

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

Tuesday, 12<sup>th</sup> May, 2020 – Morning Sitting

*The House met at the Senate Chamber,  
Parliament Buildings, at 10.00 a.m.*

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

#### PRAYER

#### MESSAGE FROM THE NATIONAL ASSEMBLY

PASSAGE OF THE REPRESENTATION OF SPECIAL  
INTEREST GROUPS LAWS (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILLS NO. 52 OF 2019)

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, I wish to report to the Senate that pursuant to Standing Order No. 41(3) and (4), I have received the following Message from the Speaker of the National Assembly regarding the passage of the Representation of Special Interest Groups Laws (Amendment) Bill (National Assembly Bill No. 52 of 2019). Pursuant to the said Standing, I now report the Message-

“PURSUANT to the provisions of Standing Orders 41(1) and 142 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly-

WHEREAS, the Representation of Special Interest Groups Laws (Amendment) Bill (National Assembly Bills No. 52 of 2019) was published vide *Kenya Gazette* Supplement No.107 of 3<sup>rd</sup> July, 2019, as a Bill concerning county governments to amend various laws to give further effects to Article 100 of the Constitution and promote the representation in Parliament, persons with disabilities, youth, ethnic and other minorities and marginalized communities;

AND WHEREAS, the National Assembly considered and passed the said Bill on Wednesday, 11<sup>th</sup> March, 2020 with amendments in the form attached hereto;

NOW THEREFORE, in accordance with the provisions of Article 110(4) of the Constitution and Standing Order No.142 of the National Assembly Standing Orders, I hereby refer the said Bill to the Senate for consideration.”

Hon. Senators, pursuant to Standing Order No. 157, which requires that a Bill originating in the National Assembly be processed by the Senate in the same manner as a Bill introduced in the Senate by way of First Reading in accordance with Standing Order

No. 139, I direct that the Bill be listed for First Reading on Tuesday, 12<sup>th</sup> May, 2020, which is today, at 2.30 p.m.

I thank you.

Next Order.

## PETITIONS

### PLIGHT OF FORMER MACHAKOS CWRs STAFF

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, I hereby report to the Senate that a Petition has been submitted, through the Clerk, by Mr. Patrick Wambua Mwangangi, a citizen of the Republic of Kenya and a resident of Machakos County.

As you are aware, Article 119(1) of the Constitution states that-

“Every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.”

The salient issues raised in the Petition are-

(1) That the petitioners were employees of the County Assembly of Machakos County and they were terminated on 23<sup>rd</sup> October, 2017 after the general elections.

(2) That upon termination, the petitioners were not given their benefits in spite of writing to the County Assembly to request to be compensated and petitioning the Labour Relations Court in Machakos County.

(3) That efforts to follow up the matter with the County Assembly and the Labour Relations Court has been futile. I think that they were not given their benefits.

The petitioners, therefore, pray that the Senate intervenes to ensure that the petitioners are duly compensated and enacts a legislation to address any possible legislative gaps.

Pursuant to Standing Order No. 231, I shall now allow comments, observations and clarifications in relation to this Petition.

Can we hear from the Senate Majority Leader?

**The Senate Majority Leader** (Sen. Murkomen): Thank you, Mr. Deputy Speaker, Sir. I congratulate the petitioners for bringing this Petition to the Senate. This House has continued to receive important petitions on matters related to devolution. One of the subjects that has remained contentious is the manner in which human resources is run in the counties.

Counties are smaller entities and they have had challenges dealing with recurrent expenditure. Machakos County may not be a good example for this, but county public servants who got new governors in the last election had their jobs terminated on flimsy grounds to pave way for people who had been given political promises.

As the relevant Committee deals with this issue, it should ensure that the county public service board enjoys its independence because there is a lot of interference from the county executive.

If you look at the drafting of the County Public Service Board (CPSB) in the County Governments Act, the intention is to create a semi-independent or sort of independent institution like the Public Service Commission (PSC) at the national level.

This Committee should be ready and bold to bring further amendments to the relevant sections of the County Governments Act, to see whether we can strengthen those sections to protect staff at the county level. These are members of staff who are likely to be victims of political witch-hunt and gerrymandering.

As the Senate, this is an area that we must continue interrogating. I have a Bill that this House already mediated and passed. We are waiting for the National Assembly to also conclude its part. It has very good provisions on strengthening the chapter on the CPSB.

Thank you, Mr. Deputy Speaker, Sir. I beg to support.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Let us have Sen. Wambua first and then Sen. Ochillo-Ayacko.

**Sen. Wambua:** Mr. Deputy Speaker, Sir, thank you for this opportunity to comment on the Petition from Machakos County.

I have a few things to say about this Petition in relation to human resource management in many counties. In support of this Petition, I urge the Committee to which you will refer this Petition to look into the critical issue of capacity building for human resources in our counties.

Only yesterday, I received a delegation of employees of Kitui County Government. These are village administrators who for the last seven years, have stagnated at Job Group H. There is no progression, promotion or stretch on a natural progression for the human resource capacity in our counties.

Mr. Deputy Speaker, Sir, the same applies to Early Childhood Development and Education (ECDE) teachers. I am happy that the Chairperson of the Committee on Education is here. This is a very grey area in all our counties and it is a human resource issue. One county has a policy on how to manage ECDE teachers who are employed on permanent and pensionable basis while others are on contract basis. In both cases, there is no clear progression of human resource in this area.

In support of this Petition, I urge that when counties constitute the County Public Service Boards (CPSBs), emphasis must be put on the capacity of the members of the board to look into issues of promotions, career progression and reward or reinforce positive performance by county employees to encourage growth.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you. Make the remarks brief. Sen. Ochillo-Ayacko, proceed.

**Sen. Ochillo-Ayacko:** Thank you, Mr. Deputy Speaker, Sir, for the opportunity to make a few remarks regarding this important Petition.

Delivery of services in counties depends very much on the quality of human resources we have. However, there are three mistakes that happen in all counties.

One, employment in all counties follows political loyalty and needs. They do not follow what the requirement is in terms of human resource establishment. I think the responsible Committee should look at whether the method of recruitment in Machakos County follows the line of the needs they have.

Two, there is a lot of politicization of public servants in counties. You will find by and large that governors regiment the public servants in those counties in such a manner

that they are used for campaigns, thuggery and advancement of causes for which they are not employed.

When these governors leave office, the incoming governor finds a team that hitherto, was fighting him or her or whose commitment was not about public service.

Third is the manner in which public servants in counties are treated when it comes to matters of termination of services. It is in the fashion of kangaroo courts or it is already decided somewhere by some thugs that you should be thrown out of office because you belong to a clan that did not vote for somebody or an interest group that is not welcome.

Mr. Deputy Speaker, Sir, this situation must be dealt with. I believe the Petition is good. I also believe that if nothing is done about the quality of public service in counties, then service delivery will continue to suffer as we sink more and more public funds in this area.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. (Eng.) Mahamud, proceed. Any other Senator before I close the Petition?

**Sen. (Eng.) Mahamud:** Mr. Deputy Speaker, Sir, this is an important Petition. On the advent of devolution, I think one thing we did not get right is how to handle public service. The public service of Kenya under the Public Service Commission (PSC) has, over the years, established traditions and regulations that safeguard the interests of public servants. The PSC also ensures that there is career progression and safeguards against abuse.

When devolution came, every county with a CPSB, with little experience, started employing people. First of all, even the quality was wanting. Second, in terms of career progression, people were employed--- You would find a first year graduate with experience of two years, employed as director under Job Group P and there is no progression thereafter.

In fact, there is a crisis in how the public service in counties is being handled. There must be an overarching regulation which covers everybody so that we have entry points, progression and disciplinary procedures. That way, we will know people are employed for the job they have done. This is so that we do not end up frustrating people who are already employed. When government changes, then people change again. This is what should be done.

For the Committee looking at this, I think we require some law to put some sanity into the management of public service in counties.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you. Sen. Madzayo, proceed.

**Sen. Madzayo:** Asante, Bw. Naibu Wa Spika. Pia nawapa kongole wale ambao wameleta Ombi hili kutoka Kaunti ya Machakos.

Ni jambo la kusikitisha kuona kwamba haki za wafanyikazi zinakandamizwa sana katika serikali za kaunti. Nilifanya kazi katika korti ya kuangalila masilahi ya wafanyikazi hapa Kenya, mfanyikazi aliye chini haheshimiwi. Ni muhimu kila mtu humu nchini aheshimiwe katika utenda kazi wake. Lazima kila mikono miwili inayofanya kazi iregeshewe asante kulingana na haki, mshahara na kazi iliyotendwa.

Katika hili Ombi, tunaona kwamba hawa walifanya kazi na hawakusema kwamba wanataka kuondoka, wala hatujui ni kwa sababu gani waliachishwa hiyo kazi.

Ukitaka kumwachisha mtu kazi, ni sharti umueleze ni kosa gani alilofanya ama ni njia gani uliyofuata kama tajiri ili ukamwachisha kazi; hauwezi kumuachisha kazi vile unavyotaka.

Bw. Naibu wa Spika, ukiangalia katika kaunti, mara nyingi utaona wafanya kazi *morale* iko chini. Hii ni kwa sababu stakabathi za masomo hazitiliwi uzito. Utapata mtu aliyesoma na kupata shahada ya *PhD* wanafanya kazi katika hospitali yetu kama hivi sasa wakati wa COVID-19 na ukilinganisha mishahara yao na wale wanaofanya kazi kama *Chief Officers* utaona kwamba mishahara ya *Chief Officers* iko juu kuliko mishahara ya madaktari. Mishahara inafaa kulingana na kiwango cha masomo na uzoefu wa mtu ili ratiba kama hiyo iweze kufuata katika kaunti zote 47.

Asante Bw. Naibu wa Spika.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Cheruiyot, you have the Floor.

**Sen. Cheruiyot:** Thank you, Mr. Deputy Speaker, Sir. The progress of any society or institution hinges strongly on the kind of human resource that the particular institution or body can attract. The fact that as the Senate, almost seven or eight years into devolution, we have not resolved the long standing issue of how our employees, particularly those who transited from the defunct local authorities and those who were employed by previous regimes in counties, where a particular governor was not elected back into office are treated, continue to undermine devolution. It continues to do so because it is impossible to progress as a country if you cannot attract the best brains available in a particular jurisdiction.

Mr. Deputy Speaker, Sir, it is no secret that many of the people who apply for jobs in the counties do so with a heavy heart. Perhaps, many of them take up the offer as a last resort. You will hardly find a situation where people can confidently apply to serve members of the public in a particular county due to political interference. As the Senate, we must consider, and perhaps this Petition presents an avenue for us to give a long-lasting solution on how we can safeguard the rights of workers in our county governments, such that, despite the fact that one administration may transit office, at least the rights of our workers are not interfered with. That is the only way we shall ensure that we have the best talents working in our counties and, therefore, provide the best services to *mwananchi* and ensure that our counties progress. Failure to do that would mean that things remain as they are and it will be extremely difficult for us to be proud.

