

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 8th September, 2020

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

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

PRAYER

COMMUNICATION FROM THE CHAIR

WELCOME TO HON. SENATORS TO PART FOUR OF THE
FOURTH SESSION OF THE 12TH PARLIAMENT

The Speaker (Hon. Lusaka): Order, Members.

Hon. Senators, I take this opportunity to welcome you back to part four of the Fourth Session. This part will run from 8th September, 2020 to 22nd October 2020 pursuant to the Senate Calendar.

It is my hope that you have all kept well and safe during the three-week recess, reconnected with your constituents, families and friends and that you are ready for the Business of the Senate.

Hon. Senators, I urge that we redouble our efforts to enable us to consider and conclude business that is before us, including Bills, Motions, Petitions and Statements critical among them being the determination of the Third Basis for revenue allocation among the county governments.

As you recall, during the Special Sitting on Monday, 17th August 2020, the House constituted an informal Committee to try to develop consensus on the issue of the formula. The informal Committee has been updating the Senate leadership on a regular basis including the Senate Business Committee. The Committee was informed that consultations were ongoing and the prospects of achieving a win-win position are very promising.

Consequently, following the Senate Business Committee meeting this morning, the Committee agreed as follows -

(a) That a consultative meeting to be held between the informal Committee and the Senate Leadership on Thursday, 10th September 2020.

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(b) That a *Kamukunji* be held on Monday, 14th September 2020 to apprise the entire membership on progress made and the outcome of the consultative engagement

(c) That the matter of the report of the Committee on Finance and Budget on Third basis for revenue allocation among the county governments be listed on the Order Paper on Tuesday, 15th September 2020.

Hon. Senators, I look forward to your cooperation and commitment as we undertake this solemn duty.

Thank you.

PETITIONS

REPORT ON PETITION: IMPLEMENTATION OF TJRC REPORT

The Speaker (Hon. Lusaka): Is Sen. Omogeni around?

Use the microphone on the dispatch box.

Sen. Omogeni: Mr. Speaker, Sir, we require more time to make that Report in the next Sitting.

(Petition deferred)

REPORT ON PETITION: RECOGNITION OF GRADUATES IN RANGE MANAGEMENT AND ANIMAL PRODUCTION COURSE

(Petition deferred)

PLIGHT OF SEED FARMERS IN TRANS-NZOIA COUNTY

(Petition deferred)

NHIF COVER FOR KIDNEY POST-TRANSPLANT MEDICATION

(Petition deferred)

IRREGULAR REDEPLOYMENT OF MR. LAWRENCE MUTEMBEI BY THE COUNTY GOVERNMENT OF THARAKA NITHI

The Speaker (Hon. Lusaka): Hon. Senators, I hereby report to the Senate that a Petition has been submitted through the Clerk by Mr. Lawrence Nicholas Mutembei, a citizen of the Republic of Kenya and resident of Tharaka Nithi County.

As you are aware under Article 119(1) of the Constitution -

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

Hon. Senators, the salient issues raised in the petition are -

(i) That the petitioner was recruited by the Tharaka Nithi County Government as the Director for Procurement in the Department of Finance and Economic Planning, a profession that he has been trained in.

(ii) That on 13th June, 2018, he was arrested and arraigned in Chuka Court on 18th June, 2018 where he was charged with an alleged Corruption Case No.1-2018, “Republic of Kenya versus Lawrence Nicholas Mutembei” on three counts of receiving bribe.

(iii) That on 5th August, 2019, the proceedings of the case were terminated upon the petitioner applying for withdrawal of the case under Section 87(a) of the Criminal Procedure Code and further, on 14th November, 2019, he applied for a revision and the ruling was made in his favour where the charges were withdrawn and the case terminated.

(iv) That the petitioner notified the County Secretary of this court determination and that he would resume duty from 1st September, 2019, and applied for annual leave. However, before he could resume his duties on 27th February, 2020, he received a letter dated 24th February, 2020, notifying him that he had been redeployed to the Department of Education, Youth, Vocational Training, Culture, Sports and Tourism as the Director with immediate effect.

(v) That upon receipt of the said letter, the petitioner wrote to the County Secretary making reference to the requisite legal provisions and stating that he was redeployed to a directorate that he had no professional training neither qualifications to run, but no response has been given on his pleas.

(vi) That the Petitioner has made efforts to have the matter addressed by the relevant authorities, all of which have failed to give a satisfactory response.

The Petitioner therefore prays that the Senate -

(i) Intervenes to have a reversal of the redeployment and reinstatement to position that the petitioner has been trained in, being procurement.

(ii) Intervene for a formal response on the issues from the Tharaka Nithi County Government.

(iii) Intervenes to prevent victimization of the petitioner by the Tharaka Nithi County Government.

Hon. Senators, pursuant to Standing Orders 231, I shall now allow comments, observations or clarifications in relation to the petition for not more than 30 minutes.

Sen. (Dr.) Ochillo-Ayacko: Thank you, Mr. Speaker, Sir. Employment matters are very delicate and county governments or employers should try to get the best out of employees. In order to get the best out of employees, it is expected that you employ somebody for what they are qualified for and you also equip them with tools with which they can exploit to discharge the obligation. You are also supposed to motivate them so that they deliver. In short, human resource is critical to service delivery, efficiency and to management.

It is obvious that the officer in question has not been treated well. He was charged in court; a charge that was eventually dropped and he is now transferred to a department for which he is not equipped to act or serve the people of Tharaka Nithi.

In support of this Petition, I want to request both the area Senator and the County Government of Tharaka Nithi to make the best use of this officer by deploying him to the area for which he is qualified. This treatment is rampant among most of our county governments for mistreating their staff for failing to encourage them for not remitting statutory deductions.

Mr. Speaker, Sir, most county governments will fail because they do not treat their workers well. If you read in the newspapers or listen to news, doctors have given notice that they will strike. I think that this is indicative of the fact that we are mistreating our staff.

In conclusion, this is a matter that the Committee to which it will be referred to should look at holistically and with a view of ensuring that---

(Several Senators had caps on)

The Senate Majority Leader (Sen Poghisio): On a point of order, Mr. Speaker, Sir. I do not know whether you notice that there are Senators wearing caps. Is that in order?

The Speaker (Hon. Lusaka): I will make a ruling on that.

Sen. Murkomen: They are traditional dancers.

(Laughter)

Sen. (Dr.) Ochillo-Ayacko: Mr. Speaker, Sir, in conclusion, I want to request the Committee to which this matter will be referred to, to look at it holistically, ensure that employees of county governments, public employees are treated well, equipped or supported and given the right environment to serve the people of Kenya who reside in those counties.

I support and encourage the petitioner to carry on.

The Speaker (Hon. Lusaka): Order Members. I said that I was going to make a ruling. It is inappropriate to wear caps in the House. I direct that you remove them with immediate effect. It is gross misconduct.

(Sen. Murkomen stood up in his place donning cap)

Remove your cap first, Sen. Murkomen.

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. First of all, when Sen. Poghisio stood, he did not mention the point of order that he stood on. He did not direct you to any order in the Standing Order and he did not say whether he was directing that question to Sen. (Eng.) Mahamud who has been wearing a cap for the entire term, for the last three years.

An hon. Senator: For four terms of Parliament.

Sen. Murkomen: I was with him in the "lower" House when he was wearing the same cap.

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The Member who is raising a point of order should rise on a specific Standing Order. Secondly, your ruling must have a determination as to the kind of cap he is talking about and you must listen to us because people convert to different religions. So, if it is a religious cap, you must first listen to us who are wearing caps.

I beg to request you---

(Loud Consultations)

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

Sen. Wetangula: Mr. Speaker, Sir, thank you for the opportunity. The distinguished Senator for Elgeyo-Marakwet has purported to challenge the Senate Majority Leader and distinguished Senator for West Pokot.

The Speaker's Rules, Part 1 (v) says:

“Senators are required not to enter the Chamber, Lounge or Dining Room without being properly dressed.”

It is very clear.

“A Senator shall be dressed in a coat, collar, tie, long trousers, socks, shoes or service uniform, religious attire or search other decent dress as may from time to time be approved by the Speaker.”

Mr. Speaker, Sir, what I am seeing some Senators wearing, certainly does not fall within this description at all. I want to encourage Senators, and I am sure that as a Speaker, you will, probably, make the same direction, that this is a House of decorum. This is not a centre of activism. This is a legislative Chamber. This is a House of revision. This is a House of reference. This is a House of wise men and women. This is a House where the whole country looks at us as trendsetters in decorum and conduct.

Each one of us has the capacity, ability and will to come here and display feelings that we hold so dear or so recklessly. However, it is not allowed. It is not available to anybody to come and adulterate, so to speak, or violate the decorum of this House.

If we want to be activists, the streets of Nairobi are open. We can go and walk up and down. There is Kenyatta Avenue which is called “Haki Zetu” Street. We can go there and shout “Haki Zetu” from morning to evening but let us maintain the dignity and decorum of this House.

Mr. Speaker, Sir, I have no problem with what they hold. I have every problem with conducting themselves in a manner that demeans the stature and status of our House. When I see my brother from Mandera who is my former ambassador--- Ambassadors are well known for strictly adherence to etiquette and good behaviour. When I see them degenerating to a manner that is totally unbecoming and unhelpful, I feel very sorry for this House.

Mr. Speaker, Sir, I have cited the rules and they are very clear. Therefore, what Sen. Murkomen was challenging falls flat on its face.

Hon. Senators: Point of order!

The Speaker (Hon. Lusaka): Order, Senators! Hon. Senators, you are aware that the whole world has been watching the Senate for about the past two months. We have

serious business ahead of us. It is not in order for us to waste time on matters that are clearly stated in our Standing Orders and the Speaker's Rules.

What I am seeing are not religious caps. I direct that you remove them so that we make progress on others matters in the House. It is so directed.

Sen. (Dr.) Musuruve: Mr. Speaker, Sir, I thank you for giving me an opportunity to support this petitioner. Indeed, it is good for Kenyans to bring their petitions to the Senate because this is where they can be listened to.

The petitioner, Mr. Mutembei, is justified to bring the petition to this House. He was hired as a procurement officer based on the qualifications he had. It is unfortunate that he was deployed to an area that he is not competent in. It is also unfortunate that the County Government of Tharaka Nithi did that.

If there is an accusation that he accepted a bribe, who was it from? Whoever gave and whoever took the bribe should be brought to book. The action by the county demeans the education profession. Mr. Mutembei could be taken to education but he does not have the papers.

Mr. Speaker, Sir, we need to interrogate this because we should not waste our education as Kenyans. Mr. Mutembei was a procurement officer. Why should he be taken to education when he does not have the capacity yet a lot of money has been spent on him?

There is need for us to run with speed and ensure that investigations are done and there is justice for Mr. Mutembei and it should not be delayed. It is unfortunate that people can be taken to areas they are not competent in and where they are, they are redundant.

I hope that the Committee concerned will do justice to this petitioner.

Sen. (Dr.) Ali: Mr. Speaker, Sir, I also rise to join Members in condemning the county government for misuse of professions because it happens in every county. Instead of deploying the right people to the right professions, they just send them anywhere and in any profession they want. You will find a doctor taken to administration when somebody who has no knowledge in health is the County Executive Committee Member (CECM) in charge while people with knowledge in finance are taken to sports and culture.

This House should come up with a mechanism to make sure that professions are respected. We should ensure that is followed so that we help our counties to perform. If we leave them to do what they are doing, it is going to cause a lot of problems.

I thank you.

Sen. Murkomen: Mr. Speaker, Sir, first of all, I appreciate the petitioner for believing and trusting the Senate to deal with matters of employment of county governments' staff. It is clear from the Petition that the petitioner is complaining about his deployment from one department to another.

What must be recognised and appreciated is that after the decision of the court, the petitioner was allowed to go back to work. The County Public Service Board (CPSB) must operate independently to assess the competences of the staff at the county level. The staff should be willing and ready to serve.

There are many people in the county and national governments who would like to work in certain areas that are considered lucrative. Some of them are in the procurement departments.

As a Senate, even as we consider this matter, we must not get ourselves to the situation of micromanaging county governments, particularly when they have to move staff from one department to another because they want to streamline the performance of that department or to protect staff suspected of misappropriation of funds from going back to certain departments that are familiar. Mr. Mutembei should be grateful that he still has a job to serve the people of Tharaka Nithi County. He must be ready to serve in other departments in the county.

The Senate should allow the CPSB to freely find ways and mechanisms of deploying staff to different departments. I say this with a lot respect because when change of guard happens in 2022, some new governors will assume office.

They may find that outgoing governors put certain staff in wrong places or as gatekeepers. They must have the flexibility to transfer staff across departments of the county, particularly when they work in departments that affect the functioning of the county government which may affect the governor.

Many governors are in court because some procurement officers participated in corruption. We are told that some of them benefited directly. We cannot force a governor to retain certain officers in procurement department because the CPSB can independently assess certain requests that come from the office of the governor on where to deploy staff for effective management of the county government.

While I appreciate Mr. Mutembei for having faith in the Senate, we must not stifle the right of county governments to run their affairs independently without being micromanaged by the Senate.

To finalise, corruption and procurement matters are serious. As a Senate, I wish we ensure that---

I saw governors making some noise about our County Public Accounts and Investments Committee (CPAIC). I expect the Chair, Sen. (Prof.) Ongeru, who is an experienced public servant, to give reasoned response to the weighty allegations from the Council of Governors (CoG) that our Members are compromised in the manner in which they deal with governors.

Mr. Speaker, Sir, we need as a Senate to acquit ourselves of these accusations and to deal with those governors regardless of whether we know them or they come from our political party. The nation is watching us to deal with those governors fairly without favor.

It is now becoming apparently clear that certain governors are not facing the consequences of the law because they are politically correct. This Senate must not sanctify and clean. It must not be part of the dry cleaning process that some governors are taken through that has become very difficult to hold them accountable.

Mr. Speaker, Sir, I request our party leaders out there not to be party to these processes where governors come through your offices to look for cleanliness and to avoid facing the music and the law. It is just because they sing, shout and finance your political

parties. Let them be held accountable by the people of Kenya and for the benefit of the people of Kenya.

I thank you.

The Speaker (Hon. Lusaka): Sen. Kang'ata, proceed.

Sen. Kang'ata: Thank you, Mr. Speaker, Sir. Allow me to associate myself with the sentiments of Sen. Murkomen. I am not so sure, whether this Petition meets the threshold required for it to be admitted in this honorable House. The reasons are, first, personally, on the face of it, it appears this is a purely employment matter. The issues raised therein ought to have been canvassed in an employment court.

However, I do not see any disclosure of any actionable issue in the said Petition with all due respect. I reiterate that I get the impression that the petitioner is complaining being deployed to another department. I guess that is an administrative issue. There is no prejudice and he has not been fired.

Mr. Speaker, Sir, therefore, I do not get the impression that there was a complaint. Again, when you see a person who really wants to stick in the procurement department, you get the impression that this person is not acting *bona fide*. Most likely he is acting *mala fide*.

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

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, at the time when we got the Petition, somebody suggested that we should remove the cockerel and part of the Court of Arms. I raised this concern. I said, we either agree to set up a Committee to check the quality of Petitions, in terms of whether or not they meet the threshold, irrespective of the question that every person has a right to file Petitions.

This sort of Petition, other than the question of jurisdiction and the suggestions that they are making, is what Sen. Kang'ata is saying; that any person, who is transferred from one office to the other, comes here.

Mr. Speaker, Sir, even when we admit such Petitions, governors then get the opportunity to say that we are trying to micromanage them. It gets worse when you have questions like the one raised about the County Public Accounts and Investments Committee. I personally want to hear; and I have told the Chairperson who is seated next to me that the first time that a Committee of the Senate has been accused of extortion as happened in 2020. Extortion is a criminal offense.

Other than making a Statement on the Floor, this Committee has a right to seek redress because it is defamation of our Chairperson and Vice Chairperson. This is somebody I met when I was 18 years old, seated in the Public Investments Committee, Chaired by Sen. (Dr.) Ochillo-Ayacko. This matter should not be taken lightly. More importantly, we must find a method in the Standing Orders where we scrutinize some of the Petitions that come here. Otherwise, we will be accused of doing the pettiest of things. It should not be here.

Thank you.

The Speaker (Hon. Lusaka): Sen. (Dr.) Langat, proceed.

Sen. (Dr.) Langat: Thank you, Mr. Speaker, Sir, for also giving me this particular opportunity to make a comment on this Petition. In as much as I appreciate that

this is a House that should listen to all Kenyans, I want to believe that this Petitioner has not exhausted other avenues at the county level.

This is a matter that I would have expected this Petitioner to petition the county assembly in that county. Even at worse, this Petitioner should have petitioned the County Public Service Board (CPSB). Suppose we make a recommendation that this Petitioner be allowed to be transferred where he or she wants, we shall attract so many Petitions of this kind that the Senate will not move or do anything else apart from micromanaging county governments' staffing issues.

Mr. Speaker, Sir, this is the Senate and we should be dealing with matters of revenue allocation which are very important rather than reducing ourselves to the level of becoming a *Kamukunji* for county issues that do not attract the attention of this country at large. This petitioner should be advised to use other available avenues to sort out his or her case.

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

Sen. Wetangula: Mr. Speaker, Sir, when I heard you reading this Petition, I turned to the Senator next to me and told him that this is the most frivolous Petition that has ever come to this House. A citizen tells us he was working in a department. He was accused of taking a bribe. He was taken to court. He was not even acquitted and the case was withdrawn. Then he is gratuitously taken back to his job and transferred to another department. Then he runs to the Senate and says that, that is wrong.

It is something that this House should not entertain. Those who process Petitions before they reach your desk should up their game. This is a matter at the very most is a case of internal discipline at Tharaka-Nithi County or a matter for labour courts but not for this House.

