project from Kibwezi to Migwani. It has taken my intervention and that of the Senator of Makeni, my brother Sen. Mutula Kilonzo Junior, for the NLC to begin looking at the process of compensating the land owners. To date, that compensation has remained a sham. Nobody knows who is being compensated and the procedure being used to compensate people.

On the strength of this Petition from the Senator of Embu, I know you will direct that this Petition be handled by the relevant Committee. Over and above on the direction where this Petition will go, I urge that you direct that the NLC makes an appearance before a Committee of the Whole so that we deal with this Petition and other issues attendant to the operations of the NLC.

I support.

**The Speaker** (Hon. Lusaka): Sen. (Rev) Waqo.

**Sen. (Rev) Waqo:** Thank you Mr. Speaker Sir, for allowing me to add my voice to this very important Petition by the very respected Senator of Embu County. I support this Petition because of the injustice that we can see on the entire team.

The church has always served Kenyans very well by taking care of the vulnerable children in our society. Unfortunately, most of the time the society around is not that kind to the church and even the vulnerable. That is why you can see such claims.

I support the Petition that justice be served to these children and the Catholic church on behalf of the Children's Home. The Committee that will look into this should give it the proper attention it deserves, so that the good work of the Senator of Embu can reflect on the ground and be respected.

Thank you and I support.

*(Sen. (Eng.) Maina) stood up in his place)*

**The Speaker** (Hon. Lusaka): Take your seat Senator.

Hon. Senators pursuant to Standing Order No. 232(1), the Petition should be committed to the relevant Standing Committee for its consideration. In this case I direct that the Petition be committed to the Standing Committee on Land, Environment and Natural Resources.

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

I thank you.

*(The Petition was committed to the Standing Committee on Land, Environment and Natural Resources)*

**The Speaker** (Hon. Lusaka): Sen. M. Kajwang', you have a Report on a Petition.

REPORT ON PETITION: BOUNDARY DISPUTE BETWEEN KISUMU,  
SIAYA AND VIHIGA COUNTIES AROUND MASENO AREA

**Sen. M. Kajwang'**: Mr. Speaker Sir, I beg for a minute to get the right report.

*(Sen. M. Kajwang' consulted the Clerk-at-the-table)*

Mr. Speaker Sir I beg to lay the following Report on Petition on the table of the Senate today, Wednesday, 17<sup>th</sup> November, 2021-

Report of the Standing Committee on Devolution and Intergovernmental Relations on a Petition to the Senate by Mr. Nahashon Ogana concerning the boundary question between Kisumu, Siaya and Vihiga counties around Maseno area.

*(Sen. M. Kajwang' laid the document on the Table)*

Mr. Speaker, Sir, if you permit me then I could just highlight the key aspects that are contained in this report.

**The Speaker** (Hon. Lusaka): That is okay.

**Sen. M. Kajwang'**: Thank you Mr. Speaker Sir. The Petition was tabled in the Senate on 1<sup>st</sup> October, 2020. It was submitted through the Clerk of the Senate by Mr. Nahashon Ogana, a citizen of the Republic of Kenya, on behalf of 16 petitioners and residents of the Manyoro Community of Vihiga, Siaya and Kisumu counties and thereafter referred to the Standing Committee on Devolution and Intergovernmental Relations.

The Petitioners submitted their prayers in line with Articles 37 and 119 of the Constitution and also in line with the Standing Orders.

This Petition relates to the historical county boundary disputes between Kisumu, Vihiga and Siaya counties resulting in the alleged marginalization of the Banyore Community. The Committee undertook to investigate and determine the prayer of the Petitioners pursuant to Standing Order No.232(2) of the Standing Orders of the Senate and invited the Petitioners to give evidence in the matters raised in the Petition.



The Committee also invited the county governments of Kisumu, Vihiga and Siaya, the Ministry of Interior and Coordination of National Government, the Ministry of Land and Physical Planning, the National Land Commission (NLC) and the National Cohesion and Integration Commission (NCIC).

Whilst considering the Petition, the committee made the following key observations:

The committee observed that county boundaries can only be altered pursuant to Article 188 of the Constitution, which provides as follows-

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

(a) recommended by an independent commission set up for that purpose by Parliament; and

(b) passed by-

(i) the National Assembly, with the support of at least two-thirds of all of the members of the Assembly; and

(iii) the Senate, with the support of at least two-thirds of all of the county delegations.”

The Senate observed that there is currently no sufficient legal framework to address the alteration of county boundaries. The committee further noted that the Senate recently republished, considered and passed the County Boundaries Bill. (Senate Bills No.20 of 2021) and referred it to the National Assembly for consideration.

I congratulate the Senators who have been consistent in calling upon this Bill to come to the House, which it has done and it is now in the National Assembly. It will cure the current scenario where the boundaries of the districts in the Districts and Provinces Act 1992, are deemed to be the boundaries of the corresponding counties.

Further, the Bill will enable the resolution of county boundaries between counties through a mediation process. It will also give effect to Article 188 of the Constitution by providing a mechanism for alteration of county boundaries by establishing an Independent County Boundaries Commission. It will also ensure that a high threshold is met before the boundaries of any county are altered. I congratulate this House for passing the Bill.

Thirdly, concerning the alleged discrimination of the Banyore Community, especially in terms of employment and service delivery, the Committee observed that Siaya and Kisumu counties requested the petitioners to raise their issues with the county governments and undertook to address the allegations of discrimination.

Further, the committee observed that on the matter of discrimination on employment, access to services and the equitable distribution of resources, the National Cohesion and Integration Commission (NCIC) had undertaken an audit and collected data and submitted for analysis.

Further the Committee noted that the NCIC had undertaken to ensure that if there is any discrimination identified, corrective measures shall be put in place to guarantee the equitable distribution of resources

Consequently, the Committee makes the following recommendations;

(1) The county governments of Vihiga, Siaya and Kisumu should collaborate on a framework to address the concerns raised by the petitioners, with regard to access to services and public amenities for the communities in the border areas.

(2) The NCIC should continue to engage the local community living along the Vihiga-Kisumu and Vihiga-Siaya County borders in peace building activities to ensure peaceful coexistence in the disputed area.

(3) The National Assembly should prioritize and expedite the consideration of the County Boundaries Bill, (Senate Bills No.20 of 2021), to provide an avenue for the review of county boundaries disputes.

The committee thanks the offices of the Speaker and the Clerk of the Senate for the support extended to the committee in execution of its mandate.

The committee thanks the Senator for Vihiga, Sen. Khaniri, who provided very important first-hand information and experience and helped the committee to better understand the concerns of the petitioners. We also thank the petitioners, Mr. Nahashon Agano, the county governments and all those parties that came before the Senate.

It is now my pleasant duty and privilege, on behalf of the Standing Committee on Devolution and Intergovernmental Relations, to present to the Senate this report on the Petition on the boundary dispute between Vihiga Kisumu and Siaya counties.

Thank you Mr speaker Sir.

**The Speaker** (Hon. Lusaka): Sen. George Khaniri.

**Sen Khaniri:** Mr Speaker Sir, I thank you for this opportunity. I had the privilege of presenting this Petition on behalf of Nahashon Agano, the other 16 petitioners and the entire populace that lives in Maseno

Before I say anything, Mr. Speaker Sir, this is to your attention. This Petition was presented in this House early October, 2020. Our Standing Orders, to be precise, Standing Order No 232(2) states very clearly that once a Petition has been presented to this House, the Speaker will assign a committee to handle it and within 60 calendar days they must report to the House.

Sixty days is two months. Ideally, if we were to follow that, then they should have reported to this House by December, 2020. The Petition report was signed on 22<sup>nd</sup> October, 2021, which was exactly one year 20 days form the day I presented the Petition to this House.

There are two things. We either amend our Standing Orders, because we cannot perpetually flout our own Standing Orders. It is clear the report should be here in 60 days. This is one year. Justice delayed is justice denied.

We either amend our Standing Orders so that we can give committees ample time to work on the petitions or we find a mechanism to enforce that provision of the Standing Order, so that petition reports are tabled within 60 days.

We take this for granted. I expect that in 60 days if a committee is not ready with a report, they should come and report progress. We are taking our own Standing Orders so casually. The petitioners were told they would get their report in 60 days. It is now one year and 22 days.

Mr Speaker Sir, that is for you and the leadership of the House to look at. This was a petition by very ordinary citizens. I see there is some allusion that it is politically instigated. No, I want to put it on record. It is very clear that the petitioners are very ordinary Kenyans, who have been to many places to solve their problem.

By the way, the Senate was not the first stop. This people first went to the defunct Interim Independent Boundaries Review Commission (IIBRC). That was the one that was led by Hon. Andrew Ligale. They did not get justice. They went to the Review

Commission, the Truth and Justice and Reconciliation Commission (TJRC), the NCIC and the National Assembly, but they did not get justice. By coming to the Senate, they were confident that they would get justice.

I want to thank the Chairperson, Sen. M. Kajwang' and his Committee. They tried their best. Even as we embarked on this Petition, I was so sure the main prayer of altering the boundaries would not have been solved by this House or by that Committee and I told the petitioners this very clearly.

Besides their main prayer, which is that they want the boundaries to be altered so that this community comes to where they belong; the western side, they had other grievances which were clearly stated. These were the historical injustices. They are complaining of discrimination in terms of job opportunities, marginalization in development, elective and administrative appointments.

I expected that Sen. M. Kajwang's Committee would come up with very strong recommendations. When you tell them to go and raise these issues with the county governments, those are the oppressors. They cannot go back to their oppressors to complain. They came to the Senate so that they could get solutions.

We expected that on the issue of historical injustice that has been meted on these people, this House, surely has the powers to handle that one. We can make recommendations.

Mr. Speaker, Sir, the ultimate prayer was the alteration of boundaries. I told them very clearly that can only be solved after the passage of Sen. Mutula Kilonzo Jnr.'s Bill on county boundaries. I really thank Sen. Mutula Kilonzo Jnr. because we got on to this in the last Senate. I think that was the third time that Sen. Mutula Kilonzo Jnr. was moving that Bill.

I want to be on record and the people of Maseno to know that the Senate has passed the Bill. We have now transmitted it to the National Assembly. It is only by passage of that Bill that we will find a mechanism to alter those boundaries because it will lead to a formation of a Commission that we will present our grievances to. This Commission will then look into the facts that we have and I am sure it will give us justice.

I thank Sen. Mutula Kilonzo Jnr. for that Bill and urge the National Assembly to ensure this Bill is passed. It is not only the Vihiga-Kisumu-Siaya boundaries, but there are many other counties with a similar problem.

May I tell my people, Mr. Nahashon Ogano and his team, not to lose hope or give up. The Bill is in the process and once it goes through, I am still on this matter. We will pursue this matter to its logical conclusion, to see to it that my people in Maseno get justice.

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

**Sen. Mutula Kilonzo Jnr:** Thank you, Mr. Speaker, Sir. This morning, the Senate Committee on Justice, Legal affairs and Human Rights----

*(Loud Consultations)*

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

**Sen. Mutula Kilonzo Jnr:** Mr. Speaker, Sir, this morning, the Senate Committee on Justice, Legal Affairs and Human Rights together with the Committee on National

Security and Foreign Relations, were supposed to meet the Cabinet Secretary for Interior and Co-ordination of National Government and the Cabinet Secretary for Lands and Physical Planning. It will surprise you that they did not come. They sent their juniors who were shown the door.

I raise this because part of the Petition by Sen. Khaniri was supposed to be heard today. I also raise this issue because at some point, we want a ruling. We are working in vain and we are getting tired of your directions being violated by cabinet secretaries. This is not the only one. The same thing has happened to the one before Sen. Sakaja's Committee. Our work is getting extremely frustrating. However, we thank Sen. Khaniri for the industry he has put in on the boundary issue. It is the motivation that made me move that Bill four times.

Mr. Speaker, Sir, we are aware that the National Assembly leadership has called us for a meeting to deliberate on Bills that are pending on both sides. If there is one Bill that will cement the legacy of this Senate, it is the County Boundaries Bill. It will resolve all the problems that are in Meru, Isiolo, Vihiga, Taita/Taveta and Kisii counties and many other places. It will provide a formula for people to sit down and find a solution to their problems without fighting.

Mr. Speaker, Sir, in your things to do, please, write down the County Boundaries Bill and put all of us in priority. I think this is part of your legacy too. God willing, when the people of Bungoma County elect you as their Governor, you will wave the County Boundaries Act, if something arises in Bungoma County.

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

**Sen. (Eng.) Mahamud:** Mr. Speaker, Sir, let me also add my voice to this issue. County boundaries is a big problem in the country. I thank the petitioners for this. The only way it can be solved according to Article 118 of the Constitution, is to have the Boundaries Commission. As said by my colleagues, I think somebody is sitting on that Bill which was moved by Sen. Mutula Kilonzo Jnr.

The boundary matter is now taking a security dimension. This morning, the Committee on National Security and Foreign Relations was before us and asked several questions concerning conflicts that have arisen as a result of boundary problems. We have been talking about this for several years now. This Constitution has been in place for the last 11 years. It is only fair that such an important matter touching on the boundaries of counties and which keeps recurring every other day is dealt with.

Normally, when boundaries are made, some physical features might disappear. People who know where the boundaries are might not even be there and several issues within counties might have changed. When dealing with boundaries between counties, people get suspicious. In fact, many Kenyans today challenge the maps that exist. They feel the maps were just drawn at will by the Ministry concerned. This can only be solved when we have a Boundaries Commission.

Mr. Speaker, Sir, I urge the National Assembly and Sen. M. Kajwang's Committee that matters of this nature must be prioritised. There is no controversy between these two Houses on the matter of boundaries of counties. It will serve everybody and solve problems. I urge that the Bill be fast-tracked so that we have a law and a Commission in place. We are now calling the Ministry of Interior and Co-ordination of National Government because it is a security matter, but they can do nothing. So, I urge that the Bill be fast-tracked.

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

**Sen. Wetangula:** Thank you, Mr. Speaker, Sir. It is unacceptable for a Petition to lie and wait before a Committee for more than a year. This Petition started when our brother, Sen. Kinyua from Laikipia, was the Chairperson of the Committee. When he became politically incorrect, they purged him. Sen. M. Kajwang, who is politically correct took over.

*(Laughter)*

Mr. Speaker, Sir, I expected Sen. M. Kajwang' to, at least, tender an apology on behalf of the Committee. We know it is not his mistake that an unacceptable trend has befallen the Committee, by keeping a Petition for one year. He did not do that.

