



**MZALENDO**



**EFFECTIVENESS OF  
PARLIAMENTARY  
COMMITTEES TOWARDS  
COVID-19 RESPONSE**

# **EFFECTIVENESS OF PARLIAMENTARY COMMITTEES TOWARDS COVID-19 RESPONSE**

SUBMITTED TO  
MZALENDO TRUST

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**REPORT**

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## ABBREVIATIONS

COVID-19:	Coronavirus Disease 2019
CSOs:	Civil Society Organizations
CS:	Cabinet Secretary
DPP:	Director of Public Prosecutions
EACC:	Ethics and Anti-Corruption Commission
FY:	Financial Year
FORD-K:	Forum of Restoration for Democracy-Kenya
GOK:	Government of Kenya
HPTs:	Health Products and Technologies
ICU:	Intensive Care Unit
KEMSA:	Kenya Medical Supplies Authority
KIIs:	Key Informant Interviews
MoH:	Ministry of Health
MT:	Mzalendo Trust
NA:	National Assembly
NERCC:	National Emergency Response Committee on Coronavirus
OCOB:	Office of Controller of Budget
ODM:	Orange Democratic Movement
PARLSCOM:	Parliamentary Service Commission
PAC:	Public Accounts Committee
PFMA:	Public Finance Management Act
PIC:	Public Investment Committee
PPADA:	Public Procurement and Asset Disposal Act
PPES:	Personal Protective Equipment
PPRA:	Public Procurement Regulatory Authority
PS:	Principal Secretary
SAGAs:	Semi-Autonomous Government Agencies
TI-K:	Transparency International-Kenya
UHC:	Universal Health Coverage
WHO:	World Health Organization

## ABOUT MZALENDO TRUST

Mzalendo ('Patriot' in Swahili) Trust is a Kenyan non-partisan Parliamentary Monitoring Organization started in 2005 and whose mission is to promote 'open, inclusive, and accountable Parliaments in Kenya and Africa.' We do so by creating and managing civic tech tools, producing evidence-based research, and leading and facilitating advocacy and partnerships with Parliaments, citizens and other relevant stakeholders. We believe that success in our work will build more effective and responsive legislation and political processes that ultimately support Kenya's national development goals.

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## EXECUTIVE SUMMARY

The study explored the wins, gaps and challenges of five selected Parliamentary committees in overseeing the Executive's management of COVID-19 pandemic: the Senate's Ad Hoc Committee on the COVID-19 situation in Kenya, the Senate Standing Health Committee, the National Assembly's Departmental Committee on Health, the Public Investment Committee (PIC) and the Public Accounts Committee (PAC).

Preliminary data indicates that all the five Parliamentary committees had clear mandate and terms of references to effectively make observations and recommendations. Apart from the Senate Ad Hoc Committee on the COVID-19 Situation in Kenya that witnessed abrupt leadership transition, the leadership in other Committees remain(ed) intact, thereby providing much needed stability for effective execution of their mandates. Remarkably, no other Committee member resigned, further sustaining institutional memory -albeit in short term- which is useful for ensuring effective execution of their mandates. The three Committees (the Senate Ad-Hoc Committee; the Senate Standing Committee and the National Assembly Departmental Committee on Health) adopted elaborate and systematic procedures effective in executing their mandates; however, this was undermined by a limited time frame, intermittent attendance of Committee sittings by some Parliamentarians and a lack of consensus among Committee members.

Although the views of stakeholders varied, thus far Parliamentarians have approved the Report of the Departmental Committee on Health, demonstrating that they perceived the works of the Committee as effective towards COVID-19 response. Given that these Parliamentary committees operate within the same environment, the study identified lack of political will in the implementation of the previous reports, Executive- Legislature relations and intra-elite distributive politics, the political economy of committee hearings, party politics and intra-elite rivalry, the conflict between the National Assembly and the Senate and sub-optimal technical expertise as some of the key factors that might have constrained Parliamentary committees towards Covid-19 response.

Arising from these observations, the study makes the following recommendations that may enhance effectiveness of the Parliamentary committees. One, Parliament, particularly the Senate, should increase its visibility in terms of availing records of its activities on the Parliamentary website so that the general public may easily access its works. Two, there is need for Parliamentarians to account for their non-attendance of committee sittings, including submission of authentic documentations from relevant authorities. Three, Standing Orders should be reviewed to explicitly show how many members must be present from both sides in the case of Joint Committee of the same House. Four, there is need for Parliament to utilize external experts knowledgeable on the subject matters. Five, Parliamentary committees could organize open days to freely engage with members of the public to narrow the gap between the two. Such a move might incentivize public's engagement with committee processes. Six, the leadership within Parliament should come up with programmes that reward the oversight activities of individuals and committees. Seven, there should be a follow up mechanism to allow those who participate in the deliberations hold the committee to account. Eight, there is need to diversify channels of disseminating Parliamentary works beyond websites and the media. These channels should be appropriate for marginalized people and people living with disabilities. Lastly, Civil Society Organizations (CSOs), such as Mzalendo Trust, could replicate their Annual Scorecard, which currently focusses on plenary proceedings, to cover committees work to as part of enhancing citizen oversight of Parliament.

As for the Executive (implementing Ministries), they should publish monthly reports on policy implementation including data and analysis on budget execution and performance, disaggregated by impact on disadvantaged groups, including women, persons with disability and youth. Procuring entities should disclose all details related to procurement contracts linked to COVID-19 spending wherever possible in open formats. With respect to political parties, there is need for political will among the leaders of political parties to reduce external inferences in Committees' work. In partnership with Parliament, CSOs should come up with advocacy programmes aimed at increasing public participation to enhance awareness among citizens on the role of Parliamentary committees so as to neutralize public lethargy toward Parliament and its work. CSOs should come up with programmes that reward the oversight activities of Parliamentarians within committees, akin to Mzalendo's Shujaz Award that focus on public interest legislation. CSOs should also identify strategic persons/champions in Parliament and county assemblies (more friendly MPs/MCA, clerks) and work closely with them on specific issue of public interest. Media should promote accurate reporting of Parliamentary affairs and enhance capacity among journalists in Parliamentary procedures and processes. Finally, international donors supporting legislative programmes should pay greater attention on demanding for oversight from Parliament by availing material, technical and financial resources; availability so as to exercise autonomy and promote political will. International donors should bring together all relevant stakeholders to develop and adopt international norms and standards on managing fiscal policy in times of crisis, including ensuring adequate levels of accountability, and supporting governments in putting such norms and standards into practice.

## 1.0 BACKGROUND TO THE STUDY

Coronavirus (COVID-19) was first recorded in China in December 2019. On 30th January 2020, the World Health Organization (WHO) declared COVID-19 a public health emergency of international concern and later on 11th March 2020, the disease was declared a pandemic. In terms of transmission, the virus easily spreads from person to person, through contact with droplets produced by a person who is sneezing or coughing or contaminated surfaces or objects with infected persons exhibiting symptoms such as fever, cough, headache, body aches and difficulty in breathing. In response to the anxiety among Kenyans, on 2nd February 2020, the Ministry of Health (MoH) issued a press statement, assuring the public that necessary surveillance and monitoring systems had been put in place in the country to avoid having the virus imported into the country. Additionally, the MoH advised members of the public to *“maintain basic hand and respiratory hygiene, and safe food practices; avoid close contact with people suffering from acute respiratory infections; in addition, anyone showing symptoms of respiratory illness such as fever, coughing, difficulty in breathing and sneezing with a history of recent travel to China was advised to go to the nearest health facility for assessment and prompt management.”*<sup>1</sup>

On 28th February 2020, President Uhuru Kenyatta issued Executive Order No. 2 of 2020 establishing the National Emergency Response Committee on Coronavirus (NERCC) chaired by the Cabinet Secretary of Health.<sup>2</sup> This Committee would incorporate the Cabinet’s Ad-Hoc Committee on Health and the Inter-Ministerial Committee on Government Response to the Coronavirus outbreak.

The President directed MoH to oversee the announcement of policy measures and behavioral protocols in response to the spread of the COVID-19 virus. Pursuant to the presidential directive, the CS, MoH and other MoH officials held press briefing on information related to the spread of the virus.<sup>3</sup> On 13th March 2020, the first confirmed case in Kenya was announced, and consequently the Government of Kenya (GoK) moved ahead to announce a number of regulations, curative and preventive measures aimed at controlling adverse effects of the disease.

The confirmation caused significant disruptions to the operations of the Parliament necessitating amendments to the rules of procedure to facilitate smooth operations of plenary and committee proceedings. The amendments sought to provide for hybrid meetings for committee and plenary sittings; mechanisms to determine attendance and quorum; recording and documentation of the virtual proceedings; issues of privileges and immunity; and mechanisms for access and admission of witnesses, stakeholders, media and members of the public in general.<sup>4</sup>

<sup>1</sup>Cited in, The Standing Committee on Health, Report on the Inquiry into allegations regarding irregularities in the procurement of various pharmaceutical equipment and products by the Kenya Medical Supplies Authority (KEMSA), p.24.

<sup>2</sup>Its terms of reference were as follows: (a) co-ordinate Kenya’s preparedness, prevention and response to the threat of the Coronavirus disease; (b) co-ordinate capacity building of medical personnel and other professionals, so as to enable the country respond quickly and effectively to any suspected cases or outbreak of the disease anywhere within the Republic; (c) enhance surveillance at all Ports/ Points of Entry in Kenya; (d) co-ordinate the preparation of national, county and private isolation and treatment facilities; (e) co-ordinate the supply of testing-kits, critical medical products/ supplies, pharmaceuticals, masks and other protective gear within the Republic; (f) conduct Economic Impact Assessments and develop mitigation strategies with regard to the disease; (g) co-ordinate both local and international technical, financial and human resource assistance efforts with development partners and key stakeholders; (h) formulate, enforce and review processes and requirements that regulate the entry into Kenya of any persons or class of persons known or suspected to have travelled from a Coronavirus affected area; and (i) conduct any other matter ancillary to or in furtherance of any the ToRs.

<sup>3</sup>This information included- (a) policy measures to be applied by relevant actors; (b) data on new cases of infection; (c) data on recovery of already infected patients; (d) protocols for avoiding infection by individual citizens and keeping the spread at a minimum; and (e) measures taken by the government in addressing the pandemic

<sup>4</sup>Paper presented by Mr. Peter Adika titled “overcoming the pandemic and building a better tomorrow: The Role of Parliament”, at a Seminar on Debate on the role and organization of Parliaments in a time of pandemic

On 31st March 2020, the Senate established the Ad Hoc Committee on the COVID-19 Situation in Kenya (hereafter 'the Senate Ad Hoc Committee') to oversight measures taken by the national and county governments in addressing the spread and effects of COVID-19. Given that COVID-19 pandemic emerged in the mid-stream of 2019/2020 financial year, the government moved ahead to reorganize its budget priorities in order to provide much needed resources in response to the pandemic. The National Assembly (NA)'s Budget and Appropriation Committee approved two supplementary budgets, paving way for allocation of funds for COVID-19 response. As part of its contribution to the pandemic, the NA provided Ksh. 3 billion, while the Executive announced a funding of Ksh. 26 billion to the MoH. The funds were channeled towards expansion of the number of beds in county hospitals, national referral facilities; payment of allowances of health workers and purchase of personal protective gears. On 16th April 2020 President Kenyatta directed the government to establish mechanisms for cushioning vulnerable Kenyans. Amidst this response, allegation of mismanagement of funds worth Ksh. 43. 6 billion at Kenya Medical Supply Authority (KEMSA) and misappropriation in various county governments emerged.

