

**PARLIAMENT OF KENYA****THE NATIONAL ASSEMBLY****THE HANSARD**

Wednesday, 12<sup>th</sup> August 2020

The House met at 2.30 p.m.

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

**PRAYERS****COMMUNICATION FROM THE CHAIR****CONSIDERED OPINION ON BILLS FROM THE SENATE**

**Hon. Speaker:** Hon. Members, as you may recall, on 15<sup>th</sup> July 2020, I conveyed to the House Messages from the Senate regarding the passage of the following Bills:

1. The Kenya Medical Supplies Authority (Amendment) Bill (Senate Bill No.38 of 2018);
2. The Pandemic Response and Management (Senate Bill No. 6 of 2020); and
3. The Cancer Prevention and Control (Amendment) Bill (Senate Bill No.9 of 2019).

Hon. Members, following the First Reading of the said Bills on 28<sup>th</sup> July 2020, I did undertake to pronounce my opinion with respect to the Money Bill effects of the said Bills pursuant to the provisions of Standing Order 143(2), which provides as follows:

“Following First Reading, the Speaker shall, within reasonable time, pronounce his or her opinion contemplated under Article 114(2) of the Constitution.”

Hon. Members, now therefore, having received the advice on the matter, I have made a determination that the Kenya Medical Supplies Authority (Amendment) Bill (Senate Bill No.38 of 2018) does not fall within the meaning of “Money Bills,” and therefore, may proceed for Second Reading in the same manner as a Bill originating in the National Assembly as provided for under Standing Order 143(3).

Hon. Members, the Bill shall stand referred to the Departmental Committee on Health for consideration pursuant to the provisions of Standing Order 127(1) which states: “A Bill having been read a First Time shall stand committed to the relevant Departmental Committee without question put.”

With regard to the other two Bills, that is, the Pandemic Response and Management (Senate Bill No. 6 of 2020) and the Cancer Prevention and Control (Amendment) Bill (Senate Bill No.9 of 2019), I have made a determination that the said two Bills are Money Bills within the meaning of Article 114 of the Constitution. I therefore refer the two Bills to the Budget and Appropriations Committee.

The Budget and Appropriations Committee is required to consider the two Bills and report its recommendation to the House guiding on how to proceed in light of the provisions of Articles 109(5) and 114 of the Constitution, as read together with Standing order 143(6).

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Hon. Members, the House is accordingly guided.  
I thank you.  
Hon. Members, I have another Communication.

CONCERNS REGARDING THE COUNTY ROADS, WALKWAYS  
AND PARKING BAYS BILL (SENATE BILL NO. 18 OF 2018)

**Hon. Speaker:** Hon. Members, this second communication concerns issues raised regarding the County Roads, Walkways and Parking Bays Bill (Senate Bill No. 18 of 2018). As you will recall, Hon. Members, during Second Reading of the County Roads, Walkways and Parking Bays Bill (Senate Bill No. 18 of 2018) on 27<sup>th</sup> February 2020, several Members of this House, including the Chairperson of the Departmental Committee on Transport, Public Works and Housing, Hon. David Pkosing, whose Committee is in charge of the Bill, raised various concerns regarding the said Bill. Specifically, the Chairperson informed the House that the Committee was opposed to do Second Reading of the Bill based on various considerations, as reflected in the Report of the Committee on the Bill.

For the information of the House, Hon. Members, the County Roads, Walkways and Parking Bays Bill (Senate Bill No. 18 of 2018) was published under Gazette Notice No. 81/2018 on 26<sup>th</sup> June 2018, in the name of Senator Ledama ole Kina, MP (Narok County) and was read a First Time in the National Assembly on 30<sup>th</sup> July 2019.

A technical review of the Bill was undertaken and concluded on 26<sup>th</sup> September 2019, following which the Bill was granted to go ahead for Second Reading. The Second Reading of the Bill commenced on Thursday 27<sup>th</sup> February 2020. I, thereafter, suspended debate on the Bill pending my determination on the various concerns raised by Members on the Floor of this House, on that day.

Hon. Members, the Bill's initial title was, "The County Planning (Roads, Pavements and Parking Bays) Bill," but was renamed "The County Roads, Walkways and Parking Bays Bill", through an amendment in the Senate. As regards to its objectives, the Bill seeks to provide for the planning, construction and maintenance of county roads, streets, lanes, alleys, parking bays, drainage systems and walkways. It also seeks to provide for proper planning of access ways to commercial buildings along major roads, and further provides an outline of duties of the member of the county executive committee, responsible for matters relating to roads in each county.

Hon. Members, following the concerns raised regarding the Bill and following my analysis of the proposed piece of legislation, I have made the following observations:

- (i) The Bill provides for matters already provided for in law specifically in the following Statutes:
  - (a) The Physical Planning and Land Use Act, No. 13 of 2019;
  - (b) The Kenya Roads Act 2007;
  - (c) The Traffic Act Cap 403;
  - (d) The Public Roads and Roads of Access Act Cap 399;
  - (e) The Streets Adoption Act Cap 406;
  - (f) The Persons with Disabilities Act 2003; and
  - (g) The Urban Areas and Cities Act No. 13 of 2011.
- (ii) The Bill does not propose to amend or repeal any of the aforementioned Acts of Parliament.

- (iii) There is already in law, at the national level, the element of spatial planning before a road is constructed or a market centre is established and, hence, there is no need to legislate.
- (iv) The Bill seeks to set standards for the construction of roadways, parkways and other public amenities, which is contrary to Paragraph 18 of Part 1 of the Fourth Schedule to the Constitution, which places the following areas under the mandate of the national Government:
  - (a) Roads traffic;
  - (b) The construction and operation of national trunk roads; and
  - (c) Standards for the construction and maintenance of other roads by counties.
- (v) The Bill further purports to address construction and maintenance, both of which are under the purview of the national Government.
- (vi) The Bill is more administrative than legislative in its approach.
- (vii) The Bill is materially defective, both constitutional and legal aspects.

Hon. Members, it is on the basis of these observations that I hereby rule that, further considerations of The County Roads, Walkways and Parking Bays Bill (Senate Bill No.18 of 2018) by this House be halted with immediate effect and no more should be heard of it.

I thank you, Hon. Members. Next Order.

### MESSAGE

#### SENATE'S MEMBERSHIP TO THE MEDIATION COMMITTEE ON PUBLIC PRIVATE PARTNERSHIP (AMENDMENT) BILL

**Hon. Speaker:** Hon. Members, pursuant to the provisions of Standing Order No. 41, I wish to report to the House that I have received a Message communicating the Senate's membership to the Mediation Committee on the Public Private Partnership (Amendment) Bill (National Assembly Bill No. 52 of 2017).

Hon. Members, you may recall that this House passed the said Bill on 31<sup>st</sup> July 2018, and thereafter, submitted it to the Senate for its consideration. The Senate on its part proposed various amendments to the Bill, which were rejected by the National Assembly on 31<sup>st</sup> July 2019, thereby necessitating the formation of a mediation committee. The Bill whose National Assembly membership was communicated to the Senate on 2<sup>nd</sup> October 2019 comprised of:

- (1) Hon. Joseph Kirui Limo, MP
- (2) Hon. George Murugara Gitonga, MP
- (3) Hon. David Bony Mwalika, MP
- (4) Hon. Peter Kaluma, MP
- (5) Hon. (Ms.) Edith Nyenze, MP

In their Message to this House dated 7<sup>th</sup> August 2020, Senate has communicated its nomination of the following Senators to the said Mediation Committee:

- (1) Sen. (Eng.) Mohamed Mahamud, CBS, MP
- (2) Sen. Aaron Cheruiyot, MP
- (3) Sen. Kimani Wamatangi, MP
- (4) Sen. Mutula Kilonzo Jnr, MP
- (5) Sen. Rose Nyamunga, MP

With this development, the Mediation Committee on the Public Private Partnership (Amendment) Bill (National Assembly Bill No. 52 of 2017) can now commence its eagerly awaited mediation work.

I thank you all.

*(Several Members walked into the gangway)*

I allow the Members who are at the entrance to make their way into the Chamber. You can be allocated any seat. It is after 15 minutes; anybody who had booked to come and has not come by now can be assumed to have decided to go to the village. Those Members who may have booked their spaces and are coming now, if you find them occupied, just go back to the holding areas. You know that you are late. So, do not come claiming any rights. It was communicated that, 15 minutes after 2.30 p.m., the seats can be allocated to any other desiring and deserving Member.

*(Hon. Members walked to their seats)*

The rest of you can now go back to the tents or to the dining hall. Even the dining hall is a holding area, is it not? Follow the proceedings from there.

*(Laughter)*

There is one empty seat here. Oh, it is for the Speaker's Panel.

## PETITIONS

### MITIGATION OF FLOODING BY RIVER SONDU-MIRIU

**Hon. Speaker:** Hon. Members, Standing Order 225(2)(b) requires the Speaker to report to the House any Petition other than those presented by a Member. I, therefore, wish to report to the House that my office has received a Petition from a cross-section of residents from Osando Kobala, Kobuya, West Koguta and West Nyakach areas of Rachuonyo North and Nyakach sub-counties of Homa Bay and Kisumu counties led by Mr. Fredrick Gaya regarding mitigation of perennial flooding by River Sondu-Miriu.

In their Petition, the petitioners decry what they term as failure by successive governments since Independence to permanently address the far-reaching effects, anguish and havoc occasioned by regular flooding of River Sondu-Miriu and have interpreted this failure as constituting an abdication of responsibility by the authorities. The petitioners are convinced that failure by the Government to permanently address the flooding adversely affects the livelihoods of thousands of residents along the river and occasions the eruption of water-borne and vector-borne diseases.

It is on this premise that the petitioners seek the intervention of this august House in securing mitigation of the aforementioned flooding through various Government measures including dredging of River Sondu-Miriu, opening up of its blocked deltas, construction of standard dykes, reclamation of sand mines, construction of strategic bridges and roads, and compensation of affected households.

Pursuant to the provisions of Standing Order No.227 (1), this Petition stands committed to the Departmental Committee on Environment and Natural Resources. The Committee is requested

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to consider the Petition and report its findings to the House and the petitioners in accordance with Standing Order No.227 (2).

Hon. Members, I have determined that given the business that is appearing before the House, there may be no need for comments and/or clarifications on that Petition. Therefore, we proceed to the next Order. There is another petition. I saw Hon. Ali Rasso making his way in. Let us have the Member for Saku.

#### INSECURITY IN MARSABIT COUNTY

**Hon. Ali Rasso** (Saku, JP): Thank you, Hon. Speaker. I wish to make a public petition regarding insecurity in Saku Constituency and the larger Marsabit County.

I, the undersigned, on behalf of the people of Saku Constituency in Marsabit County draw the attention of the House to the following:

THAT, in 2015, the leadership of Marsabit County approved highly-contested plans to relocate Marsabit Air Strip to Horonder area and subsequently resettle a section of Bubisa residents comprising of over 50 households into the area. Following intervention by the constituency leadership and the national Government, it was agreed that the new settlers will be relocated back to their place of origin of Bubisa within two months;

THAT, Marsabit County Government reneged on this resolution and instead formalised the settlement by constructing new Early Childhood Development Education (ECDE) centres and advertising the position of area assistant chief of Bubisa Location despite the area being in Qilta Location of Saku Constituency, thereby simmering unwanted ethnic tension and administrative and boundary contestations considering that the area in Saku Constituency already had a chief and an assistant chief;

THAT, in April 2017, four Borana herders namely, Wario Oba Ubane, Abdub Kana Guyo, Abdub Jarso Waqo and Ibrahim Fugicha were senselessly massacred in cold blood in Dololo Woyama area of Sagante Location by suspected Gabra attackers, following which 27 expended 7.62 millimetre cartridges were recovered at the scene by the police;

THAT, further attacks led to the murder of Police Reservist Jattani Afatu along Shurr-Jaldesa public road on 11<sup>th</sup> April 2017 with the arrested suspected being freed in unclear circumstances and the brutal murder of three Borana herders, namely Mzee Wako Tato, Tari Diba Sankara and Jirmo Gobu on 5<sup>th</sup> September 2018 by suspected Gabra attackers, heavily armed with sophisticated machine guns and automatic weapons and who also torched their houses and property in Horonder area;

THAT, on 13<sup>th</sup> October 2018, an unprecedented conflict in Kubi Qallo area of Saku Constituency led to the death of Wario Guyo Ali, Abdub Girro, Guyo Boru Barako and Wario Boru Dida, as well as destruction of the water genset at Kubi Qallo China Borehole valued at Kshs5 million, burning of 10 motorcycles valued at Kshs1.2 million and theft of over 60 head of cattle and 653 goats and sheep from the Borana community;

THAT, on 13<sup>th</sup> October 2018, Jaldesa Village was attacked by suspected Gabra raiders leading to the murder of Tadicha Godana and Abdub Jattani as well as destruction of a water genset at Jaldesa Borehole valued at Kshs5 million followed by the 15<sup>th</sup> December 2018 murder of Borana herders, Doko Galgallo and Gababa Godana at Haro Girisa while watering their animals, as well as theft of police reservists' guns and ammunition;

That, on 13<sup>th</sup> March 2019, an attack at Haro Girisa by militias led to the brutal killing of three Kenya Police Reservists, namely, Golich Boru Dida, Qalla Kossi Bilinga and Mohamed Abdi

and injury to seven other residents, as well as theft of their guns and ammunition, followed by the cold-blooded murder of two Borana herders, namely, Jillo Sora and Abdub Jillo in Garr Shaba on 23<sup>rd</sup> May 2019 by Gabra attackers from Segel area of Jirime Location less than a kilometre from a police road block at the KBC Station in Marsabit;

THAT, on 15<sup>th</sup> December 2019, a quarry worker at Haro Halakhe Yaya by the name Denge Happi Da'acha was killed by attackers who fled into Segel Village inhabited by the members of the Gabra community and no effort was made by law enforcement agencies to apprehend the killers;

THAT, on 6<sup>th</sup> November 2019, 10 Borana herders, including five school-going children aged between 6 and 15 were killed at Kukuto by heavily armed Gabra militia, believed to be from Horonder, Segel and Bubisa following which one of the attackers was airlifted to Nairobi for specialised treatment in mysterious circumstances followed by the brutal murder of three police officers in Jaldesa Village. During this particular raid, a mobile phone belonging to one of the attackers was collected at the scene of crime and no arrests have been made to date;

THAT, further attacks have led to the murder of Galgallo Kara Roba at Haro Halakhe Yaya grazing field on 27<sup>th</sup> May 2020, followed by the murder of four Rendille youths along Badasa-Songa Road on 8<sup>th</sup> June 2020. Four Borana herders were murdered at Haro JICA on 13<sup>th</sup> June 2020 and the murder and mutilation of mentally-ill Wario Wako Elema on 14<sup>th</sup> June 2020, and murder of two secondary school students along Dirib-Town Road on 22<sup>nd</sup> June 2020, among many other cold-blooded killings;

THAT, residents of Hargeisa Village were displaced and left to suffer as Internally Displaced Persons (IDPs) following destruction of 110 houses by the Gabra militia who later settled in those villages by erecting unihuts whose recommended demolition by the County Security team has never been implemented;

THAT, all these attacks took place in Saku Constituency by attackers believed to be from North Horr Constituency, Gabra villages in Moyale Constituency and Ethiopia Region Four, who disguise themselves as herders in well-orchestrated attacks aimed at removing the members of the Borana Community from Saku Constituency, making Marsabit County ungovernable and discrediting its current county leadership;

THAT, the militias behind these attacks act with impunity as if running a system parallel to the existing Government structure, with land being at the epicenter of this conflict as exemplified by the fact that the Gabra have managed to cleanse the Borana from their midst in all their settlements, with the latest being Hurri Hills, that has made the former Borana occupants to be refugees in Ethiopia and IDPs at Ele Dimtu, Ele Borr and Kubi Qallo;

THAT, the militias in this constituency arm themselves in secrecy, plan in secrecy and gang up without the knowledge of Government apparatus....

**Hon. Speaker:** Give me one minute. How many more pages of that Petition are remaining?

**Hon. Ali Rasso (Saku, JP):** I am finishing, Hon. Speaker.

**Hon. Speaker:** You are raising issues which started in 2017 and 2018 and you are still a Member of this House, Hon. Rasso, and now you want them to be handled. I find it a bit suspicious. I wish that Petition was brought to my attention. You should be raising issues which happened in June but not in 2017 in a certain village. This Petition has something more than what meets the ordinary eye.

**Hon. Ali Rasso (Saku, JP):** Hon. Speaker, I have made some Statements before but it is important to set the foundation. This is not a one-time thing. It appears to be continuous.

**Hon. Speaker:** What happened after the attacks? Were there issues? Did you raise the issue here on the Floor of the House in 2017, 2018 and 2019? Finish the Petition.

**Hon. Ali Rasso** (Saku, JP): Thank you, Hon. Speaker.

THAT, the militia in this constituency arm themselves in secrecy, plan in secrecy and gang up without the knowledge of Government apparatus in order to carry out their nefarious activities. This also has affected the other neighbouring constituencies: Moyale and Laisamis.

THAT, efforts to address this matter with relevant authorities have not borne much fruit as exemplified by the fact that in September 2018, the Marsabit County Commissioner disarmed Borana Kenya Police Reservists (KPRs) who were actually the victims of Gabra attacks; and

THAT, the matter in respect of which this Petition is made is not pending before any court of law or constitutional body.

Now therefore, your humble petitioners pray that the National Assembly through the Departmental Committee on Administration and National Security-

- (a) Inquires into the cases of gross insecurity in Saku Constituency with the objective of facilitating restoration of peace by addressing and resolving the issue of community and administrative boundary between Saku and North Horr constituencies, resolving all existing boundary disputes in Marsabit County and facilitating recovery of Kenya Police Reservists guns, ammunition and livestock due to the Borana victims of the aforementioned attacks and killing, including compensation of the families for these avoidable losses; and
- (b) Makes any other orders that it deems appropriate in light of the circumstances outlined in this Petition.

And your petitioners will ever pray.

Thank you, Hon. Speaker.

**Hon. Speaker:** That sounds like it requires a one-year operation to flush out those militias. Is it Hon. Koinange who will handle this Petition? You require more than a year to sort out these things. Some of them started in 2017. I do not know how you will handle that. Hon. Koinange, how long do you need to respond to this Petition?

**Hon. Paul Koinange** (Kiambaa, JP): Thank you very much, Hon. Speaker. I really sympathise with Hon. Rasso for what he and his people have gone through. I can see that there are issues of boundaries, security forces, locals and militias. So, it will take time. If we will do something that will make his people happy with the area, it will take at least a month.

**Hon. Speaker:** Does this include dealing with the ammunitions?

**Hon. Paul Koinange** (Kiambaa, JP): Yes.

**Hon. Speaker:** For people to be happy, there must be a disarmament.

**Hon. Paul Koinange** (Kiambaa, JP): We may need to go on the ground, Hon. Speaker. We cannot do it from here.

**Hon. Speaker:** Perhaps, you even need to demine the place.

**Hon. Paul Koinange** (Kiambaa, JP): Thank you, Hon. Speaker.

**Hon. Speaker:** That Petition is taken to the Departmental Committee on Administration and National Security. The next one is by the Member for Nakuru Town West. If a Member has a Petition which is in excess of two pages, after reading the initial introduction, go to the prayers because these other stories are becoming too much.