We must salute the people of Bunyore for being law-abiding citizens. In certain areas like we have seen between the people of Isiolo and Garissa, Makueni and Kajiado and other places, people just take up crude weapons and fight to restore and protect their territorial boundaries. That they came here, means they have value and trust in this House.

This morning, as Sen. (Eng.) Mahammud said, we had a similar Petition and a Statement before our Committee on National Security and Foreign Relations. You will be surprised to note that there are 10 flash points arising from boundary disputes between counties. Many more could arise.

Mr. Speaker, Sir, I urge you to use your office and accelerate the movement of the Bill at the National Assembly. Thereafter, we can set up a Commission to look at these boundary arguments between counties. As we go to elections, people will become more belligerent and impatient and can easily start compromising our peace and security.

I also urge the Committee of Devolution and Intergovernmental Relations, that it is within their mandate in looking at how devolution is working, to also engage each county, to find out whether they are respecting the requirement, that 30 percent of employees of any particular county must come from outside the county. This will enable us to continue having a unitary State where somebody from Lamu County can work in Bungoma and somebody from Bungoma County can work in Kilifi County without feeling discriminated.

Mr. Speaker, Sir, this is one issue that begs your office to have a Committee that checks on the progress of activities before committees; and that is the Committee on Implementation. I support the content of the Petition and the results that have come.

Mr. Speaker, Sir, I hope that we will have a mechanism of proper follow up to ensure that people who come to this Senate for support and protection, get their just dues and benefits from our decisions.

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

**Sen. Cheruiyot:** Mr. Speaker Sir, thank you for this chance to also register my complaints alongside the rest of my colleagues with regards to the way this matter has been treated and the importance that lies therein.

You will recall that on the day this Petition was presented before this House in the usual tradition where we get to make our comments about what we think of a particular petition---

**Sen. M. Kajwang':** On a point of order, Mr. Speaker, Sir!

**The Speaker** (Hon. Lusaka): There is a point of intervention from Sen. M. Kajwang’.

**Sen. M. Kajwang’**: Mr. Speaker, Sir, this report has been brought by the Committee on Devolution and Intergovernmental Relations. Sen. Cheruiyot is a very active Member of this Committee. Therefore, it means that he cannot come on the Floor of this House to criticise and scandalise his Committee. The least he would have done was to do a minority report. Allow me to remind him that this has been brought by a Committee where he is a Member.

**An hon. Senator**: Yes.

**Sen. M. Kajwang’**: Mr. Speaker, Sir, in the absence of a minority report, he should just say that he concurs with the resolution of the Committee because he signed the report.

**Sen. Cheruiyot**: Mr. Speaker, Sir, I do not know what is itching in Sen. M. Kajwang’s chair. Had he held his peace for a few more minutes, he would have realised that in my concluding remarks, I would have spoken to all the work we have done as a Committee. Sen. Khaniri should be at peace knowing that in the fullness of time, what he is looking for will eventually be achieved courtesy of this good report.

My good Chairman is very diligent and I commend him for that. I know that he has come under fire this afternoon. When you have had a terrible afternoon, even friends begin to look like foes.

*(Laughter)*

Sen. M. Kajwang’, I want you to believe that I am your friend and will die with you if it gets to that particular point.

Mr. Speaker, Sir, the second point I was coming to was with regard to the County Boundaries Bill because of the mess we are experiencing in many counties. On the day this Petition was presented, I said that residents of my county had come before me with an almost similar Petition regarding Kisumu County. We have two main problems with Kisumu County and specifically Gov. (Prof.) Anyang’-Nyong’o. During the times of Gov. Ranguma, we never had this problem concerning Sondu Town and Muhoroni Sugar Company Nucleus Farm.

I do not know why in later days, Gov. (Prof.) Anyang’-Nyong’o has adopted these expansionist theories and where he gets this habit from. First, his county officers in Sondu are collecting revenue deep in the villages of Kericho County. In many occasions, I have had to intervene and tell citizens not to do the unthinkable because as leaders, we are trying to resolve this matter amicably.

On the side of Muhoroni, his county government officers actually come to a particular village known as Pokwa, which is deep in the heart of Kericho County. They erect construction sites with boards clearly written “Kisumu County Government”. You know how these kind of things can get emotive, especially during this season where we are nearing elections. As leaders, we find ourselves in very difficult situations.

Mr. Speaker, Sir, I agree with Sen. Mutula Kilonzo Jnr. who brought this to our attention. That as a leadership, you have been invited to have a sit-down with Members of the National Assembly, so that you can resolve this matter and so many others that are of a critical nature. If we just locked ourselves, lock, stock and barrel and say this is what

the law says without being facilitative, unfortunately, we will be shooting ourselves in the foot. Some of these laws affect us directly.

Mr. Speaker, Sir, I serve in the Parliamentary Service Commission (PSC) and I want to bring something to your attention. As a representative of Members of this House, it is important that I tell them that the National Assembly passed the Parliamentary Pensions (Amendment) Bill. The same fate that befell the County Boundaries Bill has befallen that particular law.

We are simply trying to ensure that upon the end of your term in office, Members of Parliament (MPs) do not queue at Bima House and be mistreated. We, as Parliament, want to manage our own pension so that you go to an office where people are familiar with you. They will accord you the kind of respect and treat you accordingly.

I see Sen. Orenge here and I would like to plead with the leadership of this House and the leadership of the National Assembly that when they sit together to make sure they resolve this particular Bill because it is extremely important. This is especially for our Members many of whom, for one reason or the other, have chosen to exit parliamentary work in this phase of their career. This is a very important Bill.

Let us resolve some of these outstanding issues for the sake of good order in the country. This is even on matters such as the one that I have just cited, which affects us as Members. That matter needs to be resolved urgently.

Mr. Speaker, Sir, with all those remarks, I stand with my Chairman, the good Sen. M. Kajwang'. You are the best and there is none like you.

*(Laughter)*

**The Speaker** (Hon. Lusaka): That is very generous. Sen. M. Kajwang', you must treat it with a bit of caution.

Sen. Omogeni, proceed.

**Sen. Omogeni:** Thank you, Mr. Speaker, Sir. First, on my part, I want to come to the defense of our good friend, Sen. M. Kajwang'. We know the problems that his Committee has faced for a long time. It is us who contributed to non-functionality of that Committee because they did not have quorum for a long time. So, we are being unfair to him and his Members when we direct all the blame to him while to some extent, this House is to blame.

We considered a matter this morning where a number of Senators, including Sen. Wetangula, were present. Just to correct Sen. Mutula Kilonzo Jnr., we received a written response from the Cabinet Secretary (CS) for the Ministry of Interior and Coordination of National Government, that was delivered to us by the Cabinet Administrative Secretary (CAS).

The Government, Senators and Kenyans have come to accept one reality that unless the National Assembly enacts the County Boundaries Bill - the Senate has already passed it - there is no legal framework of settling disputes between counties. That is the reality and the position in law and we cannot cheat ourselves that we can find any other solution.

Mr. Speaker, Sir, when I look at the response that has been brought to the House by the Chairman - my good friend, Sen. M. Kajwang' - he has told us clearly that unless the National Assembly expedites and passes the County Boundaries Bill, there is no legal

framework in place for settling disputes between counties. My conclusion is that what is contained in this response bears significant intellectual honesty. You have been honest to the House and instead of bashing you, we should be applauding you for stating the legal position as it is.

The only recourse for this House is to continue urging our brothers in the National Assembly to enact the County Boundaries Bill so that we can provide a solution for dealing with disputes between boundaries.

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

### POINT OF ORDER

#### NON-APPEARANCE BY CABINET SECRETARIES BEFORE SENATE COMMITTEES

**The Senate Minority Leader** (Sen. Orengo): Mr. Speaker, Sir, I was not going to say anything about this, but I heard Sen. Mutula Kilonzo Jnr. talking about the Cabinet Secretary (CS) not attending the meeting this morning. I then hear Senior Counsel saying that the CS sent a written response which was presented by the CAS.

I am worried about that trend. The more Parliament gets satisfied by junior representatives of the Executive, another day we will end up having an executive officer send to Parliament.

The Constitution is very clear on the question of accountability. It is not the function of Principal Secretaries (PSs) or CASs. Anyway, CASs should not be talking to us because constitutionally, they are not recognized since they are not part of the structure of governance. If that is the arrangement they want with the Executive while I may want somebody to make *mandazi* for me in my office, that is my own problem.

To appear before Parliament, it must be somebody with a constitutional responsibility. That is the whole idea. When our Committees summon a CS, we should not expect any lesser human being in terms of the constitutional arrangement. Otherwise, we are not doing our work properly.

I know it is getting a little bit late in the day. I remember even during the Kenya African National Union (KANU) days, in the National Assembly, at the end of all Committee reports, there used to be an appearance of the “Big Five” before the Public Accounts Committee (PAC). That included the five major Ministries that controlled the Government and the Attorney-General. Sen. Wako used to appear. Even during his most powerful times, Hon. Njonjo would also appear when summoned.

We are getting into a trend where I can sit here as an MP and talk to a CS. *Bure kabisa! Wachana na hayo maneno.*

*(Applause)*

**The Speaker** (Hon. Lusaka): Order, Senators! That is a good note to end the petitions because our Petitions time is over and we have to move to Statements. I think it has ended well.

Let us go to the next Order.



**Sen. Sakaja:** On a point of order, Mr. Speaker, Sir. I seek your guidance because Sen. Orengo has ended it well. However, we need your pronouncement and direction on the issue of CSs refusing to appear. For instance, on the issue of sports, we invited them thrice and I have been very hesitant, but we have had to issue summons. We have even brought a Motion of Censure here on some of the CSs.

Mr. Speaker, Sir, many months ago, you led us to meeting with the coordinating team under CS, Dr. Matiang'i, and we agreed on how we shall be doing things, but I think there is no goodwill. When we call him here, it is not for our benefit.

The CSs must know that when we invite them, it is not like a coffee date where they tell us when they are available and when they are not. Even when you have a problem, you should come and tell us that you need more time. We are eroding the standing of Parliament.

Mr. Speaker, Sir, in as much as you have made a ruling, we need you to emphasize that accountability and oversight of Parliament is not a favour or something optional that you discuss and agree. It is a big hallmark of our Constitution and we need you to lead from the front.

**The Speaker** (Hon. Lusaka): Let us listen to Sen. (Eng.) Mahamud.

**Sen. (Eng.) Mahamud:** Mr. Speaker, Sir, I agree with Sen. Sakaja. In fact, this morning when we called the CSs from Office of the President (Order Paper) over my security, he referred us to a ruling by the Speaker of the National Assembly. He challenged us that his understanding is that the Speaker of the National Assembly ruled that CASs can appear and we told him that we are not the National Assembly.

So, the request by the Senator that you make a pronouncement on this issue is very important. You must lead us in saying that this House will not entertain appearances by any persons other than CSs.

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

**Sen. (Eng.) Maina:** Mr. Speaker, Sir, I also rise to add my voice to this matter. I remember when you were in the Chair somebody said that CSs are very busy and it was discussed in this House. I found some Members here entertaining the idea that a PS, CAS or any "Johnnie Walker" can appear on behalf of a CS and I rose to object.

*(Laughter)*

**The Speaker** (Hon. Lusaka): Sen. (Eng.) Maina, who is a "Johnnie Walker"?

**Sen. (Eng.) Maina:** I meant once a CS refuses to appear, you can have anybody from the Ministry. That is the one I am referring to as "Johnnie Walker".

Mr. Speaker, Sir, I want to bring your attention to this matter because it was discussed. Perhaps we should check the HANSARD and see what we said. I objected and I believe somebody else also did. This House must come out clearly. I request you to communicate that this House will only deal with CSs, not because that is what we want, but because that is what the Constitution requires since they are responsible.

I must say that those who were appointed from the House knew that they had to appear. You will even find a CAS whose appointment was declared unconstitutional by the court, appearing before us. I am not a lawyer, but is there any constitutional responsibility for them to appear?

We are the ‘upper’ House, although we have been denied the powers of the ‘Upper House.’ Even in the Building Bridges Initiative (BBI), I never saw anything elevating this House to the status it should be. It is a pity because we held very important positions in the BBI Panel, but somehow this House has been relegated to what it is now. If anything, there is a recommendation for more women to join this House.

Mr. Speaker, Sir, let me finish by saying that it should come out that it is not just wishful thinking, or anybody’s judgement, but it has to be the responsible CS. You have to communicate that very clearly.

**The Speaker** (Hon. Lusaka): Let us listen to Sen. Wetangula then Sen. Olekina.

**Sen Wetangula:** Mr. Speaker, Sir, this is a very serious matter that may require a communication from your desk.

This morning, a CAS appeared before a Committee and said that the Speakers of the National Assembly and the Senate ruled that they are eligible to appear. When we reminded him that the Speaker of the Senate has never made such a ruling, he retracted and said it is the Speaker of the National Assembly.

Some months back, we even moved a Motion of Censure against CSs Hon. Munyes and Hon. Keter. My good brother from Nyeri who moved the Motion stepped out when the voting came.

*(Sen. (Eng.) Maina stood in his place)*

**The Speaker** (Hon. Lusaka): He is on a point of order. Sen. (Eng.) Maina, take your sit.

*(Sen. (Eng.) Maina) sat at his place)*

**Sen. Wetangula:** Mr. Speaker, Sir, you gave direction and communication because under the Constitution, CSs are first accountable to the Houses of Parliament before they are even accountable to the appointing authority.

In the days of President Moi, some Ministers lost their jobs for failing to appear before Parliament. This is a serious matter as CSs carry Government policies with them. Therefore, they can speak with finality on matters before the Houses. I

In future, it should be a clear directive to every Committee of this House that if a CS does not turn up on invitation, they should invoke the summons route and that nobody can represent the CS because the Constitution does not create an assistant to the CS.

I thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Proceed Sen. Olekina before I make a ruling on this matter.

**Sen. Olekina:** Mr. Speaker, Sir. I want to remind this House about what we have addressed in the past. I do not know whether we have selective amnesia or it depends on who is sitting on that seat. You made a ruling on this matter in this House earlier on and the HANSARD will bear me witness.