Following the allegations, in June, President Kenyatta gave an ultimatum of 30 days to the investigative agencies to come up with reports as to who was culpable for the misappropriation of the funds. In the same month, the Senate Standing Health Committee was authorized to investigate allegations regarding irregularities in the procurement of various pharmaceutical equipment and products by KEMSA. On 23rd July 2020, the Senate Health Committee requested the Auditor-General to conduct a special audit on accounts of KEMSA for the period 2017/2018 and utilization of COVID-19 funds by the 47 county governments. On 4th August 2020, the Senate Ad-Hoc Committee on COVID-19 Situation requested the Auditor-General to conduct special audit on the utilization of COVID-19 funds by county governments. On 31st August, the NA Public Investment Committee (PIC) requested the Auditor General to audit KEMSA procurement processes and utilization of COVID-19 funds. In the same month, the NA authorized the Departmental Committee on Health to look into how COVID-19 funds from the MOH were spent. Further, the Public Accounts Committee (PAC) ordered for special audit on utilization of COVID-19 funds by national government. Between 2nd and 5th October, 2020, the NA's Departmental Committee on Labour and Social Welfare went on a fact-finding visit on social protection measures put in place by the government in combating COVID-19 pandemic in the Coastal Region. Finally, the Senate County Public Accounts and Investment Committee considered the Auditor-General's report on utilization of COVID-19 funds in 47 county governments. Against this backdrop, this study therefore seeks to examine the effectiveness of selected (above) Parliamentary committees towards COVID-19 response. The study is part of Mzalendo Trust's broader governance programme aimed at auditing institutional effectiveness towards upholding accountability in the management of public resources.

## 2.0 OBJECTIVE OF THE STUDY

The wins, gaps and challenges of Parliamentary committees in oversighting the Executive's response towards COVID-19 pandemic were systematically examined alongside the following specific questions:

- What were the formal powers of the Parliamentary committees?
- What was the composition of the Parliamentary committees?
- What processes and procedures were followed and what were the outputs of the Parliamentary committees in executing their mandates?
- How was the performance of the Parliamentary committees perceived by different relevant stakeholders?
- What challenges constrained the performance of the Parliamentary committees?

The findings of the above questions informed the study's recommendations.

### **3.0 METHODOLOGY**

Primary and secondary data-gathering methods were used to examine purposively sampled Parliamentary committees. The general approach was to review committees' work in relations to COVID-19 pandemic. Firstly, a content analysis of the relevant provisions of the Constitution of Kenya, 2010; enabling Acts; Resolutions of the two Houses (the NA and Senate); established conventions, traditions and practices; Standing Orders of the two Houses, Reports of the selected Parliamentary Committees and Hansard Reports was undertaken in response to the study objectives. Secondly, a process tracing of the processes and procedures in conducting investigations by the selected committees from their inception, committees' hearings, submission of reports and adoption of the Reports by the two Houses was carried out. Thirdly, to supplement secondary data key informant interviews were conducted with key stakeholders as shown in Table 1.

**Table 1: Schedule of Key Informants**

No	Stakeholders	Justification	Empirical data collected
1.	Bureaucrats in the MoH	Some bureaucrats are likely to have views that are different from those presented by top officials before the committees, thereby influencing their approval and implementation of the report.	<ul style="list-style-type: none"> <li>❖ Data on whether the bureaucrats approved the committees' works,</li> <li>❖ The extent to which bureaucrats have implemented any of the recommendations of the selected Parliamentary committees.</li> <li>❖ Specific recommendations to enhance the performance of committees</li> </ul>
2.	A sample of members of Parliament not part of the membership of the selected Parliamentary committees considered in the study; Parliamentary staff	Members of the selected Parliamentary committees may generally find their work very satisfying. Therefore, any information drawing on their opinion pertaining their performance may be subjective. Parliamentary staff are uniquely positioned to evaluate the performance of Parliamentary institutions given their involvement in the daily business of the Parliament.	<ul style="list-style-type: none"> <li>❖ Hansard was used as a proxy to collect data to determine whether any Parliamentarians positively referred to a committee report when tabled before the House.</li> <li>❖ The views of committee members were excluded.</li> <li>❖ Specific recommendations to improve performance of committees.</li> </ul>
3.	Civil society organizations and interest groups	These groups are well versed with governance and democracy issues in the country. Most of them are detached from the party political conflicts that may affect effectiveness measures involving the Government and the legislature. They are probably closest to the ideal of an impartial, regularly informed observer.	<ul style="list-style-type: none"> <li>❖ Data on the extent of support on the committees' work and whether they approved them.</li> <li>❖ Specific recommendations to improve performance of committees</li> </ul>
4.	A sample of members of public	They are the final authority in a robust democracy.	<ul style="list-style-type: none"> <li>❖ Data on whether citizens knew about COVID-19 related corruption; whether citizens knew that a committee was authorized to investigate, and finally whether citizens approved of the committee's report or its views.</li> </ul>

With regard to representatives of civil society organizations, interest groups and members of the public, the researcher used a list of participants<sup>5</sup> that made written and oral submissions to the Senate Ad Hoc Committee as a guide in selecting organizations and individuals who participated in the committees' proceedings.<sup>6</sup> The researcher sent the following text message to the target respondents:

*“Good Morning/Afternoon/Evening. On xx April 2020, you made submission to the Senate Ad Hoc Committees on the COVID-19 Situation in Kenya. I am currently conducting research on behalf of Mzalendo Trust on the Effectiveness of Parliamentary Committees towards COVID-19 response. I would be grateful to know your perspectives on their performance especially with regard to their processes, observations and recommendations made and what kind of recommendations you would suggest to improve the performance of committees in general”.*

Some target respondents immediately responded to the text, some requested for more time, some directed that we extend conversion to email. Collected data was analyzed following framework of analysis outlined in the next section. Some of the limitations of the study include: First, conceptually different committees specialize in different tasks, therefore any attempt at an aggregate assessment of effectiveness can be leading. Second, at the time of writing this report, as shown in Table 2, the selected Parliamentary committees were at different stages of their works, therefore making it difficult to perform comparative analysis.

**Table 2: Status of the selected Parliamentary committees**

Committee	Committee Hearings	Committee Report	Adoption of the Report
Senate Ad Hoc Committee on COVID-19 Situation in Kenya	Concluded	Tabled eight progress reports	Yet to be adopted
Senate Standing Committee on Health	Concluded	Committee report tabled	Yet to be adopted
The National Assembly Departmental Health	Concluded	Committee report tabled	Adopted
Public Investment Committee	In progress (Considering Special Audit Report on the utilization of funds at KEMSA)	NA	NA
Public Accounts Committee	In progress (Considering Special Audit Report on the Utilization of Covid fund by national government)	NA	NA

Third, it is important to note that the two Houses have different record keeping protocols, thus making data collection a challenge. While the NA promptly avails the Reports of Parliamentary Committees, this is not the case for the Senate. Fourth, although the researchers used the 1st Progress Report of Senate Ad Hoc Committee on COVID-19 situation in Kenya as a guide to select target respondents (representatives of CSOs, interest groups and members of public), some of the target respondents were not familiar with other committees' work.

<sup>5</sup> In line with the Data Protection Act of 2019, the researcher informed the target respondents about the source of their personal data and the objectives of the study.

<sup>6</sup>3rd Progress Report, The Senate Ad Hoc Committee on COVID-19 Situation in Kenya.

#### 4.0 A FRAMEWORK FOR ANALYZING THE EFFECTIVENESS OF PARLIAMENTARY COMMITTEES

Evaluating the effectiveness of Parliamentary committees is not a straight forward exercise because of the complex internal and external environments in which legislative committees operate. Strictly speaking, the impact of committees may be hard to identify and quantify. According to Burnell, a logical place to start is with the aims and objectives as formally laid down by the instruments of authorization.<sup>7</sup> Building on this McGee<sup>8</sup> and Pelizzo et al<sup>9</sup> identified formal powers, composition and processes and procedures as key success factors. Accordingly, in reference to the select Parliamentary committees' response towards COVID-19, the framework guiding analysis proceeds as follows:

- The formal powers of committees was discerned from the perspectives of their mandates and terms of references.
- The composition of committees was discerned from their leadership and membership.
- Processes procedures and outputs of committees were discerned from how the committees executed their works (methodology adopted), especially the capacity of the committees to hold meeting with key stakeholders, summon key witnesses and conduct site visits; attendance of committee sittings, and adoption of the reports.
- Given that committee work is essentially a political process where groups are competing to push for their political views, the objective assessment of the effectiveness of the committee performance (based on the three formal structures) was drawn from the subjective views of key informants identified in Table 1.<sup>10</sup> Monk argues that "a committee can demonstrate that one of its activities or reports has performed positively if at least one of its relevant groups demonstrates approval of it".<sup>11</sup>

#### 5.0 PARLIAMENTARY COMMITTEES IN THE KENYAN CONTEXT

Article 93 of the Constitution of Kenya 2010, establishes a bicameral Parliament of Kenya comprising; the NA and the Senate (the two Houses). Article 95 of the Constitution mandates the NA to, among other functions, oversight State organs and deliberate issues of concern to the people, while Article 96 mandates the Senate to represent the interests of the counties, and protect the interest of the counties and their governments at national level. Article 124 of the Constitution allows each House of Parliament to establish committees and make Standing Orders for the orderly conduct of proceedings at the sittings of both the plenary and the committees

Parliamentary committees operate in accordance with the provisions of; the Constitution of Kenya, 2010; the Standing Orders; enabling Acts e.g. the Parliamentary (Powers and Privileges) Act, 2017; resolutions of the two Houses and established conventions, traditions and practices. The committees are facilitated in conducting their work by the Parliamentary Service Commission (PARLSCOM), established by the Constitution under Article 127.

Committees are a vital artery in Parliamentary activities. They allow Parliament to organize its work in such a way as to perform numerous activities concurrently and timely. These include matters such as: reviewing

<sup>7</sup>Burnell, P. (2002). Parliamentary Committees in Zambia's Third Republic: Partial reforms; unfinished agenda, *Journal of Southern African Studies*, 28(2):291-313.

<sup>8</sup>McGee, D. (2002), *The Overseers: Public Accounts Committees and Public Spending* (Pluto Press).

<sup>9</sup> Pelizzo, R., Stapenhurst, R., Sahgal, V. and Woodley, W. (2006), What makes public accounts committees work? A comparative analysis. *Politics and Policy*, 34, 4, p. 774.

<sup>10</sup>David Monk (2010) "A Framework for Evaluating the Performance of Committees in Westminster Parliaments", *The Journal of Legislative Studies*, 16:1, p.6.

