

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Tuesday, 10<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

#### IMPLEMENTATION OF THE HIGH COURT JUDGEMENT IN CONSTITUTIONAL PETITION No.284 OF 2019

**The Speaker** (Hon. Lusaka): Hon. Senators, as you may recall, on 3<sup>rd</sup> November, 2020, I issued a Communication on the implication of the court judgement in the High Court Petition No. 284 of 2019 and undertook to give further directions regarding the way forward on the status of Bills before the Senate. In that case, the High Court issued a number of declarations and issued orders that affect a number of Senate Bills pending before both Houses.

The Court stated unequivocally that the concurrence process under Article 110(3) of the Constitution is mandatory and is a condition precedent before any House of Parliament can consider a Bill. In particular, the court ordered the immediate cessation of consideration of all Bills that are pending before either House, and for which joint concurrence by the Speakers of both Houses has not been demonstrated, in order to allow such Bills to be subjected to the mandatory joint concurrence process contemplated under Article 110(3) of the Constitution.

Hon. Senators, in order to implement the Court decision, the Senate House Business Committee (HBC) met today and analysed all Senate Bills pending before the Senate and National Assembly, and noted that there are several categories of Bills at various stages in the Senate and the National Assembly. The Bills include-

- (a) Bills in respect of which the concurrence of both Speakers was obtained,
- (b) Bills in respect of which the Speaker of the Senate sought the concurrence of the Speaker of the National Assembly; and
- (c) Bills that are still undergoing concurrence process under Article 110(3) of the Constitution.

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Currently, there are three Bills for which the legislative process under 110(3) was adhered to and thus concurrence can be demonstrated. Bills under this category are not affected by the court order and shall therefore be proceeded with for consideration in accordance with Articles 110 to 113 of the Constitution.

The Bills under this category are-

(a) The County Early Childhood Education Bill, (Senate Bills No. 26 of 2018) (undergoing mediation);

(b) The Mung Beans Bill, (Senate Bill No. 9 of 2020); and

(c) The Cooperative Societies (Amendment) Bill, (Senate Bills No. 11 of 2020).

Secondly, there are a total of 42 Senate Bills at various stages both in the Senate and the National Assembly for which according to the court order, concurrence cannot be demonstrated.

The Bills are-

(1) The Retirement Benefits (Deputy President and designated State Officers) (Amendment) Bill, (Senate Bills No. 2 of 2018);

(2) The Public Finance Management (Amendment) Bill, (Senate Bills No. 3 of 2019);

(3) The National Museums and Heritage (Amendment) Bill, (Senate Bills No. 7 of 2019);

(4) The Establishment of Children's Homes Bill, (Senate Bills No. 12 of 2019);

(5) The Kenya Sign Language Bill, (Senate Bills No. 15 of 2019);

(6) The Startup Bill, (Senate Bills No. 16 of 2020);

(7) The Election Laws (Amendment) Bill, (Senate Bills No. 33 of 2018);

(8) The County Hall of Fame Bill, (Senate Bills No. 39 of 2018);

(9) The Street Vendors (Protection of Livelihood) Bill, (Senate Bills No. 10 of 2019);

(10) The County Licensing (Uniform Procedures) Bill, (Senate Bills No. 17 of 2019);

(11) The Fisheries and Development (Amendment) Bill, (Senate Bills No. 21 of 2019);

(12) The Lifestyle Audit (no. 2), Bill, (Senate Bills No. 22 of 2019);

(13) The Reproductive Health Care Bill, (Senate Bills, No. 23 of 2019);

(14) The Wildlife Conservation and Management (Amendment) Bill, (Senate Bills No. 24 of 2019);

(15) The Law of Succession (Amendment) Bill, (Senate Bills No. 1 of 2020);

(16) The Prompt Payment Bill, (Senate Bills No. 3 of 2020);

(17) The County Resources Development Bill, (Senate Bills No. 2 of 2020);

(18) The Parliamentary Powers and Privileges Bill, (Senate Bills No. 4 of 2020);

(19) The Community Health Services Bill, (Senate Bills No. 5 of 2020);

(20) The Investment Promotion Bill, (Senate Bills No. 8 of 2020);

(21) The Basic Education (Amendment) Bill, (Senate Bills No. 10 of 2020);

(22) The Kenya Citizen and Immigration Bill, (Senate Bill No. 12 of 2020);

(23) The Copyright (Amendment) Bill, (Senate Bills No. 13 of 2020);

(24) The County Vocational Education Bill, (Senate Bills No. 14 of 2020);

- (25)The Persons with Disabilities (Amendment) Bills, (Senate Bill No. 15 of 2020);
- (26)The University (Amendment) Bill, (Senate Bills No. 18 of 2020);
- (27)The Registration of Persons (Amendment) Bill, (Senate Bills No. 14 of 2019);
- (28)The Elections (Amendment) Bill, (Senate Bills No. 18 of 2019);
- (29)The Alternative Dispute Resolution Bill, (Senate Bills No. 19 of 2019);
- (30) The Geologist Bill, (Senate Bills No. 17 of 2020);
- (31)The County Wards Development Equalization Fund Bill, (Senate Bills No. 34 of 2018),
- (32)The Public Participation Bill, (Senate Bills No. 4 of 2018);
- (33)The County Statistics Bill, (Senate Bills No. 9 of 2018);
- (34)The Local Content Bill, (Senate Bills No. 10 of 2018);
- (35)The Salaries and Remuneration Commission (Amendment) Bill, (Senate Bill No. 12 of 2019);
- (36) The Care and Protection of older Members of Society Bill, (Senate Bills No.17 of 2018);
- (37)The Statutory Instruments (Amendment) Bill, (Senate Bills No. 24 of 2018);
- (38)The County Oversight and Accountability Bill, (Senate Bills No. 28 of 2018);
- (39)The Mental Health (Amendment) Bill, (Senate Bills No. 32 of 2018);
- (40)The Public Finance Management (Amendment) Bill, (Senate Bills No. 3 of 2019);
- (41)The Prevention of Terrorism (Amendment) Bill, (Senate Bills No. 20 of 2018); and
- (42)The Treaty Making and Ratification (Amendment) Bill, (Senate Bills No. 23 of 2018).

In respect to these Bills, the Senate is notified that these Senate Bills will be republished and be processed in accordance with Article 110(3) of the Constitution.

There are National Assembly Bills for which the Speaker of the National Assembly has sought the concurrence of the Speaker of the Senate pursuant to Article 110(3) of the Constitution. These Bills will be processed in accordance with Article 110(3) of the Constitution.

Hon. Senators, the Senate has also received three Communications on Bills passed by the National Assembly for purposes of consideration by the Senate.

The messages are in relation to the following National Assembly Bills-

- (a)The National Youth Council (Amendment) Bill, (National Assembly Bills No. 8 of 2019);
- (b)The Public Service (Values and Principles) (Amendment) Bill (National Assembly Bills No. 17 of 2019); and,
- (c)The Cancer Prevention and Control (Amendment) Bill, (National Assembly Bill No. 65 of 2019).

The said messages will be processed in compliance with the Court order to the joint concurrence process under Article 110(3) of the Constitution.

Hon. Senators, I also wish to inform you that in accordance with the advisory opinion of the Supreme Court and the judgement of the High Court, the SBC has today

considered a proposed mediation mechanism to be invoked where the two Speakers cannot agree on the nature of a Bill. This proposal will be shared with the Speaker of the National Assembly and hopefully, it will be agreed soon.

Hon. Senators, in conclusion, I wish to assure you and the nation at large that the Senate intends and has commenced the full and faithful adherence with the judgement of the High Court in Petition No.284 of 2019 and further that the bicameral legislative process as provided for in the Constitution is on course .

I thank you.

We move to the Next Order.

## PETITION

### REPORT ON PETITION: THE LOOMING COLLAPSE OF THE KR STAFF RETIREMENT BENEFITS SCHEME

**Sen. Sakaja:** Thank you, Mr. Speaker, Sir. I beg to lay the following Paper on the Table of the Senate, today, Tuesday, 10<sup>th</sup> November, 2020 -

The Report of the Standing Committee on Labour and Social Welfare on a Petition to the Senate concerning the looming collapse of the Kenya Railway Retirement Benefit Scheme due to mismanagement and psychological torture rising from non-payment of benefits.

Mr. Speaker, Sir, the Petition by pensioners under the KR Staff Retirement Benefit Scheme was presented to the Senate on 21<sup>st</sup> July, 2020 by Sen. (Dr.) Mbito, the Senator for Trans Nzoia County.

Mr. Speaker, Sir, you directed that this Petition be dealt with by the Committee on Labour and Social Welfare. We held eight sittings on this matter, including a follow-up meeting which took place yesterday, Monday, 9<sup>th</sup> November, 2020.

We noted that as of August, 2020, the pensioners have not been paid 12 months pension and Kenya Railways Cooperation, as the sponsor, had not effected mandatory annual pension increase of 3 per cent per annum accrued with effect from 1<sup>st</sup> January, 2014.

Mr. Speaker, Sir, in our engagement with the sponsor, KR and different stakeholders including the Retirement Benefits Authority (RBA) and the National Treasury, the Ministry of Transport and Infrastructure, we have secured five months payment. There is pending payments but we report that through this Petition, all the pensioners at KR will get all their dues. We have commitments that have been made as recently as yesterday. They have already received about Kshs200 million and Kshs325 million is due within the next two weeks. There is also Kshs5 billion that will come out of compensation of the Railway Club that was part deposit of the transaction. The National Treasury has confirmed that the money is available.

Yesterday, during our meeting, the Chair of the National Land Commission (NLC) was called and confirmed that they have finished the valuation. Once that is done, we will secure up to six years of pension for the pensioners. After the disposal of certain

assets, we will make sure that for 10 years, we will not have a problem with KR pensioners.

Having said that, we have agreed with RBA that the 70-30 liquidity of the scheme in terms of assets and liquid cash is adhered to so as to ensure the health of the scheme.

Mr. Speaker, Sir, the first prayer sought was to compel RBA to implement item 67 of the High Court ruling of 2012 on the issue of disagreement within the scheme having a negative impact on the livelihoods of the pensioners. It was incumbent on RBA to address the concerns of the petitioners in the spirit of the Constitution and their wider interests.

Mr. Speaker, Sir, we have ensured and observed that there is continuous engagement with RBA to ensure information flow. We have recommended that RBA continues to facilitate and report to the Committee on a monthly basis. After we finish the report on this Petition, RBA is reporting the progress to us on a monthly basis in line with Section 5 of the Retirement Benefits Authority Act.

It is not just the KR scheme; there are many other big schemes. We are next looking at Posta scheme for the retirees which has had a lot of issues. There are various big Government schemes with issues.

Mr. Speaker, Sir, the second prayer is that we intervene and help the vulnerable petitioners who have not received their pensions for the last 12 months.

As I have said, through the Committee's efforts, at least, six months pension has been paid. As of last week, one more month pension was paid. We are waiting for an agreement within the next two weeks to ensure that the entire five months arrears are done. We are also securing six years going forward, within the next one month. That is a success for the Senate.

I thank Members of the Committee on Labour and Social Welfare, as well as all the stakeholders who have come to us for being cooperative.

Mr. Speaker, Sir, I encourage the petitioners that this report is not the end. We have agreed on frequent meetings. We will ensure that all arrears are paid, the increments are looked at and that the pensioners receive timely monthly payments.

Mr. Speaker, Sir, this scheme has an outflow of about Kshs70 million a month but the only income they generate is Kshs40 million. So, no matter how you look at it, there will always be that shortfall. The Kshs5 billion deposits on the KR's land secures six years. The land is at Lunar Park, where we go for funeral meetings for our people who like the place. They have other properties in Valley Arcade and Matumbato Rd in Upper Hill that are still in the process of being sold.

Mr. Speaker, Sir, in our meeting yesterday, we agreed on the issue of an escrow facility from Kenya Commercial Bank (KCB) of Kshs325 million that will sort out the next two months.

Mr. Speaker, Sir, we are concerned with the sustainability of the scheme. RBA is coming back to our Committee with a plan on how to make sure that on top of debt recovery and sale of the assets, the recommended ratio for such a scheme is maintained. We are looking at the governance issues. We have asked for investment policy and action plan to be given to us within 14 days.

In addition, we have asked for certain audits to be done. We have asked for a forensic audit on the scheme operations by RBA from its inception, to look at World Bank grants funds that were given to the scheme to kick start its operation, the rent money that the scheme has been collecting and its usage since its inception and the debt owed to the scheme including by the Kenya Railways Corporation. I am from there and we have just launched the Nairobi Commuters Railway which is good.

We also want to know the status of Rahimtulla Towers in Upper Hill which sits on the land of KR scheme. In regards to the assets owned by the scheme, we want to know the status of that land. On this, they will report to us within two months with details of those audits.

Mr. Speaker, Sir, we have also asked for a review of the structure and composition of the Board of trustees, so as to ensure compliance with Regulation 8 of the Occupational Retirement Benefits Schemes Regulations and that any existing or any potential conflicts of interests are resolved.

Mr. Speaker, Sir, we have noted that some of the membership of the Board might have a potential conflict of interest as we move along.

We have also asked the Auditor-General to conduct - different from what the Retirement Benefits Authority (RBA) is doing - an independent special audit on the management of this scheme and report to us within three months including but not limited to the areas I have mentioned up above on the World Bank, the rent, the debts and the status of certain properties.

Mr. Speaker, Sir, we are very specific on the above issues. We do not want one report. We want a report from RBA as a regulator and an independent report from the Auditor-General such that the Auditor-General should not give us a rehashing of the RBA report. The Auditor-General should do her own report and RBA also give us their own report.

Mr. Speaker, Sir, as I move to finish, RBA ensures that all public determined pension schemes--- I have mentioned just a few including Posta and many others. Members should know. They are all these people who have worked so hard for this country. They are in their twilight or sunset. They are in their old age. They are suffering yet they gave so much service to our country. They cannot even afford---The other day, they were meeting to contribute money for one of them who had passed on. They could not even afford Kshs200,000 yet they have given years of service; not just in this Government national schemes, but also county schemes. That is the next place we are looking at, on LAPFUND and LAPTRUST.

