

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Thursday, 5<sup>th</sup> November, 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

STATE OF THE NATION ADDRESS TO PARLIAMENT  
BY HIS EXCELLENCY THE PRESIDENT

**The Speaker** (Hon. Lusaka): Hon. Senators, by a letter referenced SH/1/15, dated 23<sup>rd</sup> October, 2020, addressed to the Speaker of the National Assembly and copied to the Speaker of the Senate, the Office of the President informed Parliament of the intention to have His Excellency the President address a Joint Sitting of Parliament pursuant to Article 132 of the Constitution, on Thursday, 12<sup>th</sup> November, 2020.

As you may be aware, Article 132(1) (b) of the Constitution and Standing Order No. 22(1) of the Senate require the President to address a Special Sitting of Parliament once every year and at any other time.

Hon. Senators, the State of the Nation Address is a crucial event in the calendar of Parliament as it affords His Excellency the President an opportunity to address the Legislature and the people of Kenya on critical matters concerning the country and set out the Government's priorities, policies and legislative agenda. In furtherance of Article 132 (1) (c) of the Constitution, Parliament also receives from His Excellency the President –

(i) A report on all the measures taken and progress achieved in the realization of the national values referred to in Article 10,

(ii) Report on the progress made in fulfilling the international obligations of the Republic.

In addition, Article 240(7) of the Constitution requires the President, in his capacity as the Chairperson of the National Security Council (NSC), to report to Parliament annually on the state of the security of the Republic.

Hon. Senators, following consultations with the Speaker of the National Assembly, this is to inform you that a Special Sitting of Parliament will be held on

Thursday, 12<sup>th</sup> November, 2020 at 2.30 pm, in the National Assembly Chamber, Main Parliament Buildings.

In view of the limited sitting space in the Chamber due to the COVID-19 Public Health Guidelines, the Offices of the Speakers and Clerks of both Houses of Parliament are making the requisite arrangements to facilitate the Special Sitting.

Please, note that unlike previous occasions where Senators and Members of the National Assembly are at liberty to invite one guest each for the occasion, in this instance, that will not be possible due to the prevailing COVID-19 situation in the country.

The Special Sitting has also necessitated a re-arrangement of parking slots and as a result, the Senators' parking area here at the Main Parliament Buildings will not be available for parking by Senators on Thursday, 12<sup>th</sup> November, 2020. Alternative parking arrangements within the precincts of Parliament will be made, and will be communicated to Senators through the Office of the Clerk before the Special Sitting.

I thank you.

Next Order!

### PAPER LAID

THE CROPS (SUGAR) (GENERAL) REGULATIONS,  
LEGAL NOTICE No.99 OF 2020

**The Senate Majority Leader** (Sen. Poghisio): Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today, Thursday 5<sup>th</sup> November, 2020- The Crops (Sugar) (General) Regulations, Legal Notice No. 99 of 2020.

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

### STATEMENTS

PROCUREMENT IRREGULARITIES AND GOVERNANCE  
MALPRACTICES AT KENHA

*(Statement deferred)*

LACK OF EXPLOITATION OF MARITIME JOB OPPORTUNITIES  
BY THE YOUTH RESIDING IN THE COASTAL REGION

**Sen. Loitiptip:** Thank you, Mr. Speaker, Sir, for giving me this opportunity.

I rise pursuant to Standing Order No. 48(1) to seek a Statement from the Standing Committee on Roads and Transportation concerning the lack of exploitation of maritime job opportunities by the youth residing in the Coastal region of the country.

In the Statement, the Committee should-

(1) Provide the current employment statistics of the youth in the maritime sector and their skill set.

(2) State the official Ministry position on the factors undermining the ability of the youth in the Coastal region to take up jobs available in the maritime sector and the steps the Ministry is taking to remedy this situation; lastly.

(3) Outline the measures the Government has put in place to ensure that the youth from the Coastal region are given priority in filling these job opportunities in line with the principle of devolution.

**Sen. Faki:** Asante Bw. Spika kwa kunipa fursa hii kuchangia taarifa ambayo imeletwa na Seneta wa Lamu, Mhe. Anuar Loitiptip.

Bw. Spika, juzi tulitamaushwa na ripoti zilizotoka kwenye vyombo vya habari ambazo zilikiwa zimezugumzwa na Katibu wa Kudumu katika Wizara ya Usafiri na Miundo Msingi, Bi. Nancy Karigithu. Alinukuliwa akisema kwamba vijana wa Pwani hawawezi kuajiriwa katika kazi za meli kwa sababu hawakusomea somo la Kingereza.

Bw. Spika, ni jambo la kuvunja moyo kwa afisa mkuu wa Serikali katika Jamhuri yetu ya Kenya kutoa matamshi kama hayo. Katika kazi za bahari, kuna meli za Kichina, Kigiriki, Kitaliano na za kila aina ambazo zinakuja na kuondoka katika Bandari ya Mombasa. Sio lazima mtu ajue kuzungumza lugha ya Kingereza ili apate ajira katika meli hizo.

Bw. Spika, Tanzania iko na chuo ambacho kinatambulika ulimwengu nzima kwa maswala ya bahari. Wakenya wengi husafiri kwenda kusomea mambo ya bahari Tanzania. Ukiangalia vizuri, lugha rasmi ya Tanzania ni Kiswahili na pia wanatumia Kiswahili kwenye Bunge. Kwa hivyo, ikiwa wanafunzi wetu wanaenda Dar es Salaam kufundishwa lugha ya Kiswahili, itakuwaje Katibu wa Kudumu katika Wizara ya Usafiri kusisitiza kwamba lazima watu wasome Kingereza ndio wapate kazi kwenye meli?

Bw. Spika, itakumbukwa kwamba kazi ya ubaharia imekuwa katika Mji wa Mombasa na Pwani kwa jumla kwa muda wa zaidi ya miaka 100. Vasco da Gama alipokuja mara ya kwanza kutafuta njia ya kwenda India, alishuka Mombasa na kupata wataalamu wa bahari wakamsafirisha hadi India. Kwa hivyo, swala la kuwa lazima mtu ajue lugha ya Kingereza ili kupata kazi kwenye meli halina utaalumu wowote. Kwa hivyo, Katibu wa Kudumu amekosea watu wa Pwani na vijana wa Kenya ambao wako na tamaa ya kupata ajira kwenye meli.

Bw. Spika, itakumbukwa kwamba huyu Katibu Mkuu alikuwa Mkurugenzi Mkuu wa kwanza wa Shirika la *Kenya Maritime Authority (KMA)*. Hili ndilo shirika ambalo limepewa mamlaka ya kufunza mabaharia na kutoa vibali kwa taasisi ambazo zinafundisha mambo ya bahari. Lakini, aliondoka ofisini baada ya kuhudumu kwa muda wa zaidi ya miaka tatu bila kuweka msingi wowote wa vijana kama hawa kuweza kuajiriwa katika kazi kama hizi. Kwa hivyo, tunakemea sana kauli yake. Hafai kuendelea kutumika katika wadhifa ule kwa sababu amekaidi na kuvunja kanuni za kisheria amabazo anatakikana kutekeleza.

**Sen. Mwaruma:** Asante Bw. Spika kwa kunipa fursa hii kuchangia Taarifa ya Seneta wa Lamu, Sen. Anuar, kuhusu uajiri wa kazi katika secta ya *Maritime*. Tumeona ya kwamba watu wanaotoka sehemu za Pwani wanatengwa wakati wa kuajiriwa kazi kama mabaharia.

Ninaunga mkono Seneta wa Mombasa, Sen. Faki, kukashifu kwa kinywa kipana matamshi ya Katibu wa Kudumu kwa kusema kuwa wakaazi wa Pwani hawawezi

kuajiriwa kama mabaharia kwa sababu hawajui Kiingereza. Swali nililojiuliza nilipopata hiyo taarifa ni je, wanaojiriwa baharini wanahitaji kizungu cha kufanya nini? Kwani wanaenda kuandika insha za kizungu au kufanya kazi za ualimu?

Bw. Spika, nilipata fursa ya kwenda China. Siku moja nilipokuwa ninatafuta hoteli ya kulala, nilipatana na mwelekezi ambaye alikuwa anajua maneno mawili ya kizungu ambayo ni “*follow me*”. Nilienda hadi kwa chumba changu na nikapata huduma vizuri. Kwa hivyo, ninashangaa kwamba ni lazima mtu ajue Kizungu ili aajiriwe kufanya kazi ya bahari. Hicho kizungu ni cha kufanya nini? Kazi ya ubaharia ni ile ya kufunga *spanner*, kusafisha meli au kuelekeza mizigo itakavyoenda.

Kwa hivyo, ninapinga kwa kinywa kipana kutenga watu wa Pwani wasipate kazi za baharia. Ingekuwa vizuri kama Kamati ya Uchukuzi, ambayo itapewa fursa ya kuangalia taarifa hii kwa kina iite Katibu wa Kudumu na Waziri pia waje waeleze Bunge la Seneti ni sababu gani zinafanya watenge watu wetu wasiajiriwe. Watu wa Pwani wasipoajiriwa, kutakuwa na umaskini Pwani.

**Sen. Madzayo:** Asante Bw. Spika. Ningependa kujiunga na wenzangu waliotangulia kuchangia Taarifa hii iliyoletwa na ndugu yangu mdogo, Sen. Anuar, Seneta mkakamavu wa Lamu.

Katika sheria zetu za Kenya, hakuna mahali popote kumeandikwa ya kwamba Kizungu kitakuwa mbele ya Kiswahili. Tunavyoelewa, Kenya ina lugha mbili za kitaifa. Unaweza kuongea Kizungu au Kiswahili.

Ni jambo la kusikitisha haswa ikiwa Katibu wa Kudumu anayeangalia mambo ya bahari anaweza kutamka maneno kama vile vijana wa Pwani hawajui Kizungu, na kwa hivyo hawawezi kupewa kazi kwenye meli au nyadhifa zozote zile. Hilo ni jambo la aibu.

Bw. Spika, kwa mfano, mfanyikazi wako ndani ya nyumba haitaji Kingereza, ukiwa naye unaweza kutumia ishara. Kwa hivyo, ni matusi kwa mtu ambaye amepewa mamlaka na Rais wa Jamhuri ya Kenya, kutumikia Wakenya, kutukana watu wa Pwani. Jambo la aibu ni kwamba ‘*mama*’ huyo anaishi upande wa Pwani na familia yake. Amepata utajiri wake akiwa Pwani. Bwana yake amezaliwa na kusomea Pwani. Tunaijua historia yake sana. Lakini ukarimu wetu umetuchongea mpaka anaona sisi hatufai na kuanza madharau na matusi kwa watu wa Pwani. Hili ni jambo la aibu.

Ninaungana na wenzangu kusema kwamba Kamati ya Uchukuzi itakayo angalia swala hili imuite Katibu atueleze ni mahali gani ambapo pameandikiwa katika sheria za Kenya kusema kuwa kizungu ni bora kuliko Kiswahili na ndio sababu vijana wa Pwani hawawezi kupata kazi.

**Sen. (Dr.) Langat:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to make a contribution on this important Statement from the Senator of Lamu.

Currently, there are many issues coming from the Coastal region concerning unemployment and discrimination on matters of employment. We went to Kenya Ports Authority (KPA) on a different mission, but the issues that were raised by the people of the Coast concerning discrimination in employment are getting high.