<sup>11</sup>Ibid, p. 2.



legislation; reviewing and approving the budget and expenditures for the execution of governance; scrutinizing governance activities, policies and programmes; assessing whether they meet the intended objectives of legislation, policy frameworks and development plans; conducting investigations on special issues; vetting and approving Executive appointments; and providing a platform for public participation in the execution of specified business. Committees enable the public to meaningfully engage with Parliamentary process thereby legitimizing the operations of Parliament. It is a forum for Parliamentarians to interact with the public and relevant stakeholders in the work of Parliament. Committees hold hearings and meetings that provide the democratic opportunity for various interest groups with varied expertise, to participate by presenting their views on a range of issues. They also perform functions which the House is not fitted to perform in its corporate form, such as: summoning persons to present oral evidence and written memoranda or documents; sitting as frequently as is desirable (including sitting away from the precincts of their respective Houses and for longer hours); providing an environment that can facilitate presentation of details, sifting through evidence and formulating reasoned conclusions, consistent with both the statutes and procedures; conducting inspection tours, inquiry on matters out of which reports with recommendations are submitted to their respective House; and, forming sub-committees for the effective and efficient discharge of varied issues within the mandate of the committees.

Each of the two Houses has its own distinct committee system. The NA has three main types of Committees- Departmental Committees, Financial and Audit Committees, and Select Committees. At the beginning of the 12th Parliament (2017–2022), the NA established 15 Departmental Committees corresponding with various line ministries in the Executive.<sup>12</sup> It also established Financial and Audit Committees, including the Budget and Appropriations Committee, Public Accounts Committee (PAC), Public Investments Committee (PIC), Special Funds Accounts Committee, and the Committee on Mediation. Finally, the NA maintains a number of Select Committees in line with its Standing Orders.<sup>13</sup> Senate, on the other hand, has five general types of Committees: House Keeping Committees, Standing Committees, Sessional Committees, Joint Parliamentary Committees, and Special/ Ad hoc Committees. The House Keeping Committees include Senate Business Committee; Procedures and Rules Committee and Liaison Committee. The Standing Committees are established to deal with the subject matters respectively assigned to them.<sup>14</sup> The Sessional Committee include Sessional Committee on County Public Accounts and Investments and Sessional Committee on Delegated Legislation. The Fourth Schedule of the Senate Standing Orders paves way for the formation of Joint Committees of Parliament. The Ad Hoc Committees are established to investigate specific matters as provided by the Constitution, Statutes or Resolution of Senate, for a specified period, after which their mandate or tenure expires upon submission of a report to the Senate.

<sup>12</sup>These included, Administration & National Security; Agriculture & Livestock; Communication, Information & Innovation; Defense & Foreign Relation; Education & Research; Energy; Environment and Natural Resources; Finance and National Planning; Health; Justice and Legal Affairs; Labor and Social Welfare; Lands; Sports, Culture and Tourism; Trade, Industry and Cooperatives; and Transport, Public Works & Housing. Being fewer than the actual ministries in the Executive branch, some Committees had overlapping jurisdiction across ministries. The Executive branch had 22 ministerial positions covering the Office of the Attorney General; Industrialization, Trade and Enterprise Development; Education, Environment and Forestry; Health, Labor and Social Services; Foreign Affairs; National Treasury and Planning; Public Service and Gender Affairs; Tourism and Wildlife; Agriculture, Livestock, Fisheries and Cooperatives; Energy; Petroleum and Mining; Lands; East African Community and Northern Corridor Development; Defense; Interior and Coordination of National Government; and Water, Sanitation and Irrigation.

<sup>13</sup> These Committees exist during the duration of a legislative session, and include the House Business Committee; Committee on Appointments; Committee on Delegated Legislation; Committee on Implementation; Committee of Powers and Privileges; Committee on Regional Integration; Committee on Selection; Constituencies Development Committee; Constitutional Implementation Oversight Committee; Liaison Committee; Members Services & Facilities Committee; National Cohesion and Equal Opportunity Committee; Parliamentary Broadcasting and Library Committee; and Procedure and House Rules Committee.

<sup>14</sup> These include: Agriculture, Livestock and Fisheries; Education; Information Communication and Technology; Roads and Transportation; Energy; Finance and Budget; Health; Justice, Legal Affairs and Human Rights; Devolution and Intergovernmental Relations; Labour and Social Welfare; Lands, Environment and Natural Resources; National Cohesion; Equal Opportunity and Regional Integration; National Security and Foreign Relations and Tourism, Trade and Industrialization.

In terms of management and administration, the Committee work is subject to plenary oversight and is strictly regulated by the Speaker.<sup>15</sup> Intra-Committee organization reflects the balance of power among political parties within Parliament. Under the current Constitutional framework, Chairs of Committees typically come from the majority party while the Chairs of oversight Committees are drawn from the minority party. The Chair presides over the sitting and plays a critical role in *determining the success, in terms of effectiveness*- before, during and after the sitting.

## 6.0 DATA ANALYSIS

This section presents findings and analysis of the selected Parliamentary committees towards COVID-19 response.

### 6.1 Formal Powers of Parliamentary Committees

#### ➤ *The Senate Ad-hoc Committee on the COVID-19 Situation in Kenya*

The Senate Ad-hoc Committee on the COVID-19 Situation in Kenya was established by a Senate Resolution at a sitting of the Senate held on 31st March, 2020. The Committee was mandated to oversight actions and measures taken by the national and county governments in addressing the spread and effects of the COVID-19 pandemic in Kenya and address the following, among other matters, provision of testing and medical equipment, including adequate ventilators in referral hospitals and in at least one public hospital in each county; provision of adequate isolation centres and Intensive Care Unit (ICU) facilities in each county; measures to ensure continuous supply of food and other essential commodities at affordable prices; measures to enable learners in educational institutions to continue with their studies; measures to ensure protection, safety and well-being of healthcare and other frontline workers; enhancement of capacity and flexible deployment of healthcare staff; financial assistance to vulnerable persons and groups; protection of residential and commercial tenants; establishment of a stimulus package for the Micro, Small and Medium sized Enterprises; easing of legislative and regulatory requirements for doing business; measures to protect employees from retrenchment and job losses; and uniform policies and procedures aimed at slowing and eventually stopping the spread of the virus.<sup>16</sup> The mandate of the Ad hoc Committee on the Covid-19 Situation lapsed on 30th October, 2020. According to the interviewed Parliamentary staff, the formation of Ad-hoc Committee was commendable move, as COVID-19 issues were cross-cutting and therefore the Committee was able to consider various issues affected by the pandemic.<sup>17</sup>

#### ➤ *The Senate Standing Committee on Health*

The Senate Standing Committee on Health is mandated under the Second Schedule of the Standing Orders (fourth edition) to consider all matters relating to medical services, public health and sanitation. Accordingly, in accordance with the Standing Order 187 (1), the Senate Standing Committee on Health was mandated on 24th June 2020 during the Fourth Session of the Twelfth Parliament to inquire into various allegations of procurement irregularities at KEMSA involving several companies during the financial years 2017/2018 to 2019/2020 and concerns raised by county governments and health worker unions regarding the quality and cost of goods supplied by KEMSA in relation to the COVID-19 pandemic, particularly Personal Protective Equipment (PPEs).<sup>18</sup>

<sup>15</sup>Standing Order 166 stipulates that Committees should 'not consider any matter other than a matter which has been referred to it or which it is required by these Standing Orders to consider'

<sup>16</sup>The Senate Ad-hoc Committee on the COVID-19 situation, p.2.

<sup>17</sup>Personal interviews, Two Parliamentary staff on 18th June 2021 and 1st July 2021.

<sup>18</sup>The Standing Committee on Health, Report on the Inquiry into allegations regarding irregularities in the procurement of various pharmaceutical equipment and products by the Kenya Medical Supplies Authority (KEMSA), pp.7-8.

At the 76th sitting of the Ad-hoc Committee on the COVID-19 Situation in Kenya held on 12th August 2020, the Ad Hoc Committee resolved to hold joint sittings with the Standing Committee on Health to inquire into the procurement irregularities at KEMSA specific to the COVID-19 pandemic. The Speaker approved the request in August 2020. The Standing Committee on Health and the Ad-hoc Committee sought to determine: the role of MoH in the procurement of medical supplies through KEMSA in its preparedness and response to COVID-19; the role of the KEMSA Board in the procurement of medical supplies in response to COVID-19; the extent to which KEMSA adhered to the Public Procurement and Asset Disposal Act (PPDA), 2015, and the Public Finance Management Act, 2012 in the procurement of medical supplies for purposes of COVID-19; whether there was value for money in the procurement of medical supplies through KEMSA; whether there were appropriate controls in place at KEMSA to prevent or detect material misstatements and other irregularities including fraud, corruption and other financial improprieties; the effectiveness of the warehousing and distribution system managed and implemented by KEMSA; the capacity of KEMSA to procure and deliver medical supplies during an emergency in an effective and efficient manner; and verification of the medical supplies procured by KEMSA to ensure that they met appropriate standards and quality.<sup>19</sup> On 15th September 2020, following consultations, the Joint Committee requested the Auditor-General to conduct a forensic audit on the procurements undertaken by KEMSA in response to COVID-19 pandemic. According to a Parliamentary fiscal analyst, any inquiry to do with value for money should be handled by financial and audit committees, and it is therefore not clear how the Senate Standing Committee was given this role.<sup>20</sup>

### ➤ *The National Assembly, Departmental Committee on Health*

The National Assembly Standing Order 216 establishes the Departmental Committee on Health, mandating it to, amongst others, investigate, inquire and report on all matters relating to the mandate, management, activities, administration, operation and estimates of the assigned ministr[y] [in this case Ministry of Health] and departments.” The committee identified the following four key areas in developing the terms of reference of the investigation:

1. Establish and evaluate the quantum amounts funds/monies from the GoK and development partners appropriated to the MoH towards the fight against the pandemic; and how these funds were allocated and used by various Semi-Autonomous Government Agencies (SAGAs), counties and other state departments.
2. Assess adherence to the Constitution of Kenya 2010 and the Public Finance Management Act, 2012 on the budgeting utilization of appropriated funds towards the fight against COVID-19 pandemic.
3. Adherence to the Public Procurement and Asset Disposal Act 2015 in the sourcing of COVID-19 related Health Products and Technologies (HPTs) and other items by the MoH and all agencies charged with fight against the pandemic.
4. Establish the status of all donations received by the GoK from well-wishers towards the fight against the pandemic, specifically donations received by the MoH.<sup>21</sup>

<sup>19</sup>Ibid, pp.22-23.

<sup>20</sup>Personal interview, National Assembly Policy Analyst, 18th June 2022.

<sup>21</sup>The National Assembly, The Departmental Committee on Health, Committee inquiry into the utilization of appropriated funds, for Covid-19 Pandemic to the Ministry of Health in 2019/2020 financial year with focus on Medical Supplies Authority, pp.5-6.

### ➤ *The National Assembly, Public Investment Committee*

Section 206 of the National Assembly Standing Orders establishes Public Investment Committee with the mandate to examine the working of the public investments on the basis of their audited reports and accounts. More specifically, it:

- (a) Examines the reports and accounts of the public investments;
- (b) Examines the reports, if any, of the Auditor General on the public investments; and
- (c) Examines, in the context of the autonomy and efficiency of the public investments, whether the affairs of the public investments, are being managed in accordance with sound financial or business principles and prudent commercial practices.