Mr. Speaker, Sir, we have very serious issues out there that *wananchi* have brought to this House. There are fishermen being abducted in Lake Victoria and being killed. There are challenges with security on our Somalia border. There are challenges of workers which are still pending.

I urge that, in fact, do not commit this Petition to any Committee because it does not meet the threshold of a Petition so that this House can only deal with matters that are more serious. I know that when people apply for jobs in the Public Service, they commit themselves to work in any department.

The Speaker (Hon. Lusaka): Sen. Khaniri, what is your point of order?

Sen. Khaniri: Mr. Speaker, Sir, as much as I agree with my elder brother, the Senator for Bungoma County, that this is a frivolous Petition, we must adhere to the rules that guide the proceedings of this House. I want to follow the argument by my friend, Sen. Mutula Kilonzo Jnr., that going forward, it is important that we set a threshold for the Petitions that will come to this House.

However, for this particular Petition, since it is already here with us, we have rules that guide our deliberations and our proceedings. I am talking particularly in reference to Standing Order No. 232 (1); that any Petition that is presented to this House must be committed to a Committee. As much as it is frivolous, we must deal with it the way we deal with any Petition that comes to the Floor of this House.

Mr. Speaker, Sir, I, therefore, want to differ with my elder brother that this one should not be committed to a Committee. We have to live by our rules. Going forward, if we continue admitting this kind of Petitions, we will have an avalanche here. We will not do the important things that we are supposed to do. I want to differ with the Senator for Bungoma County on the issue of committing the Petition to a Committee.

I thank you.

Sen. Wetangula: Mr. Speaker, Sir, be that as it may, if this Petition is committed to any Committee, that Committee should take the shortest time possible to dispose it off.

I thank you.

(Laughter)

The Speaker (Hon. Lusaka): Sen. Cherargei, kindly, proceed.

Sen. Cherargei: Thank you, Mr. Speaker, Sir---

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

Sen. Sakaja: Mr. Speaker, Sir--- Is my microphone on?

(Sen. Cherargei remained on his feet)

The Speaker (Hon. Lusaka): Sen. Cherargei, please take your seat. It is a point of order.

Sen. Sakaja: Mr. Speaker, Sir, the House has discussed this Petition for too long. Since it is likely to be committed to the Committee on Labour and Social Welfare, which I Chair, would I be in order to save the time of the House by just committing to deal with this in the shortest time possible, tomorrow?

(Laughter)

Since we have other items on the Order Paper, we will deal with it very fast.

The Speaker (Hon. Lusaka): Okay. Sen. Cherargei, then we move on.

Yes, Sen. Orengo. There is another point of order.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, the problem is that once it is committed to the Committee, the Committee is bound by the Constitution. This Petition is presented by a Kenyan, and you cannot dismiss it. Once you have accepted the Petition, you cannot summarily dismiss it without giving that person the power to be heard on the Petition.

Therefore, Mr. Speaker, Sir, you cannot have your cake and eat it. Once you direct this Petition to the Committee, then they must hear the Petitioner in the shortest time possible.

(Laughter)

I do not think you can dismiss it summarily without---

The Speaker (Hon. Lusaka): What is your point of information?

Sen. Kang'ata, please, wear your mask.

Sen. Sakaja: Mr. Speaker, Sir, he is too close.

The Speaker (Hon. Lusaka): Observe social distance; that is a bit too close. Yes, Sen. Sakaja.

Sen. Sakaja: Mr. Speaker, Sir, that is a Member of my Delegation. I am worried for Nairobi.

(Laughter)

I would like to inform the esteemed Senate Minority Leader that we are not dismissing it; we are just being efficient. As the Committee on Labour and Social Welfare, if it comes to us, we will give fair hearing online, listen to the issue and deal with it very fast. In fact, that should be encouraged. It is efficiency. The Constitution says “within 60 days.” It can be within an hour, two hours or a day, but we shall invite the Petitioner and advise accordingly.

Finally, Mr. Speaker, Sir, I would like just to request the Senate Minority Leader and Senate Majority Leader to amend our Standing Orders. If you look at Standing Order No.226, if I am not wrong, it gives the steps through which a Petition is dealt with. It says-

“Where a Petition deals with a matter that is not in the mandate of the Senate, it is referred to the National Assembly”

I think you need to add one more provision that where it is not a matter of the Senate, we can also refer to the county assembly. This is because it could probably be dealt with better in the County Assembly of Tharaka-Nithi.

The Speaker (Hon. Lusaka): There is a point of order from Sen. Wambua.

Sen. Wambua: Thank you, Mr. Speaker, Sir. My point of order is that this Petition has not yet been committed to any Committee. The Senator of Nairobi County is already telling us how he will deal with the Petition when it appears before him.

Mr. Speaker, Sir, he is doing two things. He is soliciting for business for his Committee and also anticipating debate. Can you guide on that matter?

I thank you.

The Speaker (Hon. Lusaka): Sen. Were, what is your point of order?

Sen. Khaniri: Sen. Orenge had not finished his point of order. You cannot--

The Speaker (Hon. Lusaka): The Senate Minority Leader, had you not finished your point of order?

The Senate Minority Leader (Sen. Orenge): I was still on a point of order.

I do value that information. However, I just want to agree with him that within the shortest time possible, with the right of hearing being granted to the Petitioner, that is efficiency. The only thing I was fearing is that “the shortest time possible” may mean that he is not heard. On that basis, I agree with you entirely.

The right to be heard does not mean that the Petitioner has to appear. There is a lot of material now on how people can get heard. So, he can appear by a written memorandum and all that.

I thank you.

The Speaker (Hon. Lusaka): Sen. Petronila Were, Kindly, proceed. Sen. (Rev.) Waqo from the Extended Chamber start coming.

Sen. Were: Thank you, Mr. Speaker, Sir. I rise on a point of order to also say that we cannot determine whether a Petition is frivolous here in the House. We must continue to allow Kenyans to have faith in Parliament, specifically in the Senate. Before it reaches the House, it is up to the processes before it reaches the House. Once it is here, we cannot determine on the Floor that it is frivolous. I accept that we commit it to a Committee and let them handle it accordingly.

I thank you.

The Speaker (Hon. Lusaka): Sen. Cherargei, you were on the Floor. Sen. (Rev.) Waqo will be the last one because our time is up.

Sen. Cherargei: Thank you, Mr. Speaker, Sir, for this opportunity. Mine is to agree largely with colleagues that we thank Mr. Mutembei for having faith in the Senate. However, I want to agree with most of our colleagues that we should not be in the business of micromanaging the running of county affairs through the County Public Service Board or human resource.

I wish this matter would have come to this House as a matter of general policy and principles, where the guidance of the Senate should have been sought.

Mr. Speaker, Sir, finally, I want to invite colleagues to look at Article 234 (2) (i) of the Constitution. It says-

“Hear and determine appeals in respect of the county governments’ public service”.

On this matter, the Petitioner should have exhausted other means of appeal because if we continue looking at individual cases across all the 47 county governments--

Mr. Speaker, Sir, I agree there could be many issues in terms of human resource, wage bill and many other issues that bedevil our counties, but my advice to the Petitioner is that he should find a way of ensuring the county government’s public service board--- I remember once upon a time I was a Member of Committee on Labour and Social Welfare under the Chairperson., Sen. Sakaja, and we had reached the level of having a National County Public Service Act or an umbrella body that would have looked into these issues.

Be that as it may, the Petitioner can still use the national Public Service Commission (PSC) to sort out some of these issues that they might have grievances on. I know that they have a right under Article 41 on the labour rights. They should use such avenues to ensure that this issue can be resolved once and for all.

I thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): What is your point of order?

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I know you warned Sen. Kang’ata, and as you can see---

The Speaker (Hon. Lusaka): Order, Sen. Kang’ata!

Sen. Mutula Kilonzo Jnr.: I do not know what he is pleading with Sen. Omanga, but I think your order should have been physical distance and he wears his mask. Whatever he is pleading, he can do it outside.

The Speaker (Hon. Lusaka): Senators, let us be serious. Those engagements can be done out of the Chamber.

Sen. (Rev.) Waqo, kindly, proceed.

Sen. (Rev.) Waqo: Thank you, Mr. Speaker, Sir, for allowing me to come and add my voice to this. Much has been said about the Petitioner and the Petition itself. I just want to say that as the Senate, now that this Petition has come, we have the opportunity to look into this, but in future, proper verification must be done before we deliberate.

The issue of saying that we give it the shortest time possible may not sound well outside there. This is because we are here to serve Kenyans and the Petitioner has the right to be heard. We are here to create that listening ear.

Mr. Speaker, Sir, now that the Petition has come, let us give him the attention that this Petition deserves and also see how best we can handle it.

Mr. Speaker, Sir, it is also important to note that as we have been discussing the issue of revenue sharing formula among the counties, a lot of criticism has been based on the county governments.

The issue of corruption, which if you follow, is traced to the procurement department. Many people are interested in that department because of many things which we may not know. Let us give the petitioner the time to be heard. I want to request the Chair of the Committee on Labor and Social Welfare to create enough time so that in future, we do not need to come here and say so many things. Those who process the petitions can guide us and we do not need to discuss other things. Having said what we have said, we are putting many Kenyans off and that is not right.

I support the petitioner and say that, whether it is right or not, let us discuss, give it attention and guide the House in the right way.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Okay, hon. Senators, you freeze where you are or sit. Sen. Wako!

Freezing means you just stand where you are, without movement.

Hon. Senators, pursuant to Standing Order 231, the Petition is hereby committed to the Standing Committee on Labor and Social Welfare. In terms of Standing Order 232, the Committee is required, in not more than 60 calendar days from the time of reading the prayer, to respond to the petitioner by way of report addressed to the petitioner and laid on the table of the Senate.

Next Order!

PAPERS LAID

The Speaker (Hon. Lusaka): The Chairperson of the *Ad hoc* Committee on Managed Equipment Services.

Sen. Dullo: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Tuesday, 8th September, 2020-

REPORT OF THE OF *AD HOC* COMMITTEE ON MES

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Report of the *Ad hoc* Committee on Managed Equipment Services (MES) on the inquiry into the MES project by the Ministry of Health. For the benefit of the Members it will be immediately uploaded to your iPad.

(Sen. Dullo laid the document on the Table)

REPORT ON THE ARREST OF SEN. MALALAH, SEN. (DR.)
LANGAT AND SEN. (DR.) LELEGWE

Sen. Outa: Mr. Speaker, Sir, I have the privilege to lay the Paper of a statement which was presented before the Committee today; the Statement of the arrest of the three Senators.

The Speaker (Hon. Lusaka): It is a report.

Sen. Outa: Mr. Speaker, Sir, yes, it is a report.

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

Sen. Sakaja: Mr. Speaker, Sir, I appreciate that there were changes which were done in Committees recently and maybe there has not been an induction. But, traditionally when you do that, you must say "I beg to lay". This is the tradition of Parliament and then the other flowery language can come. But you must beg to lay and then lay the Paper.

The Speaker (Hon. Lusaka): Sen. Outa, just read what is written there without getting into trouble.

Sen. Sakaja: Mr. Speaker, Sir, I beg you do the induction soon.

Sen. Outa: Mr. Speaker, Sir, I want to thank the Senator for Nairobi City County. I beg to lay the following Paper on the Table of the Senate:

The report on the implementation of the directive issued by the Speaker of the Senate on Monday, 17th August, 2020 regarding the whereabouts of the three Senators.

(Applause)

(Sen. Outa laid the document on the Table)

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

Sen. Malalah: Mr. Speaker, Sir, I am sure we will have an opportunity to go through the report. I want to bring to your attention and to the attention of this House, that last week, I wrote a letter to your office pertaining the---

The Speaker (Hon. Lusaka): What is your point of order?

Sen. Malalah: Yes, that is what I want to deal on the same issue.

Last week, I wrote a letter to your office stating categorically that my life was in danger. This is not a laughing matter. In my letter, I categorically stated the threats to my life. I even mentioned the officers by name and by staff number. I even mentioned the vehicles they are using. I even mentioned the riffles that they have. I even mentioned the

venues of meetings that they have been having to ensure that they threaten my life and harm me.

Mr. Speaker, Sir, your office wrote to the Inspector General of the Police (IG). I requested for extra security. Up to now, I have not been assured of my security.

I want to use the privilege of this House to say that my life is still in danger and it is only your Chair that can protect my life. It will be bad for you to take this matter lightly and then tomorrow you hear that Sen. Malalah has been assassinated. I want to ask you to move with speed and protect Sen. Malalah against these people.

The Speaker (Hon. Lusaka): Order! Order! Sen. Cheruiyot, what is your point of order?

Sen. Cheruiyot: Thank you, Mr. Speaker, Sir, for this opportunity. I want to add a further additional point to what is being raised by Sen. Malalah that the way this House has treated this issue leaves a lot to be desired. It is not a very good practice in the conduct of parliamentary business, that what happened to three of our colleagues is handled in the manner in which it has been handled.

We have seen a report being tabled today. I expected that the leaders, led by the Leader of Majority and Leader of Minority, would at least, have given priority to this report today, before the conduct of any business. A threat to the life of any colleague is an indirect threat to your life also as a Member of Parliament. You do not know when you will take a position that is unpopular to a dictatorial regime such as the one that is presiding over Kenya right now and they will come for your life.

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

Sen. Cheruiyot: Mr. Speaker, Sir, when we appeared before the Committee on National Security, Defence and Foreign Relations of this House, we were denied the opportunity to ask questions. In fact, you would have confused the Chair and Vice Chair for being public relations officers for the CS, Interior and Coordination of National Government. It was shameful what happened, and the further decision---

The Speaker (Hon. Lusaka): Order, Members! What is your point of order, Sen. Poghishio?

Sen. Cheruiyot: Mr. Speaker, Sir, allow me to conclude. I am on a point of order!

The Speaker (Hon. Lusaka): Let him conclude!

Sen. Cheruiyot: Keep your cool, Leader of Majority. You know the Leader of Majority is my father. So, he should allow his children to express their feelings without feeling agitated. If we are wrong anyway, he can later on use parliamentary opportunity available and even call me to his office later and advise me, that you are out of order. For now, Leader of Majority, allow us to say what transpired before that Committee.

It was extremely unfortunate to lock out the media when we, as colleagues, went before that Committee. This was not the first time. Today we want a ruling from you on this practice of kicking out the media by the Committee.

This is the second time. Last time, we raised an issue of *huduma namba* when the Cabinet Secretary (CS) appeared before this Committee. We must know what is the interest that Members of this Committee have with this CS because every time he appears

before this House, the media is kicked out. On that day, the media was kicked out again and Senators were not allowed the opportunity to ask questions.

I felt a lot of anger and pain when Sen. Cherargei tried to raise a simple question and was shut down. He has had his fair share of run-ins with the leadership of that Ministry. It was an opportunity for him to ask questions, but the Chairperson told him to his face that he was not needed in that Committee. So, there are three issues which we want you to give a ruling on before we proceed with the order of business today.

The Speaker (Hon. Lusaka): Hon. Members, the issue that Sen. Malalah has raised is very serious. I advise that he brings it as a personal Statement to this House so that---

(Loud consultations)

Order, Members! They have just laid the report on the Table. We will need time for you to go through it, interrogate and give your comments. That is why I said that because he had just intervened, he brings a personal Statement. When we will be discussing that Report, the issues that Sen. Cheruiyot has raised will be discussed in a more detailed way.

We have other Papers that also need to be laid so that we make progress.

Sen. Wetangula: Thank you, Mr. Speaker, Sir. I will not go into the details of the Statement, but we have a history in this country. We look back, and the Senator for Siaya can tell you that Hon. Josiah Mwangi Kariuki stood on the Floor of the House and said his life was in danger. It was brushed off, and he was found partly eaten by hyenas in Ngong' Forest. Later on, Tony Ndilinge, with whom we were in Parliament with Sen. Orenge, stood on the Floor and said his life was in danger. Members even laughed at him. A week later, his body was found in Githurai 44.

The least we want to encourage you as our Speaker is to send an immediate message to the Inspector-General that the matter raised by the Senator for Kakamega or by any Senator that feels his life is in danger should be not be taken lightly, so that he can assure you as a leader of this House. He can also assure this country like he has a duty to protect the life and property of every individual Kenyan, he has an even greater duty to protect the life of a Senator who is feeling apprehensive that his life is in danger.

Sen. Murkomen: Mr. Speaker, Sir, you need to take this thing very seriously. It started way before with Sen. Cherargei, then moved to Sen. Kihika being denied security, then moved to me. When I was removed as the Senate Majority Leader, my security was withdrawn. I had to call the President himself to return it. It went to Sen. Sakaja; he was arrested. We then came here and laughed and are still joking across the country that it has something to do with the Ladies Lounge. It moved from there and went to the three Senators.

Mr. Speaker, Sir, it becomes that story of the German priest who said, "First they came for the socialists, and I did not speak out because I was not a socialist. Then they came for the trade unionists, and I did not speak out because I was not a trade unionist. Then they came for the Jews, and I did not speak out because I was not a Jew. Then they came for me and there was no one left to speak for me."

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They will go round these Senators on different issues that will be coming to this House and they will finally come for you. By that time, there will be no one to speak for you, because it looks like they are picking people round this Chamber.

Most importantly, a report has been laid here. If you saw, the Vice Chairperson was not confident. It is like he was struggling to lay that Paper because it is not a Paper worth being laid before this House. We know Sen. Outa when he is confident and has done the right thing. You could see him shaking when he was here. I say so because apart from the Committee rejecting the media from going there, they did not invite Sen. Malalah, Sen. (Dr.) Langat or Sen. (Dr.) Lelegwe to the Committee, yet we want to make it business as usual. I do not believe that is a report that is worth being called a Senate Committee Report.