Mr. Speaker, Sir, the National Treasury - I want to thank the Chief Administrative Secretary (CAS), hon. Gaichuhie and CAS, hon. Obure. I know we have issues when CASs come sometimes, but those two must be singled out. CAS, hon. Chris Obure, who is a Senator and CAS, hon. Gaichuhie who was in the National Assembly have been very versatile. Even in the course of a meeting, instead of saying we will come back to you in 14 days, they pick up a phone, they make that call and they give us information. That why is we support the introduction of Ministers from Parliament because politicians understand these issues and can deal with issues as they happen.

Mr. Speaker, Sir, it is finally my duty pursuant to Standing Order No. 232 to table this Report in relation to the Petition by the pensioners under Kenya Railways Staff Retirement Benefit Scheme on the looming collapse of the Scheme due to mismanagement and psychological torture.

I want to assure the petitioners, the Sponsor, Kenya Railways, and the National Treasury that we are not done with this matter. We are still on this matter. I want to put all other Government schemes with money owed to our pensioners on notice that we are on you.

I thank you.

*(Sen. Sakaja laid the document on the Table of the Senate)*

**The Speaker** (Hon. Lusaka): Thank you. Well done, Chair.

Next Order.

Let us proceed. I do not see any comment.

### PAPER LAID

**The Speaker** (Hon. Lusaka): Chairperson of the Standing Committee on Agriculture, Livestock and Fisheries, kindly, proceed. Any Member from the Committee?

Chairperson of the Sessional Committee on Delegated Legislation, Sen. Faki, kindly, proceed.

#### REPORT ON THE CROPS (TEA INDUSTRY) REGULATIONS 2020, LEGAL NOTICE NO. 97 OF 2020

**Sen. Faki:** Thank you, Mr. Speaker, Sir. I beg to lay the following Paper on the Table of the Senate, today, Tuesday, 10<sup>th</sup> November, 2020-

Report of the Sessional Committee on Delegated Legislation on the Crops (Tea Industry) Regulations, 2020, Legal Notice No. 97 of 2020.

I thank you.

*(Sen. Faki laid the document on the Table of the Senate)*

**The Speaker** (Hon. Lusaka): Next Order.

### NOTICES OF MOTION

#### ALTERATION OF THE SENATE CALENDAR

**Sen. Dullo:** Thank you, Mr. Speaker, Sir. I wish to give Notice of the following Motion-

THAT, notwithstanding the Resolutions of the Senate made on 27th February, 2020 (approval of the Senate Calendar), on 15th September, 2020 and 8th October, 2020, (alteration of the Senate

Calendar); pursuant to Standing Orders 29(4) and 31(3), the Senate resolves to further alter its Calendar (Regular Sessions) for the Fourth Session, 2020, in respect of Part V, to hold one Sitting on Tuesdays, beginning on Tuesday, 10th November, 2020, until Tuesday, 1st December, 2020, and that the Senate Calendar (Regular Sessions) for the Fourth Session, 2020, be altered accordingly.

I thank you.

**The Speaker** (Hon. Lusaka): Next Order.

Chairperson of the Sessional Committee on Delegated Legislation, kindly, proceed.

ADOPTION OF THE REPORT ON THE CROPS (TEA INDUSTRY)  
REGULATIONS, 2020, LEGAL NOTICE NO. 97 OF 2020

**Sen. Faki:** Thank you, Mr. Speaker, Sir. I wish to give notice of the following Motion-

THAT, the Senate adopts the Report of the Sessional Committee on Delegated Legislation on the Crops (Tea Industry) Regulations, 2020-Legal Notice No. 97 of 2020, laid on the Table of the Senate on Tuesday, 10<sup>th</sup> November, 2020 and that pursuant to Section 18 of the Statutory Instruments Act and Standing Orders No. 221(4)(b) and 221(5)(b), annuls in its entirety, the Crops (Tea Industry) Regulations, 2020 - Legal Notice No. 97 of 2020.

I thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Next Order.

## STATEMENTS

MANAGEMENT OF THE TEA SECTOR IN KENYA  
AND THE PLIGHT OF TEA FARMERS

**Sen. Khaniri:** Mr. Speaker, Sir, I want to thank you for the opportunity and allow me to thank the nominated Senator, Sen. Rose Nyamunga, for allowing me to come first because her Statement was first on insecurity in Kisumu.

Mr. Speaker, Sir, I just want to bring it to your attention that Sen. Nyamunga is a spouse to a very close friend of mine for many years, Eng. Erick Opon Nyamunga. When I went to make the request to her, I was sure that I will be granted that opportunity.

Mr. Speaker, Sir, I rise pursuant to the provisions of our Standing Order No. 47 (1) to make a Statement on a matter of national concern and that is, the plight of the tea farmers and the management of the tea sector in the country.

Mr. Speaker, Sir, conservative figures from the East African Tea Traders Association (EATA) indicate that tea is the largest foreign exchange earner in Kenya,

contributing to 20 per cent, which is equivalent to approximately Kshs117 billion in the year 2019.

IATA also provides that 56 per cent of the tea auctioned in Mombasa is produced by small holder farmers, which is estimate at 700, 000 metric tonnes while the plantation subsector produces the remaining 44 per cent.

Mr. Speaker, Sir, the tea sector provides direct and indirect employment to over 5, 000, 000 million Kenyans.

*(Sen. Olekina walked into the Chamber in a Maasai regalia)*

These statistics are impressive especially to the government, tea factories management and traders, but a source of pain and sorrow for the tea farmers when it comes to returns on investment.

Mr. Speaker, Sir, ordinarily, the end of every year has traditionally been a time full of excitement for many tea farmers because it is during this time of the year that they receive handsome bonuses for raw tea supplied to factories for the year. However, in 2020, farmers are bitterly crying and contemplating uprooting their tea bushes; not out of choice or better alternative land use, but due to frustrations and the realization that tea planting is wasted labour time and resources.

It is painful that despite the fact that Kenya is recognized worldwide in terms of producing high quality and marketable tea, the farmers who are the real back-bone, languish in squalor.

Just to mention a few problems faced by the tea farmers in addition to the low bonus payments; farmers are paid yearly, reducing monthly purchase price for raw tea, no subsidized fertilizer, mistreatment and frustrations from monopoly tea processing companies and their employees, non-existent extension services, corruption in weighing and tea leaf hawking, among others.

I am deeply concerned by the happenings in the tea industry because Vihiga County is blessed to host one of the tea processing factories in Kenya, Mudete Tea Factory, and majority of the residents have tea plantations. Having the factory in the county is a good thing as the tea industry offers both direct and indirect employment. In fact, Mudete Market has grown owing to the location of this tea factory.

**The Speaker** (Hon. Lusaka): Hon. Senator, there is a point of intervention.

*(Interruption of debate on statement)*

## POINT OF ORDER

### ALLEGED INAPPROPRIATE DRESSING BY SEN. OLEKINA

**Sen. (Dr.) Ali:** Mr. Speaker, Sir, on a point of order.

This intervention concerns Sen. Olekina who has come in dressed in a Maasai traditional regalia.

Is he allowed to be in that uniform today because if we encourage this, all of us will come with our homemade clothes here? Is he in order to be in that regalia?

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

**Sen. Madzayo**: I would like to inform him if he is ready to be informed.

**The Speaker** (Hon. Lusaka): He has finished. Let me give direction.

So far, as I look at Sen. Olekina, what he is wearing looks like a cultural dress. I will give further direction before the end of the session today on whether it is appropriate. In the meantime, he will remain in the House.

Let us proceed.

*(Resumption of debate on statement)*

**Sen. Khaniri**: Mr. Speaker, Sir, I had just said that although the Mudete Tea Factory has seen the Mudete Market grow tremendously, today, tea farmers have a different story to tell of the factory. It is a story of misery and regrets.

They tell of how the tea factory is demanding that they reduce the moisture content in plucked tea leaves before delivery; the nightmare in weighing of the tea; farmers having no convenient and practical time to deliver the tea leaves because this depends on the time the collecting lorries arrive at the buying centres; sometimes as early as 9.00 a.m. and other times as late as 11.00 p.m. exposing farmers to insecurity, cold and stress.

In addition to the above, farmers are sometimes forced to throw away tea leaves delivered at the tea buying centres for flimsy reasons depending on the mood of the weighing clerk at the tea buying centres.

Imagine a tea farmer who woke up at 6.00 a.m., went to the farm to pluck tea leaves until past midday, delivered the tea leaves at the tea buying centre in the afternoon, waited for the weighing clerk to come at 10.00 p.m. at night only to be told that his/her tea is not of acceptable standard and quality.

Even though factories deduct a specific percentage of money for the purchase of subsidised fertilizers, the supply of the same is never certain and is shrouded in corruption. For instance, in the current financial year, farmers have not been supplied with fertilizer and the convenient reason being that the COVID-19 pandemic disrupted the purchase and transportation of the same yet we all know that export and import business has continued in the country during the pandemic, although in reduced volume.

Today, tea farmers in Vihiga as well as other parts of the country are uprooting tea crops for alternative agriculture. This is on the backdrop of the fact that Kenya's tea is a highly marketable product in the international market. Such should not be the case in a country with a functioning government consisting of a democratically elected Parliament.

There are a number of issues that need to be solved urgently; the issue of taxation and general management of the Kenya Tea Development Agency (KTDA) and fast tracking of legislation on tea in Parliament.

Mr. Speaker, I was a Member of the Ad hoc Committee that investigated challenges faced by the tea farmers in the country, a committee that was chaired by Sen.

Cheruiyot. The Cabinet Secretary for Agriculture then informed the Committee that tea as a product attracts 42 different taxes, levies, fees, duties and licenses; 42!

The Committee Chairperson, Sen. Cheruiyot, also sponsored legislation on the tea sector in the country; the Tea Bill (Senate Bill No.36 of 2018) which is gathering dust in the National Assembly, so is the Crop Tea Industry Regulations 2020.

Mr. Speaker, Sir, for how long will the farmers of Kenya continue to suffer systemic challenges that the Government has solutions to?

In conclusion, the Government has failed the tea farmers of Kenya for a long time and this must change to salvage this very critical sector in the country. Tea should not be allowed to face the same fate as coffee and sugar industries. Nations are built by citizens under visionary leadership. The happenings within the tea sector today proves of a leadership that is weak and visionless. As it has always been observed, Kenya has all the solutions to its problems in government papers stored in government offices with nobody to implement.

How I wish the Ministry of Agriculture, Livestock and Fisheries would have taken the time to examine the findings of and work towards the implementation of the recommendations of the Senate Ad hoc Committee inquiring into the challenges facing the tea sector in Kenya Report. Then, maybe the tea farmers of this country would not have been exposed to the suffering they are experiencing today.

I have been informed that in Mudete Tea Factory, the farmers are so frustrated with the amount of bonuses offered that some have refused to pick the money. Some of the recommendations in the report are very straightforward with immediate impact, which the Government can implement.

In the past, the government officials have risen to the occasion and made substantive contributions in governance of the country. The most recent one is when a Cabinet Secretary decided and worked to end the perennial malpractices at the Kenya National Examination Council (KNEC) by eliminating cartels that have propagated national examination cheating for years.

Definitely, the cartels in tea sector can also be eliminated in the same way, if the Government so wishes.

I thank you.

**The Speaker** (Hon. Lusaka): Thank you. As Sen. (Eng.) Maina prepares himself, let us observe social distance. Sen. Omanga, let me just caution you. Coronavirus Disease (COVID-19) is real and we are not safe. I know what I am talking about. Let us take this thing seriously. We are not safe.

Sen. (Eng.) Maina, proceed.

**Sen. (Eng.) Maina:** Thank you, Mr. Speaker, Sir. Thank you for your cautionary statement though a bit scary, but it is real. It is good you have reminded us.

I stand to support Sen. Khaniri on his well-articulated and researched issues on the tea sector. As I stand here, the issue is not just tea. This country needs to relook at itself and retrace its steps.

Kenya had a strong economy when we had agriculture as the backbone of this economy. Whatever else we are doing will remain evasive and we are not likely to get the little economic development that we expect.

Mr. Speaker, Sir, Sen. Khaniri has clearly come out to articulate the issues in the tea sector. He has rightly - which I support - stated that the issues are not just about tea. There are issues of sugarcane, maize and coffee.

I come from a coffee and tea growing area along-side dairy farming. Farmers are the most frustrated lot. Their hard work and interest in farming has led them to total impoverishment.

It is a pity that the Government can look at tea farmers, for example, uprooting tea that has been on their farms for over 30 years because of frustration and nothing is done to check the situation.

Mr. Speaker, Sir, today, tea farmers are actually a miserable lot. People may not understand tea farming but most tea farmers have literally nothing else on their farms because tea was the most profitable thing. Today, we are at crossroads, where tea is collapsing the way coffee has collapsed in this country.

Today, we are producing only about 30 per cent of what we were producing in the 1970s. One wonders what magic is there in countries like Ethiopia and Rwanda that they are making money from coffee and tea yet Kenya is making none.

When I talk of agriculture, we remember the pastoralists and their cattle. Meat from the Kenya Meat Commission (KMC) used to be sold in Europe, whereas butter from this country used to be on the tables in London for breakfast.

Mr. Speaker, Sir, today, we are looking at Kenya as a net importer of maize. We are looking at Kenya where you hear countries like Uganda are producing more coffee than Kenya. There is no complicated science.

I call upon the Government to relook at the policies and implementation of various policies. They should not just have documents that are a good read, yet we are seeing the destruction of our institutions.

The Kenya Tea Development Agency (KTDA) was set up as a small-scale farmers' organization. It was set up after Independence because the big boys like Brooke Bond and others, had their space.

Mr. Speaker, Sir, it ran as a profitable body but today, it is coupled with mismanagement, stealing and actual profiteering. There are people who do not own tea but they are some of the greatest sellers outside. You hear that during tea auction, there is a certain portion left and I do not know on what basis. A few companies or individuals are given the window to go and market that tea outside and pay the money after one year.

These issues should be handled quickly. We have the Tea Bill in Parliament but some of the regulations do not need a Tea Bill. The Government can implement some policies immediately.