Let me put it very clearly that I do not blame the Speaker. I blame the Chairpersons of the Committees. In the Committee that I seat, when we refuse to accept the Chief Administrative Secretary (CAS) sometimes the Chairpersons says “No, it is okay let us give them an opportunity to be heard”. I sit in both the Health and Energy Committees. It has happened severally. So, let us call a spade a spade.

The moment we become honest, we shall make progress. Article 153, (3) of the Constitution is very clear. It states-

(3) A Cabinet Secretary shall attend before a committee of the National Assembly, or the Senate, when required by the committee, and answer any question concerning a matter for which the Cabinet Secretary is responsible.

When I hear Sen. (Eng.) Mahamud saying that a CS was trying to challenge the decision of this House using a ruling of the National Assembly, I wonder if it is a curse. I wonder whether the Speaker of the National Assembly, Hon. Muturi, made such a ruling knowing that Article 153 (3) mandates CSs to appear before Committees of both Houses.

Mr. Speaker, Sir, I request that you make it mandatory that if it is the CS who has been summoned or invited, the Committee shall not entertain any other person apart from the CS.

Secondly, the Nairobi Metropolitan Services (NMS) has got no constitutional authority to appear before a Committee of the Senate because it does not have a constitutional responsibility.

Article 187(2)(b) is very clear. It is the county government who that function has been devolved to that has the constitutional responsibility. If we are clear and the Committee Chairpersons remain firm and only demand for the CSs to appear, we will not have this back and forth because we will command some respect. The moment we deviate from the norm and allow a CAS to appear, then they will be sending whoever they want to appear.

I thank you, Mr. Speaker, Sir.

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

**Sen Mutula Kilonzo Jnr.** Mr. Speaker, Sir, before you give a directive, I want to bring two things to your attention. First, if a person of the Deputy Speaker is sitting where you are sitting, that direction has come from your office. When your Deputy Speaker issued an order against the CS Hon. Amina Mohammed, she disobeyed. I would hate to think that she did so because it was issued by your Deputy.

Secondly, when the CS sends someone to appear before the Committee, that CS then writes a letter seeking an adjournment from you. That is wrong. When a matter is delegated to the Committee, it should go to there. What is even worse is when the CS then writes to you directly that they will come on a particular day - in this case, on 11<sup>th</sup> November 2021 - she then refuses to attend.

What are we supposed to do when a CS defies the order of a Deputy speaker which is the order of a Speaker? The CS said that she would come on 11<sup>th</sup> November 2021 and then she refused to come. That order issued by the Deputy Speaker was violated. We should either increase the fines or we do something that is extremely drastic.

We are beginning to look like we are a talk show. All we do is talk, talk, talk and do nothing. What is worse is the violation of an order from your Chair. If an order from your Chair can be violated, imagine what happens when a chairperson of a Committee issues a directive. The CS would just say "I spoke to your Speaker, I will not come". It is a serious dereliction and violation of the Constitution. *Bure kabisa!*

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

**Sen. Cheruiyot:** Mr. Speaker, Sir, this is a very emotive issue.

*(Sen. Cherargei spoke off record)*

You need to remind Sen. Cherargei that this is not Cheptiret market where he shouts across when he wants to say something.

**The Speaker** (Hon. Lusaka): Sen. Cherargei, Order! I am the one to make the decision on who speaks. Please respect that.

Proceed Sen. Cheruiyot.

**Sen. Cheruiyot:** Mr. Speaker, Sir, you have forgotten to remind him that there is a procedure for how to capture the attention of the Speaker and not shouting at you as if we are in a cow market.

Back to the point that I was making, Sen Mutula Kilonzo Jnr. forgot a very important detail. However, what he said was what I wanted to refer to. The back and forth attitude that our CSs are developing towards this House needs to end. CS Hon. Amina chose the best day to show us the disdain she has for us by violating an order from the Speaker on the same day she had promised to appear before this House. That tells you that it is no longer even about this House.

It has gotten to a point where even your word does not mean much. Let me remind you that your Chair is extremely powerful. So powerful is it, that I remember last term, one fine morning, your predecessor issued orders to none other than the Inspector General of the Police and gave them ten minutes for the police officers to vacate Parliament grounds and they did. That is what happens when people take Parliament seriously.

What is this that we have done and how low have we sunk as a House to the point that CSs, who are just mere appointees, people we vet, are now ignoring us?

I agree with what Sen. Wetangula said. It calls for serious introspection from you and the office you hold. Before just giving any ruling, I want you to take your time and give us a detailed ruling tomorrow at 2.30 p.m. so that you think through and have it properly drafted. Let it not just be a reference in saying that let us obey the Constitution. No! There must be sanctions on the CS.

The CS for Sports, Culture and Heritage must be used as an example alongside the rest that have continued to ignore this particular House. That way, people will know that if you ignore the summons of the people of Kenya, then there will be repercussions. People need to learn that there are consequences. Take your time, but bring something credible for us to do.

Finally, I think the leadership of this House has let us down. I hate to do this, but I do it with a lot of respect because I know Sen. Orengo is particularly here. There is a habit that has crept into the Parliamentary leadership where when you ask these CS why they never honour these summons, they say but “I pick up the phone and call so and so and they say it is okay they are going to speak to the Chairpersons.”

The Chairpersons do not own these Committees. They are owned by the people of Kenya. When you are summoned to appear here I do not summon you as Sen. Cheruiyot, but it is the over one million residents of Kericho County who want you to come here and give an account of how you are treating their taxes and the money they pay you for you to live as a good CS.

Mr. Speaker, Sir, take your time and guide us accordingly. This is a very important issue.

*(Loud Consultations)*

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

Proceed, Sen. Orengo.

**The Senate Minority Leader** (Sen. Orengo): Mr. Speaker, Sir, the Hon. Senator from Kericho whom I really respect has cast aspersions on the leadership, but I think he kind of corrected himself by referring to Chairperson.

Mr. Speaker, Sir, I can assure you; no CS has ever rung me on a question of any proceedings before the Senate. I want to be very proud about it because I think they know what my stand would be.

However, I would plead that nobody should ever write to the Speaker. It is highly irregular. Nobody writes to a judge. You write to the Clerk and the Clerk will pass that letter to the appropriate Committee. The Clerk must put it before the Committee, not the Chairperson. The Chairperson alone can also not make a decision. It must be a collective decision.

In the meantime, I think what the CS should be advised is that when you have been summoned to appear before a Committee, lets say on the 20<sup>th</sup> of December, you should approach the Committee well before that day. You can give sufficient reasons why you cannot appear, so that the Committee then can make a decision on whether you should appear on that date or not.

Mr. Speaker, Sir, now they have taken it for granted that all that you need to do is to write a letter or to have an excuse of one nature or the other. We must be very hard on this.

Lately I have been seeing what is happening in the Congress of the United States of America, it happens all the time and you feel very proud how these people respect their institutions. Anybody who is working for the Government who does not respect Parliament should not be working in a public institution, in the first place. If they do not respect Parliament, then which other institution can they respect?

Mr. Speaker, Sir, it may be repetition, but as a reminder just like the Bible says, “they may know; but they need to be reminded.” We should come out very loudly on this question. That is not debatable.

I was very proud in the earlier Parliaments when a Speaker would tell Mr. Kenyatta who was a very venerable leader just coming out of the struggle, “Mr. Kenyatta, sit down! Mr. Kenyatta, you are out of order!”

Mr. Speaker, Sir, sometimes when I see some of your colleagues - I am not referring to you - If the President was sitting here, they would feel like they should be leaving the Chair.

*(Laughter)*

So, I hope for Kenya’s sake, we stand firm on this question.

**The Speaker** (Hon. Lusaka): Hon. Senators, just as requested, I will give a ruling although I already did. I will check the HANSARD and just reinforce what I said. However, I just want to reemphasize Article 153. Just listen to this-

“Decisions, responsibility and accountability of the Cabinet

(1) A decision by the Cabinet shall be in writing.

(2) Cabinet Secretaries are accountable individually, and collectively, to the President for the exercise of their powers and the performance of their functions.

(3) A Cabinet Secretary shall attend before a committee of the National Assembly, or the Senate, when required by the committee, and answer any question concerning a matter for which the Cabinet Secretary is responsible.

(4) Cabinet Secretaries shall-

(a) act in accordance with this Constitution; and

(b) provide Parliament with full and regular reports concerning matters under their control.”

What I want to appeal to you, is that we must also have uniformity. When we say the Constitution must be respected, then that must be implemented by all the Committees. Because the moment one Committee allows a CAS, another one does not, so that it starts looking like one Committee looks nice because they are flexible and yet the Constitution is not flexible. You are just implementing what the Constitution says and you are within the law.

So, even as I make that ruling, I want to appeal to all Committees to be uniform because you represent the Senate and the decision we take as a Senate is a decision of the Senate. It is not personal discretion of that particular Committee to allow or not to allow. You are just implementing the Constitution.

Next Order.

Proceed, Sen. Sakaja.

### PAPER LAID

**Sen. Sakaja:** Thank you, Mr. Speaker, Sir. I beg to lay the following Paper on the Table of the Senate today 17<sup>th</sup> November, 2021-

#### REPORT ON THE HERITAGE AND MUSEUMS BILL (SENATE BILLS NO. 22 OF 2021)

Report of the Standing Committee on Labour and Social Welfare on the Heritage and Museums Bill (Senate Bills No. 22 of 2021)

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

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

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

**The Deputy Speaker** (Sen. (Prof.) Kamar): Next Order.

### NOTICE OF MOTION

**The Deputy Speaker** (Sen. (Prof.) Kamar): Sen. Nyamunga. Okay, we will defer it for now.

ENGAGEMENT OF TRADITIONAL HEALTH PRACTITIONERS BY COUNTY  
GOVERNMENTS IN THE TREATMENT OF MENTAL HEALTH

*(Notice of Motion deferred)*

**The Deputy Speaker** (Sen. (Prof.) Kamar): Next Order.

**STATEMENTS**

**The Deputy Speaker** (Sen. (Prof.) Kamar): Hon. Senators---. Sen Sakaja, you have something?

**Sen. Sakaja:** Thank you, Madam Deputy Speaker. I have a point of order. I am seeing there is a Statement being requested by Sen Ngugi, because he has a right to request it on a matter of Nairobi.

I am wondering how these Statements are processed. Such a statement on Gikomba has already come to this House. I brought it. I am not sure whether Sen Ngugi knows the county he represents. How is the processing done such that the same exact Statement can be requested twice, by the substantive Senator of the County and then later by the Nominated Senator? That is administrative. He is not even a Member of my delegation? He is a member of Nyandarua delegation.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Sen Sakaja, you are communicating across the---

**Sen. Sakaja:** Sorry. Madam Deputy Speaker, just technically---

**The Deputy Speaker** (Sen. (Prof.) Kamar): I have noted that. Actually, I wanted the Statements Pursuant to Standing Order No. 51 (1) (b). I will come back to that one.

The one from Chairpersons because of deadline matters that we have been waiting for. So, I would like to call on the Chairperson of the Standing Committee on Education to issue a Statement relating to the activities of the Committee.

Sen. (Dr.) Milgo.

ACTIVITIES OF THE COMMITTEE ON EDUCATION

**Sen. (Dr.) Milgo:** Thank you, Madam Deputy Speaker. This is a Statements relating to the activities of the Standing Committee of Education Pursuant to Standing Order 51 (1) (b) for the period from July to November 2021-

I rise pursuant to standing order 51(1)(b) to make a Statement on the activities of the Standing Committee on Education for the period commencing July to November, 2021.

During the period under review, the Committee held a total of 45 sittings, considered 11 Statements, considered two petitions and tabled the reports.

During consideration of one of the two Petitions on the delayed payment to suppliers of commodities to public secondary schools during the first term of the academic year 2020, the Committee observed that, there is limited public access to the information of the goods or services procured by the Ministry of Education, the contract

values, and the suppliers' particulars, including owners and directors of the contracted companies.

The Committee noted that there were discrepancies and irregularities on the amount of resources and books requisitioned and supplied and the actual number of learners in different learning institutions.

To this end, the Committee recommended that the Ministry of Education should submit to the Senate through the Standing Committee on Education, a quarterly report on capitation fund disbursement for each school, total student enrolment for each school and payment schedules for the goods and services procured, providing evidence of prompt payment and procedures followed.

Madam Deputy Speaker, in the period under review, the Committee concluded its inquiry on current landscape and the status of implementation of Early Childhood Development Education (ECDE) in the country and held a successful validation workshop with different ECDE stakeholders, including the Council of Governors (CoG), the Ministry of Education and the Teachers Service Commission (TSC)

During this inquiry, the Committee observed that the enrolment in the ECDE centres increased gradually between 2013 and 2016 by about six per cent.

*(Loud consultations)*

Madam Deputy Speaker please protect me from the loud noise.

**The Deputy Speaker** (Sen. (Prof) Kamar): Order, Senators! Consult in low tones, so that we can hear Sen. (Dr.) Milgo.

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

**The Deputy Speaker** (Sen. (Prof) Kamar): Sen. Wambua, what is your point of order? Are you protesting consultations?

**Sen. Wambua:** Madam Deputy Speaker, this is a House of records. It should not go in the HANSARD that Sen. (Dr.) Milgo is alluding that Senators are making noise when they are just consulting.

*(Sen. (Dr.) Milgo stood in her place)*

Sen. (Dr.) Milgo is standing while I am on my feet. I do not know what is happening, but something is happening. Let us be orderly. Let us return dignity to Members and dignity to this House. We do not make noise, but we consult in low or high tones.

**The Deputy Speaker** (Sen. (Prof) Kamar): I followed it by telling Members to please consult in low tones so we can hear the Chairperson of the Committee on Education.

**Sen. (Dr.) Milgo:** Thank you, Madam Deputy Speaker. This House will have its dignity when you consult in low tones.

During this inquiry, the Committee observed that the enrolment in ECDE centres increased gradually between 2013 and 2016 by about six per cent, but declined in 2018 by 19 per cent probably as a result of three-tier 8-4-4 system being replaced by the two-tier CBC system.



Madam Deputy Speaker, the Committee, however, noted that the reduction in the number of learners is not consistent across the counties, which is attributed to inadequate number of permanent ECDE centres, insufficient number of ECDE teachers and caregivers, inadequate teaching and play materials and resources, low morale of staff due to poor remuneration and inadequate essential infrastructural facilities.

In this regard, the Committee has prepared its report with actionable recommendations to different stakeholders both at the national and county governments which is scheduled for adoption and subsequent tabling in the Senate.