Accordingly, PIC ordered for an audit of misappropriation of funds at KESMA.

### ➤ *The National Assembly, Public Accounts Committee*

Section 205 (1) of the National Assembly Standing Orders provides for the Public Accounts Committee that is responsible for the examination of the accounts showing the appropriations of the sum voted by the House to meet the public expenditure and of such other accounts laid before the House as the Committee may think fit. Consequently, PAC ordered for a comprehensive forensic audit of the use of COVID-19 funds in the country.



Despite the above stated mandates and terms of references, it appears that some Parliamentarians are not clear on the roles of Committees. For example, on a point of order, one member sought clarification on the position of the National Assembly Departmental Committee on Health and PIC. He asked:

*There is an ongoing investigation by the Public Investments Committee (PIC) on matters that are about to be reported on [by the Departmental Committee on Health]...I am seeking your guidance as to whether we are in order, as a House, to receive this Committee's Report while we know that PIC may come up with contrary proposals to those that are in the Report of the Departmental Committee on Health.*<sup>22</sup>



The Speaker of the NA responded stating that:

*I want you to look at your Standing Orders. Look at the mandate of departmental committees and that of audit committees namely: Public Accounts Committee, Public Investments Committee and the Special Funds Accounts Committee. I am aware that in our Standing Orders, PIC is mandated inter alia to look into any reports including but not limited to reports from the Auditor-General and other audit reports. That mandate does not in any way interfere with the mandate of any other departmental committees, which also have the authority to inquire into any matter falling within their assigned dockets.*<sup>23</sup>

This misinterpretation of mandates of Parliamentary committees may constrain some Parliamentarians from contributing effectively to the Committee' work.

<sup>22</sup>National Assembly Debates, 26th November 2020, p. 19.

<sup>23</sup>National Assembly Debates, 26th November 2020, p. 20.

## 6.2 The Composition of Committees

### ➤ *The Senate Ad-hoc Committee on the COVID-19 Situation in Kenya*

The Committee comprised seven members as shown in Table 3.

**Table 3: Members of the Senate Ad-hoc Committee on the COVID-19 Situation in Kenya**

No.	Name	Responsibility	Political Party
1.	Sen. Johnston Sakaja Sen. (Arch.) Sylvia Mueni Kasanga	Chairperson Chairperson	Jubilee Nominated, WDM-K
2.	Sen. Mithika Linturi	Vice-Chairperson	Jubilee
3.	Sen. (Dr.) Michael Maling'a Mbito,	Member	Jubilee
4.	Sen. Erick Okong'o Omogeni,	Member	ODM
5.	Sen. (Dr.) Christopher Langat	Member	Jubilee
6.	Sen. Mwinyihaji Mohammed Faki	Member	ODM
7.	Sen. Abshiro Soka Halake	Member	Nominated

The Committee was initially headed by Nairobi Senator Hon. Johnston Sakaja from Jubilee Party. However, he left the Committee after he was arrested for flouting COVID-2019 protocols in the capital city.<sup>24</sup> Hon. Sakaja was replaced by Sylvia Mueni Kasanga, a nominated MP by Wiper Democratic Movement (WDM) Kenya. Hon. Sakaja's membership in the Committee was taken by Senator Mwinyihaji Mohammed Faki. This quick leadership transition and membership replacement enabled the Committee to continue with its work without interruption.

### ➤ *The Senate Standing Committee on Health*

The Committee comprises nine members as shown in Table 4. The Committee is headed by Trans-Nzoia County Senator Hon. Michael Mbito from Jubilee Party. Crucially, the Committee has two members (Prof. Samson Ongeru and Dr. Abdullahi Ali) with medical background- expertise useful for the Committee.

**Table 4: Members of the Senate Standing Committee on Health**

No.	Name	Responsibility	Political Party
1.	Sen. (Dr.) Michael Mbito	Chairperson	Jubilee
2.	Sen. Beth Mugo	Member	Jubilee
3.	Sen. (Prof.) Samson Ongeru	Member	ODM
4.	Sen. (Dr.) Abdullahi Ali	Member	ODM
5.	Sen. Beatrice Kwamboka	Member	Nominated, Jubilee
6.	Sen. Ledama Olekina	Member	ODM
7.	Sen. Fred Outa	Member	ODM
8.	Sen. Mary Seneta	Member	Nominated, Jubilee
9.	Sen. Millicent Omanga	Member	Nominated, Jubilee

### ➤ *The National Assembly Departmental Committee on Health*

The Committee comprises 19 members as shown in Table 5. It is headed by Hon. Sabina Chege of Jubilee Party- Muranga County Woman Representative. Crucially, the Committee has six members with medical background: Hon. James Nyikal, Hon. Eseli Simiyu, Hon. James Murgor, Hon. Mohammed Duale and Hon. Mohammud Sheikh. This represent almost a third of the Committee membership whose expertise might have served the Committee well, given the novelty of COVID-19 and general complex medical problems bedeviling the country.

**Table 5: The National Assembly Departmental Committee on Health**

No.	Name	Responsibility	Political Party
1.	Hon. Sabina Chege	Chairperson	Jubilee
2.	Hon. Joshua Kutuny	Vice-Chairperson	Jubilee
3.	Hon. (Dr.) Eseli Simiyu	Member	FORD-Kenya
4.	Hon. (Dr.) James Nyikal	Member	ODM
5.	Hon. Alfred Agoi	Member	ANC
6.	Hon. (Dr.) James K. Murgor	Member	Jubilee
7.	Hon. Muriuki Njagagua	Member	Jubilee
8.	Hon. Beatrice Adagala	Member	ANC
9.	Hon. (Dr.) Mohammed D. Duale	Member	KANU
10.	Hon. James Wamacukuru	Member	Jubilee
11.	Hon. (Prof.) Mohammud Sheikh	Member	Jubilee
12.	Hon. Gedion Ochanda	Member	ODM
13.	Hon. Sarah Puleta Korere	Member	Jubilee
14.	Hon. (Capt.) Ruweida Mohammed	Member	Jubilee
15.	Hon. Kipsengeret Koros	Member	Independent Party
16.	Hon. Martin Peters Owino	Member	ODM
17.	Hon. Joyce Ekai Emanikor	Member	Jubilee
18.	Hon. Said Hirabe	Member	FORD Kenya
19.	Hon. Tongoyo Gabriel Koshal	Member	CCM

➤ *The National Assembly Public Investment Committee*

The Committee comprises 17 members headed by Hon. Nassir Abdullswamad Shariff from Orange Democratic Party (ODM) and elected member of Mvita Constituency in Mombasa County as shown in Table 6.

**Table 6: Members of the National Assembly, Public Investment Committee**

No.	Name	Responsibility	Political Party
1.	Hon. Nassir Abdullswamad Shariff	Chairperson	ODM
2.	Hon. Ibrahim Ahmed Abdisalan	Vice-Chairperson	ODM
3.	Hon. Zachary Thuku Kwenya	Member	Jubilee
4.	Hon. Hassan Omar Mohamed Maalim	Member	(Economic Freedom Party (EFP)
5.	Hon. Wamacukuru James Githua Kamau	Member	Jubilee
6.	Hon. Raphael Bitta Wanjala	Member	ODM
7.	Hon. Babu Owino Paul Ongili	Member	ODM
8.	Hon. Katana Paul Kahindi	Member	ODM
9.	Hon. Garane Mohammed Hire	Member	Kenya African National Union (KANU)
10.	Hon. Julius Kibiwot Melly	Member	Jubilee
11.	Hon. Mishi Juma Mboko	Member	ODM
12.	Hon. Esther Muthoni Passaris	Member	ODM
13.	Hon. Joshua Kandie Chepyegon	Member	Jubilee
14.	Hon. Rahab Mukami Wachira	Member	Jubilee
15.	Hon. Mathias Robi Nyamabe	Member	Jubilee
16.	Hon. Antony Tom Oluoch	Member	ODM
17.	Hon. Rashid Kassim Amin	Member	WDM-K

### ➤ *The National Assembly Public Accounts Committee*

The Committee comprises 17 members headed by Hon. James Wandayi Opiyo from Orange Democratic Party (ODM), elected member of Ugunja Constituency in Siaya County as shown in Table 7.

**Table 7: Members of the National Assembly, Public Accounts Committee**

No.	Name	Responsibility	Political Party
1.	Hon. Wandayi James Opiyo	Chairperson	ODM
2.	Hon. Mbalu Jessica Nduku	Vice-Chairperson	WDM-K
3.	Hon. Nuh Junet Sheikh	Member	ODM
4.	Hon. Simiyu David Eseli	Member	FORD-Kenya
5.	Hon. Nakuleu Christopher Doye	Member	Jubilee
6.	Hon. Kingi Michael Theyah	Member	ODM
7.	Hon. Amolo Paul Otiende	Member	ODM
8.	Hon. Masara Peter Francis	Member	Independent
9.	Hon. Koske Gedion Kimutai	Member	Jubilee
10.	Hon. Muchira Michael Mwangi	Member	Jubilee
11.	Hon. Oundo Wilberforce Ojiambo	Member	ODM
12.	Hon. Obara Eve Akinyi	Member	ODM
13.	Hon. Mmbaya Justus Gesto	Member	ODM
14.	Hon. Duale Aden Bare	Member	Jubilee
15.	Hon. Hassan Amina Gedion	Member	EFP
16.	Hon. Abdullahi Bashir	Member	ODM
17.	Hon. Gachobe Samuel Kihuthia	Member	Jubilee

In sum, apart from the Senate Ad Hoc Committee on the COVID-19 Situation in Kenya that witnessed abrupt leadership transition, the leadership in other Committee remain intact, thereby providing much needed stability for effective execution of their mandates. Remarkably, no other Committee members resigned further sustaining institutional memory -albeit in short term- useful for ensuring effective execution of their mandates.

### 6.3 Processes, Procedures and Outputs by Select Parliamentary Committees

#### ➤ *The Senate Ad Hoc Committee on COVID-19 Situation in Kenya*

In line with its mandate, the Committee conducted seven sittings. The first sitting was held in the Senate Chamber; all other sittings were conducted online. The Committee developed a work plan and identified key stakeholders to engage with. Subsequently, the Committee held several meetings with stakeholders like Disability Forum of Kenya, Nairobi Citizen Assembly, Siaya County Civil Society Network, Siaya Muungano Network and African Platform for Social Protection among others. These meetings were important because the stakeholders came from different facets of society and the Ad Hoc Committee handled cross cutting issues.



The Committee clustered COVID-19 emerging issues into five thematic areas, namely health issues dealing with universal and community health, testing, quarantine, isolation centres, ICU facilities, human resources for health, drugs and supplies, role and engagement of county government and mental health; economic and finance issues encompassing macro-economic effects, impact on business trade facilitation and measures to cushion borrowers and financial institutions; social, public order and human rights issues dealing with protection for vulnerable persons and groups, protection of women and girls at risks of domestic abuse, measures to enable learners to continue with their studies, enforcement of the national wide curfew and restrictions on movement, access to justice and decongestion of prisons and remand facilities; access to food, water and other basic commodities issues dealing with measure to ensure the continuous protection and supply of food, water and other essential commodities; and support services and cross-cutting issues encompassing awareness creation on measures to prevent infection and combat stigmatization; the role of ICT in combating the COVID-19 pandemic.