I want to believe that it was not out of idle duty that the petitioners wrote this Petition to this House. They believe in this institution and know that on each and every occasion that the Senate is called upon to rise to the occasion and give direction that will influence and shape the future of this country, we have never failed to do so. I hope on this particular Petition; we shall once again achieve that.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you. Order! Sen. Cheruiyot, why are you saying the things you are from where you are sitting.

**Sen. Cheruiyot:** Mr. Deputy Speaker, Sir, I could see as if you are squinting.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): The things you are saying are right, but they cannot be said from where you are sitting.

**Sen. Cheruiyot:** Mr. Deputy Speaker, Sir, much obliged.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You are basically dishing out obligation to talk to Senators from the backbench. We need to close. There is Sen. (Prof.) Ekal and Sen. Sakaja. Let us hear the two and move on.

**Sen. (Prof.) Ekal:** Thank you, Mr. Deputy Speaker, Sir. I would like to add my voice to support the Petition by the citizens of Machakos that they should be treated right and with respect. Those of us who are grey in the head remember a time when this country employed people based on their credentials and what they got in school. There is a trend going round in the country and it is taking us downwards, by the fact that in several counties people are given jobs based on their political inclinations and who they supported in the elections.

This trend cannot push Kenya forward or develop Kenya because we are going to get people with dubious credentials, unable to think and project issues to bigger scales. Development will be affected because they do not know what to do and are sitting there waiting for their salaries. Bundling out people who may have been qualified and worked diligently is not fair at all. It is up to us, the Senators, to set the rules so that everybody in the country and all counties can be treated fairly. This is so that they get what they deserve.

I support the Petition.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. (Dr.) Langat! You are late, meaning that you are raising your hand as an afterthought.

Let us hear from Sen. Sakaja because this is a labour issue mainly.

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, this is a labour issue and I want to thank the petitioner for raising this matter with the Senate. Labour issues have been a mess in our counties and we have been struggling as the Committee on Labor and Social Welfare to get a hand on them. We have several proposals, including legislative proposals that we are bringing because of the nature of having 47 different Public Service Boards without a coordinated way of working. We have brought to this House a County Public Service Board Bill that will help us address many of these things that cut across counties.

When we came up with devolution in 2010, it was not to create ethnic balkans; that someone who is born in Tharaka-Nithi must work only in that county. There are certain skills that need transferability and coordination between counties. Then within counties, we have many cases like this, including non-remittance of statutory deductions. The counties owe the pension funds, the Local Authorities Pensions Trust (LapTrust) and the Local Authorities Provident Fund (LapFund), possibly now maybe at least Kshs70 billion. There are many of the former workers of local authorities – pensioners - who cannot access money that they worked for over years of giving service.

Mr. Deputy Speaker, Sir, I want to assure this House that the Committee on Labour and Social Welfare, which I lead and ably deputized by Sen. (Dr.) Milgo, who I saw earlier, will look into this. On top of this, we shall give that legislative proposal which I hope can be fast tracked so that tomorrow it is not Tharaka-Nithi then Nairobi, Narok, Vihiga, because this is happening in all our counties. I want to give that undertaking if this Petition---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Sakaja! Would you like to be informed by Sen. Wambua?

**Sen. Sakaja:** Of course, I do not know of anyone who would refuse such an opportunity.

**Sen. Wambua:** Thank you, Mr. Deputy Speaker, Sir. The Senator for Nairobi City County has touched a very important issue, on non-remittance of statutory deductions. The painful thing about it is that money is already deducted from employees. However, the county governments have not remitted that money to the trust fund and somebody has pocketed that money. This is a criminal case. Since Sen. Sakaja is the Chairperson for the Committee on Labour and Social Welfare, I urge that they take drastic action and provide recommendations on how to manage this issue. This is a serious issue.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Right.

Sen. Sakaja

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, as I conclude, I want to thank Sen. Wambua because it is painful. Money has been deducted over years from peoples' salaries and it is not remitted. Some of the proposals we are bringing as the Committee on Labour and Social Welfare--- I am glad that The County Allocation of Revenue Bill (Senate Bill No.7 of 2020) has been pushed a bit. Once we get full verification of all these debts from each county, for example, what each owes the Local Authorities Pensions Trust Fund (LAPTRUST), Local Authorities Provident Fund (LAPFUND) and what has not been paid as PAYE. We will propose that we deduct that money at source in the County Allocation of Revenue Act (CARA) and pay LAPTRUST, LAPFUND and KRA what is owed by these people.

This is because when we give that money to the counties, they are not remitting it. Therefore, it is ordinarily the former local government workers who are suffering by not getting benefits they worked hard for. I will bring that proposal, and I hope the Senators will consider it positively.

**Sen. (Dr.) Langat:** Thank you, Mr. Deputy Speaker, Sir. I will add two things on this one. First, I support the Petition fully because it is very important. I informed Sen. Wambua that matters of Early Childhood Development Education (ECDE) have been of great challenge for a long time in counties. The Senate Committee on Education has developed a Bill that is now at mediation point with the National Assembly. I am sure that soon it will come to fruition.

Many of us have often analyzed the Report by the Auditor General. We have realized that this area has a loophole that has been abused by most of counties to misuse the resources that we allocate to them in the name of human resource development.

We find that in most of the counties, the observations by the Auditor General are that there was a seminar for two or three days. However, it was taken as if it was a complete training for workers. The money spent during those seminars is enormous. This is an avenue for corruption in our counties. There is need to put in place proper structures for recruitment and staff development. Otherwise, some governors will take advantage of this loophole and continue organizing seminars for two or three days, for them to fleece our counties year in, year out, in terms of no human resource development.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, pursuant to Standing Order No.232 (1), the Petition is committed to the relevant standing Committee for

consideration. In this case, I direct that the Petition be committed to the Senate Committee on Labour and Social Welfare.

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

### COMMUNICATION FROM THE CHAIR

#### CONSULTATION ON THE THIRD BASIS FOR REVENUE SHARING AMONG COUNTY GOVERNMENTS

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, I have a Communication to make. As you may recall, on Tuesday, 5<sup>th</sup> May, 2020, a number of Senators, while contributing to the debate on the Second Reading of The County Allocation of Revenue Bill (Senate Bill No.7 of 2020), raised concerns on the status of the third basis for revenue sharing among county governments.

Following the concerns raised by the Senators, the Chairperson of the Senate Committee on Finance and Budget moved that debate on the County Allocation of Revenue Bill (Senate Bill No.7 of 2020), be adjourned pursuant to Standing Order No.105. The adjournment was done on the premise that Senators required a forum for consultation on the third basis for revenue sharing among county governments before proceeding with the Second Reading of the Bill.

Hon. Senators, in compliance with the directive, the Chairperson of the Standing Committee on Finance and Budget, in collaboration with the Commission on Revenue Allocation (CRA), has organized a meeting for all Senators to discuss the proposed Third Basis for Revenue Sharing among county governments.

The event will take place on Thursday, 14<sup>th</sup> May, 2020 at the Bomas of Kenya in Nairobi from 8.00 a.m. All hon. Senators are invited to participate in this crucial meeting. Senators may confirm their participation with the Office of the Clerk of the Senate for purposes of planning.

I thank you.

Next Order

### PAPERS LAID

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Members, first, we have the Chairperson of the *Ad Hoc* Committee on COVID-19 Situation in Kenya.

Proceed, Sen. Sakaja.

#### THE FIFTH PROGRESS REPORT OF THE *AD HOC* COMMITTEE ON THE COVID-19 SITUATION IN KENYA

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, today is a very special day for me because it is my daughter's birthday.



I beg to lay on the Table of the House today, Tuesday 12<sup>th</sup> May, 2020, the Fifth Progress Report of the *Ad Hoc* Committee on Committee on COVID-19 Situation in Kenya.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You were careful not to misuse the airtime of the Senate by sending greetings to members of your family. Thank you, Sen. Sakaja.

Proceed, Chairperson of the Senate Committee on Land, Environment and Natural Resources, Sen. Mwangi.

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

**Sen. Mwangi:** Thank you, Mr. Deputy Speaker, Sir. I beg to lay on the Table of the House today, Tuesday 12<sup>th</sup> May, 2020, the Report of the Standing Committee on Land, Environment and Natural Resources on the Sectional properties Bill (National Assembly Bills No. 23 of 2019).

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Mwangi and Sen. Sakaja! None of you has laid any document. You have just told us what you are doing, but have not done it practically.

**Sen. Mwangi:** Mr. Deputy Speaker, Sir, we consulted the Clerk and he told me that they had the Paper.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): This is light of the health issues.

**Sen. Mwangi:** I should think so.

REPORT ON THE NATIONAL DROUGHT MANAGEMENT AUTHORITY (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILLS NO. 26 OF 2019)

I also wish to lay on the Table of the House a Report of the Standing Committee on Land, Environment and Natural Resources on The National Drought Management Authority (Amendment) (National Assembly Bills No. 26 of 2019).

I thank you, Mr. Deputy Speaker, Sir.

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

## NOTICE OF MOTION

ADOPTION OF THE FIFTH PROGRESS REPORT OF THE *AD HOC*  
COMMITTEE ON COVID-19 SITUATION IN KENYA.

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

THAT, the Senate adopts the Fifth Progress Report of the *Ad Hoc* Committee On Committee On COVID-19 Situation in Kenya, laid on the Table of the Senate on Tuesday, 12<sup>th</sup> May, 2020, which I have laid electronically.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Yes, for the record.  
Next Order!

### STATEMENTS

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, we have three Statements pursuant to Standing Order No. 47(1) and six Statements under Standing Order No. 48(1). Those are nine Statements. We will move on chronologically at lightning speed. We will limit our observations so that we can cover all the ground. First is the Senator for Trans Nzoia County, Sen. (Dr.) Mbiti, to make a Statement.

Since he not in the House, the Statement is deferred.

#### MISLEADING INFORMATION IN THE MEDIA CONCERNING CORONAVIRUS (COVID-19) PANDEMIC

*(Statement deferred)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Next is the Senator for Kilifi County, Sen. Madzayo, to make a Statement on the alleged rape and murder in Bamba Police Station in Kilifi County.

#### ALLEGED RAPE AND MURDER OF A MINOR IN BAMBA POLICE STATION

**Sen. Madzayo:** Bw. Naibu Spika, kulingana na sheria zetu za Bunge Kipengele 47 (1) ninasimama kuongea kuhusu jambo ambalo linahusika na kaunti, kuhusu kubakwa na kuuawa kinyama kwa msichana, ilhali alikuwa ni mototo mdogo sana wa miaka 16. Anaitwa Margaret Shukrani Masha.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Madzayo, is your Statement in English or Kiswahili?

**Sen. Madzayo:** Bw. Naibu Spika, Taarifa ambayo iko hapa ni katika lugha ya Kiingereza ambayo niliandika, lakini nimeitafsiri kwa Kiswahili.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Madzayo. Why are you complicating your life? You are one of the very experienced judges. You should know that you can make a Statement in either of the two languages, but you cannot read what has not been approved by the Speaker. If what was approved by the Speaker was in English, stick to English.

**Sen. Madzayo:** Mr. Deputy Speaker, Sir, I stand guided. I thought it would be better if I spoke in my language, which my people who I represent in the Senate would understand. However, I still stand guided.