Madam Deputy Speaker, during the period under review, the Committee considered three Bills, namely-

- a) Basic Education (Amendment) Bill, (Senate Bills No. 4) 2021;
- b) Kenyan Sign Language Bill (Senate Bills No.5) 2021); and
- c) County Vocational Education and Training Bill (Senate Bills No. 6) 2021.

These Bills are currently undergoing the legislative process and are at different stages in this House.

Madam Deputy Speaker, the Statements requested from the Committee continue to highlight on the challenges posed by the effects of COVID-19 pandemic. This pandemic has exposed vast challenges and disparities facing the education sector. The net effect of these challenges is that the gap in education and socio-economic quality is likely to be aggravated which could affect the learning and life chances of many children in the country.

The Standing Committee on Education will continue engaging the Ministry of Education and other stakeholders to ensure that sufficient resources have been availed to ensure that the challenges and disparities facing the education sector are addressed.

Madam Deputy Speaker, as you are aware, the Committee adopted different measures, means and tools of oversight during the COVID-19 pandemic among them conducting virtual inquiries.

During the period under review, the Committee resolved to invite all the governors to virtual meetings of the Committee to deliberate on the implementation of the Technical and Vocational Education and Training (TVET) policies in each county and the challenges, if any, facing implementation of the said policies. So far, the Committee has met 26 counties virtually and intends to conclude this inquiry before the end of this Session.

I thank you, Madam Deputy Speaker.

**The Deputy Speaker** (Sen. (Prof) Kamar): Thank you, Sen. (Dr.) Milgo.

Please note that we are not commenting on the statements.

What is your point of intervention Sen. Cherargei?

**Sen. Cherargei:** Thank you, Madam Deputy Speaker. It is important that I give a slight input although I am not a Member of the Committee on Education. I would like to make two comments. One, I thank the Chairperson of the Committee on Education. However, there was a small issue on the conclusion of suppliers to schools.

I brought a Statement to this House on the same matter on suppliers who serve secondary schools and the Ministry of Education not being paid. That was raised during COVID-19 period. We needed the Ministry of Education to let us know whether the issue of pending bills to the suppliers of Ministry of Education has been undertaken and concluded.

Further, there was the issue of increase of school fees by institutions of higher learning such as universities, colleges and polytechnics as well as that of status of funding by the Higher Education Loan Board (HELB). I would like the Chairperson of the Committee on Education to note some of the issues that are coming up.

Finally, is on the issue of ECDE teachers. My county has employed ECDE teachers who are allegedly earning Kshs10,000 per month on permanent and pensionable terms. I call on the Chairperson of the Committee on Education to re-look at the ECDE Act.

There is no uniformity in the payment of the ECDE teacher in the counties. For instance, Kisumu could be paying their ECDE teachers Kshs15,000. Nairobi County, represented by Sen. Sakaja, could be paying its ECDE teachers Kshs20,000 while a county like Nandi is paying its teachers Kshs10,000. What can Kshs10,000 do for an ECDE teacher? We need to relook at that matter.

The ECDE teachers even in your county, Uasin Gishu County, are being thrown right, left and centre. Other counties are paying their ECDE teachers as low as Kshs5000. We need a scheme of service to address the issues affecting the ECDE teachers. The Chairperson of the Committee on Education must come out strongly and address such issues.

I thank you, Madam Deputy Speaker.

**The Deputy Speaker** (Sen. (Prof) Kamar): Sen. Cherargei, when a Statement is referred to a Committee, you are welcome to go the Committee and contribute right there so that what you are saying does not have to go to the HANSARD only. It will have more impact if you contribute to the Committee. Please go ahead and talk to the Chairperson.

Sen. Sakaja, do you also have something to say?

**Sen. Sakaja:** Madam Deputy Speaker, Sen. (Dr.) Milgo, who is also my Vice Chairperson Emeritus in the Committee on Labour and Social Welfare is doing an amazing job. My comment on the issue of ECDE teachers is that we did a joint a tour. When went to Kisumu, Bomet and Kericho counties and we realized what Senator Cherargei is saying is true.

We have a huge issue across the country on the schemes of service and that is a labour issue. In some counties, teachers are paid in a certain way and I am very happy the Governor of Kericho listened to us and agreed to review upwards, same as Bomet. Some of the ECDE teachers are treated as casuals and contract staff while others are on permanent and pensionable terms.

I would like to inform all Senators that we are engaging the CoG together with all the Public Service Boards to make sure that the established scheme of service for ECDE teachers is uniform across the country. I know many counties have different amounts of resources within, but let us aim to get there because these teachers go to the same schools to learn, only for one of them to end up being paid Kshs25,000, while another one receives Kshs10,000. That is not fair.

It is good to inform the public and Members of the Senate that the Committee Labour and Social Welfare together with Committee on Education is actively working to resolve the matter.

Thank you, Madam Deputy Speaker.

**The Deputy Speaker** (Sen. (Prof) Kamar): Thank you. That is very good information.

Sen. (Dr.) Langat, would you also like to inform the House?

**Sen. (Dr.) Langat:** Yes, Madam Deputy Speaker.

I would like to thank Sen. (Dr.) Milgo for the good work that she is doing. I would like to also add something on matters to do with Competence Based Curriculum (CBC)

Wherever we go in this country, there are many complaints on readiness and preparedness for this particular programme to continue. I have heard that Sen. (Dr.) Milgo is now with the Committee interrogating the same. I want to inform them that they should not involve stakeholders during the time of interrogation, so that we streamline this particular curriculum based system of education because it is proving to be very difficult.

Madam Deputy Speaker, whenever we get teachers they tell us how confused they are about this curriculum. The training they have undergone was not sufficient for them to handle this system. Further, most of the complaints are on the costs and also lack of preparedness to engage the students in junior and senior secondary schools.

I know she is equal to the task and I appeal that she handles it with a lot of care so that she can advise us and the Ministry of Education effectively on the same.

Thank you, Madam Deputy Speaker.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you, Senator. The next statement is from the Chairperson of the Standing Committee on Energy.

#### ACTIVITIES OF THE COMMITTEE ON ENERGY

**Sen. (Eng.) Maina:** Thank you, Madam Deputy Speaker. I rise pursuant to Standing Order No.51 to make a Statement on the Activities of the Standing Committee on Energy in the last quarter from 20<sup>th</sup> July to 16<sup>th</sup> November, 2021.

I start by noting that during the period under review, the Committee lost our dedicated Vice-Chairperson, Sen. Prengi. He was a nice person to work with. May his soul rest in peace. I also take this opportunity to welcome Sen. A. Haji who has joined our Committee. I report here that Sen. A. Haji was duly elected as our Vice-Chairperson this morning. He is very welcome.

Madam Deputy Speaker, during the period under review, the Committee held a total of 10 sittings, handled six statements and also finalized on one Petition. With regard to statements, pursuant to Standing Order No.48(1), Sen. (Eng.) Hargura requested for a Statement from the Committee regarding establishment of off-grid energy facilities in Marsabit County.

The Ministry of Energy provided a response which was shared with the Senator. In their response, the Ministry of Energy indicated that part of the strategies being employed to ensure electricity access in all areas include grid expansion, grid densification, grid intensification, solar energy system and solar stand-alone systems.

Madam Deputy Speaker, pursuant to Standing Order No.48(1), Sen. Pareno sought a Statement from the Committee regarding the KenGen Wind Power Project in Ngong Hills. The Ministry of Energy provided a response, which was shared with the Senator.

In their response, the Ministry indicated that KenGen sets aside funds for Corporate Social Responsibility (CSR) projects aimed at improving the living standards

of communities that host installations. This is done through employment opportunities, education scholarships, environmental conservation, water, COVID-19 response and health. We believe these things have been done. The Senator has not raised any issue with us.

Madam Deputy Speaker, Sen. Ledama Olekina sought a Statement from the Committee regarding the financial status of the National Oil Corporation of Kenya (NOCK). The Ministry of Petroleum and Mining provided a response and we discussed with Sen. Olekina because he is a Member of this Committee. We are still pursuing the matter with the Senator. The Committee will fully cooperate so that this important and strategic parastatal is taken care of.

Madam Deputy Speaker, under Standing Order No.48(1) and on 7<sup>th</sup> September 2021, Sen. Samson Cherargei sought a Statement from the Committee regarding malpractices by players in the energy sector, including suppliers of liquefied gas. The Committee has written to the Ministry of Petroleum and Mining and is awaiting response from the said Ministry.

Once again, Sen. Cherargei sought a Statement from the Committee regarding fuel price increases by the Government as announced by the Energy and Petroleum Regulatory Authority (EPRA). Following deliberations by Senators, you directed that the Committee invites both Cabinet Secretaries for Petroleum and Mining, and Energy for a meeting on 21<sup>st</sup> September, 2021. The Committee invited both CS, but they both sent apologies and failed to appear.

Madam Deputy Speaker, this matter was taken seriously by this House and it resulted in a censure Motion passed on both CSs. The Committee met with the Cabinet Secretary for Petroleum and Mining on 4<sup>th</sup> October, 2021. Sen. Cherargei was present in the meeting and was provided with a response from the Ministry of Petroleum and Mining. We assume the Senator is now satisfied with that response.

Madam Deputy Speaker, pursuant to Standing Order No.48(1), Sen. Cherargei sought a Statement from the Committee regarding the power purchase agreements between Kenya Power and Independent Power Producers. The Committee has written to the Ministry of Energy and is awaiting a response from the Ministry.

Madam Deputy Speaker, the Committee is currently finalizing the Petition submitted by Mr. John Kimeu Mukai regarding restoration, remediation and reinstatement of the residents of Thange River Basin and the effects on the environment and the people in that area due to an oil spill which happened on 12<sup>th</sup> May, 2015.

The Petition had initially been committed to the Committee on Lands, Environment and Natural Resources. However, through your office, it was recommitted to the Committee on Energy. We intend to table the report in the House in this session regarding our conclusion on the matter.

During the period under review, the Committee pressed the Ministry of Petroleum and Mining to submit a regulation on the Petroleum Development Levy. The CS informed the Committee that the regulations are currently at the public participation stage. The relevant Bill is in Parliament currently.

Madam Deputy Speaker, of importance to note is that the funds of the Petroleum Development Levy, which was supposed to cushion consumers of oil products like fuel and paraffin is right now in the control of the National Treasury. It is the view of the

Committee that this fund should be under an independent regulator. Presently, there is a Bill undergoing public participation and it will regularize this matter.

Madam Deputy Speaker, the Committee informed the Ministry of Petroleum and Mining that the funds of the Petroleum Development Levy (PDL) should be under the control of the Ministry of Petroleum and Mining. When this Bill is passed, that is what it will aim to achieve.

During the period under review, the Committee engaged the Ministry of Energy on the cost of electricity for domestic and commercial consumption. The Committee has learned that taxes and levies are the major cause of high electricity bills in the country.

The Ministry keeps telling us that the high cost of fuel and electricity bills is due to high Government taxes levied on these two items. As we are all aware, the Executive has ordered that the prices must come down in December, so we are all waiting for that.

Madam Deputy Speaker, the Committee invited the National Treasury and the Ministry of Petroleum and Mining to discuss this matter. We are still following it. Allow me to say on record that the Committee has engaged the Ministry of Petroleum and Mining regarding the cost of petroleum products.

The Ministry of Petroleum and Mining has always indicated that taxes and levies are the major contributor of the high fuel prices. We, as the Senate, it is unfortunate that it does not have the mandate on taxes and levies. It is, therefore, upon the National Assembly to ensure that taxes and levies on petroleum products and electricity are reduced. We hope that this Bill will achieve that.

Madam Deputy Speaker, as I conclude, the Committee intends to carry out the following key activities during the next quarter-

- (1) It will continue to engage the Ministry of Petroleum and Mining on-
  - i. The National Oil Corporation of Kenya (NOCK) and its current financial status owing to the unending uncertainty in actual financing and project fund disbursement.
  - ii. The cost of petroleum products.
  - iii. The cost of liquid petroleum gas.
  - iv. Strengthening of the infrastructure and storage capacity of petroleum products.
- (2) The Committee intends to meet with the Ministry of Energy on-
  - i. Lowering the cost of electricity to Kenyans
  - ii. The status of the Kenya Power (KP) with reference to its financial status.
  - iii. The status of KenGen with reference to its financial status.
  - iv. A policy on renewable energy which includes solar, geothermal and wind energy.

Madam Deputy Speaker, I must add that we have been extremely concerned---

*(The Serjeant-at-Arms dropped a Box)*

There seems to be an earthquake.

**The Deputy Speaker** (Sen. (Prof.) Kamar): It is okay. Just continue.

**Sen (Eng.) Maina:** I pray that she is well.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Somebody is already taking care of that.

**Sen. (Eng.) Maina:** We wish to assure the House that we are relieved that through the efforts of the Committee, there has been some relief on the cost of fuel and electricity. We hope that before the end of the year, as has been promised by the Government, these two products will come to affordable prices.

Madam Deputy Speaker, I beg to move.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you, Senator. The last Statement is by the Chairperson of the Standing Committee on Finance and Budget.

*(Sen. Cherargei spoke off record)*

Sen. Cherargei. Please, be very brief.

**Sen. Cherargei:** Thank you, Madam Deputy Speaker. I will be very brief, future Governor of Uasin Gishu County.

Energy is very important. Issue concerning energy are so sensitive and emotive. There are two things that I want to observe.

I thank the Chairperson of the Committee on Energy, Sen. (Eng.) Maina, for this opportunity. I congratulate them for giving a decisive Statement. I thank the Committee because it is from my question that the then Cabinet Secretaries (CS) of Energy and Petroleum and Mining were censured.

Madam Deputy Speaker, the issue of an independent power producers agreement is where the real problem is with the high cost of electricity in this republic. The new CS, Dr. (Amb.) Monica Juma has assured the country that they will give us a gift before Christmas day. I, therefore, appeal that the issue of independent power producers must be addressed.

I hope that the Chairperson of the Committee on Energy is listening. The second issue is on the PDL fund. During the monthly reviews by the Energy and Petroleum Regulatory Authority (EPRA), we have seen that the issue of fuel remains constant throughout this period.

Through the Committee on Energy, the Senate really wants to know whether the PDL fund will assist our people. We need our people to be cautioned. You are aware that the World Bank (WB) is telling the country to review some of its issues.