The Speaker (Hon. Lusaka): Proceed the Senate Minority Leader.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, let me, first of all, say one point as a preamble. I think that we owe it to the Republic of Kenya that when there is a sitting of the Senate or any Committee and you do not intend to allow the media, you must give a plausible explanation. You should not give that explanation after the event. You should give it before.

(Applause)

That happens in the courts. If you do not want the public or the media to take part in the proceedings, the court must give reasons. The Constitution says that if you want to make a decision, which is adverse to any person who is interested in it, you must give notice or a reasonable explanation. For one, I would never tolerate a situation where the deliberations of the House, either in the Committee or in Plenary, are closed to the public. That is not possible in a democratic society.

The second thing which Sen. Wetangula referred to is that, there is standard security given to Members of Parliament. Once that standard security is removed from any Member of Parliament, it is a matter of concern not to that particular Member, but to the Senate as a whole. I remember that there was a time when the security of Sen. Muthama was taken away from him. We brought that matter to the Floor of the House and the Speaker ensured that security was reinstated.

Now that Sen. Malalah has stood here and addressed this matter as of public concern, it cannot rest. I know that you had already pointed out to me that at some stage that the letter has reached you. However, now that he has raised this matter on the Floor of the House, something must be done.

Mr. Speaker, Sir, the issue of security is very important. I was engaged in the trial of the murder of Dr. Ouko. The first thing that happened was the security was removed from him. What happened subsequently is history. If there was a man that I thought was good, holy, religious, and who could not have met that fate, then that would have been Dr. Robert Ouko.

I remember a Member of Parliament from Nyeri, Hon. Waruru Kanja. He stood in the National Assembly the way Sen. Malalah has stood today. There were a lot of points

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of order against what he was saying, but he said, “I must speak, because I want to tell the people of Kenya that my life is in danger.”

I do not want to be found dead like hon. (Dr.) Ouko because I will not be able to raise that issue.

The fact that Sen. Malalah has raised this issue from the Floor, I hope that immediate action should be taken. The inquiry can proceed, but the question of his security must be dealt with immediately. This is because if it is left in abeyance, then something will happen and all of us who are here will feel collectively guilty. I know after the death of hon.(Dr.) Ouko, many people felt very guilty because he had been pointing out to people that his life was in danger and it looked like a story.

I was in the House at that time when hon. (Dr.) Ouko was a lonely figure. He used to sit on the frontbenches. However, he used to come to sit on the backbenches where we used to sit with hon. Abuya Abuya and hon. Koigi Wamwere. He was sensing something was going to happen to him, but was not courageous enough to stand up and say it.

Now that Sen. Malalah has spoken, let us forget our differences and think about his life because it could happen to you or me. I have seen so many Members of this House lose their lives in the circumstances where they should not have died.

(Applause)

Mr. Speaker, Sir, some directive should be made from your Chair immediately so that we do not live in guilt tomorrow. If you give it tomorrow and something happens today, we will be collectively guilty of this affair.

The Speaker (Hon. Lusaka): Let us have Sen. Pareno from the extended Chamber; then Sen. Wako.

Sen. Pareno: Thank you, Mr. Speaker Sir, for giving me an opportunity to comment on this issue of the security of Members. I am a Member of the Senate Committee on National Security, Defence and Foreign Relations. It is not right for Sen. Murkomen to say that, probably, the Report is not worth what it should be.

As the Members of the Committee, we did our job and justice to the matter that was before us. We took the matter of threats and arrests of Members very seriously. I urge Members to look at the Report that has been laid---

(Loud consultations)

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

Sen. Pareno: Mr. Speaker, Sir, since we are not debating the Report, they should read it and see the far-reaching recommendations as far as the security of Members is concerned.

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

Sen. Sakaja: Mr. Speaker, Sir, I am shocked to hear this from Sen. Pareno. Is it in order for her to say the Committee did justice to this matter while I attended, raised my

issues of being trailed and gave them number plates of the cars being used by the Directorate of Criminal Investigations (DCI) officers, yet I was dismissed? I was not even asked further details. Honestly, is she in order to mislead the House?

This is a Committee I have chaired for two years in this House in the absence of Sen. Haji who was engaged in the Building Bridges Initiative (BBI).

Sen. Pareno: Mr. Speaker, Sir, I agree that Sen. Cherargei and Sen. Sakaja were not given the chance they should have had before the Committee. However, that does not mean that as a Committee we did not consider what was before us which was the threat and arrest of Sen. Malalah, Sen.(Dr.) Lelegwe and the Sen.(Dr.) Lang'at.

If you look at the Report, we made quality---

The Senate Majority Leader (Sen. Poghio): On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): What is your point of order, Leader of Majority?

The Senate Majority Leader (Sen. Poghio): Mr. Speaker, Sir, it is basically on procedure. We might get carried away or be agitated by certain things that have happened which we do not necessarily condone. For the order of the House, there are statements which have been said about colleagues, including the statement casting aspersions on the Vice Chairperson of the Committee on National Security, Defence and Foreign Relations, and also using this opportunity improperly. We all condemn, but the Paper has been laid.

We are all going to look at the copies. We have all canvassed on it. I am hoping we can just follow our procedure. I assure the Members, including Sen. Malalah the matter has been raised and he has had the opportunity to be heard. The Speaker and this House have heard.

Mr. Speaker, Sir, guide us so that we do not have to attack each other on a matters like this.

The Speaker (Hon. Lusaka): Sen. Pareno, had you finished? I had given Sen. Wako opportunity.

Sen. Pareno: Mr. Speaker, Sir, there were a lot of points of order so I sat to give others a chance to raise them.

In as much as there are issues that arose within the hearing such as those being raised by Sen. Sakaja, we considered them. I was only inviting Members to be kind enough to look at the Report. If it falls short of addressing that issue, they will be able to raise what they are raising now.

Sen. Wako: Thank you, Mr. Speaker Sir, for giving me an opportunity to speak on this. I see Members laughing here thereby indicating that this matter may not be as serious as they think or taking it lightly.

Issues of security, particularly when they involve the right to life are very critical. As others have said, when it involves political leaders, it becomes even a matter for the nation. This is because for each leader that has lost life in the manner that other people have spoken of here, this country almost broke down. Whether you are talking about hon. Tom Mboya, hon. (Dr.) Ouko or hon. J. M Kariuki and others, this country almost broke down. Therefore, the issue we are discussing here goes beyond Sen. Malalah to the root of peace and security of the nation.

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It is not enough to say “he has been heard and the matter will be considered”. On a matter of security of this nature, we need to know immediately what action has been taken on that complaint, particularly where a leader has taken the trouble to use his resources to investigate and he had given detailed particulars of the number plates of vehicles, policemen and all those involved. The least we expect is an immediate withdrawal of those vehicles or the people following him or an immediate statement to say that they are not after him. We then have some action taken to give Sen. Malalah the security he deserves.

This country is at peace. However, something can happen which will make us shudder. I believe that never again are we going to have the kinds of instances that happened in the past which almost brought this country down.

My request to you is that the Inspector-General of Police should immediately say that those officers have been withdrawn, since the evidence is there, as he provides security to Sen. Malalah. Either withdrawal, denial or something has to be done immediately.

The Speaker (Hon. Lusaka): Hon. Senators, this matter has attracted a lot of interest when I look at my list. As we proceed, I want to say that immediately Sen. Malalah wrote to my office, I wrote a letter to the Inspector-General of Police asking him to take immediate action.

The Paper has just been laid on the Floor of the House. Since I know that we shall have an opportunity to discuss it, I want to direct that tomorrow at 10.00 a.m. the Inspector-General of Police appears before the Standing Committee on National Security, Defence and Foreign Relations. All those who have an interest in the matter should be allowed to attend.

The proceedings should be open to the media and all those who are interested in listening to this matter. It is so directed.

(Sen. Malalah stood up in his place)

Order, Member! I hope you are not challenging my ruling.

Sen. Malalah: Mr. Speaker, Sir, I want to thank you for your wisdom. However, my worry is, does that direction guarantee my security tonight?

The Speaker (Hon. Lusaka): It does guarantee your security tonight. You were alive yesterday and I am hoping that you will still be alive tonight. I have not seen anything---

Sen. Madzayo: Asante, Bw. Spika. Nakubaliana na uamuzi uliofanya, lakini nilikua nataka kukuomba jambo moja. Ombi langu ni kuwa, Mwenyekiti wa *Standing Committee on Justice, Legal Affairs and Human Rights* anafaa kuwa mmoja wa wenyekiti watakaokua katika mkutano na *Standing Committee on National Security, Defence and Foreign Relations*, wakati *Inspector-General of Police* atakuja hapa.

Ombi la pili ni kuwa, mimi nilikua ndani ya hiyo nyumba---

The Speaker (Hon. Lusaka): Order, Senator! You know the rules, that once the Speaker has made a ruling, it is final. We cannot go back on that matter. I have directed that the Inspector-General of Police will come tomorrow, as well as those who can attend.

(Loud consultations)

I have made a ruling on that matter. We cannot go back to it because we are setting a bad precedent. I have said that Sen. Malalah's security is guaranteed. When the Inspector-General of Police comes tomorrow, we will look at it.

Sen. Cheruiyot: On a point of order. Sen. Madzayo has made a very humble plea to you which I want to request you to grant; that the Standing Committee on Justice, Legal Affairs and Human Rights be enjoined in prosecuting this matter.

The reason we are pleading with you on this matter is because we know how difficult it is to appear before the Standing Committee on National Security, Defence and Foreign Relations. I do not intend to discuss the conduct of the leadership of the Standing Committee on National Security, Defence and Foreign Relations. However, bear with some of us.

Some of us are extremely young and when we go before that Committee and have to engage the Chairperson, it is not an interesting experience and it is not respectful.

Mr. Speaker, Sir, I want to plead with you that you accede to the request by Sen. Madzayo to allow this exercise to be carried out jointly by the Standing Committee on National Security, Defence and Foreign Relations and the Standing Committee on Justice, Legal Affairs and Human Rights.

The Speaker (Hon. Lusaka): Order, Members! We have to make progress. The request by Sen. Madzayo is granted.

Next Order.

REPORT ON THE INQUIRY INTO THE CONDUCT
OF SEN. SENETA AND SEN. KWAMBOKA

Sen. Kasanga: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today Tuesday, 8th September 2020-

Report of the Committee on Powers and Privileges on the Inquiry into the Conduct of Senators during the Election of the Chairperson and Vice Chairperson of the Standing Committee on Health.

(Sen. Kasanga laid the document on the Table)

THE PUBLIC HEALTH COVID-19 REGULATIONS 2020

Sen. Dullo: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today Tuesday, 8th September 2020-

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- (1) The Public Health (COVID-19 General Public Safety) Rules, 2020, Legal Notice No. 129 of 2020.
- (2) The Public Health (COVID-19 Sale of Alcoholic Drinks) Rules, 2020, Legal Notice No. 163 of 2020.

(Sen. Dullo laid the documents on the Table)

Sen. Kibiru: Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate, today Tuesday, 8th September 2020-

REPORT ON NON-PAYMENT OF PENDING BILLS
BY KITUI COUNTY EXECUTIVE

- (1) Report of the Standing Committee of Finance and Budget on the Petition presented by Sen. Enock Wambua, MP, on non-payment of Kitui County Executive of pending bills incurred during the 2015/2016 financial year.

REPORT ON THE EQUALIZATION FUND BILL, 2020

- (2) Report of the Standing Committee on Finance and Budget on the Equalization Fund Bill (National Assembly Bill no.43 2019)

(Sen. Kibiru laid the documents on the Table)

NOTICES OF MOTIONS

ADOPTION OF REPORT ON THE INQUIRY INTO THE
CONDUCT OF SEN. SENETA AND SEN. KWAMBOKA

Sen. Kasanga: Mr. Speaker, Sir, I beg to give notice of the following Motion for adoption of Report for the Committee of Powers and privileges on the inquiry of the conduct of two Senators-

THAT, the Senate adopts the Report of the Committee of Powers and Privileges on the inquiry into the Conduct of Sen. Beatrice Kwamboka, MP, and Sen. Mary Seneta, MP, during the Election of the Chairperson and Vice Chairperson of the Standing Committee on Health, laid on the Table of the Senate on Tuesday, 8th September 2020.

Thank you.

ADOPTION OF REPORT OF THE *AD-HOC* COMMITTEE ON MES

Sen. Dullo: Mr. Speaker, Sir, I beg to give notice of the following Motion: -

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THAT, the Senate adopts the Report of the *Ad hoc* Committee on Managed Equipment Services on inquiry into the Managed Equipment Services Project by the Ministry of Health, laid on the Table of the Senate on Tuesday, 8th September, 2020.

Thank you.

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

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

OPERATIONALIZATION OF EDUCATION ASSESSMENT
RESOURCE CENTRES (EARCS) IN COUNTIES

Sen. (Dr.) Musuruve: Madam Deputy Speaker, I beg to give notice of the following Motion -

THAT, Aware that Section 46 of the Basic Education Act, 2013 mandates the county education boards to provide for Education Assessment and Research Centres (EARCs), including a special needs service in identified clinics in the respective counties;

FURTHER AWARE, That the functions of EARCs as provided by the Act include the study of children with special education needs within the county; the giving of advice to parents and teachers as to appropriate methods of education for such children; in suitable cases, provision for the special education needs of such children in the identified clinics; and, the giving of advice to county education boards regarding the assessment of needs of any child under special needs education for purposes of any of the provisions of the Basic Education Act, 2013;

NOTING THAT, given the critical role EARCs play in assessment, placement and early intervention of children with special needs, EARCs countrywide are currently in a dilapidated and dysfunctional state;

NOW THEREFORE, the Senate calls upon the county governments to operationalize Section 46 of the Basic Education Act, 2013 by:

- (1) Ensuring that EARCs in the respective counties are fully furnished and adequately staffed.
- (2) Work in tandem with the National Government to develop a national policy on EARCs that will define the expected service delivery in accordance with internationally set standards and regulate the terms of employment for the staff.

Thank you, Madam Deputy Speaker.

STATEMENTS

The Deputy Speaker (Sen. (Prof.) Kamar): The first Statement, under Standing Order 47 (1) ---

Sorry, I am advised that there is a Statement by the Senate Majority Leader.

ACCESS BY COUNTY GOVERNMENTS TO THEIR SHARE OF
NATIONALLY RAISED REVENUE FOR FY 2020/2021

The Senate Majority Leader (Sen. Poghisio): Madam Deputy Speaker, I will ask for your indulgence on this one. It is a Statement pursuant to Standing Order 52 (2) --

-

(Loud consultations)

The Deputy Speaker (Sen. (Prof.) Kamar): Order, Members! Let us give audience to the Senate Majority Leader.

The Senate Majority Leader (Sen. Poghisio): Madam Deputy Speaker, I rise, pursuant to Standing Order 52(2) of the Standing Orders to make a Statement concerning access by county governments to their share of nationally raised revenue for the Financial Year 2020---

(Sen. Poghisio's microphone went off)

What has happened to the volume? Is it my problem?

I rise, pursuant to Standing Order 52(2) of the Standing Orders to make a Statement concerning access by county governments to their share of nationally raised revenue for Financial Year 2020/2021.

As you aware, under the Constitution of Kenya 2010, there is a two-tire process on how revenue is shared between the two levels of government. In the first instance and pursuant to Article 218(1)(a) of the Constitution, Parliament considers and passes the Division of Revenue Bill which divides revenue raised nationally between the national and county levels of government. In this respect, the Division of Revenue Act, 2020, was passed by Parliament and assented to on 22nd April, 2020.

In the second instance and pursuant to Article 218(1)(b) of the Constitution, Parliament considers and passes the County Allocation of Revenue Bill which allocates among counties, the revenue allocated to the county level of government on the basis determined in accordance with a resolution passed under Article 217 of the Constitution.

The County Allocation of Revenue Bill, 2020, was published on 17th April, 2020, read a First Time on 21st April, 2020. Second Reading debate on the Bill commenced on the 5th May, 2020 and was adjourned pursuant to Standing Order 105, to allow the Senate to consider and pass the the Third Basis for allocating revenue among the counties, the share of national revenue that is annually allocated to the county level of government. The passage of the County Allocation of Revenue Bill, 2020, is predicated upon the

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resolution made by the Senate pursuant to Article 217 of the Constitution, considering that the second generation formula has lapsed.

Madam Deputy Speaker, Article 224 of the Constitution provides that: -

“On the basis of the Division of Revenue Bill approved by Parliament under Article 218, each county government shall prepare and adopt its own annual budget and appropriation Bill in the form, and according to the procedure, prescribed in an Act of Parliament.” However, while a reading of Article 224 would seem to imply that the budget process at the county level of government is determined by the Division of Revenue Bill, it should be noted that Article 224 is operationalized, where there is a subsisting basis for the horizontal allocation of the county governments’ share of nationally raised revenue among the counties.

A consideration of this synopsis of events therefore reveals that with respect to this Financial Year, we are in a very unique situation where the vertical allocation of counties is ascertainable from the Division of Revenue Act, while the horizontal allocation determined by the County Allocation of Revenue Bill is yet to be ascertained as it is dependent upon the resolution of the Senate under Article 217 of the Constitution.

Madam Deputy Speaker, the budget making process and allocation of revenue between the two levels of government is not merely an academic exercise. At the heart of public governance is the delivery of public services. The efficient and effective delivery of public services is dependent on resources. The delay in the passage of the County Allocation of Revenue Bill not only represents a delay in the transfer of funds to county governments, but is likely to result in the crippling of services at the county level of government. We are almost at the end of the first quarter of this financial year and no transfer has been made to county governments.

A delay in the determination of allocations due to county governments will *ex ante* cause a disruption in the budget-making process for county governments and *ex-post* affect the effective implementation of the budget. These two scenarios, therefore, beg the question whether county governments have a remedy within the law that would allow limited access to their share of nationally raised revenue.