Discrimination of the youths based on various things--- We had discussed here one time, to the point of raising a concern---

*(Sen. Murkomen spoke off record)*

**Sen. (Dr.) Langat:** Mr. Speaker, Sir, Sen. Murkomen is saying that BBI *itamaliza*. Please, save me from this Member here; he is finishing my time. He has left you and now come to me.

Although we are talking about the BBI solving this problem, it is in this House where this issue can be addressed. Bringing forth an issue that people could not be employed in the maritime sector because of language, is not something to be entertained.

I thought that Kiswahili is a national language; that once somebody can speak in Kiswahili, they can be employed in one area or another. If this is the situation, as the Senator has raised, it is an insult and injury to the people from the Coast. Already the seaport has been transferred to become a dry port somewhere in Naivasha, and it will bring more problems. Employment will soon be centralized in Naivasha instead of the Coast. Therefore, the people from the Coast should proper for more problems, because employment has been transferred from the Coast to another region.

We support the people from the Coast that those local jobs should be given to them. In fact, some few week ago some people in Bomet almost raised a concern when the Principal of Bomet University employed a watchman from her area. The local jobs should be given to the locals, as a way of promoting Corporate Social Responsibility (CSR).

I support the people of Mombasa. The jobs in their area should be given to them.

*(Applause)*

**The Speaker** (Hon. Lusaka): I know sometimes you preach. Is that a prophecy that they are going to have no more problems?

**Sen. Shiyonga:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to join my colleagues in contributing to this Statement.

Employment, especially what has been raised by Sen. Loitiptip, is of much concern. Yesterday, we had a Statement from Sen. Faki on the leadership of the maritime department. Today, we are talking about discrimination against the youth in the same department.

When a region is complaining so much especially with regard to employment and discrimination, those people need to be listened to. We entertained devolution and are here to defend it. Devolution is all about the locals and how best we can empower them. Youth are part of these locals from the Coast. If one can discriminate the locals based on the language they speak and the skills, they have - they already have the skills; the problem is only the language – they must be told that it is the worst thing they can ever give to the region.

Mombasa just like any other region in this Kenya needs to be respected. The coastal people, whether they have educational qualifications or not, have skills and can deliver. These jobs need to be given to the youth. We need to empower devolution in the Coastal region by especially giving the youth at the Coast maritime jobs.

We always blame the youth in the region that they are drug addicts. Why should we then deny them the jobs they deserve just because of a statement that can be made in English?

The officer that has been mentioned here needs to be recalled because he is not qualified to lead Kenyans with such discrimination. Whether the officer is a man or a woman, he or she is not worth being a leader in Kenya by discriminating on the youth because they cannot speak English. Not everyone can speak English.

Mr. Speaker, Sir, I am a leader in the Committee on National Cohesion, Equal opportunity and Regional Integration. I request that if you commit the Statement to the Committee on Roads and Transportation we can sit jointly, so that I can bring in the issue of discrimination and teach the officer concerned a lesson.

*(Several hon. Senators spoke off record)*

**The Speaker** (Hon. Lusaka): They are saying that you “scoop” them. You have the power in your Committee to “scoop” them.

Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** An. hon. Senator, who was a friend of Sen. Murkomen at some point recently said: “What is good for the goose is good for the duck.”

*(Laughter)*

Even the people who speak English, do not speak it well. It is even worse when we discriminate a young person based on language. On the matter of young people, whether we call them--- Sen. Murkomen and Sen. Cheruiyot are good people to address because they are also propagating discriminatory tendencies. It is the same principle whether you are denying somebody a job because they come from the Coast or you tell a young man that they are poor because somebody else is rich and has taken money from them.

On my part and for my good colleagues, including Sen. Madzayo - a retired Judge - Article 232 of the Constitution is very clear on what a public servant is supposed to do. As Sen. Shiyonga is “scooping” them, Article 232(1) (i) says:-

“The values and principles of public service include—

(i) affording adequate and equal opportunities for appointment, training and advancement, at all levels of the public service, of—

(i) men and women;

(ii) the members of all ethnic groups; and,

(iii) persons with disabilities.

If a person is hired, is a Kenyan and cannot speak English, they should be given a book and trained for a few days. They should not be denied an opportunity. That person who was posted there and is on public funds, sitting in Mombasa, getting hardship allowance on behalf of Kenyans is incompetent - we should say as much - and should be terminated.

Sen. Loitiptip, please, write an official complaint. We did a law here under Article 232 on Principles of Values of Public Service. We have a person who is an official ombudsman of public service. If a person violates the principles of public service, you

write an official complaint for which you are supposed to be heard because that person has violated the rights of young people in the Coastal region.

**Sen. Murkomen:** Thank you, Mr. Speaker, Sir. This is a very valid concern raised by the Senator of Lamu. I get shocked because every time we raise these very important issues as a country, the answer given is always that we need to change the Constitution. These are issues of implementation. We cannot start telling the people of Lamu or the Coast that when we talk about issues of employment and discrimination, which is real issues---

I am saying this with utmost respect as a leader who has visited most of those counties at the Coast. Those days when we were collecting views, I went to most of the counties of the Coast during the Constitution of Kenya Review Commission (CKRC) of Prof. Yash Pal Ghai. One of the things the people of the Coast have always complained about is discrimination.

They are not only being discriminated in getting jobs in the mainland of Nairobi, Mombasa, Kisumu, Eldoret and Nakuru.

They are now being discriminated back home where they come from. It is a paradox. It is something that should prick the conscience of those who are in authority and positions of governance. To make it worse is to use English Language as an excuse when we know that the national languages of the Republic of Kenya are Kiswahili and English. We also know that ---

I have listened to the Principal Secretary (PS) whose words are attributed to this issue of discrimination and she does not speak good English. If English was the consideration for her to be in that office, she would have been removed. She would not have qualified to hold the position she is speaking about.

The Committee that will look at this issue should put it a greater consideration. A research was done by the National Cohesion and Integration Commission (NCIC) on the ethnic and regional composition of Government offices, both parastatals and public service. It shows clearly that the people from the Coastal region are the most discriminated against.

I want to challenge Sen. Loitiptip because he has been in the forefront. I saw him the other day hugging the President and thanking him for the Building Bridges Initiative (BBI). There are serious issues in the BBI Report that affect the people of Lamu, one of which is a provision that says; "Per capita earning in so far as division of revenue is concerned must not go beyond three times the lowest county." If that will happen, Lamu will lose Kshs2 billion.

Mr. Speaker, Sir, the other day, Sen. Loitiptip was so loud about unemployment. I want to hear his voice about the BBI Report. I want to challenge him as a young person. I hope he is not falling into that trap of BBI Report that says forming a commission will create jobs for the people of the Coast. If at the moment a simple implementation like hiring people in the Port, they cannot hire the locals, where can you assure me that forming a youth Commission is going to create jobs for those people? The challenge that is facing this country is implementation of the law as it is.

Mr. Speaker, Sir, we must be seen to stand up. I want to challenge you, Sen. Loitiptip. You are my friend, and I am glad to do this here because you are my younger

brother. If all of us here are going to fall into this trap of being friends with the Executive, the President and so forth and sell the future of the people of the Coast by accepting the BBI Report as it is. I want to hear your voice, not the voice of others. I want to hear your voice because during the division of revenue, your voice was hazy; it was not very clear.

*(Laughter)*

However, now that you have read this question here, we want to hear your voice when it comes to the BBI Report and whether--- I do not want to---

**The Speaker** (Hon. Lusaka): Sen. Murkomen, I hope you are not using this opportunity to discuss BBI.

*(Laughter)*

**Sen. Murkomen:** No, Mr. Speaker, Sir. The BBI Report is a public document; we will discuss it. The reason I want to challenge Sen. Loitiptip is because---Some of us came out of constituencies that were not losing money in division of revenue. Sen. Malalah, Sen. Sakaja and I defended counties and regions that were losing money.

Mr. Speaker, Sir, I want this time round to see those counties that are suffering as a result of the good formula in the BBI Report, led by Sen. Loitiptip, to be at the forefront, so that all of us can come behind them. That is the same challenge I have with the pastoralist counties.

Mr. Speaker, Sir, all the pastoralists counties yesterday or the other day stood firm and said: "We must deal with this formula." I was hoping Sen. Loitiptip would sit with them.

I want to extend this challenge to the Senate Majority Leader in this House, Sen. Poghisi. He was in a Press conference alone calling himself the Majority Leader and speaking on behalf of pastoralists, when there was no other pastoralists with him.

*(Laughter)*

Mr. Speaker, Sir, we must not allow the leadership of this House and the Senate to be silent about the issues that are going to affect this country in the future.

Sen. Loitiptip, as a young man, please, I want to follow you this time round on the issue of division of revenue and the formula. I look forward to this discussion.

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

**The Speaker** (Hon. Lusaka): Sen. Murkomen, you have said so many things. I hope you are---

Sen. Omogeni, kindly, proceed.

**Sen. Omogeni:** Thank you, Mr. Speaker, Sir. I also rise to support this Statement that has been requested by the Senator for Lamu, my good friend, Sen. Anuar Loitiptip. What should interest the House is that for two consecutive days, we have been discussing issues of discrimination directed at the coastal people.

I was in the House yesterday when the good Senator for Kilifi County, the retired Judge, Sen. Stewart Madzayo, gave an analogy in the House. He gave names of heads of parastatals - five of them - from the Coastal region that are headed by people from one



region. In all those positions, there was nobody from the Coastal region. What was even more amazing is that the Senator for Mombasa, Sen. Faki, gave incidence, where people were interviewed for positions for a particular city in the coast and the person who was number four is the one who was picked. The other leading three candidates from the Coast, who were qualified for the job and were interviewed, were left out.

How far must we go as a Government in discriminating against people from the coastal region? I was shocked because if the excuse now is that the youth have not gone to school and learnt the English language, what about the incident that was brought to the attention of the House yesterday, where somebody had applied for a job of a Chief Executive Officer (CEO); he is from the Coast, he is qualified, becomes number one after the interview and then he is left out?

Mr. Speaker, Sir, if we were to talk honestly and be serious as leaders, there is somebody somewhere who systematically wants to discriminate against the Coastal people. I think it is not fair. If the President of this country is listening to us and watching this debate, this should be a wakeup call. This is because you cannot be talking about putting the country together, unifying this country and supporting the youth of this country, when somebody working for your Government is very systematically trying to discriminate against the youth of Mombasa.

Mr. Speaker, Sir, even if you want to get people to work in these ships, some of these people from the Coast, you can never swim better than them. They have some of the lifetime skills; they do not need English.

I do not know whether this matter is being referred to the Committee on Roads and Transportation, but the Committee on National Cohesion, Equal Opportunity and Regional Integration should pick this issue of what is happening in Mombasa against the coastal people and get a report in this House.

It is not fair. Even if it were me, I would not be happy if you discriminate against my people of Nyamira. This is because we are here as representatives of our people. If these issues are happening, we must bring them to the attention of the House. Since we are colleagues, we must speak in solidarity with the coastal people.

Mr. Speaker, Sir, as the Senator for Nyamira, I identify with the Coast and the coastal people, and we must send a strong statement to the Government that this discrimination should come to an end.

I support.