Madam Deputy Speaker, it is good that you come from Uasin Gishu. I was shocked that a 50 kilogramme bag of maize is sold at Kshs1,350, yet the cost of using diesel is very high. Selling maize is still very costly. A 50-kilogramme of maize bag is being sold at shs1,350. However, when the cost of fuel is still very high.

I appeal to the Committee on Energy to kindly address the issue of the PDL fund. We were told that regulations were in place. Can Sen. (Eng.) Maina confirm to the House whether the rules and regulations on the management of the petroleum levy fund has been developed, so that we can have a proper handling on how the funds can be used to subsidize prices and ensure that fuel does not become costly.

Madam Deputy Speaker, I congratulate the Chairperson of the Committee on Energy and appreciate that they will address the remaining issues.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Sen. (Dr.) Ochillo-Ayacko. Take two minutes if possible.

**Sen. (Dr.) Ochillo-Ayacko:** Thank you, Madam Deputy Speaker, for the opportunity. I heard the speaker before me talk about the future Governor of Uasin Gishu. However, I hope that you get there, but I do not want to spend my time on that.

I was once privileged to serve as the Minister of Energy under the former President Kibaki. In all our engagements with him at either the Cabinet or individual level, he kept on asking me one thing, when would the cost of electricity come down? That is what he talked to me about.

During my youthful years, I tried to make very complicated, sophisticated and imaginary propositions to modernize the sector. He told me that the bottom line was when would the cost of electricity come down?

I plead with the leaders of this nation and Members of this House that all those proposals on innovation and technology must answer the question that former President Kibaki kept asking me. When will the cost of energy come down?

Madam Deputy Speaker, we know that all governments are seeking to come to office promise the public affordable lives and an affordable cost of living. However, until we address the cost of fuel and electricity, we will just be dancing around this promise without attempting to realize it. I want to support the Statement of this Committee and ask them to keep asking when the cost of energy will come down.

Thank you.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Sen. (Dr.) Lang'at. You have two minutes.

**Sen. (Dr.) Langat:** Thank you, Madam Deputy Speaker, for allowing me this opportunity also to support my Chairman, the Senator for Nyeri. We still have a long way to go, more so, when it comes to the cost of fuel and energy in this particular country.

While going round in my county, I realised that the high cost of fuel has affected the self-employed *boda boda* people. The initiative of self-employed youth who ride *boda boda* was introduced in this country during the time of President Mwai Kibaki.

The *boda boda* industry has employed many youth who otherwise could be idle in our society and doing all manner of things. The *boda boda* sector has helped the youth to earn a living and live relatively stable lives in their homes. However, the same business has been affected negatively by the high cost of petroleum.

I just want to encourage Members of our committee that we still have to work hard to ensure that the cost of energy and fuel in this particular country comes down because it actually drives a larger number of the youth who are self-employed. The work we did the other time was encouraging because we headed to the right direction. The greatest challenge we had was failure by the Cabinet Secretary for Petroleum and Mining to appear before our committee.

I hope this time around, with the declaration that we made and the ruling of the Speaker today, that gentleman by the name Munyes will change his mode of working with the committees and make sure that he cooperates with us, so that we bring down the cost of fuel in this country to manageable prices for those who are in sectors where fuel drives their economy.

I support the Statement.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Finally, we will have Sen. Olekina.

**Sen. Olekina:** Madam Deputy Speaker, as a Member of the committee, I can attest that the committee has been dealing with a lot of Statements and crises in the sector

in terms of prices of fuel going up on a regular basis. This is a very complex matter. I hope that soon, both Houses of Parliament will sit down and think through the prices.

We know that petroleum prices are going up globally but in the developed nations, they have ways of cushioning the citizens. It has been tough in this country. When we increase petroleum prices, we should always take into consideration the kind of living standards of our people.

I commend the Chairperson for having read the Statement. As a Member of that committee, definitely I will continue to support its work. I can see Sen. (Dr.) Langat here and he is also a Member of the committee.

The more we work and interrogate the Cabinet Secretaries on matters that affect the public, the more we become responsive to our citizens. One of the biggest challenges that I want to reiterate---

Madam Deputy Speaker, I am happy that the Speaker gave the direction. It is imperative for Cabinet Secretaries to respect the Constitution because they have constitutional responsibilities. Once they are summoned to appear before the committees to give answers to certain questions raised by members of the public or even Senators in this House, they should do so.

Another thing that I would like to encourage my Chair is that as per Article 153(4) of the Constitution, it is stated that a Cabinet Secretary shall provide regular reports on matters that affect their sector.

I want to encourage my Chairperson who is a distinguished Member and a senior citizen in this country to be engaging either the Cabinet Secretary for Energy or the Cabinet Secretary for Petroleum and Mining and ask them to submit quarterly reports on matters that affect their dockets. Once we make that milestone of having quarterly reports, it will enable us do our work diligently and ensure that we keep an eye on all the sectors.

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

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

Mr. Temporary Speaker, Sir, today we are talking about petroleum products being transported to Kisumu. We want to be sure that Kenya Pipeline Company (KPC) is doing a good job. I am happy that there have been positive changes in KPC. I hope that gradually we will see more improvement.

I am impressed with the changes that have been brought about by the new management. I hope that slowly by slowly, we will have much affordable petroleum products in this country.

I thank you.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Hon. Senators, we will proceed with Statements pursuant to Standing Order No.51(1)(b). The last Statement under that section is by the Chairperson of the Standing Committee on Finance and Budget. He needs to issue a Statement relating to the activities of the committee.



## ACTIVITIES OF THE COMMITTEE ON FINANCE AND BUDGET

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): The Chairperson is not in. So, the Statement stands deferred.

*(Statement deferred)*

We will go back to Statements pursuant to Standing Order No.48(1). The first Statement is by Sen. Ngugi but since he is not here, we will proceed. The next Statement is by the Senator for Taita-Taveta County, Sen. Mwaruma, and it stands deferred.

## OPERATIONS OF THE NATIONAL IRRIGATION BOARD

*(Statement deferred)*

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): The last Statement under that section is by Sen. Kwamboka. That Statement also stands deferred because she is not around.

## STATE OF POLICE STATIONS IN THE COUNTRY

*(Statement deferred)*

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Let us go to the next Order.

**BILLS***Second Reading*THE HERITAGE AND MUSEUMS BILL  
(SENATE BILLS NO.22 OF 2021)

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): The Order stands deferred.

*(Bill deferred)*

Let us go to the next Order.

*Second Reading*THE COUNTY OVERSIGHT AND ACCOUNTABILITY  
BILL (SENATE BILLS NO.17 OF 2021)

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): The Order stands deferred.

*(Bill deferred)*

Let us go to the next Order.

*Second Reading*

THE INTERGOVERNMENTAL RELATIONS (AMENDMENT)  
BILL (SENATE BILLS NO.37 OF 2021)

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): The Order is deferred.

*(Bill deferred)*

Let us go to the next Order.

*Second Reading*

THE COUNTY GOVERNMENTS (AMENDMENT) BILL,  
(SENATE BILLS NO. 38 OF 2021)

*(Bill deferred)*

**MOTION**

ADOPTION OF REPORT ON INQUIRY INTO ALLEGATIONS REGARDING IRREGULARITIES  
IN THE PROCUREMENT OF VARIOUS PHARMACEUTICAL EQUIPMENT  
AND PRODUCTS BY KEMSA

**Sen. (Dr.) Mbito:** Mr. Temporary Speaker, Sir, I beg to move the following Motion-

THAT, the Senate adopts the Report of the Standing Committee on Health on inquiry into allegations regarding irregularities in the procurement of various pharmaceutical equipment and products by the Kenya Medical Supplies Authority (KEMSA), laid on the Table of the Senate on Tuesday, 30<sup>th</sup> March, 2021.

Mr. Temporary Speaker, Sir, the Standing Committee on Health was informed about various allegations of procurement irregularities in KEMSA involving several companies in the Financial Year 2017/2018 and 2019/2020.

The Committee noted various concerns raised by county governments and health workers union regarding the quality and cost of goods supplied by KEMSA in relation to Covid-19 pandemic particularly Personal Protective Equipment (PPEs).

The Committee, therefore, resolved to inquire into the allegations of the procurement irregularities in KEMSA involving several companies.

Mr. Temporary Speaker, Sir, as a summary, the main red flags that necessitated our inquiry included-

(1) The utilization of Universal Healthcare Coverage (UHC) and KEMSA capital budget to fund Covid-19 related procurement without authority.

- (2) The irregular use of retrospective direct procurement method;
- (3) Commencing of Covid-19 related procurement processes without an approved budget.
- (4) Failure to integrate the Covid-19 related procurement plan into the budget process.
- (5) Inefficient management of stock in KEMSA where it was exposed to value for money risk.
- (6) Awarding of tenders to companies that had been in existence for less than a year.

We interviewed many stakeholders and relied on the audit report of the Auditor-General on the utilization of Covid-19 funds by KEMSA for the period 13<sup>th</sup> March to 31<sup>st</sup> July, 2020. It was established that the management of KEMSA violated the Public Procurement and Disposal Act, 2015 in all material aspects. The budgetary management for capital budget did not comply with the Public Finance Management Act, 2012.

Given the inefficiency in the procurement process, and the fact that 97 per cent of supply is still lying in KEMSA warehouses at the time of audit, there was no value for money realized. So, the Committee made several observations and at the end of it all, it made a raft of recommendations among which-

- (1) The Office of the Director of Public Prosecution (DPP) and the Directorate of Criminal Investigation (DCI) investigates the Chief Executive Officer (CEO) and board of management of KEMSA for contravening the provisions of the law. We listed the officers whom we were interested in. They included the CEO and chief officers.

- (2) We also asked the Office of the DPP and the DCI to investigate the companies that were awarded these tenders and find out whether there was any collusion between them and the KEMSA officials.

- (3) We also asked State Corporations Advisory Committee (SCAC) to undertake an audit into the conduct of the board of directors and board of management of KEMSA in accordance with Section 27 of the States Corporations Act and make recommendations to the President, the Cabinet Secretary and the Ministry of Health on the measures required to put in place and ensure effective management and functioning of KEMSA.

- (4) We also asked for a review of Public Procurement and Asset's Disposal Act so as to cover issues like rapid market survey in case of emergency procurement and ensure that the procurement plan and the annual procurement projection setting up the intentions of the probable timing, in 24 months period, with some indication of the probability of the intended procurement are available to the public.

- (5) Publish a complete list of current contracts with planned intentions for extension or market approach in the next 24 months.

- (6) Report any significant variations to the procurement programme in its annual report.

- (7) Review the existing regulations to provide for elaborate framework for the conduct, by procurement entities, of emergency procurements, in particular, implementations of Section 103 of the Public Procurement and Assets Disposal Act procurement entities.

These are the recommendations that we made as a Committee on issues to do with procurement in KEMSA. We also requested that KEMSA be authorized to dispose these

medical items that were procured in response to the Covid-19 pandemic at market rates and stop the losses that is being incurred.

With these few remarks, I beg to move and request my brother, Sen. Olekina to second.

**Sen. Olekina:** Mr. Temporary Speaker, Sir, as I rise to second this very important Motion, I must register my disappointment because of the time that it has taken us to deal with this matter.

We investigated this matter over a year ago. During the signing of the report, I was far. I believe my colleagues signed this report sometime in March this year after the investigations and report writing.

As I rise to support this Motion, I have to note the following observations which are key. One, we clearly observed during our investigations, that procurement laws were flouted 100 per cent. This is did not only originate from KEMSA but also from the Ministry of Health.

Mr. Temporary Speaker, Sir, there was evidence to support that the entire mess originated from the Ministry of Health. There were clear directives given by the Permanent Secretary (PS) to the board as well as the management of KEMSA which led them to tap into money which had been set aside for UHC for them to place in orders.

We observed clearly during our investigation that procurement laws were flouted not only by KEMSA but the Ministry of Health (MoH).

The COVID-19 crisis in this country exposed the MoH and a State corporation which for many years had been operating without any major scandals and got them to start thinking how to create COVID-19 billionaires.

Whatever happened during the KEMSA Scandal is something we will regret for the rest of our lives. This is because people went there to put their bellies first instead of lives. They did not care about children in Narok, Trans Nzoia, Mombasa or Samburu who would be exposed to COVID-19. All they cared was how they could get to the procurement. They would then hike the prices of Personal Protective Equipment (PPEs) which were essential things for preventing Kenyans from contracting the deadly virus.

Mr. Temporary Speaker, Sir, the days we sat here and listened to both the Board and the Management, I came to believe that there are people who do not value humanity at all. It is only their way or the highway. They believe that the only way to survive in this country is by lining your pocket at the expense of poor Kenyans.

During our investigation into this matter of KEMSA, I was shocked that without any budget the KEMSA Board as well as the Management would give people commitment letters. They would then tell them to go ahead and import PPEs worth billions of Kenya shillings at whatever price and promised to pay them when the goods landed here.

They had no money because we know what happens. KEMSA being a non-governmental organization (NGO) depends on money given as a budget by the MoH. Once that happens, county governments because of the KEMSA Act put in their requests and end up paying for them.

In this case, we know how much that money was. It was not in billions of Kenya Shillings. When it came to COVID-19, there were donations, which were being given which ended up being sold. There was money allocated. They also got an opportunity to

tap into the UHC money that was set aside for children in our country who have never had a chance to get any medical support so that they could do so.

Universal Health Coverage (UHC) is one of President Uhuru Kenyatta's Big Four Agenda. This - hypocritically - is what we are pushing so fast to pass National Hospital Insurance Fund (NHIF) Bill so that at least people can get access to it. I wonder.

The recommendations here are very clear. There are individuals who we found culpable. We found they had already put their fingers in the cookie jar. We named individuals in this report which is a public document and anyone out there can get it. We named the former Managing Director (MD) Mr. Jonah Manjari whom we recommend that he be investigated. We also named the legal officers for them to be investigated with possible prosecution and we gave timelines.

Mr. Temporary Speaker, Sir, I wonder when we take a whole year to adopt a report whether the timelines we gave--- In these recommendations we gave a period of one month for it to be implemented.

I will read one of the recommendations we gave. The first one was –

- 1) That the Office of the Director of Public Prosecution (DPP) and the Director of Criminal Investigations (DCI) investigate the Chief Executive Officer KEMSA and the Board of management of KEMSA for contravening the following provisions of the law including -
  - a) Article 226 of the Constitution read together with Section 44(2) of the Public Procurement Assets and Disposal Act (PPADA), Section 44, 45 (3) (d) of the PPADA and Sections 48 and 53.