I would like to first call your attention to the provisions of Section 134(1) and (2) of the Public Finance Management Act which provides that: -

“(1) If the County Appropriation Bill for a financial year has not been assented to, or is not likely to be assented to by the beginning of that financial year, a county assembly may authorize the withdrawal of money from the County Revenue Fund.

(2) Money withdrawn under subsection (1)—

(a) may be used only for the purpose of meeting expenditure necessary to carry on the services of the county governments during the financial year concerned until such time as the relevant appropriation law is passed; and,

(b) may not exceed, in total, one-half of the amount included in the estimates of expenditure submitted to the county assembly for that year.”

The provisions of Section 134 of the Public Finance Management (PFM) Act, however, contemplate that the option of votes on account would arise where the Division of Revenue Bill and the County Allocation of Revenue Bill have been passed and for whatever reason a county assembly has not passed an Appropriation Bill. The section does not contemplate the present situation where the County Allocation of Revenue Bill has not been passed and national revenue has not been divided among the counties.

Perhaps then the provisions of the Public Finance Management Act (County Government) Regulations would provide a clearer way forward. Regulation 134 of the Public Finance Management (National Government) Regulations on equitable transfer before approval of County Allocation of Revenue Bill provides that-

“(1) If the County Allocation of Revenue Bill submitted to Parliament for a financial year has not been approved by Parliament or is not likely to be approved by Parliament, by the beginning of the financial year, the Controller of Budget may authorize withdrawals of up to 50 per cent from the Consolidated Fund based on the last County Allocation of Revenue Act approved by Parliament for the purposes of meeting expenditure of the county governments for the financial year.

(2) The authority under paragraph (1) shall cease upon assent of the County Allocation of Revenue Act for the financial year.

(3) The transfer to county governments made under paragraph (1) under this regulation shall form part of their equitable transfer for the financial year.”

It is prudent to remember that these regulations are made under authority conferred on the Cabinet Secretary under Section 205 of the PFM Act and the principles espoused under Article 94(5) of the Constitution. It is my unequivocal position that whereas the principal Act does not deal directly with the question of transfers in the absence of the County Allocation of Revenue Act, the Regulations are clear on the remedy available to counties.

The conundrum we are faced with has been the subject of judicial consideration. In Advisory Opinion No.3 of 2019 (Council of Governors and 47 others versus Attorney-General and six others) the question of funds transfer to county governments in the event of a delay in the process of enacting the Division of Revenue Bill was canvassed by the Supreme Court. The following constitutes the court’s ruling on the matter-

“It is therefore our considered opinion that should an impasse occur due to the failure of the mediation process, occasioned by the lack of concurrence between the two Houses over the Division of Revenue Bill, the National Assembly shall, for the purpose of meeting the expenditure necessary to carry on the services of the County Government during that year until such time as the Division of Revenue Act is assented to, authorize the withdrawal of money from the Consolidated Fund. The monies so withdrawn shall be included, under separate vote(s) for the several services in respect of which they were withdrawn. It is to be expected that each County Assembly, would have to re-adjust their respective budgets and appropriation bills accordingly.

This leaves us with the question regarding the percentage to be withdrawn from the Consolidated Fund. While the withdrawal of money for the purpose of the national Government under Article 222 is based on a percentage of the estimates of expenditure for that year, the same method cannot apply to the county governments, since the estimates do not include the equitable revenue share due to counties.

Logic would require that the percentage of the money to be withdrawn be based on the Division of Revenue Bill; yet this would be legally untenable, given the fact that the Bill, is not only the subject matter of controversy, but is also yet to pass into law.

In the circumstances, it is our view that in the event of an impasse, the percentage of the money to be withdrawn be based on the equitable allocation to counties in the Division of Revenue Act of the preceding financial year. In keeping with the spirit of Article 222(2)(b) of the Constitution, the money to be withdrawn shall be 50 per cent of the total equitable share allocated to the counties in the Division of Revenue Act.”

Madam Deputy Speaker, from the outset, let me point out that the Supreme Court Advisory Opinion relates to a situation where the Division of Revenue Bill has not been enacted. This is distinguishable to the present scenario where the Division of Revenue Act has been enacted and the counties’ share of nationally raised revenue has been determined. Access to these funds would therefore not be subject to the approval of the National Assembly or be predicated on the passage of an Appropriation Bill. The global allocation to counties has already been made by the Division of Revenue Act.

However, the Advisory Opinion remains useful for our present purposes as it would have the same net effect that we are trying to achieve. The directions of the court would result in the transfer of 50 per cent of the allocation made to each county government in the immediate preceding financial year.

Indeed, the manner in which the court arrived at this conclusion is aligned to my Statement today. In considering the question to access of funds by counties during a delay in the enactment of legislation contemplated under Article 218 of the Constitution, the court employed a purposive interpretation of the Constitution. They based their opinion on the overarching principle of continuity in government as set out in Article 222 of the Constitution and espoused in other rulings of the Supreme Court.

The court found that a reading of the law whose consequence would be the grinding to a halt of the delivery of services by county governments would represent a subversion of Article 222 of the Constitution and yet a constitution cannot subvert itself. There must, therefore, be a remedy for counties to continue delivering on public services.

On the premise of the law and facts that I have canvassed above, therefore, it is incumbent upon the Cabinet Secretary of the National Treasury to implement the provisions of Regulation 134 of the Public Finance Management Act (National Government) Regulations and further fortified by the *ratio decidendi* of the Court in Advisory Opinion No.3 of 2019, to transfer to the counties 50 per cent of the allocation made in the County Allocation of Revenue Act, 2019. This would ensure continuity in

the delivery of services by county governments as a means to an end, but also as a means of promoting the principles of devolution as set out in Article 175(b) of the Constitution.

Madam Deputy Speaker, I raise this Statement because of the misunderstanding and also just to disabuse the accusations targeting this Senate. I know the Senate Minority Leader will add his voice to this as soon as I conclude.

It is clear that we have a duty in determining the formula and passing the County Allocation of Revenue Bill. However, at this moment, it is difficult for the Senate not to come out in this manner.

We had to do this because governors are now accusing the Senate. They are saying that services will grind to a halt. Everybody knows that the Constitution protects that. It cannot happen and we should not allow it to happen.

Madam Deputy Speaker, I now ask my colleague the Senate Minority Leader to add his voice.

I thank you.

The Deputy Speaker (Sen. (Prof.) Kamar): Let us hear from the Senate Minority Leader.

The Senate Minority Leader (Sen. Orengo): Madam Deputy Speaker, I fully concur with the statements made by the Senate Majority Leader.

However, I just want to add a few matters which the Council of Governors (CoG) uttered when they made a statement last week. I was told that they were, probably, going to issue another statement today.

Madam Deputy Speaker, in making their statement last week, they made a very atrocious statement. One of the things they said is that they are going to shut down and disband the Senate; that they are going to file a petition in the court to dissolve the Senate.

I would ask the CoG to read the advisory judgement which arose out of a matter they had filed themselves in the Supreme Court. I want to say from the Floor of this House, there is no provision under the Constitution that you can use to dissolve the Senate. There is none at all. You can dissolve Parliament and those provisions are contained in Article 261 (5), (6) and (7). I want to repeat just in case the governors continue to make those statements that if Parliament fails to enact any particular legislation within the specified time; it is not about the resolution under Article 217. In making that resolution, we are not enacting legislation at all. They should be aware of that distinction. In fact, in Paragraph 91, the court made this clear. They said this: -

“In this regard, we would have had no hesitation to invoke the provisions of this Article 261 of the Constitution had the Division of Revenue Act been one of the legislations unequivocally or at least tangentially included in the Fifth Schedule.”

They said they would have done it if it was one of the Bills that are contemplated in the Schedule.

I want to tell them that it is impossible for them to dissolve the Senate in these particular circumstances. Article 217 makes it possible for us not to have an impasse. This is because Article 217(7) says that when there is no resolution, the previous

resolution - I think Sen. Omogeni, Senior Counsel and Sen. Faki pointed this very clearly - Article 217(7) says that a resolution under this Article that is approved under Clause (b) shall be binding until a subsequent resolution has been approved.

Madam Deputy Speaker, as far as I am concerned, there is no constitutional crisis. There is no impasse. The Cabinet Secretary to the Treasury has the legal instruments both on account of this constitutional provisions and those provisions that have been cited by the Senate Majority Leader.

The second thing which the governors uttered which was completely uncalled for and atrocious. I heard a statement where they were saying that the Senators are extortionists.

Hon. Senators: Yes!

The Senate Minority Leader (Sen. Orengo): They said so, and I heard that at the Senate, we are extortionists.

Hon. Senators: Imagine!

The Senate Minority Leader (Sen. Orengo): Madam Deputy Speaker, if you take any newspaper on a daily basis on matters relating to the Anti-Corruption and Economic Crimes Act, you are more likely to find a governor on the first pages of the newspaper than you will find a Senator. Even in today's newspaper, I do not see a picture of a Senator here. It is all governors. This has not occurred because it has just happened. It is because somebody has gone and made a complaint.

I would advise the governors to go to Integrity House and make a report that on such and such a day, there was a Senator who asked me for a bribe or I witnessed an event of extortion.

(Applause)

Madam Deputy Speaker, these kinds of wild statements, these kinds of sensational statements are shameless and uncalled for. In fact, I would have thought the CoG would sit together and say we are an endangered species, what do we do in order to survive? This is because at this rate they are likely not to survive. Just on the newspaper alone, there are eight of them and I do not see a single Senator. Whenever you see a Senator on the first page, it is on something else which is political. This is a statement that should not have come from the governors at all.

Madam Deputy Speaker, finally, I would want to say this on this issue which is very important as far as I am concerned. I have got a lot of respect for many governors. Many of them are my friends. For those who attended the burial of the late Governor Laboso, in the middle of the contention of how much money should go to counties; it was the Chairperson of the CoG who is my party leader, who said Kshs316 billion is enough. He even asked what we were complaining about. It was them at a meeting with the Executive who said that Kshs316 billion was enough when we were struggling to make sure that we get what the counties deserve and they refused. In fact, if governors knew their work in the county, they should have supported the Senate to the hilt.

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Madam Deputy Speaker, now they want the money. They want, not only this money that they are being given by Parliament, but they also want the Covid-19 money. They want the money, but they do not want oversight. They do not want to account. What type of people are these?

Hon. Members: Shame!

The Senate Minority Leader (Sen. Orengo): Woe unto them!

Hon. Members: Yes!

(Applause)

The Senate Minority Leader (Sen. Orengo): Madam Deputy Speaker, under Article 104 of the Constitution, you can recall a Member of Parliament. I am very proud to say that for these 10 years, I have not heard of any instance where members of a particular constituency are calling for a recall of a Member of the Senate; not even once. However, if you want to go by the number of impeachments that are awaiting; they are so many that I do not think we even have the capacity to deal with all of them if at all they land here.

Madam Deputy Speaker, in conclusion, I want to say that the governors should live up to the mandate and the job that they were given. If they want money, they must be oversighted. If they think there is a crime committed by Senators, they should go to Integrity House or Vigilance House or the DCI headquarters near Karura Forest and make a complaint; we are not above the law. However, we cannot be an excuse for them to run away from oversight and audit by institutions of Government.

Thank you, Madam Deputy Speaker.

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, I am guided by the resolution of the House Business Committee today that we will take only that Statement under Standing Order No. 52(2) and it will not attract any debate for now. On Thursday when we come together, we will really dispose of some of the things that we have. I am saying this because I have seen a number of requests and I wanted to mention that we will move, therefore, to the next Order.

Next Order.

The next Statement is under Standing Order No.47(1) and I will start with the Statement from Sen. (Dr.) Milgo.

(Loud Consultations)

Hon. Senators, we have a number of Statements today. I am going to beg for your indulgence that for the Statements under Standing Order No. 47 (1), we will only allow two interventions.

However, when it comes to Statements under Standing Order No. 48 (1), these are Statements that must go to the Committees and, therefore, let us make sure that every Member is given a chance to---

(Loud consultations)

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Senator, can you take your seat please?

Sen. (Dr.) Milgo: Madam Deputy Speaker, help me so that my voice can be heard.

The Deputy Speaker (Sen. (Prof.) Kamar): There is a point of order from a Senator. Take your seat; I do not want two Members standing at the same time.

Sen. (Eng.) Mahamud, kindly, proceed. Give him the microphone please.

Sen. (Eng.) Mahamud: Madam Deputy Speaker, I am sorry to say this but you know on a matter of that importance, where the whole country is waiting for funds to go to the counties; the Senate Majority Leader in this House issued a Statement. You ruled that the Senate Business Committee this morning decided that nobody should contribute. In fact, on other Statements, which are very trivial, you allow half an hour or 15 minutes and we are done.

Madam Deputy Speaker, is it in order for the Chair to gag the Senate?

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

The Deputy Speaker (Sen. (Prof.) Kamar): On the same? Yes, Sen. Cheruiyot.

Sen. Cheruiyot: Madam Deputy Speaker, we want to humbly plead with you that this is a very important Statement that has been issued by the Senate Leader of Majority. The character and conduct of the Senate are on trial. You have heard what Governors have said. You have heard what the Cabinet Secretaries have said. The least that Members of this House can do is to show support and speak to the issues that have been canvassed by our leadership.

Therefore, to offer an opportunity to the Senate Majority Leader and the Senate Minority Leader only and deny us the chance to prosecute our issues is not fair. We want to humbly plead with you that you kindly find it within your discretion to allow us, even if it is only three minutes per Senator to speak on this matter. This is because it is extremely important.

Many of us are going to public functions over the weekend and the governors are telling people: "If there is no medicine in this hospital, kindly, ask your Senator. They have not provided the funding". It is a very important issue.

The Deputy Speaker (Sen. (Prof.) Kamar): Point taken. Sen. Kinyua, kindly, proceed. He is also on a point of order, Sen. Cherargei. Allow Sen. Kinyua to say what he has to say.

Sen. Kinyua: Thank you, Madam Deputy Speaker, as a former Chairman of the Committee on Devolution and the counties---

(Laughter)

Madam Deputy Speaker, this is a very important matter and it is concerning our counties. All statements that will follow are important, but the issue of money going to the counties is very important. Everybody is saying that the Senate is failing in their duties and that is why the services to counties are almost grinding to a halt. If we do not speak about this matter now, we will be failing in our duties and I would urge you---

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The Deputy Speaker (Sen. (Prof.) Kamar): Point taken. Sen. Cherargei, kindly, proceed.

Sen. Cherargei: Thank you, Madam Deputy Speaker, for this opportunity. This matter of national gravity should be taken with the seriousness it deserves.

Madam Deputy Speaker, for your information, the Council of Governors (CoG) sat today in their Extra-Ordinary Summit. They did discuss this House alleging that the lack of funds---

They have said that even devolution is under attack, yet we cannot be able to canvass on the Floor of the House, so that Kenyans can understand where the truth is.

Madam Deputy Speaker, I beg of you to give us an opportunity of two to three minute to canvass on this issue, so that Kenyans can understand and know the truth.

I thank you.

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Wambua, kindly, proceed.

Sen. Wambua: Thank you, Madam Deputy Speaker. I want to join my colleagues to urge you that you give Senators an opportunity to canvass this matter for one reason. Last week, you heard the Council of Governors purporting to give directions to this Senate, purporting to say that they have capacity to order the closure of the Senate.

Madam Deputy Speaker, this institution is under attack and we have a duty and a responsibility to safeguard the interests of counties and not the interests of individual governors. Give us an opportunity to ventilate on this matter.

I thank you.

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Shiyonga, kindly proceed.

Sen. Shiyonga: Thank you, Madam Deputy Speaker. I will add my voice to my colleagues'. It is very absurd when governors have extraordinary sittings to discuss about the Senate and the Senate in response gives only an opportunity to two Senators.

I urge you to give us an opportunity to defend ourselves. This is because the matter that is affecting counties affects us too. If you are told that they are there to go and proclaim outside there that we are holding to ransom the Government of Kenya; everywhere they are saying that we are the ones holding the money, we need to defend this Senate, our interests and our name as a Senate.

Madam Deputy Speaker, give us a chance. Give us a signal.

I thank you.

The Deputy Speaker (Sen. (Prof.) Kamar): I think I need to rule on this one, Senators, because from where I sit, a Speaker is only guided and in the guidance that we got from this Statement, the Statement was read under Standing Order No. 52 (2). A Statement under Standing Order No. 52 (2) has no debate.

As I said, we do want to use Standing Order No. 1 at this stage because we know we are going to come back on Thursday to discuss our matters. I am informed that on Thursday, there will be a meeting for dialogue between the two groups, so that we see whether we can zero in.

Hon. Senators, I think the Senate Majority Leader has done justice to this. The Leader of Minority has done justice to this. I want to plead with Senators that we leave it

at that. The governors have heard us. The Executive have heard us. We are going to have opportunities through the other Statements to be able to throw in one or two comments.

Please, let us leave it at that. There is no debate on this one. Thank you.

Next Order is on Statements under Standing Order No. 47 (1) and I had moved on to Sen. (Dr.) Milgo.

(Loud consultations)

APPOINTMENT OF SEN. (DR.) GERTRUDE MUSURUVE AS
CO-CHAIR OF THE INTERNATIONAL PARLIAMENTARY
NETWORK ON EDUCATION

Sen. (Dr.) Milgo: Thank you, Madam Deputy Speaker. I rise pursuant to Standing Order No. 47 (1) to make a Statement on appointment of Sen. (Dr.) Gertrude Musuruve Inimah as the Co-chairperson of the International Parliamentary Network for Education (IPNE).

Madam Deputy Speaker, I congratulate Sen. (Dr.) Gertrude Musuruve for this appointment to the IPNE. The International Parliamentary Network for Education seeks to realize the call for Sustainable Development Goals (SDG) number four.