For public participation, the Committee invited views and proposals from the general public through the two leading newspapers (Daily Nation and The Standard). Further, the Committee held meetings with National Coordination Committee on the Coronavirus and conducted site visits in a few counties like Isiolo, Kajiado and Kiambu. As resolved by the Senate, the Committee submitted eight progress reports<sup>25</sup> to the Senators and the country periodically, and submitted a final report upon conclusion of its engagement. On 4th August 2020, the Committee requested the Auditor-General to conduct a special audit of the utilization of COVID-19 funds by the 47 county governments. Although available progress reports indicate minutes of the Committee sitting, they however lacked evidence of adoption of the reports. Therefore, we do not know whether there was consensus in every progress report and perhaps how lack of consensus might have affected the effectiveness of the Committee.

### ➤ *The Senate Standing Committee on Health*

This Committee analyzed tender documentation and various reports on the procurements undertaken by KEMSA with respect to the COVID-19 related items and met with the Board and management of KEMSA and various stakeholders and investigative agencies. The Committee also conducted field visits like a few counties like Nairobi, Kajiado and Kiambu; deliberative meeting sessions; and identified the companies that had been awarded tenders by KEMSA and further developed a sample from the list of suppliers provided by KEMSA in order to determine a representative sample from whom information was sought and some of whom who also appeared before the Committee to respond to various issues identified by the Committee with respect to the tenders awarded to them by KEMSA. On 23rd July 2020, the Committee requested the Auditor-General to conduct a special audit on accounts of KEMSA for the period 2017/2018 and utilization of COVID-19 funds by the 47 county governments. Although the Report of the Committee underscored challenge faced by county governments in the procurement of medical supplies, it is not clear whether site visits included all the county governments given time constrains and resources as observed by one Parliamentarian.<sup>26</sup> Although minutes of all the sittings are attached in the Report, certification form for adoption of the Report is missing. It is not known whether there was consensus in the final Report and perhaps how lack of consensus might have affected the effectiveness of the Committee. One Parliamentary staff observed that the act of sampling companies and individuals violated Article 47 and 50 of the Constitution on fair administrative action and fair hearing and might have informed some Parliamentarians to oppose the report.<sup>27</sup>

<sup>25</sup>Personal Interview, Anonymous. 17th June 2021.

<sup>26</sup>Personal interview, Member of National Assembly 13th June 2021, although Standing Orders provide room for extension of time.

<sup>27</sup> Personal interview, Parliamentary staff, 18th June 2021.

### ➤ *The National Assembly, Departmental Committee on Health*

To systemically respond to its terms of references, the Committee developed some guidelines. To establish and evaluate the total quantum of funds/ monies appropriated from GoK and development partners to the MoH towards the fight against the pandemic in 2019/2020, the utilization of the funds by the MOH, SAGAs, County Governments and other state departments, the Committee asked the following questions: What did the National Assembly appropriate to the MOH towards the fight against COVID-19? How much and when did the MOH receive the funds appropriated from Treasury? How much and when did the MOH transfer the funds to the relevant SAGAs; How much and when did the MOH transfer the funds to the counties? When did the SAGAs receive the funds? When and what quantum of funds did the MOH or its SAGAs receive?

To ascertain whether SAGAs adhered to the Public Procurement and Asset Disposal Act, 2015 while sourcing for COVID-19 related Health Products and Technologies (HPTs) by the MOH and its SAGAs, the Committee checked whether an Annual Procurement Plan in the MOH and its SAGAs as envisioned by the PPADA 2015 existed; whether Accounting Officer approved for procurements by the MOH and Board's Approval for the procurements undertaken by the SAGAs; the Committee evaluated the tendering procedure used by the various SAGAs and the MOH. To establish the status of all donations by the government of Kenya from well-wishers towards the fight against the pandemic; specifically, donations received by the Ministry of Health, the Committee questioned the status of all donations received by the government of Kenya from well-wishers towards the fight against the pandemic? How relevant were various donations to the Kenya situation and how did it assist in the fight against COVID-19 pandemic? Did the GoK and the MOH have in place an operational framework of receiving and managing these donations? The agency charged with the responsibility of distributing received donations? What procedure was used to distribute the donations?

Consequently, in executing its mandate, the Committee undertook several activities including requesting written and oral submissions, conducting research and analysis of various presentations made on the investigations. The Committee held meetings with various national government agencies and institutions including county governments as well as undertaking physical inspection visits to selected hospitals and county government. Further, the Committee summoned those responsible from the mentioned SAGAs, key among them: - the Principal Secretary, Ms. Susan Mochache, Hon. Kembi Gitura, Chairman KEMSA, Dr. Jonah Manjari the suspended Chief Executive Officer; Mr. Charles Juma Ezekiel, the suspended Director of Procurement –KEMSA, Mr. Eliud Muriithi, the suspended Director of Commercial Services of KEMSA. However, key institutions like Ethics and Anti-Corruption Commission (EACC) were not summoned.

The evidence of adoption of the Reports shows that six members of the Committee did not sign the final Report. Adoption of reports is an important indicator of the extent of decision-making by Committee members. The failure by almost a third of members to append their signatures implies that probably there was lack of consensus in the Committee work. This gap was observed by one Parliamentarian noting that:



*[O]ut of the 19 Members, five did not sign. I hope they had good reasons. Maybe they were away or something. But five not signing, I do not think it is because they do not want their signatures to be seen there. This is a serious matter and I would have thought that everyone should have signed just to show that there was consensus. Consensus is the new ugly word in town. That there was consensus enough within the Committee<sup>28</sup>*

<sup>28</sup>Hon. Sakwa Bunyasi (Nambale, ANC), 26th November 2020, National Assembly Debates, p. 38.

### ➤ *The National Assembly, Public Investment Committee*

On 31st August 2020, the Public Investment Committee (PIC) requested the Auditor-General to conduct special audit of KEMSA procurement process and utilization of COVID-19 funds. The Auditor-General conducted the audit and confirmed that indeed public funds utilized by KEMSA for procurement of medical supplies for purposes of combating the COVID-19 pandemic were used in a manner that was unlawful and ineffective. The Auditor-General has since submitted the Report to the NA and shall inform the deliberations of the PIC and decision making taking cognizance of any limitations raised.

### ➤ *The National Assembly, Public Accounts Committee*

The Public Accounts Committee (PAC) ordered for a comprehensive forensic audit of the utilization of COVID-19 funds by the national government. The Auditor-General found that expenditures incurred by the MOH and the Referral Hospitals were in violation of the Public Procurement and Asset Disposal Act, 2015. There were failures by the entities to account for donations and inventories procured, inconsistencies in procurement records raising red flags on authenticity of the transactions, and unsupported payments. The Auditor-General has since submitted the Report to the NA and shall inform the deliberations of the PAC and decision making taking cognizance of any limitations raised.

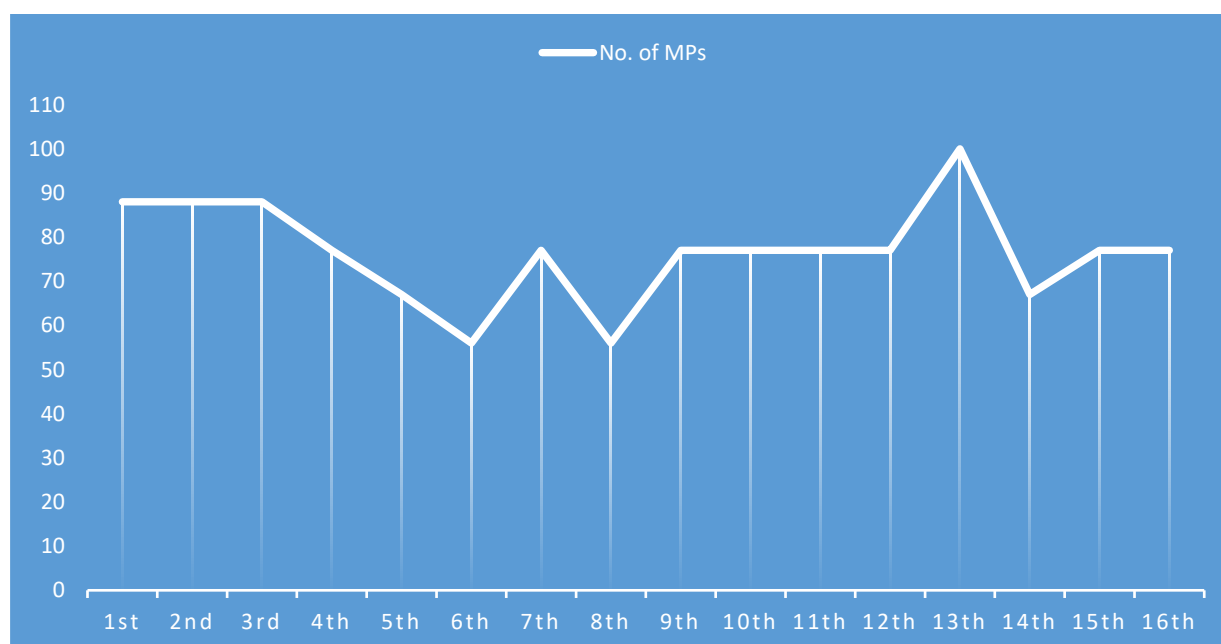
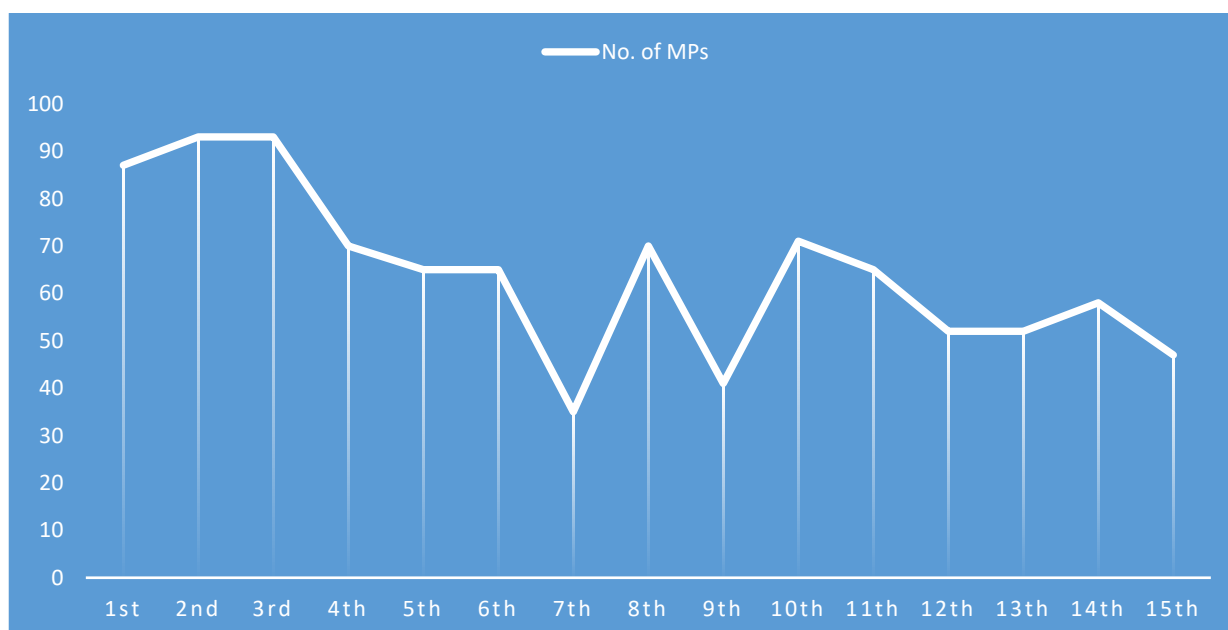
#### 6.3.1 Attendance of Committee Sittings