It is very clear that the actors are DPP and DCI. The timeline was one month.

Who is responsible because we do not have an Implementation Committee? It is the Committee on Health. We adopted this report in March. Now at the end of the year, KEMSA is threatening to fire all its 922 employees because they have come up with new things. They are saying, “we have a bloated work force and yet we are supposed to have only 383 employees as per SCAC guidelines”. They want to fire them all instead of looking at the rot.

One of the funny things we heard the other day when we were meeting with KEMSA Board was that for a hospital in Kwale to order drugs from Kwale, the delivery period is over 616 days, which is almost two years. I do not know whether they will be walking because If I walked from Nairobi to Kwale, the maximum it would take me is a month. I do not know whether they will be going at snail's pace to deliver this medicine and whether it will even work. I think we are jokers in this country. We have a crisis.

As Senate, we spent taxpayers' money to come up with these recommendations. We went for a retreat in Mombasa where we drafted these recommendations. We sat here and exchanged bitter words with KEMSA Board and the Ministry because of the rot there. All we were trying to do was to find out the truth because we swore to defend the Constitution. Instead of the DPP and DCI saying, “so long as the report has been tabled, even if it has not been adopted, let us move fast.” They just dillydally. To add insult to injury, the President comes in and gives them 21 days and says, “make sure everyone who is responsible is held accountable.”

Mr. Temporary Speaker, Sir, the goal posts have shifted. I wonder whether this report will be meaningful now that the mandate has changed. It is no longer following all those who robbed this country of billions of shillings and caused the huge scandal. It is

now simply sending all employees home. Meanwhile we have dead stock bought for billions of Kenya Shillings of products which were bought that can never be sold.

A mask that now costs about Kshs30 was at that time being sold for Kshs900. It is there. What did we hear when we were going through these investigations? They said they were being held hostage by the suppliers. Give me a break! How does a supplier hold you hostage?

It is lack of accountability that led to this.

Mr. Temporary Speaker, Sir, I hope that someone out there will want to be counted as somebody who believed that Article 226, was not drafted by the framers of the Constitution just for the sake of it. This Parliament did not just pass the laws to make sure that we call for accountability for the sake of it. Otherwise, all these parliamentary meetings will just be a means for us to earn some allowances.

This is one of the investigations that really annoyed me because I could clearly see that the people in the Kenya Medical Supplies Authority (KEMSA), who belong to jail, did not care. It was very clear they were not acting alone. They were acting with some very senior people who are untouchable in this country.

If we are really calling for change and we believe everything that we say and we respect the President---

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

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Sen. (Dr.) Ochillo-Ayacko, on a point of order.

**Sen. (Dr.) Ochillo-Ayacko:** Thank you, Mr. Temporary Speaker, Sir. This is a country where there is no secrecy and this House should not have secrecy. Would I be in order to request and plead with my outspoken brother, to name these untouchable people who are interfering with public affairs so that we join him in dealing with these people?

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Sen. Olekina, you are required to substantiate the matter. If not, I bring you to the attention of Standing Order No.100 on the responsibility for the statement of fact.

**Sen. Olekina:** Mr. Temporary Speaker, Sir, I will be glad to do that.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Proceed.

**Sen. Olekina:** Mr. Temporary Speaker, Sir, the fact that the recommendations of this House directed the offices of the Director of Public Prosecutions (DPP) and the Directorate of Criminal Investigations (DCI) to investigate these individuals and until today, they have not been investigated will lead me to conclude that the persons being investigated are very powerful, that they cannot be touched.

I was very clear in my submission and I will repeat what I said; that, it will lead you to conclude that those who were in charge of KEMSA, have not been prosecuted until today because we are dealing with people who are very powerful in this country and cannot be touched. How do you explain the fact that the President says that investigations to be concluded in 21 days and until today, they have not been concluded?

I do not have a problem with my good friend and colleague - the engineer; former Cabinet Secretary (CS) for the Ministry of Energy, the Senator and hopefully the future Governor of Migori County - for asking me to substantiate. However, I said that the fact that these investigations have not been carried out, will lead me to conclude that they are dealing with very powerful people who cannot be touched. In a country where we respect

the rule of law, when you are given 21 days to prosecute, you must prosecute. I believe I have substantiated.

Mr. Temporary Speaker, Sir, this is a matter which really gets me the wrong way. Before I conclude, one of the recommendations that was made by my committee, which was also given a timeline of one month - was that the DPP and DCI investigate companies set out in annex two of this Report.

Everyone is invited to come in and get a copy of the Report because this is a public document. These are companies that were awarded tenders by KEMSA. The two offices are to determine if there was any collusion between the Chief Executive Officer (CEO) of KEMSA, the Board of Management of KEMSA and the directors of the companies; in contravention of the Public Procurement and Asset Disposal (PPAD) Act, 2015 and the Public Finance Management Act, 2012 and---

*(Sen. Olekina hesitated)*

Mr. Temporary Speaker, Sir, I cannot see what is written here. So, I will just summarise what is written there; and prosecute. We were given one month. I hope now, the DPP and DCI will come and get some material from this Report.

It is a bit hypocritical for the KEMSA Board to now come and have a meeting with the Senate Committee on Health and say they were being held hostage by suppliers. You were being held hostage? This Committee that investigated this matter has recommended the DPP and DCI to then go and follow these companies and suppliers and find out what this "hostage" means. Why are you being held hostage?

One thing which was a laughing matter is that, when we held a meeting with the new KEMSA board, when you listen to them you realize that they have no clue as to what is happening. In fact, their focus is on a Human Resource (HR) audit but not the truth. If you listen to them, you will end up concluding that the reason why these staff were sent home is so that the truth will never come out as to what happened last year that led to the issue of the COVID-19 billionaires.

As I conclude, it is important that the House reviews the existing regulations to provide for an elaborate framework for the conduct by procuring entities, to emergency procurements and in particular, the implementation of Section 103 of Public Procurement and Asset Disposal Act, 2015 by procuring entities. This is a matter that now behooves us as Parliament and also the Ministry to be look at what is happening.

Mr. Temporary Speaker, Sir, I have to say that I am a bit skeptical of the militarization of this country. The moment you bring in the military, you are actually saying goodbye to procurement laws because they will do whatever they want to do. Furthermore, it is the military. I believe the military of this country has done a very good job. I hope that instead of bringing in the military to take over KEMSA, we can prosecute those who caused companies---

I am sure there are innocent people who supplied to KEMSA but today, one of the things that pains me the most, is when you hear that KEMSA owes suppliers Kshs6.8 billion. KEMSA is also owed quite a lot of money by county governments.

I want to request county governments that since we come here to fight for you to get money and the National Treasury releases the monies on time, please, pay KEMSA

what you owe them. That way, at least, you can deliver drugs to Kilifi County in a month's time, instead of the 616 days that you take to fill an order rate.

Mr. Temporary Speaker, Sir, with those few remarks, I beg to second.

*(Question proposed)*

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Sen. (Dr.) Ochillo-Ayacko, you may have the Floor.

**Sen. (Dr.) Ochillo-Ayacko:** Thank you, Mr. Temporary Speaker, Sir, for the opportunity to speak to this hallowed topic.

The primary function of Parliament - aside from legislating and budget approval - is to oversight the use of public funds, fidelity to law and service delivery to people who are the true owners of this country.

They are the ordinary Kenyans who pay taxes, vote and make Kenya a nation. A nation comprises of four things; the people, their territory, their government and the international recognition. Those four things constitute an identity that should be recognized by the United Nations.

Mr. Temporary Speaker, Sir, the oversight function of this House is performed by Committees created by the Standing Orders and actualized by law. One such Committee is the Committee on Health that we have put in place to dedicate its energy, time and skill to oversight the use of public funds. The entity that is being oversighted is one that is responsible for pharmaceutical materials that are consumed by our counties by way of health supplies.

The one unfortunate thing is that the entity under scrutiny is one that has been enjoying a monopolistic position when it comes to dealing with counties. Until proposed changes were recently made, it was a monopoly and all counties were obligated to get their supplies from that institution.

It is unfortunate that such an institution has been associated at the expense of supporting life or fighting invasion of disease. It has been associated with graft and not just graft at the surface. The kind of graft I am referring to is one that is so embedded in its structure and its behavior. It is the kind of graft that cost the loss of public finances of such magnitude that the Committee believes that such powerful people are behind such wanton waste and misbehavior.

Mr. Temporary Speaker, Sir, it is unfortunate that as we debate the recommendations of the Committee, the President's admission to that vice that action be taken within 21 days is being ignored. A presidential directive is earth moving. People would try to trip on one another to try and have it implemented. I wonder what is happening to our institutions charged with the responsibility of investigating thoroughly matters that are of this nature.

I wonder what the Directorate of Public Prosecution (DPP), Ethics and Anti-Corruption Commission (EACC) and Directorate of Criminal Investigations (DCI) are doing. If they are doing anything, they should let us know that they are trying to remove or knock out the teeth of the responsible individuals.

As far as we are concerned, we have equipped them with personnel who are well trained. We have also equipped them with resources to carry out the duties that they are supposed to carry out. I still wonder why they are not carrying out their duties. Wherever



they are, I urge them to do their work. I also urge the President as the person in whom and whose office we have vested unfettered authority that is only fettered by the Constitution and the law, he should move with dispatch and give life to his directive.

The President is the Commander-in-Chief and he issued a command. Can the President's command as the Commander-in-Chief be issued in vain? If he allows his command to be issued in vain, by allowing that to happen, he has abolished his own office. Perhaps his office is existing in terms of the niceties and flowers that it has but his authority is null and void because nobody is acting on his authority.

If he does not want to exercise that authority, I wish and hope that there was a way he could allow Baba to do that on his behalf. The method of Kondele or some other places would apply by people who are ready to give life to such authority. That is of course on a light note. I believe that the President should say something and cause it to be done because that office is vested with sufficient authority.

Mr. Temporary Speaker, Sir, I notice that my brother, Sen. Cherargei is in awe and wonder about Kondele. I am not talking about the incident that took place in Kondele last week. The real Kondele is the one that you have not seen yet. Wait until the time comes. Kondele is the home of one legendary person called Onde. Kondele is Kisumu is equivalent to another place in Migori called Posta; that place that was never visited. I hope that the bad spirits will not cause trouble and turmoil in such places. This is Kenya and it is one country for all of us so we should not pull it down.

What gives encouragement to people who are hell bent on pilfering and taking away our resources is that fact that they can do it and get away with it. Some people may choose to call it impunity but realists will tell you that if you are able to commit a crime, get away with it and display the proceeds of crime out there, then crime becomes a rewarding profession. The young people of today and the future will wish that they learnt the trickery and skill to commit crime and get away with it. This is a crime that has come to this House for scrutiny. It has also gone to our sister House for scrutiny.

It has caught the attention and ears of the President for scrutiny yet the suspected criminals are traversing this nation and displaying their wealth and resources out there. What will our children who study, pass fourth form, go to university and emerge with first class honours and are unemployed think of? They will think that going to university, passing your exams and being a *boda boda* rider does not pay. They will think that being a criminal you can get away with a crime in spite of the fact that the President claims to be offended at that crime.

That the Senate, including Sen. Olekina can debate and nobody cares. Whether Sen. Olekina has debated the matter, Sen. Ochillo-Ayacko from Migori can also say so and they get away with such crime, then the young people of today and tomorrow will put school aside and disregard degrees with first class honours or otherwise and learn how to commit crime. That will be the time that this nation will fall to pieces.

Mr. Temporary Speaker, Sir, many people are appointed to office, have a pen, signature and key that can take away billions of shillings but they do not steal those monies because they believe that doing so will be a crime for which they will be caught and made answerable. This wonderful report is before this House which is pointing towards people whose names are there. They are Kenyans who we know and they are suspected of stealing money that belongs to us and nothing is being done.

Are we not as a nation wasting time setting up offices such as the Directorate of Criminal Investigations (DCI)? We give the officers at the DCI guns, equipment to help unravel fingerprints and ability to read documents that we cannot read? Are we not as a nation wasting time constituting a body like the Ethics and Anti-Corruption Commission (EACC); legislating and fortifying resources given to them? What are we doing with those institutions when names are here and not a single one of them has been invited to unbundle the suspicion that we have about the utilization of funds? Not a single name has been invited to unbundle the suspicion that we have about the utilization of the funds.

Reports are only good if they are acted on. Reports amount to nothing if those being reported to and those who make such reports do not feel that the reports deserve action. If you read the news in the print and electronic media, it is no longer reported on the front pages that money was lost at the Kenya Medical Supplies Authority (KEMSA). That is not news. Money was lost and nobody cares.

Mr. Temporary Speaker, Sir, what is reported out there is how some terrorists escaped prison. That becomes news. I believe our children are likely to become terrorists, so that they try to experiment with something called, prison break. Those of us who love watching movies perhaps have watched the Prison Break series. That is what is in vogue and has become relevant; trying to put in the news for people to read that money is being stolen. We are even appreciating people who confess to have stolen and have brought back the money to share with others.

In this society, if we do not go back to our souls and what we are supposed to do as trustees and guardians of public property; and as people who believe in institutional functions, the rule of law, obedience to law and such related things, we should disband this nation and go back to where we came from. One passionate fan of Hon. Raila said that we should disband this nation and go back to where we came from. A young man said if Covid-19 caught *Baba*, this nation should be disbanded.

Mr. Temporary Speaker, Sir, this impunity is catching up on us. It is worse than Covid-19 because the virus has its own impunity. If we are not arresting or investigating these people in spite of what the President said, what the hell are we doing here? We should just disband or we agree that this House and the EACC are salaried institutions, let us earn our salaries as we cheer on the vulgar criminals who are ripping apart this nation. This is sad.

We are saying this while smiling, but as a nation, we keep slipping deep into debt. We keep on borrowing and doing such things, but the output or the end product for which we borrow, does it serve the purpose for the borrowing? Some of these monies that were lost in KEMSA and continue to be lost in other institutions might have been borrowed. What is happening is shameful on those with authority to execute. It is an indictment to their powers, that they had powers and never used them.

Mr. Temporary Speaker, Sir, it is a shame to them that they have jails that they are filling with innocent and poor people, who have stolen nothing. Rich people continue to jail Kenyans living in poverty. This is the kind of shame that must come to everybody, including me. We should be ashamed of ourselves for doing nothing. For us sitting today including Sen. Cherargei, we are in a House and can talk about it. However, what are those people with guns, jails, courts and money doing in those offices?