## APPROVAL AND APPLICATION OF LOW COST CONSTRUCTION TECHNOLOGY

**Hon. Samuel Arama** (Nakuru Town West, JP): Thank you, Hon. Speaker. This is a public Petition No. 28 of 2020 regarding the approval, application and use of newbuild's low cost construction technology.

I, the undersigned, on behalf of Architect John Dumas Gacharia of P.O. Box 16454 – 20100, Nakuru, draw the attention of the House to the following:

THAT, Article 43 of the Constitution guarantees every person the right to the highest attainable standard of health, which includes the right to accessible and adequate housing;

THAT, provision of adequate, affordable and decent housing for low income households is in short supply in this country;

THAT, due to lack of quality shelter, a majority of people live in areas with no access to clean water and sanitation, as well as unreliable and unhealthy energy sources thereby leading to increased exposure to diseases;

THAT, the cost of production is the biggest challenge affecting the supply of housing in the country with the current housing deficit currently standing at 2 million houses and 61 per cent of urban households living in slums;

THAT, this deficit continues to rise due to fundamental constraints on both the demand and supply side and is exacerbated by urbanisation rate of 4.2 per cent which is equivalent to 0.5 million new city dwellers every year;

THAT, the principle of progressive realisation of socio-economic rights under the Constitution requires the Government to take deliberate, concrete and targeted steps towards the achievement of these rights;

THAT, to realise affordable housing, the Government of Kenya identified housing as one of the four core agenda it intends to address with a projection of 500,000 new housing units every year;

THAT, the new building construction technology is a Kenyan construction invention developed by the petitioner and patented under African Regional Intellectual Property Organisation on 9<sup>th</sup> August 2007 under certificate of grant of Patent No.AP1765 awarded to New Build Limited.

*(An Hon. Member entered the Chamber without bowing to the Chair)*

**Hon. Speaker:** Go up to the door, not there. You have no business talking to anybody now. Go up to the door.

**Hon. Samuel Arama** (Nakuru Town West, JP): I will continue.

THAT, the technology reduces cost of production of houses by between 30 and 40 per cent by employing the use of stones in construction of the foundation, the floor slab and ring of beams instead of the traditional cement, thereby reducing the cost of foundation footing by 53 per cent, the cost of the floor slab by 69 per cent and the cost of ring beams by 3 per cent;

THAT, the technology is applicable whether the underlying basis is soil or rock as it relieves considerable amount of pressure on the base and remains stable under varied weather conditions;

THAT, the application of the technology to only 25 per cent of the Government's target of 150,000 units in urban areas and to 60 per cent of the 300,000 housing units in rural areas could

save the country over Ksh54.3 billion per year and greatly contribute to the realisation of construction targets under the Kenya Vision 2030 roadmap;

THAT, the technology has been presented to the relevant authorities in the country including the Office of the President, Ministry of Lands, Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works as well as the National Construction Authority;

THAT, the technology has been approved by the Ministry and has been uploaded on the Ministry's website and that the training sessions on the application of the technology have been carried out to various industry players under the auspices of the National Construction Authority;

THAT, the matters raised in this Petition are not pending before any court of law, constitutional or legal body.

Therefore, your humble petitioner prays that the National Assembly through the Departmental Committee on Transport, Public Works and Housing considers making recommendations to the relevant Government agencies on the use of the said technology with the objective of facilitating general adoption and utilisation of the technology in Kenya's construction industry.

And your petitioner will ever pray.

Thank you, Hon. Speaker:

**Hon. Speaker:** The Petition is referred to the Departmental Committee on Transport, Public Works and Housing.

The next Petition is by the Member for Busia, Hon. Florence Mutua.

#### DEVOLUTION OF PENSION SERVICES TO COUNTIES

**Hon. (Ms.) Florence Mutua** (Busia CWR, ODM): Thank you, Hon. Speaker.

I rise to present to the House Public Petition No.21 of 2020 regarding devolution of pension services to the counties.

I the undersigned, on behalf of aggrieved pensioners, draw the House to the following:

THAT the Pension Department under the National Treasury is mandated to ensure timely, efficient and effective payment of pensions, gratuities and other benefits to eligible retirees from the public service so that they enjoy a dignified and secure livelihood when they leave the service;

THAT, most senior citizens who served the Government with diligence and honour make follow-ups for their benefits for years on end;

THAT, many files go missing either deliberately or due to lack of enough human resource to handle the files resulting into inordinate delays between the time a claim was received and the time it was paid out;

THAT, this has caused pecuniary challenges to the intended beneficiaries who continue to spend a fortune travelling to Nairobi and back pursuing what is not even guaranteed;

THAT, regrettably, some pensioners end up dying without getting these benefits which they worked for many years to save;

THAT, consequently, the next of kin and other dependants are thereby forced to travel many times and for hundreds of kilometres from across the country to Bima House in Nairobi to pursue the benefits occasioning more strain on their meagre resources;

THAT, the Auditor-General's reports on Pensions Department have been recommending the reorganisation of the Department;

THAT, efforts to have the matter addressed by the relevant authorities have been futile;

THAT, matters raised in this Petition are not pending in any court of law, constitutional or other legal body.

Therefore, your humble petitioners pray that the National Assembly through the Departmental Committee on Labour and Social Welfare:

1. Looks into the state of pending payments and the action being taken by the relevant authorities to deal with the delays in payment of pension dues;
2. Initiates a process of devolving pension services to county level through legislation to save pensioners and dependants' time and resources; and
3. Make appropriate recommendations with respect of numerous cases of missing files.

And your petitioners will ever pray.

Thank you, Hon. Speaker.

**Hon. Speaker:** There is an issue you have raised in that Petition that successive reports from the Auditor-General have recommended some reorganisation of the Pensions Department. If that be so, I do not know whether the consumers of the reports from the Auditor-General, mainly Public Accounts Committee and Public Investments Committee, particularly with regard to the issues of pension, have never seen those recommendations from the Auditor-General.

Finally, I observe that pension is essentially a matter of finance. I am not sure whether where you have directed the Petition to is the right Committee to deal with it in the most appropriate way. I do not know whether you would want to be advised.

Yes, Hon. Makali Mulu.

**Hon. Makali Mulu** (Kitui Central, WDM-K): Thank you, Hon. Speaker. I must thank Hon. Mutua for this Petition.

I totally agree with you, Hon. Speaker, that matters pension are under the Ministry of Finance. So, the right Committee to address the matter would be the Departmental Committee on Finance and National Planning. I totally agree that the issues raised are weighty and need to be sorted out as quickly as possible.

Thank you, Hon. Speaker.

**Hon. Speaker:** We do not want to force you to direct it to the Departmental Committee on Finance and National Planning. Maybe you want the Petition to be dealt with by the Departmental Committee on Labour and Social Welfare.

**Hon. (Ms.) Florence Mutua** (Busia CWR, ODM): Hon. Speaker, I stand guided.

**Hon. Speaker:** I am sure, Hon. John Mbadi and Hon. Kimunya will agree with that statement. That matter will be best dealt with by the Departmental Committee on Finance and National Planning. So, accordingly, the Petition is directed to the Departmental Committee on Finance and National Planning. The Chair is here. They will look at it. You have even requested for the possibility of coming up with legislative proposals to address some of the concerns.

The last Petition by the Member for Kinango, Hon. Benjamin Dalu Tayari.

#### IRREGULAR TRANSFER OF OWNERSHIP OF CHENZE RANCH

**Hon. Benjaim Tayari** (Kinango, ODM): Thank you, Hon. Speaker. I rise to present to the House Public Petition No.25 of 2020 regarding irregular transfer of ownership of Chenze Ranch from Chenze Ranching Cooperative Society.

I, the undersigned, on behalf of concerned shareholders of Chenze Ranching Cooperative Society Limited draw the attention of the House to the following:

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THAT, subject to Article 65 of the Constitution, every person has the right either individually or in association with others to acquire and own property of any description and in any part of Kenya as long as it is lawfully acquired.

THAT, at Independence the Kenya Triangle Grazing/Hunting Block No. 24 situated in Kwale was classified as a game block and was later designated as a livestock rearing area under ranch management concept to benefit the local people and was divided into several ranches namely; Kuranze Ranch, Lungalunga Ranch, Mwabeja Ranch and Chenze Ranch;

THAT, the Chenze Ranch measuring approximately 32,000 Hectares was earmarked and set aside for ranching for Chenze Ranch Cooperative Society registered in 1968 under Certificate No. 1786;

THAT, from 1968, the Chenze Ranching Cooperative Society embarked on what has been a complicated, frustrating and long journey towards acquisition of a title deed for Chenze Ranch;

THAT, in 1991, the society was shocked when it discovered that the parcel had been irregularly registered as Parcel LR. Nos. 24030 and 19198 and title deeds issued to the Redbridge Ltd.;

THAT, so as to reverse the unfortunate historical injustice that had occasioned disinheritance of the local community of the said parcel, the Chenze Ranching Cooperative Society Ltd. filed a case with the National Land Commission (NLC) in 2015;

THAT, preliminary findings by the National Land Commission revealed that all pre-requisite formalities pursued by the Chenze Ranching Cooperative Society since 1968 clearly indicated that the land rightfully ought to be registered in favour of the Chenze Ranching Cooperative Society as the owners and that the Land Registrar should revoke the title to LR. 19198;

THAT, the National Land Commission declared LR. No 24030 in the name of the Redbridge Farm and purportedly in Kwale County is a parcel in Karen, Nairobi County and further declared that the illegal entry in Mombasa Registry be forthwith expunged;

THAT, the National Land Commission declared that LR. No. 19128 should revert to the County Government of Kwale who were directed to start registration of the rightful owners of the parcel and further reserve space for public utilities and markets;

THAT, officials of the Chenze Ranching Cooperative Society Ltd. later discovered in 2019 that the then Vice-Chairperson of National Land Commission, Ms. Abigail Mbagaya Mukolwe, reneged on the commission's minuted resolutions and purported to award the Redbridge Farm Ltd. as the legal owner of the Chenze Ranch under unclear circumstances in breach of the constitutional mandate of the National Land Commission;

THAT, if this injustice is not reversed, members of the Chenze Cooperative Society Ltd. stand the risk of being disinherited of Chenze Ranch and subjected to permanent loss of livelihoods;

THAT, the petitioners have sought justice from various Government agencies such as the County Commissioner, the County Government of Kwale and the National Land Commission in futility;

THAT, none of the issues raised in this petition is pending in any court of law, constitutional or judicial body.

Therefore, your humble petitioners pray that the National Assembly through the Departmental Committee on Lands:

- (a) Inquires into the issues raised in this Petition with a view to establishing the circumstances under which the Chenze Ranch was irregularly registered in favour of

- the Redbridge Ltd. and recommends appropriate action against individuals who aided the irregular transfer;
- (b) Intervenes to cause the relevant Government agencies to consider revoking both lease title deeds given to the Redbridge Ltd. for LR. No. 24030 and LR No. 19198;
  - (c) Recommends that lease titles for the entire block of 32,000 hectares of land in the Chenze Ranch be issued to bonafide owners, and;
  - (d) Makes any other recommendations that it finds fit in addressing the plight of these petitioners.

And your petitioners will ever pray.

It is presented by Hon. Benjamin Dalu Stephen Tayari, Member for Kinango Constituency.

I thank you, Hon. Speaker.

**Hon. Speaker:** It looks like that is a matter that has been dealt with by the National Land Commission and has made findings. Now, what is the National Assembly going to do again? Let us not act in vain because there is a specific mandate given to the NLC under the Constitution. That is what they have done, exactly as you have read out. They have made very specific and clear findings. I thought what is now left is implementation of those findings, Hon. Tayari.

**Hon. Benjamin Tayari** (Kinango, ODM): Thank you, Hon. Speaker.

What transpired is that the NLC made recommendations that the land should be reversed to the owners of the Chenze Ranching Society. But, unfortunately, before the term of the previous commission ended, members found a report which had been written by the former vice chair reversing the land back, again to the Redbridge Limited. That is why this Petition has been presented to the House. So, the members of the ranch and members of the society are kindly requesting intervention so that the land can be reversed back. If it is the NLC which is supposed to do it again or the Ministry of Lands and Physical Planning, they need that assistance.

**Hon. Speaker:** I think an underlying principle throughout the Constitution regarding Chapter 15 on commissions is that they are independent and, in the performance of duties, they are not under the direction or control of any other body and/or authority. So, if the commission has commissioned and made certain findings but just like you have alleged, just one officer, the vice chair, came and revised otherwise, all you needed to do is advise your people to go back to the NLC. Let them go to the NLC with the findings by the commission and this other ruling or whatever it is by the vice chair, and ask them which one is which so that they can confirm.

Well, maybe you know the National Assembly has a lot of time. Perhaps, they will go and just enjoy themselves. They cannot tell the NLC to do what they are already constitutionally mandated to do. Their own statute even obligates them to act even on their own motion, even without being moved. If, indeed, the commission had expressed itself one way but, subsequently, maybe because of the transitions as perhaps I suspect you could be suggesting, the vice chair... We all know that the chairman was ejected unceremoniously, maybe the vice chair decided to overturn. That could be an error on the face of record which can be rectified by the commission itself if it is sufficiently put so.

Hon. Tayari, you will appear before the Departmental Committee on Lands and maybe explain those facts. The Committee may even have to just call the NLC who might just come and say, well, this is the position or this is not the position, Hon. Rachael Nyamai. Yes, Hon. Kimunya.

**Hon. Amos Kimunya** (Kipipiri, JP): Thank you, Hon. Speaker. After your analysis of the problem, I expected you to dismiss the Petition. It is because, increasingly, we are now seeing a situation where people lose in court, where people lose within a constitutional body, then they come to seek relief in Parliament which has no mandate to offer those reliefs. Hence, the more we

entertain those Petitions, the more the number increases. Somebody loses a job. Instead of going to the labour court, they come to Parliament. Somebody loses their land, they come here. So, Hon. Speaker, I want you to, given the background you have given in terms of the division of responsibilities, perhaps communicate to the House, at some time in terms of what should be the matters that could be canvassed through Petitions. That is so that we do not overburden the Committees with a lot of work and they come up with resolutions that cannot be implemented.

*(Loud consultations)*

Much as Members may want to entertain those issues, it is important that we do what is within our mandate. The Constitution states that people can petition Parliament but it also says that Parliament can only look at matters within its mandate, whether it is the Senate or the National Assembly. The moment we start deviating to look at matters in court and in the National Land Commission, we would be diverting from our core mandate as per the Constitution. It would be important that you give us guidance at some point on what can be brought here and what cannot.

**Hon. Speaker:** Well said. I do not need to be addressed on this issue. This House does not run that way. You understand the provisions of Article 119 of the Constitution. You must always walk with the Constitution on your fingertips. I want to ask you to look at the provisions of Article 119 of the Constitution and you will understand what I am talking about. At an appropriate time, I will make a pronouncement. We must, from time to time, allow for entertainment of shadows and benefits of doubt. If you listened to Hon. Tayari, he explained an element which is not very clear – that if the Committee has a sitting with the NLC and issues discussed might not be that complex, the NLC might just state that they will deal with that matter and it ends there. There is always room for the benefit of the doubt on a balance of probability. The standards required for Petitions are not like those in a criminal case of beyond reasonable doubt but on a balance of probability. At an appropriate time, we will be addressing in detail the full range as to what is expected of us as a House under Article 119 of the Constitution.

It is true that you can petition the House but it must have authority. You cannot petition the House to make a law and assent to it because it does not have authority to do so. You cannot petition the House and request that it finds somebody guilty and sentence him to 100 years because the House does not have authority to do so. We must look at some of these things. There is, indeed, a lot of work for all Members and the Committees. We should try to strike a balance between the desire of Members to act on behalf of their constituents and the right of citizens to petition the House. We must be honest at all times. We must not shy away from stating when we do not have authority to handle some things. For instance, it is important to tell people that on matters of early childhood education, the National Assembly does not have authority to handle. It is a matter of the other House of Parliament. We must appreciate those things. When you are petitioned by your own constituents on some nursery schools, potato farms, slaughter houses for donkeys, burial sites for cows in the villages or mortuaries for dogs, please do not bring those issues here because we do not deal with them. Those are not our functions. They are devolved functions.

Is that Hon. Owen Baya? You look so different. Is it after this recent debate?

**Hon. Owen Baya** (Kilifi North, ODM): Thank you, Hon. Speaker. Looking at this Petition, I would like to state that the Committee can make a direction that a certain investigating body investigates why the vice-chair did whatever she did. This Petition is appropriately here. I do not agree with what the Leader of the Majority Party has said. This House can look at the injustices committed and order that the Ethics and Anti-Corruption Commission (EACC) or the Directorate

of Criminal Investigations (DCI) investigate the vice-chair on her action to change a minute that was pronounced by the Commission. That can happen and this House can help the people that Hon. Ben Tayari is talking about.

Hon. Speaker, we have a big problem at the NLC. The only cure is to have a quasi-judicial and independent tribunal within the NLC. The NLC has dispossessed land from my people because of certain decisions...

**Hon. Speaker:** Hon. Baya, I will stop you. We do not entertain certain discussions in this House. What are you discussing? Is there any Motion on dispossession of land? Are you presenting another Petition? If you want to set up a tribunal, make a proposal and bring it in a proper way. It is not right to just talk because it is fashionable to do so because *Mzalendo* is watching. We hear your earlier point.

Hon. Members, nothing prevents anybody who feels aggrieved by a decision of any person purporting to exercise the functions of their office – like the alleged action of the vice-chair – from reporting those transgressions, if any, to the EACC or the DCI. The EACC or the DCI do not have to wait for a recommendation from a Committee of this House. I want to state that it is not the Committee but the House acting in plenary. I want to ask Committees to desist from issuing roadside decisions. We had earlier on stopped that practice. You have no authority to do so. You must bring a report to this House. The Members of this House will debate your report and either adopt or reject it, with or without amendments. You are causing unnecessary panic and apprehension out there, especially when you indicate that you are going to visit sites with television crews. Some of you are too excited to appear on television giving instructions and summoning people. You have no such power. You should come to the House with a report and convince your colleagues to support you. Do not go out there issuing instructions. Who are you? As you are aware, the House works through resolutions and not roadside decisions. I want to ask you to desist from that behaviour. You may be cited for disorderly conduct. That Petition will go to the Departmental Committee on Lands.

Next Order!

### PAPER LAID

**Hon. Speaker:** The Leader of the Majority Party.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

A list on fresh submission and resubmission of nominees to the National Government Constituencies Development Fund (NG-CDF) Committees for Lurambi and Tigania West constituencies respectively.

**Hon. Speaker:** Very well. Next Order!

### ORDINARY QUESTIONS

**Hon. Speaker:** The first Question is by the Member for Maragua, Mary Wamaua.

*Question No. 145/2020*

ILLEGAL DEDUCTIONS BY TEACHERS SERVICE COMMISSION

**Hon. (Ms.) Mary Njoroge** (Maragwa, JP): Hon. Speaker, I rise to ask Question No. 145/2020 to the Chairperson of the Teachers Service Commission:

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- (i) Could the Teachers Service Commission explain how and why the Commission sanctions deductions for enrolment and membership of teachers into welfare societies and organizations such as Kenya Women Teachers Association (KEWOTA) and Kenya Union of Special Needs Education Teachers (KUSNET) without their consent?
- (ii) Could the Commission immediately stop deductions to KUSNET which has failed to acknowledge the requests by Mrs. Njuya Ann Wairimu of ID No.10168061, Mr. Ndungu Benard Njoroge of ID No.13276355, Mrs. Kiruhi Ruth Njeri of ID No.21270257 and Mr. Kinyanjui Stephen Maina of ID 8546807 for the withdrawal of their membership from the Union and stoppage of deductions?