Mr. Speaker, Sir, it is also at this point that I call our country to restart the ward system that we had and provide the farmer a guarantee; that any coffee, maize or livestock farmer should have a guarantee; that if drought came tomorrow and the crops or the animals were lost, there should be something paid as a minimum.

Countries like USA are developed technologically. They have fantastic infrastructure and advanced technologically. Yesterday, they reported that a company may have come up with a vaccine for the dreaded COVID-19 Disease. Nevertheless, we

should ask ourselves why the USA Government ensures that their milk, maize, wheat and tobacco farmers are guaranteed a certain payment.

Mr. Speaker, Sir, I remember President John F. Kennedy beating Richard Nixon when he argued that farmers must be protected and guaranteed a certain minimum payment. This is because a farmer is not actually in charge of supply and demand. A farmer produces when the rain comes. A farmer harvests when the season is right.

Today, this country is importing oranges from Egypt and fruits from South Africa. I am calling upon this Government to retrace its steps and bring Kenya back to where it was when farming was the backbone of our economy. This ensured the country had a strong economy.

Mr. Speaker, Sir, in fact, our shilling was stronger than the British Pound. Therefore, Kenya should be a net exporter of everything. We should be having a Boeing leaving the Jomo Kenyatta International Airport (JKIA) every morning, taking fresh fruits to the Arabian countries. With their petro dollars, we should be getting a premium profit.

What is the magic that KMC, which I understand now is being run by the Kenya Defense Forces (KDF), cannot go back and produce meat the way they were in the early 1970s and 1980s?

**The Speaker** (Hon. Lusaka): Senator, you need to wind up, so that we give an opportunity to others.

**Sen. (Eng.) Maina:** Mr. Speaker, Sir, I beg your pardon.

**The Speaker** (Hon. Lusaka): I am saying you need to wind up so that we give an opportunity to Members. I have a long list here. This is just a Statement.

**Sen. (Eng.) Maina:** Mr. Speaker, Sir, I am a farmer and have been brought up through farming.

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Order, Sen. (Eng.) Maina! Conclude.

**Sen. (Eng.) Maina:** I am concluding, Mr. Speaker, Sir. I am talking with passion and sympathy to the many tea, coffee and dairy farmers who face poverty, having been impoverished by the same commitment and patriotism they had for this country. I call upon the Committee that will look into this and the Government, to ensure measures are put in place immediately to address this issue. They should also ensure that our farmers are taken care of and Kenya retraces back its footsteps.

**The Speaker** (Hon. Lusaka): Those who will be speaking, please, condense your contribution so that we give more Members time to speak.

Sen. Omogeni, you have the Floor.

**Sen. Omogeni:** Thank you, Mr. Speaker, Sir. Sen. Khaniri has raised an important Statement before the House. The plight of farmers afflicts all regions and counties where there is tea farming. Sen. Mutula Kilonzo Jnr. will bear me witness that two weeks ago, himself, the Vice-Chairperson of the Committee on Justice, Legal Affairs and Human Rights and myself were in Nyamira, Kiabonyoru Ward, in a village called Menyanya. You will be surprised that farmers there narrated to us their plight. A newly married woman who has just come out of honeymoon and is a farmer told us of instances

where they are forced to stay in tea buying centers up to 11.00p.m waiting for the lorries that come to collect tea leaves from tea buying centers. Imagine somebody's wife in a tea buying center waiting for tea collection from 2.00p.m up to 11.00p.m. How inhuman can we be to our farmers?

We were told of a case in a village called Menyenya where farmers are forced to take tea leaves to a buying center that is five kilometers away from their farm. They pluck their tea leaves, carry it on their heads and trek five kilometers to deliver the tea leaves. How inhuman can we be to an important sector like tea farming that give us a lot of money in terms of foreign earnings? I do not know about Mudete Tea Factory in Sen. Khaniri's county. However, you will be shocked if I gave you the figures of the payment to tea farmers in Nyamira and the larger Kisii region. In a factory called Tombe, farmers were paid Kshs9 bonus and in Ogembo Tea Factory, they were paid Kshs9. In my own factory where I grow tea, although I am a small-scale farmer, Kshs15 was paid out. How will you recoup the investments, the input you have put in terms of fertilizer and tea worker throughout the year? The farmers are not making money but losses.

Mr. Speaker, Sir, I went to a village in Mathira Constituency on Saturday called Kiaruiru in Kariki. I was surprised when I stood up to talk about the Building Bridges Initiative (BBI). Farmers there told me to tell them the plight of tea farmers.

*(Applause)*

That is the case! I repeat, in Mathira Constituency, the farmers told me to tell them about the plight of tea farmers. The same case happened in Nyamira three weeks ago and the things farmers want to hear before you tell them about BBI, is that they want to understand what they will earn as farmers. Let us be honest that we are not solving the problem that is facing the people we represent unless we resolve the issues of tea farmers.

I am waiting for an opportunity in this House when we will address the issue raised by the Senator for Nyeri where we provide for the minimum amount of money we must pay our farmers per kilo of the green tea leaves they deliver to our factories. We cannot continue treating our farmers in such an inhuman manner. It is good to talk about the Youth Commission in the BBI, but we must also address the concerns of our farmers.

I thank Sen. Khaniri for raising this matter. If we are given a window to make proposals on the BBI, one of the legislations which we must enact within a period of 90 days should be the Tea Act. Let us begin with the Tea Act first before we talk about all the legislations that must be enacted. We must speak in unison from this House as a Senate. If we are not reforming the tea sector, we should not talk about BBI. I am speaking this as the Senator for Nyamira County and I know what the concerns of my people are. As we support this process, the plight of farmers must take center stage.

In conclusion, we must caution our courts. The Cabinet Secretary for Agriculture, Hon. Munya, has come up with so many recommendations on the reforms that we need in the tea sector. He has reduced the commission paid to the Kenya Tea Development Agency (KTDA) from 2.5 per cent to 1.5 per cent, so that one per cent goes to the benefit of farmers. The Cabinet Secretary has proposed that we reduce the number of directors in tea factories from six to three. What has happened? Some cartels have gone to court,

obtained an injunction reforming the reforms. We must ask our courts whether they are serving the interest of Kenyans or those of a few cartels. I appeal to the Judiciary - we respect the independence of that institution - some of these matters should be fast tracked. This matter was in court in June *ex parte*, one party in attendance. The hearing date for the interparty hearing was given for November and the farmers are suffering.

I urge members serving in the Judiciary to fast track some of these cases so that we do not cause suffering to our farmers. I fully support this Statement.

*(Interruption of debate on statement)*

### CONSIDERED RULING

SEN. OLEKINA IS APPROPRIATELY DRESSED

**The Speaker** (Hon. Lusaka): Hon. Senators, before we proceed, I promised to make a ruling on Sen. Olekina's dressing. As I make the ruling, I want to refer to two instruments that I have. One is my own rules, the Speaker's Rules and the other is the Constitution.

If you look at Rule No.5 of the Speaker's Rules, it says-

"Senators are required not to enter the chamber, lounge or dining room without being properly dressed. This means that a male Senator shall be dressed in a coat, collar, tie, long trousers, socks and shoes or service uniform, religious attire or such other decent dressing as maybe approved by the Speaker from time to time. An equivalent standard shall apply in respect of women Senators who may also wear *Kitenge* or such other African attire."

If you look at Article 11(1) of our Constitution, it states-

"This Constitution recognizes culture as the foundation of the nation and as the cumulative civilization of the Kenyan people and nation."

Hon. Senators, we all know that we represent counties and certain counties have their own cultural dresses. For instance, the cultural dress for Narok and Kajiado counties has been recognized the world over. It is one that represents even Kenya as a country.

So, it will be unconstitutional for me to order Sen. Olekina out because of what he is wearing.

Having read the two, as the Speaker, I rule that he is decently dressed and he should remain in this House.

*(Applause)*

*(Resumption of debate on statement)*

**Sen. Cheruiyot:** Mr. Speaker, Sir, that is a wise ruling. I support it 100 per cent in enriching our culture. I think you need to go further and order that in order to promote our youth, many of whom are jobless, we should instigate that before Members of this House, we should check where the suits they wear are made from.

Many of our young people would make a good living out of fitting and properly dressing the leaders in this House. That is a requirement we need to consider, so that all these Italian suits can disappear and we have suits made by young people from Kisii, Kericho and other places so that we come and display them.

This is an important issue that our colleague, Sen. Khaniri, has brought to the attention of this House. He has brought it so well and reminded us the journey that this House has travelled with the tea farmers of this country.

In 2018, we formed a committee. We went round the country and visited about 10 of the 13 tea growing counties in this Republic. We brought a report to this House and jointly, together with that Committee came up with a Bill. Like Sen. Khaniri has rightfully reminded this House, that Bill continues to enjoy a lot of delay at the National Assembly.

I have made efforts to follow up and find out the reason and the cause of the delay. I can gladly report to the House that although it has taken longer than it should have taken, Members of Agriculture and Livestock Committee of the National Assembly-- When I was doing that work this morning, I did not know that Sen. Khaniri would come with this Statement.

They have assured us that the Bill will go for Third Reading and they should be done with it by next week. Of course I expect they have introduced a raft of changes because of the provisions of Articles 110 and 114 on the issue of a money Bill.

There are so many things we would have wished to address, including some of the concerns that Sen. Khaniri spoke about on the number of taxes. The tea farmer is the most taxed citizen in this Republic. We would have wished to propose waivers but given the provisions of our Constitution and the limitations on what this House can do in terms of money Bills, we were not able to handle it. However, we have ensured that our colleagues in the National Assembly address that particular issue.

Therefore, I can sit here proudly knowing that many of our concerns have been sufficiently addressed in that Bill. I hope they give a communication later this week. That is why I was a bit apprehensive when I heard the Deputy Senate Majority Leader give Notice of Motion that there will be a debate on limitations of the number of days we shall be sitting.

It is my sincere most wish that we conclude this particular matter before we break for this Session of Parliament. Once we receive the communication from the National Assembly, the Committee on Agriculture, Livestock and Fisheries should be seized of the matter and ensure all the additional further legislation is done.

I have personally followed the debates to ensure that many provisions they have introduced are fair and protective of the rights of our farmers. Many of the changes are in tandem with the wishes of this House to ensure we liberate the tea farmer.

Mr. Speaker, Sir, I agree with many of my colleagues on many of the changes that we proposed in that particular report because we have seen their fruition even before the passage of the Bill. For example, in the report that we tabled before this House, we proposed that EATTA must be forced to go digital. This is because issues of price fixing are brought about by manual auction of tea where a few tea buyers sit at a round table and

agree how much they will pay for tea that belongs to over 600,000 farmers in this country.

We want to stop manipulation of prices. For that to happen, it is important that we have a digital platform where people can bid without being present at the auction, so that we ensure farmers get value for money.

I have seen in the newspapers that on 27<sup>th</sup> of this month, His Excellency the President will be at the tea auction in Mombasa to launch that digital platform. That is courtesy of work that has been done by this particular House. The journey is still long because there are many things we are calling upon the Government to do, so as to respect the gainful place of our tea farmers. In other countries, farmers are respected and accorded their pride of place because of their contribution to the economy.

One time while visiting the City of Des Moines in Iowa, I saw an interesting advert in their airport saying that farmers and serving military men and women should not queue. They had an interesting caption that the military people could be returning home to visit their families while the farmers needed to hurry home to plan for the next season. That was interesting! It shows they respect their farmers because they know the work they do. In this country, our farmers are continuously neglected.

Back in the day when tea was tea, during months like November when tea bonuses were paid in the county that I represent in this House, you could tell that people had money. Nowadays, whether it is paid or not, there is no difference because of the many bottlenecks we have introduced in this sector.

I agree with Sen. Khaniri that despite the fact that various gains have been made, a lot of work needs to be done. I also agree with Sen. Omogeni.

This morning, a group of friends that represent tea farmers in this Parliament gave a press conference. We called out for the creation of a Guaranteed Minimum Returns Fund in the Building Bridges Initiative (BBI), to ensure that when farmers plant green grams, corn, sugarcane, tea, coffee or whatever they produce, the Government should ensure that there is a Fund that stabilises the market for them. If it gets to a point for reasons that are beyond the market forces, farmers end up earning lower than the usual price. There should be a Fund to ensure that the market prices are stable.

Mr. Speaker, Sir, it is my sincere hope that those views will be taken into consideration and we shall take the concerns of our tea farmers. There are many things I would have wished to say but in the interest of our colleagues who also want to speak, let me leave it at that. I appreciate the Statement by our colleague Sen. Khaniri on behalf of the tea farmers.

I thank you.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, first, I want to echo the sentiments of Sen. Omogeni. The Senate Committee on Justice, Legal Affairs and Human Rights saw actual suffering of a tea farmer. Just because the directors had disagreed, a disabled tea farmer was forced to travel five kilometres to and back to deliver tea leaves. I thank Sen. Omogeni for buying him a wheelchair. In most cases, some tea factories exercise discretion on collecting tea.

I am of the view that a true shared prosperity of this country is making sure that small people like that gentleman who is disabled can make money out of tea. For people

like Sen. Cheruiyot and the Senator for Nandi, a large portion of the land they occupy has tea.

I am aware of a company that is repackaging our tea in Dubai and selling it. It is not that tea is not a marketable crop. Is it possible that Sen. Cherargei, Sen. Cheruiyot and the people they represent are comfortable because they do not make enough noise about tea? In a large part of Kericho, where Sen. Cheruiyot comes from, the tea is being farmed by foreign companies. Nobody is making money out of this.

Mr. Speaker, Sir, I agree with Sen. Khaniri. We have said too much about this, formed too many committees and passed many pieces of legislation with no action. It is unfortunate. I hope that someday, we can make sure that the tea farmer in Kenya can make money out of the tea that is growing all over the country. There are investors from all over the world who are prepared to come to the country because of the tea that we farm.

I thank you.

**The Speaker** (Hon. Lusaka): Sen. Cherargei.

**Sen. Cherargei:** Thank you, Mr. Speaker, Sir, for this opportunity. I want to thank Sen. George Khaniri, my neighbour, for this Statement on the issues surrounding the tea sector. We agree that tea is one of the economic backbones, especially in Nandi County. Three quarters of Nandi County is covered by tea.