Mr. Temporary Speaker, I must express my disappointment at the fact that we lose money and we know who is suspected to have taken it. We also know the

importance and the crucial position that institution plays in terms of supplying health materials to our counties and hospitals. We are doing nothing about it yet this continues to happen. It will happen tomorrow and those who make it happen will continue displaying their ill acquired wealth in public. They might even become celebrities and corrupt the values of young people. The young often wonder how those stealing or taking things they are not supposed to are becoming celebrities. We will get into some of the behaviour we see in western movies; how black people celebrate drug lords, kingpins or gun slingers. Here in Kenya, we may likely start to celebrate thieves. Having said so, I resume my seat and watch what will happen.

Mr. Temporary Speaker, Sir, we have done our duty as a House and as the Senate. We have taken our time and listed the people we suspect. We are now handing over their names and our notes to the right people. Let them do their work and if they do not do it, they will still live in this nation. I pray that their children and their children's children will be the ones who will be misled that crime pays.

Thank you, Mr. Temporary Speaker, Sir.

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

**Sen. (Dr.) Zani:** Mr. Temporary Speaker, Sir, I support the report that has been tabled on the floor of the Senate. When the member of the Committee on Health Sen. Olekina was making his presentation, I thought he would go a little further and inform the House on what happened between the completion of this report and its tabling. They both belong to the same Committee. I looked at the signatures and two Members have not signed the report. This is Sen. Olekina and one other Member whom I will not mention because they are not in the House.

Mr. Temporary Speaker, Sir, something interesting is happening both at the Committee level and maybe at a higher level. I have gone through this well-written report. If there is anyone studying health issues, especially during times of crisis and the format that should be followed, flouting of that format and engagement; this report can make a good piece of theoretical information. If I had a student who was interested in this area, I would refer them to this report.

I thank the people involved in writing this report. Just looking at the level of analysis and research, it is in-depth. The work of this Committee involved a lot of information coming from various stakeholders. Part of the submissions came from the suppliers. They got a sub-sample of some of the suppliers and have listed about 21 suppliers. They engaged the Public Procurement Regulatory Authority (PPRA), the Ethics and Anti-Corruption Commission (EACC) and the Kenya National Chamber of Commerce and Industry (KNCCI).

Mr. Temporary Speaker, Sir, they have put together a piece of writing that should be able to give insights on what happened. As other Members have said and as we said before, the Implementation Committee is non-existent in the Senate, which also complicates the issue of follow-up. The issue of timelines put in this report made sense at that time. That should have been the investigation period or the implementation period.

Mr. Temporary Speaker, Sir, you should give guidance on how we should proceed given that the tabling and the debate of this report is happening now when some of those timelines have already passed.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Sen. (Dr.) Zani, for your information, the same issue was raised by Sen. Olekina. This report was tabled in March

and has been in the Order Paper all through, but the Chairperson was never there and the Motion was deferred severally. We had the opportunity to move this Motion now.

**Sen. (Dr.) Zani:** Mr. Temporary Speaker, Sir, it still puts us in the same situation. I am giving a technical input about a way forward on very clear timelines in this report. What do we do? For whatever reasons, this report is coming in late to the Floor of this the House and we have various recommendations. Do we just start this procedure? Do we have different dates? It is a technicality.

Mr. Temporary Speaker, Sir, when the Committee gives the reply can you guide us on this technicality because some of these issues are still outstanding. When we read part of it, we find that Public Procurement and Assets Disposal Act has been flouted in various respects. We want to look at the specific timelines that have been given for the various recommendations and give insight about how we can go about it.

I remember that when the COVID-19 pandemic broke out, we had the *ad hoc* Committee first lead by Sen. Sakaja and then by Sen. Kasanga. They did enormous work. As a Senate, we were so dedicated to the outbreak of COVID-19 situation. Later on, at the 76<sup>th</sup> sitting of the *ad hoc* Committee, there was a merger. This House agreed that this issue should be handled by the Committee on Health. I would like to thank both Committees for the effort that was put in.

Mr. Temporary Speaker, Sir, some of these issues go outside this Senate. When we do an introspection of ourselves, sometimes it goes beyond us. We had the Kenya Private Sector Alliance (KEPSA) meeting in Naivasha and these issues were well articulated. The Senate came forward and tried to put this into process as much as possible.

The Committee resolved to inquire into allegations of procurement irregularities. These had been coming out from various Statements that were brought to this House and queries that kept coming up from time to time. What were the red flags? At that time, they included utilization---

*(Sen. Kinyua stood in his place)*

Should I pay attention to the Senator here?

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Proceed. There is no intervention.

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

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

**Sen. (Dr.) Zani:** Mr. Temporary Speaker, Sir, at that time, the Committee had various red flags which necessitated inquiry. There was issue of utilization of Universal Healthcare (UHC) coverage and the Kenya Medical Supplies Agencies (KEMSA) capital budget to fund COVID-19 related procurements, irregular use of retrospective direct procurement method, they give details of the various suppliers who are later on featured in this report and commencing COVID-19 related procurement without an approved budget. These were some of the red flags among others.

Mr. Temporary Speaker Sir, I also want to note that between 13<sup>th</sup> March and 31<sup>st</sup> July 2020, 97 per cent of supplies procured were still lying in the KEMSA warehouse as at the time of audit. We do not know whether it is a coordination issue. There was no value for money realized. I remember this was the time when most of these materials like Personal Protective Equipment (PPEs) were really being sought after. If 97 per cent of supplies procured were still lying in KEMSA, it suggests that only 3 per cent had been utilized at that time.

During its enquiry, the Committee observed a number of issues. There was need for better oversight by the Ministry of Health over KEMSA, a disconnect between the board of KEMSA, the Chief Executive Officer (CEO) of KEMSA and the board of management, the issue timely reporting and lack of adhering to the reporting structures, among others.

Mr. Temporary Speaker, Sir, I made about 26 various observations. This shows the level of work that was put in at the Committee level and by the researchers of this Committee. There is quite a lot of content.

Number nine says that given that the management of KEMSA received communication from the acting Director-General of health informing them of the COVID-19 pandemic and requiring KEMSA to undertake the necessary preparations. KEMSA ought to have taken necessary steps towards planning for COVID-19 pandemic in good time.

If we think back at how this pandemic ravaged people at various levels, it reminds me of how we generally manage disaster. Deaths occurred and treatment was problematic. We might want confirmation as to whether the Disaster Management Bill finally went through this. This was another Bill that was put in place that people can have better management of such disasters. This is not just a disconnect, but it amounts to serious consequences for the various situations that we have.

At the introduction on page 21 of this report, the Committee resolved to enquire into allegations of procurement irregularities. The Committee requested for the certified copies. I have gone through the rest of the report. They seemed to have followed through because the level and focus in this Committee was upgraded. They got requests from usable partners, looked at tender letters, tender opening minutes, tender evaluation minutes, due diligence, professional opinions, and payments vouchers, *et cetera*.

Mr. Temporary Speaker, Sir, even the presentation of the recommendations is so specific. How I wish that this report, which has a lot of insight would make a difference for Kenyans! The recommendations which are on a table at the end give a lot of details. The report, the observations and the content of the various processes during each of these Committee meetings are very clear and very well put out.

Furthermore, they requested certified copies of all payments, documents, details of the procurement methods used, details of the verification process, *et cetera*.

The terms of reference for this Committee were also very clear in the way forward. This includes the effectiveness of warehousing and distribution systems and the capacity of KEMSA to procure and deliver.

I want to go straight into the recommendations and touch on them specifically. Before I do that, the budgetary allocation to the Ministry of Health is also laid out on page 26. We are talking about billions and billions. It comprises of Ksh62.9 billion and Kshs52.9 for current and capital expenditures, respectively.

Mr. Temporary Speaker, Sir, if I am to deviate, there are matters of community health services. There is a Bill on the Floor of this House which I think has now moved on to the National Assembly. It touches on what community health workers and volunteers can do on the ground and their facilitation. What can be given that can make changes that touch on the health outcomes?

Apart from education inequality, the biggest inequality in a developing country like Kenya is health inequality. A child who can easily be cured from malaria by getting the right medication will have their outcome not catered for. For the sake of scholarship and knowledge in education, this report has so much basic information that is key to anybody who wants to understand this health sector better. That is a very big budget and proportions are given in terms of what budget was sent where.

Mr. Temporary Speaker, Sir, I just want to touch on that because other Senators, especially the one who is next to me seems very anxious to want to report. He keeps looking at me and muttering words here and there. I have not mentioned any name.

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

**Sen. Wambua:** Mr. Temporary Speaker, Sir, I have looked around. The Senator seated closest to Sen. (Dr.) Zani is the Senator for Kitui County. She has alleged that the Senator for Kitui County is looking at her and being anxious. I am reading the report keenly so that I make informed contributions. The Senator for Kitui County is not anxious. He is patiently studying the document.

I thank you.

**The Temporary Speaker** (Sen. Kinyua): Sen. (Dr.) Zani, proceed. At least you are properly informed.

**Sen. (Dr.) Zani:** Thank you, Mr. Temporary Speaker, Sir. I just like how words change. There was no mention of the Senator for Kitui County. No such mention was given. In fact, I could just be talking about an imaginary speaker; a Senator next to me.

On Page 54 at the 13<sup>th</sup> joint sitting held on that day the committee received the final report from the regulatory authority, the committee was briefed as follows. There is a full briefing. All the COVID-19 related tenders were processed through direct procurement. The procurement proceedings were initiated via intent letters *et cetera*. The commitment letters did not contain clear specifications of the items required to be supplied.

Mr. Temporary Speaker, Sir, how do you have commitment letters that do not have clear specifications and the items being supplied? This is what I said earlier. Even with that Disaster Risk Management Bill, these are the things we want to put into place. It was co-sponsored by Sen. Mutula Kilonzo Jnr. and Sen. Sakaja. You can understand in a situation where there is an emergency, things are moving very quickly. However, if we do not put these systems into place then the whole emergency situation puts us in a situation where we are making actions. Those actions end up without the deliverables that are expected in the long run. The rest of the report deals with the various submissions and details for this which are very good and appropriately put.

Mr. Temporary Speaker, Sir, last but not least, there are very specific recommendations at the end of this report. From the onset, the office of the Director of Public Prosecutions (DPP) and Directorate of Criminal Investigations (DCI) investigates at various levels. The quotation of specific sections is recommendation number one. There are various articles and what the infringements are seen to be.

Then we have the second recommendation again on investigation. The timeline is one month. The Senate oversight committee for this is the Committee on Health. Maybe even as we get to reply, it would be good to hear something on this. Maybe it is not yet on this report but we might be getting insights as to what this Committee on Health has done in terms of follow up.

Mr. Temporary Speaker, Sir, the fourth recommendation is regarding the Act. Provide an elaborate framework for the conduct of a rapid market survey in case of emergency procurement. This is key to have a quick rapid market survey of what is available, who can procure what and how it can be given. In a public entity it is not reflective of an existing market or environment. The recommendation at the end of the day is the need to provide an elaborate framework for the conduct of rapid market survey. Provide for the publication of procurement plans by a public entity within five days of issuance. Publish an annual procurement projection. Setting intentions and probable timings in coming 24-month period.

Mr. Temporary Speaker, Sir, in terms of working and technicality, this is a broad overview which will be very important. It is not just for the entities that are contained in this report but generally for all entities in this country. You have a projection. The reasoning for this is that where there is a crisis, you can now begin to have variations. However, you already have a projection that has been put into place. Undertake an audit of the existing reporting structures. The actors are the Ministry of Health and the authority has been given a different responsibility.

Mr. Temporary Speaker, Sir, I want to end there. I just want to say that a lot of comprehensive details have been put by this committee that can change the health sector completely. The onus is on us to decide how we want to proceed to infuse some of this knowledge coming from what we have had as a crisis and as we look how to analyse how best we can move forward. That we are able to look and see how and where it should have been done and how best to counteract. This is so that in another situation, such a situation can be counteracted right in advance by having pre-thought about it even before that time.

I thank you.

**The Temporary Speaker** (Sen. Kinyua): Thank you, Sen. (Dr.) Zani. Sen. Cherargei, proceed.

**Sen. Cherargei:** Thank you, Mr. Temporary Speaker, Sir, for this opportunity. From the onset, I am torn whether to support the report or comment on it. Millions of shillings were lost under the cover of the pandemic when we had people in offices who were supposed to be the custodians of the interest of Kenyans. There was an outright breach of trust, confidentiality and integrity by the board and management of Kenya Medical Supplies Authority (KEMSA).

The only silver lining in this report is a situation where they have become specific. This is one of the reports. I agree with Members that it was important as this House and we did insist that I wish we had a committee on the implementation to track some of the reports that this House has resolved. For example, the Solai Dam tragedy report, the Talai historical injustices report and many other reports that have been adopted. Even the latest one on finance and budget on the issue of public debts.

Mr. Temporary Speaker, Sir, it would be easy to track some of these recommendations and implementation. However, the silver lining on this report only is

that they have become specific. They were bold enough. That is what we want to agree. I had my colleague from Migori County saying that a presidential directive is as good as the law. I know the President or his handlers are watching this. The 21 days were given last year for this investigation in the KEMSA heist and COVID-19 billionaires' scandal to be investigated. It is more than a year. No one have been arrested. No one is telling us whether the file is with Ethics and Anti-Corruption Commission (EACC) or ODPP or whether the DCI has completed the file in the issue of investigation of KEMSA.

We have seen a number of reports flying here and there but there was a presidential directive of 21 days. It is unfortunate that a presidential directive can be treated the same way as a directive of *Nyumba Kumi*. It is undermining the Office of the President. It is undermining the holder of that office. If you cannot respect a presidential directive, then it means this county is not functional.

I have insisted before that unless the President is now a lame duck. If he gives a directive and no one implements it then what are we, even if we talk here at the Senate until Jesus comes back and we cannot implement the presidential directive of 21 days that was given? The President must be honest with the nation. He must tell the nation. Although we are aware in the past he said when he was abroad that he will come and address the issue of the Pandora Papers but it has never been addressed.

Mr. Temporary Speaker, Sir, the question we want to remind him is that he gave us 21 days. It behoves all of us. There was a time he was being interviewed by some media houses and he said he would give the nation the contract between China on the issue of the loan and Mombasa Port. It has never been done.