Thank you.

**Hon. Speaker:** You desire a written reply from the Teachers Service Commission. So, one will be written to you with a copy to the House.

Next Question by the Member Meru County, Hon. Bishop Kawira Mwangaza.

*Question No. 161/2020*

ASSISTANCE TO VICTIMS OF FLOODS IN MERU

**Hon. (Ms) Kawira Mwangaza** (Meru CWR, Independent): Thank you, Hon. Speaker. I rise to ask Question No. 161/2020 to the Cabinet Secretary for Devolution and the Arid and Semi-Arid Lands:

- (i) Could the Ministry consider providing food, shelter, and any other humanitarian assistance for households affected by the recent floods in Thagara, Jerusalem, Kiigene and Muguru villages in Meru County?
- (ii) Could the Ministry also consider assisting the said victims in the reconstruction of their houses that were destroyed by these floods?

Thank you.

**Hon. Speaker:** That Question will be replied to before the Departmental Committee on Administration and National Security.

Next Question by the Member for Tetu, Hon. James Gichuhi.

*Question No. 162/2020*

MEASURES TO ADDRESS DELAYED PROCESSING OF PENSION AND GRATUITIES

**Hon. James Gichuhi** (Tetu, JP): Thank you, Hon. Speaker. I rise to ask Question No. 162/2020 to the Cabinet Secretary for the National Treasury and Planning:

- (i) Could the Cabinet Secretary explain why there is persistent delay in the processing of pension and gratuities for retirees and their dependents?
- (ii) What measures has the Ministry put in place to address the challenges faced by pensioners and their dependents in accessing their dues in a timely manner?
- (iii) Could the Cabinet Secretary explain why the legal representative in the estate of the late John Raphael Ndirangu (deceased) who was a Police Constable PF. Number 30792 who passed away on 5<sup>th</sup> October 1979 while on duty in Wajir County is yet to receive the necessary dues despite numerous efforts?

Thank you.

**Hon. Speaker:** That Question will be replied before the Departmental Committee on Labour and Social Welfare

Next Question by the Member for Mogotio, Hon. Dr. Daniel Tuitoek.

*Question No. 165/2020*

APPOINTMENTS IN PUBLIC UNIVERSITIES

**Hon. Daniel Tuitoek** (Mogotio, JP): Thank you, Hon. Speaker for this opportunity. I rise to ask Question No. 165/2020 to the Cabinet Secretary for Education:

- (i) How many public universities in the country do not have university councils, substantive Vice Chancellors and Deputy Vice Chancellors?
- (ii) When are the above councils, Vice Chancellors and Deputy Vice Chancellors expected to be appointed?

Thank you.

**Hon. Speaker:** That Question will be replied before the Departmental Committee on Education and Research.

Next Question by the Member for Kuresoi South, Hon. Joseph Kipkosgey.

*Question No. 166/2020*

COMPENSATION AND RESETTLEMENT OF INTERNALLY DISPLACED PERSONS

**Hon. Joseph Kipkosgei** (Kuresoi South, JP): Thank you, Hon. Speaker for giving me this opportunity to ask Question No. 166/2020 to the Cabinet Secretary for Devolution and Arid and Semi-Arid Lands:

What measures are in place to ensure that persons living in three Internally Displaced Persons (IDP) Camps, namely, Kipkongor, Kurbanyat and Itare in Kuresoi South Constituency with over 2,162 households and who are living in deplorable conditions are compensated and permanently resettled?

Thank you.

**Hon. Speaker:** Very well. That Question will be replied to before the Departmental Committee on Administration and National Security.

Next Question by the Member for Lamu East, Hon. Athman Ali.

*Question No. 172/2020*

RECRUITMENT OF STAFF TO WORK AT LAMU PORT

**Hon. Ali Sharif** (Lamu East, JP): Thank you, Hon. Speaker for giving me this opportunity to ask Question No. 172/2020 to the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works:

- (i) Are there any plans by the Government to give special consideration to the residents of Lamu County, and in particular youth from Lamu East Constituency in the

employment opportunities, at the Lamu Port by the Kenya Ports Authority considering that three berths are ready to commence operations?

- (ii) When does the Kenya Ports Authority plan to commence recruitment of various staff to work at the Lamu Port?

Thank you.

**Hon. Speaker:** Very well. That Question will be replied to before the Departmental Committee on Transport, Public Works and Housing.

Next Question by the Member for Kisauni, Hon. Menza Mbogo.

*Question No. 174/2020*

STATUS OF OWNERSHIP OF LAND IN MTOPANGA WARD OF KISAUNI CONSTITUENCY

**Hon. Mbogo Ali** (Kisauni, WDM-K): Thank you, Hon. Speaker for giving me this opportunity to ask Question No. 174/2020 to the Cabinet Secretary for Lands and Physical Planning on behalf of the residents of Matingasi Village in Mtopanga Ward, Kisauni Constituency:

- (i) What is the current status of ownership of Plot Nos. 224/2, 225/2 and 62/11/Mombasa North in Mtopanga Ward, Kisauni Constituency?
- (ii) Could the Cabinet Secretary explain progress made in implementing the Mombasa City Council Resolution of September, 2016 revoking all titles deeds to the said parcels of land?

Thank you.

**Hon. Speaker:** That Question will be replied to before the Departmental Committee on Lands.

Finally, Question by the Majority Party Whip.

**QUESTION BY PRIVATE NOTICE**

UTILIZATION OF CAPITATION FUNDS IN SCHOOLS

**Hon. Emmanuel Wangwe** (Navakholo, JP): Thank you, Hon. Speaker. I wish to ask a Question by Private Notice pursuant to standing Order No. 42B(4) to the Cabinet Secretary for Education, Science and Technology:

- (i) Could the Cabinet Secretary provide details of how much funds meant for capitation was released in the Financial Year 2019/2020 and how much is pending to be released to schools?
- (ii) Can the Cabinet Secretary provide details on the amount of money under capitation that was allocated for the purchase of text books, sports/games in both primary and secondary schools in the Financial Year 2019/2020?
- (iii) Can the Cabinet Secretary explain how much funds the Ministry has spent on the ongoing Centre for Mathematics, Science and Technology Education in Africa (CEMASTEA) programme?
- (iv) Aware that the Ministry suspended learning in institutions in March, 2020 will the Cabinet Secretary utilise the capitation funds thereof for infrastructure

development in order to comply with the social distancing measures recommended by the World Health Organization?

Thank you.

**Hon. Speaker:** Indeed, that is an important issue. Why should the Ministry of Education not start constructing the necessary physical facilities in all public schools? The monies are not being utilised. The pupils and students are all at home. Monies were meant to have been expended for both the second and third terms. So, those monies can be used to upgrade and, in fact, make the infrastructure in our public schools almost first class.

*(Applause)*

We should not just be saying we do not know when we are going to reopen schools because of physical social distancing yet we have the whole of this period to prepare for these things. The Ministry can actually do it. How long does it take to construct a row of eight classrooms? Maybe we should see this COVID-19 as a blessing in disguise to address the physical infrastructure needs of our public schools, both primary and secondary, especially in light of the 100 per cent transition policy. Even you Members, through the National Government Constituencies Development Fund (NG-CDF) money, could also partner with the Ministry. I am sure you are best placed to know the condition of the schools in your constituencies.

The functionaries at the Ministry of Education should have a one-day sitting in this Chamber with the Committee and as many of you as are able to come to discuss this issue. This is something for which we cannot just bury our heads in the sand. The state of infrastructure is one of the reasons some poor parents in the villages withdraw their children from public schools and take them to all manner of funny things called academies. Academies in the village? They are just small shops and funny places and they call them academies. If this is done, it may be the reason we would be able to attract and retain more of the teachers who leave to those so-called academies and restore our public education system back to where it was some years back. I am sure Dr. Nyikal would confirm. Many of us went through public schools. We should actually be ashamed to see the mushrooming of private schools in our constituencies when we know that indeed we ought to have between 95 and 97 per cent of all children going to public schools. Those who want to take theirs to some premier private institution should do so. But, surely, academies in villages? We need to address this issue. I am sure Hon. Florence Mutua is up to the task.

Even as you address this question, maybe you could holistically tell the Ministry to give you an update of where they are in preparation for reopening of schools, because schools must reopen anyway. We cannot say that we are going to wait until we flatten the curve. When is that going to be? We continue to sit here. We have made arrangements to sit. We are making others to make our virtual sittings even much better. It is a shame that our children are at home. Surely, Ministry of Education officials must have some plan of how to deal with this situation should the curve not flatten. We cannot just keep children eternally at home. Even if you tell those who are in class one and ECDE to repeat, I do not know what you will tell those who are being weaned from their mothers in preparation for ECDE. Will you tell them to continue being weaned? We may be sitting on a bigger problem. But I am sure Hon. Florence Mutua and her Committee are up to the task.

Hon. Florence, would you want to comment?

**Hon. Florence Mutua** (Busia CWR, ODM): Thank you, Hon. Speaker, for that question. It is very important. As you have said, most of us went through public schools. Indeed, as you have

said, maybe this COVID-19 is a blessing in disguise so that we can have infrastructure in public schools back to where it should be as we prepare for schools to reopen in January 2021. We have questioned the Cabinet Secretary on how prepared the Ministry is. We also questioned the issue of COVID-19 infections peak. If we peak in January, then what happens? As a Committee, we are also trying to negotiate to see if we can have a retreat. We need a serious checklist from the Cabinet Secretary on how we are moving forward to ensure that infrastructure is ready in all constituencies to ensure that our schools are ready for January reopening. Our Committee is ready and we are working overtime to ensure that the infrastructure funding is put to good use.

Thank you, Hon. Speaker.

**Hon. Speaker:** And nothing says that our classrooms must be for 40 students. The classrooms can be for 25 or 20 students. We should plan ahead. Anyhow, let us go to the next segment. Hon. Mutua will deal with that. Let us go to requests for statements. Because there are quite a number of requests, some of which are very long, I guide that you do not read the entire request. Read the introduction and then the prayers. First is Hon. ole Kenta.

## STATEMENTS

### KILLING AND INJURY OF RESIDENTS OF NAROK NORTH

**Hon. Richard ole Kenta** (Narok North, ODM): Thank you, Hon. Speaker. Pursuant to Standing Order 44(2)(c), I seek to request for a statement from the Chairperson of the Departmental Committee on Administration and National Security regarding the killing of two residents of Narok North Constituency and grievous harm to four others.

Two adults from Narok North Constituency, namely, Jonathan Kampalei Mpusia, aged 32, ID No. 27164314 and Musanga Sadera, aged 23, ID No. 35987287, were victims of extrajudicial killings by police officers under the guise of stopping clashes between warring communities in Olpusimoru Location on 29<sup>th</sup> July 2020. Another four adults, namely, Saruni ole Njapit, aged 29, Joseph Tumpes Naimodu, aged 29, Fredrick Lapapa, aged 26, and Tumpes Sankei, aged 16, were also grievously injured.

It is on this background that I seek a statement from the Chairperson of the Departmental Committee on Administration and National Security on the following:

1. What steps have been taken to ensure speedy investigations, arrest and prosecution of the police officers responsible for loss of life of the deceased and grievous bodily harm to the injured?
2. What are the details and particulars of the police officers stationed at Olokurto Police Station, Olpusimoru Police Post and Entiyani Anti-Stock Theft Unit Post on the day of the incident, 29<sup>th</sup> July 2020?
3. What measures is the Ministry putting in place to ensure that the affected families and individuals are duly compensated for the loss of lives of their loved ones and for the injuries sustained, and by when?

Thank you, Hon. Speaker.

**Hon. Speaker:** The request is referred to the Departmental Committee on Administration and National Security. The Committee may not necessarily tell us when they are going to respond, because of the calendar of the House. The next request is by the Member for Garissa Township, Hon. Aden Duale.

## ILLEGAL DETENTION OF YASSIN JUMA IN ETHIOPIA

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, pursuant to the provisions of Standing Order 44(2)(c), I wish to request for a statement from the Chairperson of the Departmental Committee on Defence and Foreign Relations regarding illegal detention of Mr. Yassin Juma, a Kenyan freelance journalist, by Ethiopian authorities.

One of the country's most committed and dedicated journalist, Mr. Yassin Juma, was arrested in unclear and controversial circumstances by Ethiopian authorities in the Oromo region of Ethiopia on 3<sup>rd</sup> July 2020 while pursuing journalism employment invitation. On account of the failure by the Ethiopian police to provide evidence linking Mr. Juma to any wrongdoing, the court at Araba sub-city freed him on bail on 5<sup>th</sup> August 2020 and a higher court upheld the bail conditions on 7<sup>th</sup> August 2020. However, to date the Ethiopian police are still holding Mr. Yassin Juma in illegal detention contrary to court orders and in complete digression from international accords on judicial processes. Failure by the Ethiopian authorities to release Mr. Juma, in line with the decree of their own courts, is an alarming and regressive undertaking that continues to distress Mr. Juma and his family back in Kenya.

Hon. Speaker, it is against this background that I seek a Statement from the Chairperson on the following:

- (i) What specific measures are being pursued by the Government of Kenya, through the Ministry of Foreign Affairs, to secure the release of Mr. Yasin Juma to guarantee him absolute freedom?
- (ii) What immediate assistance and facilitation is the Government currently according the journalist through our Kenyan Embassy in Addis Ababa?
- (iii) What measures does the Government have in place to safeguard other Kenyans who are arrested in other countries with similar treatment abroad?

Thank you, Hon. Speaker.

**Hon. Speaker:** Chairperson, Departmental Committee on Defence and Foreign Relations will respond immediately the House resumes.

Next request is by the Member for Kilifi North, Hon. Owen Baya. Kindly have the Floor.

## DISBURSEMENT OF EQUALIZATION FUND

**Hon. Owen Baya** (Kilifi North, ODM): Thank you, Hon. Speaker. I will follow your guidance and request for a Statement regarding disbursement of the Equalization Fund pursuant to Article 4 of the Constitution. Could the National Treasury provide a Statement on unutilized funds for the period 2015 to 2020 stating the amount spent and the balance?

- (i) State why the National Treasury has failed to disburse Equalization Fund to the marginalised counties using the existing allocation formula?
- (ii) When is the National Treasury expected to disburse the next funds to the counties?

Thank you, Hon. Speaker.

**Hon. Speaker:** Very well. Departmental Committee on Finance and National Planning will take up that matter. You can only do so when the House reconvenes.

Next request is by the Member for Taita Taveta, Hon. Haika Mizighi, kindly have the Floor.

## CAUSE OF INCESSANT FIRES IN TSAVO NATIONAL PARK

**Hon. (Ms.) Haika Mizighi** (Taita Taveta CWR, JP): Thank you, Hon. Speaker. Pursuant to Standing Order No.44(2)(C), I wish to request for a Statement from the Chairperson of the Departmental Committee on Environmental and Natural Resources regarding a sad case of incessant fires in national parks in the country and in particular, increased fire incidences in Tsavo Park. So far, it has experienced more than three incidences of fire outbreak in a span of three months.

This year alone, in May, a fire destroyed vegetation in Tsavo East. In June and July, fire consumed more than 100 hectares in a vast conservation area. On 8<sup>th</sup> August 2020 at 2.00 p.m. more than 400 hectares of vegetation in Tsavo East National Park were destroyed by fire which started at dam area.

The surging fire incidences across game parks in the country come amid growing concerns over short and long-term impact of vegetation and wildlife. This is considering that our national game parks are inhabited by thousands of wildlife, flora and fauna species including The Big Five.

It is against this background that I seek a Statement from the Chairperson, Departmental Committee on Environment and National Resources to address the following:

- i. explain the surging cases of incessant fires across the national parks in the country and in particular, Tsavo National Park that has led to destruction of more than 400 hectares of vegetation owing to the fact that the said forest is inhabited by thousands of wildlife species;
- ii. what the causes of these fires are and how the Ministry is handling it; and,
- iii. what measures the Ministry has put in place to ensure the situation is contained and such incidences do not recur in future.

**Hon. Speaker:** I suppose it is about causes of the incessant fires. Very well. Chair for the Departmental Committee on Environment and Natural Resources to respond when the House resumes.

Finally, Hon. Benard Shinali, the Floor is yours. The Member for Goldmine.

*(Loud consultations)*

Use the microphone which is available.

## MIRANDA CORRIDOR GOLD EXPLORATION

**Hon. Benard Shinali** (Ikolomani, JP): Thank you, Hon. Speaker.

Pursuant to Standing Order No.44(2)(c), I wish to request for a Statement from the Chairperson Departmental Committee on Environment and Natural Resources regarding the Miranda Corridor Gold Exploration.

Since pre-colonial times, parts of the western belt, especially sections of present day Kakamega County have been known to be rich in mineral deposits especially, gold. Indeed, the name Ikolomani is the corrupted version for 'goldmine' where locals have for long been earning a living through artisanal gold mining.

In the recent past, Acacia Exploration Kenya Limited and International Mining Company have been prospecting for large scale and economically viable deposits of gold in Miranda Gold Corridor Exploration comprising parts of Kakamega, Siaya and Kisumu Counties.

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Hon. Speaker, it is against this background that I seek a Statement from the Chairperson, Departmental Committee on Environment and Natural Resources to address the following issues:

- (i) What estimated value and quantity of gold deposits in the Miranda Gold Corridor has Acacia Exploration Kenya Limited identified, and what mining methods does the company intend to deploy in mining the gold in this particular region, in light of sustainability of the environment?
- (ii) What is the ownership of Acacia Exploration Kenya Ltd that has been awarded the rights to prospect Gold in Miranda Gold Corridor, and does it have local shareholdings?
- (iii) What formula and structure does the Ministry intend to use in ensuring that there is equitable sharing of revenue, priorities and royalties between the national Government, the county governments and the local communities within Miranda Gold Corridor once economic explorations of gold commences?
- (iv) What services and infrastructure development does the Ministry and Acacia Exploration Kenya Ltd intend to roll out within Miranda Gold Corridor Exploration to benefit the locals?
- (v) Is there compensation plan for locals who have been affected by exploration activities and those who may be affected at commencement of commercial mining, and the timelines for compensating affected locals?

Thank you, Hon. Speaker.

**Hon. Speaker:** The Chairperson Departmental Committee on Environment and Natural Resources will respond when the House resumes.

We will go to responses to request for Statements, and I will ask the Chairs who are going to do this to do so. Hon. Nzengu, had you requested for a Statement? Or what was it?

Please give him the microphone.

**Hon. Paul Nzengu** (Mwingi North, WDM-K): Thank you, Hon. Speaker. Last week on Tuesday, I requested for a Statement from the Chairperson, Departmental Committee on Health on matters “Kalaza” in Mwingi North. The Chair was not in that day and the Speaker did not give me the exact date when to receive the figure.

**Hon. Speaker:** Kala-azar?

**Hon. Paul Nzengu** (Mwingi North, WDM-K): Kala-azar, yes.

**Hon. Speaker:** Now, the Chairperson of the Departmental Committee on Health is present and therefore she will deal with that. I think she understands what Kala-azar is. So, we start with the Chairperson for the Departmental Committee on Labor and Social Welfare regarding the status of national hygiene (*Kazi Mtaani*). Do not go to great lengths of how many times people have to wash their hands. You just go to the salient features of the response.