**The Speaker** (Hon. Lusaka): I will say something about that. Sen. Cherargei, then, Sen. Wambua in that order.

**Sen. Cherargei:** Thank you, Mr. Speaker, Sir, for this opportunity. I want to support my brother, Sen. Loiptip Anuar. It is so sad. When I saw the PS in charge of Maritime saying that coastal people do not understand English, I was shocked. According to Article 7 of the Constitution - I hope she is watching - the national language of the Republic of Kenya is Kiswahili. Secondly, the official languages of the Republic of the Republic are Kiswahili and English.

Mr. Speaker, Sir, I am meant to understand that the coastal youth are one of the unique people. Apart from understanding Kiswahili, they know Italian and Spanish. I

saw on social media some of them eloquently speak Italian, Spanish and other languages like German, yet you are using a yardstick of English.

Mr. Speaker, Sir, if Kenya was a functioning country - if the Executive was functioning and the President was serious – PS Kagirithu Nancy Macharia should have been fired long time ago because this issue is so serious.

Mr. Speaker, Sir, the other time in Nandi, when I said, “People should respect the Deputy President,” the National Cohesion and Integration Commission (NCIC) arrested me. Which other incitement words are you looking for, worse than what PS Nancy Macharia said about the Coastal youth?

It is a continuous, systematic and systemic isolation of the young people from the Coastal region. It is so sad and I want to challenge Sen. Loitiptip. I want to thank him because he stood with me during the revenue sharing formula and we were able to have consensus at the end of the day. I believe that he is a man with a stand.

I want to challenge Sen. Loitiptip to draft--- Sen. Mutula Kilonzo Jnr. has advised you very well that there should be an official complaint to the Ombudsman. Make sure that you also write to the President. If you speak to the President, you can give him a call.

We cannot allow PS Nancy Macharia, to continue undermining the unity of this country. Karigithu is a PS! What is the Cabinet Secretary in charge of transport doing when somebody under his docket is saying such words? The unity of this country is under threat when people like the PS are saying such words.

I am informed that nowadays I am a Member of the Committee on National Cohesion, Equal Opportunity and Regional Integration. I have seen my Chairperson, Sen. Shiyonga, insinuating that she might ‘scoop’ the PS. I want to assure the House that when this matter will come up in the Committee on National Cohesion, Equal Opportunity and Regional Integration, courtesy of my capable Chairperson, Sen. Shiyonga---

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

*(Loud consultations)*

Let us consult in low tones and observe social distancing.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Speaker, Sir, for giving me this opportunity. I just want Sen. Cherargei to confirm to us whether the PS is Nancy Macharia as he says. Just make it clear before the Floor of the House because we have Nancy Macharia, who is the CEO of Teachers Service Commission (TSC). Is she the same one you are referring to?

**Sen. Cherargei:** Mr. Speaker, Sir, my apologies for the mix-up. I am referring to Nancy Kagirithu. I did not insinuate the CEO of TSC, Nancy Macharia.

I want to urge the people of Coast region because I saw that the pastoralists took a position yesterday. If you allow the Building Bridges Initiative (BBI) document to pass, the statements that were made by PS Nancy Kagirithu will be the order of the day. You must stand and be counted.

The people from Coast region should be given equal opportunities like the people in Rift Valley, Western and in Nyanza; they have equal opportunities. I want to challenge

Sen. Madzayo and Sen. Faki because they were very vocal during the formula period. This is the right time to stand and be counted.

Somebody said, “you will not be judged where you stand when there is peace and calm, but the person who is in charge in the ring where there is sweat and blood.” This is the right time to defend your territory as the people from the Coastal region. That is the attitude some people have towards the people from the Coastal region. You must stand with the right side of history by defending such statements.

I want to thank Sen. Loitiptip. As young people, we are proud of you. We pray that God may continue to give you wisdom, so that you can continue to stand with guidance of Sen. Faki, Sen. Madzayo and the team from the Coast region.

Thank you, Mr. Speaker, Sir.

**Sen. Wambua:** Thank you, Mr. Speaker, Sir. I rise to support the Statement by Sen. Loitiptip. I will say very few things. First, the PS owes the people of the Coast region an apology. She owes the youth of the Coast a public apology for that matter.

It is a shame that a leader of the level of a PS would introduce a new category of discrimination in this country; discrimination on the basis of the language that you speak. It is really a shame.

Article 27 of the Constitution is very clear that no person should be discriminated against on any basis. The Constitution lays down the areas of discrimination. The PS has actually brought in a new category of discrimination that the reason the youth in the Coast region cannot secure jobs is because they cannot speak good English. It is ridiculous and shameful.

Discrimination of young people in one region of this country is discrimination against young people in all parts of this country. Discrimination of one region in this country, is discrimination in all parts of this country. Why do I say this? I studied for my first degree at Moi University in Eldoret, and Sen. (Prof.) Kamar was my teacher.

Madam Deputy Speaker, at that time, the leadership and the management---

**The Speaker** (Hon. Lusaka): It is Mr. Speaker, Sir. I know you are talking about Sen. (Prof.) Kamar, but she is not on the seat right now.

**Sen. Wambua:** I am sorry, Speaker, Sir. I meant Sen. (Prof.) Kamar.

Mr. Speaker, Sir, the leadership and the management of that university, at the time when I was a student there reflected the face of this country. We have heard narrations of what is happening especially at the Kenya Ports Authority (KPA) in Mombasa, where the people of that region for the longest time, have complained about being discriminated in securing jobs because they are being told that they are not properly educated and cannot work. This discrimination must come to an end.

Lastly, I want to challenge the Senator for Lamu to draft a Motion of censure against the PS and bring it here, so that we discuss the PS. That will serve as an example to other Principal Secretaries and government functionaries, who think that this country belongs to them and certain sections or regions of this nation and some people are more Kenyan than others.

I support.

**The Speaker** (Hon. Lusaka): I wanted to say this when the Chairperson of the Standing Committee on National Cohesion, Equal Opportunity and Regional Integration is here because the matters that have been raised are really important.

Whether this is referred to your Committee or not, on your own volition, you should be able to move as a Committee. That is because when we have a situation where it is being alleged that a person who was number one is left out and number four is picked, we want that report in this House, so that we can collectively take a decision as a House.

Chairperson, take it upon yourself, what Sen. Loitytip has brought, what was raised yesterday and other issues that have been raised, so that you bring a report here in the next two weeks. This will ensure that we can make a collective decision as the Senate. This must come to an end. We cannot continue operating like that, raising issues and just sweeping them under the table.

It is so directed.

#### RESUMPTION OF SPORTING ACTIVITIES IN THE COUNTRY

**The Speaker** (Hon. Lusaka): Sen. Omanga is not there, so we skip it.

*(Statement deferred)*

#### MONOPOLISTIC TENDENCIES BY THE EABL IN BEER PACKAGING

**Sen. Were:** Mr. Speaker, Sir, I rise pursuant to Standing Order 48(1) to seek a Statement from the Standing Committee on Tourism, Trade and Industrialization concerning monopolistic tendencies by the East Africa Breweries Limited (EABL) in beer packaging.

In the Statement, the Committee should: -

(i) explain why EABL is using its dominant position in the market to engage in restrictive trade practices by engraving the universal euro brown design beer bottles with the EABL initials thus limiting access of beer bottles by its competitors.

(ii) explain whether any beer company in Kenya has the right to claim ownership of the Euro brown design beer bottles considering that the bottle design existed many years before East African Breweries Limited (EABL) and these competitors ever entered the Kenyan market.

(iii) state whether the move by EABL to engrave the Euro brown design beer bottles with its trademark is in contravention of the Competition Act.

(iv) cause the Competition Authority of Kenya (CAK) to investigate EABL's unfair competition practices and take the requisite action as provided in law.

(v) Finally, the Committee should state measures, if any, put in place by the Government to ensure EABL does not continue abusing its dominant position in the market to perpetuate anticompetitive practices against other players in the beer market.

Thank you.

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

**Sen. (Dr.) Musuruve:** Mr. Speaker, Sir, thank you for giving me this opportunity. Kindly allow me to thank Sen. Were for bringing this Statement on the Floor of this House. It is actually a practice that companies that are doing very well and are moneyed take advantage of branding themselves. They are using the money they have to ensure that they have more customers at the expense of other companies.

This is a situation that should be interrogated in the Committee on Tourism, Trade and Industrialization where I sit. It would be very good for Sen. Were also to take us through as Committee in this matter so that we understand it better and see how to protect also other smaller companies because they provide employment to our youth.

I support this Statement by Sen. Were. I know that when it comes to the Committee where I am Vice Chairperson, Sen. Were, we will look into the depth of this matter.

**The Speaker** (Hon. Lusaka): Sen. Faki, what is your intervention?  
Shooting Down of Kenya Aircraft in Somalia

#### SHOOTING DOWN OF KENYAN AIRCRAFT IN SOMALIA

**Sen. Faki:** Thank you, Mr. Speaker, Sir. On 25<sup>th</sup> May, 2020, I sought a Statement on the shooting down of a Kenyan aircraft in Somalia. In the Statement, I requested the Committee on National Security, Defence and Foreign Relations to investigate the shooting down and maybe bring a report to the House.

Mr. Speaker, Sir, to date, I have not had any engagement with the concerned Committee. To make matters worse, the International Air Transport Association (IATA) rules provides that a preliminary report be issued by the host country where the accident occurred and what measures they are taking to avoid future accidents.

Mr. Speaker, Sir, so far that report has not been issued. The matter was investigated by both the Kenyan and Ethiopian governments. The delay in the release of this report is also delaying compensation that could be paid by the insurer of the aircraft to the families of the victims and also those who were involved in the accident.

I am seeking your intervention so that the concerned Committee can rise up and take up this matter. This is because time is running. Within one year from the date when the accident occurred that is the 4<sup>th</sup> May, 2020, this matter may not be brought up in any court of law. This is because the IATA rules provides that any claim which is supposed to be made has to be made within a period of 12 months from the date of the accident.

Mr. Speaker, Sir, I beg for your intervention in this important matter because five Kenyans died as a result of this accident which was occasioned by the negligence of the members of the Ethiopian National Defence Force (ENDF) stationed in Somalia in the area of El Bardale.

**The Speaker** (Hon. Lusaka): I know the Chairperson of the Committee is indisposed. The Vice Chairperson, Sen. Outa, is an observer in the US in the controversial elections. I do not know whether we have any Member from the Committee on National Security, Defence and Foreign Relations.

Who is a Member of the Committee? Sen. (Eng.) Mahamud, why do you not communicate that we need that report? Just like Sen. Faki said this is time bound. Give him the microphone.

**Sen. (Eng.) Mahamud:** Mr. Speaker, Sir, on behalf of the Committee, we undertake to look for that report and see how we can deliver it.

**The Speaker** (Hon. Lusaka): Okay. Sen. Cherargei, proceed. Chief Whip, observe social distancing.

**Sen. Cherargei:** Mr. Speaker, Sir, protect me. The Chief Whip is becoming 'miscellaneous' here. I do not know why the Chief Whip is excited. Maybe it is because of the Building Bridges Initiative (BBI). He has said we should go to the people instead of the Senate.

I support what Sen. Were has just said that there are some companies that have monopolistic tendencies. For example, EABL cannot claim patent of a specific way of designing yet it is an internationally accepted standards that is being used by most companies.