I think there are jokers within Government that whenever President Uhuru Kenyatta directs something, they take it lightly. If they were serious about this presidential directive, several people would be in. However, let me make the following comments.

We hope when the hustler nation, God willing, takes over the reins of power in this republic, a presidential directive will be taken with the seriousness it deserves. I hope and pray that if Hon. William Ruto becomes the fifth president, we will have a functional government.

Mr. Temporary Speaker, Sir, there are two things. I have seen recommendation number one and the chairperson my good friend Sen. (Dr.) Mbiti is here. I agree that the board and the management of Kenya Medical Supplies Agency (KEMSA), they should be in all of them. This is because under management of companies, there is what we call corporate governance. The work of KEMSA board was to oversight the management and running of affairs. So, they did fail in their oversight.

It is good Sen. Olekina is here. I was present when we cross-examined the chairperson of the KEMSA board, the former Chief Executive Officer (CEO) Dr. Jonah Manjari and Sen. Kembi Gitura. Then this Government decided to reward him with the chairmanship of Communication Authority of Kenya (CAK).

Does this mean that in this country the more you are corrupt the more you are rewarded? The same chairperson who presided over the allegations of COVID-19 within KEMSA has been rewarded. Are we likely to see the CAK going down the way KEMSA is going down? Most likely. They have even gone ahead to fire some junior "hustlers" that is drivers, messengers, and tea girls. We need to be honest that if we have to fight corruption, let us remove politics.



The biggest mistake as I go to my third point is that we have politicised and weaponised the fight against corruption. If you are politically correct, you will never be arrested. If you are politically incorrect, you will be arrested. That is what KEMSA is all about. I bet these people who have been mentioned or people who are facing allegations of corruption within KEMSA are politically correct. If they were not, they would have been arrested.

Mr. Temporary Speaker, Sir, for example, today they have just arrested the immediate former Commissioner-General of Prisons, Wycliffe Ogaló. He has been arrested by the Directorate of Criminal Investigations (DCI). His arrest was swift but the people who stole from Kenyans through COVID-19 billionaires have never been arrested.

I have seen there was a meeting with the USA Secretary of State Mr. Antony Blinken. If we have to strengthen the partnership between Kenya and America, the issue of corruption must be addressed. We are aware Americans have been uncomfortable with the way KEMSA has been run. We want to ask the donor partners that until meaningful reforms are done within KEMSA, they should no longer partner. I hope Mr. Antony Blinken who is the Secretary of State who has just visited the county should take note of that. I know his officers will brief him on the same.

Mr. Temporary Speaker, Sir, there is the issue of military takeover and National Youth Service---

**The Temporary Speaker** (Sen. Kinyua): Sen. Cherargei, do you want to be informed by Sen. Olekina?

**Sen. Cherargei:** Mr. Temporary Speaker, Sir, the way he looks chirpy and lively, maybe I will agree.

**The Temporary Speaker** (Sen. Kinyua): The answer is yes or no. The way he looks does not matter.

**Sen. Olekina:** Mr. Temporary Speaker, Sir, I am quite happy that the good Senator knows that Maasai people look good. Anyway, I would like to inform Sen. Cherargei that KEMSA has got two arms. One, they are partners with international community like United States Agency for International Development (USAID) and the other is funded by our own taxpayers money.

The most important thing and I appreciate your submissions is that instead of denying Kenyans access to medicine, because there is a law---

The KEMSA Act prohibits county governments from purchasing medicine from any other person apart from KEMSA. I appreciate Sen. Cherargei making comments and suggesting that the international community should not partner with Kenya until this matter is resolved. I think a small arm of KEMSA or sub-committee should be established to deal with the issue of donor agencies. You know very well with the current ruling, this Senate cannot even oversight on funds which have been given to this country by donor agencies. I just wanted to inform the good Senator and thank you for allowing me to inform him.

**Sen. Cherargei:** Mr. Temporary Speaker, Sir, thank you for that information. As you are aware Sen. Olekina just turned 47 years old the other day and he seems to be growing wiser by the day. I appreciate those comments.

My fourth point is that there is the issue of a military takeover. We need to be careful. As a country, there is a process of deploying the military. The ongoing

militarisation of Government and civil public institutions is saddening. As a country we do not have to militarise every problem we face.

Before we know it this Parliament could become militarised and we have a General replacing you as the Speaker. As a country we must be very careful. The biggest challenge that the next president of this republic Hon. William Ruto will have is how to take those military officers back to the barracks. How do you take them back? How do you involve them in civil matters and in the issues of civil servants?

How do you oversight a military officer if he becomes the CEO of KEMSA? There is a procedure and rules on how military should appear. They appear within their ranks. The militarisation of the Government through Kenya Meat Commission (KMC), I think this matter has been ruled on.

It is unfortunate that the government we have does not respect court orders and that is why people like Mr. Miguna Miguna continue to suffer out there and yet they are Kenyans.

Mr. Temporary Speaker, Sir, on my final submission looking at the time, the recommendation was specific that the people to be investigated are: Dr. Jonah Manjari the CEO of KEMSA; Mr. Charles Juma, director of procurement; Mr. Eliud Mureithi, the director, commercial services; Mr. Fredrick Wanyonyi, corporation secretary and director legal services; Mr. Edward Njoroge, director operations; Mr. Waiganjo Karanja, director of finance and strategy; and any other KEMSA official that was involved.

The naming of these people should give impetus to Ethics and Anti-Corruption Commission (EACC), DCI and DPP to prosecute them if they are found culpable.

I have seen the companies. I will not name those companies because the list is a bit longer. If we arrest these individuals from the CEO Dr. Jonah Manjari and the rest, what about the board? Why have the board members been left out?

They have indicated that the former chairperson of KEMSA board is the first one. The board led by Sen. Kembi Gitura must be arrested and be prosecuted. The former CEO must be arrested and prosecuted. Also the companies, some of them were registered within three months. They were given up to billions of tenders within KEMSA to supply COVID-19 supplies. They must be prosecuted.

In fact, those companies should have been blacklisted in this republic by the registrar of companies and the Attorney-General and be put on the red alert. I saw that Mr. Miguna Miguna was given a red alert. I do not know whether we can give the red alert to companies. A red alert should be given to those companies so that they cannot do business in Tanzania and Uganda.

These companies must be blacklisted in Kenya and a red alert issued everywhere. If these companies have been indicted, their directors must be prosecuted. It is called lifting the veil. It is important. The only problem we have with KEMSA is that these people must be arrested and prosecuted.

Therefore, I urge the DCI and DPP in my concluding remarks that they should stop playing public relations exercise by saying DCI and DPP does not see eye to eye. It is none of our business. Our business is when they prosecute cases. They should not be going to the media and newspapers and saying DPP wants to be removed; the DCI does not see eye to eye with DPP. That is none of our business.

These are perpetrators of horrendous crimes. This is genocide because most Kenyans die because of lack of masks and oxygen. It is like dancing on the graves of the

dead. We must stop these issues by ensuring that we prosecute. Most Kenyans, families, children, wives and husbands lost their kin because of exposure to COVID-19 due to lack of oxygen, masks or personal protective equipment (PPEs).

In conclusion, most of the health workers, nurses and doctors died because of lack of Personal Protective Equipment (PPEs), oxygen and masks. This is because the people who stole from the Kenya Medical Supplies Authority (KEMSA) committed genocide. This is genocide. These are murderers. If the office of the Director of Public Prosecutions (DPP) and the Directorate of Criminal Investigations (DCI) do not prosecute these people, we are dancing on the graves of those who died and they will never forgive us.

Mr. Temporary Speaker, Sir, I hope this report will be implemented fully. We need people to be charged and prosecuted. This should be an example. The tears of widows, widowers, orphans and nurses unions and many others cannot go in vain. The people who did this must be prosecuted and pay back. Their assets must be frozen. They must go to prison and serve their jail time, so that we are serious in ensuring that this issue of KEMSA is resolved once and for all.

Therefore, I hope people who want to become governors---I want to make a small comment on the issue of the KEMSA Act. We must review and open to ensure counties also can get pharmaceuticals and drugs from other agencies.

Mr. Temporary Speaker, Sir, I thank you and cede time to other colleagues to proceed.

**The Temporary Speaker** (Sen. Kinyua): Thank you, Sen. Cherargei. Sen. Wambua, proceed.

**Sen. Wambua:** I thank you, Mr. Temporary Speaker, Sir because the Senator for Nandi County is proclaiming that he has ceded time to me. It is true I actually asked him to cede some time for me. Thank you, Senator for Nandi County.

I stand to make my comments on this report, which was tabled on the Floor of this House in March this year. We are now in November at a time we are debating this report. It would be important that at the end of our submissions, that you give directions on what happens next because there are some recommendations in this report that could still be acted on and should actually be acted on.

Mr. Temporary Speaker, Sir, I thank the committee led by my friend and brother, Sen. (Dr.) Mbito, for tabling and bringing to the attention of this House and the country the extent of the rot at KEMSA. That is in terms of the quality of goods that were procured at the peak of the spread of COVID-19.

As I make my comments on this report, I must go on record and say that the people that inflated the cost of goods and medical equipment at KEMSA at a time that Kenyans were living under the fear of death every minute, to those people, may a curse fall on them because that is what they deserve.

Mr. Temporary Speaker, Sir, I appreciate the magnitude of work that the Committee on Health had to do initially with the *Ad-Hoc* Committee on COVID-19. For them to have pulled through after the expiry of the time of the *Ad-Hoc* committee, I congratulate them.

I want to make a few comments on the observations and their recommendations. It is very clear and this report says it that there was never due diligence carried out on companies that were procuring to supply to KEMSA. It would appear like everybody was in a rush to get tenders to supply KEMSA. Companies that had been registered for just a

few months were being awarded tenders worth Kshs900 million. Nobody was looking back to question the capacity of those companies to supply KEMSA.

Mr. Temporary Speaker, Sir, arising from that lack of due diligence and coupled with a deliberate move to overprice the goods supplied, by the end of 2020, KEMSA was already counting losses to a tune of Kshs2 billion. It had bought medical equipment and goods of low quality at very high rates that they were even unable to sell to counties.

That is conspiracy in which we lost two important things. One is that on account of that conspiracy, we lost many lives and a lot of money. For the loss of lives and money, somebody must be held responsible. It cannot be that it is okay, it happened. No, it cannot be. Somebody must pay for the cost of the lives and money we lost.

Mr. Temporary Speaker, Sir, I like the recommendations by the Committee top of which is to investigate the CEO of KEMSA. That is where the buck stops. I have just listened to my colleague, the Senator for Nandi County, saying that today we were treated to some news of the arrest of the immediate former boss at prisons on account of an escape of three dangerous criminals. That is okay. In fact, I wish the prison's boss would have resigned without having to wait to be fired. In this country we must develop a culture where people in positions of leadership take responsibility for the mess in their offices.

Mr. Temporary Speaker, Sir, I am not sure whether I am hoping against hope. This report was tabled in March this year. We are now debating it. I do not want to anticipate the outcome of the debate, but it appears like this report will be adopted. I then would expect that from tomorrow or even today before midnight, those people recommended for investigation and arrest should be arrested and prosecuted for the mess that they caused at KEMSA.

Mr. Temporary Speaker, Sir, these companies, some of them with really funny names, were awarded tenders worth hundreds of millions of shillings. We cannot sit pretty and say we tendered, got the awards, supplied and the officers at KEMSA received and accepted the supplies. We cannot allow that to happen. The directors of these companies must be held to account.

I thank Sen. Mbitio and the Committee on Health because they know those companies in this report. Tomorrow when we wake up, we want to hear and be treated to reports that directors of companies involved in suspect dealings in KEMSA during which time lives and money were lost, are being held to account.

Mr. Temporary Speaker, Sir, I remember the circus to which this country was treated to during the inquiry. That some people were just taking a leisurely walk around KEMSA and somebody called them and told them to apply for tenders. By close of that day, that person was given a tender of 340 million. Which country are we living in? What kind of hypothesis this is?

Mr. Temporary Speaker, Sir, it would be a shame to the top leadership of this country if people who own those companies are allowed to continue to operate in this country. Those companies should forthwith be blacklisted and the directors be held to account.

As I go towards concluding my remarks, one of the recommendations in that report and I do not know whether it has happened or it is still awaiting further direction, is that the medical supplies owned by KEMSA be released to counties to help in the fight

against the Corona virus. We should not behave as though we are living in post Corona times. The virus is still with us.

Mr. Temporary Speaker, Sir, if there are supplies still being held in KEMSA which could aid in the fight against the pandemic, this House should give a firm direction that those supplies be released and be distributed to counties to help in the fight against the pandemic.

From the report, I did not see a Chief Administrative Secretary (CAS) appear before the Committee to give submissions on behalf of the Ministry. We have debated this on the Floor of this House that CASs should never appear before any Committee of the Senate unless they are accompanying Cabinet Secretaries or are carrying documents for them.

Mr. Temporary Speaker, Sir, CASs should not be interrogated by Senators on issues of oversight or on getting information from Ministries on matters that concern respective committees. In the interest of time, I make my submissions and I thank the Committee for the work they have done. Thank you, Mr. Temporary Speaker, Sir.

**Sen. (Dr.) Mbito:** Mr. Temporary Speaker, Sir, let me take this opportunity to thank the Senators who have contributed to this Motion. This is a very important Motion, and it is the hope of the Committee on Health that those sentiments are noted and taken very seriously. It is our interest to serve Kenyans, to ensure that the Kenya Medical Supplies Agency (KEMSA) works efficiently and that all the recommendations that we have given in our report are adopted speedily. KEMSA is basically a procurement agency, so most of the issues that we have raised are to do with procurement and how we can ensure that KEMSA is efficient in that aspect. I thank the Members who have contributed today.

I beg to move.

**The Temporary Speaker** (Sen. Kinyua): Hon. Senators, pursuant to Standing Order No.79 (1), I determine that the Motion before the Senate does not affect counties.

*(Question put and agreed to)*

Sen. (Dr.) Mbito, kindly approached the table.

*(Sen. (Dr.) Mbito consulted with the Temporary Speaker (Sen. Kinyua))*

### ADJOURNMENT

**The Temporary Speaker** (Sen. Kinyua): Hon. Senators, it is now 6.30. p.m., time to adjourn the House. The Senate therefore stands adjourned until Thursday, 18<sup>th</sup> November, 2021, at 2.30 p.m.

The Senate rose at 6.30. p.m.