#### STATUS OF THE KAZI MTAANI PROGRAMME

**Hon. Peter Mwathi** (Limuru, JP): Thank you, Hon. Speaker. Just allow me to give a small background, and then I will go to the salient point.

**Hon. Speaker:** But it looks like a booklet.

**Hon. Peter Mwathi** (Limuru, JP): The booklet has annexures, which I am going to table. Therefore, I am not going to read all the names.

**Hon. Speaker:** Okay.

**Hon. Peter Mwathi** (Limuru, JP): Thank you, Hon. Speaker. Just by way of background, the outbreak of COVID-19 occasioned the adoption of containment measures and policies to limit the spread of the virus across the country. The socioeconomic impact of these containment policies has been particularly hard on low-income earners who often rely on daily wages from casual work. The contraction...

**Hon. Speaker:** Sorry, Hon. Mwathi. Who has requested the Statement?

**Hon. Peter Mwathi** (Limuru, JP): I had requested to make it after several inquiries by Members. I requested to apprise Members on this program which most of them say they do not understand.

**Hon. Speaker:** There is no request? Is it just information gratuitous?

**Hon. Peter Mwathi** (Limuru, JP): Yes.

*(An Hon. Member spoke off record)*

**Hon. Peter Mwathi** (Limuru, JP): Informal request, but mostly from the Liaison Committee and, of course, from Members themselves.

**Hon. Speaker:** You say it is burning. It is burning who?

**Hon. Robert Mbui** (Kathiani, WDP-K): It is a burning issue

*(Laughter)*

**Hon. Speaker:** Proceed, Hon. Mwathi, but the Member for Kathiani says it is a burning issue and he is sitting pretty. I do not see him burning.

*(Laughter)*

**Hon. Peter Mwathi** (Limuru, JP): It has generated a lot of interest Hon. Speaker. May I proceed?

**Hon. (Ms.) Gladys Wanga** (Homa Bay (CWR), ODM): On a point of order, Hon. Speaker.

**Hon. Speaker:** There is a point of order from Hon. Gladys Wanga.

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR), ODM): Thank you, Hon. Speaker. The issue of *Kazi Mtaani* is very pressing, burning as has been said, and the level of detail that the Chair of the Departmental Committee on Labor and Social Welfare has, and having served in the Committee, is an issue that requires him to table that report in my view. This is so that we can have a chance to read it, so that when he presents it, we are able to interrogate the matters one by one. This includes the names that he has attached to that document.

Hon. Speaker, if he just reads it today, it might not be most beneficial to Members.

**Hon. Speaker:** Do you have anything in conclusion that you could read? Highlights?

**Hon. Peter Mwathi** (Limuru, JP): Yes, Hon. Speaker. I could read the highlights, but definitely, after I read, I am going to table the report together with the annexures for every county. We have names for each constituency that is benefiting, but not all of them. It is important to check, but I can go to the highlights.

**Hon. Speaker:** Yes, because there is a lot of other business that requires to be done.

**Hon. Peter Mwathi** (Limuru, JP): Hon. Speaker, *Kazi Mtaani* has been split into Phase I and II. Phase I commenced on 29<sup>th</sup> April 2020 and was completed on 26<sup>th</sup> June. So, that is over.

The second phase has been rolled out in all the 47 counties. In Phase I, we had only a few counties, namely, Kilifi, Kwale, Mombasa, Nairobi, Kiambu, Nakuru, Kisumu, and Mandera. I have given the coverage areas and the numbers in each of those areas. Phase II has now been rolled to the 47 counties and involves 283,000 workers comprised primarily vulnerable youths living in slums and informal areas in our urban areas. In addition, for a duration of six and a half months, they will be earning Kshs455 each, a figure that has been agreed to by the leaders of those youths.

The success stories about this program are: It has provided a platform for mentorship, identification, and nurturing of youth's talents and youth bonding. It has partially reduced unemployment. It is also cost effective because they use their own tools. It has reduced idleness and has helped some youths quit bad behavior. There are general upgrading of hygiene standards in the areas of operation especially in the slums, cleaning of roads, markets, schools and playgrounds, and they have opened up other public areas.

The challenges, and I expect Members to listen to this and follow up, are that, some youths provided telephone numbers that do not match their IDs. There have been issues that youths are not getting the payments or their payments are delayed, reasons being that some youths provided telephone numbers that do not match their ID cards. This has resulted in mis-matched details. This was especially the case when youths used IDs which belong to other family members and this led to delayed payments and in some instances, no payments at all.

Some youths had blocked or "frozen numbers". Under this, I say some youths, because they had taken Fuliza loans.

There is inadequate funding for the program given the high level of vulnerability coupled with massive job losses and for this reason, the program will only cover the most vulnerable of the youth.

The youths who are basically slum dwellers have a myriad of issues and some choose to use proxy telephone numbers due to loans in their lines or using different subscribers mostly Airtel and Telcom.

The process requires a lot of data which definitely is prone to human error and manipulation as opposed to use of banks and cash for payments where an officer can be held responsible.

Hon. Speaker, I have attached an annex containing all the 47 counties together with the names of the sub-counties which are benefiting from this program. In conclusion, my Committee undertakes to work closely with the State Department to address the issues to improve on the program.

Thank you, Hon. Speaker.

**Hon. Speaker:** Who wants to comments on this? Maybe Hon. Mwinyi, what is your take? One minute, because this is not debate, until you read the Report.

**Hon. Omar Mwinyi** (Changamwe, ODM): Thank you, Hon. Speaker. My concern is this is truly a good initiative. However, my fear is that after the six months or so, this Committee must have some arrangements to make sure this program is sustained or may be developed so that at least hope can be instilled in our youths for now and in future. Otherwise, if it just dies like that, then it would have had no impact at all. Those are my remarks.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Duale, you have the Floor.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I think you gave an order sometimes back that Chairs should liaise with the Office of the Clerk that the Statements are uploaded so that by the time we come here, we have read the Statement. It is very difficult to interrogate a Statement that you do not have a copy of.

Hon. Speaker, I totally agree with Hon. Gladys Wanga that we are given another opportunity so that we can see the numbers in our constituencies and counties. About two weeks ago, you ordered that for the benefit of the person who seeks a Statement, and for the benefit of the House, a Statement should be uploaded in the system so that anybody who wants to comment on any Statement can comment from a position of knowledge. Right now, we would not be fair to the Chairman because he has read only the highlights.

**Hon. Speaker:** Unfortunately, I am informed that it was uploaded in the morning.

**Hon. Aden Duale** (Garissa Township, JP): Okay. I hope that in future, all of us going forward, should read.

**Hon. Speaker:** Let us hear the Member for Kathiani.

**Hon. Robert Mbui** (Kathiani, WDM-K): Hon. Speaker, on this particular Report, I think it is important that he also investigates further the identification criteria for those who would qualify because that is one of the biggest problems that we face when people are identified to benefit from a Government programme and we are not sure how their names were picked.

Secondly, the issue has been canvassed very well and the marketing of Kazi Mtaani by the Government has been very successful. That means every unemployed youth in every constituency believes that there is some money going to come to them from the Government. So, it needs to be very clear that it is not everybody that will benefit so that we can visit our constituencies in peace. The youth expect that whenever we go to the constituencies, we have good tidings from the national Government in the name of *Kazi Mtaani*.

Thank you, Hon. Speaker.

**Hon. Speaker:** Just tell them that it is not everybody who is entitled. It is like when you run in the constituency. A number of people hang on us for giving us two or three votes.

Let us hear the Member for Kitui South.

**Hon. (Ms.) Rachael Nyamai** (Kitui South, JP): Thank you, Hon. Speaker. My concern is about the targeting of sub-counties. I would like to give an example of Kitui County, where only Kitui Central Sub-County and Mwingi Central Sub-County are benefitting. It becomes difficult to explain to our constituents that a constituency is totally left out. You realise that the same sub-counties are the ones benefitting from the Kenya Urban Roads Authority (KURA) because they are labelled as urban sub-counties. So, I request the Chair to take the approach of the National Youth Service (NYS) that we had in 2016 and 2017, where we reached many youths in all sub-counties so that it does not disadvantage Members of Parliament. My constituents ask me how comes Mutomo and Ekwotha are seen to be better off than Kitui Central and Mwingi Central in terms of ability to offer employment. So, it is better when they cut across all sub-counties instead of identifying a few sub-counties.

Thank you, Hon. Speaker.

**Hon. Speaker:** Well, that is understood. The Chair and the Committee will take note of that. The next response is by the Chairman of the Committee of the National Government Constituencies Development Fund (NG-CDF) regarding re-allocation of funds from the Education Bursary Scheme to other projects.

#### RE-ALLOCATION OF FUNDS FROM EDUCATION BURSARY SCHEME TO OTHER PROJECTS

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD-K): Hon. Speaker, on Wednesday, 5<sup>th</sup> August, 2020, Members of this august House raised a number of issues, amongst them being re-

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allocation of funds from the Education Bursary Scheme to other projects like expansion of additional school infrastructure, mostly construction of classrooms and purchase of desks in preparation for re-opening of schools. Members also sought to know the fate of the un-gazetted constituencies, the status of pending delayed release of funds and even additional funding to deal with the COVID-19 situation in our schools in order to comply with the protocols and guidelines from the Ministry of Health.

I would like to inform the House that the NG-CDF Board has received enquiries from several constituencies on the possibility of re-allocating the funds set aside for Education Bursary in financial years 2019/2020 and 2020/2021. These enquiries have been based on the realisation of the need for more space and facilities when schools re-open. The Board has deliberated on the request and in its meeting of 28<sup>th</sup> July 2020 resolved that constituencies may re-allocate funds from bursaries in the Financial Year 2019/2020 where bursaries have not been released, and in the Financial Year 2020/2021 on condition that the funds are channelled to construction of classrooms or purchase of desks. Further, in line with Section 6(2) of the Act, the Board has considered re-allocation of funds from sports and environment. In schools where there is a shortage of toilets, money for environment can go towards construction of toilets.

The Emergency Reserve, in line with Section 8 of the Act, remains un-allocated and is available for emergencies that may occur within the constituencies. However, upon the lapse of financial years such as 2019/2020, if there is any money for emergency which has not been utilised, it can go to construction of classrooms. This will have to go through the normal procedure of notifying the Board and seeking concurrence. The Board is in the process of preparing communication to constituencies to give clarification on this position and provide the guidelines on how to do this.

On Tuesday 11<sup>th</sup> August 2020, the NG-CDF Committee held a meeting with the Cabinet Secretary for the National Treasury with regard to the delayed disbursement, among other issues, including additional funding for schools. The Committee was informed by the Cabinet Secretary that in order to address the issue of additional funding, the National Assembly had approved Kshs2.1 billion under the State Department for Early Learning and Basic Education to cater for rehabilitation and construction of additional school infrastructure under the Economic Stimulus Program. This is domiciled in the Ministry of Education and we will need to engage with the Departmental Committee on Education and the Cabinet Secretary for Education to ensure that we harmonise the process of identification of projects and formula for sharing out this money amongst the schools. It is, therefore, proposed by my Committee that a joint meeting with the Cabinet Secretary for Education should be held to harmonise this matter.

Regarding the arrears that have accrued over the years, the Cabinet Secretary informed the Committee that due to the low performance revenue for the Financial Year 2019/2020 resulting from the effects of COVID-19, the National Treasury found it difficult to release the Kshs13.7 billion in respect of the same financial year. This figure adds to the earlier figure of Kshs4.9 billion that had accumulated from previous years, totalling to Kshs18.691 billion.

Hon. Speaker, I wish to inform the House that on Monday, 10<sup>th</sup> August 2020, the National Treasury, as promised earlier by the Cabinet Secretary, released Kshs4 billion. The funds have been received by the Board for disbursed to the constituencies. The CS also assured the Committee that there will be an additional release after one week on Monday 17<sup>th</sup>. Subsequently, they will release the remaining balances after salaries have been settled at the end of the month.

Regarding the status of gazettelement of NG-CDF Committees from some of the constituencies, the Board has to date received lists of proposed members of the constituencies

committees from 287 constituencies. I do not need to mention all of them. About 181 were approved by the National Assembly on 14<sup>th</sup> and have been gazetted with effect from April 2020 vide Gazette Notice No.3737 contained in the published list of 29<sup>th</sup>. This will run up to 2022.

There are 90 constituencies that have been submitted to the Government Printer for publication. Ten have been submitted to the National Assembly which the Leader of the Majority Party tabled a few days ago, nine are currently being analysed by the Board for compliance with the NG-CDF Act. Regulations and gaps noted in the submissions have been communicated back to the constituencies for correction before presentation to the National Assembly for approval.

Only one constituency has not submitted its nominees and the Board is working with it to fast-track the same by the end of the week. This contributes to delays when you do not submit the members of the constituency committee to the Board. You should not expect to receive funding including those that are pending.

Finally, the following Bills are before the Committee:

The National Government Constituencies Development Fund Bill, 2019 by Hon. Makali Mulu. The Report has been tabled in the House and should be embarked on for further processes.

The County Wards Development Fund (Senate Bill No.34 of 2018) whose Report I tabled this morning.

The National Government Constituencies Development Fund (Amendment) Bill, 2019 by Hon. (Dr.) Eseli is pending before the Committee. Possibly when we resume, we will be ready with the Report for tabling.

I would like to encourage colleagues in view of what the Government has provided in terms of mitigation towards COVID-19 compliance with regulations. I would like to urge colleagues to engage with line ministries because there are additional funds. There is a total of Kshs57 billion set aside under the Stimulus Programme for different ministries. Therefore, Members should engage the line ministries in their respective counties and sub-counties to ensure they participate in identification of projects while at our level, we will look at the sharing formula.

Thank you, Hon. Speaker.

**Hon. Speaker:** I suppose that may not elicit debate. Hon. Wamunyinyi will table the Report, so that we can make progress. Hon. Wamalwa.

*(Hon. Wafula Wamunyinyi laid the Document on the Table)*

**Hon. (Dr.) Chris Wamalwa** (Kimini, FORD-K): Thank you, Hon. Temporary Deputy Speaker. First and foremost, I want to thank Hon. Wamunyinyi for the detailed Report. My concerns pertain to the Kshs2.1 billion under the Economic Stimulus Programme. I was humbly requesting if the NG-CDF Committee and the Departmental Committee on Education and Research would come together and harmonise before proceeding to the Ministry of Education. This amount will really help.

Secondly, pertaining to the NG-CDF Board, I think they have done a wonderful job. Some of us submitted our proposal for reallocation and I am happy with the speed at which they have been doing this. However, when it comes to the issues of reallocation, I have an incidence in my constituency where money was reallocated to a bus and they rejected it. I am humbly requesting if an amount of money deals with school bursaries, when reallocated to a matter concerning education like a school bus, desk or classrooms, they should be flexible enough to accept.

I want to thank Hon. Wamunyinyi. I can see he is fitting in the shoes and is a Member of my party, FORD-K.

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Thank you, Hon. Speaker.

**Hon. Members:** He is your boss.

**Hon. (Dr.) Chris Wamalwa** (Kimini, FORD-K): No! He is not.

**Hon. Speaker:** Hon. Makali because you had a Bill, you will get a chance.

**Hon. Makali Mulu** (Kitui Central, WDM-K): Thank you, Hon. Speaker. I want to thank the Committee for that Report. As you are aware, they have said my Bill's report is ready. I hope when we resume, I will have an opportunity to move my Bill and debate it.

I want to comment on the bursaries. I think from the Report, it is coming out very clearly that some constituencies have already disbursed bursaries and others have not. The truth of the matter is that even those that have disbursed bursaries, they sent the money and schools were closed immediately.

Would I be in order to ask the Chair to liaise with the Ministry and provide a general Statement that this financial year disbursed bursaries will be used in the next financial year? So that, even those of us who had disbursed, we will not get into problems with parents demanding for bursaries in January. This will help Members so that we only budget for next year in terms of bursaries.

Thank you, Hon. Speaker.

**Hon. Speaker:** I thought the general Statement that came from the Ministry was that those who had paid school fees, it will be considered next time when schools reopen. I think it will be useful if both the beneficiaries and parents get this information. I think it might be difficult for the County Executive Committee Members (CECs) to demand from the schools.

Chair, Budget and Appropriations Committee.

#### STATUS OF MESSAGES FROM THE SENATE UNDER S.O. NO.41

**Hon. Kanini Kega** (Kieni, JP): Thank you, Hon. Speaker. Since this is my first time to present a Statement as a Chairman, I am happy my predecessor is here and we are working closely together with the Chairman emeritus.

I stand to give a very brief and important Statement to this august House on the status of various messages received from the Senate under Standing Order No.41 of the National Assembly. In particular, you have in various occasions referred to the Budget and Appropriations Committee Bills from the Senate for review and consideration in accordance to the requirements and provisions of Article 114 of the Constitution and Standing Order No.114 of the National Assembly.

Article 109 of the Constitution provides for the exercise of legislative powers and specifically Article 109(5) provides, and I quote for avoidance of doubt, that:

“(5) A Bill may be introduced by any member or committee of the relevant House of Parliament, but a money Bill may only be introduced in the National Assembly in accordance with Article 114.”

It, therefore, means, that the constitutional mandate or powers to determine whether a Bill or Motion is a money Bill is only bestowed in the position of the Speaker of the National Assembly. Of course, this is an exclusive constitutional power. On various dates, the Assembly received messages from the Senate on approval of various Bills. Upon your opinion and on account of technical advice from the non-partisan Parliamentary Budget Office, you determined they were money Bills. It is on this account that you referred the Bills to the Budget and Appropriations Committee for consideration in accordance to the provisions of Standing Order No.143 of the National Assembly. As per the attached list which I am going to table, these Bills were determined

by the Parliamentary Budget Office as money Bills and, therefore, as per the relevant constitutional provisions, they did not originate from the relevant House as required and they may not proceed.

During our sitting yesterday, 11<sup>th</sup> August 2020, the Budget and Appropriations Committee reviewed and considered the said Bills. The Committee, therefore, recommends that these Bills shall not proceed. It is, therefore, clear that the purported passage of these Bills by the Senate is unconstitutional. Let me just highlight a few of those Bills.

1. The County Boundary Bill, 2017. Note the date. It is dead on arrival.
2. The Office of the County Printer Bill, 2018, is also dead.
3. The Food Security Bill, 2017 faces the same fate.
4. The Disaster Risk Management Bill, 2018, faces the same fate.
5. The Public Participation Bill, 2018 faces the same fate.
6. The Treaty Making and Ratification (Amendment) Bill, 2018, is also dead.
7. The Prevention of Terrorism (Amendment) Bill, 2018, is also dead.
8. The Personal Data Protection Bill, 2018, is similarly dead.
9. The County Oversight and Accountability Bill, 2018, is also dead.
10. The Local Content Bill, 2018, faces the same fate.
11. The Natural Resources Benefit Sharing Bill, 2018, is also dead.
12. The Commission on Administrative Justice Bill, 2019, is also dead.

Hon. Speaker, the reason I have decided to give this Statement is to make sure that we do not repeat the same mistake. I know right now, the other House is also busy processing Bills of the same nature not considering provisions of Article 109(5) of the Constitution. In this regard, I very humbly urge that the other House should stand guided on their powers and their mandate with regard especially on Article 109(5) that I have talked about.