In 2015, the International Community committed to include a call on education, SDG number four among the 17 Sustainable Development Goals to be achieved by 2030 and commitment was to ensure inclusive and equitable quality education and promote lifelong learning opportunities for all.

Madam Deputy Speaker, Sen. (Dr.) Musuruve's appointment comes at an opportune time when we are all grappling with the effects of COVID-19. Education of all children in Kenya and worldwide has been adversely affected with the advent of COVID-19. Even though this is the case for every child in the education sector, children with disabilities and other marginalized communities have been most hit by this virus. IPNE seeks to ensure that the needs of the child that are furthest are met.

Madam Deputy Speaker, although education is meant to be a socio-economic equalizer for all children, with time, the academic achievement of children with disabilities and the marginalized have been moved many uncountable steps backward during this COVID-19 period. The case of Kenya with regard to recreation in education for children with disability and marginalized children, is indeed, the case for other African countries.

Madam Deputy Speaker, we are ten years away from 2030 and the promised commitment to secure education for all children by the year 2020 is at great risk, nationally and internationally.

The International Parliamentary Network on Education (IPNE) support for collective action and advocacy by parliamentarians working together on education reforms will help in realizing the Sustainable Development Goals (SDG) number four.

Sen. (Dr.) Musuruve is an active Member of the Standing Committee on Education. Her commitment on issues of learners with disabilities and the marginalized

children is encouraging. She has written, published and distributed books on sign language using her own resources and her innate desire to contribute on matters of education is overwhelmingly pleasant.

Madam Deputy Speaker, as one of us, I am certain that Sen. (Dr.) Musuruve is capable of pushing the interests of the African child and her agenda as a country in support of education of the vulnerable children who are at great risk of missing out on education. It is worth noting that Sen. (Dr.) Musuruve was once the Vice Chairperson of the National Council of Nomadic Education in Kenya.

Apart from being a people with disability (PWD) representative in the Senate she has taught in a special school during her lifetime as a teacher while she interacted with PWDs and feels their pinch and need.

Another keynote issue that cannot be ignored is that, Sen. (Dr.) Musuruve has academic qualifications in special needs education, a Masters degree in applied linguistics with a pass in sign language and a PhD in mass communication with a pass in media portrayed on PWDs.

With all this experience, I believe she is equal to the task. More importantly, she is also a very active Member of the Education Committee and she plays an important role in contributing to issues that have been affecting education in this country.

I call upon all my colleagues to give her the support she may need in realizing her new assignment. It is not about her, but Kenya at the international level pushing inclusion of vulnerable children worldwide and closing the disparity in education.

The problems in education have affected children. With the COVID-19 pandemic, many children are at home, especially those from marginalized communities. In this case, not only being a PWD, but she is also a woman. As ladies, we feel greatly honoured. I congratulate her for this great appointment. Sooner than later, we will start IPNE Kenya to ensure SDG-4 issues on education are addressed.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, we have two Senators to contribute; Sen. Sakaja and Sen. Shiyonga.

Sen. Sakaja: Madam Deputy Speaker, briefly because I see we have a lot of business before the House. There are three Statements pursuant to Standing Order Nos.47 (1) and 48(1) where we resolved; no comments.

I join Sen. (Dr.) Milgo, as well as the rest of the House in congratulating Sen. (Dr.) Musuruve. She is a serious champion for the people she represents in this House, who are PWDs. She has been in Committees that I have chaired in this House since we came here. No matter what you discuss, even when discussing agriculture, she has to say PWD. This is a true champion and the true essence of the current structure of representation where we have people who represent special interests.

Madam Deputy Speaker, the IPNE is extremely important. I know they will benefit richly from Sen. (Dr.) Musuruve because of what she has been pushing with respect to sign language, deaf learning and special learning for children with disabilities, which is a huge challenge in this country. We have children with mental health issues, autism and they do not have enough facilities. I have toured a number in Nairobi and they need assistance.

I am happy to note that we shall have a champion who is going to be there. I have confidence in her. I was very sad when she was removed from my Committee and I know she is also sad to not be in my Committee. I am confident that we have a shining star representing this House and country in this important network.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you. Sen. Sen. Shiyonga, you have the Floor.

Sen. Shiyonga: Thank you, Madam Deputy Speaker for giving me this opportunity to join my colleague in congratulating Sen. (Dr.) Musuruve on the new appointment.

I am a proud woman and Senator who comes from the same region with her. Congratulations to her for this international appointment. As much as Sen. Sakaja is sad that she is not sitting in his Committee, I am proud she sits in the Committee on National Cohesion, Equal Opportunity and Regional Integration, which I chair. Without Sen. (Dr.) Musuruve, I always feel like there is something missing. She is qualified to serve in that position.

Sen. (Dr.) Musuruve has been an able lecturer at Jomo Kenyatta University of Agriculture and Technology (JKUAT). She is a champion of PWDs inside and outside this House. She has brought many Petitions, Statements and Bills to this House.

We, as women, of this country are proud of her. Once more, congratulations Sen. (Dr.) Musuruve.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you. I will give this chance to Sen. (Dr.) Ali, being the Chairperson of Sen. (Dr.) Musuruve.

Sen. (Dr.) Ali: Thank you, Madam Deputy Speaker. I appreciate the time you have given me. I want to thank Sen. (Dr.) Musuruve who is my Vice Chairperson in the Committee on Tourism, Trade and industrialization. She is an excellent lady and is very capable.

As Sen. Sakaja said, she will never miss a word to say in anything we discuss. I like the energy. She should keep it up and I wish her well in your new position and endeavors.

The Deputy Speaker (Sen. (Prof.) Kamar): I will give one minute to Sen. Farhiya, so that we allow another one minute to Sen. (Dr.) Musuruve to respond.

Sen. Farhiya: Thank you, Madam Deputy Speaker. I wish to join my colleagues in congratulating Sen. (Dr.) Musuruve. Like everybody has said, if you bring something on procurement, she will always ask: Where are the PWDs? If you bring another issue, again she will want to know where the representation of PWDs is. In life, you cannot do things the same way and expect different results.

Sen. (Dr.) Musuruve has proven that you can do something exceedingly well and get rewarded for it. Since you gave me one minute, I respect the directive and wish to congratulate her for this appointment.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you. Sen. (Dr.) Musuruve, can you receive the congratulations within one minute?

(Sen. (Dr.) Musuruve's microphone went off)

Try the next one. There is a mobile microphone coming there. I think there is a problem. You will use a mobile one when you are there.

Sen. (Dr.) Musuruve: Madam Deputy Speaker, I want to take this opportunity to thank all my colleagues for hailing me for this position. I am truly humbled to have been picked to serve humanity. It is not by mistake that I am disabled. It was designed by God, and I appreciate the way God allowed it. It is my prayer that God will use me as he intends to. I thank you so much for being supportive to this initiative.

I want to let my colleagues know that Sen. (Prof.) Kamar was earmarked for this particular position from the embassy. They looked at her and me, and because of disability, I was brought on board. I opened up to Sen. (Prof.) Kamar who is supporting me in this initiative.

We will have the global event on the 14th of this month, and the Senate will be represented. The Speaker is one of the interventionists. I thank all the parliamentarians. Sen. Mwaura, Sen. Shiyonga and our Chair, Sen. (Dr.) Milgo have signed the declaration. We have a lot of support from Kenya.

So far, about ten Members of the National Assembly and the Senate of Kenya have signed the declaration to support the Sustainable Development Goals (SDGs) to support the children who are far behind, and to ensure that we fight for equal resources and quality education to ensure that children with disabilities are not left behind, come 2030.

Colleagues, I am truly humbled. I look forward to seeing you when we globally launch the International Parliamentary Network on Education (IPNE) on the 14th. Thank you very much for the support you have for children with disabilities in this country and the world.

The Deputy Speaker (Sen. (Prof.) Kamar): The next Statement is by Sen. (Dr.) Mbiti. He is absent and nobody was sent to represent him.

PAYMENT OF ALLOWANCES TO OFFICE ADMINISTRATIVE PERSONNEL
WORKING IN THE HEALTH SECTOR IN COUNTY GOVERNMENTS.

(Statement deferred)

The next one is by Sen. (Dr.) Musuruve. Please give her the mobile microphone.

ALLEGED APPROVAL OF THE VAGINAL RING TO CURB
THE SPREAD OF HIV/AIDS IN AFRICA

Sen. (Dr.) Musuruve: Thank you, Madam Deputy Speaker, for giving me this opportunity.

I rise pursuant to Standing Order No.47 (1) to make a Statement on a topic of general concern, namely the vaginal rings approved for use to curb the spread of

HIV/AIDS in Africa. A silicon vaginal ring containing the antiretroviral drug Dapevirine has been approved as a new HIV transmission prevention for women.

The European Medicines Agency (EMA) announced that it had adopted a positive scientific opinion on its use in low and middle income countries. Information on the mainstream media, specifically the *Daily Nation* newspaper of 26th July, 2020 claimed that a study proved that the vaginal ring can reduce the risk of Type I HIV. The ring is seen as method for cisgender women in sub-Saharan Africa who despite being the face of the epidemic, have few options to protect themselves.

Madam Deputy Speaker, the ring was developed by the International Partnership for Microbicides (IPM). The nature of the study conducted, methodology used, the recipients of the study and the resultant outcomes that informed their decision that the ring is best suited for HIV prevention for women in sub Saharan Africa was not highlighted.

Madam Deputy Speaker, without empirical data that is verifiable, the study done so far lacks the credibility threshold of believability and objectivity. The developers of the ring need to state the countries where the experiment was done, the number of subjects in the study, and the control and intervening variables in the study. A sweeping statement that the ring is ideal in Africa without defending the statement is erroneous and should be taken in the right manner that it so deserves.

Madam Deputy Speaker, according to the World Health Organization (WHO), at the end of 2019, there were 38 million people living with HIV worldwide. If this is the rate globally, a more effective experiment on the vaginal ring would be better done in its country of origin, the United States of America (USA). There is every need for the organization to state the pros and cons of the ring so that the intended users can make informed decisions.

Before the concerned Ministry in Kenya adopts this ring, public participation must be carried out. Article 35 of the Constitution of Kenya clearly states that every citizen has a right to access information. Information availed needs to be accurate. The information given on the vaginal ring is scanty, inadequate and lacking merit.

Madam Deputy Speaker, vaginal rings generally have side effects. For instance, breakthrough bleeding/spotting, increased vaginal discharge, headache, nausea, depression, decreased sex drive, breast tenderness, among others. The organization, therefore, needs to inform members on how they can overcome such eventualities, including heart attack that might result from the use of the ring.

Article 43 of the Constitution of Kenya states that everyone has a right to the highest attainable standard of health, which includes the right to healthcare services. It is needful to state that the health of women in low and middle income countries matters and should never be taken for granted, no matter the circumstance. Experiments and trials are better performed on animate beings that are not human.

Madam Deputy Speaker, in conclusion, the assumption made by the developers of the ring that women in Africa have few options in HIV prevention is fallacious, misleading, and does not stand the test of time. Aggressive measures need to be undertaken in public awareness on mainstream HIV prevention measures such as

abstinence, using condoms, limiting sexual partners, never sharing needles and so on, rather than adopting one that little is known about and is farfetched.

I thank you.

The Deputy Speaker (Sen. (Prof.) Kamar): Senators, you can remove your card and restart, because the system is back.

I do not know whether Sen. Sakaja was coming in or---

Sen. Sakaja: Madam Deputy Speaker, I have very little capacity on this. I wanted to speak on the next one by Sen. Halake. This one is difficult.

The Deputy Speaker (Sen. (Prof.) Kamar): The next Statement is from Sen. Halake.

IMPOSITION OF VAT ON CLEAN AND RENEWABLE ENERGY PRODUCTS

Sen. Halake: Thank you, Madam Deputy Speaker. Pursuant to Senate Standing Order No. 47 (1) I rise to make a Statement on an issue of general topical concern, namely, imposition of VAT on clean and renewable energy products in our country.

On 23rd June, 2020, the Finance Bill 2020, which sought to amend various laws relating to succession, proposed an amendment to the Value Added Tax (VAT) Act of 2013 and introduced VAT on equipment used for the development and generation of solar, wind and hydro energies.

This Bill has subsequently been assented into law. On receiving the Presidential assent, the Act imposed a 14 percent VAT to supply or importation of specialized equipment for the development and generation of solar, wind energy, including deep cycle batteries, hydro energy as well as clean cooking stoves.

Madam Deputy Speaker, taxation of clean energy or renewable energy will have far-reaching consequences as it will not only have increased the tax burden for the poor and marginalized, but also act as an impediment to national development.

This undermines Kenya's ability to reach the national objectives of universal electrification by 2022, which will be impossible to realize with the introduction of the taxes and more so, the elements of the Big Four Agenda, which is affordable housing, food security, manufacturing and universal health care. These will be difficult to realize without energy in the hard-to-reach places.

It should be noted that clean energy, wind energy, solar energy and clean cooking stoves are mostly used in areas such as where we come from in northern Kenya, for instance, Isiolo and Marsabit, where there is plenty of wind, solar and other clean energy.

According to the 2019 census, solar lighting in Kenya averages 19.3 per cent with rural areas recording above average rates of connectivity of 29 per cent higher than the rural national grid connections that stood at 26 per cent.

Clean energy and renewable energy is rural-facing, so to speak. The imposition of VAT on solar equipment and batteries will make them more expensive. A price increase of 14 per cent would lead to 17.5 per cent fall in their demand. A reduction in demand will wipe out thousands of jobs in the solar and renewable energy value chains.

The decentralization of the energy sector, according to the Power for All Organization 2019 study, shows that the sector created over 10,000 direct jobs and 65,000 jobs in the communities they serve.

The introduction of taxes in the sector will not only constrict its growth, but also result in job losses as companies adjust to the increased cost of doing business as a result of the taxes. This will negatively affect not just employment, but also access to the poorest of households.

Kenya has noble and achievable electrification goals and the next two years will be the most critical for the country to achieve. The main priority for the Government should be to focus on securing energy for all Kenyans everywhere. Imposing VAT on solar and renewable energy generation is not aligned to these electrification goals. It is punitive to the poor households in this country.

The responsibility, therefore, lies in the House to ensure that Kenyans, the economy and development objectives of this country are protected through ensuring that imposition of VAT on renewable energy products is reversed and more access is made.

We have no business investing in fossil fuels at this time when everybody is shifting to renewable energy. We are going back and starting to put tariff or taxation barriers on clean energy.

I urge and recommend that the initial VAT exemptions on equipment used for development and generation of solar and wind energy be retained. This has happened midway---

I think we had the exemptions up to 2022. However, before even the expiry of the exemption period, the VAT has now been imposed. That creates an environment in which nobody even knows what to do, because the taxation just came out of the blues.

We know there is revenue collapse, but we need to make sure that people know what to expect from our taxation policies. There is not justifiable reason to impose the new taxes on renewable energy equipment and products, as it will have adverse effects on the society and economy, both in the short and long term.

Madam Deputy Speaker, I know this is a Statement under Standing Order No. 47(1), but if you would be persuaded, I would appreciate if this is directed to the Committee on Finance and Budget, so that they can deal with the National Treasury and find out why at this point in time, we are going back on our renewable energies, which are being used by our poorest households.

I thank you.

Sen. Nyamunga: Thank you, Madam Deputy Speaker, for giving me this opportunity just to add some points on the Statement by Sen. Halake.

I think Kenya is one of the nations that are overly taxed. I was looking at the daily newspapers from last week and the number of people who are called 'super rich' in this country. They are only 40 Kenyans who are 'super multi-billionaires.' There are 2,900 who are in the next level. Looking at the percentage of the population of this country, we have only 3 per cent that you would call rich. The rest of Kenyans are struggling.

It has been a big problem for most of us and most women who stand for the interest of women in this country, looking at green energy. In my County of Kisumu, we

have been struggling to get women to use gas for cooking. How can we on earth add another 40 per cent as tax on green energy? I do not even have words to speak to this issue. It is a terrible thing.

I urge the Senator to forward this to the Senate Committee on Finance and Budget, which I am a Member. We are going to push this issue to the highest level, even if it means going to the National Treasury or any other place. There is no way the Government of Kenya can add more percentage in form of tax on green energy, because we need to be clean in terms of health.

When we talk of clean energy, we are talking of the women, the suffering of the children and the suitability of our forests. We cannot be talking about these things at the same time looking at how we can tax. It is unfortunate. We want to go to the depth of this matter and urge the Government that there is no way they are going to add any tax to green energy in this country.

I support.

Sen. Sakaja: Mr. Deputy Speaker, it is quite unfortunate that on such a matter, the Senate is constrained because it is a matter to deal with tax raising measures. If you look at the Senate Standing Order No. 224, it is possible for you, since these are very important issues.

You should recommend that the Committee on Finance and Budget jointly sits with the corresponding Committee in the National Assembly to look at this issue.

This issue is affecting not just the area where Sen. Halake was born, but even the urban areas. A lot of renewable energy is becoming the go-to because of the strain on the grid that we have. There is a lot of pressure on the national grid and urban dwellers are now focusing on alternative forms of energy, including the clean stoves and solar for heating.

Madam Deputy Speaker, we had solar heating regulations on the Energy Regulation, 2012 that spurred the growth of solar in this country. That is something we are really proud of.

The government of President Mwai Kibaki and the beginning of this government led the growth of renewable energy in this country. What we are seeing is a disconnect between policy that is long term with short term measures in the Finance Bill.

People should put their money where their mouth is. It is easy to talk from one end of the mouth saying that we are supporting renewable energy, yet you are taxing each and every component in renewable energy and we will see further losses.

We have invested a lot of money in the Turkana Wind Power Project, in the geothermal projects, on wind and other renewable forms that this country is hailed across the world as being a leader in renewable energy. If this tax is not dealt with, then that will disappear.