There are many bottlenecks, and I think that most of them are by the legal regime. The other day, I saw that the Cabinet Secretary (CS) in charge of Agriculture trying to bring tea regulations, which created a tea storm in a tea cup, because of the various interest groups that have been there.

Mr. Speaker, Sir, we need to agree on how to proceed, especially on the review of regulations and the legal regime within the tea sector. Tea farmers nowadays pay more to tea pickers than they get. They pay a lot of money to get subsidized fertilizers, and there are many other challenges that the tea sector is facing.

Another issue that is facing the tea sector is the issue of auctions, especially in Mombasa and the running of the sale of tea, as my brother, Sen. Mutula Kilonzo Jnr., has said. It is becoming one of the biggest challenges in the sale of tea. I hope that the Committee on Agriculture, Livestock and Fisheries will guide the House on this. We should not use a lot of money to sell tea, because everybody in this country and even across the world--- Although coffee is overtaking tea, I think we need to agree on how to proceed.

Mr. Speaker, Sir, the third issue is on the historical land injustices. I am happy that Sen. Mutula Kilonzo Jnr., Sen. Omogeni, Sen. (Rev) Waqo and I had the privilege of being in Kericho County, courtesy of Sen. Cheruiyot, and you could see the pain of tea farmers. As much as there are huge tracts of tea farms within Kericho, Nandi and Bomet, where Sen. (Dr.) Lang'at comes from, the biggest beneficiaries and owners of those tea farms are majorly multinational companies.

The elephant in the room is to address the issue of historical land injustices. Most of the land where tea is grown is still owned by British veterans, multinational companies and various cartels in the country. Even as we address the tea reforms within the tea sector, we must address the elephant in the room, which is historical land injustices.

The fourth point that I want to make is that I agree with the argument that we need to introduce minimum guaranteed returns. I am happy that Sen. Omogeni has received salvation, because some people were blindly supporting the Building Bridges Initiative (BBI) for the sake of other things. I am happy that reality is coming up. That is why we say that we should look at the guaranteed minimum returns for the tea, dairy and sugar cane farmers.

I know that you come from an area where sugar cane is grown. Sugar cane farming is dead and gone. The tea sector is now in the Intensive Care Unit (ICU), and the maize sector is in the High Dependency Unit (HDU). In fact, the issue of milk was forgotten. There is a monopoly company that controls 40 per cent of the milk shares in this country and we know who they are. We will name them when the time comes.

Mr. Speaker, Sir, we need to agree that the agricultural sector needs reforms, especially the tea sector. I want to warn cartels and other interest groups that slowly want to sneak into the management of the tea sector. They are the same people who gave the Kenya Meat Commission (KMC) to the military.

When we went round doing public participation on tea regulation, the worry of tea farmers was that if we are not careful, tea farming will be handed over to the military, the way KMC has. If you take the tea sector and hand it over to the military, how will we access tea and yet that is a protected area?

Those are challenges that we need to look into, and that is why we will not go back. We must have guaranteed minimum returns on all agribusiness that we have in this country. I have heard that BBI has Article 11 (a) on shared prosperity. When people will be discussing the positions of Prime Minister, Deputy Prime Ministers and Deputy President, we will be discussing the issues of tea, milk, sugar cane and many other issues.

Finally, so that my colleagues also have an opportunity, the bonuses in the tea sector are worrying. When we were growing up, the only people who would buy brand new Peugeot vehicles were tea and maize farmers. Today, most tea and maize farmers cannot even buy a bicycle, a wheelbarrow or a *mkokoteni*, yet they were the people who would buy a brand new 504 Peugeot after being paid bonus.

In the village, they were the main people. If you were a son of a farmer, you could get a beautiful girl in the village. You could get the best in the village, but unfortunately, now you cannot get even the 'leftovers', *hata yule 'amechapa.'*

Mr. Speaker, Sir, that shows how the economy has gone down among farmers. The farmers cannot even sustain themselves. They are always lamenting. As a country, using the BBI and the minimum guaranteed returns, this is the right time to address these issues, once and for all. Let us protect our farmers the way protectionist policies have been put in the First World countries. Let us ensure that maize, sugar cane and tea farmers have an opportunity.

I hope that the Committee, led by Sen. Ndwiga, will be able to address this issue and put it to rest. The tea farmers are watching. We want the tea sector to be streamlined and transformed into a commercial enterprise. I am happy that almost three quarters of this country grows tea. Therefore, we hope that when the real BBI - because the one that we are being told about looks like *mitumba* - comes, we will expect nothing but minimum guaranteed returns for all farmers.

I thank you.

**The Speaker** (Hon. Lusaka): Sen. (Prof.) Ongeru.

**Sen. (Prof.) Ongeru:** Thank you, Mr. Speaker, Sir. Let me weigh in on this very important topic of tea production. Indeed, we had a Select Committee, which I was a Member. We went round and listened to the views of farmers.

We categorized those views under three categories. They were the issues dealing with the thumb-gate prices, the green leaf and issues surrounding the agricultural expansion programmes that will serve the small-scale holders of tea, so that they can maximize on their production in terms of kilogrammes. They will, hence be able to get handsome returns from tea farming.

We realized that one of the elements that was amiss at that time was the issue of subsidized fertilizers. When it was left to the market forces, the fertilizer cost went beyond the reach of the farmer. They hoped that using collective bargaining agreements in terms of the volume and the number of small-scale holders, through the Kenya Tea Development Agency (KTDA) and other institutions, they would be able to get a fair price. Unfortunately, they have not had that opportunity to get a fair price. Therefore, right at the farm level, we saw that the application of fertilizers was missing and, therefore, they are not able to maximize on their productivity.

Secondly, we also noted that the support agricultural staff and extension officers that were very critical to help the small-scale farmer assess their potential were not even available. The farmers, therefore, picked up farming techniques from their cultural practices the way they have seen it handed over from one generation to another. That was something that was missing.

Furthermore, we noted bottlenecks on delivery of green leaves to the factory and delivery of processed tea to the auction market in Mombasa. The private transportation costs were prohibitive because they were based on market forces hence they were out of reach for the farmers. The prices kept on fluctuating, thus there was no stability in transportation costs.

There were also problems at the auction market. The auctioneers are local and international players who can manipulate that market in many ways. You will realise that some products are offered on auction and others are offered on private sale. If you are not careful, you can put a big chunk of sales that belong to the small-scale farmers to private sales, which attracts low prices to the detriment of farmers. Therefore, something has to be done at the auction.

We noted that some of the producers are large-scale farmers who control up to 44 per cent of the tea industry in Kenya. The other 56 per cent of tea farming is controlled by the small-scale farmers who have no voice at the auction market. They are, therefore, left at the whims of the other players.

I want us to focus on how we can deliver the decisions from all the three levels that I have mentioned. This has nothing to do with the Building Bridges Initiative (BBI). Kenyans must get the right price for this commodity. Let us not politicize it. It is in the interest of this country that we offer better prices for agricultural commodities because agriculture is one of our largest foreign exchange earner.

A Bill was brought in this House and it has now gone to the other House. Our maximum concentration should be on how we can fast track that Bill for it to become an Act of Parliament.

When the Bill was taken for public hearing, we looked at the Tea Act, which was done some time back, and we realized that it was difficult to reintroduce an amendment to that Act because of the nature of its introduction and the interest that was entrenched in it.

The regulations that were brought by the Cabinet Secretary created so much storm. The only remedy that we have at the moment, is to fast-track the Bill, which is in the National Assembly, plus the regulations that have been set up because most of those elements have been captured.

We noted that there are more than 42 levies and taxes on one commodity called tea, which is cumbersome for a small scale holder. How do you handle 42 levies and taxes on one commodity? We hope that the current Bill, which is before the National Assembly, and the regulations that are coming, are going to target those levies and commodities for us to lessen the burden of the other people.

I do agree that the amount paid to the farmer at the level of green tea must be enhanced. Currently, they are being paid Kshs17 per kilogram by Kenya Tea Development Authority (KTDA). It will be prudent to pay the farmer for him to cover his costs instead of him waiting for the bonus, which is unpredictable and unfixed. This year's bonus was not attractive.

The bonuses were very attractive five or ten years ago. Some factories in the East of Kenya used to pay Kshs67 to Kshs70 a kilogram. This year, the farmers got below Kshs30. In the western part of Kenya, the bonuses were below Kshs20 per kilogram depending on where you were. Some bonuses were as low as Kshs8 or even Kshs7 per kilogram. This is very unpredictable and that is why we need stability. The farmer should earn decent, predictable bonuses. He should also be able to meet basic costs at the green level. We must give him guaranteed minimum returns at the green level position for him to be a major player in the market. We should also fix the auction market.

I heard about the digitalization of the platform in Mombasa. It is good in one way but it can be thoroughly manipulated to a point where it does not have the desired effect if it goes to the international digital platform. We should go for minimum controlled digitization platform that will guarantee sales and safety of the small-scale farmer at the auction market rather than opening it widely.

If you do so, you will just be swallowed in the international digital platform and the farmer will get nothing or may even end up worse than before.

We should soberly look at this matter because it affects the tea farmer, the sugar factories and the other factories. I do empathize with the farmers because they are now in difficulty. I hope that this Bill will be fast-tracked for it to be an Act of Parliament with regulations.

**Sen. (Dr.) Ali:** Thank you, Mr. Speaker, Sir. I am not a tea farmer but I want to support the Statement by Sen. Khaniri.

Kenyan tea and coffee is the best in the world. It is actually used to blend other coffees and teas. Why can we not make our tea be more expensive than the others? Why

should we allow people to buy cheaper tea from Brazil and other places then use our coffee and tea to blend those products? This is a serious issue. I am a nomad and I know this. What about the tea and coffee farmers, the officials at the Ministry of Agriculture, Livestock and Fisheries and KTDA?

I support this Statement. I request the National Assembly and our Committee on Agriculture, Livestock and Fisheries, to look at these issues and come up with solutions for our farmers to benefit as much as possible from their resources.

**Sen. (Dr.) Ochillo-Ayacko:** Thank you, Mr. Speaker, Sir. I support the Statement by Sen. Khaniri, who is also my namesake.

Farming is the biggest form of employment in this country. The mainstay of revenue and employment in the 47 counties is farming. We will not be doing justice to the potential that we have if we do not take care of the mainstay activities in our counties.

We all represent rural folks and farmers and we depend on farming in one way or the other. What is of priority to us and the nation is to fix issues related to farming and issues that affect farmers. Migori County depends on livestock, sugarcane, tobacco and fish farming.

Farmers are very poor, meaning a majority of the people not only in Migori but in Kenya are poor and suffering. A quick and long term fix for our farmers is what we must prioritize.

There are people who want to politicize this issue by juxtaposing it with BBI. I do not think that, that is the direction we want to take. We are capable as a House and a nation to scale the stairs and chew gum at the same time. Let us prioritize the issue of farmers and ensure that they get adequate returns for their investments as we also pursue other political arrangements or reforms that are equally necessary.

Mr. Speaker Sir, I urge our colleagues as we look at tea and coffee farming, let us not forget sugarcane farming on which 10 million Kenyans depend directly or indirectly. We have cane cutters, loaders, drivers, people who are directly employed in mills and those who are distributing cane products.

All these are farmers. Let us not forget our livestock keepers, fish farmers, pyrethrum and other farmers. Once we empower them as a nation, we are going to empower ourselves and live a very happy and long life as we smile all the way to the bank and back to our homes.

I support.

**Sen. (Dr.) Lang'at:** Thank you, Mr. Speaker, Sir, for also giving me a chance to add my voice to this very important Statement from Sen. Khaniri.

When we were young, the tea sector was one of the greatest employer in this county, especially for the youth. When we see farming in this country declining, it is an obvious reason that unemployment will also automatically follow.

Yesterday, I was coming from Bomet and what I witnessed in Maai Mahiu is a looming danger to this country. I wish Sen. Olekina could listen to this because he is a neighbor to that place. The youth came out to block the highway to Nairobi simply because the Government has gone to harvest sand, which has been a source of livelihood to them. The police raided that place but were overpowered by the youth. The more we

fail to empower these youth through promoting the agriculture sector and other avenues, the more we breed danger to this country.

The plight of the tea farmers is the right word. When we get the tea farmers where I come from, the poverty rate is so high simply because when tea farming was still very profitable, most of the people planted tea to the point that they left no room for food crops. This is because they used to get a lot of money that they could use to buy food. Today, malnutrition and starvation is very high in tea planting areas.

This is a very serious issue that should seriously be addressed. To make matters worse, tea growing areas such as Bomet, Kericho, Nandi, Vihiga and other places are so green and attractive that people can easily imagine that they are the best places where wealth is being generated. That is a mirage. More often, those places do not receive any help from any Non-Governmental Organizations (NGO). Tea farmers are suffering. Even the multi-national plantations in our places are declining. They used to be the biggest employers for the youth.

We must take this Statement seriously. I hope the Bill, which was being championed by Sen. Cheruiyot and some of us should be brought to save this situation.

Even though we are also saying that it is not an issue to argue about when it comes to matters BBI, it is very important.

I noted Sen. Halake supporting Sen. (Prof.) Ongeru when he said that it was not a matter to do with BBI. In as much it was a very important concern to all of us, the issues of pastoralists and crop farming must be listened to in the BBI. Crop farming, which is one of the most important sector in this country, must be seriously debated.

Where I come from - as Sen. Omogeni said - whenever we talk about BBI without talking about tea farming, people will not even listen to you. We must take this seriously.

I support that we must introduce guaranteed minimum returns (GMR) to give hope, security and assurance to these farmers so that they may continue flourishing and give employment to the youth and as a foreign exchange earner.

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

**Sen. Wetangula:** Mr. Speaker Sir, I salute Sen. Khaniri for this extremely important Statement.

Kenya has been on the world map as the top tea farmer. In fact, tea from Sri Lanka cannot access any market until it is blended with tea from Kenya. That is how good our tea is. You go to Pakistan, Afghanistan and the entire Middle East, Kenyan tea is the one everybody takes. Even when one goes to UK, the famous English breakfast tea is not English but Kenyan tea.

It is unfortunate that farming in this country - and a country that is agricultural - has not been given the weight it deserves by successive governments. In the good old days, many of our colleagues left the university to go straight to work for Brook Bond, James Finley or any of those companies because they were very good employers. We cannot say the same today.