Finally, let me also take this opportunity to assure the Members that we have legislative proposals that have been referred to the Budget and Appropriations Committee that my Committee will prioritise, review and consider expeditiously. There are some that we have already received that we have forwarded to the National Treasury. Some we have got reports and I assure this House that we will dispense of those Bills as fast as possible.

In conclusion, I would like to urge the Office of the Clerk of the National Assembly to streamline the flow of processing of legislative proposals especially after the technical review is done and also to remove any duplication and undue delays to the processing of legislative proposals in the Committee. I have met many Members who have said that they have Bills that are lying in our Committee. I assure those Members that we will do everything possible to make sure that we dispense of with those legislative proposals and make sure that the process continues seamlessly.

Finally, I beseech the other House to clearly and honestly remain on their lane. From where I sit as the Chairman of the Budget and Appropriations Committee, they are overstepping their mandate. Members of Parliament come from different counties. If a Senator has a Bill that has a money aspect, they can identify a Member of Parliament in the National Assembly who will process it in the National Assembly, follow the due process and then it is referred to the Senate, but the other way round is not going to work. I thank you, Hon. Speaker.

**Hon. Speaker:** Let us hear the immediate former Chair of the Budget and Appropriations Committee, Hon. Ichung'wah.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Speaker, for the opportunity. I want to weigh in on the issue that has been raised by the Chairman of the Budget and Appropriations Committee, Hon. Kanini. I will also take this opportunity to confirm that, indeed,

tomorrow, Thursday being their second meeting, we shall officially be handing over to the new Chairman part of the work that I left. As I promised the House, I will continue working with the Committee and all Members.

He has raised a very substantive issue. Indeed, I was astounded yesterday, even as we may not want to discuss the on goings in the other House, to note, on the debate on the County Allocation of Revenue Bill and the formula on the share of our revenues, a debate which we gather now is on the 8<sup>th</sup> sitting which was miraculously adjourned to a day that is not even on the calendar of that House. Great things are happening in that House. I noticed one of the proposed amendments to the Report on the share of revenue by a lady Senator whose name I cannot remember proposing to amend the Committee's Report that has the import of amending the Division of Revenue Act, which is now an Act of Parliament. It is not even a Bill because it was passed by this House and as the Chairman rightly says, is a money Bill that emanates and is initiated from this House. It went to the Senate, they passed it and they shared resources to the tune of Kshs316.5 billion to our county governments. Now, a Senator sits in the Senate Business Committee and they even do a 411 saying that they have approved an amendment that will amend the sharable revenue going to counties. How?

Therefore, I agree with the Chair that we need to ask the other House... I think there is a serious leadership crisis in that House. They need to get serious, at least, in being able to interpret statutes. If they cannot interpret their own Standing Orders, at least, they should be able to read, understand and interpret the Constitution and the law as it is and know what Bills they are mandated by the Constitution to initiate from the Senate and which ones, like those that are under Article 114 of the Constitution that are money bills, that can only be initiated from this House. I think it is only Lamu County that has only three Members of the National Assembly. Including County Women Representatives, all Senators have a minimum of four Members of the eNational Assembly that they can talk to from their counties to bring these Bills to this House. Therefore, it is not just an abuse of the parliamentary systems, but it is also a waste of public resources for Senators to purport to be sitting in the Senate to debate and pass money Bills that they know will be going nowhere. You heard the Chairman saying that they are all dead. I do not know who killed them. Fortunately, I am not the one who killed them. It is not anybody who has killed them. It is the Constitution that has killed those Bills because they cannot have emanated from the Senate.

I ask Senators to please read and understand the Constitution. Understand that you cannot even imagine amending an Act of Parliament like the Division of Revenue Act through an amendment to a committee report on share of revenue and a formula. It is unheard of and unconstitutional. Without saying much, as I said, there is a serious leadership crisis in that House and I wish to beg they would come here for internship.

With that, I beg to support the Chairman's sentiments.

**Hon. Speaker:** I can see all of you want to say something. So that you may speak well guided, our own Standing Order No.87(4) reads... I will read subsections (4) and (5), so that as you contribute to this, you do not violate any of these.

“No Member shall impute improper motive to any other Member or to a Senator except upon a specific substantive Motion of which at least three days' notice has been given, calling in question the conduct of that Member or Senator.”

So, you are well guided on that. Sub Section 5 indicates that it shall be out of order for you, as a Member of this House, to criticise or call to question the proceedings in the Senate or the Speaker's rulings in the Senate. But then, the debate may be allowed on the structures and roles of the Senate

or National Assembly. The House is well guided, I believe. So, you must also operate within the rules.

What is out of order now, Hon. John Mbadi?

**Hon. John Mbadi** (Suba South, ODM): Thank you, Hon. Speaker. Some of these Bills, about twelve of them that the Budget and Appropriations Committee has declined to approve for further discussion in this House, are very important to this country. I was asking myself, how I wish these individual Members of the Senate, who proposed these Bills, would approach their Members of Parliament, as Hon. Kimani Ichung'wah has said, in the National Assembly to propose the Bills. It is not that the Senate is not allowed to discuss those Bills. A lot of those Bills, if not all, concern counties and, therefore, would go to the Senate. But the Constitution, as it is, does not allow us to accept those Bills to be introduced in the Senate.

Hon. Speaker, Article 3 of the Constitution is about the defence of this Constitution. Every person has an obligation to respect, uphold and defend the Constitution. In fact, under that Article, the only other provision is that any attempt to establish a government that is non-compliant with the Constitution is unlawful. So, you can see where the Constitution rates any attempt not to respect this Constitution. It is treated as trying to set a parallel government. Meaning, they have the same weight. It is a very serious offense, if any of us would allow a money Bill to be introduced in the Senate. In fact, it is supposed to be treasonable because the charges for one who tries to set up parallel government is treason. If you fail to respect this Constitution, it is also treasonable, I would assume, because it is under the same Article as the other one.

As the Budget and Appropriations Committee, we did the noble thing of declining these Bills. It is not out of disrespect to any House of Parliament. We do know that the Kenyan public decided to create two Houses of Parliament. Probably, it is the only jurisdiction where the two Houses of Parliament are having equal powers, in terms of what is provided for in the Constitution. But what I fail to understand is why the Office of the Clerk of the Senate, which is staffed with good and capable legal minds, I assume, can allow Bills that are clearly money Bills to be introduced in the Senate.

The definition of money Bill has no ambiguity. It says, a Bill specified in Article 218. Of course, in Article 218, it is the County Allocation of Revenue Act (CARA) Bill. It is defined as any Bill that contains provisions dealing with taxes. It means anything that deals with taxes and it is not CARA Bill, the imposition of charges on a public fund or the variation even if you just want to repeal or vary a provision or a charge to a public fund, the appropriation receipt *et cetera*. It is clearly defined. I fail to understand why the Clerk's Office in the Senate... And I want to speak to the Clerk's Office. I do not want to speak to the individual Senators because we have different capacities. That is why we employ and pay competent staff to help Members of Parliament, whether in the Senate or in the National Assembly.

Hon. Speaker, I also want to find out and I want to be very careful here. Clearly, there is a lot of work for the Senate to do. They can easily avoid money Bills by dealing with their work early enough, so that we do not see some of the circus that we see in this country. The Commission on Revenue Allocation (CRA) proposed a formula and brought it to Parliament in April 2019. All that time, we are in August the following year. Over one year four months is when we are seeing a Senate that is trying to beat, I do not know what time, to pass that very important Motion. The CRA had various parameters that we thought the Senate would deal with, so that at this time, we would have a formula.

However, even though our Standing Orders do not allow us to discuss the other House, I heard a Member say that the leadership in the Senate has a problem. I do not know whether there

is leadership in the Senate because it appears to me, there is none. I now understand why some positions should be occupied by either lawyers or if you are not a lawyer, you should have been a Member of Parliament for at least five years. I know you know whom I am talking about, but I will not mention the position because he knows himself. I cannot imagine that if I were disorderly here, you would plead with me that, I beg you, Hon. John Mbadi. You would order me out or to, definitely, not be out of order. Honestly, those who are making decisions, because some of these decisions are made elsewhere, please, get someone who can do some work and who can run an institution well.

Hon. Speaker, my final comment, because if I continue, I can clearly see myself treading on dangerous grounds that you had warned us against, I just want to ask the Senate, kindly be fair to Kenyans and make sure that this formula is passed. We want it to come here. I know we have very limited powers in that formula, but let it come here so that we can discuss it. Some of us are thirsty. We want to talk on this formula. Please, do not keep it there. If you are defeated, can you own up and allow us to now deal with it because it appears that the people of Kenya gave you a job that you cannot do? But before we reach there, I hope the next sitting will not be like what I saw.

As the Chairperson of the Parliamentary Service Commission (PSC), Hon. Speaker, I just want to ask you, as I sit down and you may not respond to me, you can easily switch the gadgets we have here from there. I cannot give myself time to speak without your authority, but I see that happening in the other House. Does it mean you did not give them the correct gadgets? There is a lot of confusion there. Anyone can talk at any time that person feels like.

I thank you.

**Hon. Speaker:** What is happening now? Let us hear the Member for Murang'a County, who has not been here for a long time.

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): Thank you, Hon Speaker. I do not want to follow the line of whether there is capacity in the other House or not, but those who have eyes can see.

My question is on the processes and how the Bills from the Senate are brought to this House. In particular, I had an experience yesterday where my clerk called me on a Bill that has gone through our Committee. We have actually even tabled a report and are waiting for a Second Reading. That was a Bill that originated from the Senate. That Bill came to this House around one year ago. It was referred to our Committee. We got a call that the Budget and Appropriations Committee had looked at it and said it was a money Bill. That was the Mental Health Bill. I would like to question the processes of how we receive Bills from the other House. Before they are referred to committees, should they first go to the Budget and Appropriations Committee? What should be the process? There is total confusion. We have wasted a lot of resources and time. We have done public participation and have tabled a Report in this House.

As we debate the processes, we need to have a clear way of communication between this House and the other House. The big question is who cleared this Bill to even be debated in the Senate in the first place, passed and communication made to this House? Do we have qualified people in the right places? We have a clerk. There are people who go through these Bills. If we do not have capacity, could we hire or get proper people in those positions, so that we do not waste Kenyans' money and precious time? We are discussing this now when we could be discussing something better.

**Hon. Members:** On a point of order, Hon. Speaker!

**Hon. Speaker:** Even as you make your points of intervention, make them very brief, so that we do not make this the business of the day.

I just want to give one piece of advice to the Budget and Appropriations Committee. It is very clear. Article 114 is clear on what constitutes a money Bill. Our technical office is the Parliamentary Budget Office. It advises all of us. Look at what is contained in Article 109(5). It states that money Bills may only originate from the National Assembly. You do not have to spend a lot of time. Just table a report that you have found this to be a money Bill and it unfortunately originated from the wrong place.

With regards to what Hon. Kanini Kega said, we want to see them and get the coffins. When you sit with them, do not come and report to the plenary that you were unable to communicate. We need to get that report exactly as you have done. With respect to each Bill, identify the aspects that constitute a money Bill effect, table it here and then the plenary will look at it and communicate the fact that we have sent the coffins to the other side. We may very soon, Hon. John Mbadi, think of buying a hearse to transport those coffins.

It is absolutely important that we remain faithful. Also to the departmental committees, if a Bill has money Bill aspects and the Parliamentary Budget Office has advised so, I regularly read and refer it to the Budget and Appropriations Committee which is the committee mandated to give us that report after interacting with the Parliamentary Budget Office and whomever else they may wish to interact with. Hon. Sabina says that she dealt with a Bill which was a money Bill and it originated from the other House. It will not see the light of day. It is just a matter of synchronising the processes around here. It is just a matter of the process. That is something that we can correct.

We also want to ensure that there is committee between the two Houses. The only way this can happen is if all of us are faithful to the Constitution, more so, in the observance of those provisions. I know Hon. Millie Odhiambo has spoken in the past about the co-sponsorship of Bills. This is something that we have said for the longest time should be encouraged. As Hon. John Mbadi observed, you read the context of some of those Bills and they are very good. Unfortunately, we cannot just be excited because of the dressing. We may not just say that the Member walking in is very well-dressed, therefore, cannot...

*(An. Hon. Member walked into the Chamber)*

*(Laughter)*

We will have to obey the Constitution notwithstanding how well-coloured the Bill may look like.

I will give one minute to each Member. Let me just follow the order as it is. Let us have the Member for Funyula.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Thank you, Hon. Speaker for giving me the opportunity to comment on this.

This month marks 10 years since we inaugurated the new Constitution. It is incumbent upon both the Senate and the National Assembly to respect the provisions of the Constitution. The leadership of both the Senate and the National Assembly needs to sit down and find ways and means of harmonising how things are done to avoid wastage of public resources. Quite a number of those Bills are very important to Kenyans, but as everybody has mentioned, if we are unable to proceed and conclude the process, that is a waste of public resources and Kenyans are denied the benefits of those particular laws.

**Hon. Speaker:** Let us have the Member for Suba North.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Speaker for giving me this opportunity. On the issue of the disorganisation in the Senate, I commented on my Facebook profile and I will not do so here because we all have different miens.

Having said that, I only have two suggestions. You have already talked about one of them, namely, that the Procedure and House Rules Committee needs to come up with a procedure for co-sponsorship of Bills. Already in the Committee, we were confronted with three Bills that are similar, namely, the Public Participation Bill, the Healthcare Bill and the Community Health Workers Bill. If we co-sponsor, it means that a Bill will emanate from here and the other person in the other House will have it. That will deal with those bottlenecks.

Secondly, the other issue that we need to deal with is also an amendment to our own Standing Orders and concurrent amendments to their Standing Orders so that the process of declaration of money Bills becomes very clear. I have Bills which I am waiting for and they have to go to the Budget and Appropriations Committee because they are money Bills. The Senate Bills should concurrently have the same process even before they go for their First or Second Readings to stop wastage.

There is the Reproductive Healthcare Bill. I do not know if it will be declared a money Bill when it comes here. It is now undergoing the second public participation. It will undergo another public participation here and we will have wasted money. I was about to let go of my Bill because of the other one. It will die there and here as well. We have spoken about this for very long. If the Procedure and House Rules Committee can take up those two issues, it will sort this out.

**Hon. Speaker:** The Procedure and House Rules Committee and the rules themselves may not override what is in the Constitution in regards to the origination because that is the main problem. Even if it will be co-sponsored, as long as it is a money Bill, it can only originate in the National Assembly, but proceed to co-sponsorship. That is what we need to really agree on to promote committee.

**Hon. Makali Mulu** (Kitui Central, WDM-K): Thank you, Hon. Speaker. I want to make very quick remarks on this matter. I want to remind the House that this is not the first time this House is saying that a particular Bill is a money Bill. On that basis, it is rejected. We did that in the 11<sup>th</sup> Parliament. It is happening again. As Members of Parliament, we all swore to defend the Constitution. By all standards, this is the senior House in terms of experience and knowledge. It is important we help this other House. With your experience, Hon. Speaker, we can help the other House, so that things are done correctly. These Bills take a lot of time to be considered. I am not sure whether they have any challenge with time. However, we have challenges with time. I propose that the two Houses should work together at the technical level. At the leadership level, the leadership of this House led by the Leader of the Majority Party, you and the Leader of the Minority Party, please, help your colleagues, so that things are done correctly.

I submit my contribution, Hon. Speaker.

**Hon. Speaker:** Hon. Duale, you have the Floor.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I agree with Hon. Makali. This is a matter which we have lived with since the inception of the Constitution 2010 and bicameral Parliament. The Constitution is very clear on what is a county Bill, Bills that do not concern counties and money Bills.

I really like what Hon. Millie said. It happens in other jurisdictions which are bicameral. There is something called co-sponsoring. You can co-sponsor a Bill with a Senator and then it starts here. When it is in the other House, he takes over. When it is here, a Member of the National

Assembly, regardless of his constituency, whom you share the same principles, will move it. We must say this. Kenyans must listen. Last night, I said that, at least, I am proud to have served under two Hon. Speakers: You and Speaker Marende. Why do I say so? I have never seen an Act of Parliament being amended in a report of a committee. We passed the Division of Revenue Bill, 2020. The President assented to it. It is an Act of Parliament. This is where I agree with Hon. John Mbadi. The Clerk and the technical team of the Senate.... Some of us may end up in the Senate. We do not want the Senators to look like some of the Members of the County Assemblies (MCAs). If you ask me, the Members of Kirinyaga County Assembly are doing better than the Senators. They know the law. How do you amend an Act of Parliament in a report of a committee?

I really hope that by Thursday, before they resume, they must remove that amendment. How do you increase the shareable revenue which was decided in the Division of Revenue Bill, 2020, assented to law and it is in 411? Even the media must learn the legislative proposals and the Constitution. How do you increase the shareable revenue from Kshs316.5 billion to Kshs348 billion in a report? We want to respect and not to discuss the other House. However, if your neighbour misbehaves and you share the same compound, those of us who live in town houses, you tell him that he cannot have a party until 11.00 p.m. because your children want to sleep. Your neighbour cannot violate the Constitution, the Public Finance Management (PFM) Act and his or her standing orders. I hope when they resume on Thursday, they will remove that amendment.

Hon. Speaker, on a light note, I will also go to my Facebook and Twitter pages tonight. I went on a sabbatical leave. I feel that I should go back. Hansard reporters of these Houses must be given language that they can interpret. You cannot say anything and expect the Hansard reporter to interpret it. If the House agrees with the Motion, we will go on a recess. I am sure Hon. Kimunya will move that Motion. Please, protect the Constitution, dignity and integrity of the House always. You have done that since 2011. Please, give a call to the other House because they are our neighbours. If their House is on fire, we have to go and put it out. That amendment is offensive and unconstitutional. You cannot amend an Act of Parliament through an amendment in a report of a committee.

Secondly and lastly, I shared an issue with Hon. Mbadi and other Members this morning. Hon. Millie agrees with me that if there are five amendments here in a clause, the Chairperson always says that if the amendment of a certain Member passes, the rest of the other amendments fall. I have never seen a House where every amendment under the sun must be voted for. I agree with Hon. Makali Mulu. We need to send some technical expertise from our Clerk's office to go to the Senate. I agree with the Chairperson of the Budget and Appropriations Committee that Articles 114 and 109(5) of the Constitution must be followed to the letter.

**Hon. Speaker:** Let us now hear the Member for Kesses.

**Hon. Swarup Mishra** (Kesses, JP): Thank you, Hon. Speaker. I did not understand my two seniors said that they blame the leadership of the Senate. Whom do they blame? Which leader do they blame? Is it the Leader of the Majority Party, Leader of the Minority Party, Whips or the Speaker? I want to be guided on that.

Two, when you do not try to conceive with a lady, you cannot know whether she is fertile or not. Unless you marry her, you cannot know whether she can give birth to a baby or not. Similarly, unless you try to make a law, you cannot know its pros and cons. We, the National Assembly, have a big role to play in the counties governance, as far as budget is concerned in different committees. We should be part and parcel of the Senate to govern, vet and check accountability of county governments. The Building Bridges Initiative (BBI) is coming very soon. We should consider that.

Thank you very much.

**Hon. Speaker:** Hon. Wanga, you have the Floor.

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Thank you, Hon. Speaker. Even though Hon. Mishra is looking for guidance, some things are better left unguided in the manner they are said.