Mr. Speaker, Sir, the problem we have in this country is not even EABL which is becoming rogue and monopolistic. The problem is that we have an agency called CAK which is just grossly incompetent, chronically ineffective and moribund.

When we even raise issues of the milk and dairy sector in this country, it is the CAK that has allowed some companies in this country, especially in the milk and dairy sector that have run amok. When you see companies like EABL micromanaging and remote controlling CAK to allow them to override other companies that are making beer in this country, it is very sad.

There are many other multinational companies. We have even other companies in the telecommunication sector in this country. The CAK has left Kenyans at the mercy of these monopolistic companies.

You find EABL can dictate how the market of beer in this country can be run yet the CAK should be protecting Kenyans. Are we at their mercy? These are agencies that were created to put a leash into an insatiable appetite by companies that have monopoly. That is from the dairy, agriculture, beer, telecommunication sectors, among others.

Mr. Speaker, Sir, there is a company in this country and I do not want to name it, that is monopolistic in telecommunication. They decide on how to sell data bundles and pricing in terms on engaging in buying airtime.

I request the Committee that you will direct this matter to that CAK must be summoned here. It is a Government agency. They will never care about Kenyans. They will always care about the profits they want to make. They want make satanic profits in this country at the expense of the welfare of the citizens that we have.

Mr. Speaker, Sir, I hope this matter will be addressed as soon as possible. This is so that we do not allow EABL to behave in a manner that they want to monopolize everybody and dictate on how the matter should look like.

Even in the dairy sector, as farmers, we have always complained that there is one of the companies in this country that control 40 per cent of the milk market prices in this country, yet CAK has not done anything.

I hope this matter will be put to rest. When CAK will come to this House, some of us will have so many questions from the market prices to the aspect of the control of the beer or alcohol market in this country.

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

**Sen. Omogeni:** Mr. Speaker, Sir, this is a matter that is really important to the economy of this country.

We came up with the Competition Authority of Kenya because we wanted to encourage competition among players in the market. If you follow the history of this country, there are so many players that have tried to set up shop in Kenya. Nonetheless, word out there is that Kenya Breweries will never give them room to operate. They come with very unfair business practices in the market to ensure they kick any competition out of the market.

You know the case of the South African company Castle Lager that tried to set up shop here but because of unfair business practices by Kenya Breweries, they closed shop and left the country. I have been reading the newspapers about a local company called Keroche and they also point fingers towards unfair practices from Kenya Breweries.

It serves the economy if we allow many players to set up shop, and that way, we create more employment opportunities for our people. If we allow one player to be a monopoly in the market, it is the same people in employment who will continue in employment. If we allow many companies to set up shop, it will employ many of our youth.

There is no way we will solve the problem of youth unemployment unless as, a country, we get it right. One way of getting it right is allowing many players in the industry. There is a time we were in Australia and I was told that there were more than 500 small beer making companies in a country with a population of about 24 million people.

In Kenya, we have a population of about 48 million and for more than 30 years, we have had one company enjoying monopoly. It is the same thing when you talk about the electricity distribution companies. In the United States of America, in a State like Tennessee, the Tennessee Valley Authority is able to supply electricity to the entire State which is much cheaper than what is produced by the national grid.

If we do not bring some of these unfair practices to an end, our economy will never grow. We will never create employment. It is not magic but us getting our policies right when we come up with an unfair competition practice body; the Competition Authority of Kenya. They must understand their mandate and help the market to be fair to attract investors from outside and then we can say that the new companies are creating jobs for the youth.

Otherwise, we will set up a National Youth Commission in the Constitution but unless we fix the problems that are afflicting us in terms of attracting industries to come up and set up shop, we will never get it right. I hope the Committee that will look into this matter can take it seriously as we try and fix the idea of one company feeling they should not allow any other company to set up shop.

It is not in the best interest of this country to say that Kenya Brewery Limited should be the only beer making company. It may serve the business interest of that

country but it is not serving national interest. I pray that the Committee tasked with looking into this matter can go to the bottom of it and summon the Competition Authority, to come here and tell us what they have done to ensure that the market becomes even and attractive to other players who want to join it.

**Sen. (Eng.) Hargura:** Mr. Speaker, Sir, we cannot be talking of creating jobs for our youth - giving figures of about 500,000 jobs per year - then stifle competition in the sector supposed to generate those jobs be it in the specific case of East African Breweries Limited (EABL) or any other sector.

I urge the Committee to look very clearly and seriously at what the Competition Authority is doing to sort out this kind of issues. Since, we have been creating authorities and commissions that go to sleep immediately they are created. They do not take their job seriously.

I urge the Committee, that when these Statements are given, they should follow them up. More than a month or two ago, I requested a Statement from the Committee on Roads and Transportation on the issue of the Roads Maintenance Levy Fund. Yesterday I checked with the Committee and there was no reply from the Cabinet Secretary. Those are the funds we have been allocating in the County Allocation of Revenue Act (CARA) and we need to see what is being done.

If the Cabinet Secretary cannot report back to us, then we will not have a way of checking what is going on. Whatever we are doing, we must have a follow up on this question so that whatever Members are asking is useful. Otherwise, when we generate questions here and they are not being responded to, then you are not doing any service to Kenyans.

**The Speaker** (Hon. Lusaka): Sen. Kang'ata, you have the Floor.

**Sen. Kang'ata:** Mr. Speaker, Sir, I rise to comment on this Statement by Sen. Were. Under a capitalistic economy, the government must always foster what we call a perfect competition economy. In a perfect competition economy, there are certain features.

First, companies must be price takers. That means that no single company should dictate the price. Secondly, a customer should get symmetrical information. That is to say there should have equal information so that they make the right decision.

It is on that basis that Kenya established the Competition Authority of Kenya (CAK) but we have seen it failing to live up to the expected outcomes or objectives of the law that underpins it. It is because we have certain sectors in Kenya that are completely dominated by certain companies.

The first one is the alcohol sector. The EABL controls about 90 per cent of the market but no remedial action is being done by the CAK. That is completely unfair because by doing that, several things happen.

First, the EABL is the one that dictates the price of beer in this country. Secondly, no new company can establish itself and employment cannot be created. The worst case scenario is that the EABL is owned by a foreigner. It is not even a Kenyan company because they bought out the original Kenyan shareholders. For me, it is not positive. It is something that the CAK has neglected to take remedial actions.



In other societies like in America or other developed capitalistic societies, the regulators take major anti-trust action. They can even compel a company to split up or cede some shares. I do not see the alcohol sector expanding if we still have a situation where 90 per cent of that sector is controlled by one company.

Another company that has the same problem – I urge my sister to bring a Statement on it – is the telecommunication industry. Currently, Safaricom controls more than 90 per cent of that sector. As a result, new companies cannot establish themselves in this economy. It is easy for Safaricom to use its muscles to push out other companies.

There is what we call termination charges. That is to say, once a person calls from company “X” to clients of another company like say Safaricom, there is some money that company is supposed to pay Safaricom. As a result of the skewed economy, you find that small companies owe billions of shillings to Safaricom. At what point shall we have a situation where those companies will become competitive, innovate and ensure that the market is free?

Mr. Speaker, Sir, the CAK must appear before the Senate to tell us why they have been unable to compel certain huge companies to act responsibly so as to allow the market to be open and competitive. That is the only way we can create employment and break monopolies. Otherwise, this economy of ours will never prosper. We shall not innovate and create employment and it will be an imperfect competitive economy. I therefore support Sen. Were for bringing up this issue.

As I finalise, I am aware there have been some litigations concerning this matter. I saw that in the newspaper. However, I think what is before us is not that which is in court. We are looking at the public interest elements and not the private issues which are currently being litigated in court.

I am not aware of any other time that Parliament has ever endeavoured to question the CAK on matters of a closed or competitive economy. I think this Statement affords us that opportunity.

I thank you.

**The Speaker** (Hon. Lusaka): What is your Statement, Sen. Cherargei?

#### LOSS OF KSHS2.3 BILLION AT NOCK

**Sen. Cherargei:** Thank you, Mr. Speaker, Sir, for that indulgence.

Mr. Speaker, Sir, I rise pursuant to Standing Order No.48(1) to seek a Statement from the Standing Committee on Energy regarding the loss of Kshs2.3 billion at the National Oil Corporation of Kenya (NOCK). In the Statement, the Committee should-

(1) State the circumstances that led to the diversion of fuel products and falsification of credit and delivery notes by the NOCK officials.

(2) State why the Corporation has failed to keep and provide proper records and order processing procedures thus resulting to the loss of Kshs2.3 billion.

(3) Explain why no action has been taken on responsible staff for illegal diversion of products consignments despite being highlighted by the Auditor-General thus resulting to liquidity challenges facing the NOCK.

(4) Explain what the Ministry of Energy is doing to avoid the impending asset seizure and auction of the NOCK properties due to defaulted bank loans amounting to over Kshs5.3 billion.

Mr. Speaker, Sir, it is worth for the House to note that Members of the National Assembly have also recommended that the NOCK is becoming insolvent and not tenable and therefore it should be privatized. That is the information I wanted the House to know.

I thank you.

**The Speaker** (Hon. Lusaka): We will now move to Statements under Standing Order No.51(b).

What is your intervention, Sen. Were?

**Sen. Were:** Mr. Speaker, Sir, I have a complaint to the Committee on Labour and Social Welfare but I am also on a point of order as well.

I placed two Statements to them a few months ago. One was on the pension issues. It was about frustrations at the Pensions Department. The other one was on the Emergency Fund within trade unions. They have not gotten back to me at whatever level. They have just gone quiet on those two issues.

Now it is through Statements that we can prosecute our business because our Bills are lying at the National Assembly. We only have Motions. If we make sure that committees work on Statements that we bring here, we will be doing Kenyans a favour.

I thank you.

**The Speaker** (Hon. Lusaka): We met with the Chairpersons of the committees and we agreed that they will work on that. The Chair of the Committee on Labour and Social Welfare, please, make sure that you respond.

What is your intervention, Sen. Cherargei?

**Sen. Cherargei:** Mr. Speaker, Sir, before the Chairperson of the Committee on Labour and Social Welfare responds, there were also matters of casual labourers who were fired by Wajir and Nandi county executives but we have not received any responses from the Committee on Labour and Social Welfare. The issue was urgent at that time and you directed that they should report back but it never happened because we went on recess.

Mr. Speaker, Sir, you should direct them to give responses either today or by Tuesday next week even if they are interim answers to those Statements.

**The Speaker** (Hon. Lusaka): Are you a Member of the Committee on Labour and Social Welfare?

**Sen. (Dr.) Milgo.** It is just last Tuesday that I read the Statement on the activities of the Committee on Labour and Social Welfare. We listed all the programmes and activities, and Sen. Were's Statements were also listed and are on the line. We have already started with Sen. Cherargei's Petition.

As a Committee, we normally like interrogating issues deeply, so that we can bring them to a conclusion in the most favourable manner. There are some issues that we were still looking into, in order to accomplish dealing with the Petition from the Senator of Nandi County. I am sure that in the next week or so, we shall be able to dispense with that particular Petition.

**The Speaker** (Hon. Lusaka): If you can do that in the next week, that will be very good.

Chairperson of the Standing Committee on National Security, Defence and Foreign Relations. I do not see him.