We who grow maize in the western part of Kenya and the North Rift used to depend on parts of tea growing areas for our market. As the Senator of Bomet has said, they utilized all their land with tea and they had sufficient money to buy food from elsewhere. There was a market for maize we grew in other parts of the country. Today the

tea farmer has joined the line of misery that the cane farmer has been standing on. They are all living very badly.

Mr. Speaker, Sir, when it comes to payment, you know where I come from in Bungoma, now even a farmer who did not go to school knows something called Debit Note (DR). If you ask them how much they earned from their cane delivery, they tell you they got a DR. It means having kept cane in their farms for 30 months, they have delivered to the factory which has given them a debit note; a negative that, in fact, they owe the factory certain amounts. I believe the tea farmers are all nearly getting there.

This is shameful, regrettable and something that we should not encourage. This is because farming is what has sustained this economy. We are not an industrialized country. We still have very rudimentary manufacturing and are rapidly degenerating into a “supermarket” economy.

What we used to produce here such as Colgate and whatever, are now produced in Egypt and then brought put into the supermarkets here. Colgate-Palmolive closed, East Africa Industries closed. Everything is gone. We are now dependent on things produced elsewhere in South Africa, India, Egypt, Algeria and we now just run a “supermarket” economy.

We must support our farmer. Since BBI is about three components; policy, legislative and constitutional changes, even if we do not write these crops in the Constitution, we must legislate in the legislative change---

**The Speaker** (Hon. Lusaka): Wear your mask, Sen. Iman.

**Sen. Wetangula:** We must bring proper legislation to fit in the component of legislative change and legislative arm of the BBI.

We must bring proper policies in the policy sector, so that we make our farmers get the worth of their sweat. If you go to areas like Bungoma, and Trans Nzoia, people are trying to grow tea, but there is nowhere to deliver it because the Kenya Tea Development Agency (KTDA) has been taken over by cartels. It is no longer serving farmers. We must return this crop management and the benefits out of these crops to the benefit of the farmer.

Mr. Speaker, Sir, lastly, there is no country in the world that is properly agricultural without subsidies to farmers. If you go to USA, Europe and anywhere else, farmers take a very significant allocation of resources to feed the nation and to generate wealth.

We have seen in this country when they give a fertilizer subsidy, it is narrowed down to maize farmers, if they get it at all. If we want to give fertilizer subsidy, we must give the tea, cane, maize, horticultural farmer and every single farmer, the subsidy to sustain them, so that they can turn the wheel of the economy. If we do not do this, then all efforts we are putting in reforming our country will come a cropper.

Mr. Speaker, Sir, I want to see that as we focus on crop farming, we do not forget livestock farming from the northern parts of Kenya and the range lands of this country, so that every single producer in this country from agriculture, gets the worth of their products.

I thank you.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to speak on this Statement. I want to begin by thanking Sen. Khaniri for coming up with this Statement.

Sen. Khaniri is speaking on an issue that is live and real on the ground. I remember when I was growing up, about 35 years ago - and I know quite a number of Senators were not born then - about 35 years ago, when I was in Vihiga County where I originally came from, I could see my grandfather planting tea leaves. He was a very good farmer who was known. He was not working because he was a retired teacher during the colonial times, but he was able to pay his workers just from the tea proceeds.

Very many people got into tea farming. There was a predictable day when tea was plucked, collected and money was paid. People got into tea farming because of these incentives; there was encouragement at that time. However, it is unfortunate, as years have gone by, tea farming has become one of the poorest farming crops.

During that time, it was a cash crop that was lucrative. People were able to pay school fees. For instance, my grandfather was able to pay school fees for his children and maintain his family. Even other farmers I saw in Vihiga were able to do that. Right now, it is a sorry state.

Mr. Speaker, Sir, when I started working as a teacher, I decided to reward my parents. When I got my first pay, I decided to plant tea leaves for them because I saw how lucrative it was and I thought that it was a good way of rewarding my parents, so that they could have a predictable income even in their aging moment.

Right now, there are so many brokers in the tea industry; tea has no returns for farmers. This is an issue that we have to take seriously as Kenyans because Kenya signed the Maputo Declaration, which was very clear that 10 per cent of the national revenue will go to farming. Tea is a big employer for the youth. People can even employ themselves. As a country, we are talking about employment as a very big agenda.

Mr. Speaker, Sir, there is need for the tea manufacturing industry to be streamlined so that our farmers are also encouraged. It is unfortunate that our farmers are crying; they want the Senate to hold their hand. As Senate, we need to ensure that we lift the farmers by ensuring that we come up with legislation that will help them.

It is unfortunate that the Bill that Sen. Cheruiyot came up with, up to now, it is not law. There is need to fast track that Bill, so that it is eventually a law. When it becomes a law, I am sure that farmers in Kenya, especially tea farmers will be encouraged to get into planting tea. It is unfortunate that a crop that was so lucrative at one point is now being uprooted because farmers are discouraged.

As a nation, we have to see how to endeavour and encourage our farmers because they are doing a good job. They are employing themselves, they are employing youth, they are feeding their families and taking their children to school out of tea.

Mr. Speaker, Sir, we need to ensure that there is return for farmers. This is a House that can ventilate on this and ensure that our farmers are protected because this our mandate.

Thank you, Sen. Khaniri, for bringing up this good Statement. I hope that the Committee that will deal with this Statement will do service to it, so that it sees light of the day and farmers are protected.

I thank you.

**The Speaker** (Hon. Lusaka): Finally, Sen. Olekina, kindly, proceed.

**Sen. Olekina:** Thank you, Mr. Speaker, Sir. Let me begin by thanking Sen. Khaniri for bringing up issues, which will help us bring real solutions to the people of this country.

Mr. Speaker, Sir, earlier on, the Chairperson of the County Public Accounts and Investments Committee (CPAIC), who is my very good friend, talked about us politicising things, saying that the BBI does look into this matter.

As a matter of fact when you look at the proposed Constitution Amendment Bill, Article 3, which is on shared prosperity, it talks about: “The Government shall promote sustainable agriculture.”

Mr. Speaker, Sir, when it comes to agriculture, this is the backbone of this country called Kenya. Some of the facts, which are quite clear is that, the tea industry or sector employs 10 per cent of the total population of this country. Last year alone, the tea sector brought in this country over Kshs200 billion in foreign export. It also brought in about Kshs23 billion in terms of local sales. What does that tell you?

It talks about the issue that Sen. Khaniri has brought out clearly, which deals with the issue of the management of the tea sector. When you look at the tea sector, there are two elements; export, which is good for the foreign income of this country and local sales.

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

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

Madam Deputy Speaker, when you look at the Constitution, you will also realize that agriculture is devolved. This Senate has stood firmly to protect devolution. This Senate, last year, passed a legislation that encourages warehousing through the Warehousing Receipt Bill.

What we ought to be talking about now is how to ensure that our county governments - agriculture is a devolved function - sit down, the County Executive Committees (CECs) Members in charge of trade or agriculture find a way to promote and help these tea farmers instead of us lamenting.

One of the biggest problems that I see and I think the Cabinet Secretary in charge of Agriculture, hon. Munya is, he said that instead of us talking about all these issues, let us find what the problem is. He pointed out to one particular area. It is the outdated auction system. This auction system is so porous. It allows people to sell their own tea outside the country such that there is no way you can control and tell how much of the tea foreign income we get in this country. Maybe we get more that Kshs211 billion. There is a lot of direct sales.

Madam Deputy Speaker, instead of this House always passing everything to the national Government, it is important for us to say that agriculture is devolved and begin to focus on legislation. When we focus on legislation, we must begin to ensure that what is devolved is fully devolved so that our farmers can benefit.

When we talk about Government policies, they should trickle down to the people on the ground so that they can understand their impact. When we have serious challenges in this country, I worry that 10 per cent of Kenyans are employed in one sector. Maybe they could be more.

I hope that the Committee will take this matter seriously and Sen. Khaniri should take them to task. That is because we are talking about tea today, tomorrow we will be talking about sugarcane. I hope that one day we will be talking about livestock because that is what pastoralists depend on.

I am happy that Sen. Kang'ata is looking at me as I talk. It is because when we talk about the areas that are missing in the Building Bridges Initiative (BBI) proposal, it is that. If you look at the Shared Prosperity, it stops on agriculture. We want livestock to be included because that is what Kenyans depend on.

Therefore, this Committee has to sit down and invite governors then carry out a proper audit in each county. That will help us know how much tea Kericho County produces. How much of the tea that you produce is sold locally and how much is sold in auctions so that we can streamline the sector.

The genius in that sector is amazing. In fact, today I can disclose that there is some company in Kericho that does not only package the traditional tea, but it also packages a different kind of tea that helps us boost our immunity, courtesy of the governor of Kericho. We have the ability.

The problem is that it is not that we do not have laws. If you read the Constitution and the laws that are out there, they have laid out everything on paper. However, is it practically achievable?

We should go back to the Constitution. The framers of the Constitution thought it wise to devolve agriculture because they knew that is what everybody in this country depends on. What we need to do is to push for implementation of these laws and implementation of the Constitution because it is not that we do not have enough laws, it is just that we do not care an only lament.

I listened to Sen. Wetangula talk about the deficit that farmers have, caused by brokers. They are people who go out there and instead of farmers benefitting, the brokers are the ones who benefit. Therefore, by the time the farmers take their sugarcane to the factory, they do not have any credit left for them to benefit.

We need to sit down and say that the pieces of legislation that we pass in this House are defined to eliminate the brokers who have destroyed the tea sector. They are designed to eliminate the brokers who do nothing. They just sit in Nairobi or other parts of this country, then when the people who voted for Sen. Khaniri are crying and pushing him to come to this House to submit a proposal are harvesting their tea, the brokers go there and, guess what, our hard-working people end up suffering.

Madam Deputy Speaker, I hope that the Committee that you will task to look into the very important Statement that Sen. Khaniri has come up with, they will be guided by what we are losing and what we can actually gain so that we improve the management of the tea sector in this country.

Sen. Mutula Kilonzo Jnr., talked about companies in Dubai that are repackaging our tea. Maybe it is about time that we looked at the role of the Kenya Tea Development Authority (KTDA). We should devolve it and see whether it can find a way out.

Maybe it is about time that we now implement the Warehousing Receipt Bill. I think it is already an Act. We should look at the entire agricultural spectrum and our economy and see how best it can serve our people and how our people can benefit so that we can localize agriculture.

This business where we all sit here in this House and we know that the Senate is the defender of devolution and we always look at the national Government for guidance, we will not achieve anything.

In conclusion, I think it is important that when this Committee sits down to try and figure out what ails this sector, they must also carry out serious statistics. We have very good institutions in this country. The Kenya Bureau of Statistics (KEBS) can give you proper statistics on what each sector in this country produces.

When we talk about guaranteed minimum returns, it is the tea that is being sold in Kenya or in the East African Community being maximized before we even look at the outside. Then, the reforms in a proper auction system. If we agree or rather when this Committee finds that the only way that we can achieve progress in this sector is if the entire tea, which is produced, is only sold through that auction and not sold anywhere else.

When I travel - I travel quite a lot - you find that companies like Starbucks who have individuals who come and buy tea or coffee directly from us. We even have other counties, for example, when we were in Kirinyaga County during the Devolution Conference, the governor of Kirinyaga talked about marketing her own coffee and tea directly to companies in the United States.

When we talk about this, we must be driven by market forces and the rule of supply and demand. That is what will help us. We should keep in mind that most of the land, which is in this country---

**The Deputy Speaker** (Sen. (Prof.) Kamar): Please wind up.

**Sem. Olekina:** Madam Deputy Speaker, I know you drive a lot to Eldoret. You never get a chance to go through Kiambu.

Madam Deputy Speaker, I would like to welcome you for a beautiful drive through Two Rivers and cut through Kiambu on your way to Narok. You will be mesmerised. You will see how important tea is.

I am sure I do not need to take you to Kericho. In terms of the ability of the agriculture sector to be able to run this country is far more than what we can be able to account for. I hope that the Committee will visit Narok County. That is because in Narok we produce tea.

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

**Sen. (Eng.) Mahamud:** Thank you, Madam Deputy Speaker. I want to thank Sen. Khaniri for bringing this important Statement. Agriculture is said to be the engine of economic growth in Kenya.

In fact, about 75 per cent of Kenyans earn their livelihood through agricultural activities. Agriculture contributes about 33 per cent of the Gross Domestic Product

(GDP). Agricultural products, tea included, are having serious problems. The plight of tea farmers that Sen. Khaniri talked about could be true for many other farmers. Tea is very indigenous to Kenya.

Those of us who have served in various missions outside this country know that we used to promote tea a lot. However, you will be surprised to find out that no Kenyan tea finds itself on the shelves of the supermarkets in the world as Kenya tea because there is no value addition in Kenya. Our tea used to blend other teas. The quality of our tea is adulterated by people who bring all sorts of tea there. Lipton tea is from Kenya.

Kenya is unable to do value addition because tea is not controlled by indigenous Kenyans. The multinationals in this country do their own things. The tea plantations in the western part of Kenya, especially Kericho, is very good but it has very little to do with the farmers.

Frankly, the tea farmers are suffering because the challenges are growing by the day. If you look at the other sectors in the agricultural sector, they are equally suffering.

I come from northern Kenya where 90 per cent of the people depend on the livestock for their livelihood. Nothing is in place on how to manage, improve and market it.

We are letting down Kenya being an agricultural country. Kenya is a nation that cannot support its farmers. The farmers should have support so that they can feed the nation. Kenya is an agricultural country and agriculture contributes to about 30 per cent of the GDP.

Madam Deputy Speaker, we must be serious. The Statement by Sen. Khaniri is in its right place. The Committee dealing with that must actually bring this matter to its conclusion. However, it is important to also note that all our sectors are in danger. As a country, we must wake up so that we can feed our nation and stop importing food from outside every time there is a small drought or crisis. During a crisis, we want to import maize and sugar.

I know our sugar industry is down. I am aware that we get some quota from countries from the Common Market for Eastern and Southern Africa (COMESA), so that we are given time to improve our factories, but our factories are dying.