The individual Senators who moved this Bill should neither be ashamed, afraid nor should their egos come in the way of discussing with Members of the National Assembly for purposes of carrying some of their ideas forward. For example, I have a Cancer Prevention (Amendment) Bill and there is one that has come from the Senate which has died or fallen in the hole by Senator (Dr.) Ali, which has very good ideas. If we were to discuss, there are some ideas that I can carry along given that I have a similar Bill and interest. Even broadly speaking, now that the Bills are already where they are, the individual Senators who carry those ideas should consider discussing with Members of the National Assembly who have similar interests, so that these ideas can be carried forward, even as we technically resolve the issues and Senate reflects on the money Bills. The Senate cannot run away from the idea that you cannot originate money Bills there. People bury their heads in the sand thinking that they will just originate them and then this will be cause for conflict or it will look like the National Assembly stifles what the Senate does.

I am very happy about the guidance that you gave at the beginning of this debate because we do not want anyone to say that the National Assembly was discussing the Senate in any way. You gave that guidance. What you have done is legal. However, we can still discuss, even at individual Member level, to see how we can carry some of these ideas.

Thank you, Hon. Speaker.

**Hon. Speaker:** Even as the Bills go to be buried, we can pick some ideas.

*(Laughter)*

Could we hear Hon. Limo?

**Hon. Joseph Limo** (Kipkelion East, JP): Thank you, Hon. Speaker, for giving me this chance to also weigh in on this matter. First, I want to take this opportunity to congratulate my successor, Hon. Wanga, who has just spoken. It seems she is a good successor because she started well. Since then, I have been on the backbench. This is my first speech. She is doing well because she was even my follower at the university. Therefore, I have no doubt that she will perform. However, we are also here ready to help.

Hon. Speaker, the other House has been doing many things that leave the world wondering. It seems like they do not have the capacity to understand the Constitution or interpret it. However, there are very bright Senators there who have always been picking these issues, but there is a deliberate move by the leadership there, either because they are not able to lead or they have a capacity problem. We have been wondering what the technical department there led by the Clerk has been doing. The Constitution is very clear on the Bills which originate from the Senate and which ones originate from the National Assembly. You really wonder why they keep starting disputes. We have had situations where the Senate has been going to court to interpret simple issues.

Other than this House focusing on what the Constitution says, led by yourself, Hon. Speaker, it has been a respected House because we have never done anything which brings disrepute to this House especially with the public. We have been acting as per the Constitution. I urge the House to continue working, but let us not get tired pointing out areas the Senate does

wrong, but we should not waste a lot of time there. We should only face one direction and leave the Senate to decide what they want to do. Yesterday, in fact, they were not able to understand how amendments on the same matter are supposed to be prosecuted.

**Hon. Speaker:** That is the route I cautioned against. Let us not discuss the proceedings there.

**Hon. Joseph Limo** (Kipkelion East, JP): I am guided, Hon. Speaker. I was just mentioning it so that we are not seen to be like them. We know what we are doing and I urge the House that we proceed with the way we do our work and stick by the law, that whatever has been passed by this House and has been enacted into law, should remain, so that the public is not misled. We should stick to what is passed by this House and signed by the President into law under the Division of Revenue Bill.

Thank you, Hon. Speaker.

**Hon. Speaker:** Let us have Hon. Nyikal.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Thank you, Hon. Speaker. I will use exactly one minute.

What I wonder is: Are the processes in the Senate same as the processes here? Here, we have prepublication scrutiny which goes through the committee. How do these Bills pass through prepublication scrutiny without this being noted? I think, it may be an issue of the process not being adhered to or taken seriously.

Thank you, Hon. Speaker.

**Hon. Speaker:** I had also been given an indication that Hon. Nyikal responding to...

Hon. Wamalwa, take one minute, please, so that we can do business.

**Hon. (Dr.) Chris Wamalwa** (Kimini, FORD-K): Thank you, Hon. Speaker.

You made a ruling in this House that a Bill can only go to the Second Reading if we have a public participation report, which has done very well. Unfortunately, in the other House, the Senate, those are not the provisions. So, for us to move in harmony, we need to harmonise our Standing Orders and those of the Senate. I knew this when I followed the Bill by Senator Kihika, on reproductive health, the one which wants to legalise abortion through the back door. There was no public participation. What Hon. Nyikal has said on prepublication scrutiny is not there. So, for us to move together, we must harmonise the processes, so that we can have concurrence as we move on.

Thank you.

**Hon. Speaker:** Honestly, on the issue of public participation, remember at the general level Article 10 of the Constitution is very clear on public participation, and Article 118 specifically on when we are doing our processes here. So, let us just hope that everybody will... Hon. Nyikal was to table some report then we go to this other one.

Hon. Kimuny, you have the Floor.

**Hon. Amos Kimunya** (Kipipiri, JP): Thank you, Hon. Speaker.

Some comments have been made to the effect that the leadership needs to do something in terms of the harmony between the two Houses. Out there, Kenyans see the Parliament of Kenya. We are one Parliament and the Constitution says that there shall be one Parliament of Kenya which makes laws. The Houses may be different and the functions may be different, but what people see is the Parliament of Kenya. Hon. Mbadi mentioned it and it has also been supported here that some of the laws emanating from the Senate maybe of major consequence to the people of Kenya. That

is why we need to start thinking that wherever it comes from is not a turf war of who should have done it or whether he did it right or wrong, but serve the bigger interest of the people of Kenya.

I want to confirm to the House that there is an initiative chaired by Hon. Speaker on harmonising the working of the processes in the House. In the past, we had the Senate taking the National Assembly to court on passage of laws. We do not want to continue with one arm of the House taking the other one to court and using public expenditure on the wrong thing. So, there is a process already in place and there is check list that has been agreed upon in terms of how Bills will be processed and signed between the two Speakers, so that by the time they are processed, we know they have gone through the process. I just want to tell the Members that the challenges have been noted and we must accept that the Senate is only seven years old. The previous Senate died in infancy. We hope this one will not die because of the kind of things we are seeing. But the National Assembly has been there in decades and so, there is more experience or institutional capacity that is here that is not there. Perhaps as the bigger brother, it is our role to help them come along and create the capacity that they need.

Basically, we do not need to panic. Let us work together and also at the committee level, this is something that when we meet as chairpersons of committees, there is an opportunity for each committee to identify that a certain money Bill is important for the country and that we can liaise with our counterparts in the Senate to take it over and process it, so that we do not end up losing an important Bill just because of origination or things that could be harmonised within the one Parliament initiative.

Thank you, Hon. Speaker.

**Hon. Speaker:** Obviously, I know we are doing those consultations. Hon. John Mbadi and Hon. Kimunya are aware.

By the time a Bill is considered, and it is important to look at Article 110 of the Constitution specifically (3), by either House, the Speakers of the two Houses of Parliament, shall resolve any issue as to whether it is a Bill concerning counties, a special or ordinary Bill. Those are the issues to be considered at the level of Article 110(3) of the Constitution. Before Article 110, there is Article 109(5) on origination, then Article 114 on what constitutes a money Bill. By the time a Bill comes to the National Assembly from the Senate, the Senate has already passed it, notwithstanding the money Bill effect. Quite a number of Senators have approached me and I have sympathies with some of them. I ask them that I wish they could remove clauses which make it a money Bill. When you look at some of them, they are very good Bills, but unfortunately, their passage would result in expenditure of public resources for which there is no budgetary allocation. What do you do? I appreciate the problem the Budget and Appropriations Committee finds itself in. Do we pass it? It may be a very good Bill. You will read it. Remember that there was one about potatoes and something like that in the last Parliament. It was not so bad.

Another one was about something similar to the old Kenya Industrial Estates (KIE), but at the county level. It was a good Bill. But the expenditure of public resources falls directly under Article 114 of the Constitution. What do you do? It originated there, unless a Member of this House now picks it up and begins the whole process afresh and then later takes it to the Senate so that it does not die. Some of them are very good legislative initiatives but, unfortunately, it just has to be agreed at the technical level that we must help Parliament. I agree with Hon. Kimunya that we must help Parliament legislate. But, of course, it must be within the Constitution and the law so that origination does not become bad. We do not want people to go to court and say that this Bill originated in the Senate. It is a Money Bill. It is not going to be struck out. What were we doing? What are we going to say about the whole institution?

Those are some of the issues that we are going to sit around, to continue to talk about, and see how best we can advise our technical teams both in the National Assembly and the Senate, to try and save initiatives which would otherwise have a lot of benefit to the country.

Hon. Nyikal, you were to respond to a Question, but the Questioner was not here.

#### RELIABILITY OF COVID-19 TESTING KITS

**Hon. (Dr.) James Nyikal** (Seme, ODM): Thank you, Hon. Speaker. I am going to respond to a Question by Hon. Baya of Kilifi North Constituency. He raised it on 20<sup>th</sup> July. He sought a Statement from the Chairperson of the Departmental Committee on Health regarding the reliability of testing kits by the various service providers that conduct COVID-19 testing in the country.

The Hon. Member was with us when the Ministry gave the answer. Actually, he was satisfied. I can see he is gone. I think this is so important. We can spare some time to listen. That is because this has been asked by other Members where one test is positive and another one is negative. We are now not clear.

**Hon. Speaker:** Are you able to finish it in two minutes?

**Hon. (Dr.) James Nyikal** (Seme, ODM): No, in three minutes.

*(Laughter)*

Because of that, Hon. Baya raised three questions in view of the two contradicting results in respect of Ms. Khalid Nafula Mwanaidi and her children. What the COVID-19 status now is, and what measures the Ministry of Health is putting in place to ensure that testing kits for COVID-19 meet the World Health Organisation (WHO) standards. What measures the Ministry is putting in place to ensure that the tests carried out in various laboratories meet the scientific attributes of reliability, validity and consistency.

In regard to the SARS-CoV-2 testing, it is always safe to repeat the test. I am actually summarising. By repeating the test, the last result shall supersede the previous. However, in the event of discrepancy between two laboratories, where one is positive and another is negative, the WHO guidelines state that the patient is advised to self-isolate and repeat the test in one week. It has in this case been advised that the test should be repeated. Simply, I agree with this. When there is doubt in an issue of illness of this public health magnitude, it is better to err in favour of safety. Although one is negative and the other positive, it is better to assume one is positive. It is safer that way.

The second part of the Question seeks to know what measures the Ministry of Health is putting in place to ensure that testing kits for COVID-19 meet the WHO standards. The Ministry of Health has issued guidelines to all testing laboratories to only use WHO approved kits. The Ministry of Health has harmonised the types of testing kits to be used by various laboratories as below. All testing kits must be validated and verified by the regulator prior to use. On report files for reference, all laboratories have been advised to implement lot to lot analysis of batch of kits prior to use. All laboratories use multiplex design of testing kits that can test for more than one gene of COVID-19. This is for both the screening and confirmatory tests. It is just that they have to put a guideline. If various laboratories use kits that test for different genes – one is testing for two genes and another is testing for one or three genes – obviously, the results will be different. So, what the Ministry has said it is going to do - and we advised - is that it is going to put a standard for the country. All laboratories should use the same cut-off of what results they have.

The third part of the Question was on measures the Ministry is putting in place to ensure that the tests carried out in various laboratories meet the scientific attributes of reliability, validity and consistency. The Ministry has developed COVID-19 Test Laboratory Quality Assurance Guidelines. This document is designed to standardise all phases of testing prior to release of results and provide corrective action guidance in the event of result discrepancy. The Ministry has also set up COVID-19 Laboratory Proficiency Testing Scheme, a programme that involves a comprehensive quality assurance mechanism where all phases of testing are monitored.

Let me summarise this. If two laboratory tests are different, the first people to deal with this are the two laboratories, before the patient is involved in this. That is so that they check each other. There is then a peer review. How come yours is positive and ours is negative? What are the reasons? The technical people will then agree on those reasons and what is released to the patient is with an explanation. For example, if it is a six-day difference, it may be that you are at the final stages of the illness and, therefore, you are positive. If you are tested later, you are found negative. Since many people are asymptomatic, that difference cannot be seen. So, it is for the labs to say why there is a difference. We even advised - and they agreed - that there are quick antibody tests which can say you have been in touch with the virus but you are now not sick. So, the positive could have been positive but you are now okay.

Hon. Speaker, we could go into more details but that summarises the problem that many people have been facing with these issues.

Thank you, Hon. Speaker.

**Hon. Speaker:** Finally, the Leader of the Majority Party on Standing Order No. 44 (2).

#### BUSINESS FOR CONSIDERATION UPON RESUMPTION FROM RECESS

**Hon. Amos Kimunya** (Kipipiri, JP): Yes. Hon. Speaker, pursuant to the provisions of Standing Order No.44 (2) (a), I rise to give a Statement on behalf of the House Business Committee, which met on Thursday, 6<sup>th</sup> August 2020 to prioritise business for consideration.

The House is scheduled for recess commencing tomorrow in accordance with the Calendar of the House. In this regard the House Business Committee has not scheduled any business for next week. Upon resumption from recess on Tuesday, 8<sup>th</sup> September 2020, the following business will be prioritised.

Consideration in Second Reading of the Public Finance Management (Amendment) Bill (Senate Bill No.3 of 2019) and the Public Service Commission (Amendment) Bill (National Assembly Bill No.27 of 2019); the Report of the Special Funds Accounts Committee on the Audited Financial Statements for the National Government Constituencies Development Fund for the constituencies in Kiambu County; and Report of the Public Investments Committee on Special Audit Report on Procurement of Pre-Export Verification of Conformity to Standard Services for used motor vehicles, mobile equipment and used spare parts by the Kenya Bureau of Standards.

Through you, I urge all Chairpersons to expedite consideration of over 20 Bills that are pending before them and to table the reports when we resume so that Members can acquaint themselves with the contents of the Bills before debate, and to facilitate processing of the same on the Floor of the House.

In respect to Questions before Committees, we will resume re-scheduling of Questions during the recess period. I encourage Committees to ensure that Cabinet Secretaries appear before them to respond to Questions instead of only tabling the respective responses.

The House Business Committee will reconvene on Tuesday, 8<sup>th</sup> September 2020, to consider business for the week.

Hon. Speaker, I now wish to lay this Statement on the Table of the House.

*(Hon. Amos Kimunya laid the document on the Table)*

**Hon. Speaker:** Next Order!

## PROCEDURAL MOTION

### CONSIDERATION OF CERTAIN BUSINESS RECEIVED DURING THE AUGUST/SEPTEMBER RECESS

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Speaker, I beg to move the following Procedural Motion:

THAT, notwithstanding the provisions of Standing Orders No. 41 and 42 relating to conveying of Messages from the Senate and from the President or the National Executive and Standing Orders No. 120, 122 and 126 relating to Publication, Procedure upon Publication and First Reading of Bills, this House orders that, during the period of the long recess of the Second Part of the Session (August 14 – September 7, 2020) –

(a) upon receipt of any Message from the Senate, or upon receipt of any name of a person nominated for appointment to a State or public office from the President or any other office in the National Executive, the Speaker shall forthwith refer such Message to the relevant Committee for consideration, without having to recall the House;

(b) should a Bill be published during the period, or a published Bill become due for First Reading during the period, the Speaker shall, upon lapse of seven days following the publication of the Bill, forthwith refer such Bill to the relevant Committee for consideration pursuant to the provisions of Standing Order No. 127 (Committal of Bills to Committees and public participation) and, upon resumption of the House, cause the Bill to be read a First Time and the Second Reading may be taken forthwith, or on such other day as the House Business Committee may determine;

(c) should the Speaker receive a Message relating to the Senate's amendments to a Bill originating in the National Assembly, the Speaker shall forthwith refer the Schedule of the Senate Amendments to the relevant Committee for consideration pursuant to the provisions of Standing Order No. 145 (Senate amendments to Bills originating in the National Assembly), and, upon resumption of the House, report such fact to the House; and,

(d) should the Speaker receive a Message from the Senate in respect of any Special Bill concerning county governments, or a Division of Revenue (Amendment) Bill, the Speaker shall forthwith refer such Bill and the accompanying Message to the relevant Committee for consideration, pursuant to the provisions of Standing Order No. 143(3) (Consideration of Bills originating in the Senate), and, upon resumption of the House, cause the Bill to be read a First Time and the Second Reading may be taken forthwith, or on such other day as the House Business Committee may determine.

Hon. Speaker, this is a Procedural Motion that gives the leeway that upon receipt of Messages from either the Senate or the President, they do not have to wait for us to come back.

They can be processed and sent to the relevant Committees. By the time we come back, the Committees would have looked at them. It is a Procedural Motion that we normally pass when we go on recess. I do not want to go through every detail.

I beg to move that the House approves this Motion, and ask Hon. Mbadi to second.

**Hon. Speaker:** Hon. John Mbadi.

**Hon. John Mbadi** (Suba South, ODM): Hon. Speaker, the leave of the House is not required for the House to go on recess because we had already approved the Calendar of the House. If we did not want to proceed on recess from tomorrow, we would have brought a Motion to change the Calendar. So, we are definitely proceeding on recess tomorrow.

Hon. Speaker, this is our last Sitting until 8<sup>th</sup> September, and until that time, there is a likelihood that Messages from the Senate or the President will be sent here. Our Standing Orders would have required that those Messages are read in the plenary but since there will be no plenary, through this Motion, we are giving you powers to refer the same to the relevant Committees. We want to seek the concurrence of this House to do that. If a Bill is published, upon lapse of seven days, we do not have to wait for First Reading of the same for the Bills to be referred to various Committees for consideration. I can go on and on – even amendments or any Communication from the Senate regarding a Bill.

Hon. Speaker, after concurring with the HBC on this Motion, I want to wish Members the best during the one-month recess. I understand that times are difficult because we are not able to meet our constituents formally and properly. I want to ask them to try and inspect some of the NG-CDF projects that are ongoing in their constituencies, together with other projects that are funded through the National Government funding.

Hon. Speaker, I second.

**Hon. Speaker:** Hon. Members, I will just read the first part of the Motion and itemise the others.

*(Question proposed)*

**Hon. Members:** Put the Question.

*(Question put and agreed to)*

**Hon. Speaker:** Next Order!

### MOTION

#### ADOPTION OF REPORT ON ALLEGED INVASION OF LAND IN ROYSAMBU BY KENYA DEFENCE FORCES

THAT, this House adopts the Report of the Departmental Committee on Lands on its consideration of a Petition on the alleged invasion of LR 5875/2 in Roysambu Constituency by the Kenya Defence Forces, laid on the Table of the House on Thursday, 2<sup>nd</sup> July 2020

*(Hon. (Ms.) Rachael Nyamai on 12.8.2020 - Morning Sitting)*

*(Resumption of Debate interrupted on 12.8.2020)*

**Hon. Speaker:** The Leader of the Majority Party.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Speaker, I rise to seek your guidance on the subject matter of this Motion in terms of its constitutionality. I believe the Standing Orders allow a matter on constitutionality to be raised at any one time.

Hon. Speaker, between the time the discussion began in the morning and now, certain facts have emerged that were, perhaps, not clear. This Petition purports to demand of the National Assembly to do things that are not allowed within the provisions of Article 119 of our Constitution. You have emphasised the need for this House and its Committees, to only consider matters within our authority. You even emphasised that this afternoon and you are the lawyer in the House.