Pursuant to Standing Order No.41 (1), I rise to make a Statement on the issue of countrywide concern, namely, the rape and coldblooded murder of a minor, namely Margaret Shukrani Masha on 4<sup>th</sup> February, 2002 at Bamba Police Station, in Bamba Ward, Kilifi County.

Mr. Deputy Speaker, Sir, I rise to make this Statement on behalf of the people of Kilifi County, who in their wisdom, entrusted me with this position, and I hold utmost respect for them. The admiration for this Senate is unmatched.

On the evening of Tuesday, 4<sup>th</sup> February, 2020 at about 8.00 p.m., the residents of Kilifi County in a small town of Bamba, and in particular the relatives and friends of Margaret Shukrani, were met with very devastating news that their girl who was aged 17 years was dead in a police station.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it, Sen. Wambua?

**Sen. Wambua:** On a point of order, Mr. Deputy Speaker, Sir. I would hate to disrupt my brother, Sen. Madzayo. Your rules concerning sittings at this time clearly stipulate that we cannot approach the Speaker and that we limit movements and consultations within the Chamber. Have you relaxed those rules? I have sat here and seen a lot of consultation amongst ourselves, yet we are complaining out there that Kenyans have relaxed and gone back to normal life. Kindly guide us.

Thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I have also observed one or two colleagues who have approached the Chair. The general principle is that we should minimize that unless it is an emergency. If it is an emergency, you can approach from a distance, but let us minimize approaching the Chair as one of the measures.

In fact, instead of approaching the Chair, you can stand on a point of order, unless it is really an emergency or it is private.

Proceed, Sen. Madzayo. Have you finished?

**Sen. Madzayo:** Not yet, Mr. Deputy Speaker, Sir. You are still giving directions.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I finished giving the direction.

**Sen. Madzayo:** Mr. Deputy Speaker, Sir, much obliged. Last year, in 2019, the late Margaret was defiled by unknown persons. The investigations were conducted and some suspects arrested. They were taken to court and charged, and the matter was coming up for hearing.

On the evening of 4<sup>th</sup> February, 2020, the late Margaret, in the company of her mother, went to Bamba Police Station to meet with a police officer concerned with investigations in the matter that was coming up on the 5<sup>th</sup>. They wanted to ask for a lift as they could not afford the fare to travel to Kilifi Law Courts, which is approximately about 50 kilometers away.

Mr. Deputy Speaker, Sir, it was unfortunate that to the surprise of everyone in the company of her mother, the police directed that the girl stays back in the cell and the mother goes home together with her relatives. They complained about that because they did not know the reason the girl should stay behind. As the police had already ordered them to leave the station, the poor mother had to leave.

At around 8.00 p.m. the same evening, the mother was contacted through the neighbours and told that her daughter Margaret had died in that police cell. Family and friends quickly rushed to the police station. Upon arrival, there was a police van carrying the body of Margaret and it was leaving for Kilifi County Hospital Mortuary. The relatives attempted to stop the vehicle, but they could not. They had carried the body and

did not want the relatives to see it. The police vehicle had to leave without the mother seeing the dead body of her own daughter.

Mr. Deputy Speaker, Sir, on 9<sup>th</sup> February, about four days thereafter, the distinguished Senator for Mombasa County, Sen. Faki, who is an advocate of the High Court of Kenya and I visited the Bamba Police Station.

At the police station, we were shown a photograph, which was taken through a phone camera. It was alleged that the lady had committed suicide by hanging herself. That photo raised many questions because one cannot hang themselves with a rope that is shorter than they are.

The door where she was hanging on was an ordinary door in a police cell. The girl was hanging there with a hijab, but her feet were touching the ground. That, therefore, means that it was not possible for one to hang while stepping on the ground.

Mr. Deputy Speaker, Sir, those who handled the body at the mortuary can recall that the minor's clothes were torn and blood was oozing from her private parts. It is sad that we made several calls to the Officer Commanding Station (OCS) of Bamba Police Station, Mr. Titus Mwasia, but he was not prepared to meet the mother of the deceased.

Incidentally, the OCS had attempted to ask the mother to go to the police station, so that he could convince her that the daughter had committed suicide, but the mother refused and insisted that an autopsy be done to confirm what led to the death of her daughter.

Kilifi County Government sought the services of Dr. Johansen Oduor to conduct a postmortem to find out what killed Ms. Margaret. Unfortunately, by the time the body was released to the family to go and bury, the postmortem report had not been released. It is painful that it is about four months and Dr. Johansen Oduor has not released the postmortem results.

One of the cardinal rules is that life belongs to the state. We want the Government to take decisive action against the police officers of Bamba Police Station with regard to the incident that happened leading to the death of the young girl.

Mr. Deputy Speaker, Sir, pursuant to Standing Order No. 47(3), I seek your indulgence that this Statement be referred to the Standing Committee on National Security, Defence and Foreign Relations. The Committee should investigate the circumstances that led to the death of Ms. Margaret.

There are several questions that are yet to be answered. Why did the police detain the 17-year old girl in a cell against the provisions of the Children's Act and any other law in Kenya? Secondly, they should tell us the offence that the minor had committed for the police to detain her. That should be disclosed because they had gone there to seek transport to be taken to Kilifi Law Courts to give their evidence with regard to the rape that had taken place. It had already been recorded in the Occurrence Books (OB) in Kilifi and Bamba Police Station and the case was to be heard the following day.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Madzayo, you have taken too long.

**Sen. Madzayo:** I am just concluding.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Please do, because you should not take more than 10 minutes on one Statement.

**Sen. Madzayo:** Mr. Deputy Speaker, Sir, we want to know the police officers that committed the crime. Finally, we would like to know why the postmortem report has not been released up to now.

I thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I direct the Committee on National Security, Defence and Foreign Relations to investigate that matter in liaison with Sen. Madzayo and provide a report. It is so ordered.

Let us have the next Statement by Sen. Mwaura.

EFFECTS OF COVID-19 PANDEMIC ON  
MICRO AND SMALL ENTERPRISES

Since Sen. Mwaura is not in, we will defer that.

*(Statement deferred)*

Let us have Sen. Kasanga seek the next Statement regarding the National Hospital Insurance Fund (NHIF).

OPERATIONS OF THE NHIF

**Sen. Kasanga:** Mr. Deputy Speaker, Sir, I rise pursuant to Standing Order No. 48(1) to seek a Statement from the Standing Committee on Health concerning the operations of the NHIF. In the Statement, the Committee should:

(1) Explain the factors leading to the decline in growth of the NHIF, leading the scheme to post a loss during 2019.

(2) State the measures, if any, that have been put in place to ensure contributions by the public towards the Fund are not pilfered and that there is no disruption in payment of benefits to members in light of the challenges currently being faced by the NHIF.

(3) Provide information on the Fund's deposits from members vis-à-vis honoured and pending claims raised by hospitals arising from medical services provided to members of the scheme during the past two years.

I thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well, that is how it should be.

Sen. (Dr.) Mbiti is not here. I will also exercise discretion on that matter and ask the Committee on Health to deal with that issue. The Committee should provide a response to the House in two weeks because NHIF is a sensitive issue.

Let us go the next Statement.

ALARMING WAVE OF UNRESOLVED MURDER CASES IN  
OL-JOROROK CONSTITUENCY, NYANDARUA COUNTY

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Since Sen. Mwangi is not in, that Statement is deferred.

*(Statement deferred)*

The Statement by Sen. Kwamboka is deferred on the request of the Senator.

STATUS OF EDUCATION IN KENYA FOLLOWING  
THE OUTBREAK OF THE COVID-19 PANDEMIC

*(Statement deferred)*

Let us have Sen. Dullo seek a Statement on challenges experienced in Isiolo County relating to COVID-19 pandemic.

CHALLENGES EXPERIENCED IN ISIOLO COUNTY  
RELATING TO COVID-19 PANDEMIC

**Sen. Dullo:** Mr. Deputy Speaker, Sir, I rise, pursuant to Standing Order No. 48(1) to seek a Statement from the Standing Committee on Health on the challenges currently experienced in Isiolo County, relating to COVID-19 pandemic. In the Statement, the Committee should:

(1) Ascertain the legitimacy of the alleged launch of the 13 Intensive Care Unit (ICU) and High Dependency Unit (HDU) bed ventilators by the Governor of Isiolo County on 12<sup>th</sup> April, 2020.

(2) Investigate the alleged intimidation of the Isiolo County residents by the officials after the circulated video and photographic evidence on open source media showing the said 13 beds being transported from Galaxy Hospital Annex, a local private hospital, to the Isiolo Teaching and Referral Hospital.

(3) Conduct an inquiry into the Isiolo County Executive expenditure on the Kshs40 million allocated for the Coronavirus Disease (CPVID-19) preparedness and make their findings public.

(4) Explain the measures the Committee intends to put in place to ensure transparency and accountability in the counties during the COVID-19 pandemic response.

I thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Well done. Sen. Sakaja, you have heard what Sen. Dullo has said. Pursue it in the context of the ongoing mandate and you can cover that issue in your weekly reports.

Next Statement by Sen. Wetangula. He is not in.

TRAFFIC CONGESTION ALONG THE BUNGOMA-KANDUNYI-  
MALAVA ROAD

*(Statement deferred)*

Next, Sen. Khaniri.

## INCREASED CASES OF INSECURITY IN VIHIGA COUNTY

**Sen. Khaniri:** Mr. Deputy Speaker Sir, I thank you for the opportunity. Pursuant to Standing Order No.48, I rise to seek a Statement from the Chairperson of the Committee on National Security, Defense and Foreign Relations concerning the increased incidences of burglaries and general insecurity in the country during the nationwide curfew. There have been a number of robbery incidences all around Kenya, and Vihiga County is no exception.

On 14<sup>th</sup> April 2020, three thugs were killed by angry villagers in Chandumba Village because of robbery cases. On 24<sup>th</sup> April 2020, three different killings happened in the Chamakanga-Busali Ward. In the same months, two more killings and robberies have happened in Shamakhokho and Mago wards of Vihiga County.

Therefore, in the Statement, the Chairperson should explain -

- (i) The reason for increased incidences of burglaries and robberies during the curfew period throughout the country, yet there would be an expected improvement in security as nobody is allowed outside, except the police.
- (ii) What measures the Inspector-General of police is undertaking to address the increased reports of burglaries, some of which are allegedly committed by members of the discipline forces.
- (iii) What they are doing to improve security in Vihiga County, especially in market centres where break-ins have become rampant.

I thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. Sen. Mwangi, you are back. You can seek your Statement.

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it, Sen. Khaniri.

**Sen. Khaniri:** Mr. Deputy Speaker, Sir, I expected that you would refer this like you did to all the other Statements---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You did not ask, did you? I will exercise my discretion against what you are saying because you never asked. Sen. Madzayo asked.

**Sen. Khaniri:** Mr. Deputy Speaker, Sir, Sen. Madzayo was under Standing Order 47(1). I am standing under Standing Order 48. Go through Standing Order 48, I am requesting a Statement from a Chairperson.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): It is your Statement?

**Sen. Khaniri:** Yes, under Standing Order 48.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Meaning that it is mandatory?