Madam Deputy Speaker, instead of improving our factories, we are fighting on how to import that quota and this is serious. The agricultural sector led by the Ministry of Agriculture, Livestock and Fisheries must wake up. In fact, the Ministry is behaving like a big rogue elephant kicking everybody around, but doing nothing.

I support the Statement. I want to extend it to other sectors of the economy, livestock included. You can see the Kenya Meat Commission (KMC) which was supposed to deal with livestock issues has now been transferred to the Kenya Defence Forces (KDF). I do not know what they want to do, but that sector is also neglected because farmers are left on their own. We need a Government that supports and takes its farmers seriously, so that this country can feed itself.

With those remarks, I beg to support the Statement. I thank you, Madam Deputy Speaker.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Finally, the Majority Whip, Sen. Kang'ata.

**Sen. Kang'ata:** Madam Deputy Speaker, let me first take this opportunity to thank the Senator who has brought this very good Statement because it is beneficial to the country, and in particular, the fact that tea is a major export for this country.

There are three key earners of foreign exchange in this country. We have diaspora remittances, tea and horticulture. I take pride that I come from the county that produces the largest volume of tea from small-scale farmers. Murang'a County has ten tea factories.

Madam Deputy Speaker, we start from Gatanga at a place called Kariara Ward. You go to Kandara at a place called Githumu region or Rocho. You go all the way to Kigumo where we have two wards namely Kinyona and Kangare. You go to Kiharu where we have Murarandia Ward. In Kangema, we have two wards that is Kanyenyaini and Rwathia. At Mathioya, again, you will find the entire Kiru Ward and part of Gitugi, where they grow tea.

Those of us who come from Murang'a County, we have ten tea factories serving the small-scale farmers in that county. On average, every year, Murang'a County earns between Kshs11 billion to Kshs12 billion from tea. We have about 50,000 farmers. When you do a multiplicar of about four per every household, we are talking of about 200,000 persons from Murang'a County who depend directly on tea.

Madam Deputy Speaker, personally, as a Senator from such a county, I will do everything to support this sector. I will stand with the tea farmers and support all the reforms that will ensure they get better payments.

It is a shame in this country that the tea farmer who assists this country to get major source of foreign revenue currently earns a bonus of about Kshs20, Kshs30 or Kshs40. From where I sit, a tea farmer should be earning a bonus of about Kshs200.

Madam Deputy Speaker, there are several problems that have been bedeviling tea farmers in my region. First, we have subdivision of land to uneconomical levels. Secondly is the issue of fertilizers. We have had a situation where fertilizers are becoming so expensive.

Thirdly, there are instances where you find the county government has been receiving money on behalf of tea farmers. It is failing to remit that money to the respective tea factories. That is money that is used to make and repair roads, which are used to transport tea.

Madam Deputy Speaker, therefore, I urge the relevant committee, when it will be considering this Statement, to compel respective county governments, including the County Government of Murang'a, to release cess money that it had received on behalf of the tea farmers.

I also strongly urge this House to positively consider the so-called rules that were being proposed by the Government to spur this sector into growth. I strongly believe the Government of His Excellency Uhuru Kenyatta is acting in good faith when it is pushing for reforms in the coffee and tea sectors. Therefore, I urge every Senator to support those reforms once they are tabled before the relevant committees of the Senate and National Assembly.

I would also urge tea farmers to be provided with what we call a Guaranteed Minimum Return (GMR) scheme. When I was in the National Assembly, I proposed

amendments to the relevant laws to enact guaranteed minimum return for coffee, sugar, cotton, and tea farmers. However, I left the National Assembly before my legislative proposals could be put forward. We all know that as the Senate, we cannot initiate money Bills. Therefore, I will be urging my colleagues in the National Assembly to ensure my legislative proposals are enacted into law.

Madam Deputy Speaker, I am aware of some people who have been saying that the Building Bridges Initiative (BBI) should have provided for guaranteed minimum return. However, I draw the country's attention to the fact that it is the role of the National Assembly to create any fund. Therefore, those who are arguing that point should ask Members of the National Assembly to enact requisite legislation for guaranteed minimum return. In any event, once we devolve 35 per cent of the national revenue to the counties, county governments will have the requisite funds to also come up with such kinds of schemes.

Madam Deputy Speaker, therefore, guaranteed minimum return is provided by implication by the BBI by virtue that governors will now have requisite funds to create such kind of a scheme if they deem fit. Members of the National Assembly, again, still have that legal competency to establish that fund. Therefore, that should not be used as a weapon to fight the BBI. I rest my case.

Finally, I congratulate my colleague from Narok County, Sen. Olekina. He is dressed in a very good manner. I do not know where he has gone. I really wanted to tell him that we need to encourage Senators to be dressing in a traditional way as opposed to the Western style once in a blue moon, but of course within the confines of ethics of good dressing of the Senate.

Thank you.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you, Senator. Hon. Senators, we are way past the Statement Hour, but at least most Members have ventilated on the first Statement. We will go to the rest and urge that you allow me to take only two comments on each one of them. Is that allowed? Will as many of that opinion say Aye.

**Hon. Senators:** Aye!

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you. We will get about two comments for each of the other Statements so that we can clear. The next Statement is by Sen. Rose Nyamunga.

MURDER, ABDUCTIONS AND MYSTERIOUS  
DISAPPEARANCE OF PEOPLE  
IN KISUMU COUNTY

**Sen. Nyamunga:** Madam Deputy Speaker, I rise pursuant to Standing Order No.47(1) to make a Statement on an issue of countywide concern, namely, cases of murder, abduction and mysterious disappearance of people in Kisumu County.

In the recent weeks, cases of murder, abductions and mysterious disappearance have risen to worrying levels. Families have been left distraught and these agents of impunity have left many children without parents. The fundamental right to life for every Kenyan, as enshrined in the Constitution, cannot be overemphasized.

The Constitution 2010 is globally celebrated because of the Bill of Rights, which is believed to be progressive. However, if Kenyans will continue to live in fear in their own land, then this Government has failed big time in its cardinal responsibility of protecting the lives of its citizens.

Madam Deputy Speaker, some of the people whose disappearance and eventual murder have been reported, include Thomas Ochieng who had an eatery in Kisumu. He had left work to meet a person who had called him on phone about two weeks ago. He was optimistic that he would strike a business deal. The 41-year-old father of five commonly known as 'Chuks' confided in his friends that the caller wanted him to provide catering services for his 40 guests for three days.

Mr. Ochieng hired a *boda boda* rider to take him to a hotel in Milimani, where he was to meet the guest. Later, he went to a night club in the Central Business District and parted ways after agreeing to seal the deal the following morning. The following day at 8.00 a.m., Mr. Ochieng left his house to meet the clients. His family and workers were looking forward to seeing him later in the day; little did they know that Mr. Ochieng had joined the statistics of people who have mysteriously gone missing, only to be found brutally murdered days later.

Madam Deputy Speaker, the mysterious disappearance of people in the region has caused immense panic to Kisumu residents, considering that no suspects have been arrested. Several people have gone missing, including a teacher and his driver, who are yet to be found.

About three days after Mr. Ochieng's disappearance, his body was found lying at the Jaramogi Oginga Odinga Teaching and Referral Hospital mortuary with deep cuts and some body parts missing. The body was taken to the mortuary by Kenya Coast Guard Service (KCGS) officers after they recovered it from Lake Victoria. The family of the deceased is pleading for justice, but they are not alone in this quest.

A few metres from their home, the family of a teacher who was also brutally murdered and dumped in a sewerage lagoon is yet to come to terms with his death. The decomposing body of Mr. Joseph Onyango was found floating in a sewerage pond a few days after he mysteriously went missing from his home. The body had deep cuts and the family suspects that he was tortured before he was murdered. I understand that he was the sole bread winner and his murder has completely destroyed the lives of those who depended on him. Mr. Onyango was a primary school teacher in Nyakach Sub-County.

Madam Deputy Speaker, in the past one month, three cases of people who have gone missing only to be found murdered have been reported in the region. Other cases have been reported since the year began, including the brutal murder of a 42-year-old Non-Governmental Organisation (NGO) worker in Riat. Caren Anyango's body was found in a pool of blood in an office block, where she worked as a support staff and caretaker for Community Initiative Action Group (CIAG-K) and Transparency International (TI). To date, no suspects have been arrested.

Another case is that of a nurse, Mr. Ferdinand Onger, 40 years old, who was abducted by unknown people at Riat Dispensary. His body was later found dumped in a forest in Nandi, several kilometres away. A post-mortem report indicated that he died due to excessive bleeding, after his throat was slit and mouth slashed with a sharp object.

In August, the body of a teacher who went missing a few weeks after she was interdicted was found dumped by the roadside at Tido, in Kisumu East. As concerns grow over mysterious deaths, several families are also struggling to find their kin who have gone missing. In Nyamasaria, the family of Enock Odhiambo, a primary school teacher, is yet to find him and his driver, more than a month after they left home to attend a burial in Migori. His car was found abandoned a few metres from Sondu, Nyakach Sub-County.

Madam Deputy Speaker, I urge you to task the Standing Committee on National Security, Defence and Foreign relations to take up this matter and summon the security team from the region, to provide information and steps taken so far to stop such unwarranted abductions, disappearance and murder of people.

I thank you.

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

Sen. (Eng.) Hargura, proceed.

**Sen. (Eng.) Hargura:** Thank you, Madam Deputy Speaker. I would like to support the Statement by Sen. Nyamunga on the incidents of murder, abductions and mysterious disappearances of people in Kisumu County. This is a growing concern, which is widespread and not only in Kisumu County.

What is worrying Kenyans is the way police officers are responding to these occurrences. Nothing is being done and the culprits are emboldened, and that is why the situation is continuing.

In my County of Marsabit, these kinds of incidents have been occurring. I would like to refer specifically to the incident, which occurred on Saturday evening where a teacher by the name Jeremiah Hanche Ado was murdered early in the evening because it was reported by 7.30 p.m., when people were still moving about in town. An incident occurred and the members of the public who witnessed even tried to alert the police who were patrolling nearby, and no action was taken.

I would like to pass my sincere condolences to the family of the teacher, Mr. Jeremiah Hanche Ado, his friends and the community because this is a sad occurrence, which was uncalled for. It was a cold blooded murder of a teacher who was going about his business. Until he met his sudden death he was a teacher at one of our secondary schools, the Kamericha Secondary School. As you know, we have a serious shortage of teachers, especially because of the incidences that have been occurring, where teachers from other parts of this country do not want to go to the northern part of Kenya. Now, we are losing our own through senseless killings like this one.

Madam Deputy Speaker, what is worrying is that this incident occurred very early in the evening. The scuffle between the teacher and the suspect was witnessed. The police who were patrolling around were called and told it was not more than 50 or 30 meters from where it occurred, but they did not react; they just walked off.

We were told that after the scuffle, one of the assailants dropped a phone. In this age and time, that is a useful lead. Based on that phone, a lot of the mystery could be unraveled.

The residents of Marsabit have been demonstrating because of such kinds of incidents which are not investigated and this is the third day. Neither the police nor the

county security team are showing any passion in trying to solve the issue of crimes and assure the public that their security is being taken care of.

When members of the community demonstrated and explained all that to the police and the County Commissioner, informing them that they did not respond on time even with the evidence and wanted assurance that they will investigate and get to the bottom of the matter and arrest the culprits, there is nothing forthcoming. The perception of the public is that the police are accomplices in that because they did not act on time when it happened yet there were there.

Members of the public provided a phone that could trace the assailants, but up to now there is no communication. There is no information coming from the police or the Directorate of Criminal Investigations (DCI) that they are doing something.

Our feeling is that if it were a local, maybe they would have told us who it was. It may not be a local and that is why the information is not coming out. That is a feeling that is being precipitated by the fact that the police are not responding. Instead, when they asked members of the public with information to come forward, the one who went forward is now being threatened with arrest. They are being told that they broke COVID-19 protocols.

Somebody died and they are trying to assist solve the puzzle. Instead of them being told to say what they know, they are now being told they broke COVID-19 protocols by demonstrating. People demonstrated because somebody lost their life. COVID-19 protocols are about saving lives. We are losing lives, but the state agency which is supposed to protect us is not responding.

Madam Deputy Speaker, I would like to urge the police to take their work seriously and move with speed because by not responding makes criminals bold to commit crimes knowing that nobody will go after them. When there are leads like the phone, that is the best way to go about it.

We are giving the police time to make sure they sort out this issue. Otherwise the kind of situation we are in will lead to more crime and we are going to lose more lives. We do not want to go that way.

Madam Deputy Speaker, mine is to urge the County Security Committee of Marsabit led by the County Commissioner to take their work seriously to solve crimes and give hope to the public. If they cannot respond even with the information they have been given, but instead turn against the public that they have broken COVID-19 protocols, then we are not giving Kenyans assurance. They are not behaving like the state security is supposed to by taking care of the security of Kenyans. Let the state security organs take their work seriously and protect Kenyans.

I thank you.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Hon. Senators, we reduced the numbers, but not the minutes. The minutes should be reduced to three because we still have an important Motion on Order No.8 that we must finish today.

**Sen. Wambua:** Madam Deputy Speaker, as your former student, I will abide by the three minutes or less.

I thank Sen. Nyamunga for bringing this Statement to the Floor of this Senate. It actually paints a grim picture of the situation in Kisumu, which is replicated in many

counties in this country. Truth be told, the state of armed crime, robbery with violence, abductions, disappearances and murders in this country has gone high.

Maybe somebody would want to draw a correlation between those criminal activities and COVID-19, that whereas criminals are taking advantage of the situation to wreak mayhem upon innocent citizens, perhaps the police are taking cover and being cautious and careful on interactions. There is need to strike a heavy balance between the fight against COVID-19 and the cardinal duty of police officers to ensure law and order in this country.

There is a separate issue that this country also needs to address itself to. The cases of depression have also gone extremely high, in fact, so high that yesterday, a village in Mutito which is in my county buried a husband and his wife.

What is said to have happened is that the man woke up in the morning and escorted his wife to work. On their way, the man turned against his wife and killed her. He went back home and committed suicide. There has been no case of violence between the two. That is a demonstration of the rate of depression that has bedeviled this country in this era.