Sen. (Prof.) Kindiki will tell you that the Constitution says that international treaties form part of our law. Kenya is a signatory to the Paris Agreement. The Paris Agreement pushes for reduction of carbon emissions and we have committed to it. It pushes to accelerating global efforts towards reducing greenhouse gas emissions. This law goes contrary to our commitments under the Paris Agreement.

The Kenya Renewable Energy Association projects 20 per cent increase in demand as we move forward for solar and other renewable sources, yet we are making it further out of reach. I was glad, I heard the Leader of Majority in the National Assembly in a burst of wisdom, propose that both Houses need to relook at our Standing Orders to provide for co-sponsoring of legislation or even Motions, so that before we are told that such a Motion or Statement is a money Bill or not, within the purview of the Senate, Sen. Halake would easily get someone from the other House and they can together co-sponsor legislative interventions, so that we do not get into the hurdles that we normally get into when we deal with good legislation that is curtailed by our neighbours.

I would urge you to recommend that the Standing Committee on Finance and Budget sits jointly with the Finance Committee of the National Assembly to look at this issue as a matter of urgency.

I have hundreds and thousands of people of Nairobi who depend on renewable energy, especially in the low income and informal settlements who have already been adversely affected by this tax introduction in the 2020 Finance Bill.

Thank you.

Sen. Kasanga: Thank you, Madam Deputy Speaker, for allowing me to speak on this Statement.

Thank you, so much, Senator, for bringing this up. I did not even have an idea, since I had not heard about it before. Thank you for your passion in conservation of the environment. Indeed, you are missed in the Committee on Lands, Environment and Natural Resources.

The other day in our meeting in the Committee on Lands, Environment and Natural Resources, the Cabinet Secretary, Ministry of Environment and Forestry was crying how as a House of legislation, we should be trying to push for more and more legislations that can change the mind-set of Kenyans towards their agricultural practices and their normal practices when it comes to environment because of how far we are depleting the environment and some of our great resources.

For example, Magadi salt is already affected by siltation because of our practices. To hear the gains that we have so far gained on renewable energy are likely to be reduced by imposition of taxes is a retrogressive move.

In fact, when the people who make these decisions sit down, you wonder what they are thinking at a time as a country we have our youth already aligning into these fields of renewable energy. Our universities have set up programs for our youth so that they can tap into this market that has become a global market. The whole world is going into renewable energy. Why are we taking a step back?

Sen. Halake, thank you for bringing this to our attention. I support this Statement.

Madam Deputy Speaker, do make a ruling so that this issue can be sorted out as soon as possible.

Thank you.

Sen. (Dr.) Ali: Thank you, Madam Deputy Speaker. I wish to support the Statement by Sen. Halake. I will not talk more about what others have said. Before,

renewable energy was very expensive the world over. Now that it has come down, and we increase our Value Added Tax (VAT), then we are going back to the same place.

That means that we do not want renewable energy to be the mainstay of this country where we have the resources; we have the winds, we have the geothermal, the solar and the sun, but we want to go back to petroleum products and fuel, which is very dangerous to the world all over.

We should urge the concerned authorities not to do what they are doing. As Sen. Sakaja has said, we might not have the authority to go for it, but we have the mandate to fight as a Senate and we will follow it up. Whoever is concerned should do what should be done.

Thank you.

The Deputy Speaker (Prof. Kamar): Thank you. Sen. Were, one minute please. We need to wind up that Statement.

Sen. Were: Thank you, Madam Deputy Speaker. I will take exactly one minute. I am a lady of a few words.

My issue is on the fact that we are signatories as a country to the Sustainable Development Goals (SDGs), which was an improvement from the Millennium Development Goals because we thought that we needed to develop our countries or develop ourselves with the future in mind so that we preserve the environment for our children and our grandchildren.

Therefore, to put 40 per cent tax on green energy, which is a step in the right direction of preserving the environment, is an insult to that signature we put internationally to the Sustainable Development Goals (SDGs).

Madam Deputy Speaker, I also want to join my colleagues to ask for your magnanimity in putting this Statement to the relevant Committee so that this matter can be discussed effectively.

Thank you.

Sen. Farhiya: Thank you, Madam Deputy Speaker. Some of these things are shocking because what we should be doing is that, we should have policies that encourage renewable energy. Industrialization is part of President Uhuru's agenda for this country. However, if you look at the incentives of including 14 per cent VAT for renewable energy, it makes energy more expensive.

If you go back to the use of fossil energy, that means you are making electricity much more expensive. If you make electricity much more expensive, then you are curtailing the development of industries in this country. In counties like Wajir, most of our boreholes rely on solar energy to bring water out of the boreholes. If you increase the VAT 14 per cent on those, it tells us that we cannot get water. We already have water scarcity in our county.

This will also impact innovation because there are many youths who are innovating around renewable energy, given that it creates employment. With COVID-19 in place, unemployment has increased. It is self-defeating. The more you create industries, the more you will be able to generate revenue from their sales. When you make the input expensive, it means you are making---

Madam Deputy Speaker, as a country, we should create an incentive to incentivise people who are developing renewable energy because it is friendly to the environment. Moreover, it is cheap because it is in abundance like solar energy; God has given us that in some parts of this country.

I said the other day in this House, that we do not have electricity in my county. Fifty years down the line, we rely on generators that are not reliable. Wajir Town is in darkness 70 per cent of the time. If we make solar energy so expensive, it will lead to more darkness.

Thank you for your indulgence.

Sen. Cherargei: Thank you, Madam Deputy Speaker. I agree and support Sen. Halake on this Statement. The introduction of Value Added Tax (VAT) on renewable energy is unfortunate and is encouraging the use of pollutants that are not environment friendly.

The world is moving towards renewable energy and when you look at Article 242 of the Constitution, which talks about clean and healthy environment, the only way to ensure that there is clean and healthy environment as provided for and envisioned by the Constitution is when we zero-rate and encourage Kenyans towards renewable energy.

For us who grew up in the village when the environment was facing destruction with the *mamas* getting their *kunis* leading to a lot of smoke in the kitchen. We want to encourage Kenyans to move to friendly energy friendly usage.

I agree that this was unfortunate and I thought that the National Assembly in their wisdom or lack of it should have ensured that this matter ought not to have been presented to the President for assent. As a House, we must move with speed to ensure that the appropriate Committee reverses this issue of adding VAT.

Finally, we need to ensure that renewable energy is used in generating income for the young people, for example, the usage of electricity. We need to be moving around, for instance, in the northern part of this nation to promote the use of renewable energy. We can harness and ensure that we work towards solar energy, which is renewable energy and it is environment friendly.

I support this Statement by Sen. Halake and look forward to a favourable conclusion that will ensure that Kenyans do not have to pay VAT on renewable energy.

Thank you.

The Deputy Speaker (Sen. (Prof.) Kamar): The Statement is committed to the Committee on Finance and Budget.

Hon. Senators, the next Statements are under Standing Order No.48 (1) and I am really going to seek your indulgence because we want to read all of them today. They are 19 in number. I would like to plead that the Statement giver gives the Statement and we refer it to the Committee for those Members who are present so that we off-load them from our Order Paper, which is really congested.

POLLUTION OF THE ENVIRONMENT BY INDUSTRIAL EMISSIONS

The Deputy Speaker (Sen. (Prof.) Kamar): The Statement is from Sen. Beatrice Kwamboka. An apology has been given.

(Statement deferred)

PROPOSED INCREASE OF EXERCISE DUTY ON BEER MADE
FROM SORGHUM, MILLET AND CASSAVA

The Deputy Speaker (Sen. (Prof.) Kamar): The next Statement is from the Senator for Kakamega, Sen. Cleophas Malalah; nobody was given that assignment.

(Statement deferred)

SOURCE AND UTILIZATION OF FUNDS ON BEAUTIFICATION AND
“NG’ARISHA JIJI” PROGRAMME BY NAIROBI CITY COUNTY

The Deputy Speaker (Sen. (Prof.) Kamar): Statement number 3 is from Sen. Johnson Sakaja who was right here but stepped out. Let us move on. We will come back to him.

(Statement deferred)

MISAPPROPRIATION OF STAFF EMOLUMENTS, STATUTORY
DEDUCTIONS AND OTHER LABOUR RELATIONS VIOLATIONS

Sen. (Dr.) Ali: Thank you, Madam Deputy Speaker; I have got two of them so I am getting confused.

The Deputy Speaker (Sen. (Prof.) Kamar): There is one for the Committee on Labour and Social Welfare.

Sen. Ali: Thank you, Madam Deputy Speaker, I rise pursuant to Standing Order No.48 (1) to seek a Statement from the Standing Committee on Labour and Social Welfare regarding non-remittance of employee statutory deductions, non-payment of work injury benefits and other labor related violations by county governments.

In the Statement, the Committee should respond to the following:

(1) What policy or regulatory framework guides county governments on violations on remittances of employee statutory deductions, payment of work injury benefits and other labor related violations including payment of loans and to Sacco societies?

(2) What measures has the Government put in place to protect county employees against the above violations?

(3) What is the status of Wajir County *vis-à-vis* remittances of statutory deductions, particularly, Pay As You Earn (PAYE), National Hospital Insurance Fund (NHIF), National Social Security Fund (NSSF) and other statutory deductions?

Thank you.

Sen. Farhiya: Thank you, Madam Deputy Speaker. I wish to congratulate the Senator for Wajir County for bringing this Statement.

Wajir County does not only remit those deductions but even allowances for trips and the like are never paid to the staff. There are allegations that members of staff are advised to claim their per diems but the money is given to somebody else.

We fight here amongst ourselves for allocation of funds to the county yet there is clear violation of what is meant for the people in the counties. I do not understand why institutions like Kenya Revenue Authority (KRA) do not freeze those accounts of county governments if deductions for a given year are not remitted.

The Wajir County staff do not have insurance. We allocate medical money for county staff. There are so many issues in Wajir that need to be addressed urgently. I urge institutions like the Ethics and Anti-Corruption Commission (EACC) and the Directorate of Criminal Investigations (DCI) to come to the rescue of Wajir County to ensure that there is accurate accountability by the county.

There are certain things, for example, people borrow loans and yet they do not contribute. How do you expect the SACCOs to survive? Some of the SACCOs go under as a result of non-remittance from the county, yet people have rightfully contributed to those SACCOs. This means that even the savings of the people are at risk.

The other day, I brought a Statement for which I am waiting the Committee on Education to respond to. There is a Committee of the County Government that was not paid for 23 months. The Committee's tenure has come to an end. I had requested that the County Government should be stopped from recruiting further until they pay the benefits of the former Committee.

Madam Deputy Speaker, there are many issues around Wajir County with regard to accountability, including money belonging to the people being requested by the Controller of Budget to pay certain suppliers. Some people are paid and others not.

At times, I do question the role of the Controller of Budget because if they cannot take care of certain malpractices, then why do they exist if they cannot stop such malpractices?

I support.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Senator. I said one minute each and so, we can allow two people and then we move to the next Statement.

Sen. Boy: Asante sana, Bi Naibu Spika, kwa kunipa fursa hii. Kwanza, namshukuru sana Seneta Ali kwa kuleta hii *Statement* yake wakati huu ambapo kuna matatizo mengi sana ya ufisadi katika nchi yetu.

Kusema kweli, ni jambo la kusikitisha kuona kwamba wafanyikazi wa Wajir hawapati haki yao na pia waki *recover* zile allowances zao, pia kulipwa ni shida.

Saa hii tumefika wakati kwamba ufisadi lazima ukomeshwe katika nchi yetu hasa huko sehemu za Wajir. Hili ni jambo la kusikitisha sana. Kulipiwa mfanyikazi hata pesa

ya NSSF, kama alivyosema Sen. (Dr.) Ali, pia hazilipiwi. Mfanyikazi ambaye pia anatoka jasho, anaenda katika nyanja za chini kwa wale ambao kuna joto na jua pia hawapati haki yao.

Naunga mkono taarifa hii na sheria ichukuliwe dhidi ya wale ambao wanahusika. Hatua kali inafaa kuchukuliwa katika Wajir *County Government*. Wale wanaoendeleza ufisadi wasibakishwe kwa sababu ni watu wabaya sana.

The Deputy Speaker (Sen. (Prof.) Kamar): That Statement stands committed to the Standing Committee on Labour and Social Welfare.

The next Statement is by Sen. (Dr.) Mbito, but he is not around. We will go to the next one by the Senator for Mombasa, Sen. Faki.

STATE OF AFFAIRS AT THE POSTAL
CORPORATION OF KENYA

Sen. Faki: Thank you, Madam Deputy Speaker, for giving me this opportunity. I rise pursuant to Standing Order No.48 (1) to seek a Statement from the Standing Committee on Information Communication and Technology regarding the state of affairs at the Postal Corporation of Kenya (PCK).

In the Statement, the Committee should-

- (1) Explain why the corporation has not paid staff salary for the past six months.
- (2) State why the employees' statutory deductions, SACCO contributions and deductions to financial institutions have not been remitted by the said corporation.
- (3) Apprise the House on the general state of affairs at the PCK, indicating whether the corporation is able to meet its future financial obligations relating to staff salaries and other labour obligations.

Madam Deputy Speaker, it is painful that six months into the COVID-19 pandemic, the PCK has not paid salaries to its employees throughout the Republic. Recently, the Board of Management renewed the employment contract of the Postmaster General. It is sad to say that immediately after the renewal of the contract, the employees have gone without salary for the past six months.

I thank you.

Sen. Cherargei: Madam Deputy Speaker, I congratulate Sen. Faki for bringing this Statement. This is a clear violation of labour rights as enshrined in Article 41 of the Constitution of Kenya.

It is sad that in these days and age, there are Government employees in one of the parastatals that have gone for six months without pay. It is not only inhuman but sad. I can only imagine the pain and anguish their families are undergoing because they cannot buy food and pay rent, especially during this COVID-19 pandemic period.

This issue has been raised for the past six months. People work hard. As Christians, the Bible encourages us to work in order to be paid. Why can the PCK not pay its employees, yet there is the Board of Management and leadership in place?

It is sad for the employees of the PCK in this country. Even if the PCK is not performing as expected, it is a parastatal and should be bailed out by the Government of

the day. It is not a private entity. Why does the Government not bail out the PCK? If it is not possible, then they should privatise it, but ensure that the interests of the employees are catered for.

Madam Deputy Speaker, you should not even give 14 days on this issue. In my opinion, by Tuesday next week, we should have a progress report by the Committee on Labour and Social Welfare, telling us about the status.

If the PCK is making losses, they need to embrace technology. When you go to the USA, people are using the postal corporation to send ballot papers for people to vote. Why is the PCK not adapting to the technology and changes that are coming up?

As I conclude, the trade unionists who should be championing for the rights of those workers are busy doing politics. I wish they were busy fighting for the rights of the employees of the PCK. The union leaders should be at the forefront.

This is corruption! It is immoral and economically unjustifiable when their children go hungry and cannot visit hospitals because they do not have money, especially during this COVID-19 pandemic period.

As we fight the COVID-19 pandemic, it is unfortunate that we have a pandemic within the PCK in this Republic. The Cabinet Secretary in charge of ICT, the Board of Management and the Chairperson of the Board must tell the country what is ailing our PCK.

I have an appeal to the President of the Republic of Kenya to bail out the PCK. He should not just bail out the suppliers and pending bills. He should start with the employees of the PCK of this country because it is very important.

Some of us used to write love letters. It is the PCK that ensured we have marriages in this country. Now people have moved to SMSs and *WhatsApp*, but many families were set up through the PCK because they ensured timely delivery of love letters.

I thank you, Madam Deputy Speaker, and look forward for this issue being resolved.

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

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

The Temporary Speaker (Sen. Pareno): I can assure you that love letters are still being written via a different mode of communication.

Let us listen to Sen. Boy.

Sen. Boy: Asante sana Bi. Spika wa Muda kwa kunipa fursa hii. Naunga mkono Sen. Faki kwa yale aliyosema kwa sababu ni kweli kabisa.

Nina ndugu mdogo wangu mara tatu ambaye anafanya kazi katika Shirika la Posta. Kila nikienda nyumbani ninamsaidia. Sasa huu ni mwezi wa pili. Ilibidi nimuulize shida yake. Aliniambia kuwa hajapata pesa hadi leo. Kwa hivyo, haya maneno ni ya ukweli.

Kama kuna shida, Serikali inafaa kusimamia PCK au kuwasaidia wafanyakazi wake kwa haraka kwa sababu hali ni ngumu sana. Ni vigumu sana watu kupata chakula wakati huu wa COVID-19. Nikifika Kwale, yeye huniangalia kwa ishara ya kutaka pesa.

Bi. Spika wa Muda, Shirika la Posta lina matatizo makubwa. Jengo ambapo ofisi kuu ya posta iko kule Lunga Lunga karibu linaanguka. Nimepiga kelele karibu mara tatu ili jingo hilo lirekebishwe au sivyo lifungwe. Watu wanaokaa mle ndani wananyeshewa na mvua. Hiyo ni aibu kubwa sana kwa Wakenya.

Shirika la Posta linapata pesa. Ikiwa mkataba wa Mkurugenzi Mkuu umefanywa upya, kwa nini wasilipe wafanyakazi wake? Muungano wa Wafanyakazi umewakodolea macho tu. Wakuu wa Muungano wa Wafanyakazi wanafaa kupiga kelele ili kuhakikisha kwamba wafanyakazi wa Shirika la Posta wanapata pesa zao. Wafanyakazi hao wanafaa kulipwa kwa haraka.

Kaka mdogo wangu amekuwa akifanya kazi na Shirika la Posta karibu miaka 10. Nikifika Kwale, yeye huniangalia sana. Sina hata raha. Mara ananiambia hana petroli ilhali anafanya kazi katika posta. Kazi hiyo inafaa kumsaidia. Kamati itakayoshughulikia jambo hili ifanye kwa haraka.