Hon. Speaker, there is a maxim that equity does not act in vain. If you are to apply it in this House, we would be asking: Should the Committees of this House act in vain? If we were to be challenged that we have given instructions to the National Land Commission (NLC), an independent commission that cannot be directed by any other body, then we will have acted in vain. The Petition was seeking that the House directs the NLC to do something. If you look at what the Committee is recommending, if we adopt the Report, we would be moving into contravening Article 119 because we will be talking about determining the rightful owner of the land. That is a determination of the rights reserved within Article 23 of the Constitution, a matter reserved for the courts.

Hon. Speaker, indeed, he who comes to equity must come with clean hands. The petitioners did not disclose in their Petition or to the Committee that they had gone to court, twice, on the same matter, lost the case and paid the costs. They have now decided to come through a roundabout route, through a Petition to Parliament to seek what they did not get in the Environment and Land Court. Instead of appealing after losing in the Environment and Land Court, they have come to the House. As a House, do we have the authority to determine the rightful owner of the land, order compensation and, to expedite issuance of a title deed?

There are some constitutional issues that we want to look at, so that we do not - within our bigger mandate of looking at every Petition - start stepping on the toes of the National Land Commission, county governments and the courts on interpretation. Our own recommendations should not be thrown out as if we have acted in vain. I know the Committee has done a lot of work. They had to do it. However, when you look at the Report, they were guided in terms of what kind of recommendation they have made. Whatever they do will be against the Constitution.

Therefore, I seek your guidance on this matter so that we do not spend a lot of time reviewing it, come up with a conclusion and vote on a Motion that cannot be implemented because the recommendations are not within the powers granted to this House to so determine. That is the guidance that I would like to seek from you. I would have wished to bring it to the House Business Committee before this matter comes back. However, now that the Motion got to the Order Paper of this afternoon before the HBC meeting, you can guide us accordingly.

Thank you.

**Hon. Speaker:** Hon. John Mbadi has priority in speaking. Is it?

**Hon. John Mbadi** (Suba South, ODM): Hon. Speaker, maybe in future, we may amend our rules to provide that a Petition would not only state that a matter is not pending before a court of law, but also go a step further and declare that the matter had not been dealt with elsewhere. It is mischievous for an individual who has lost a case in court to try to use Parliament to sanitise what probably the courts did not find merit in.

I want to support the Leader of the Majority Party and plead with you that you defer any proceedings on this particular Motion as you get a more reasoned ruling on this matter. In the past, a Report of this House made a recommendation that the courts differed with. I remember when I was sitting in the Public Accounts Committee, we recommended that the Ethics and Anti-Corruption Commission (EACC) shall investigate the Senator for Elgeyo Marakwet and his law firm on the issue of National Youth Service (NYS). The wording of that recommendation, which appeared like we are ordering an independent organ to investigate, made that case not to proceed despite the merits that were in the matters that the Committee had recommended and the House canvassed. Again, it will be untidy for us to defeat a Report of a Committee of this House by either the Majority or the Minority parties mobilising to defeat or approve it.

The best way is to halt this Motion as we consult further, so that if it unprocedurally found its way to the House, it is dealt with. So, I am supporting the Leader of the Majority Party, Hon. Kimunya, in asking you to step down this Motion as we consult further. In my capacity as the Leader of the Minority Party, I have received new information. They are facts that were not disclosed earlier when the matter was canvassed.

Thank you.

**Hon. Speaker:** Member for Ruaraka, I can see you are burning to say something on this.

**Hon. T. J. Kajwang'** (Ruaraka, ODM): Hon. Speaker, I have a lot of respect for the significant Members who are leaders in this House both in the Majority and Minority parties. But let us, for once, look at this in an impartial manner and see where this Petition is coming from, and for what value. As far as I am able to see - and I have the Petition with me - the first recommendation of this Committee is to the Ministry of lands in consultation with an independent body called the National Land Commission to do some things. It is true that NLC is an independent body, but the direction is to the Ministry of Lands to consult with that independent body. The independent body is not being directed to do anything substantive. The direction is to the Ministry of lands, which we have authority over under Article 95 of the Constitution to be able to proceed against.

The second recommendation is to the Director of Criminal Investigations (DCI) to investigate some matters. This is purely something within the remit of the Assembly.

The last recommendation is to the Ministry of Lands to do certain things. It may be or may not be the case that issues that are in this Report are true. The Assembly may decide, for reasons that are stated in the Report, that these recommendations do not hold water and, therefore, reject the Report. The Leader of the Majority Party may also decide to move an amendment, for example, to the first recommendation to delete the names of those people that, in his view, are independent and, therefore, cannot be directed.

The problem I have is that the Constitution itself has given members of the public a constitutional right to come to this House and move us by way of a Petition. We have an Act of Parliament called Petition to Parliament (Procedure) Act, which states clearly that when a petitioner moves the House, he will state whether the matter has gone to the Judiciary or organs that are designed to deal with it. The architecture of the statute itself did not think that it is proper to deny petitioners or members of the public to petition the National Assembly just because the matters have been advanced in other fora. That is why if you look at our Standing Orders, they have mirrored that statute, word for word, on the need of the petitioner to disclose that, for example, that it is a live matter proceeding in court or that it has been handled in various organs.

Therefore, I am cautious because the substance of the submission of the Leader of Majority Party is asking you to defeat what is constitutionally guaranteed to members of the public. It will

be a dangerous precedent. We can defeat this Motion on the Floor of this House. We have the vote. We can decide that there is no merit in this Motion and we throw the baby with the water, so to speak. We may decide to amend it or keep it the way it is. But, to ask you to make that decision is putting you on tenterhooks with Members. This is a Petition that has been well designed and looked at by various Committees and you are being asked to take the opportunity to make a decision that kills what really is a public cry. I would rather that this Motion is discussed before the Assembly, defeated or approved. Otherwise, it will be dangerous to turn that decision to you. It is between us to make that decision as the Assembly. I plead that this Motion proceeds to its logical conclusion.

Thank you.

**Hon. Speaker:** This Petition, did it come through the Member from “royal suburbs”?

**Hon. Isaac Ndirangu** (Roysambu, JP): Thank you, Hon. Speaker, for the information by the Leader of the Majority Party. I wish to inform them that this Petition was presented by my constituents to yourself, and you are the one who delivered it and spoke about it in this Chamber. You ordered the Departmental Committee on Lands to efficiently make findings and report to the House. This was under Standing Order 220, where you are authorised to make a presentation of a petition from Kenyans.

Our Constitution is very clear in Article 95(5) that the National Assembly exercises oversight over State organs. Article 124 also empowers each House to establish committees that may conduct proceedings on its behalf. Parliamentary committees perform a multiplicity of tasks but, of key relevance in this instance, is conducting investigations on special issues and making reports and recommendations to the House under Standing Order 216. The Committee presented its Report in the House and it was laid before the House on 5<sup>th</sup> December 2019. Early this year, the same petitioners, through myself, requested your office to allow this Motion to be debated and adopted under special circumstances as provided under Standing Order 225.

Last week, Hon. Speaker, you authorised a Procedural Motion exempting this business from the Standing Orders, so that we can deliberate on it.

I read mischief in the position taken by the Leader of the Majority Party. Earlier in the day, when you were away, he presented an advisory from the Attorney-General, saying that there has been communication that this matter is *sub judice*. I want to make it very clear that the petitioners are members of Roysambu Community Development Society. I know there is a litany of cases surrounding that matter. But that group, who are former workers in that farm, have never gone to court. And if the Leader of the Majority Party has court proceedings detailing the case by the Society, he should table it in the House. It is very sad that this morning, the Leader of the Majority Party and the former Leader of the Majority Party ganged up in this House to express disdain and contempt for the work of this House. The Report that was laid on the Table of this House was confirmed and signed by all the 19 members of the Committee. And they agreed with the findings. This is the Report we are being asked today to adopt. But when the former Leader of the Majority Party stood to speak, he said that all the four petition requests that the petitioners placed in your office and which you read in this House could not be provided by a resolution of this House. If that is the trend the Leader of the Majority Party is going to continue with, he will be busy killing this House. This House should be able to express itself and to do what Kenyans have petitioned it to do.

(Applause)

So, Hon. Speaker, we should be very careful and ensure that our leadership is not gatekeeping for other interests out there. I say so because the Leader of the Majority Party was telling this plenary that this land belongs to the Kenya Defence Forces (KDF). He does not even know where the land is.

The KDF, through the Ministry of Lands, had sought to make a compulsory acquisition of that parcel of land from a private owner. The Ministry of Lands offered Kshs3.5 million, but he refused. The Jewel owner went to court and the court upheld his petition and awarded him Kshs23 million. The Ministry of Lands and the KDF never paid at all. The only amount they said they paid to the court was Kshs3.5 million. In the documents in this Report, the Attorney-General, the Ministry of Lands, the Principal Secretary for Lands and the National Land Commission have all under oath admitted that, that money has never been paid. Compulsory acquisition, according to the Act, has to be prompt, just, fair and complete. Thirty years after the acquisition, that has not been done.

Our investigations reveal that there are grabbers using the name of KDF to grab this parcel of land. Thirty years ago, since the KDF applied for compulsory acquisition, they have never reported there, until recently when the Ministry of Lands, the NLC and the Nairobi City County issued letters of allotment to the former workers of the Jewel company. From 1974 when the owner, Jacob Samuels died, those workers have been there. He died when he still had their arrears. When his sons came to inherit the property, they continued with the business, but did not complete paying those people. So, the people who brought this Petition are former workers of Jacob Samuels. They are saying Jacob Samuels disappeared. In fact, it is suspected he was either killed or deported courtesy of the grabbers. Sometime in 1999, a fake company, which had not even been incorporated at that time, applied for the allotment of this piece of land and it was issued with an allotment letter. Can you imagine a non-existent company being allocated land while the law is very clear that property cannot be owned by a non-entity?

What we are saying is that this Report should be discussed today and adopted or rejected. It is important to note that this Report has already been laid on the Table of the House. What we are asking now, because of the special circumstances and for Government agencies to take the recommendations of this Petition seriously, is that it should be adopted. And the recommendations are straightforward.

**Hon. Speaker:** So that I can address the issues raised, can you read for me the recommendations? Hon. T.J. almost did that. I want to hear what the recommendations are.

**Hon. Isaac Ndirangu** (Roysambu, JP): Hon. Speaker, the recommendations are as follows:

In response to the petitioners' prayers and based on the observations, the Committee recommends:

- (i) That the Ministry of Lands and Physical Planning, in consultation with the National Land Commission and the Nairobi City County, complete the titling process for LR. 5875/2 within 180 days of tabling this report (which have already expired).
- (ii) That the Director of Criminal Investigations should investigate the officers in the Ministry of Lands and Physical Planning who may have caused loss of public funds by effecting fraudulent transactions relating to LR. 5875/2. That is to say that the people who had issued an allotment letter to unknown existing Solio Company Ltd.
- (iii) The Ministry of Lands and Physical Planning should secure LR. No.23393 with a view of ensuring that innocent Kenyans do not lose money through fraudulent

transactions as evidenced by their attempt to amalgamate LR.No.5875/2 with other properties.

The third recommendation is because the same grabbers were seeking to amalgamate the land in question with another piece of land at the Ministry of Lands so that they can lose tract and another land registration number is issued for the same premises.

Hon. Speaker, therefore, I urge you to put the Question.

**Hon. Speaker:** Very well. Chair of the Departmental Committee on Lands, Hon. Rachael Nyamai, we need some clarification. I know you moved the Report. It is true, as the Leader of the Majority has said that there was some long winding letter that purported to be a legal opinion from the State Law Office. But, in the course of your investigations as the Committee, did you get a chance to invite the Ministry of Lands officials to appear before you? Did you also get a chance to invite the people from the State Law Office? Are you aware of pending cases?

**Hon. (Ms.) Rachael Nyamai** (Kitui South, JP): Thank you, Hon. Speaker. Today seems to be another day like the one when we were handling the issue of Ruaraka. It looks like reports that find their way to this House especially from the Departmental Committee on Lands seem to be of that nature.

Hon. Speaker, I would like to say that I do not want the Parliamentary Committee on Lands to look like a Committee that is ill-advised. It has a legal counsel and it was properly advised. The question of this matter being actively in court, especially with the group that had raised it, was discussed. The matter was not in court with this group. If there are other groups, then, I do not know.

I would also want to go direct to what you have asked on who we met. We met several institutions. I want to go to the specifics, that the petitioners themselves, whom Hon. Waihenya Ndirangu represented came; the acting CEO of National Land Commission and the Chief Administrative Secretary, Ministry of Lands and Physical Planning, which is the Ministry itself came. I would like to say in this House that this was the most difficult period that the Committee had with the Ministry because we kept getting contradicting information as we asked for documents. When the documents were brought, we realised that, that piece of land has three files that existed; being put on top of each other. So, throwing this Report under the carpet, I think, is not even good for the Government itself. There are issues that are going to assist the Government in this matter. It is like saying let the illegalities continue and Kenyans continue to suffer, and encouraging people who are doing wrong things to continue to do so.

We invited Uchumi. Why were we going to Uchumi because initially, we did not know about Uchumi? The Committee found itself digging deeper because when this matter was raised, other parties started coming out. Apart from this small group or rather the group that had brought the Petition, we have KDF that we expected. Then came Uchumi who we asked to give us documentation that they have used all these years to do business on behalf of Kenyans. The Committee never got even a single document, not even a copy of the title deed that was being used. So, I would like to request you, Hon. Speaker, do not throw it away. Let it be there. Let this House make a decision on it so that Kenyans can be assisted.

Then came the Kenya Commercial Bank which is actively engaging on a matter of multi-billion shillings. What has happened is that the Ministry, our own officials, have taken land which seems to be cleaner on the site and amalgamated it with this one which is “dirty” so that they can use it for Kenyans to be cheated further. It is not good to throw this document under the carpet. Let it be discussed as it happened in the morning.

Then came a company called Jewel Complex. We asked many questions regarding this institution. It turned out that it is the one that now owns LR/No.23393 which is now being amalgamated with LR/No.5875/2, so that this can be one document. This matter is monkey business. Leaving it at this level is even going to make it worse. I urge you that it is discussed.

Lastly, this Committee has not directed any Government institution. The prayers are: Ensure the upholding of the petitioners' right to occupy, reside and do business on this land. In the wisdom of this House, your guidance, the Clerk's guidance and the legal counsel who exist in this House, compare the prayer and the recommendations.

On the issue of expediting issuance of titles to approved letters, this matter should be concluded but, in our recommendations, we do not make reference to the letters of allotment because we believe that other institutions need to dig deeper so that they can give proper documents.

On the issue of preservation of title deeds and allotments, we avoided going deeper into issues that do not concern this Committee.

On compensation for the demolitions of petitioners' premises, we know there are other institutions which can do this.

We invited the Attorney-General and the State Law Office, but I believe they did not appear. This Report is of good quality. I think I carry the image of the Departmental Committee on Lands. I do not want the Committee to have acted in futility. This document is worth being looked at by this House and a decision made.

Thank you, Hon. Speaker:

**Hon. Speaker:** Hon. Members, the issue that the Leader of the Majority Party has raised is one of constitutionalism but, listening to the recommendations, I see nothing that was going to direct a constitutional commission which is the National Land Commission to do anything. The first recommendation is to the Ministry which is perfectly within the right of this House to direct the Ministry of Lands to do some things in consultation with the National Land Commission. That is not a direction to the NLC.

The other one is to undertake the resolution to recommend to the Directorate of Criminal Investigations to investigate, which is again within the rights of this House to direct, and we have done so for a very long time. In fact, I would say since time immemorial. Hon. Peter Kaluma knows that time immemorial means time whence the memory of man runneth not to the contrary. It is a very long time. We have always done that and they have actually honoured our recommendations and directions. They have investigated people. I do not know whether that one offends the Constitution.

The third recommendation was that of titling. That is a function of the Ministry. Is that not so? Who undertakes it? I thought it is a function under the Ministry. The Directorate of Survey in Kenya is under the Ministry of Lands and Physical Planning. So, that is their function and the recommendation does not say to any particular person. However, titling is important. In fact, even to remove those many cobwebs, I think these are fair recommendations. Of course, I may wish to just confirm that then they are within the provisions of Article 95 (2) about the power of this House to deliberate and resolve issues of concern to the people.

*(Applause)*

Therefore, to the extent that this Committee has been careful enough to limit itself to what is within its authority under Article 119, the recommendations do not violate any of the provisions

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of the Constitution and may be debated by the House. In addition, mark you, I have no vote. So, they may be debated for the House to resolve as it desires. So, proceed with the debate.

*(Hon. Anthony Oluoch spoke off record)*

**Hon. Speaker:** What is it, Hon. Oluoch?

**Hon. Anthony Oluoch** (Mathare, ODM): Thank you, Hon. Speaker. I am grateful for the guidance you have given. Taking into account that this matter has been exhaustively deliberated upon by Members, would I be in order to ask, under Standing Order 95, that the Mover be called upon to reply?

Thank you.

**Hon. Speaker:** Does that appear to be the mood in the House?

**Hon. Members:** Yes!

**Hon. Speaker:** Hon. Members, Hon. Anthony Oluoch, the Member for Mathare, has risen in his place and claimed that the Mover be called upon to reply. I, therefore, put the Question.

*(Question, that the Mover be now called upon to reply, put and agreed to)*

**Hon. Speaker:** Mover!

**Hon. (Ms.) Rachael Nyamai** (Kitui South, JP): Hon. Speaker, I would like to thank the Committee on Lands, Environment and Natural Resources for the dedication they have shown towards the work that we do. I would like to thank the Clerk's Office for the support they give us, especially on legal issues. In most of the matters we deliberate on, we find ourselves going into legal issues. I would also like to thank the Hon. Members who deliberated on this matter in the morning and this afternoon. I would also like to thank your Office, Hon. Speaker, for your guidance, especially when this matter was raised by Hon. Waihenya. It is a Report we had tabled in this House, and we had not anticipated that it would be debated with such zeal.

With those few remarks...

Hon. Speaker, I would like to clarify that we have not made any express decision as to who is supposed to be given that land. That is the far we could go as a House.

With those remarks, I beg to reply.

**Hon. Speaker:** Hon. Members, having confirmed that the House has the requisite quorum, I will put the Question.

*(Question put and agreed to)*

*(Applause)*

**Hon. Speaker:** Next Order!

## BILL

### *Second Reading*

#### THE HEALTH (AMENDMENT) BILL

**Hon. Swarup Mishra** (Kesses, JP): Hon. Speaker, I beg to move:

THAT, the Health (Amendment) Bill (National Assembly Bill No.64 of 2019) be now read a Second Time.

The principle object of this Bill is to amend the Health Act No.21 of 2017 to introduce a new section that seeks to provide for the development of policy guidelines to regulate the referral of patients to health institutions both within and outside the country. The new section will ensure that the relevant stakeholders are involved in the process of developing such policy guidelines so as to ensure that the process of referral to hospitals outside the country is not subjected to abuse. If the amendment is passed, the Health Act No.21 of 2017 will be amended by inserting a new section immediately after Section 79. For avoidance of doubt, and since the amendment is very short, allow me to quote it verbatim as follows:

“79 (A) (1) The Cabinet Secretary (CS) shall develop policy guidelines on the mechanism of referral of patients to health institutions within the country and outside the country.