ACTIVITIES OF THE COMMITTEE ON NATIONAL SECURITY,  
DEFENCE AND FOREIGN RELATIONS

*(Statement deferred)*

**The Speaker** (Hon. Lusaka): Chairperson of the Standing Committee on Tourism, Trade and Industrialization, is there any report on the activities of the Committee?

**Sen. (Dr.) Ali:** Yes, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Proceed, Sen. (Dr.) Ali.

ACTIVITIES OF THE COMMITTEE ON TOURISM,  
TRADE AND INDUSTRIALIZATION

**Sen. (Dr.) Ali:** Thank you, Mr. Speaker, Sir, I rise pursuant to Standing Order 51 (1) (b) to make a Statement on the activities of this Committee commencing January to August, 2020. During the period under review, the Committee has held a total of 53 sittings and considered seven Bills, one Petition, and has undertaken one county visit to Eldoret to check on the Moi University Savings and Credit Society SACCO in Uasin Gishu County.

Mr. Speaker, Sir, regarding the Petitions pursuant to Article 118 of the Constitution, one Petition was referred to the Committee during the period under review. This is the Petition that was reported by Sen. (Prof.) Kamar on the liquidation of Moi University SACOO Ltd. in Uasin Gishu County. Upon receipt of the Petition, the Committee has undertaken stakeholder engagements and subsequently received submissions from a wide range of stakeholders and respondents who include-

- (i) The Ministry of Agriculture, Livestock, Fisheries and Cooperatives;
- (ii) The State Department of Cooperatives;
- (iii) The Commissioner of Cooperatives;
- (iv) The SACCO Societies Regulatory Authority (SASRA);
- (v) The county executive government of Uasin Gishu;
- (vi) The Intergovernmental Relations Technical Committee (IGRTC);
- (vii) The Commissioner of the Cooperative Department;
- (viii) The Cooperative Bank of Kenya;
- (ix) The Petitioners; and,
- (x) Other persons affected by the liquidation of the SACCO.

Further, on Friday 16<sup>th</sup> October, 2020, the Committee undertook to a fact-finding visit to Eldoret in Uasin Gishu County, to upraise itself on the status of Moi University SACCO, which included a site inspection visit of the Moi University Savings and Credit

Society (MUSCO) Tower, the key asset for the SACCO that is earmarked for auction by the Cooperative Bank of Kenya. The Committee is compiling the evidence received and a final report on the Petition is being finalized for tabling in the Senate.

Mr. Speaker, Sir, in respect to Bills, the following were considered-

- (i) The County Tourism Bill (Senate Bills No.5 of 2019), passed by the Senate.
- (ii) The Street Vendors Protection of Livelihood Bill (Senate Bills No.10 of 2019), passed by the Senate.
- (iii) The County Licensing Uniform Procedures Bill (Senate Bills No.17 of 2019), due for the Third Reading.
- (iv) The SACCO Societies (Amendment) Bill (National Assembly Bill No.1 of 2018), on which the Committee is considering public memoranda.
- (v) The County Resource Development Bill (Senate Bills No.2 of 2020), on which the Committee is considering public memoranda.
- (vi) The Investment Promotion (Amendment) Bill (Senate Bills. No.8. of 2020). We have just discussed that today, and it is coming for the Committee Stage soon.
- (vii) The Startup Bill (Senate Bills No.16 of 2020) has been advertised for public participation and submission of memoranda.

The Committee has planned for a report writing retreat to prepare reports on all the Bills.

Mr. Speaker, Sir, during the period under review, the Committee conducted prepublication scrutiny of the following legislative proposals and recommended for publication by the Senate.

- (i)The Tourism (Amendment) Bill (2019) by Sen. (Dr.) Milgo.
- (ii)The Cooperative Societies (Amendment) Bill (2020) by Sen. (Dr.) Zani.
- (iii)The Startup Bill (Senate Bills No.16 of 2020) by Sen. Sakaja.

Mr. Speaker, Sir, in view of the resolutions of the Senate on the reorganization of Committees of the Senate, the Committee had six new Members. In this regard, the Committee resolved to undertake internal induction for the new membership and have meetings with key stakeholders within the Committee mandate as follows: -

- (a)The Ministry of Tourism and Wildlife;
- (b)The Ministry of Industrialization, Trade and Enterprise Development;
- (c)The State Department of Cooperatives;
- (d)The Council of Governors (CoG);
- (e)The Kenya Bureau of Standards (KeBS); and,
- (f)Met with the United States of America (USA) ambassador and deliberated on the framework for the US-Kenya free trade agreement negotiations.

Mr. Speaker, Sir, the Committee experienced the following challenges in transacting its business. A Member who resigned from the Committee has not been replaced, which further complicates the quorum challenges. The Committee requests the Members to attend all of the Committees meetings. I also request that the leadership of the Senate fast-tracks the replacement of the Member who resigned from the Committee.

As I said in the last meeting we had in Naivasha, I have other challenges, which I have informed the leadership about. I hope that those things will be looked into.

Mr. Speaker, Sir, going forward, the Committee intends to prioritize county visits and stakeholder engagements with a view to identify specific legislative interventions with regards to the impact of the Coronavirus Disease (COVID-19) on key sectors and its mandate, including engagement with the Ministry of Industrialization, Trade and Enterprise Development, the Ministry of Tourism, the county governments, the Kenya Association of Manufacturers and the Kenya Private Sector Alliance (KEPSA).

Further, the Committee will prioritize engagements with the Ministry of Industrialization, Trade and Enterprise Development on how to enhance the ongoing US-Kenya free trade agreement negotiations and mainstream county interests within the negotiation framework.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): The Chairperson of the Standing Committee on Roads and transportation. Is there any member with a report?

Sen. Wambua. It seems as though your names are not coming here.

**Sen. Wambua:** Thank you, Mr. Speaker, Sir. I am a member of the Committee on Roads and Transportation, but I do not have a brief on the Report. Please, allow me one minute to make a comment on the issues that Sen. (Dr. Ali) has touched in his Report.

One of the areas where committees of the Senate need to up their game is taking the opportunity to build the capacity of counterpart committees in the county assemblies, to undertake responsibilities and roles within their jurisdiction. I say this because in the Committee on Tourism, Trade and Industrialization, there are a lot of opportunities in the counties, especially opportunities for tourism.

For one reason or the other, county assemblies have not really tapped into and expounded on these opportunities for the benefit of the counties, not just as tourist attractions to generate revenue for the counties, but also as a cultural heritage for the identity of the people of those regions. I have in mind two aspects which fall squarely under the Committee on Tourism, Trade and Industrialization.

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

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

Last year, we had opportunity as a Committee of the Senate to visit two historical areas; that is the Nzambani Rock and the caves in Kitui East which are said to be the breeding grounds for all the bats in Africa. These are things that we can take advantage of as a Committee of the Senate to help the county counterpart committees to develop and grow tourism in the regions.

**The Deputy Speaker** (Sen. (Prof.) Kamar): I can see the Chairperson wants to intervene. Maybe before the intervention, Sen. (Dr.) Ali, let us share some information with the Senator.

Yesterday, Sen. Khaniri made a Statement on culture and we asked him to go back and develop something more and discuss with this Committee. The reason was that we do not have cultural sites and it is time we had county cultural centres where our artefacts can be kept in the country.

We are expecting the Committee to also do more. What you have said is a continuation of yesterday's discussion. Chairperson, please consult with Sen. Khaniri and read yesterday's HANSARD because there is a lot that was raised to do with culture and tourism.

**Sen. (Dr.) Ali:** Thank you, Madam Deputy Speaker. I do not know whether culture falls under this, but I will consult and see. You can put it that way, but I wanted to tell Sen. Wambua that these committees do not organise anything. If you come up with something such as a Statement, then the Committee can visit those areas with you and then come up with a report. Unless we are pushed and given a way to do something, the Committee itself might not initiate.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you, Sen.(Dr.) Ali and the Chairperson of the Committee on Tourism, Trade and Industrialization. I know in your opening remarks you mentioned your trip to Uasin Gishu. I thank you and your Committee. You led a very powerful Committee that did a lot of work. You are still the talk of town because of the wonderful job you did. As the Senator of the area, I thank you most sincerely.

Hon. Senators, I cannot see the Chairperson of the Roads and Transportation Committee that was supposed to give the last Statement.

ACTIVITIES OF THE COMMITTEE ON ROADS  
AND TRANSPORTATION

*(Statement Deferred)*

We now call upon the Senate Majority Leader to issue a Statement. We will have the Chief Whip to represent him.

BUSINESS FOR THE WEEK COMMENCING  
TUESDAY, 10TH NOVEMBER, 2020

**Sen. Kang'ata:** Thank you, Madam Deputy Speaker. Pursuant to Standing Order 52(1), I hereby present to the Senate the business of the House for the week commencing Tuesday, 10<sup>th</sup> November, 2020.

I take this opportunity to welcome all Senators back to the House after the recess period. It is my hope that you all took the opportunity to meet with your constituents, friends and families and also to rest a bit.

I also take this opportunity to thank all Senators for their commitment and dedication in serving the people of Kenya and guarding devolution.

On Tuesday, 10<sup>th</sup> November, 2020, the Senate Business Committee (SBC) will meet to schedule the business of the Senate. On that day, the Senate will consider Bills

which have complied with the provisions of Article 110(3) of the Constitution and also the judgement of the High Court of Kenya in Constitutional Petition No.284 of 2019.

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

On Wednesday, 11<sup>th</sup> November, 2020, the Senate will continue with business that will not have been concluded on Tuesday 10<sup>th</sup> November, 2020 and any other business scheduled by the SBC.

On Thursday 12<sup>th</sup> November, 2020, His Excellency the President of the Republic of Kenya will address a special sitting of Parliament in fulfilment of his responsibilities under Article 132(1)(b)(c) of the Constitution. The Special Sitting of Parliament will take place in the National Assembly Chamber Main Parliament Buildings.

The address is a crucial event in the Calendar of Parliament and affords His Excellency the President the opportunity to not only highlight Government priorities, policies and legislative agenda, but also to report on all measures taken and progress achieved in realisation of the national values as envisaged in Article 10 of the Constitution. He will also report the progress made in fulfilling international obligations in the Republic of Kenya.

As such, therefore, the SBC will not schedule any other business on that day.

Madam Deputy Speaker, with respect to the Bill, we are all aware that the Judgement that was rendered by the High Court in Constitutional Petition No. 284 of 2019 has had far-reaching implications to the business of the Senate. I urge for patience and understanding as the Senate leadership engages our counterparts in the National Assembly to fast track the process of regularizing published Bill affected by the Judgement to conform to Article 110(3) of the Constitution.

No affected Bill at any stage, including tabling of the Committee reports and Messages from the National Assembly will be scheduled in the Order Paper before that exercise is completed and further directions given.

In conclusion, the issue of COVID-19 in this Republic cannot be overstated. Data availed by the Ministry of Health and information in the public domain globally is that we are now in the second wave of the pandemic which is said to be more lethal than the first one. I urge all of us to religiously adhere to the public health guidelines on keeping safe and preventing the spread of this pandemic.

I thank you and hereby lay the Statement on the Table of the House on this day 5<sup>th</sup> of November, 2020.

*(Sen. Kang'ata laid the document on the Table)*

**The Deputy Speaker** (Sen. (Prof.) Kamar): Hon. Members, that brings us to the end of Statement time.

Next Order.