Wanabodi wa Shirika la Posta hawafai kupewa marupurupu mengi ya kuzunguka kwenda Nairobi, Takaungu na kwingineko. Wahakikishe kwamba wafanyakazi wao wanapata pesa.

Wakati huu wa COVID-19, watu wana shida ya watu kupata chakula na kulipia kodi za nyumba. Watu wengi wamefukuzwa kutoka nyumba walizokuwa wakiishi. Hilo ni jambo la kusikitisha kwa Wakenya.

Nasisitiza kuwa *Statement* hii iliyoletwa na Sen. Faki inafaa kushughulikiwa kwa haraka.

The Temporary Speaker (Sen. Pareno): I see no further request for contribution. I, therefore, refer this Statement to the Committee on Information Communication and Technology.

The next Statement is by Sen. (Dr.) Milgo.

DESTRUCTION BY FIRES, OF THE CONSERVATION AREA AROUND TSAVO NATIONAL PARK

Sen. (Dr.) Milgo: Madam Temporary Speaker, I rise pursuant to Standing Order No.48 (1) to seek a Statement from the Standing Committee on Lands, Environment and Natural Resources regarding the continued destruction by fires of the conversation area around the Tsavo National Park.

In the Statement the Committee should-

(i)state the cause of the frequent fires that have destroyed the conservation area for a long time;

(ii)outline the measures that have been put in place to avoid further destruction of the national park by fires, as well as measures that the Kenya Wildlife Service (KWS) will put in place to respond in a timely manner to mitigate against mass destruction of the conservation area by these fires; and,

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(iii) state whether wildlife died as result of the fires and there are any plans to ensure that this does not happen again in future.

The Temporary Speaker (Sen. Pareno): I will allow a few comments. We have Sen. (Dr.) Ali.

Sen. (Dr.) Ali: Thank you, Madam Temporary Speaker. It is frightening when you see what you saw happen in Tsavo National Park. Every time, at least twice or thrice, you see the place burning down and animals running up and down. People travelling to Mombasa cannot even pass through the road because of the fires.

What surprises us is that even if there are no tourists now, the Ministry of Tourism and Wildlife has helicopters and the KWS has many *askaris* and resources. Why should these fires be burning every day? The wildlife run to the roads and make people's lives difficult.

Madam Temporary Speaker, this is a very serious issue. Fires break out during dry seasons, but they are caused by people who invade the national parks. Whether they are pastoralists, poachers, people with other motives or bandits, something should be done. This is something that should be stopped.

The Ministry of Tourism and Wildlife should tell us what is going on and what they do with the finances. The issue of COVID-19 and the situation now should not be an excuse. We have to take care of our wildlife and the people who live there. If there are issues with the conservancies, they should be told what is happening.

I support the Statement.

Sen. Halake: Thank you, Madam Temporary Speaker. I rise to support the Statement by Sen. (Dr.) Milgo on the need to find what is going on at our conservation areas. I have been advocating for community conservation. The Tsavo National Park is a Government park. The reason sometimes we find this disconnect is that the communities living around our national parks are not being accommodated. They are not being used efficiently and benefiting maybe from the conservation area.

It is about time our agencies that have the mandate for conserving our national parks came clean. They should use not just policing because it will not work, but also communities around the parks to ensure that good and sustainable conservation is undertaken in our national parks.

Madam Temporary Speaker, it is unfathomable and sad to see that fires are causing untold suffering on our animals. Sometimes people say that these animals belong to KWS, but that is not true. The animals belong to all of us in this country; they belong to the world. They are of national and global importance.

A good solution needs to be found. From where I sit wearing a conservation hat, the solution is in community conservation. The solution is ensuring that communities that live around Tsavo are part and parcel of the conservation area; that the communities also benefit from that.

Madam Temporary Speaker, I would like to congratulate the Government for recently giving Kshs2 billion to community conservation. That is something that we look forward to, and it will become mainstream into the budget of this country.

It will ensure that the communities that bear the brand of conservation and host the animals are part of the landscape are also recognized and given the compensation they need; that they are actually used in the fight against poaching and bad consequences of some of the habits around parks.

Madam Temporary Speaker, with those few remarks, I support Sen. (Dr.) Milgo's Statement that we must get to the bottom of this. We must ensure that our national parks have sustainable conservation at heart. It is not just policing that you go and run in and out and forget that this is a large ecosystem that contains communities as well.

I would like to encourage the Government to continue investing in the communities around the parks to ensure that we do not see these kinds of wanton destruction of our national parks.

I thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. Pareno): As we wait for Sen. (Rev.) Waqo from the extended Chamber, Sen. (Dr.) Musuruve take a few minutes to comment on this.

Sen. (Dr.) Musuruve: Madam Temporary Speaker, thank you for giving me this opportunity to support this Statement by Sen. (Dr.) Milgo. The fact that the Tsavo National Park can go on fire is a serious thing. As Kenyans, we have to see how to conserve our parks and the economic gains. One of the main economic gains is tourism. Tourists come to the country to see our wildlife. As it brings income to the community and the country, we have to see how to conserve our parks.

There is need for communities around our parks to coexist with wildlife. Every animal has value addition on this universe. We must ensure that animals are not extinct. Recently, I read in the newspapers that the white giraffes are now extinct.

Madam Temporary Speaker, our national parks employ many of our youth as tour guides and so on. Hotels get bookings from tourists who go for game drives across the country.

We have to conserve our wildlife. The Government needs to look for mechanisms and ways of ensuring that both wildlife and human beings coexist.

The Temporary Speaker (Sen. Pareno): Sen. (Rev.) Waqo, proceed.

Sen. (Rev.) Waqo: Madam Temporary Speaker, thank you for allowing me to add my voice in support to this important Statement by Sen. (Dr.) Milgo. This is something that affects many parts of this country. It is unfortunate that when it happens, we lose a lot as a country. Our animals are affected. The resources around there are definitely affected and the air is also polluted.

I come from a place that has many national parks. We have the wild animals that give us many opportunities and bring a lot of income. However, when there are fires, wildlife suffers most. What happened in Tsavo National Park is a great loss to the nation. There is a certain animal called marsupial, which is a carnivore in Australia that has been extinct because of fire.

I support the Statement and pray that our Government will put into consideration proper plans that can protect our resources, so that we do not keep on losing and the human beings being affected.

The Temporary Speaker (Sen. Pareno): Next Statement is by the Senator for Isiolo County, Sen. Dullo. They are two Statements. You can start with the one on attack by the police, then, we move.

Yes, Sen. Sakaja.

Sen. Sakaja: On a point of order, Madam Temporary Speaker. I acknowledge that the Chair has changed its occupant. The resolution earlier today in the Senate Business Committee - which Senator Kang'ata and Sen. Dullo can confirm - is that because of the sheer number of these Statements, they should be read in terms of the title, tabled and referred to the Committees, so that we can go to further business. That was the resolution and Sen. Kang'ata can confirm.

If we could effect that, we can go to some of the Bills that we have been waiting for, as well as those that are on the Order Paper. Maybe that can be confirmed to you by the Clerks-at-the-Table.

The Temporary Speaker (Sen. Pareno): Sen. Kang'ata, kindly, proceed.

Sen. Kang'ata: Madam Temporary Speaker, I confirm that, that is the position. In particular, there is a Bill that we really want to move; the Sectional Properties Bill, 2019.

The Temporary Speaker (Sen. Pareno): I am aware that, that is the position, but I notice that at least for each Statement we have been aligning to, I allow very short comments, so that we reach the Sectional Properties Bill, 2019. We will time ourselves accordingly.

Sen. Fatuma Dullo, I will ask you to present your two Statements, so that we can have quick comments.

Sen. Dullo: Madam Temporary Speaker, I think that was the decision of the Senate Business Committee, but the Speaker vacated that position when he was on the Chair. That changed everything. Nevertheless, let me just quickly read my Statements.

ALLEGED ASSAULT AGAINST A RESIDENT OF ISIOLO COUNTY AT BARAMBATE POLICE POST

I rise pursuant to Standing Order No. 48(1) to seek a Statement from the Standing Committee on National Security, Defence and Foreign Relations regarding the assault on an Isiolo resident by police officers at a place called Barambate Police Post, Isiolo County.

In the Statement, the Committee should-

(i) Urgently investigate and establish the police officers who assaulted and seriously injured Mr. Mohamed Olufo at Barambate Police Post, as well as all persons complicit in the incident.

(ii) Explain what action has been taken by the National Police Service to address cases of police brutality at the said police post following the assault of Mr. Olufo.

(iii) State why Mr. Olufo was denied his right to emergency medical attention despite sustaining severe injuries following the police brutality meted on him.

(iv) State when Mr. Olufo and other victims of police brutality in Isiolo County will be compensated.

HUMAN–WILDLIFE CONFLICT IN ISIOLO COUNTY

Madam Temporary Speaker, I rise pursuant to Standing Order No.48 (1) to seek a Statement from the Standing Committee on Land, Environment and Natural Resources concerning human-wildlife conflict in Isiolo County.

In the Statement, the Committee should-

(i) Explain the circumstances surrounding an incident in which a lion raided a village in Kina, Isiolo Town, attacking and killing livestock and causing serious injury to Mr. Galgalo Ali.

(ii) Provide an up-to-date report on responses and measures by the Kenya Wildlife Service (KWS) to wildlife attacks in Isiolo County.

(iii) Stipulate measure put in place to prevent future cases of human-wildlife conflict in the area.

(iv) State when Mr. Galgalo and other victims of human-wildlife conflict will be compensated.

I thank you.

The Temporary Speaker (Sen. Pareno): I will allow very short comments on the two Statements.

Sen. Cherargei, kindly, proceed.

Sen. Cherargei: Thank you, Madam Temporary Speaker. I want to support Sen. Dullo on the issue of assault by the police. Police brutality is becoming a norm in this country. If you do not die by the bullet of an armed robber, you are likely to die by the stray bullet by trigger-happy police officers.

For example, in the last few months, Nandi also bore the biggest brunt when police allegedly killed around three people in Lessos area, and the other day we saw it happen in Kericho.

When I was the Chair of the Committee on Justice, Legal Affairs and Human Rights, we tried with the former Vice Chairman of the Committee on National Security, Defence and Foreign Relations, Sen. Sakaja, to address this issue of forced disappearance and extrajudicial killings. I think there is a big problem that we are facing as a country.

I wish the Inspector-General (IG) of Police, Mr. Hillary Mutyambai, would have been faster, the way he has been fast today to condemn leaders who have been making utterances in public rallies. If we had a police service that is more proactive and friendly-- - I hope that the issue of Isiolo County will be resolved.

Finally, Madam Temporary Speaker, I want to call upon the Independent Policing Oversight Authority (IPOA) that they need to stand firm. They need to investigate these officers who are assaulting ordinary Kenyans. They must be brought to book.

I know of many good police officers across this country. These are criminal elements within the National Police Service. They are giving the National Police Service

a bad name; that we have a police force, yet the Constitution, which is progressive, has created a police service. It says, “*Utumishi kwa Wote*”.

Madam Temporary Speaker, I support and hope that the Committee on National Security, Defence and Foreign Relations, which you are Member, will be able to resolve this issue. When we appear before your Committee, this time round, kindly be magnanimous with us when we will be asking hard questions.

I thank you.

The Temporary Speaker (Sen. Pareno): I now proceed to refer the Statements to the relevant Committees.

I start with the Statement by Sen. (Dr.) Milgo, which I had not referred to the Committee on Lands, Environment and Natural resources. I refer Sen. Dullo’s first Statement on attack by police to the Committee on National Security, Defence and Foreign Relations and the second Statement to the Standing Committee on Land, Environment and Natural Resources.

The next Statements are by the Senator for Lamu. You have two statements; I will be asking you to read the two Statements one after the other.

Sen. Loitipitip: Thank you, Madam Temporary Speaker, for giving me this opportunity. I will go straight to the first Statement considering that I have two Statements.

STATUS OF DOCK WORKERS JOB OPPORTUNITIES FOR YOUTHS AT THE LAMU PORT

I rise pursuant to Standing Order No. 48 (1) to seek a Statement from the Standing Committee on Roads and Transportation concerning the status of dock workers job opportunities at the Lamu Port for the youth in Lamu County.

In the Statement, the Committee should-

(i) State the status of interviews conducted by the Kenya Ports Authority (KPA) for Lamu youths for jobs advertised by the said Authority on 6th November, 2019 and whose interviews were carried out in December, 2019. That is more than eight months.

(ii) Explain the reason for lack of communication to the applicants for more than eight months later by the Kenya Ports Authority, particularly those who were successful following the interviews and whether there are any intentions to do so.

(iii) State plans, if any, by the Ministry to absorb various youth from Lamu to work in the said port, both as manual laborers and as professionals according to their qualifications.

(iv) Outline the Government position in relation to the continued construction of the Port, putting into consideration the fact that there has been a reduction in the Financial Year 2020/2021 budgetary allocation that was meant to fast-track the construction of the Port.

KILLING OF CHIEFS, POLICE OFFICERS AND COMMUNITY VOLUNTEERS IN LAMU COUNTY

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I rise pursuant to Standing Order No. 48 (1) to seek a Statement from the Standing Committee on National Security, Defence and Foreign Relations concerning the killings of chiefs, police officers and community volunteers in Lamu East Constituency, Lamu County.

In the Statement, the Committee should-

(i) Explain steps the Ministry of Interior and Coordination of National Government has taken, if any, to bring to book the killers of chiefs, police officers and community volunteers as well as enhance security in Lamu County.

(ii) Explain what measures the Ministry is putting in place to ensure that the Committee embraces community policing to ensure that locals relay any information that would help avert such killings.

(iii) Outline measures, if any, that the Ministry has put in place to ensure that families that have lost their bread winners such as brutal killings are safe, justice is served and they are fully compensated.

I thank you.

The Temporary Speaker (Sen. Pareno): Very short comments, please. This is because we are short of time and still have some work to do.

I will allow Sen. (Dr.) Musuruve to make very short comments.

Sen. (Dr.) Musuruve: Thank you, Madam Temporary Speaker for giving me this opportunity to support this Statement from Sen. Loiptip, who has brought an issue to the Floor of the House that is important. I remember that at one point the Local Content Bill was brought to the Floor of the House. The proposition of The Local Content Bill was that locals should have a percentage with regard to the industries present in various counties.

When it comes to dock workers, job opportunities should benefit the people of Lamu County. When it comes to issues of the Youth, most of them are idle and lack jobs. There is need for county governments — not Lamu County only— to ensure that any opportunity that comes on board in the counties is given to the youths. Even when giving opportunities to youths, let them know that we have youths with disabilities, who also need to be given an opportunity to work.

This is a valid Statement that should not be taken lightly. I believe that the relevant Committee will work with speed and ensure that the prayers of Senator for Lamu are considered.

Thank you, Madam Temporary Speaker for the opportunity.

The Temporary Speaker (Sen. Pareno): Sen. Sakaja, you have two minutes.

Sen. Sakaja: Madam Temporary Speaker, two minutes are many. The Senator for Lamu knows that I feel very strongly about the issues he has raised with respect to the people of Lamu. I have been there previously, but officially when we had the problems in Mpeketoni. At that time, I was chairing a Joint Committee of the National Assembly and the Senate on National Cohesion and Equal Opportunities. We could see the pain and the real underlying problems taking place in that area. We have subsequently gone there with other Committees.

Madam Temporary Speaker, the people of Lamu are extremely accommodative and loving. The young people there are hardworking, but lack opportunities. This is why for a long time they have become fodder for the recruitment by terrorist group. I have been there as the Vice Chairperson of the Committee on National Security and Foreign Relations and in other capacities.

The issue of radicalization comes about when young people, who have education and energy, see opportunities passing them and see other people coming and taking advantage of what is rightfully theirs. This is why I would ask that weight be put on this. From the time of Lamu Port-South Sudan-Ethiopia-Transport (LAPSSET) Corridor project promising things to the young people in Lamu; job opportunities and scholarship which sometimes come and sometimes they do not, the issue of the tourist facilities there. I am happy that Sen. Loitiptip became the Senator of Lamu. Before you were Senator of Lamu, you were one of my coordinators when I was the chair of The National Alliance (TNA) and you did an excellent job. Even before that we still worked together.

The people of Lamu have a voice in you. You are the one who will go down on record because you removed---

The Temporary Speaker (Sen. Pareno): Your two minutes are over.

Sen. Sakaja: Let me finish that statement.

The Temporary Speaker (Sen. Pareno): You said you were going to use less.

Sen. Sakaja: I got inspired because of my love for Lamu County. Sen. Loitiptip removed a politician who would have been in the seat in Lamu from 1992 to 2013 because of the faith of the young people, and also because they were tired.

If you do not speak on these issues, they will be tired again. Keep talking about them, let us see action and I am ready to support.

The Temporary Speaker (Sen. Pareno): Sen. Halake, normally, you are fast. I give you two minutes.

Sen. Halake: Thank you, Madam Temporary Speaker. I am fast but allow me to say something about police brutality.

Let me start with congratulating my brother, Sen. Anwar, for this excellent Statement that will go a long way in providing opportunity and ask questions around why locals are always by-passed. It is not just the locals; certain counties have a way of being neglected, especially Lamu and Isiolo. Smaller counties seem not to be taken seriously when it comes to youth opportunities. I am happy that the Senator for Lamu County is a youth, who is standing up for their rights. He knows what it means to be given an opportunity. By him sitting here, he has an opportunity to ensure that his cohorts and youths in Lamu are given opportunities.

Madam Temporary Speaker, we are from the Coast with the COVID-19 *Ad Hoc* Committee. The issues around drugs, unemployment and people loaded in a ferry to pick bread is unacceptable in this day and age when our Constitution is clear and also because we have been self-governing for approximately 60 years.