**Sen. Khaniri:** Yes, Mr. Deputy Speaker Sir. I am requesting a Statement from the Chairperson. Therefore, it is mandatory that it be referred to a Committee. I would wish that you give some time limits on the response.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Which part of the Standing Order are you applying because what I have is different?

**Sen. Khaniri:** It is Standing Order 48 (3). It says:

Where a Statement has been requested from a Committee, pursuant to paragraph (1) –

- (a) The Speaker may allow comments in relation to the Statement for not more than fifteen minutes; and
- (b) The Committee may invite the Senator who requested the Statement---
- (4) The Speaker may allow the Senator who requested the Statement, under paragraph (1), or any other Senator to make comments.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Khaniri, there is no basis. I know what I am saying. I apply these Standing Orders daily whenever we are sitting. I am looking for the part which you claim mandates the Speaker to mandatorily refer the Statement to a committee. It is the Chairperson to take over the matter. You can make a special request if you want the Chairperson to support your Statement additionally, but do not make it appear mandatory. That is my point.

**Sen. Khaniri:** Mr. Deputy Speaker, Sir, what else would it mean if a Senator requests for a Statement from a Chairperson of a Committee?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Here, the Chairperson notes the requests and takes up the matter *suo moto*. Unless a Senator makes a request, like some of you do, or the Chairperson, in his own Motion, decides to do as I did with regard to Sen. (Arch.) Kasanga's issue because of the widespread nature of the National Hospital Insurance Fund (NHIF) and so forth. Anyway, instead of too much ado, where is the Chairperson?

Sen. Khaniri, I hope that you have understood the argument that I am making. Standing Order 48 anticipates that the Chairperson of the Committee will do so automatically, without being moved or directed.

**Sen. Khaniri:** Mr. Deputy Speaker, Sir, I am properly guided, but my request to you is that I wish that you treat it the same way that you treated Sen. (Arch.) Kasanga's Statement by giving some timelines as to when the Chairperson can respond. This is because if you do not do so, this Statement will be with the Committee even for six months.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): No, this is a security issue. It cannot take more than two weeks. Where is the Chairperson for the Committee on National Defense, Security and Foreign Relations? Is the Vice-Chairperson here? Do we have any member of this Committee? What about the Senate Majority Leader or the Deputy Majority Leader?

*(Sen. Wambua spoke off record)*

Order! Order, Sen. Wambua. The House has only one Senate Majority Leader at a time, so do not bring newspaper issues here. Do we have the Senate Majority Leader? The Deputy Majority Leader? Any Chairperson from the Senate Majority side to speak on behalf of the Senate Majority Leader?

**Sen. (Eng.) Mahamud:** Mr. Deputy Speaker, Sir, we will bring this to the attention of the Committee so that they can expedite the response required by Sen. Khaniri.



**The Deputy Speaker** (Sen. (Prof.) Kindiki): Provide the response in 14 days. Thank you, Sen. (Eng.) Mahamud.

I think that we are done with Statements.

Sen. Mwangi, I interrupted you.

#### UNRESOLVED MURDER CASES IN OL JOROROK, NYANDARUA COUNTY

**Sen. Mwangi:** Thank you, Mr. Deputy Speaker, Sir. I rise pursuant to Standing Order 48 (1) to seek a Statement from the Standing Committee on National Security, Defense and Foreign relations regarding the alarming wave of unresolved murder cases at Ol Joro Orok Consistency in Nyandarua County in the last six months.

There has been a wave of crime in Nyandarua County, particularly in Ol Jororok and Ndaragwa sub-counties. These are criminals who are specializing in the murder of women and children. They are organized criminals. They first rape women, eventually engage in cold-blooded murder of the same women that they have raped and they also kill their children.

Mr. Deputy Speaker, Sir, it is the responsibility of any Government in power to take care of the life and property of its citizenry. We have had this problem in the last six months, and we are wondering what the police are doing.

Article 29 of our Constitution guarantees the freedom and security of every Kenyan. I am alarmed by the wave of the murders in our county over the last few months, especially in Ol Jororok Constituency which largely remain unresolved to date.

Mr. Deputy Speaker, Sir, what is more worrying is that these crimes have been meted against single, helpless and innocent women who are first raped and murdered. It is also worth noting that nothing is stolen from the victims.

Here are some of the cases that have happened in the last six months.

On the 5<sup>th</sup> November, 2019 at Ol Jororok Gardens, Kanguo sub-location around 7.00 p.m., a lady commonly known as Mama Brian and her sister Agnes were attacked by unknown assailants who hacked them to death and nothing was stolen from them.

On 23<sup>rd</sup> November, 2019, Mary Mwendothi, a Nyandarua County Government employee from Heshima Village while going home around 9.00 p.m, was attacked, raped and killed by unknown people and nothing was stolen from her.

On 10<sup>th</sup> December, 2019, Mary Nyambura Macharia, a casual labourer from Munanda Village, was raped and murdered while going home at around 7.30 p.m. in the evening and nothing was stolen from her.

Early this year, in Amani Village, Alice Wanjiru's house was dug into by unknown people who raped and murdered her. Again, nothing was stolen from her house.

Two weeks ago, in Chakareri Village, Eunice Muthoni and her daughter Lynette Njeri, were raped and murdered after the assailants dug their way into their house. Eunice's two sisters who were also present during the incident were also raped and are now admitted in hospital with stab wounds that they sustained during the ordeal. Nothing was stolen from their house.

On 26<sup>th</sup> April, 2020, unknown attackers broke into the house of Margret Wairimu and killed her and her son James. Nothing was stolen from their house.

Mr. Deputy Speaker, Sir, it is worth noting that, in these cases, women have been victims.

None of the reported cases has been resolved and nobody has been taken to court. Therefore, our request as the residents of Nyandarua is that most of the security officers in Ol Jororok and Ndaragwa sub-counties should be removed from their work places. They have overstayed and relaxed. That is why we are having all these murders.

We fear going on with our businesses because people are killed, cases are reported to police stations and nothing is happening.

Mr. Deputy Speaker, Sir, for example, a police administration constable was caught stealing electrical poles at Ol Kalou. He was taken to the police station. Up to date, he was not taken to court. The Criminal Investigative Department (CID) set him free and did not investigate the case. One wonders the kind of country we are living in. These things never used to happen before. Kenya has become completely insecure.

In the Statement, the Committee should:

(i) Explain the steps taken by the security agencies to bring to book the perpetrators of these murders in the constituency given that there are several unresolved murder cases reported in the last six months;

(ii) Outline measures, if any, that the Ministry of Interior and Coordination of National Government has put in place to ensure that residents of Ol Jororok and Ndaragwa feel secure, especially due to the fact that the recent cases of murder have happened at night when the curfew restriction is in place;

They cannot take care of themselves and no step is taken.

(iii) State the progress made by security agencies towards investigation into and resolution of all murders reported at Ol Jororok Police Station for the last six months and the status of each case.

If the police cannot secure our people---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Githiomi, you have made your point.

**Sen. Mwangi:** Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. (Eng.) Mahamud, likewise, bring this matter to the attention of the Committee on National Security, Defence and Foreign Relations. In the same timeframe of two weeks, a response must be shared to the Senator.

**Sen. (Eng.) Mahamud:** Much obliged, Mr. Deputy Speaker, Sir.

*(Interruption of debate on Statement)*

## POINT OF ORDER

ABSENCE BY SENATORS DESIGNATED TO  
ATTEND SITTINGS

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, I seek your directions. This House has 67 Senators, but due to Coronavirus, Members always try to fight for space to be in the

designated list of only 28 Senators. If you look around, there is no Majority or Minority Leader and no Majority or Minority Whip.

I urge that you give direction on that. We are not being fair to the people we represent and Senators who have not been given a slot to come.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. Sakaja. I will give directions straight away.

The Senate is meeting in extraordinary times. In these circumstances, all of us are unable to attend the sittings of the House as is the case until the situation is normalized.

The House will take sanctions against a Senator who in a normal way has been recommended by their party leaders to sit during these special circumstances and does not appear without having notified the Speaker.

If a Senator has been identified and notified that they have been selected to be in the sitting and something happens and are unable to sit, they must communicate it immediately to their party leaders and to the Speaker with a view of getting a replacement. We cannot have empty seats yet there are Senators who have been struggling, through their parties, to get a slot to come to this House.

Any Senator who causes the House to have an empty seat when the Coronavirus pandemic has also caused many of our seats to be empty will be guilty of a misdemeanor and will be dealt with accordingly.

Thank you, Sen. Sakaja.

*(Applause)*

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it, Sen. Nyamunga?

**Sen. Nyamunga:** Mr. Deputy Speaker, Sir, in light of that, I do not know if it will be wrong for me to suggest that Members be allowed to come on interest basis because it will not be right for us to come and sit here. We have a lot of business to transact, but then we have empty chairs.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): We will have that directed to the Senate Business Committee (SBC). That is a good suggestion, which should be considered in the next SBC sitting. Right now, we are using political parties to suggest based on so many interests. If we go solely by way of interest, we are likely to see maybe, a Senator from one corner of the country, or one gender or one political party and it might be difficult.

The point is simple. If through your party, you have been processed to attend a sitting. You must attend. If you cannot attend, then you must notify the Speaker in good time and a replacement sought. Period! I think that there is no debate about that.

**Sen. Wambua:** On the same note with what Sen. Nyamunga said, with a slight amendment, we can borrow a leaf from the National Assembly where the sitting is preserved for first-come-first-served basis, such that the sittings are open for all Senators meaning that the first 28 who get in will transact the business of the House; if that can also be taken to the SBC.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well, thank you.

Sen. Ochillo-Ayacko; we need to put this behind us.

*(Resumption of debate on Statement)*

**Sen. Ochillo-Ayacko:** On a point of order, Mr. Deputy Speaker, Sir. Not on that matter, but to plead with you because the security issue that was raised by Sen. Githiomi touched me and I wanted you to just consider something that I observed.

It appears from the narrative of Sen. Githiomi that there is negligence; there is abdication by police officers in that part of the world. You heard the litany and the gruesome manner in which innocent women were murdered.

Am I in order to ask you to include in part of the directive, that disciplinary processes be instituted with a view to demoting the responsible commanding officers in those areas? We cannot have a situation where people are killed now and again and all we are asking is for a report.

Mr. Deputy Speaker, Sir, the Committee dealing with it should also come to us with information as what disciplinary action, including demotion, be meted out against these police and dismissal of the police officers who have authority, Intel, guns and cells and are doing nothing as our people get murdered.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. I direct that the additional issue raised by Sen. Ochillo-Ayacko be included unless, Sen. Githiomi has an objection---

**Sen. Mwangi:** Mr. Deputy Speaker, Sir, I have no objection. It is quite good.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You have no objection! Let the additional issue be included as well. The Committee should, therefore, recommends that in the event of any officer being found to have been negligent or culpable in any manner, or acted unlawfully, suggest concrete measures and sanctions to be carried out against such officers.

Let us move on to the next Order.