## **BILL**

### *First Reading*

THE COOPERATIVE SOCIETIES (AMENDMENT BILL)  
(SENATE BILLS NO. 11 OF 2020)

*(Order for the First Reading read-Read the First Time  
and committed to the relevant Committee.)*

Next Order.

**MOTIONS**

RECOGNIZING AND APPRECIATING THE ELDERLY  
BY COUNTY GOVERNMENTS

THAT AWARE that in 2006, the National Government initiated the Older Persons Cash Transfer (OPCT) Programme, popularly known as *Pesa ya Wazee*, which is an unconditional cash transfer programme to destitute elderly persons above the age of 65 years to cater for their subsistence needs;

NOTING THAT the beneficiaries receive a monthly stipend of Ksh2,000, delivered every two months through appointed payment agents, and also entitled to medical insurance through the National Health Insurance Fund (NHIF);

CONCERNED however that the programme's credibility is marred by issues of delayed payments to beneficiaries, difficulties in processing of payments through the stipulated agents and payments to unregistered persons;

NOW THEREFORE, the Senate recommends that the county Governments complement the efforts of the national Government and assist in resolving these challenges by -

1. Developing legislation and policies to protect the elderly, including ensuring all elderly persons in their counties are registered in the OPCT programme; and

2. Organize value addition mechanisms such as financial training to help the beneficiaries of the program to efficiently utilize this allowance.

*(Sen. Nyamunga on 4.11.2020)*

*(Resumption of Debate interrupted on 4.11.2020)*

**The Deputy Speaker** (Sen. (Prof.) Kamar): This is supposed to be resumption of debate. The Mover has requested that we defer the Motion since she is travelling with a Committee outside Nairobi.



*(Motion deferred)*

Next Order.

OPERATIONALIZATION OF SECTION 46 OF  
THE BASIC EDUCATION ACT, 2013

**Sen. (Dr.) Musuruve:** Thank you, Madam Deputy Speaker. I beg to move 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 the 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 the 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; and

(2) Working 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.

Madam Deputy Speaker, the issue of children with disabilities keeps coming up in this Senate for the purposes of ensuring that they are not left behind. I always thank all the Senators because when issues of disability come on the Floor of this House, they support very strongly.

Before we talk about children with disabilities and intervention in their academics, how they can live, or be functional in the society, we have to ensure that they are identified and assessed at an early age before placement is done. That is the core role EARCs apart from offering psychosocial support to parents and the teachers of children with disabilities in regular schools.

In 1984, the Government of Denmark through DANIDA in collaboration with the Government of Kenya ensured there were EARCs in the then districts. In 1984, the first

EARCs that were established were 17. They were fully equipped with all the accessories and what was needed to ensure that children with disabilities were identified and placed at the right time.

It is unfortunate that as we are speaking right now, the EARCs have been neglected, abandoned and are dysfunctional. That has implication for the life and future of children with disabilities. As we prepare other children through the school systems, so that eventually, they can exit to the world of work, we seriously need think about these children with disabilities. We can start by identifying children with disabilities in our communities.

Madam Deputy Speaker, when a mother carries a baby in her womb, she does not know whether she will give birth to a normal child or a child with disability. She only realizes a child has some disability after one or two years. For example, if she calls a child and he is not responding; then she realizes her child has some challenges maybe in hearing, speaking and so forth. Sometimes you move a biro pen to see whether the child will follow it with his eyes, but you realize that he is not responding. You may end up concluding he has problems with his eyes. That is when a parent worry and wonder what exactly is wrong with her child. Sometimes parents blame themselves for the disabilities of their children.

Madam Deputy Speaker, EARCs are put in place to help such parents. EARCs have audiometers to assess, the right materials and the assessment tools. Those tools can help to identify that a child may be different from the rest in the sense the child does not see clearly or cannot follow a moving object placed before their eyes. When the child cannot respond, then he might be having hearing problem.

Madam Deputy Speaker, if the child is not able to go to the toilet, that is when it is identified that there is a problem. If the child is autistic, that is when it is identified. When these children are identified at an early age, it will be possible to place them at the appropriate education facility, so that they can actualize their potential.

Madam Deputy Speaker, these are roles that EARCs were playing during that time when Denmark and the Government of Kenya had collaborated to intervene in special needs education. After EARCs, Kenya Institute of Special Education (KISE) and Kenyatta University (KU) special needs education were established.

Madam Deputy Speaker, I am a beneficiary of that system because when I went for special education, it was a collaborated effort of the Government of Kenya and Denmark. I received full sponsorship. I did not pay the fee because they wanted to solve issues that were at the ground.

Madam Deputy Speaker, in as much the Government was sorting out the issue of special needs of education at the higher level, they ended up forgetting what is at the lower level. That is why there is a mismatch when it comes to education of children with disabilities, especially those who are deaf.

Madam Deputy Speaker, I am moving this Motion to the Floor of the Senate because I need my fellow Senators to support me in this endeavour of ensuring that we have the right policies in place to support children with disabilities and ensure that no child with a disability will lag behind as far as education is concerned. Most school

grounds are not levelled properly to ensure that children with disabilities do not encounter problems. I urge teachers make sure these children are comfort in their schools.

Madam Deputy Speaker, parents who have children with disabilities go through painful moments because no one seems to understand them. I have a friend who has an autistic child. She did not know about it and I explained to her that when assessed him. We need to be champions on these issues and encourage parents who have children with disabilities.

Madam Deputy Speaker, EARCs play a big role in ensuring that they encouraging such parents, so that they can take care of their children and understand their children because they do not understand them.

Madam Deputy Speaker, when a child is autistic, down syndrome, hearing disability or blind, a parent may not know how to treat and support the child from the word go. EARCs are supposed to help such parents in developing assessment tools and individualised educational plans for the children so that they walk together as they accept that their children have disabilities. Such parents are supposed to be a source of comfort to other parents who have children with disabilities.

Counselling of both child and parent is done in EARCs. This is done to ensure that there is full support for children with disabilities.

The national Government has a responsibility of ensuring that we have permanent teachers stationed in EARCs to support parents and children with disabilities. The assessment needs to be done in the EARCs. When assessment is done, there are children who improve with time.

Some children are placed in special needs education centres when they are not supposed to be there because assessment was not done well, for example, the deaf who needs hearing aids so that he/she goes to the normal school. There is an advantage of going to a normal school because they mingle with the rest of the learners and learn languages. Language acquisition is very important. Without language acquisition, your world is blocked.

I remember a reporter who had a hearing problem, Mr. Louis Otieno. When he realized he could not hear properly, he thought his world had ended. He woke up one morning deaf and he was depressed. EARCs are supposed to help in rehabilitating such people so that they accept their situation and raising awareness on disability issues.

EARCs come in handy in raising issues to the county governments and in *barazas* so that people with disabilities are accepted from an early age. When they are not accepted at the early age, they have nowhere to exit in the world of work because they have nowhere to exit. That is why we find many people with disabilities, it is so painful, who go for secretarial studies, but they end up being house girls or polishing shoes because the world has not understood them.

It is my desire and plea that Senators will rally behind me and see how we can develop policies that can work so that EARCs have permanent teachers, fully equipped and have doctors and nurses. Teachers in EARCs wonderful work and they should not be taken for granted.

Madam Deputy Speaker, children with mild disabilities can be placed in regular schools. Teachers who interact with children with mild disabilities in regular schools

need to have some training on how to help the learners. We have many categories of such learners such as those who are slow learners.

Children who have learning disabilities can be helped in a normal school. They do not have to go to a special school. We have children who are gifted and talented. Such children can be placed in regular schools so that they are not frustrated.

I urge the national Government together with the county governments, to ensure EARCs are operational in this country. Kenya is a signatory to the United Nations (UN) Conventions on the rights of children with disabilities. The UN Convention parties affirmed that they are going to support the interests of children with disabilities and Persons With Disabilities (PWDs) so that their rights are actualised in terms of education, recreation and everything else.

As the leader representing persons with disabilities that in as much as we talk about parity in learners, it can never be achieved in regards to children with disabilities unless we correct the wrongs that are there from the onset. There is no way parity can be achieved.

We have to look for ways and mechanisms of ensuring that we have a policy. The policy should speak to these issues. We should have EARCs that are fully funded and with teachers who can conduct assessment tests. We should also have teachers who are trained in EARCs. We should also have nurses and counsellors who are championing of these issues.

Madam Deputy Speaker, we normally appropriate money to go to the county governments. There is a need for all county governments to ensure that they set a fraction aside for the purpose of ensuring that special need of these children are met in terms of academics and functional skills so that they are not left behind.

My humble request and prayer is that this Motion will go ahead. We are working on a Bill with regard to children with disabilities and I hope it will see the light of the day.

I beg to move and call Sen. (Dr.) Milgo to second the Motion.

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

**Sen. (Dr.) Milgo:** Thank you, Madam Deputy Speaker, for this opportunity to second this Motion. It is a very important Motion affecting a very important section of people in this country, PWD.

The Motion on operationalization of Section 46 of the Basic Education Act, 2013 mandates county education boards to provide for EARCs. It is an important Motion because such centres will play a critical role of bringing children with disabilities on board.

The Kenya Institute of Special Education (KISE) plays an important role in ensuring that special needs teachers are trained. However, nobody has talked about going to the local centres and counties where children with disabilities are found. For many years, children with special needs have been confined and have not been given a chance to go to school. If EARCs are established in counties, they will be a game changer for them. EARCs will go a long way to in assessing these children.

In the counties, we have many different cases of children with disabilities. Parents or guardians just pick up a child with a disability and take them to any school. Once in

those schools, they will not get the right education. That is because they will not be able to learn because of the fact that they may not get facilities, teachers and even the conditions of such schools may not be fit for them. EARCs will play a very important role to ensure that different types of disabilities are placed in the right centre so that they benefit from education.

EARCs will play an important role in advising the county education boards to setup a matrix for assessment of existing EARCs to ensure that they provide the right kind of education for children with different types of disabilities.

In addition, the matrix that shall be set up by the county education boards shall assist the counties to set up the specialized schools. We have been speaking to issues of Early Childhood Development Education (ECDE) across the counties. We have been strengthening the issues of setting up specialized centres in the various counties to ensure that we provide an all-inclusive education.

Madam Deputy Speaker, in the course of our interrogation, we did find that when County Executive Committee Members (CECs) go to establish schools, they simply put up a centre and say it is a special needs centre. We even interrogated to the extent of finding out the type of materials that are placed in those particular schools. We got a surprise that those children actually do not receive the right kind of education.

These EARCs shall play an important role in placement, intervention and special needs so that these children achieve their education just like the normal children.

Madam Deputy Speaker, as I said earlier, when you take children with disabilities to any special school, what happens is that, at the end of the period, they should have been able to learn and read.

This same information shall not only play an important role in establishing the centres. The same information that shall be obtained in EARCs will also play an important role in identifying the right kind of teachers.

Madam Deputy Speaker, as the Chairperson of the Committee on Education, I have established the fact that children with disabilities vary. We have those that are blind, have hearing challenges, visual challenges and even bipolar cases.

We did realize that even out of these, there are children that require one teacher per child. While we are talking about one teacher to 25 children in ECDE centres, in special schools, they do require one teacher to one child based on the account of the disability. If these centres are established, they will go a long way in ensuring that these children get the right teachers in the right ratios.