Allow me to say one thing on Sen. Dullo's Statement on police brutality. In the COVID-19 *Ad Hoc* Committee, we saw police brutality first hand in the Coast. It is not the first time that the Senator has brought these issues. Allow me to congratulate the

Isiolo human rights defenders. Youth who have united and called themselves the Isiolo Human Rights Defenders have been highlighting these issues to all of us and have been active. Every single day they highlight to us two or three people who have been clobbered by the police or other agencies that are supposed to be looking after them.

The Independent Police and Oversight Authority should ensure that justice is served to the people of Isiolo and the people of this Country. I support both Statements and look forward to working on these issues with the two Senators.

Thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. Pareno): The first Statement by the Senator for Lamu on dock workers is referred to the Committee on Roads and Transportation. The second Statement on killings of chiefs, police officers and community volunteers is referred to the Committee on National Security, Defence and Foreign Relations.

The next Statement is by the Senator for Wajir, Sen. (Dr.) Ali.

STATUS OF PREPAREDNESS FOR COVID-19 BY
WAJIR COUNTY GOVERNMENT

Sen. (Dr.) Ali: Thank you, Madam Temporary Speaker. I rise pursuant to Standing order 48 (1) to seek a Statement from the *Ad Hoc* Committee on COVID-19 Situation in Kenya on the status of preparedness for COVID-19 by Wajir County Government.

In the Statement, the Committee should address the following-

(1) State the status of availability of oxygen cylinders, oxygen flow meters and functional concentrators at the Wajir County Referral hospital and whether the Ministry is aware that Abdi Yusuf, a resident of Wajir County and a veteran public health officer of over 30 years experience, died on 24th July, 2020 at Wajir County Referral Hospital in the COVID-19 isolation ward allegedly after failing to get medical emergency that required supplemental oxygen, despite the millions of shillings allocated to the county. The gentleman died while asking for oxygen.

(2) Explain the capacity of Wajir regional referral laboratory to conclusively conduct COVID-19 test.

(3) Provide a list of all the staff employment in Wajir County hospital and their academic qualification, stating the number of competent Intensive Care Unit (ICU) nurses, doctors and anesthetists capable of performing incubation, as well as the number of ICU beds.

(4) State the amount the county was allocated from the national Budget for COVID-19 preparedness and whether the COVID-19 isolation center at Wajir referral hospital is properly branded and there are dedicated ambulances ready to handle patients with COVID-19 and related emergencies.

Madam Temporary Speaker, I am asking all these because when this young gentleman died people in Wajir were up in arms. He died because of lack of oxygen. Many other members of staff have contracted the disease, and up to now, the problems are still there.

Thank you.

The Temporary Speaker (Sen. Pareno): This touches on a very serious pandemic. Looking at the time, and we still have sort out very urgent issues, I will only allow one comment from the Chair of the Committee on the COVID-19 Situation in Kenya, Sen. Kasanga.

Sen. Kasanga: Thank you, Madam Temporary Speaker. I want to thank---

The Temporary Speaker (Sen. Pareno): I can see an intervention by Sen. Farhiya. Kindly, urgently, because we are running short of time.

Sen. Farhiya: Madam Temporary Speaker, I was requesting if you could just allow me two minutes, because I come from the same county as the Senator, and I have something to add.

The Temporary Speaker (Sen. Pareno): I will ask Sen. Kasanga to be very brief since she is very conversant with what is happening, so that I give you one minute. However, we are strained of time.

Sen. Kasanga: Thank you, Madam Temporary Speaker. I am actually happy to let my time go to Sen. Farhiya, so that she can add on to it. I just wanted to thank the Senator for Wajir because he had actually called me about this situation, and I am happy that the Statement has now been laid on the Table of the Senate. We shall pick it up. I guarantee you that we shall look into it as we did for Isiolo and all the other counties that we were able to look into.

Thank you.

The Temporary Speaker (Sen. Pareno): Sen. Farhiya, one minute, please.

Sen. Farhiya: Thank you, Madam Temporary Speaker. Given that Wajir county borders Somalia, where there is a bit of inter-trade, and because of the pastoralist nature of our county where people move to Somalia and back in search of pasture, the cases of COVID-19 will continue rising.

As a matter of urgency, I am requesting that the *Ad Hoc* Committee on the COVID Situation in Kenya visits Wajir, so that they can assess the real situation on the ground. When that medical officer died, contract tracing was not done. The other day, a county staff also died in a hospital here in Nairobi. Due to lack of insurance by the county government, some of us were called to contribute to his medical bill.

Madam Temporary Speaker, the situation is dire. Kenyans deserve better from us. I really plead with the *Ad hoc* Committee on the COVID-19 Situation in Kenya to urgently visit Wajir, so that they can establish what the issue there is.

I thank you.

The Temporary Speaker (Sen. Pareno): The Statement is referred to the *Ad hoc* Committee on the COVID-19 Situation, and you have heard the Chair say that she is going to look into it.

We will move to the next Statement.

Sen. Cheruiyot is not here. So, that Statement is deferred.

OPERATIONS OF ADAK AND THE RAMPANT DOPING
TEST FAILURE BY KENYAN ATHLETES

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(Statement deferred)

Sen. Kwamboka, Sen. Iman, and Sen. M. Kajwang are also not here. Those Statements are also deferred.

STATUS OF GRADUATIONS IN VARIOUS LEARNING
INSTITUTIONS IN 2020

USE OF EXCESSIVE FORCE BY POLICE
WHEN ENGAGING WITH CIVILIANS

ALLEGED INDUSTRIAL STRIKE BY HEALTH WORKERS IN
HOMA BAY COUNTY IN THE MIDST OF COVID-19 PANDEMIC

(Statements deferred)

ALLEGED FRUSTRATIONS FACED BY RETIRED
PUBLIC SERVANTS OR THEIR BENEFICIARIES IN
CLAIMING BENEFITS AT THE PENSIONS DEPARTMENT

The Temporary Speaker (Sen. Pareno): We will move to Sen. Were.

Sen. Were: Thank you, Madam Temporary Speaker. I rise to request for a Statement on the frustration faced by retirees or their beneficiaries at the pensions department.

Madam Temporary Speaker, I rise pursuant to Standing Order 48 (1) to seek a Statement from the Standing Committee on Labour and Social Welfare regarding the frustration faced by retired public servants or their beneficiaries in claiming benefits at the pensions department. In the Statement, the Committee should -

(i)state if there is a service charter at the pensions department in the National Treasury stipulating the timelines within which a retired public servant or their beneficiaries should receive retirement or death benefits, and if so, indicate the level of compliance with that service charter;

(ii)explain whether the Government is aware of the frustration experienced by retired public servants and/or their beneficiaries in accessing retirement or death benefits and state the measures being put in place, if any, to address the problem;

(iii)state the measures, if any, that the Ministry of Finance and National Treasury has put in place to ensure that services are decentralized in order to make them easily accessible to pensioners and/ their beneficiaries; and,

(iv)clarify whether the pensions department undertakes any monitoring and evaluation exercises to ensure efficient service delivery, and if so, state whether the findings/results of such surveys are ever publicised.

Thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. Pareno): I will only allow one Senator to make comments.

Sen. Farhiya.

Sen. Farhiya: Thank you, Madam Temporary Speaker. You know, as we all work hard at our different respective places of employment, we expect that when we retire we will have a decent life.

First of all, let me state that I support the Statement by Sen. Were, and thank her for bringing this matter to the Senate.

When those people retire, they expect that they at least get their money regularly, because they are now aged, and that is the time they need that money.

Also, when people's pension is deducted, that money is usually used for other investments, so that it generates income. It is also a source of financing for either businesses, or the Government to get financing because of that pool of resources from different people.

Madam Temporary Speaker, when these people who have retired, are aged and vulnerable cannot access that money, it is pathetic. This House should put to task people who are supposed to take care of the retirement benefits for those people, to ensure that they are given their money.

The other issue is about people whose breadwinners passed on and are now orphans and widowed.

The Temporary Speaker (Sen. Pareno): Your time is up. Kindly, conclude.

Sen. Farhiya: Thank you. Since they relied on that person for income, and now the person is gone and they do not get their benefits, they are left without school fees, housing and everything else in terms of the lifestyle that they were used to.

Madam Temporary Speaker, this is an urgent matter. The Committee that is allocated needs to fast track this issue so that there is the restoration of benefits to those people.

I thank you.

The Temporary Speaker (Sen. Pareno): This Statement is referred to the Standing Committee on Committee Labour and Social Welfare.

We move to the next Statement by Sen. Cherargei.

ALLEGED REDUCTION OF TEA PRICES BY TEA COMPANIES IN NANDI COUNTY

Sen. Cherargei: Thank you, Madam Temporary Speaker, for this indulgence. I request for a Statement on the reduction of tea prices by tea companies in Nandi County.

I rise pursuant to Standing Order No. 48 (1) to seek a Statement from the Standing Committee on Agriculture, Livestock and Fisheries concerning the reduction of tea prices by tea companies in Nandi County.

In the Statement, the Committee, should-

(i) explain why Kipchabo Tea Factory in Nandi County has breached its tea pricing contract with farmers and reduced the price of tea from Kshs30 per kilo to Kshs19 per kilo;

(ii) state and provide the current prices being paid to farmers by all tea companies in Nandi County for tea producing supplied by farmers;

(iii) state why the management of Kipchabo Tea Factory has not refunded farmers' money deducted towards the supply of fertilizers as the company had earlier agreed with the farmers;

(iv) state why Kipchabo Tea Factory has continued to deduct cess fee from farmers despite the company having not financed and/or participated in any Corporate Social Responsibility (CSR) activities in Nandi County;

(v) provide information on the Corporate Social Responsibilities that the tea companies in Nandi County have engaged in targeting residents of the host county;

(vi) state how much is collected from farmers by tea companies in Nandi County as cess fee; and,

(vii) explain why the company made farmers to sign a contract whose contents they were not made aware of and in a language that they cannot best understand.

I thank you.

The Temporary Speaker (Sen. Pareno): I will not allow any more comments on these Statements, so that we are able to catch up with the rest of the business. This Statement is, therefore, referred to the Standing Committee on Agriculture, Livestock, and Fisheries.

Next is Sen. Halake's Statement. Very briefly, please.

DEROGATORY REFERENCE OF MENTALLY CHALLENGED
VICTIMS OF SEXUAL VIOLENCE IN THE PENAL CODE

Sen. Halake: Thank you very much Madam Temporary Speaker. I rise pursuant to Standing Order. No. 48(1) to seek a Statement from the Standing Committee on Justice, Legal Affairs and Human Rights regarding derogatory reference to mentally challenged victims of sexual violence in the Penal Code.

The Sexual violence bit is not even the most important, but the derogatory terms used to describe our mentally challenged citizens is---

(Interruption of Statement by Sen. Halake)

The Temporary Speaker (Sen. Pareno): Do you have an intervention, Sen. Sakaja?

Sen. Sakaja: Yes, Madam Temporary Speaker. I am very sorry, Sen. Halake. I earlier had a Statement that was deferred, but would like on the record to withdraw it, so that it is not brought back next week because of time.

The Temporary Speaker (Sen. Pareno): So, it shall be marked as withdrawn.

SOURCE AND UTILIZATION OF FUNDS ON THE BEAUTIFICATION
AND “NG’ARISHA JIJI” PROGRAMME BY NAIROBI CITY COUNTY

(Statement withdrawn)

(Resumption of statement by Sen. Halake)

Sen. Halake: The issue of the sexual violence notwithstanding, generally, the language used on our mentally challenged individuals is a point of concern.

In the Statement, the Committee should:

(a) Provide justification if any for the continued use to the terms idiots. In our Penal Code, mentally challenged individuals are referred to as idiots and imbeciles. In section 146 of the Penal Code refer to mentally challenged victims--- I am using the sexual bit because I came to this while following up on sexual abuse of mentally girls. I then realized as I was reading the Penal Code that they are referred to as imbeciles and idiots.

(b) Explain why the Statute has not been amended in line with article 27(4) of the Constitution of Kenya which prohibits direct or indirect discrimination against any person on any ground especially when using those words.

(c) State the steps, if any, that have been taken to amend section 146 of the Penal Code to replace the offensive terminology.

I am sponsoring amendments to ensure that those kinds of derogatory, unacceptable terms to call people idiots and imbeciles are not there. I thought I should bring it to this House and make sure the Committee on Justice, Legal Affairs and Human Rights looks at these and also gives it the highlight it requires.

I thank you.

The Temporary Speaker (Sen. Pareno): The Statement is committed to the Senate Committee on Justice, Legal Affairs and Human Rights.

I now invoke the Standing Orders to defer the business in Statement pursuant to Standing Order No. 51(1) (a) and the ones that are pursuant to Standing Order No. 51(1) (b).

ACTIVITIES OF THE COMMITTEE ON JUSTICE, LEGAL
AFFAIRS AND HUMAN RIGHTS

DEMISE OF RENOWNED ARTIST PAPA SHIRANDULA

ACTIVITIES OF THE COMMITTEE ON AGRICULTURE,
LIVESTOCK AND FISHERIES

ACTIVITIES OF THE COMMITTEE ON DEVOLUTION AND
INTERGOVERNMENTAL RELATIONS

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ACTIVITIES OF THE COMMITTEE ON EDUCATION

(Statements deferred)

We, therefore, move to the Statement pursuant to Standing Order 52(2).
Proceed, Senate Majority Leader.

BUSINESS FOR THE WEEK COMMENCING
TUESDAY, 15TH SEPTEMBER 2020

Sen. Dullo: Thank you, Madam Temporary Speaker. Pursuant to Standing Order 52 (1), I hereby present to the Senate the business of the House for the for Tuesday 15th September, 2020. Before I proceed, I take this opportunity to welcome Senators to the fourth part of the Fourth Session.

On Tuesday, 15th September, 2020, the Senate Business Committee (SBC) will meet to schedule the business of the Senate. On that day, the Senate will consider Bills scheduled for Second Reading and those at the Committee of the Whole Stage.

The Senate will also continue with consideration of business that will not be concluded in today's Order Paper, including Motions, Petitions and Statements.

Madam Temporary Speaker, a total of 20 Bills are due for Second Reading stage and another 17 Bills are at the Committee of the Whole. The SBC will prioritize these Bills accordingly starting with the following that have been scheduled for Tuesday, 15th September, 2020 -

- (1) The Prompt Payment Bill (Senate Bills No. 3 Of 2020)
- (2) The Community Health Services Bill (Senate Bills No. 5 Of 2020)
- (3) The Equalization Fund Bill (National Assembly Bills No. 43 Of 2019)
- (4) The Public Finance Management (Amendment) Bill (National Assembly Bills No. 51 Of 2017)
- (5) The Street Vendors (Protection of Livelihood) Bill (Senate Bills No. 10 of 2019)
- (6) The Elections (Amendment) Bill (Senate Bills No. 18 of 2019)
- (7) The Kenya Sign Language Bill (Senate Bills No. 15 of 2019)
- (8) Consideration of the National Assembly Amendments to The County Outdoor Advertising Control Bill (Senate Bills No. 19 of 2018)
- (9) The Wildlife Conservation and Management (Amendment) Bill (Senate Bills No. 24 of 2019)
- (10) The Law of Succession (Amendment) Bill (Senate Bills No. 1 of 2020)
- (11) The County Resource Development Bill (Senate Bills No. 2 of 2020)
- (12) The Sectional Properties Bill (National Assembly Bills No.23 of 2019)
- (13) The Livestock and Livestock Products Marketing Board Bill (National Assembly Bill No. 2 of 2019)

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(14) The representation of special interest groups law (Amendment Bill) (National Assembly Bill No. 52 of 2019)

(15) The Investment promotion (amendment Bills) Senate Bills No. 8 of 2020)

(16) The Mung Beans Bill (Senate Bills No.9 of 2020)

Individual Senators who may have amendments to these and other Bills are encouraged to file the same in good time.

Allow me to also urge representative Movers of Bills, standing Committees and respective Senators that have already filed amendments to be in the House whenever the Bills are scheduled. This will facilitate speedy consideration and smooth transition from one stage to the next.

Madam Temporary Speaker critical business still remains relating to financial matters, namely the Third Basis of Revenue Sharing among the county governments and the County Allocation of Revenue Bill. I continue to urge colleague Senators that as we continue to deliberate on this matter, we need to proceed with patience, understanding and objectivity as the matter is undoubtedly weighty and emotive, so that we can arrive at a logical conclusion.

I thank you, and hereby lay the Statement on the Table of the House.

(Sen. Dullo laid the document on the Table)

The Temporary Speaker (Sen. Pareno): Hon. Senators, looking at the time, I now rearrange the Order Paper, so that we move directly to Order No.24.

Proceed, Senate Majority Whip.

Proceed, Sen. Kang'ata:

BILL

Second Reading

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

Sen. Kang'ata: Madan Temporary Speaker, I beg to move that the Sectional Properties Bill (National Assembly Bills No.23 of 2019) be now read a Second Time.

This Bill is important for several reasons. I first thank the Deputy Majority Leader for yielding that I move this Bill. The Bill is trying to establish a legal framework for ownership of property in a vertical manner.

Vast majority of Kenyans own property in a vertical manner. With the rate of urbanisation, we may need to start encouraging our people to understand what we call strata/vertical ownership of property.

The rate of urbanisation in this country is 4.23 per cent every year between the years 2015-2020. The urban population currently is about 30 per cent of the entire

population of Kenya. We had a law that was called Sectional Properties Act of 1987, which this Bill is intending to replace.

With that kind of huge rate of urbanisation, we foresee - as a Government - that more people will come to urban areas. They will need to own property, but it will be small units that will be inside a certain building. The effect of this Bill is to provide---

ADJOURNMENT

The Temporary Speaker (Sen. Pareno): Hon. Senators, it is now 6.30 p.m., time to interrupt the business of the Senate. The House, therefore, stands adjourned until Tuesday, 15th September, 2020, at 2.30p.m.

The Senate rose at 6.30 p.m.