## **BILLS**

### *First Reading*

THE LIVESTOCK AND LIVESTOCK PRODUCTS  
MARKETING BOARD BILL (NATIONAL ASSEMBLY  
BILL NO. 2 OF 2019)

*(Order for First Reading read - Read the First Time and  
Ordered to be referred to the relevant Committee)*

### *Second Reading*

THE PANDEMIC RESPONSE AND MANAGEMENT BILL  
(SENATE BILLS NO. 6 OF 2020)

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Chairperson of the *ad hoc* Committee on COVID-19 Situation in Kenya, Sen. Sakaja, proceed.

Do you also want to move the Bill electronically?

(Laughter)

**Sen. Kasanga:** We are paperless, Mr. Deputy Speaker, Sir.

I beg to move that the Pandemic Response and Management Bill (Senate Bills No. 6 of 2020) be read a Second Time.

The Bill was read the First Time on 21<sup>st</sup> of April, 2020 and was committed to the *ad hoc* Committee on COVID-19 Situation in Kenya to facilitate public participation. A call for public memorandum was placed in the local dailies on the 22<sup>nd</sup> and 23<sup>rd</sup> of April, 2020, which closed on 1<sup>st</sup> May, 2020. Before I go into the details of the Bill, allow me to give a brief background on the publication.

Mr. Deputy Speaker, Sir, as you are aware, on 31<sup>st</sup> of March, 2020, the *ad hoc* Committee on the COVID-19 Situation was established here in the Senate. We were tasked with several matters to address, including the financial assistance to vulnerable persons and groups, the protection of residential and commercial tenants, protection of employees from job losses and the easing of legislative and regulatory requirements for doing business. Those were part of our mandate.

We have, as a Committee, severally reported in the House every week since the establishment of the Committee. Before embarking on this task of the Bill, we were able to form all the issues that were given to the Committee in five thematic areas. These areas included health, economic and financial issues, social order, public order and human rights issues, access to food, water and other basic commodities, and support services and cross-cutting issues like Information and Communication Technology (ICT) and others.

After identifying these thematic areas, we then invited members of the public to come give us their views and feelings on the issues of COVID-19 under these thematic areas. The response was overwhelming; we had over 160 submissions coming in and we still have a few more still coming in.

I really want to thank all the organizations, individuals and Members of Parliament who came forth with these requests that we had given them because it is upon this basis that the Bill was formed.

When we received the views from the public, we did a comparative study on how other jurisdictions around the globe had responded to the pandemic and, especially on issues of policy and legislation. The Committee resolved that it was imperative to have legislation; it was the only method that we could see that would have the future at heart; something that was for posterity.

Our proposal to come up with legislation should not be construed to mean that the Government of the day has failed in handling the COVID-19 pandemic. Far from it, we have engaged various Ministries and Government agencies. We have been brought to speed on up-to-date issues on what they are dealing with. The social dialogue has been extended to private partners. We commend the Government's effort in trying to avert the

pandemic. In proposing this Bill, we just want to make it easier and seamless next time by putting the structures in place.

Mr. Deputy Speaker, Sir, a pandemic is a rare phenomenon. The nature and characteristic of a pandemic is not predictable. The measures needed to manage may vary from one pandemic to another. History has shown that pandemics have so far bombarded the world ranging from plagues, smallpox to different strains of flu. They have been overcome by embracing varied measures. Therefore, having a straight jacket legislation may not be effective.

This is why we noticed that the Bill proposes measures that are not too restrictive in order to give that wiggling room that is necessary, depending on the nature of the pandemic that, God forbid, we may face again.

After publication of the Bill and close of submissions of public memorandum on 1<sup>st</sup> of May, 2020, we have so far received 64 submissions on the Bill from organizations and individuals. Fellow Senators have also given immense support. We had submissions from Sen. Mugo and Sen. Ochillo-Ayacko. We want to thank them very much. In fact, we shall be inviting them to address the Committee on this issue.

Mr. Deputy Speaker, Sir, having said that, I will go through some of the provisions of the Bill. The Bill is proposing a declaration of the pandemic as a beginning. The Bill proposes that the President, in consultation with the National Security Council, may issue a Gazette notice to declare a pandemic, and the same would happen at the end of the pandemic. With the same consultation, then you would mark the end of the pandemic. This basically brings into effect this Bill.

Mr. Deputy Speaker, Sir, we are talking about national and county government committees. Once the pandemic has been declared, the Bill will provide a mechanism for a coordinated response by national and county governments. It provides for the establishment of *Ad Hoc* National Pandemic Response Committee and the committee is required to spearhead the implementation of activities geared towards preventing the spread and mitigating against the negative impact. The detailed functions of this committee are listed in Clause 9 of the Bill.

It is also proposed that the committee be chaired by the Cabinet Secretary (CS) who is responsible for health matters. Pandemics are about health. Currently we are seeing what they are doing, and in the same breadth, this is what the Bill is proposing.

The membership of the committee shall include the Chairperson of the Council of Governors (CoG) or a person designated in writing, the Principal Secretary (PS) responsible for Finance and other Cabinet Secretaries, Principal Secretaries and public officers that the President may deem necessary, depending on the nature of the pandemic.

The committee is at liberty to co-opt other members. This was very clear because, as you can see, it cannot just be one standing committee. There has to be other sub-committees dealing with all the various issues and persons with knowledge and skills that are found necessary for effective performance. It may not even necessarily be Government entities; it could also be other stakeholders who are conversant with the issues.

This particular committee is required during the pandemic to submit reports to Parliament. This is something that is not currently happening, but in the future, we are

proposing in the Bill that this committee submits to Parliament, reports after every two weeks; the reports detailing the nature of the infection or the rate of the infection, the measures undertaken to mitigate the pandemic and challenges faced in mitigating the pandemic.

The provision will ensure that Parliament is kept abreast on emerging issues, without necessarily having to write or summon the relevant CSs as we are doing. We know that it is a challenge since they are busy, but at the same time, we want these updates to keep coming. This part of the Bill is to mitigate this challenge. After the end of the pandemic has been declared, within a month, the same committee should submit a final or exit report to Parliament.

Mr. Deputy Speaker, Sir, in the same breath as it is happening at the national level, the county governments are required to collaborate with and compliment the efforts of the national Government in responding to a pandemic. We have already seen some of these activities happening in some of the counties, but we are putting it here in the Bill.

To facilitate this, the Bill proposes a framework for the establishment of the County Pandemic Response Committee in each county. Similar to the committee at the national level, these committees shall be *Ad Hoc* committees established by the county governor, in order to implement the strategies that have been rolled out at the national level and to also promote civic education.

Mr. Deputy Speaker, Sir, as you have seen, COVID-19 already has so much stigma to it. The stigma adds to the challenge in dealing with it. Civic education becomes very critical and it is a function at the county government. The details of the functions of the county committees are listed under Clause 15 of the Bill.

It is also proposed that the county committee shall be chaired by the County Executive Committee responsible for health and the membership shall include county commissioners and other county public officers that may be necessary. Just like the national committee, the committee may co-opt experts where necessary. The county committees mimic the committee at the national level and various aspects required during the pandemic, to submit reports to the relevant county assemblies ever so often as at national level, which is two weeks.

Mr. Deputy Speaker, Sir, the Bill proposes The Pandemic Response Fund. This has received quite a bit of interest from our stakeholders and interested persons who have submitted. It is an area which, as a committee, we are still looking at critically, but there cannot be no fund for many reasons.

The Bill proposes the establishment of the fund whenever a declaration of a pandemic is done. The fund would serve as a pool of resources for ensuring that there are adequate resources towards the spread and the mitigation against the impact of the pandemic. The fund is to be administered by the Principal Secretary responsible for matters relating to finance. It is expected to be wound up two months when the pandemic is declared to have ended. This is under Clause 20 of the Bill.

Under socio-economic protection, the Bill proposes temporary relief measures to those who are adversely affected by the pandemic. This is an area that has also created a lot of interest from citizens and stakeholders and Members of Parliament (MPs) alike.

You will find these socio-economic protections under Clause 25 running through to Clause 34 of the Bill.

Some of the proposals include the national Government and county governments being required to put in place social safety measures designed to support vulnerable persons, vulnerable households and the informal sector workers whose incomes have been disrupted by the pandemic. Such schemes include the cash transfers to the identified groups of people.

The relevant national Government and county government agencies may during a pandemic waive water and electricity charges for identified vulnerable persons and households, in consultation with water and electricity service providers.

Mr. Deputy Speaker, Sir, I have to read very carefully because many people have misinterpreted the spirit of what we want to do in this Clause of the Bill. I am sure the Chairperson of the *Ad Hoc* Committee on COVID-19 in Kenya, Sen. Sakaja, will highlight on some of these issues.

Where a pandemic affects the financial capacity of a tenant to meet their obligations, the tenant shall give a notice in writing to the landlord that they are unable to meet their obligation because of the pandemic. Upon receipt of that notice, the parties shall enter into agreement. I know the Chairperson will speak to this since it has brought a lot of controversy. In fact, once the Bill was published, we had to go on air to clarify what the Bill intends to do because it had raised quite a lot of issues.

Mr. Deputy Speaker, Sir, where a pandemic adversely affects the ability of an employer to pay salaries is another very controversial area. Notwithstanding the provisions of the Employment Act, an employer shall not terminate the contract of a service, dismiss or coerce an employee to take a salary cut. However, the employers shall permit the employer to take leave of absence, for instance, without pay for the duration of the pandemic.

This is an area which we are expecting to receive a lot more submissions, for us to deliberate as a Committee. We are also expecting the fraternities that handle matters of employment to come forward and give their submissions on this issue so that we can continue fine-tuning to find the best way possible.

Statistics from the current pandemic have shown that revenues have really dropped. Part of the reason we are hearing all the crime that is going on is because our pockets are significantly empty. People who are not in the vulnerable category are slipping into a vulnerable section of our citizens.

Most industries, especially the hospitality industry, are very hard hit. When we spoke to some of these people, it is very heartbreaking to see people in the transport sectors and the tourism transport sector have grounded their vehicles alongside their drivers. We do not know when tourism is going to pick. It is estimated that it may take up to 2022 to see tourism picking from where it is. These are critical conversations that need to be heard beforehand.

Where a pandemic affects the financial ability of a borrower, a borrower and the respective lending institution shall enter into agreement to review repayment modalities and penalties. We have already seen this happening. In our Committee, we had conversations with the Kenya Bankers Association (KBA) and the Central Bank



Governor. We know many people with loans have already gone to their banks to have their loans restructured.

The Central Bank of Kenya (CBK) has given a few reprieves to ensure that the citizens are cushioned from extra charges that come from some of these conversations. We are putting in these structures here so that, in future, we do not have to start digging up on what do we do or what did we do then and we need to do it now.

County governments may suspend fees payable for renewable trade licenses and payment of property rates during the pandemic. This is another proposal.

Mr. Deputy Speaker, Sir, and Hon. Senators, these are not exhaustive provisions. I know we may need to rephrase them as we go ahead with the Bill. We may need to include a few other provisions so that we do not abuse anyone. The employer is a critical part of this economy as much as is the employee. So, it is the landlord who is very critical in our economy as is the tenant. Therefore, all of them have to be cushioned from the effects of the pandemic.

We have received many proposals dealing with statutory timelines. Some of them may not have been canvassed in the Bill, but we intend to take them on board. For instance, when the Ministry of Lands has suspended issuance of certain paperwork that would enable land transactions to happen, and such transactions are time-bound, then what happens? We have been receiving some of these complaints and we are still looking at them.