(2) Despite the sub-section (1), the policy guidelines for referral mechanisms developed under subsection (1) shall provide for consultations with the body responsible for registration and licensing of Medical Practitioners and Dentist Board and the National Hospital Insurance Fund (NHIF).”

Hon. Speaker, the policy guidelines referred shall ensure that adequate measures are taken to establish whether the health institution to which a patient is referred purchased adequate health equipment and healthcare personnel. A public health facility that refers a person to the health institution outside the country shall ensure that adequate consultations are undertaken with the Kenyan Mission in the country in which the referral is made to establish the credibility of the health institution.

This is also in line with Section 104 of the Health Act No.21 of 2017, which provides as follows:

“104. The Cabinet Secretary (CS) shall, within three years of operation of this Act, ensure the enactment of legislation that provides for among other things –  
(h) Health tourism;”

The definition of medical referral same as tourism means the recommending and referring of patients with disease processes bearing the following indicators: Lack of diagnosis and/or lack of infrastructure and or lack of skills and/or lack of equipment and facility.

*(Hon. Speaker left the Chair)*

*[The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya) took the chair]*

Hon. Temporary Deputy Speaker, a medical referral also known as medical tourism is described as the travel across international borders with the intention of seeking some form of medical and surgical treatment, which also includes sports, diagnostics and curative care. As far as classification is concerned, it is domestic and cross border referrals that differentiates medical tourism.

As far as the global prospective is concerned, 14 million people in the world travel every year with expenses of US\$20 billion. The African medical tourism prospective is US\$3.8 billion or approximately US\$4 billion, and 30 per cent of the patients go to India. About 10,000 patients leave Kenya annually to seek cross border medical treatment at a cost of US\$10.8 million or about

Kshs10 billion every year. The age disparity varies from three weeks to 84 years old people, and females are slightly dominating as far as gender is concerned. The most preferred destination for Kenya is India at 96 per cent and 4 per cent in the rest of the world with private facility referrals at 81 per cent and public sector referral at 19 per cent.

The disciplines under which we referred from Kenya are: Oncology 37 per cent, Renal 21 per cent, Cardiology and Heart, 19 per cent, Elective Surgical Procedures and others 23 percent. The indications which medical referral usually happen both domestic and international is surgical oncology, radiation oncology, medical oncology with comprehensive cancer care, cardiac surgery, both paediatric and adult, open heart surgery, transplant surgery, that is kidney, liver, cornea, heart, advanced neuro and spine surgery and the advanced reference medical laboratory facilities. We are still sending so many body fluids outside the country and continent.

The disadvantages of cross border and international referrals include repetition of workable diagnostics, logistic challenges with the international travel for sick persons, lack of proper knowledge and information about the credibility of the treating doctors, facilities and personnel, middlemen, common misguidance and vested interests that impact negatively on the patients, lack of emotional and moral support from the family and relatives, poor statement because of miscommunication or no communication between both ends, post procedural complications on arrival if not well managed, fraudulent practices when people present themselves falsely as the patients at the expense of the National Hospital Insurance Fund (NHIF), ministries and parastatals of the Government of Kenya.

The advantages of emerging hired medical practice to prevent cross border or international referrals are as follows. Kenya is emerging as a global medical tourism destination and as the leader in Africa. Major resource and revenue quantity sources can be utilised to develop health infrastructure, health education, skills and manufacturing of health products, drugs, equipment and furniture.

The multinationals will be attracted to choose Kenya as their headquarters for their continental offices and operations. Kenya will contribute substantial input in the field of medical research. It will ensure reduction in cross border brain drain rather than brain gain, for both nationals and international personalities.

On the pandemic effect on medical tourism, it is highly discouraging that medical tourism and referrals will be limited and discouraged because of the following reasons:

- (a) Very little is known about referral destined countries as far as the pandemic is concerned.
- (b) Protocols and Standard Operating Procedures (SOPs) managing the virus in respective countries might not be similar to another country.
- (c) Temporary frequent and cross border international travel particularly to the health facility with the front runner health personality is extremely dangerous.
- (d) There might be reluctance, delay and very many obstacles because of technical and bureaucratic perspectives of the pandemic.

The protocols and the SOPs to control medical referrals without abuse. Through this Bill, the Ministry of Health (MOH) shall have a SOP and protocol for medical referrals. There should be proper indication for patients who could be referred on the basis of non-availability of infrastructure, skills, equipment and facilities. There should be proper vetting and selection criteria by MOH in conjunction with the Kenya Medical Practitioners and Dentist Board (KMPDB) and the NHIF to establish the integrity and credibility with international accredited health facilities and doctors where the patients are being referred with the help of bilateral diplomatic missions. All

patients who are referred should be properly vetted by a specialised technical authoritative board or committee for documentation to avoid fraudulence. The foreign medical referral hospitals should be determined by or selected by the Kenya Government on the basis of competitiveness of the international ...

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Mishra, I hope you are concluding.

**Hon. Swarup Mishra** (Kesses, JP): Certainly. I am almost. The potential of Kenya as a preferred medical tourism destination is its geographical location of connectivity by road, air and water, high skilled personnel availability, growing health education, advanced health policing with supplementary UHC and a mature democracy with political stability.

With those few conclusive remarks, I hope that if and when these amendments are passed, the CS Health shall put in place the necessary statutory instruments to help realise the very noble intentions of these amendments. I wish to thank the Chairperson, Members and staff of the Departmental Committee on Health for the facilitation, expertise, consultation and stakeholder engagement during the pre-publication scrutiny of this legislative proposal culminating in the proposed amendment and after the Bill was formally committed to the Committee upon being read the First Time.

As I conclude, I request Hon. Caleb Hamisi, the Member of Parliament for Saboti, to second this Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Mishra, you need to put it on record that you are moving.

**Hon. Swarup Mishra** (Kesses, JP): Yes. I beg to move and as I conclude, I request Hon. Caleb Hamisi, the Member of Parliament for Saboti, to second this Bill.

**Hon. Caleb Luyai** (Saboti, ODM): Thank you, Hon. Temporary Deputy Speaker for giving me the time to second this Health (Amendment) Bill 2019.

Hon. Temporary Deputy Speaker, from the Constitution, in the Bill of Rights, everyone has the right to...

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon Hamisi, please take note that you only have five minutes.

**Hon. Caleb Luyai** (Saboti, ODM): Yes, Hon. Temporary Deputy Speaker. From the Constitution, it is stipulated that every Kenyan citizen has the right to the highest attainable standards of health. It is a fundamental duty of the State to observe, respect and promote this important right. With the special interest as a Parliament of peoples' representatives, it is imperative upon us to legislate the best way to enable the highest attainment of these standards. If you look at this Amendment Bill with special interest on Clause 4, it states:

‘A public health facility that refers a patient to a health institution outside the country shall ensure that adequate consultations are undertaken with the Kenyan mission in the country in which the referral is made to establish the credibility of the health institution.’

Hon. Temporary Deputy Speaker, many times, we have heard families undergoing enormous loses of resources and sometimes loved ones because, in the process of seeking treatment abroad, they fall in the hands of rogue institutions and doctors without credibility or even rogue middlemen. We have had embassies coming in to help just at the tail end after the families have suffered resources and loss of their loved ones. So, when we make it a mandatory requirement for consultation with the Kenyan mission, it will leverage some of these loses and ensure that our embassies and missions are well coordinated and aware of the cases that are taken as referrals.

Secondly, this Bill also gives the mandate to the Health CS to develop policy guidelines in consultation with stakeholders in the health sector, something that has not been happening previously. Consulting with the other health sectors that are more experienced ensures best available options are observed and adhered to, which will ultimately give better results.

With those few remarks, and because of the time since I have too many points which we shall deliberate on further during the debate, I now beg to second the Health (Amendment) Bill 2019. I thank you.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuyu): Let us have Hon. Wakhungu Wamalwa.

**Hon. (Dr.) Chris Wamalwa** (Kiminini, FORD-K): Thank you, Hon. Temporary Deputy Speaker for granting me this opportunity. First and foremost, I want to thank Dr. Mishra for bringing this wonderful Amendment Bill.

I rise to support the need to develop a policy guideline in terms of referral cases. Many a times, the many conditions referred to India like heart surgery and matters oncology can be handled locally. If there is a policy guideline, it will guide. This is because in any case, if a matter can be handled here, there is no point of going to India, Israel or Germany. Kenya has invested heavily on the infrastructure as far as the health system is concerned.

At times, the costs incurred are too high when you put together the air ticket and accommodation. Overall, it becomes more expensive than being treated locally. When it comes to management of oncological matters of cancer, it has stages one, two, three and four. When a cancer matter has reached advanced stages like stage four, there is no need for referral. But you find referrals because of ignorance around this and unscrupulous middle people who want to make money.

I have been to India on matters of health care check-ups. It is more costly there than being handled here competitively. Many a times, when patients go aboard, even the local missions in that foreign country are not aware. If in one way or another, by bad luck the person passes away, that becomes a very difficult burden for the family and a lot of stress on how to bring the body back. This is because we have unscrupulous business people in this country who are colluding with some hospitals abroad in a fraudulent manner.

It is important as we make a policy guideline to involve key stakeholders like the Kenya Medical Practitioners and Dentists Board (KMPDB) on matters like oncology, cardiological matters like heart surgery or gynaecological cases. Maybe, we should have the input of the Kenya Obstetrical and Gynaecological Society because many people are being referred out of ignorance.

I have had opportunities to attend Harambee of patients going abroad, but ignorantly, because they are being blackmailed or confused by the middlemen. Only later on after consultations, they find such a matter can be done in Moi Teaching and Referral Hospital (MTRH) or Kenyatta National Hospital (KNH) or some private hospitals like Mediheal Hospital. I have been to Mediheal hospital and patients from my county go there. In the long run, they decide to go abroad, but after seeking a second opinion, they realize that in this country, we have local investors who have brought those machines here. So, they can be treated here with their family without incurring the air costs.

This is, indeed, very important and this Bill was long overdue. It should be amended so that we can have a policy guideline and a clear framework that nobody will just go for treatment

abroad. When this policy guideline is put in place, it will also put Kenya as a medical tourism destination. If we do this, there will be more benefits locally in terms of contributing to the economy.

Thank you, Hon. Temporary Deputy Speaker. I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Sheikh, you have the Floor.

**Hon. Mohamed Mohamud** (Wajir South, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to support the Health (Amendment) Bill (National Assembly Bill No.64 of 2019). I want to thank Hon. Mishra for bringing this matter up. This is a crucial and important Amendment Bill. This is because the health of our society is paramount and a prerogative of our legislative service to our community.

This is an important Bill because the reason why our patients are referred out of this country is in order to get the support they have failed to get from this country. This country has failed communities when it comes to health over the years. It costs us United States of America (USA) dollars \$11 million which is equivalent to Kshs1.1 billion that is spent by Kenyans every year on health tourism.

I support this Bill, but it makes me wonder why our health services remain at perils and does not provide the sufficiency required by the community. In our health systems, we have levels one, two, three, four, five and six hospitals. Level one is community health services, level two is dispensaries, level three is health centres, level four is county health services, and level five is county referral services while level six is tertiary referral institutions.

What I want to take over at this stage and consider more is the level six hospitals which are tertiary referral hospitals. In Kenya, we have about four teaching, research and referral hospitals. They are KNH, MTRH, Mathari National Teaching and Referral Hospital and National Spinal Injury Hospital. These are referral hospitals where patients are referred from counties and brought to major cities like Nairobi and Eldoret.

What makes me wonder is why those institutions are not well serviced, supported and cannot deliver what is required. On top of that, we have competent health facilities such as the Aga Khan University Hospital and faith-based institutions such as MP Shah Hospital and Mater Misericordiae Hospital. Those are institutions that can be supported to ensure our patients do not necessarily get into debt. It costs them considerable amount of money to travel overseas where they spend money which they can easily save.

Article 43(1)(a) of the Constitution stipulates that every Kenyan should get the highest standard of health. Why is that not provided in this country. I wonder what the Ministry can give on this. It is very important for the Ministry to take considerable number of steps. My people from Wajir South endure a lot of suffering when it comes to travelling all the way from the rural area to Nairobi and then travel overseas. For them to get their passports and other documents is another critical matter.

I support this Bill because it will provide the checks and balances required to ensure institutions in Kenya are able to support patients who should be treated and supported in this place. We do not want to see further poverty. I support.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Let us now have the Member for Kathiani, Hon. Mbui.

**Hon. Robert Mbui** (Kathiani, WDM-K): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. I rise to support the Amendment Bill by my colleague Hon. Mishra of Kesses.

My colleague says we take few minutes so that we can all get an opportunity. I think this is a brilliant idea because we are looking at ways of providing policy guidelines for referral of patients. What has been happening in the past is that anybody from anywhere chooses where to go, how to go and when to go. That is why it is important for us to come up with a policy. I would like to point out a few things which, maybe, we need to look into.

The first one, which I agree with, is that it is important to consult with the medical practitioners' board. But when you talk about consulting with NHIF, why have you left out the possibility that some of those people may actually be insured under private cover? I think it is also important that this guideline is not just for people that are being treated in public hospitals.

The other issue is this: You said that we have to ensure that these facilities that they go to have adequate facilities, personnel and medicaments. But then you still propose that we use the Kenyan embassies abroad to be the ones that determine whether they are capable. I do not know whether they really have the capacity to do that. I think it is important that you align that.

Kenya has this slogan: Buy Kenya, build Kenya. If we encourage people to be referred to external hospitals, then we are killing the country. We need to improve our infrastructure and the training of our medical personnel so that we can ensure that Kenyans can be treated here and get the very best healthcare possible in the world with their own doctors in this country.

In conclusion, I think the biggest problem we are facing in this country in the health sector is the issue of corruption. This is because we have been having a fight in Afya House for the longest time possible. Year in, year out, there is always scandals in that ministry. I do not know whether we are going to be able to achieve the dream of people that have good health with that kind of leadership in that Ministry.

I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Let us have Hon. Mabona Millie. I can hear Members here are requesting to use the nine minutes equitably amongst the three of you.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker. I will try and speak very quickly so that the other Members can have time. I wish to support but with a bit of caution. What I would want to say is that Coronavirus has taught us something that if we have not learnt as a country or as the world, then we are fools. We need to focus on socio-economic rights especially on issues of health, education and nutrition. On health, we have actually shown that there is a county that built an ICU unit within one month. Counties are going around trying to build hospitals and ICU units and put alternative centres. So, it is a good thing to ensure that we build our health facilities within the country so that we do not have to go out of the country.

I thank the Mover. He actually knows my brother was sick and was actually almost going for a transplant in this hospital. When he had come back from the US, he was supposed to go to India. Then I was told we have facilities in Kenya. He ended up at Moi Teaching and Referral Hospital (MTRH) and he actually underwent a very successful kidney transplant. The challenge is that if you look at the facilities at MTRH, even though we have doctors, you will realise that they are not good. So, what we need to do is to allocate money for the purchase of better facilities.

My only concern with this Bill is that we must make sure that we provide for going out of the country despite those provisions or the policy regulations that we want to put up. There should

still be freedom of choice and we cannot limit that and if you want to limit, we must do it constitutionally.

Otherwise, I support. Thank you for bringing this Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. (Dr.) Makali Mulu, it is your chance.

**Hon. (Dr.) Makali Mulu** (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Speaker. I want to assure Dr. Nyikal that I will spare a minute for him. He is actually an expert in this area. I will only talk for one minute. I thank the Mover of this Bill. For me, this should have happened when we were doing the main Health Bill. When we passed the main Health Act, this should have been part of that. I thank the Mover for coming up with this amendment because it is going to help this country.

Many Kenyans are travelling outside the country to seek medical help and, more so, to India. Truth be told, some of the diseases that are taking them out there can easily be treated here. So, I think this Bill is important. I just want to make two observations. I agree with Hon. Millie. Even as we pass this law, it is important that we do not restrict people from freedom of choice so that if you want to go out there, you can go.

The second point is also our health personnel or the experts must also break some of these cartels they have formed where they take our own people round because they are making money without caring what they are doing to their families. We have seen situations where they have reached a point where they cannot go beyond, but they cannot advise you to seek alternative or a second opinion because they want to continue making money out of you. So, even as we push this, Hon. Mishra, even you as health professionals – because I know you are one of them – in terms of morals, we also need to have our gain so that we do not really mess Kenyans and make them poorer.

I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Let us hear the Member for Seme.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill. International referral of patients is rampant in this country, and as Members have said, there are many times that people go out for what can be treated here; where we have the skill and where you even have the equipment. So, there is need for regulation. This need for regulation is basically to protect the patient. One, to make sure that they get quality care where they go. Not all patients who go out get the kind of care they are thinking about. We also have to protect them from cartels. It is true people have set up institutions that are actually just referring patients for gain. They get a commission for the patients they refer. They have even involved airlines and hotels. We need to protect people against that.

As my colleague has said, let us also admit it that some professionals have got trapped into this. Therefore, it is important that we have some regulations. It is important that there is quality care. If you leave this country, the person who is referring you should be the person to ensure that they know what facility you are going to and the kind of professional that is going to see you. Right now, people are just get pamphlets and asked to choose where they want to go to. How does a patient know which facility to go and visit?

There is also need to ensure continuity. If you are referred outside the country, there are very few treatments that you are taken out of the country and it is the end of it. When you come back, there is need for follow-up and the best person to do the follow-up is the person or institution

that referred you out there. As it is now, people go and they come back and they do not know what to do.

We also have to protect the patients on cost. What makes people go outside is that it is supposed to be cheaper out there. But when you look at it in the long run, it may not be. We have tried in this country and we will try. When I was Director of Medical Services (DMS), we tried to ask: “Why is it to go outside, get surgery done, go and stay in a hotel, go with an airline and it is still cheaper than here? These are the issues that we really need to look into. The Bill addresses this fairly well, but I think there are areas we may need to look into. For example, in the body responsible for registration and licensing of medical practitioners and dentists, we also need to include facilities. So, the body that registers facilities needs to be included.

As the Hon. Member said, it is not only national hospital insurance that has actually been devolved, but we will also make amendments to involve the Insurance Regulatory Authority so that medical insurance is not abused. In fact, it may also be important to know people who are in schemes - even the national schemes - that the money is not spent because somebody else is paying. These are the things that need to be looked into.

We have said that we will have somebody in our foreign embassies. That will only work if we can determine which countries are most frequented. We can have medical attachés in those areas to help with this. It is used even in research relations and other relations in the health welfare. So, we can do that. In addition, the facility or doctor that refers the patients must also ensure that they will look after the patients, when the patient returns to this country. There is more to be said. This is a good thing, which we have talked on for a long time. Now it has come. I know the Ministry is even trying in a way to get it done administratively, but it is important to entrench this in law.

I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. (Dr.) James Nyikal, you have a balance of two minutes, which you can claim when we come back to it although you have concluded.

Hon. Swarup Mishra, I am hesitant to let you speak because we have considerable amount of time remaining on this Bill. Being the crucial Bill that it is, I would rather we leave it at that and then when we come back after recess, we can resume debate on it. I believe the Leader of the Majority Party will ensure that we prioritize and have Members get into more debate on this one. It is in your interest Hon. Swarup Mishra. In that regard, Hon. Members, we finish at that.

## ADJOURNMENT

Hon. Members, the time now being 7:01 p.m., this House stands adjourned until Tuesday, 8<sup>th</sup> September 2020 at 2:30 p.m.

The House rose at 7:01 p.m.