As we look into issues of crime, I urge that---

*(Sen. Wambua's microphone went off)*

**The Deputy Speaker** (Sen. (Prof.) Kamar): Hon. Senators, it appears this Statement is turning to a Statement under Standing Order No.48(1) although it was under Standing Order No.47(1). I will allow two minutes each for two Senators representing two different regions then I will make a ruling.

Sen. Cherargei you have two minutes then I will allow another Senator from the Western region.

**Sen. Cherargei:** Thank you, Madam Deputy Speaker, for this opportunity. Before the changes in committees happened, as the Chair of the Committee on Justice and Legal Affairs, we were supposed to go to Kisumu to listen to forced disappearances and extrajudicial killings. Sen. Faki had hosted us in Mombasa County and I confirm it was a harrowing experience. It is sad that it is happening in Kisumu. I hope the Committee on Justice and Legal Affairs will follow up so that we have a report.

I concur that the killings continue to happen especially in Nandi where two young men were killed. There is one that was killed by the police in Lessos and investigations are ongoing. Arrests have been made on the border of Vihiga and Nandi counties.

On Friday, 30<sup>th</sup> October, 2020, a man by the name Lawrence Kipkirui Agui Tuluso was brutally murdered by armed robbers. He was a security officer at Chemomi Tea Estate. Up to now, the phone has not been tracked. When some of us were arrested, it was easy for the police to track. The victim was killed with his hands tied.

Madam Deputy Speaker, you will remember that there were brutal murders of tea managers in tea estates in Nandi. We are seeing that creeping up. Following this Statement by Sen. Nyamunga, we expect that these investigations must be done expeditiously. We request the police to move with speed. Mr. Lawrence Kipkurui was

brutally murdered with his hands tied. His phone disappeared. I thought that these are things that can be easily traced because they have---

Madam Deputy Speaker, I support and I hope that the appropriate Committee will investigate this and get back to the House.

I thank you for that indulgence.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you. I will get a view from the western region.

Sen. (Dr.) Musuruve. Please, use two minutes.

**Sen. (Dr.) Musuruve:** Thank you, Madam Deputy Speaker, for this time that you have given me. I support this Statement. I thank Sen. Nyamunga for bringing it on the Floor of this House.

I condole with the family of Mr. Ochieng', Ms. Karen, and all those who lost their lives during this time. Indeed, it is very painful that the lives of sole bread winders have been taken away due to the murders. This has implications on their families. When it comes to school fees and other basic needs, their families will be deprived.

Article 43(3) of the Constitution says that the state shall provide security for people who are not able to provide security for their significant others. This is a socio-economic right that we should endeavor as a Senate to ensure it is implemented. The issue of insecurity is all over. It is not only in Kisumu, and there is need for us to pursue the right Committee to ensure that it does investigations.

Madam Deputy Speaker, when murders are committed, it is not an impromptu murder. They are usually planned activities. One of the roles of the police is that they should be able to detect murders or such crimes. The Committee on Justice, Legal Affairs and Human Rights should investigate from the police whether they have arrested anyone or whether they have been able to detect. If they have not been able to detect we need to know why.

I also call upon the Committee to investigate about police patrols. If police patrols are going on in Kisumu, how come no one has come to know the murderers? The people who are being murdered are professionals; teachers, nurses and all that.

There is a need to investigate what exactly is happening in Kisumu, so that the issue is arrested. It could just be the same people who are doing the same acts. They need to be rehabilitated and brought to book, so that it does not continue, because this trend will continue in Kisumu. It is something that we really need to stop.

I believe that the Committee on Justice, Legal Affairs and Human Rights will do something about this issue. I thank Sen. Nyamunga for bringing up this issue on Floor of the House so that it is addressed.

Thank you, Madam Deputy Speaker.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Hon. Senators, I am now persuaded that this Statement should have been under Standing Order No.48(1). Therefore, I will direct it to the Committee on National Security, Defence and Foreign Relations. We hope that the Members of the Committee on Justice, Legal Affairs and Human Rights can join in to make sure that we get a good report.

*(The Statement was referred to the Committee on National*

*Security, Defence and Foreign Relations)*

The next Statement is by Sen. Shiyonga.

VERBAL ABUSE OF EDUCATION OFFICIALS  
BY THE CS FOR EDUCATION

**Sen. Shiyonga:** Thank you, Madam Deputy Speaker. I rise pursuant to Standing Order No.47(1) to make a Statement on an issue of general topical concern; namely, the verbal abuse of education officials by the CS of Education, Prof. George Magoha.

Madam Deputy Speaker, Kenyans are in shock following a viral video in which the CS for Education has been captured howling insults at education officials in Uasin Gishu County. In the video, the CS, who was on a visit to educational institutions in the county on Friday, 6<sup>th</sup> November, 2020, to assess learning and delivery of desks in various schools, is recorded interrogating the Uasin Gishu County Director of Education, Mr. Gitonga Mbaka, concerning alleged untidiness of a school the CS was visiting in the county.

The CS, seemingly unimpressed by the response of the education official, hurled insults to Mr. Mbaka, and is recorded saying in Kiswahili, and I quote, “*Nikisema wewe ni mjinga, ni uwongo?*” In English that is, would I be wrong if I say that you are stupid? Whereupon the CS proceeds to tell the education official, publicly and to his face, “*Wewe ni mjinga kabisa.*” You are very stupid. These are the words coming from a CS in Kenya.

Madam Deputy Speaker, such kind of conduct by the CS, or, indeed, anyone in leadership is unflattering, and should be condemned in the strongest way possible. The CS, who is in charge of education, should be the last person to set a bad example to the public, including the millions of children in our education system, where he has been given the privilege to lead.

If indeed the CS had issues to raise with the concerned education official, there are official channels and procedures that he ought to follow instead of insulting his juniors. The conduct of the CS is in total contravention of the national values and principles of governance as espoused in the Constitution, which calls for among other things, high standards of professional ethics, human dignity, inclusivity, human rights and integrity, values that the CS, Prof. Magoha, obviously discredited in this particular incident.

Madam Deputy Speaker, lastly, as a House, we must condemn the conduct of the CS. The CS must also apologize immediately and unreservedly to the education officials in Uasin Gishu County, and the entire country for his unbecoming behaviour.

Thank you, Madam Deputy Speaker.

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

**Sen. Faki:** Asante, Bi. Naibu Spika, kwa kunipa fursa hii kuchangia Taarifa iliyoletwa Bungeni na Sen. Shiyonga. Ni jambo la kutamausha kuwa Waziri Magoha alimkejeli na kumtusi afisa wa elimu katika eneo la Rift Valley kwa njia ambayo haikuwa sawa kulingana na maadili ya bindadamu.

Sifa kubwa ya kiongozi ni kwamba lazima awe mtu wa kuheshimu sheria na binadamu wengine, lakini kitendo Prof. Magoha alifanya kinakiuka maadili hayo. Sote tuna mapungufu katika utendakazi wetu, na itakuwa si sawa kwa kiongozi yeyote kumuita mwenzake mjinga ama mpumbavu akiwa hadharani penye kila mtu anaweza kuona. Hayati Julius Nyerere alisema kwamba mtu mpumbavu amezaliwa mpumbavu. Yaani, kwa Kiingereza, *he is a fool*. Mjinga ni yule ambaye hana ufahamu wa jambo fulani. Kwa hivyo, akifahamishwa, ule ujinga huwa unaondoka.

Bi. Naibu Spika, kama kulikuwa na jambo ambalo Waziri aliona kuwa kuna na upungufu kwa yule afisa wa elimu, angemwita faraghani na kuweleza, “Jambo hili linafaa kufanywa kwa njia ifuatayo.” Lakini kumwita mjinga ama mpumbavu mbele ya hadhara ni jambo ambalo ni kunyime na maadili. Kwa hivyo, ninamkemea Waziri Magoha kwa jambo kama hili.

Jambo ambalo linavunja moyo ni kwamba hiyo habari imesambazwa katika vyombo vya habari na imefikia familia na watoto wa afisa huyo wa elimu. Hao pia sasa wanamdharau mzee wao ambaye ni kiongozi wa familia yao. Ninakemea jambo hilo.

Naomba dakika moja nionge kuhusu arifa iliyozungumziwa na Seneta Nyamunga. Jimbo la pwani limeathirika sana na uuaji wa wananchi. Wengi wao wameuawa na taasisi za serikali na hatujui chanzo ya hizo vifo. Kamati ya sheria na haki za kibinadamu ya Seneti ilikuwa imevamia jambo hilo na ilifanya kikao kule pwani na ni jambo lakusikitisha kwamba watu bado wanaendelea kupotea hadi sasa. Lazima jambo hili lifuatiliwe kwa haraka ili ripoti ya Kamati ya Sheria na Haki za Kibinadamu ya Seneti iletwe hadharani na wahusika washtakiwe na kupelekwa mahakamani kwa wakati unaofaa.

Ni jambo la aibu kwamba tuna Katiba nzuri ambayo tulipitisha mwaka wa 2010 lakini watu wamepotea wengi tukiwa na hii Katiba kuliko wakati tulikuwa na katiba ya kitambo.

Asante, kwa kunipa hii nafasi.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you. Sen. Olekina, you have three minutes.

**Sen. Olekina:** Thank you, Madam Deputy Speaker, for giving me this opportunity.

I am surprised. This House should reprimand the conduct of the Cabinet Secretary for Education who is bound by the Public Officer Ethics Act. I wish to remind him that the Act, which he subscribes to and signed to abide by, prohibits that kind of unprofessionalism. It is about time that the public officers, including us, realise that we serve those offices by the will of God and privilege.

The Public Officer Ethics Act (9)(1) states that-

“A public officer shall-

(a) carry out his duties in a way that maintains public confidence in the integrity of his office;

(b) Treat the public and his fellow public officers with the courtesy and respect;

(c) To the extent appropriate to his office, seek to improve the standards of performance and level of professionalism in his organisation.”

I want to remind this House that the Ethics and Anti-Corruption Commission (EACC) wrote to this Senate a few months ago and reprimanded the behaviour of two of our colleagues. It insisted that action had to be taken. It should not be an issue of selective justice. The Ethics and Anti-Corruption Act is very clear. We expect the EACC to take the same steps that they took in our case to reprimand the behaviour of the CS for Education. We must respect each other.

Respect is paramount. There is no point of us serving in these offices if we do not show our children that we can correct people in a professional and respectful manner. I thank Sen. Shiyonga for bringing this Statement. This matter should be carried forward. I notice that my time is being limited yet you did not stipulate my speaking time.

If this Statement requires action by a Committee, then the EACC should be called upon to investigate the CS and ensure that we respect the rule of law. We do not come to Parliament to pass legislation for certain individuals to cherry pick what to respect and what not to respect. These laws are important and mandatory for all of us.

**The Senate Majority Leader** (Sen. Poghio): Thank you, Madam Deputy Speaker, for the opportunity. I support the Statement sought by the Senator. Nowadays, we do not have the luxury of saying things without weighing them. The comments that the CS made in front of junior and senior officers, as read by the Senator, are not even acceptable in the African culture. It is not good to shout at someone whose children and family members are around for it makes them look like they do not matter. It does not matter how much they have wronged you. In any case, how did those people wrong the CS? What was there to anger the CS to a point that he could not control what he was saying? We sometimes get to a level where we think that we have so much privilege and everybody else does not matter.

We respect the CS for Education and he has done so much for this country. He has run a university, the examination council and he has done many other good things. However, we demand that he apologises to those people and the country. I do get angered, but I cannot disrespect people who have also been given an opportunity to work by the same Government. For that reason, I agree that we need to be firm. He has privileges, but this House can also demand of him to come and explain his behaviour. We can also demand that he apologises to those people.

I feel bad because there was a time when District Commissioners would behave like that. One District Commissioner would actually shave people's hair without water. That is the kind of thing that is coming back and we do not want it. Anyway, Prof. Magoha has a boss and I hope that his boss has heard those things. However, we are the representatives of the people who were insulted and we speak for them.

Thank you, Sen. Shiyonga. You have quoted him and you have everything written out. We need to bring sanity in the leadership of this country and there are no two ways about it. This was a mistake and he must apologise. I know that it is not easy for him, but the truth is that not all things are easy. He has to accept that he has wronged the people of Kenya. I do not know how he would feel if those words were used against him. I do not know how he would react and neither do I know how I would react. However, we do have a chance to correct it and I agree with Sen. Olekina because the Public Officer Ethics Act is very clear. Technology has made it difficult for people to run away. There are people

who have said things that have come out. Nowadays, people record things and record you. I am just giving you information that people can record you. With these phones, you can be recorded in or out of context.

I support this Statement. If the particular Committee of this House wants to follow it up, they can do so. They can even follow up on that matter and call him to come and explain why he would do that to Kenyans.

I support.

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

**Sen. Halake:** Thank you, Madam Deputy Speaker, for giving me the opportunity to contribute to this Statement by Sen. Shiyonga and to congratulate her for being able to stand up for somebody that perhaps did not have the ability or the power dynamics to speak for himself.

Leadership is about respect. If the good professor and CS actually spoke those derogatory words and used such abusive language, then he is definitely out of order and must be called out. I am glad Sen. Shiyonga did just that. He must apologize. I do not know what level the person that was abused is. Maybe it is about time that education was devolved.

The idea that a CS would run around this country going to every little classroom and corner, fight with very junior people and abuse them because he is more powerful, invincible or perhaps he is the supervisor, is really unacceptable. Why would a sitting CS go and start running in classrooms?

I have seen the CS actually do that in very many little corners of this country. That is a recipe for conflict. If one goes to supervise such junior people perhaps you are bound to find some fault and then get angry. Some people are not very evolved to manage their anger very well. Those things may come out. That said, there is not excuse. It is unacceptable for a CS to disparage people who work for this country.

The rule of law prescribes how those mistakes are to be handled. Even if it is punishment, you punish a person according to certain respectable and acceptable parameters of respect for human beings.

As a nation we are going through a constitutional moment through the BBI. One of the things that has been identified is lack of national ethos and lack of respect for ourselves and others. I hope those of us in leadership positions start to act in model behavior, which we can be proud that our children can follow and that we are mentors for our children.