Under the miscellaneous matters, the Bill makes it an offence to misuse funds meant to alleviate effects of the pandemic. It also makes it an offence to spread false information. It also makes it an offence not to follow directives that have been given by the relevant authorities under this Bill. We have canvassed that and we have seen how our police officers are struggling with enforcement measures.

Mr. Deputy Speaker, Sir, as it may not be possible to envisage all matters that we need under the legislative solution during the pandemic, the Bill gives a leeway to Cabinet Secretaries in charge of various dockets to make regulations whenever need arises. Like I said earlier, we are not being prescriptive in this Bill, but we are giving a framework that we can follow in the event of, God forbid, other pandemics that may come.

The Committee is currently considering all the submissions that we have received. We are having several remote meetings with stakeholders who have brought in their memoranda.

On Friday, 8<sup>th</sup> May, 2020, we had a meeting with the Law Society of Kenya (LSK) and Coulson Harney LLP (Bowmans); they had presented weighty issues. Especially issues on timelines on some of the issues that I mentioned on the Ministry of Lands and stuff like that. We intend to take more stakeholders, including Senators and Members of Parliament before wrapping up on all proposals. We will be proposing a raft of amendments at the Committee Stage. We believe we want to strengthen the Bill and make it easy for implementation.

In conclusion, I want to thank the Office of the Speaker and the Office of the Clerk of the Senate for extending the Committee a lot of support. We have an incredible Secretariat who are working round the clock. Our Reports are very detailed because we

are having several consultations in a short time, but they are able to capture all our conversations and recommendations and even the work they have done on the Bill given the timeline. We have to commend the legislative office for what they have done and what they continue to do.

Mr. Deputy Speaker, Sir, we thank you so much for that support. Allow me to call my Chairperson, Sen. Sakaja to second the Bill.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): But you have not moved it.

Sen. Kasanga, you have to move it.

**Sen. Kasanga:** Mr. Deputy Speaker, Sir, I beg to move and request Sen. Sakaja to second it.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Well done, Sen. Kasanga. You have come from far since the days of the shoes debacle.

*(Laughter)*

**Sen. Sakaja:** Thank you, Mr. Deputy Speaker, Sir. I deliberately asked my able Vice-Chair, Sen. Kasanga to move this Bill. I believe in opportunities and agree with you that she has done a very remarkable job. She has also been doing a very good job leading this Committee.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You should add that you are also a product of opportunities.

**Sen. Sakaja:** I am a product of opportunities since 2013 and I am still learning.

Mr. Deputy Speaker, Sir, I rise to second this Bill. I had mentioned earlier that it is a special day. In 1820, one lady called Florence Nightingale was born on this day 12<sup>th</sup> May 2020. She was an English social reformer, a statistician and founder of modern nursing. She came to prominence managing nurses during the Crimean War and gave the nursing profession status and she was an icon during the Victorian culture.

Apart from my daughter, Emily Sakaja, who was born today and turns one-year-old. As I said, Florence Nightingale who was born in 1820, it is a special day and it is International Nurses Day.

It is very poetic that on this International Nurses Day, we are moving a Bill on a pandemic where our nurses have come out as the frontline of defense and are doing an amazing job. We pray that God may continue to bless our nurses, doctors, lab technicians and all those other Kenyans who are working tirelessly putting their lives on the line as we fight Coronavirus.

A pandemic is not a normal occurrence. In fact, there is no one listening to my voice across the country or in this House who was alive when there was another global pandemic of this nature in 1920. Because of that, the Committee that this House saw fit to establish felt that it is important for us to have a special legislative framework on how to deal with a pandemic.

During a pandemic, it is not business as usual; it cannot be business as usual. That is why some of the proposals that we have put here might look controversial, but it is not usual times. During a pandemic, certain luxuries have to be forfeited. It has a huge impact on the economy. We are already feeling the pinch at individual level and as a country.

In the Report that I have tabled today; the Fifth Progress Report, if you look at the state of our economy, we are looking at projections of Gross Domestic Product (GDP) of 2.5 per cent down from 5.6 per cent. In fact, the realistic projection is 1.8 per cent. It has a huge impact on our daily lives. Our lives are not the same; we are here wearing masks looking like bank robbers. We are meeting virtually on Zoom.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Can you not get a better example Sen. Sakaja?

(Laughter)

I thought you would say looking like surgeons, especially Sen. Mwangi who has gloves on his hands.

**Sen. Sakaja:** In fact, others are wearing headgear.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): The robber thing looks untidy.

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, these are peculiar times. However, like I have said, every cloud has a silver lining and the world is reshaping on how it operates.

The *ad hoc* Committee which I chair has been able to conduct in a month, more than 45 sittings. This is unprecedented and we meet online. Sen. Linturi might be in Meru on a *miraa* tree while Sen. Faki is in Mombasa. Sen. Kasanga has been joining our meetings from Machakos while Sen. Omogeni is elsewhere. We have been able to have 100 per cent attendance in our Committee sittings.

Mr. Deputy Speaker, Sir, you have been in leadership. I have chaired Committees since 2013 and I have never seen 100 per cent attendance continuously. Every cloud has a silver lining. We are doing cashless transactions and we are taking every challenge in stride.

As my Vice-Chairperson has said, because of how big this mandate is and the effects of Coronavirus, we narrowed down to five areas. We have been looking at those areas critically. I am glad to say that we have made tremendous progress in many of those issues that came up from the beginning. Cabinet Secretaries have been coming and they have been resolving those issues. We have listened to many stakeholders too.

I want to thank Kenyans because they are amazing people. On top of resilience, Kenyans care about their country. If you look at the level, amount and quality of submissions that ordinary Kenyans and institutions have brought to us, more than 160 of them appearing in our meetings, you will agree with me that Kenyans are an amazing lot. We have spoken to ordinary nurses and doctors in the counties and that is why I thank technology.

We were able to have a meeting where we had a nurse in Kakamega, another one in Meru and another one in Coast, at the same time, telling us how things are. In Kiswahili we say, “*Vitu kwa ground ni* different.”

Sometimes the Cabinet Secretary or Government officials may give you one side of the story. However, in the same meeting, you have an ordinary *mwananchi* saying; we have not heard of that. Therefore, we get progress and closure on many of those issues.

I want to single out the legal fraternity. A number of law firms have come to us like the LSK. I want to single out Coulson Harney LLP (Bowmans) who came and

looked at our proposal. We have friends there such as Mr. Evans Monari and others and they gave very practical interventions.

The Kenya Bankers Association was very pragmatic in as much as they have been affected so much. They said that they will change one or two things but agreed with what was making sense in the Bill. They reported that as of last week, they had received more than 20,000 requests from their clients. The clients were requesting them to restructure loans amounting to Kshs160 billion and they had acceded to those requests.

A pandemic period is a time for Kenyans and all the leaders to come together. You will remember that I was opposed to the adjournment of this House at the beginning of this pandemic. I said that a pandemic is like war and that the generals do not disappear during war because they have to be at the frontline.

As a Senate, we could not go home because everybody needed solution and oversight. In fact, we have seen real generals during this pandemic in the name of Members of this House, private citizens, public institutions and the Ministry of Health. However, I want to single out the Cabinet Secretary (CS) for the Ministry of Health, Sen. Mutahi Kagwe, for the tremendous work that he is doing. I refer to him as Sen. Kagwe because he insisted that he was still a Senator when he came to the meeting.

I would want to reiterate that oversight has not been suspended and neither has the rule of law and the Constitution been suspended. We are oversighting. We have been telling the CS and his team what is not going well and what they need to look at.

This Bill provides that it will take primacy when it is in operation and it will only be in operation when the President declares a pandemic. The World Health Organization (WHO) provides protocols on how a pandemic is declared. Based on its analysis and the reports that it gets from state parties, it declares the pandemic and communicates to the presidents of state parties. The Bill provides that the National Security Council, on the advice of the Cabinet Secretary for the Ministry of Health, will recommend that the President declares a pandemic.

When the President declares that there is a pandemic, this Bill will take effect and it will only stop being effective when the President declares that the pandemic is over. At that point, if any other law is in contravention with this Bill, then this law will take effect and full force but that does not include the Constitution. You are a law professor and I cannot even try to tell you the doctrine of implied repeal or the doctrine of precedence supremacy of a law at the point of its application.

Members of the private sector told us that we are setting up a committee that only includes the Government. They asked us to make amendments so as to include them. That is why I believe that this Bill might look different in many aspects after the Committee stage.

We also noted that there is a challenge of coordination between national and county governments and that is why this Bill affirms that the county governments must have a coordination mechanism with the national committee and their county committees. The county committees will have a national Government representative through the county commissioner. At the national committee, the counties will be represented through the Council of Governors and the parliamentary leaders can also be represented to a certain extent so as not to blur the lines of separation of power.

A huge aspect of this Bill is what we are referring to as social economic protection which is extremely important. A big portion of our population in many towns and cities cannot fend for themselves during this time of curfew. We do have a night economy. The restaurants where the waiters, waitresses, barmen and bouncers used to work have been closed.

We spoke to Uber and other taxi drivers. At Kenya Airways (KQ), we have hundreds of flight attendants and pilots who are not on pay right now. They need to be cushioned. There are no two ways to think about it. Their cushioning is not just by sending food.

Mr. Deputy Speaker, Sir, there is a fallacy that the only people who need support are in slums. That is not true. If many of us missed their salaries twice, there will be a problem and you will not only find them in Kibera or Mathari slums; you will also find them in Hurlingham, Kilimani, South C, in the villages and places which normally would not be targeted through social assistance programmes. They need to be cushioned through us cushioning their employers and business.

I am glad to report that in our interaction with the National Treasury, they told us that they have found and secured, possibly by the end of June, Kshs120 billion grant to create a Wage Subsidy fund. That is in our Report and it is a success of this Committee.

I would like to state that before we came up with this Bill, we analysed legislation from 50 countries. We looked at what parliaments have done. I am glad Sen. Kasanga mentioned the level of professionalism that our secretariat has, led by Mr. Charles Munyua, Ms. Claire and Dr. Sagini. They have looked across the world and found what is working for First World countries. They also looked at countries like Argentina, Mexico, Rwanda and South Korea. We have then been able to say that there are things we can practically do.

If we had that fund of Kshs120 billion today to begin with and a corporation or business goes because we have said that you should not fire your workers---. However, we are not just cushioning your workers but also providing the fund such that you can go to your bank and there is a concessional facility from Government and you can then show your turnovers and what you earned in a similar month and in the previous year but because of Coronavirus Pandemic, you have not earned that amount. Then you can get a concessional loan or even a grant to keep your people in jobs.

Mr. Deputy Speaker, Sir, we have to do that in a pandemic. This is not something to operate all the time but during a pandemic, we must do that. Otherwise, we will go into such deep recession that will take us more than 10 years to recover from, as a country. Through Pay As You Earn (PAYE), that company or organisation can first show the people they have been paying salaries so that they are not laid off.

The bank has a relationship with you and will not just give you money if they do not think you have the capacity to repay. Neither will they give you a grant if you truly do not deserve it. At this time, they should be able to access that small business support which we have seen.