The attendance of Committee sittings by Parliamentarians is one of the key indicators for determining the effectiveness of Parliamentary committees. It is assumed that if all members of the Committee attend all the sittings, this would offer every member an equal opportunity to make observations critical in informing recommendations. The Standing Orders of both Houses expressly provide for the number required for a quorum. In the Senate, the quorum of every committee is set out by Standing Order 185 (7) (7) that is, three members "the Chairperson and two other members of the Committee", while the quorum of the select committee is set out by Standing Order 178 (4) "Unless otherwise provided under any written law, these Standing Orders or by resolution of the House, any five members of a select committee shall constitute a quorum". Unless the quorum is achieved within thirty minutes of the appointed time, a sitting of any select committee shall stand adjourned to such time and day as the chairperson may appoint. Figure 1 shows the attendance of Senators in the 16 sittings of the Health Committee.<sup>29</sup> The Committee maintained steady attendance by Senators in the said sittings with no sitting falling below half of the Committee's membership. However, when the Ad Hoc Committee joined the Health Committee, two sittings of the joint committee fell below half of the membership as indicated in Figure 2.

Further analysis of the attendance indicates a pattern of absentia by certain members. A look at the pattern of the joint sitting reveals that membership tended to gravitate towards those from the Standing Health Committee. According to a senior Parliamentary staff member, whereas virtual sittings have occasioned some flexibility among Parliamentarians, concurrent attendance where members log into more than one meeting has eroded accountability.<sup>30</sup>

<sup>29</sup>It is worth noting that both the Senate and the National Assembly lack a standardized format of drafting Committee Reports. As such some Committees' reports have attendance records of all sittings, some reports have only evidence of members who adopted the report, while some reports have no evidence of attendance. For example, the Report of Senate Standing Committee on Health inquiring allegations regarding irregularities in the procurement of various pharmaceutical equipment and products by KEMSA annexed attendance record of all the sittings while the Report of the National Assembly Departmental Committee on Health inquiring into utilization of funds appropriated to the Ministry of Health for COVID-19 pandemic only annexed the evidence of members of who adopted the report.

<sup>30</sup>Personal interview, 1st July 2021.

**Figure 1: Attendance of Senators in the Standing Health Committees****Figure 2: Attendance of Senators in the Joint Committee of the Senate Standing Committee on Health and the Ad-Hoc Committee on the COVID-19 situation**

In some cases, missing the sittings could have been occasioned by some good reasons such as travel or even sickness, but where a pattern is formed by one or two members, it raises doubt as to the extent to which some members take Committee work seriously. Whereas participation in Committee hearings especially on matters of public interest like COVID-19 pandemic provides political visibility for members at the national level, it has been argued that “there is often very little political reward associated with appealing to the electorate through [Committee work].<sup>31</sup>

<sup>31</sup>Ken Ochieng’ Opalo (2021): Leveraging legislative power: distributive politics and Committee work in Kenya’s National Assembly, *The Journal of Legislative Studies*, p. 15.

Since the return of multiparty elections in 1992, Parliamentary turnover remains high suggesting that voters care less about national visibility as opposed to direct constituency services. This implies that during the COVID-19 inquiry, some Parliamentarians struck a balance between responding directly to what their voters demanded as opposed to focusing too much attention on Committee hearing. This view was validated by two key informants who observed that committee's work is just extra time on Parliamentarians' plate. Sitting in the committees is a lot of work compared to what they do in the constituencies.<sup>32</sup>

In sum, the three Committees (the Senate Ad-Hoc Committee; the Senate Standing Committee and the National Assembly Departmental Committee on Health) adopted elaborate and systematic procedures effective in executing their mandates; however, this was undermined by limited time frame and intermittent attendance of Committee sittings by some Parliamentarians and lack of consensus among Committee members.

## 6.4 The View of Stakeholders

This section analyzes views of Parliamentarians (non-committee members in the plenary of the House); the view of the public and civil society organizations (other interest groups).

### 6.4.1 The Views of Parliamentarians

The views of Parliamentarians are important in determining the direction of Parliament (either the National Assembly or the Senate) once approved in the plenary. It has been argued that Committee members usually find their performance very satisfying.<sup>33</sup> Therefore, a better assessment of the performance of the Committee work before the plenary would include considering views of non-members of the Committee. Out of the five Committees, it is only the Report of the National Assembly Departmental Committee on Health inquiring into utilization of funds appropriated to the Ministry of Health for COVID-19, that has been tabled (1st October 2020) and moved (26th November) before the plenary of the House. From the National Assembly Hansard Report of 26th November 2020, opinion was divided among Parliamentarians concerning the Report of Departmental Committee on Health. A majority of Parliamentarians supporting the Committee work made positive reference of the Report. One member observed:

**“ I like the recommendation by the Committee that the investigative agencies take appropriate action. When you look at the recommendations of the Committee, you look at the position they are in. We have PPEs which are in the warehouse which need to be used by the healthcare workers to save lives. The masks need to be given to vulnerable groups. Do we leave them lying there? No, we cannot leave them lying there. The Committee recommends that within 14 days of adoption of this Report, those PPEs must be given out and the masks must be distributed. There are recommendations here that can further be improved by the Public Investments Committee. To me, this is a good start by the Committee that we adopt this and make sure that we release the PPEs. But we ask the investigative agencies to follow the COVID-19 billionaires, freeze their accounts, recover the money they have taken so that there is no loss and make sure that all who conspired to do this, beginning from the PS, the CEO and everyone else hidden behind the companies, are arrested and be brought to justice.”<sup>34</sup>**

<sup>32</sup>Personal interviews, Anonymous Respondents, June 2021.

<sup>33</sup>Ken Coghill and Lewis, Colleen. 2004. Reforms to Protect Parliament's Reputation. *The Parliamentarian*, 85 (4), p.354.

<sup>34</sup> Hon. (Dr.) Robert Pukose (Endebess, JP), 26th November 2020 National Assembly Debate, p. 39.

Another parliamentarian stated:



*Having looked at this Report, I particularly like the Committee Recommendation No.28, which is to amend Sections 35 and 69 of the Public Procurement and Asset Disposal Act of 2015. When we do things in the Committees, the standard reports we get here basically say “investigate” but this Committee has gone further to identify a loophole in the law. If we seal it we will, perhaps, save future losses of money. I commend this Committee. Let this be a lesson for other Committees. When you do an inquiry, identify not just the loopholes, but also which law we can tighten as Parliament to avoid that loophole being used by somebody in the future.<sup>35</sup>*

Still, another parliamentarian observed:



*The Departmental Committee on Health is giving us very good recommendations as far as this Report is concerned. It is giving it impetus as to what needs to be done, even if the investigations are ongoing...The recommendation of ensuring that our frontline medics get insurance cover is not something that we should be debating today. It should have been done like yesterday. They are our soldiers and they should have access to the best medical care. We cannot afford to lose more doctors. It is very expensive to train a doctor in this country and it is sad that you end up losing a life and monies used in their training.<sup>36</sup>*

A few parliamentarians opposed the Report. One member observed that:



*I saw a lot of optimism, but when you read this Report, you realize that it is very disappointing. It is disappointing in the sense that it is sanitizing. If we are told that these are the companies which were registered and within less than three weeks or one month, they had been given billions of tenders, then they should go ahead and name this company and if possible, shame them. We want them to be blacklisted from doing Government business. Why is the Committee shying away from that recommendation? It is lacking. What we are seeing in the recommendation is blame game and forwarding the problem to the DCI...This is shoddy work. The Departmental Committee on Health has disappointed us very much. We have COVID-19 billionaires and the CEO of KEMSA has been on record that he was given directions on the list of companies. He mentioned this. Our Committee, that we trust, has shied away from this.<sup>37</sup>*

Another Parliamentarian alleged that one of the suspected companies doing business with KEMSA was associated with the leadership of the Departmental Committee on Health of the National Assembly, noting that the report was “full of explanations of small things, verbosity and platitude”.<sup>38</sup> In the final analysis, the committee report was adopted by a majority in the plenary. Given that the number of Parliamentarians making positive references to the report outweighed the number making negative references, it follows that the Departmental Committee on Health was perceived as effective in executing its mandate with regard to COVID-19 pandemic.

<sup>35</sup>Hon. Amos Kimunya (Kipipiri, JP), p. 41.

<sup>36</sup>Hon. Zachary Thuku (Kinangop, JP), p.45.

<sup>37</sup>Hon. (Dr.) Chris Wamalwa (Kimini, FORD-K), Pp.32-33.

<sup>38</sup>Hon. Ndindi Nyoro (Kiharu, JP), p. 47.

### 6.4.2 The Views of Bureaucrats in the Ministry of Health

Interviewed bureaucrats were not aware of the status of the reports of Parliamentary committees. This was surprising because they are the main stakeholders involved in the implementation of such reports. A senior public health officer in the Nairobi City County government observed that:

**“ I did not get response after I made my submissions, but from reliable sources I am aware that my contributions were considered by the Committee. However, I am yet to come across verifiable indicators that what I said was followed.”<sup>39</sup>**

Another officer in the Ministry of Health observed:

**“ Basically I have been relying on the media just like other Kenyans and for sure I cannot say that I approve the Committee Report. I am aware other Committees were mandated to perform additional inquiry unfortunately I don't know their outputs.”<sup>40</sup>**

### 6.4.3 The Views of the Public (Voters)

Although the public is the cornerstone of any functional democracy, less is known about how it perceives Parliamentary activities.<sup>41</sup> It was surprising that despite having made submission to the Senate Ad Hoc Committee, some members of the public were not aware of the status of the Committee work in regard to COVID-19 in Kenya. One Kenyan was even surprised that the researcher asked his views on the same. He remarked “To be honest, I don't know what the Committees has done after our submission, so I'm not sure how to comment. Did they do a report of their activities?”<sup>42</sup>

Another Kenyan approved the Senate's Ad Hoc Committee's report but had own reservations stating that:

**“ From the report all I saw was that the Senate collected a list of issues, but it doesn't say what happened next. I can guess that they may have made some recommendations or requests to the Executive, but I don't know how they did that or if the Executive implemented any of them...what I can remember is that the Senate drafted a pandemic response bill.”<sup>43</sup>**

Some Kenyans compared the performance of Committees in the two Houses. For example, one observed that:

**“ I think the Senate Committees are generally more in depth in listening and making good recommendations for the beneficial welfare of Kenyan citizens...unlike the National Assembly Committees which seem to be more transactional doing good bidding for the benefit of the Executive or generally making recommendations detrimental to the well-being of the citizens.”<sup>44</sup>**

<sup>39</sup>Personal interview, Senior Public Health Officer, Nairobi City County Government, 21st June 2021.