Madam Deputy Speaker, assessments that come out of these centers will also assist in purchase of the aids that shall be used in the various schools. This is because of the fact that we need to know what materials need to be placed in the various specialized centres. We may equip the special, or integrated schools with materials. The question is: What kind of material are we giving them?

Another very important issue around this is that if these centres will be established and made operational, it will go a long way to ensure that the special needs children shall also acquire education.

We have been speaking all along about issues of inclusivity. The BBI itself is speaking a lot about inclusivity. In this case, if that Bill passes, we want to talk about

inclusivity, not only in the political arena, but even in terms of employment, education and every other area because these children who have got challenges, normally delay in joining school.

Madam Deputy Speaker, without proper identification and placement in the right schools, the net effect is that eventually these children do not get any gainful education. They miss out on the decision making table. They miss out even in job opportunities and eventually we speak of marginalization round the circle. In this case, for many years, we will be speaking about marginalization.

Madam Deputy Speaker, even in terms of tenders, we have been talking about tenders in the counties. We have been talking about 5 per cent of them be given to youths, women and Persons with Disability (PWDs). They should be given the right education and research centres established to place them in the right education sector so that come the future, they are well educated and can even understand what tenders are. What happens is that they miss out on these tenders because they are poverty-stricken and uneducated.

These children are normally neglected. They are even isolated to the extent of not getting into any gainful employment. Even in these tenders, they can do some businesses. However, they will not be able to access these if you do not bring them on board in the early days of their lives.

We are talking about Sustainable Development Goals (SDGs) No. 4, which is provision of all-inclusive, equitable and quality education by the year 2030. We are sharing that all governments are committed to this. We have already formed an imminent association of parliamentarians across the world to ensure that this SDGs No.4 is implemented.

Madam Deputy Speaker, without these EARCs in the counties, we will talk about an inclusive education. However, if children with disabilities are left out, it means that they will not achieve this call when we are leaving them out.

EARCs in this case should be established in each county. They should be equipped so that they are able to assess, intervene and place children in the right schools and places. This is so that materials are provided for them so that they live normal lives like other children.

Madam Deputy Speaker, I support this Motion on the Operationalization of Section 46 of Basic Education Act, 2013 that was brought by my colleague Sen. (Dr.) Musuruve.

As I second it, I congratulate her because she is passionate about PWDs. I hope this Motion will pass so that we shall have the counties set up these centres.

I second.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you Senator.

*(Question proposed)*

**The Deputy Speaker** (Sen. (Prof.) Kamar): Sen. Were, proceed.

**Sen. Were:** Thank you, Madam Deputy Speaker. I would like to support the Motion by Sen. (Dr.) Musuruve on the operationalization of Section 46 of the Basic

Education Act, 2013, and thank her for bringing the Motion to this House. I also thank her for her dedication to the needs of Persons with Disability. She is living up the role that she represents in this House; the needs of persons with disability.

For a long time, we have had issues with children with disability, where parents do not know what to do with those children. Some of them are not aware that it is a condition within, which the children can lead a normal life without any hindrances. For a long time, these children have been hidden in houses and rooms, so that the public never get to know where they are.

Madam Deputy Speaker, we set up devolution to bring services closer to the people. Early Childhood Education is a function that is fully devolved and counties are in charge of this function. This Motion that is meant to ensure that we have set up education and assessment research centers in counties, is something that counties should be doing already.

The information that the centers are dilapidated and neglected should be taken seriously. Governors should be called to explain why the centres have not been set up with infrastructure and made fully operational for these services.

These education and assessment research centers, other than helping to identify these children to get them out of the house and support them in terms of education so that they can lead a normal life as other children, is something that is basic.

As Sen. (Dr.) Musuruve said, this is something that is required in the United Nations Convention on the rights of children with disability. These centers will also provide psychosocial support, not just for the parents and guardians of those children, but also to the teachers who offer this service to the children.

Madam Deputy Speaker, in my county of birth, that is, Busia County, we have a national school for persons with disability called St. Catherine's. For a long time, this has been the point of reference for schools around the region, if not national. We have children from across the country going there. The St. Catherine's School for Special Children also acts as the resource center on issues of special needs. I urge counties to take this issue seriously and take the burden away from schools that deal with persons with disability or children with special needs.

Thank you.

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

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

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

**Sen. Halake:** Thank you, Mr. Temporary Speaker, Sir. I rise to support the Motion by Sen. (Dr.) Musuruve. As my colleagues have said, she continues to be a real champion of people with disability. Where is it better to begin, than with the children?

Disability can and continues to be a big area of marginalization for our children and even adults. I support the fact that we must operationalize and implement the laws we have put in place. As we have been told and we know, our country has one of the most robust laws for everything, be it disability and anything you can think of in terms of the

social, economic and other aspects of life. However, implementation has become a major barrier to access quality of services for our citizens.

I support the Motion to operationalize Section 46 of the basic education as moved by Sen. (Dr.) Musuruve on behalf of children with disabilities. However, I would like to mention one thing because the way it reads, ‘including a special needs service and identify clinics in respective counties---’

I want this House and country to think beyond special needs, especially for children and education. We need to think beyond a clinical perspective and even social welfare perspective to a human rights perspective. This is so that we are not going to just confine children with disability as a clinical lot that needs to be looked at clinically or a social welfare case, but a case of social, economic and human rights that they deserve.

If there is one way of ensuring that they access education, is to have these centers because data is becoming a driver of evidence for support in service provision.

This is a good place to start and I congratulate her once more. The fact that this education assessment and research centers are there, means that we can collect data on which, then policy and legislative interventions can be made, going forward.

One of the issues we face is that we do not even know how many of our children have disabilities. How then can we include them in our systems? These centers become more important when they are operationalized, so that we start collecting data and identifying issues causing barriers for these children. One of them is the fact even the teachers may not have the necessary and requisite training to provide services to our children. That data will come in handy to ensure that our training is geared towards that.

On the issue of funding, as we speak about the Building Bridges Initiative (BBI), where I know people with disabilities were having a lot of representation, we are happy that those have been taken on board.

One of the issues is that if the children do not get access to education, whereas we have known them to exit very early in the education cycle, knowing the correlation between education and the social economic status of every citizen in those country, it then means that we will have children who exit the school system early because of lack of the right infrastructure to support them. Then the cycle of poverty and dependence is entrenched. This is a good Motion that should be supported by this House and the Ministry. Section 46 of the Basic Education Act becomes more important.

Mr. Temporary Speaker, Sir, investment in our children with disability makes a lot of sense. It will reduce dependence in the future because we are seeing many people with disability in poverty. If at the basic level of education they are out of the system, how will they ever have a chance to get out of the cycle of poverty if the children do not start off with the number one factor that correlates to social economic status?

We must invest in our children with disability, so that the investment helps the country and cuts the cycle of dependence and poverty. It will also ensure that children with disability have an equal chance as a right for them under not just the Bill of Rights, but also under Section 46 of the Basic Education Act.

Basic education is a devolved function and counties need to step up and ensure that they have the right data and the centers are operationalized. We can ask any county today how many of their children have disability and what category of disability. Today,



we do not have any county with that data; maybe it is at the national level. Even then, I do not think that the data at the national level is segregated enough for it to make investment sense.

We talk about marginalization in our country with regard to regional or how further from the center. One major marginalization that should become a definition, is the fact that if somebody has disability, chances are that they will be marginalized.

The definitions should also be changed so that children with special needs are taken care of because they are marginalized and stigmatized. If that is not the case, their access to education and opportunities will be curtailed.

Mr. Temporary Speaker, Sir, as I congratulate and support the Senator for coming up with this Motion, I look forward to participating in its implementation and see the return on investments we get when we invest in our children with special needs. We should form a habit of not just making laws but also implementing them.

I thank you and support.

**Sen. (Prof.) Ogeri:** Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to also weigh in on an important topic on the Operationalization of Section 46 of the Basic Education Act, 2013. I thank Sen. (Dr.) Musuruve for bringing this Motion to this House.

Let me put it on record that in 2009, as the Minister for Education, I was responsible for establishing the National Special Needs Education Policy that clearly enunciated what needed to be done, particularly, by coming up with comprehensive strategies and policies to improve service to children with special needs. You can make reference to that policy that I established when I was the Minister for Education in 2009.

One of the areas in that policy was to create advocacy and awareness of the existence of children with special needs and requirements. We also needed to revamp the curriculum to improve the performance and rating of such children in special education centres and also provide teachers who are appropriately trained to handle those delicate individuals who have diverse needs, unlike the normal children that we see around in the basic education establishments.

The policy also gave room for data collection to enable assessment of areas that needed to be attended to so as to create the necessary legal framework to support them.

In fact, if the Mover of the Motion would like me to also add something, Section 46 of the Basic Education Act should be read alongside Sections 47 and 48 of the same Act because this has a consequential effect in operationalization of Sections 46, 47 and 48. Section 47 creates a mandatory reporting process on how such children should be treated within any given county. Section 48 gives effect that if the centres are not available inside our country Kenya, then we can go beyond the territory of Kenya to have establishments elsewhere to assist those children acquire basic education.

Mr. Temporary Speaker, Sir, I am a great supporter of education because education is a game changer. It does not matter whether it is a normal individual or a child with special needs and requirements. They can improve their own self-importance and self-worth by just acquiring certain basic skills and knowledge to help them accomplish certain tasks with ease without any difficulty.

You cannot train such a child in the normal way by having them go to a normal classroom to listen to a teacher teaching using a blackboard with a chalk. Even if tablets are used, their attention span is much reduced in some of the cases.

Their physical ability to handle certain gadgets may be limited to a certain extent. Their being in a learning environment helps them to be attended to, based on their health status. Some may have difficulties in articulation. Therefore, speech therapy may be an important addition to what they need within the centres.

For some, their muscles may be moving in an awkward and uncoordinated manner. Therefore, they need a physiotherapy to bring order to the coordination and the way the muscles move, for those children to have a comfortable life and move without difficulties.

Some may require hearing aids in the centres because if you do not hear, it is difficult to register anything in your mind. Therefore, it may be difficult for things to be absorbed in their minds. We need to enforce such services to them so that if one needs a hearing aid, they can get it so that they can hear correctly without any difficulty.

Some of them may have speech problems and, therefore, they need speech therapy. I think I have already mentioned that. They need them so that they can pronounce certain vowels with ease without any problem or difficulty. I have already alluded to the fact that they may be interested in multiple things at the same time. Therefore, you need to bring order in their thought processes, so that they think in a particular direction. The only person who can bring that order is a teacher who is trained to handle special needs requirements.

They may also require certain basic types of things that suite their conditions. They may not be in a position to chew very hard foods. However, they may be able to chew some soft foods to help them maintain their health statuses in a perfect condition.

The needs of a special needs child are peculiar and different from a normal school going child. What we need to do is to create favourable climate even for parents to learn and accept the conditions so that they help those children to grow. It becomes a painful and distressful exercise for parents with children with special needs. They always give up. They need to be encouraged and brought on board. The only other people who can do that are teachers in the training centres.

We appreciate that it is not all the time that those children are in the special centres because they must stay at home at some stage. Even simple things like how they wear or dress are important because that brings self-worth to an individual and make them to accept their condition.

This is not an Act in vain. Section 46 of the Basic Education Act must be operationalized. The policy has been put in place and the centres have been located and sited as county government centres under the county governments' directors of education. What needs to be done is to come up with a Bill so that it gives direction and guidance on how this should be done and how certain groups of people must step in to help those people.