Of course, the United States of America (USA) has a USD2 trillion budget. We do not have the same but we are saying around Kshs200 billion. I am glad we have seen banks take it up. I saw the National Chamber of Commerce and Industry and Equity Bank

– I thank Mr. James Mwangi – saying that they will provide a facility of a certain amount for their own clients who can demonstrate that loss of business during this time and also have the potential to repay.

Mr. Deputy Speaker, Sir, we have put in a proposal there. As I have said before, it is very difficult to legislate empathy, common sense, good behaviour and humanity. If you are a landlord, this is not the time to evict your tenant. Enter into an agreement with your tenant.

That provision is not just to cushion the tenant but also the landlord. I have spoken to many who are asking that we have said tenants should not pay. No, that is not what we said. The media sensationalised this issue. We are not saying that tenants should not pay, but we are urging them to get into an agreement. For example, your tenant may be able to pay a certain portion for now. If they are paying Kshs20, 000 in rent, you can agree they pay Kshs10,000 and then Kshs15,000 or something extra to recover it. It is better than having no tenant at all.

I have many friends who own big buildings in this town and they told me that they had to sit down with their tenants and ask them what is realistic. As it is, the real estate market was suffering. So, this landlord, having entered an agreement with his tenant, can then now access that concessional facility from the bank.

First of all, if they are paying mortgages, the mortgages must be suspended at that time and pushed forward for that period of the pandemic. If that is done, they will not have obligations that they cannot meet because they are not getting the same amount or rental income they were getting.

Mr. Deputy Speaker, Sir, other countries have gone to the extent of stopping all evictions. We are not going to that extent. We are saying, get into an agreement or an understanding. I know for many people, that is the only source of income and I understand that. It is easier for the Government to support 1,000 landlords than 100,000 tenants. If the landlord is happy and has been cushioned, then the tenant will be happy.

In that provision where we said that “the Cabinet Secretary shall create regulations to cushion both”, we have decided as a Committee instead of leaving it blank and saying “may”, we are going to put in the specific provisions so that it is not abused and we have proper protection.

Mr. Deputy Speaker, Sir, I have mentioned the issue of loans. Mortgages and banks have expressed willingness to amortise and if it was a 20 month facility, extend it for the period of the pandemic. During this period, there are no charges and interest. I am glad that based on interaction, the banks have said that certain transactions will not be charged as of now and they have restructured loans amounting to Kshs160 billion. It is a pandemic and not an epidemic like malaria or a landslide but a global pandemic.

Mr. Deputy Speaker, Sir, moving forward, and I hope that brings some understanding or context to it, we have heard everybody who has come from both sides. Of course, there were the extremes, there is an association called the Landlords and tenants Association. I think the Registrar of Societies needs to explain because I do not see both of them being an association because it is like an association of oxen and sheep together. Nonetheless, there is freedom of association and if they are registered, we respect what they said. Their view was extreme, saying; ‘to halt all rent payments’. You

cannot do that in any society. We need to create support such that the Government supports the landlords not to evict those tenants. It is not for everybody. Unless you can demonstrate that you have been laid off, fired or your income has gone down, that facility is not for you. Some people would want to advantage of that yet they are still receiving their income as usual.

We have looked at the issues regarding penalties. Some say the penalties are too stiff but we choose to disagree because the penalties we have put in the Bill are sufficient. If you misuse resources meant for cushioning the poor and make false claims to a public or private entity during a pandemic like a bank; if you misappropriate donations of foodstuff as we are seeing and hearing might be happening in certain areas, you get a serious punishment and must be punished.

We are saying that this is the time where accountability might be going out of the window, people are saying because of this urgency to procure, the procurement rules are not being followed in county and national Governments, in certain departments.

We have made very strong recommendations in our report which we shall move in the afternoon. That is in the fifth progress report; that the Public Procurement Regulatory Authority, accounting officers and the Ethics and Anti-Corruption Commission (EACC) to look very keenly at all procurement happening at this time so that people do not just start saying because it is a pandemic, let me buy wheelbarrows or jerricans at a certain price. Let me buy masks at Kshs20,000. The rules must be followed.

In this Bill, we are saying if you are caught misappropriating funds, we have put 10 years, pay thrice the value of the goods you have appropriated and a minimum sentence of 10 years. We must stop taking Kenyans for a ride. What kind of a person can take food meant for a hungry person in the slum and decide to sell it? That person deserves to be in jail. If they really wanted food, let us feed them from jail because our prisoners are also being fed. We cannot allow any public officer or private individual to misuse and misappropriate funds during the time of a pandemic.

The other proposals we are bringing include the issue of timelines as Sen. Kasanga has said. I am glad when we had a meeting with the National Transport and Safety Authority (NTSA) and the Ministry of Transport, Infrastructure Housing, Urban Development and Public Works, they were very pragmatic. They said it is true; if we cannot give you a new licence during this time and your license just expired before the pandemic or during the pandemic, it should be deemed to continue operating during the time. Since you cannot get the digital driving license because of the thumbprint issue and the proximity issue because they have to take your biometrics, so let it continue operating.

Even then, the rules of that specific entity or institution in terms of convening the meeting of the threshold required must be followed. It is the same way in which our Committee is able to meet online, but a quorum of three must still be achieved during that time.

The issue of statutory timelines has been covered in the Bill. We will strengthen that. The issue of NSSF and NHIF and some of these payments within Government have been addressed in the Bill. We are open to ideas, amendments, criticism and praise. The ratio, though, should balance towards positive criticism; the constructive. This is because

at such a time of a pandemic, some may say, “Oh, you are just legislating.” We have a choice. The easier route is to do nothing and say: “*Itaisha tu*” - I am sorry I have used Kiswahili, to say “it will end or stop”. However, we have a choice to determine that, we, as the leaders and elected representatives, will play our part in coming up with ideas to cushion Kenyans. This is the time Kenyans want to see us; and a strong leadership.

Mr. Deputy Speaker Sir, I am glad that the President put out a fund for musicians and artists who at this time are not performing any shows and cannot perform anywhere. I am glad that the Cabinet Secretary for Sports, Culture and the Arts has directed that it will be “pay for work” not just loose money. I am sure you saw a presentation where my sons and I were rapping. We have said we need to be part of that Kshs100 million because we are also educating people about Coronavirus.

Further to that, we are saying that on top of cushioning Kenyans, we need to think of a post-Corona recovery strategy. Kenya and our economy will have to go on. This is the time for us to develop a thorough post-Corona economic recovery strategy. We are glad that there is a sub-committee led by the Cabinet Secretary, Prof. Margaret Kobia.

Beyond that, we are listening to various institutions. I thank the International Budget Partnership (IBP), The Institute for Social Accountability (TISA), a young student of economics in Geneva and many others who were able to bring very good ideas that we are incorporating in the Bill.

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

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

I can see the mood in the House is changing, signaling something. Can I be allowed to finish?

*(Sen. Poghio spoke off record)*

Thank you, Leader of the Majority.

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

**Sen. Sakaja:** This is very important. I can hear he has started his work badly by pressuring somebody on the Floor. Just allow me to finish. This is the Bill the whole country is talking about. The Senate has taken initiative and leadership on this issue. Let me finish in just five minutes as people acclimatize with the House.

Mr. Speaker, Sir, I thank Sen. Mugo, Sen. Ochillo-Ayacko and Hon. Kaluma from the National Assembly, the Central Organization of Trade Unions (COTU), the Federation of Kenya Employers (FKE), the National Gender and Equality Commission (NGEC), the Kenya Human Rights Commission (KHRC), the Kenya Tea Growers Association (KTGA), Mzalendo Trust (MT), Civil Society Organizations (CSOs) and many other institutions that have been able to come and give us input. We are still open to listening to input because we hope to go to the Committee stage. If the Senate Business Committee (SBC) allows, this afternoon or next Tuesday.

With those very few remarks, I wish to second this Bill.



*(Applause)*

*(Question proposed)*

*(Interruption of Debate on Bill)*

**The Speaker** (Hon. Lusaka): Hon. Senators, before we proceed on debate, I have a Communication to make.

### COMMUNICATION FROM THE CHAIR

#### CHANGES IN MAJORITY LEADERSHIP POSITIONS

**The Speaker** (Hon. Lusaka): I have received communication from the Jubilee Coalition, from the Office of the Deputy Minority Whip, Sen. Kang'ata, dated 11<sup>th</sup> May, 2020. The letter or communication was accompanied with the following documents-

- (1) Minutes of the Jubilee Parliamentary Coalition meetings dated 11<sup>th</sup> May, 2020, which is a record of the proceedings of the meeting together with resolutions.
- (2) Duly signed list of Senators who attended the above indicated meeting;
- (3) Post-election coalition agreement between the Jubilee Party of Kenya and the Kenya African National Union (KANU).
- (4) Register of Political Parties certificate dated 8<sup>th</sup> May, 2020.

The minutes show that 20 Senators attended the meeting and resolved unanimously to-

- (a) remove the current Leader of Majority, Sen. Kipchumba Murkomen, in accordance with Standing Order No. 19 (5);
- (b) remove the current Majority Whip, Sen. Susan Kihika, in accordance with Senate Standing Order No 19 (5);
- (c) elect Sen. Samuel Poghiso as the Senate Majority Leader;
- (d) elect Sen. Irungu Kang'ata as Senate Majority Whip; and,
- (e) elect Sen. Haji Farhiya Ali as the Senate Deputy Majority Whip.

I am satisfied that the changes were made in accordance with Senate Standing Order 19 (1), (2), (3) (4), (5) and (7) and meets the threshold required under Standing Order No. 19 (5), there having been a majority of votes.

Accordingly, I wish to communicate to the House that the Majority has effected changes, which shall now take effect as follows;

- (i) Senate Majority Leader – Sen. Samuel Poghiso
- (ii) Senate Majority Whip – Sen. Irungu Kang'ata
- (iii) Senate Deputy Majority Whip – Sen. Haji Farhiya

For avoidance of doubt, Sen. Aden Dullo Fatuma, continues to be the Senate Deputy Majority Leader as no changes were made affecting the officer. I will make a reasoned ruling in due course.

(Applause)

Sen. (Eng.) Mahamud, proceed.

**Sen. (Eng.) Mahamud:** Mr. Speaker, Sir, I just saw something about the Political Parties Dispute Tribunal (PPDT) that whatever was agreed between KANU and Jubilee Party was null and void, and it should be left to be determined at a later date. I do not know whether that has come to your attention.

**The Speaker** (Hon. Lusaka): That is why I said that I will give a reasoned ruling in due course.

Proceed, Sen. Cheruiyot.

**Sen. Cheruiyot:** Mr. Speaker, Sir, thank you. I appreciate the decision that you are about to make. However, this is extremely unfortunate. These are extraordinary times. It calls upon you to stand firm and be the Speaker that this House elected you to be; to arbitrate, be fair, firm, and resolute in defence of this institution.

I have information in my possession, and would wish to know---. It would be proper, before the Speaker communicates such a decision, that this House is furnished with the alleged minutes of the meeting, showing who were present and who signed. This is because we have supplied your office this morning with a list of 20 Senators from the Jubilee Party that have signed and said they were not party to that meeting.