<sup>40</sup>Personal interview, Officer, Ministry of Health, 21st June 2021.

<sup>41</sup>Uhr, J., 2002. Issues Confronting Parliaments. Australasian Parliamentary Review, 17 (1), p. 124.

<sup>42</sup>Personal Interview, Anonymous Respondent 12th June 2021.

<sup>43</sup> Ibid.

<sup>44</sup>Personal interview, Anonymous Respondent 12th June 2021.

#### 6.4.4 The Views of Civil Society Organizations and Interest Groups

It is generally appreciated that in the context of committee performance, these groups are possibly the most significant participants because they are thought to be most knowledgeable on the subject matter under investigation.<sup>45</sup> In addition, members of these groups are delinked from the main stream politics and are therefore deemed to be objective and impartial in their views about the performance of the committee. Just like Parliamentarians and members of the public, the views of these groups differed. At policy level, it was recommendable the manner in which NA's Budget and Appropriation Committee approved supplementary budget, however minimal gain has been reported by the oversight committees.<sup>46</sup>

In sum, although the view of stakeholders varied, thus far Parliamentarians have approved the Report of the Departmental Committee on Health, demonstrating that they perceived the works of Department Committee on Health as effective towards COVID-19 response.

#### 6.5 Assessment of the Roles

In the final analysis, as earlier stated, in strict sense, the impact of committees may be hard to identify and quantify, this does not imply that committees fail to influence government's action. This sub-section assesses the effectiveness of the selected Parliamentary committees along the following four roles: information gathering debate; development of legislative framework, holding government to account and bringing Parliament closer to people.

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<sup>45</sup>David Monk (2010) A Framework for Evaluating the Performance of Committees in Westminster Parliaments, The Journal of Legislative Studies, p.10.

<sup>46</sup>Personal interview, Senior Program Officer, International Budget Partnership, 21st July 2021.



**Table 8: Assessment of the Roles of the Selected Parliamentary Committees**

<b>Parliamentary Committee/Role</b>	<b>Information gathering and debate</b>	<b>Development of legislative framework</b>	<b>Holding government to account</b>	<b>Bringing Parliament closer to people</b>
The Senate Ad Hoc Committee on COVID-19 Situation	-Minutes of the committee hearings provided  -Issues to do with misappropriation of Covid funds was brought to limelight immediately unlike in the past where scandals are unearthed after a long period of time	-Developed legislative guidelines on future emergency (Pandemic Response Management Bill, 2020)-	-Instant monitoring of how COVID funds were used in various hospitals in county governments through actual visits	-Conducted sites visits in a few counties like Isiolo, Kajiado, Kiambu -Publicized its works in the media and Parliamentary websites
The Senate Standing Committee on Health	-Issues to do with misappropriation of COVID funds were brought to limelight immediately unlike in the past where scandals are unearthed after a long period of time	Recommended a review of existing regulations to provide for an elaborate framework for the conduct, by procuring entities, of emergency procurements and in particular, the implementation of section 103 of the PPADA by procuring entities.	Recommended investigation of senior officers at KEMSA and the MoH	-Conducted visits in a few counties like Nairobi, Kajiado and Kiambu - Publicized its works in the media and Parliamentary websites
The National Assembly Departmental Committee on Health	-Issues to do with misappropriation of COVID funds were brought to limelight immediately unlike in the past where scandals are unearthed after a long period of time	Recommended review of Section 35 of the PPADA to provide a timelines within which the Public Procurement Review Authority undertakes investigations	Recommended investigation of senior officers at KEMSA and the MoH	-Conducted visits in few counties - Publicized its works in the media and Parliamentary websites

The National Assembly Public Investment Committee	Issues to do with misappropriation of COVID funds were brought to limelight immediately unlike in the past where scandals are unearthed after a long period of time			
The National Assembly Public Accounts Committee	Issues to do with misappropriation of COVID funds were brought to limelight immediately unlike in the past where scandals are unearthed after a long period of time			

## 7.0 CHALLENGES OF PARLIAMENTARY COMMITTEES

Richard Fenno identifies Executive branch, clientele groups and party leaders as some of the main factors constraining performance of Parliamentary committees.<sup>47</sup> However, their influences vary from one Committee to another. Building on Fenno's conceptual framework, this research identifies lack of political will in the implementation of the previous reports, Executive- legislative relations and intra-elite distributive politics, the political economy of committee hearings, party politics and intra-elite rivalry and the conflict between the two Houses as some of the factors that may have constrained Parliamentary committees towards COVID-19 response.

### 7.1 Lack of Political Will in the Implementation of the Previous Reports

In 2018, the Speaker of the National Assembly opined that "whereas Parliamentary Committees are crucial in the fight against corruption, they can only make recommendations for action by the Executive".<sup>48</sup> This observation is also shared by The Institute for Social Accountability noting that Parliament "does not have sufficient powers to enable a reluctant Executive to implement recommendations of the Committee."<sup>49</sup> Perhaps it is this lack of political will to implement directions of Parliament that caused some Parliamentarians to express reservations towards the committee work. For example, in the case of the Report of the Departmental Committee on Health, one member averred that:

**“** *I have read the Report and the recommendations. What I am worried about is that these are just recommendations. If we are not careful, they will just be thrown away and nobody will look at them. They will not be implemented and that will be the end of the chapter...Therefore, I agree that this House, especially the Departmental Committee on Health, must be more serious and more involved in ensuring that this Report is not a dead letter report. This is not a Report that has been brought here to sanitize what other people did. It is not a Report that has been brought*

<sup>47</sup>R.F. Fenno (1973), Jr., *Congressmen in Committees*, Boston, MA: Little, Brown

<sup>48</sup>'Executive frustrates MPs anti-corruption effort, says Muturi', *The Star*, 19th July 2019.

<sup>49</sup>'Oversight Role of Parliament', *The Institute for Social Accountability*, 201., p. 6.

*here to cool down our anxiety. It is a Report that should be followed through to ensure that it is enforced, so that all the culprits who have misappropriated the COVID-19 pandemic funds can be brought to book.<sup>50</sup>*

Another member opined that:



*Hon. Speaker, I agree with you on the aspect of who should handle this matter. These are crimes against humanity. In fact, these people should even have proposed that this matter goes to the International Criminal Court at The Hague. That is where these people should be taken, but in the absence of such recommendation, we can specify the EACC. Unfortunately, what has been happening is that a lot of cases have been going to the EACC, but people are not seeing them “biting” anybody. This time round, we want to see the EACC “bite” because this is a tragedy against this country.<sup>51</sup>*

Approaching the Committee work with preconceived notion that its recommendations may not be implemented could occasion a situation where the unclear recommendations are made. For example, before the Report of the Departmental Committee on Health was amended it had recommended that both the Office of Director of Public Prosecution (ODPP) and Ethics and Anti-Corruption Commission (EACC) investigate those widely mentioned, without being clear which office should take precedence in the investigation.

## 7.2 Executive- Legislative Relations and Intra-Elite Distributive Politics

Generally, Committee work varies depending on the nature of Executive-Legislature relations. According to a senior Parliamentary staff, the 12th Parliament is the weakest Parliament in the history of Kenya because of dominant Executive.<sup>52</sup> As such, Parliamentary Committees in Kenya have “little chance of influencing policy efficacy [though they may be] influential in managing intra-elite distributive politics over policy and governance rent.”<sup>53</sup> As such Committees in Kenya tend to prioritize “activities that maximize their leverage vis-à-vis the Executive branch (managing intra-elite distributive politics)”<sup>54</sup> as opposed to ensuring efficiency in the mainstream Committee work. The Executive omnipresence in the appointment of the officials alleged to have mismanaged COVID-19 funds at KEMSA and at the MoH provide limited legislative influence over Executive action. This implies that after all, the recommendations of the Committee may not see the light of the day. As one governance expert observed “entrenched impunity allows those of corruption (sic) and connected to the top Executive to avoid legal punishment despite concerted investigations.”<sup>55</sup> Recently published work on Executive-Legislature relations and how it influences the performance of Parliamentary committees argues that the limited influence on Executive agencies shares [...] reduces opportunities for credit claiming over agency action among legislators, thereby diminishing the returns to spending effort on policy efficacy for electoral purposes.”<sup>56</sup> The implication of the Executive-Legislature relations in the context of COVID-19 pandemic inquiry is that whereas the Committee hearings exposed governance malpractice at KEMSA and the MOH as broadcasted in the media, the Committee work rarely goes beyond embarrassing the Executive branch.

<sup>50</sup> Hon. George Gitonga (Tharaka, DP), 26th November 2020, National Assembly Debates, p. 28-29.

<sup>51</sup> Hon. Robert Mbui (Kathiani, WDM-K), Hansard, 26th November 2020, National Assembly Debates, p. 30.

<sup>52</sup> Personal interview, Parliamentary Staff, 1st July 2021.

<sup>53</sup> Ken Ochieng’ Opalo (2021): Leveraging legislative power: distributive politics and Committee work in Kenya’s National Assembly, The Journal of Legislative Studies, p. 4

<sup>54</sup> Ibid, p.5.

<sup>55</sup> Personal Interview, Governance Expert, University of Nairobi, 10th June 2021.

<sup>56</sup> Ken Ochieng’ Opalo (2021): Leveraging legislative power: distributive politics and Committee work in Kenya’s National Assembly, The Journal of Legislative Studies, p. 12.

### 7.3 The Political Economy of Committee Hearings

The political economy of Committee hearings and their implication on the effectiveness of Parliamentary committees is shown in two main forms: the ability of Committee members to extract personal side payments from the subjects of investigations and the cost-benefit analysis of attending Committee hearings.<sup>57</sup> The latter is manifested at the initial stage where members intensively lobby for perceived lucrative committees such as Energy, Transport, Security, PIC and PAC.<sup>58</sup> Although it was not substantiated, when Parliamentarians debated the Report of the Departmental Committee on Health one member alleged that one of the companies that had shoddy business with KEMSA was associated with the leadership of the Committee on Health and that money could have exchanged hands amongst members to return favorable recommendations to some of the companies mentioned in the report. Media reports have indicated that extraction is either done internally among members to safeguard certain interests if one of them is involved or side payments are obtained from the subjects of investigations.<sup>59</sup> To amplify, in 2015 PAC was disbanded when it was discovered that Committee members “had been using their positions to enrich themselves through extortion and blackmail”.<sup>60</sup> The scandal touched on the conduct of the Principal Secretary at the Ministry of Administration and National Security. In 2017 PAC was reported to have asked for Ksh. 10 million in bribes in order to write a favorable report touching on the conduct of a cabinet secretary.