This is because it is an army of workers ranging from health workers, social workers, physiotherapists, speech therapists, parents, the community, and all the other people who are involved who need to accept it as something that is very important. This

can only be captured in a Bill. I hope that when that Bill is developed, it can help and elaborate more on how these children with special needs can be handled.

Finally, you will be surprised that some of these children with special needs requirements are some of the best achievers in society. Once properly directed, they can reach their potential and even become smarter than normal children who are in the regular class, thinking that they are better than the others. They have an opportunity to excel, to do their best, to become great scientists and to do other things that normal children cannot do. That is the opportunity that we must bequeath these children so that they stand tall in society.

Fortunately, in Kenya, the Basic Education Act is in place. Section 47 of the Act states that they must report any child who is disabled. What normally happens when they are not reported is, they are confined and locked in rooms in houses and remote huts, and it will never be known that they exist in society. They must, therefore, be brought out and helped. That is captured in Section 47 of the Basic Education Act.

If any services are unavailable in the country, Section 48 of the Act provides that the State must provide the necessary resources to locate this child outside the territory of Kenya for treatment and management.

We have the tools that we can use to help the child. We must also gear at our teacher training centers. We must train special needs teachers who understand these children. When I was in the Committee on Education, we argued and developed the sign language policy, which I believe is in a Bill form and has been debated in this House. These are the things that will help these children make an advancement in their life. Without these things, it will be very difficult to make an advancement in life.

With those few remarks, I support this Motion.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Hon. Senators, I call upon the Mover to reply.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Temporary Speaker, Sir, for this opportunity. Today my day will end very well. I am happy that this Motion has come before my fellow Senators. I have been really impressed because of the engagement that they have given me and the value that they have added.

I thank my fellow Senators for supporting this Motion. I particularly acknowledge that the seed Sen. (Prof.) Ongeru planted when he was the Minister of Education in 2009 has now given fruit, because it has now come to the Floor of this House.

Thank you very much, Sen. (Prof.) Ongeru, for starting this walk on fighting for the rights of Persons with Disabilities (PWDs). He has acknowledged that PWDs also have the potential, which just needs to be nurtured.

He has opened our eyes on Sections 46, 47, and 48 of the Basic Education Act. I really miss Sen. (Prof.) Ongeru in the Committee on Education. He was very instrumental when we were developing the Kenya Sign Language Bill. There was a lot of input. I know that we will benefit a lot from his wisdom and experience when coming up with this Bill.

Mr. Temporary Speaker, Sir, I want to say on the Floor of this House and before my fellow Senators that I wrote to the Directorate of Legal Services some time back when this Motion came out, and said that I wanted it as a Bill.

I thank the Directorate of Legal Services with Dr. Okello and his team, because they are already working on it. We are progressing very well. I know that Sen. (Prof.) Ongeru will give very valuable input to this Bill. I will consult him as we progress with the Bill.

I thank Sen. Were, who has brought out a very important issue, that children with disabilities are hidden. It is a fact. If they are hidden, it becomes very difficult for them to get out of their houses and go to school. She has rightly mentioned that Education Assessment and Research Centers (EARCs) are the right place for children with disabilities. Counties need to take part in that.

I thank Sen. Halake so much. She has brought out the issue of the cyclic nature of poverty. Families of PWDs go through the cyclic nature of poverty because they do not have the right education when it comes to job placement when exiting school. They are not able to exit to the world and work. She has brought in a very good perspective of looking at PWDs from a human rights perspective rather than from other paradigms or medical perspectives. She has insisted that when intervention is done, PWDs will have an economic benefit to the country, which is a true statement.

I also thank Sen. (Dr.) Milgo for seconding this Motion. I am happy because she has echoed the issue that I brought on board, that EARCs need to be operationalized in counties. She also said that counties need to ensure that no child is left behind. She talked about the right student to teacher ratio and the right education being given to children with disabilities. I am happy because she has also brought in the issue of the International Parliamentary Network of Education (IPNED) where I am the Co-Chair, globally.

As we focus on issues of disability, we have to rally parliamentarians. We have to rally the national leadership, county leadership and regional leadership to support this cause of ensuring that children with disabilities have education and their rights.

We have to see how to support the fourth Sustainable Development Goal (SDG). We have started a parliamentary network for Kenya. I wrote to the Speaker and explained to him about IPNED. He was really happy about it. I hope that he will give us his blessings so that we have it as a caucus in this country. When we have it as a caucus, we will be in the international map with regard to championing issues of children with disabilities.

Mr. Temporary Speaker, Sir, I also congratulate and thank my fellow parliamentarians who signed the declaration of IPNED that seeks to support children with disabilities and the child who is farthest behind, so that no one is left behind. During the launch, fellow parliamentarians came and said that they want to run with Agenda Four of the SDG.

Globally, education cannot wait. As we talk about issues of the Coronavirus Disease (COVID-19) and education, think for yourself. What is the impact of COVID-19 on children with disabilities? This is a discussion that is hardly talked about, just the way issues of disability are hardly talked about. However, I am happy that when it is brought to the Senate, my fellow Senators run with it and they are the champions of PWDs in this country.

The establishment of EARCs is very important. Sen. Halake has mentioned that as we talk about inclusivity in the Building Bridges Initiative (BBI), it should start with

PWDs, because disability marginalizes someone. Once you have a disability, you are already marginalized.

When we went to Naivasha, we got an opportunity to meet the Hon. Raila Odinga about marginalization of persons with disabilities in legislation and all that. I want to report that he gave us an ear, and I thank him for that. I spoke to him together with Sen. (Dr.) Mwaura, he listened and we presented our memorandum to him. It was very clear. Even the President has said that issues of disability will be handled.

It is also very clear that the Rt. Hon. Raila Odinga stated that the issue of disability will be handled.

The issue of disability should be handled in education and in the world of work. It is painful to note that very few organizations have achieved the 5 percent constitutional requirement that people with disability should also get employment. This is something that should be enforced.

I know it is in the BBI Report but the issue of progressive should not be there because it limits chances of people with disability. Let appointing positions be given to PWDs.

Mr. Temporary Speaker, Sir, there is need for PWDs when they exit the world of work, to also be Ambassadors and Cabinet Secretaries. In every organization, let us at least have the economic value of PWDs being factored in. I know that the Rt. Hon. Raila and President Kenyatta are keen about the issue of disability. Even as the conversation goes on, they will ensure that they factor them in.

My fellow Senators generally have affirmed that there is need to operationalize a policy. It has come out clearly from Sen. (Prof.) Ongeru that the policy is there but it is not operational. We are coming up with a Bill, which I know will get a lot of value from Sen. (Prof.) Ongeru.

I thank all legislators who have supported this Motion. I hope when the Bill comes to the Floor of the House, it will get support.

I beg to reply.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Hon. Senators, we have determined that this Motion does not affect counties and we are going to vote by voice.

*(Question put and agreed to)*

Next Order.

ADOPTION OF THE REPORT ON INQUIRY INTO THE  
OPERATIONALIZATION OF NATIONAL CONSTRUCTION  
AUTHORITY (DEFECTS LIABILITY)  
REGULATIONS, 2020

THAT, the Senate adopts the report of the Standing Committee on Roads and Transportation on its inquiry into the operationalization of National Construction Authority (Defects Liability) Regulations, 2020, laid on the table of the Senate, on Thursday, 24<sup>th</sup>, September, 2020.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): The Chairperson of the Committee on Roads and Transportation not present. The Order is deferred.

*(Motion deferred)*

Next Order.

NOTING OF REPORT OF THE 141<sup>ST</sup> ASSEMBLY OF  
IPU AND RELATED MEETINGS

THAT, the Senate notes the report of the Parliament of Kenya Delegation to the 141st Assembly of the Inter-Parliamentary Union (IPU) and related meetings, held in Belgrade, Serbia, from 13th to 17th October, 2019 laid on the Table of the House on Wednesday, 4th March, 2020.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): The Mover is not present. The Motion is deferred.

*(Motion deferred)*

Next Order.

NOTING OF REPORT OF THE 3<sup>RD</sup> ORDINARY  
SESSION OF THE 5<sup>TH</sup> PAP

THAT, the Senate notes the Report of the Third Ordinary Session of the 5th Parliament of the Pan-African Parliament held from 7th to 18th October, 2019 in Midrand, South Africa.

The Mover of the Motion is not present. The Motion is, therefore, deferred.

*(Motion deferred)*

Next Order.

ALLOCATION BY COUNTIES A PORTION OF THEIR BUDGET  
ON ECDE AND DEVELOPMENT OF A POLICY  
TO INCORPORATE THE NEEDS OF CHILDREN

THAT, AWARE THAT, the Constitution of Kenya (Article 53) affirms that children have basic rights, including the right to education, nutrition, shelter, health care and parental care, provisions that are aligned with those cited in both the Convention on the Rights of the Child and the Africa Charter on the Rights and Welfare of the Child, to which Kenya is a signatory;

CONCERNED THAT, the current status of day care facilities in the Country are not child friendly or habitable and there is need to bridge

this gap to capture the play group class in the new 2-6-3-3-3 curriculum that is replacing the 32-year-old 8-4-4 system;

ACKNOWLEDGING THAT, most parents lack access to quality daycare facilities, which would provide a safe and stimulating environment to take care of their children while they are at work;

NOW THEREFORE, the Senate urges that County Governors in conjunction with the Ministry of Education to ensure that:-

1. Counties allocate at least 10 percent of their budget on Early Childhood Development Education (ECDE) towards this vulnerable group; and,

2. Policy is developed to incorporate the needs of children who are less than three years of age.

The Mover of the Motion is not present. Therefore, the Motion is deferred.

*(Motion deferred)*

Next Order.

#### PARKING CHARGES IN PUBLIC INSTITUTIONS OFFERING ESSENTIAL SERVICES

AWARE THAT, many urban areas and towns in Kenya lack designated car parking areas as a result of imbalance between parking supply and demand mainly due to ineffective land use planning and miscalculations of space requirements, thereby leading to exorbitant parking fees;

NOTING that, most essential services offered in hospitals, educational institutions and other public utilities are offered in urban centers, shopping malls and other designated areas that charge parking fees to access;

ACKNOWLEDGING, that whether they are delivered by public or private providers, essential services such as health, banking, education and other utilities are considered to be public services because they are public goods that sustain the well-being of every citizen and help in the development of the society as a whole;

CONCERNED, that access to hospitals, educational institutions and other places offering essential services might be hindered due to exorbitant parking fees levied on motorists accessing these services;

FURTHER CONCERNED, that charging entry fees amount to double taxation as the motorists who would have paid the parking fees will still pay for the services they seek;

NOW THEREFORE, the Senate urges the Cabinet Secretary for Lands, Housing and Physical Planning together with the Council of Governors to come up with a policy framework to create an enabling

environment for protection of motorists accessing essential services from paying exorbitant fees for parking.

The Mover of the Motion is not present. Therefore, the Motion is deferred.

*(Motion deferred)*

### ADJOURNMENT

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Hon. Senators, having concluded the business of the day, it is now time to adjourn the House. The Senate therefore, stands adjourned until Tuesday 10<sup>th</sup> November, 2020 at 2.30 p.m.

The Senate rose at 5.20.p.m