Mr. Speaker, Sir, first, Jubilee Party has 34 Senators in this House. We only have a coalition agreement with the Party of Development and Reforms (PDR), and that makes it 35. If 20 Senators sent a letter to your office this morning urging and reminding you that they were never party to these changes, then where did these numbers that are allegedly being used to make these changes come from?

Secondly, I am aware that you are also in possession of a letter from the Whip of the Majority side, informing you of a court order that was issued this morning. They were interim orders from the PPDT informing you of the fact that the decision that was made to enter KANU and Jubilee Party into a post-election coalition is null and void and stayed because it was unprocedural.

Mr. Speaker, Sir, how you choose to treat this information is out there for history to remember; that at such a time as this, when the country was faced with such serious pandemic as we are dealing with, people sat somewhere, made forgeries and we are about to sanction it as a House. We will go down so badly.

I plead with you, as you make your decision, to tell us the truth about what happened. Establish for us who attended this meeting. Who are these alleged 20 Senators that met? They should also tell us why there is contravention of Standing Order No.19(4) that directs that it is the Whip of majority side who writes to you. We would wish to see that letter by Sen. Kihika informing you of these changes.

I rest my case.

**Sen. Pareno:** On a point of order, Mr. Speaker, Sir. We have Standing Orders in this House and the Speaker has made a ruling. Is it in order for Sen. Cheruiyot to purport to question a communication and the decision of the Speaker? This is because what he has done is to question your mandate, which is given by the Senate, that governs this House.

**Sen. Murkomen:** Mr. Speaker, Sir, it is with tremendous respect that I make the following comments. First, I respect the rules of this House, the Constitution and the Standing Orders.

Mr. Speaker, Sir, we have received your communication, not that we were not aware of the machinations and the schemes that were happening, but I am shocked by you.

This morning, I came to your office with the Senate Majority Whip and we served you with an order that was procured after an application that the Majority Whip was part of. In that application, the court and the tribunal are very express. It stayed any decision that is going to be made based on the purported coalition agreement between the Kenya African National Union (KANU) and the Jubilee parties. That is weighty.

Mr. Speaker, Sir, when the history of this House will be written for your time as the second Speaker under the new Constitution, that decision will be key.

Secondly, I stand here knowing for sure that if you have 20 Senators and the court has ruled that three of them from KANU cannot participate in the elections, that means you only remain with 17 Members of the Jubilee side. Together with the Party of Development and Reforms (PDR), we form 35. That means that the majority of the remaining Members were against the decision.

Going back, Mr. Speaker, Sir, when you ruled on the case of Sen. Orenge replacing Sen. Wetangula, you made it clear about the form of communication. You said that communication can only come under Standing Order No.19 which is express. It can only come from the Majority Whip, if it is the removal of the Senate Majority Leader, and vice versa. It anticipated that there will be no situation where you can remove both of them at the same time.

These are important positions. It is not about my position. If you have made your determination or if you have been pushed to a corner to make that decision, I would like to say this---

**An hon. Senator:** Point of order!

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

**Sen. Murkomen:** Mr. Speaker, Sir, I am the one who is affected by this decision. Therefore, my colleagues should give me some respect because they will have the rest of the two-and-a-half years to celebrate this decision.

**The Speaker** (Hon. Lusaka): You should take note of what you say. I will not allow you to say that I was pushed to a corner.

**Sen. Murkomen:** Mr. Speaker, Sir, I have not said you were pushed by anybody. I have just said that if the evidence before you pushed you to a corner and you have made a decision that is not reasoned, it does not give the reasons, the names and what you will do with the tribunal decision that came before you. You only said that you will have a reasoned decision later.

Allow me then to say this. When I was a student leader at the university, one of the things I went through was a training in leadership. I remember only one important aspect of leadership, that the moment you take a position – whether it is the Speaker, the Senate Majority Leader, or a Senator – always prepare yourself for the day you will leave that position.

Mr. Speaker, Sir, I am not worried and I have no problem not being the Senate Majority Leader. What was being defended on this side was the fact that we must follow the rules. Be it as it may, if you will finally disregard the law and make a decision that I am not going to be the Senate Majority Leader in this House, I want to thank my colleagues who voted for me, supported me throughout and who have continued having faith in me even amidst a lot of intimidation from the Executive.

Secondly is to thank the six or seven staff of the Office of the Senate Majority Leader. At the moment, the only people that are in my mind are my staff, it is not me. I know that they have done a tremendous job. They have loans and commitments to their families. However, this afternoon, they are going to lose their jobs by a stroke of political conmanship. So, I really feel for them.

I want to thank them for their support. I will stand by them as a person. I have just started my political life. I have only been in politics for seven years. I believe that this is just, but the morning of my political career. There will be a brighter future. They should take heart because we will come back big. They must continue looking forward to that great future.

Lastly, during this time of the Coronavirus, we were told that not more than 15 people should meet yet we were told yesterday that about 20 people met at the State House to plot how to remove Mr. Murkomen from the position of the Senate Majority Leader. The only agenda for our Jubilee Party has been wrangles from 2018 up to now and not focusing on delivery of services.

If the greatest achievement of the President of Kenya is to demonstrate to the people of this country that “I have removed my Senate Majority Leader and I am a big man---” The President is already a big man. I am just, but the son of a squatter, born and brought up in Embobut. To be the subject of his discussion over and over again--- I want now tell him: “Therefore, Mr. President deliver for the people of Kenya because Mr. Murkomen is out of the way. If I was your stumbling block, deliver for the people of Kenya.”

Mr. Speaker, Sir, allow all the Bills that have been signed unconstitutionally, and which this House went to court to challenge to come to the Senate. I want to tell the President “Stop lying to the Senate. You told us that you will give us oversight fund. Bring the oversight fund to the Senate if Murkomen was the stumbling block.”

It is only---

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

**Sen. Murkomen:** If I was the only reason that the Senate was not being protected, it is time---

**The Speaker** (Hon. Lusaka): Order, Senator! There is a point of order.

**Sen. Murkomen:** I want to conclude!

**The Speaker** (Hon. Lusaka): There is a point of order. Order, Sen. Murkomen! Sen. Pareno, what is your point of order, then Sen. Murkomen can conclude.

**Sen. Murkomen:** I was on a point of order, Mr. Speaker, Sir. I stood on a point of order.

**The Speaker** (Hon. Lusaka): Order! No!

**Sen. Pareno:** Mr. Speaker, Sir, we are guided by the rules of this House. Is it in order for Sen. Murkomen to impute conmanship on the conduct of the President of the Republic of Kenya?

**Sen. Murkomen:** I never said it.

**Sen. Pareno:** If he wishes to accuse the President, then it is time for him to make a substantive Motion to that effect. Is it in order for him to discuss the President and his conduct?

**Sen. Murkomen:** Mr. Speaker, Sir, I have not discussed the conduct of the President. I know the rules of this House.

The President promised this House oversight fund. Two-and-a-half years down the line, he has not delivered. The President promised this House that the signatures of his Bills must come to both Houses--- He has not delivered.

**The Senate Minority Leader** (Sen. Orengo): On a point of order, Mr. Speaker Sir.

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

**Sen. Murkomen:** The respect of this House can be more achieved if I pave way for that respect to be achieved.

**The Speaker** (Hon. Lusaka): There is a point of order, Sen. Murkomen.

**The Senate Minority Leader** (Sen. Orengo): Mr. Speaker, Sir, at the end of the day, whatever our passions or anger, the rules of this House must be observed. I heard Sen. Murkomen state unequivocally that the President should stop lying to the nation and should now deliver the things that he itemized.

Mr. Speaker, Sir, is it in order for him to run away from his statement and try to persuade us that he did not make it?

If he cannot withdraw the statement now, in the proceedings of the House in the afternoon or tomorrow, he should accordingly withdraw and apologize.

**Sen. Murkomen:** Mr. Speaker, Sir, I did not say that the President lied.

**The Speaker** (Hon. Lusaka): Sen. Murkomen, I would like to inform you of Standing Order No.96 on content of speeches. It states that:

“Neither the personal conduct of the President, nor the conduct of the Speaker or of any judge, nor the judicial conduct of any other person performing judicial functions, nor any conduct of the Head of State or Government or the representative in Kenya of any friendly country or the conduct of the holder of an office whose removal from such office is dependent upon a decision of the Senate shall be referred to adversely, except upon a specific substantive Motion of which at least three days’ notice has been given.”

**Sen. Murkomen:** Thank you, Mr. Speaker, Sir. I am aware of the Standing Order. I am clear in my debate. I am within the debating rules. I want to conclude by saying that I hope by removing Sen. Susan Kihika and I un-procedurally, illegally and unconstitutionally, it will improve the relationship between this House and the National Assembly and also the Executive promises to this House. I hope that the President will not sign any other Bill that concerns counties that does not come through this House.

I will remain focused on the rule of law and on the things that affect Kenyans. I will defend the people of Elgeyo Marakwet whom I am grateful to for electing a son of a

squatter to come to this House. To my adversaries, you can celebrate, cheer and be happy. I will come back big.

With those remarks, I know you will say the conduct of the Speaker is put in doubt. You are my friend. I have known you for long. You have been a District Commissioner (DC) in my place and I knew you when you were governor. I defended you when Sen. Orengo and Sen. Wetangula wanted to bring certain documents against you. This is not your decision. You made it under duress and undue influence.

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

**The Senate Minority Leader** (Sen. Orengo): On a point of order, Mr. Speaker, Sir. I have been in this House for many years and have had wars with Speakers. I had a war with Speaker Kaparo but never ever, in the history of my life in Parliament, would I address the Speaker in the manner in which you have been addressed.

Mr. Speaker, Sir, if Sen. Murkomen wants to proceed to be part of this House, he should have no alternative but to withdraw the remarks that he has made about you personally. This is because when you sit on that Chair, the person Ken Lusaka is not the equivalent of the Speaker of the Senate. He cannot undermine the authority of your office. I demand that he withdraws and apologizes.

Mr. Speaker, Sir, we will speak on this issue since the other side has responded. We will also address the legality of the decision and whatever they have been doing. I hope this continues in the afternoon.

**Sen. Linturi:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to weigh in on this matter.

12 years ago, there was once a great man that I personally miss who came from your area. At that time, this country was faced with serious problems.

At that time, I had the opportunity to serve the people of Igembe South as their Member of Parliament (MP). Weighty decisions were placed before him for determination. When I look around this House, it is only Sen. Orengo and Sen. (Eng.) Mahamud who were MPs then.

Mr. Speaker, Sir, the question was what decision should have been made for the greater good of the country or---

**The Speaker** (Hon. Lusaka): Sorry to interrupt you.

### ADJOURNMENT

**The Speaker** (Hon. Lusaka): Hon. Senators, it is now 12.30 p.m., time to interrupt the business of the Senate, the House, therefore, stands adjourned until today, Tuesday 12<sup>th</sup> May, 2020 at 2.30. p.m.

**Sen. Linturi:** Mr. Speaker, Sir, I hope I will get my time in the afternoon.

**The Speaker** (Hon. Lusaka): You will.

The Senate rose at 12.31 p.m.