With respect to cost-benefit analysis, it is instructive to note that the number of sittings is influenced by the ceiling provided by the Salaries and Remuneration Commission (SRC). As evidenced in Figure 1, the Senate Standing Committee on Health held 16 sittings which coincide with 16 set by SRC.<sup>61</sup> This implies that no matter the magnitude of the issue at hand, Parliamentarians may find it not rewarding to engage in extra work that would not attract any monetary rewards. Indeed, the novelty and complexity of the actors involved in curbing the spread of COVID-19 pandemic certainly would have required Parliamentarians to spend more time understanding the issue. Accordingly, Parliamentarians just worked within the bare minimum, while ensuring that they also attend to other competing needs that would provide them additional monetary rewards.

### 7.4 Party Politics and Intra-elite Rivalry

Another factor that influence the performance of Parliamentary committees is party politics and intra-elite rivalry. Parliamentary Committees have been loci for political supremacy depending on the nature of the political realignment in the country. COVID-19 emerged at the height of the proposed constitutional change under the Building Bridge Initiative (BBI). The initiative is widely supported by President Uhuru Kenyatta of Jubilee Party (JP) and former Prime Minister Raila Odinga of ODM party. Although the Deputy President William Ruto of JP has not publicly opposed the initiative, his loyal foot soldiers in both Houses suggest that the Kenyatta’s deputy is opposed to the document. As COVID-19 containment measures have restricted political gatherings, Deputy President supporters have argued that the restrictions are applied selectively. It was not surprising that Parliamentarians who opposed the Report of the Department Committee on Health were those associated with Deputy President- under the movement known popularly as Tangatanga.<sup>62</sup>

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

<sup>59</sup> House of Shame: History of bribery allegations in Parliament, The Star, September 19, 2020.

<sup>60</sup> Ababu Namwamba and Public Accounts team sent home over graft claim, Daily Nation, 14 April 2015.

<sup>61</sup> Parliament answers “lies” on MPs pay with...lies, Daily Nation, 27 July, 2019.

<sup>62</sup> Those associated with the President as known as kieleweke.

Debates on reports of Parliamentary committees have become an arena for supremacy battle and projection of political ambitions. In the case of the Report of the Departmental Committee on Health Hon. Chris Wamalwa perceived the debate as the opportunity to attack Hon. Joshua Kutuny perceived opponent in the succession politics of Trans-Nzoia gubernatorial seat. In his contribution to the debate, Hon. Wamalwa remarked:

**“ Hon. Joshua Kutuny is my neighbour and I respect him very much. He articulates things both in Kiswahili and English, which some of us cannot do. When it came to the recommendations and the way he has been articulating issues of maize, I expected the same to happen here. What happened to my brother, Hon. Joshua Kutuny, and my neighbour? I do not know what happened.”<sup>63</sup>**

On a point of order Hon. Kutuny responded:

**“ Hon. Speaker, I have listened to my neighbour. As colleagues and Members of Parliament, it is important to go through the Report properly. My friend has taken this opportunity that you have given him to settle local political scores because he knows that I am the man who has managed him well on the ground. He pretends that he can be the governor of Trans Nzoia. So, he wants to use this platform to smear some of the people who are very strong on the ground.”<sup>64</sup>**

Similarly, Hon. Ndindi Nyoro perceived the debate as an opportunity to attack Hon. Sabina Chege perceived political enemy in Murung'a politics. Without tabling the evidence Hon. Nyoro alleged that some of the companies that did shoddy business with KEMSA were linked to the leadership of the Departmental Committee on Health.<sup>65</sup> In her concluding remarks, Hon. Chege indirectly attacked Hon. Nyoro saying that "I feel sad when I see people trying to politicize issues, settle political scores and act like they are in their village markets. They just come here to say things that they might have seen on social media and they want now to put their colleagues to shame. It is a shame."<sup>66</sup> This intra-elite rivalry was not unique in the debates of the Report of Departmental Committee on Health. Earlier debates of some reports of Parliamentary Committees have also witnessed intra-elite rivalry as evidenced in the debates of the report on vetting of the nominees for appointment to the National Land Commission where Parliamentarians from Kilifi County were divided on whether to approve the nomination of Kazungu Kambi so much that the Speaker of the National Assembly warned protagonists against turning the report into county affairs.

## 7.5 Conflict between the National Assembly and the Senate

Perennial conflict between the National Assembly and the Senate since 2013 has generally undermined the performance of Parliament. In their response to COVID-19, the works of some Parliamentary committees were undermined by lack of concurrence between the two Houses.<sup>67</sup> Although Article 110(3) and 113 of the Constitution of Kenya provides for concurrence between the two Houses and establishment of mediation committee respectively, these mechanisms have not been effectively exploited. At the heart of this conflict is the varied interpretation of Bills concerning counties and money Bills. When the Senate's Pandemic Response Management Bill was forwarded to the NA, it argued that it was money Bill and therefore not within the confine of the Senate. This conflict has stalled implementation of some recommendations proposed by the Senate Ad Hoc Committee on COVID-19 Situation.

<sup>63</sup>National Assembly Debates, 26th November 2020, p. 33.

<sup>64</sup>National Assembly Debates, 26th November 2020, p. 34.

<sup>65</sup>National Assembly Debates, 26th November 2020, p. 47.

<sup>66</sup>National Assembly Debates, 26th November 2020, p. 51.

<sup>67</sup>Personal interview, Senior Parliamentary Staff, 1st July 2021.

## 7.6 Sub-optimal Technical Expertise

It was also observed that most Parliamentary committees especially the secretariats inadequate technical know-how of the matter under investigations.<sup>68</sup> Whereas some committees strive to collect data through evidence based approach, this is constrained by lack of expertise to analyze the data and inform policy formulation and implementation.<sup>69</sup>

As a result, lack of political will in the implementation of the previous reports, Executive- Legislature relations and intra-elite distributive politics, the political economy of committee hearings, party politics and intra-elite rivalry, conflict between the National Assembly and the Senate and sub-optimal technical expertise are some of the key factors that might have constrained Parliamentary committees towards COVID-19 response.

## 8.0 CONCLUSION AND RECOMMENDATIONS

The study explored the wins, gaps and challenges of Parliamentary committees in overseeing the Executive's response towards COVID-19 pandemic. Preliminary data indicates as follows: With regard to the formal power, the study established that all the five Parliamentary committees had clear mandate and terms of reference to effectively make observations and recommendations. With respect to composition of the Committees, the study found that apart from the Senate Ad Hoc Committee on the COVID-19 Situation in Kenya that witnessed abrupt leadership transition, the leadership in other Committee remain intact, thereby providing much needed stability for effective execution of their mandates.

As for the processes and procedures, the three Committees (the Senate Ad-Hoc Committee; the Senate Standing Committee and the National Assembly Departmental Committee on Health) adopted elaborate and systematic procedures effective in executing their mandates; however, this was undermined by limited time frame, intermittent attendance of Committee sittings by some Parliamentarians and probable lack of consensus among Committee members.

Turning to the views of relevant stakeholders, the study established that although the view of stakeholders varied, thus far Parliamentarians approved the Report of the Departmental Committee on Health, demonstrating that they viewed the works of Departmental Committee as effective towards COVID-19 response. Given that the selected Parliamentary committees operate within the same environment, the study identified lack of political will in the implementation of the previous reports, Executive-Legislature relations and intra-elite distributive politics, the political economy of committee hearings, party politics and intra-elite rivalry and the conflict between the National Assembly and the Senate as some of the key factors that might have constrained Parliamentary Committees towards COVID-19 response. However, their influences vary from one Committee to another and newer factors could be identified from the works of the remaining Committees. Arising from these observations, the study makes the following recommendations that may enhance effectiveness of the Parliamentary Committees.

### (a) Parliament

- Parliamentary committees, through their secretariats, should strive to ensure that Committee reports and Committee Hansards are easily available and accessible. This is to also ensure the realization of the right to access information provided under Article 35 of the Constitution of Kenya 2010.

<sup>68</sup>Personal interview, Senior Program Officer, International Budgeting Partnership, 12th July 2021.

<sup>69</sup>Personal interview, Senior Parliamentary Staff, 1st July 2021.

- There is need for Parliamentarians to account for their non-attendance of committee sittings, including submission of authentic documentations from relevant authorities.
- Standing Orders should be reviewed to explicitly show how many members must be present from both sides in the case of Joint Committee of the same House.
- There is need for Parliament to engage external experts knowledgeable on the subject matters.
- Parliamentary committees could organize open days to freely engage with members of the public to narrow the gap between the two. Such a move might incentivize public's engagement with committee processes. The leadership within Parliament should come up with programmes that reward the oversight activities of individuals and committees. With time, these processes which encourages successful oversight will overtake rival interests of political parties.
- There should be a follow up mechanism to allow those who participate in the deliberations hold the committee to account.
- There is need to diversify channels of disseminating Parliamentary works beyond websites and the media. These channels should be appropriate for marginalized and people living with disabilities.
- Parliamentary committees should strive to ensure that committees are well-balanced with representation from women, youth and persons with disabilities. This will ensure diverse voices are included.

***(b) Executive (Implementing Ministries)***

- They should publish monthly reports on policy implementation including data and analysis on budget execution and performance, disaggregated by impact on disadvantaged groups, including women and girls.
- Procuring entities should disclose all details related to procurement contracts linked to COVID-19 spending wherever possible in open formats.

***(c) Political Parties***

- There is need for political will among the leaders of political parties to reduce external interference from the committee works.

***(d) CSOs***

- In partnership with Parliament, CSOs should come up with advocacy programmes aimed at increasing public participation to enhance awareness among citizens on the role of Parliamentary committees so as to erode the culture of not being interested in what is happening in Parliament.
- CSOs should also come up with programmes that reward the oversight activities of Parliamentarians within committees. With time, these programmes erode rival interests of political parties.
- CSOs should identify strategic persons/champions in Parliament and county assemblies (more friendly MPs/MCA, clerks) and work closely with them on specific issue of interest.

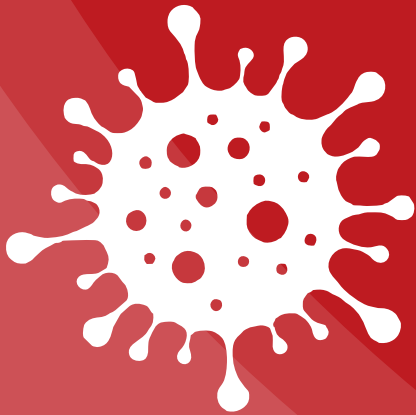
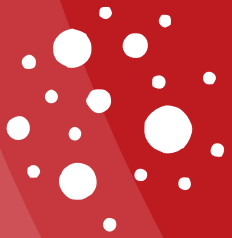
*(e) Media*

- In partnership with Parliament, the media should promote accurate reporting of Parliamentary affairs and enhance capacity among journalists in Parliamentary procedures and terminologies.

*(f) International Donors*

- There is need to pay greater attention to creating a demand for oversight from Parliament by availing material, technical and financial resources; availability. Through strengthen capacity Parliament may exercise autonomy in achieving their goals. Consequently, Parliamentarians may use the powers available to it to force enforcement of recommendations. It can utilize its power of the purse to deny financing to the identified saboteurs.
- Bring together all relevant stakeholders to develop and adopt international norms and standards on managing fiscal policy in times of crisis, including ensuring adequate levels of accountability, and supporting governments in putting such norms and standards into practice.





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