Definitely if those words were uttered then I am ashamed to say that the CS responsible for children, giving them discipline and educating them is setting a bad example. We condemn this and ask that he does something about it. I do not know if an apology is even enough.

I support.

**The Deputy Speaker** (Sen. (Prof.) Kamar: I can see Sen. (Dr.) Musuruve vigorously seeking an intervention. I will allow you and Sen. Wambua two minutes each.

**Sen.(Dr.) Musuruve:** Thank you, Madam Deputy Speaker for giving me time to comment on this Statement. I thank Sen. Shiyonga for bringing this issue on the Floor of the House.

Article 28 of our Constitution is very clear about human dignity. We need to respect and protect human dignity. It is unfortunate that the CS uttered such words to Mr. Mbaka. It is painful that he did not empathize. He never put himself in the shoes of Mr. Mbaka. For someone to say in Kiswahili “*Wewe ni mjinga*” to someone who has children and has gone through the system was very demeaning.

The CS should get into a moment of introspection. Before he talks to people, he must be very clear on the need to respect people’s dignity. Aside from this Statement that Sen. Shiyonga has brought, it has also gone viral that he even ordered a teacher to pick rubbish.

Madam Deputy Speaker, the CS needs to apologize to the teachers’ fraternity in this Republic. We should not set a precedence where a CS can decide to just arrogate powers to himself and decide to do what he wants to do to teachers. This is a wrong precedence. The CS should appear before us. In fact, he needs to apologize publicly to those people. Teachers are professionals, but he has demeaned the teaching profession. He has demeaned the profession of Mr. Mbaka. This is something unacceptable. He should appear before the Senate as a whole, explain himself and even apologise to Kenyans.

Being in that position does not mean he is better than all Kenyans. It is God’s favor. When God favors you, it does not mean that you step on others as---

**The Deputy Speaker** (Sen. (Prof.) Kamar): Your time is up.

**Sen. Wambua:** Thank you, Madam Deputy Speaker. I will be very brief. Last week on the Floor of this Senate, we were discussing the behavior of the Principal Secretary in charge of Maritime for demeaning the youth from the Coast region. Today we are discussing the CS for Education for demeaning an education officer.

Questions must be asked. I am happy that the Senate Majority Leader has said that action must be taken against these kinds of leaders. People who do not bring honour and dignity to public office have no right to hold those offices.

The CS for Education is in charge of a very delicate section of our society that is young people and children. When these children see their CS appearing on television or speaking on radio, they want to listen to what he is saying. They go there only to be confronted with insults.

I want to take this opportunity to condemn those utterances by the CS. It is high time that people are held accountable for their utterances beginning with the CS for Education, Prof. Magoha.

I support.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you, Sen. Wambua and Sen. Shiyonga. Mr. Gitonga Mbaka being my own Director of Education, I want to give him great assurance because the Senate has spoken. I assure the Senate that this is a very diligent worker in Uasin Gishu County. He works very well with teachers and students especially at this very difficult time.

I associate myself with the comments that Senators have made. I want to encourage Mr. Gitonga, the County Director of Education in Uasin Gishu County, to continue serving the people of Uasin Gishu.

The next Statement is under Standing Order No.48(1) by Sen. Omanga.

**Sen. Omanga:** Thank you, Madam Deputy Speaker. I have so many Statements such that I do not know which one.

**The Deputy Speaker** (Sen. (Prof.) Kamar: We will give you a chance to read two of your Statements. You may start with the one for the Committee on Labour and Social Welfare.

**Sen. Omanga:** I am starting with the first one on Financial Status of Deposit-Taking Commercial Banks. I have so many others for the people of Nairobi, around six. We have issues in Nairobi City County.

**The Deputy Speaker** (Sen. (Prof.) Kamar: Sen. Omanga, I have two in the Order Paper.

**Sen. Omanga:** I will start with the two and then the six will come later. Let me start with the first one.

**The Deputy Speaker** (Sen. (Prof.) Kamar: So, you will do one today?

**Sen. Omanga:** No, I will do two today and maybe the other six because they are so many. I have so many issues. I am raising on behalf of Kenyans and the people of Nairobi City.

**The Deputy Speaker** (Sen. (Prof.) Kamar: We are giving you a chance to read two Statements; one directed to the Standing Committee on Finance and Budget and the other one to the Committee on Labour and Social Welfare.

**Sen. Omanga:** Thank you, Madam Deputy Speaker. They are many. I will read two of them.

#### FINANCIAL STATUS OF DEPOSIT-TAKING COMMERCIAL BANKS

Madam Deputy Speaker, I rise pursuant to Standing Order No.48(1) to seek a Statement from the Standing Committee on Finance and Budget regarding the financial status of deposit-taking commercial banks.

In the Statement, the Committee should-

(1) Explain the measures the Central Bank of Kenya (CBK) has put in place to regulate fiscal policy for deposit-taking banks such as Spire Bank Limited.

(2) State penalties the CBK has put in place, if any, to be meted on commercial banks that fail to comply with the laid down regulations.

(3) Outline measures being taken by the CBK in terms of policy directions in order to cushion the banking industry from severe loss going forward.

Thank you.

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

**Sen. Omanga:** Madam Deputy Speaker, can I read the other one?

**The Deputy Speaker** (Sen. (Prof.) Kamar: No, I will allow two comments on this and the next Statement.

**Sen. Omanga:** Thank you, Madam Deputy Speaker. It is because I am overworking.

**The Deputy Speaker** (Sen. (Prof.) Kamar): The first comment is from Sen. Kang'ata.

**Sen. Kang'ata:** Madam Deputy Speaker, I wish to support what my sister, Sen. Omanga, has done today, to bring the attention of this House to the problems bedeviling Spire Bank.

Madam Deputy Speaker, Spire Bank is owned by secondary school teachers of this Republic. Spire Bank made a loss of Kshs556 million for the last six months. This is compared to Kshs81 million profit that they made last year, in the same period. That bank experienced a 90 per cent default rate, which is seven times higher than the industry rate of 13.1 per cent. This pushed the gross non-performing loans to Kshs2.69 billion out of a total loan book of about Kshs2.96 billion.

Madam Deputy Speaker, the liquidity ratio of that bank is about 6.6 per cent, which is below what the regulator requires of about 20 per cent. I have been informed that Mwalimu National SACCO Society Limited injects almost Kshs200 million to that company every week. As a result, monies belonging to teachers of this Republic of Kenya is being lost every week. Mwalimu National SACCO Society Limited continues pumping money into a dead bank, while CBK, which is the regulator, is doing nothing whereas it has the power to punish or to enquire into the affairs of Spire Bank. So far, we are not aware of anything that has been done by the CBK to ensure that teachers of this Republic of Kenya are protected.

Madam Deputy Speaker, we all know the story behind the sale of that bank to Mwalimu National SACCO Society Limited. That bank used to be owned by one rich Asian. He then maneuvered to have it bought very expensively by the teachers of this Republic, only to turn out that it was a shell bank.

I urge the relevant Committee to investigate this scandal to ensure that all the culpable persons are prosecuted and secondary school teachers of this Republic get justice, so that we do not have a situation where good money is being thrown into a bottomless pit.

Madam Deputy Speaker, I thank Sen. Omanga for bringing this issue to this House. I have no doubt that the relevant Committee will render justice to the teachers of the Republic of this country.

I thank you.

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Thank you. Sen. Lokorio Petronila Were, kindly, proceed.

**Sen. Were:** Thank you, Madam Deputy Speaker. I also rise to support this Statement by the overworking Senator from Nairobi City County.

This Statement is very important because with the recommendations or the report from the Committee, we shall avert a catastrophe. Whatever recommendations they come with, this House will be remembered as the House that saved teachers, especially secondary school teachers who put their money into this SACCO.

Madam Deputy Speaker, I speak knowing that teachers - an. Hon Senator has just told me not to take these SACCOs seriously - do not attend the Annual General Meeting.

Most teachers whose money is put into Spire Bank every week, are not aware of what is going on.

This House needs to protect teachers by ensuring that their savings are safe. We should put the CBK to task to explain what regulatory measures or interventions they are putting in place to ensure that this bank that is purely a teachers' bank is living up to standard and that the deposits teachers are putting in this bank through Mwalimu SACCO do not get lost.

Madam Deputy Speaker, very soon, we shall see teachers going to the streets or camping at offices of Mwalimu SACCO or the Teachers Service Commission (TSC), to look at how they thought they were depositing their monies into the SACCO and yet those monies are not going to the SACCO. If the money did, it has been mismanaged by Spire Bank.

As Sen. Kang'ata has said, Spire Bank initially was Equatorial Bank. As we all know, the banking industry for a long time has had challenges. We have several of those banks like Equatorial Bank that collapsed. We are afraid that Spire Bank will collapse with the savings of poor teachers who earn very little. They have been crying out for more money to be paid to them, whereas, the little they save for their retirement is being mismanaged by Spire Bank.

Madam Deputy Speaker, I support this Statement and call upon the Committee to do a thorough job to ensure that people responsible for this mismanagement are put to task.

Thank you.

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

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

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Asante sana, Sen. Petronila Were. Sasa hivi, nitampatia fursa Sen. Omanga ili aweze kuendelea na kauli yake.

#### RESUMPTION OF SPORTING ACTIVITIES IN THE COUNTRY

**Sen. Omanga:** Thank you, Mr. Temporary Speaker, Sir. I am on my second Statement. I will do the other six tomorrow.

I rise pursuant to Standing Order No. 48(1) to seek a Statement from the Standing Committee on Labour, Social Welfare and Human Rights regarding the resumption of sporting activities in the country.

In the Statement, the Committee should-

(1) State the official resumption dates for the indoor sports and other social contact sporting activities in the country.

(2) State the health protocols set jointly by the Government and the various sports federations to cushion players from the spread of COVID-19 during the matches.

(3) State the measures the Government has taken in mitigation and support to various sporting teams against the harsh economic effects of COVID-19.

(4) Explain the action that will be taken against teams found culpable of violating the set health protocols.

I thank you.

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Asante sana, Sen. Omanga.

Sen. (Dr.) Gertrude Musuruve, unaweza pia kuchangia. Kabla uchangie, ningependa kusema; hongera kwa akina mama kwa kuchaguliwa kwa mwanamke wa kwanza kama Makamu wa Rais katika Jamhuri ya Umoja wa kule Marekani.

Sen. (Dr.) Gertrude Musuruve, una nafasi yako. Naona una nguo nzuri ya kijani kibichi.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Temporary Speaker, Sir, for complementing our own who is now the Vice-President of the United States of America (USA).

I begin by thanking Sen. Omanga for coming up with this important Statement. When it comes to sporting activities, we need to know that sports plays a big role in the lives of people. Ordinarily, when teams come together for sporting activities, there is the spirit of team building and friendliness that is embraced, during that time.

The spirit of endurance also comes in when people engage in sports. Additionally, we also experience cardiovascular benefits from sporting activities. When people are engaged in sports, they keep at bay diseases that are related to the heart and all that. Therefore, sporting activities help in a number of ways. It has to be very clear before the Senate that there are people who have been relying on sports for their daily living.

During this COVID-19 pandemic, just as much as the tourism industry and other industries have gone down, sporting activities have also gone down. This has many negative effects on the sportsmen and women.

Mr. Temporary Speaker, Sir, I am glad that you are also a person with disability. You know very well what sportsmen and women who have disabilities go through. Some of them rely on sports for their daily living. However, they do not know what to do right now because they are frustrated.

There is need for the Government to come up with a mechanism to ensure that sporting activities resume. Even when they resume, there is need for sportsmen and women to ensure that they observe COVID-19 protocols. The Government should come up with protocols, so that they know the rules that need to be observed.

Apart from that, it has to be clear that sportsmen and women in this country have not been cushioned. I know quite a number of Persons with Disabilities (PwDs) who have been bringing glory to this country through Paralympic athletics. They have talked to me many times saying that they are frustrated and they do not know what to do.

There is need for the Standing Committee on Labour and Social Welfare to ensure that they are pursuing this issue so that sports resume in this country. This is because there are so many people who are frustrated at the moment. Some of them are breadwinners and they do not know where to go. There is need for sportsmen and women to be cushioned handsomely.

In addition, PwDs who engage in sports need to be cushioned during this COVID-19 period.

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Asante sana kwa huo mchango.

Kwa sasa nitamuita Sen. Were ili azungumzie taarifa ambayo iko kwenye Ratiba ya Shughuli.

**Sen. Were:** Thank you, Mr. Temporary Speaker, Sir. When you sit there and switch to Kiswahili, it tempts us sometimes to speak Kiswahili, and then we remember that we are not as eloquent as you are.

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Sen. Were, nimekuambia mara nyingi kuwa si lazima uzungumze kwa ufasaha. Kiswahili kitukuzwe kwa njia nyingine yote.

MONOPOLISTIC PRACTICES BY TELECOMMUNICATION  
COMPANY M/S SAFARICOM PLC

**Sen. Were:** Mr. Temporary Speaker, Sir, since I am reading the Statement, I will do it in English. Next time when I speak off the cuff, I will try to match up to you.

I rise pursuant to Standing Order No. 48 (1) to seek a Statement from the Standing Committee on Information and Technology regarding the abuse of dominance by the telecommunications company Safaricom PLC.

In the Statement, the Committee should-

(1) State what measures are in place to ensure there is a level playing field for players in the telecommunication industry considering that Safaricom reached over 60 percent market share through their voice, data and mobile money networks.

(2) Explain the measures taken by the Ministry of ICT, Innovation and Youth Affairs through the Communications Authority of Kenya (CAK) to declare Safaricom a dominant player in the industry, and to make the country's telecommunication sector more competitive.

(3) State measures, if any, to prevail upon Safaricom PLC to offer access of its transmission sites to its competitors in areas where the competitors have little or no coverage because of the dominant status that they have achieved.

(4) Determine if the Central Bank of Kenya (CBK), through the Ministry of National Treasury and Planning, can strengthen mobile money interoperability and foster financial inclusivity in the country by implementing agent and merchant interoperability.

Thank you, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Asante sana, Sen. Were.

**Sen. Faki:** Bw. Spika wa Muda---

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Subiri Sen. Faki. Kuna Hoja ya nidhamu kutoka kwa Sen. Wambua.

**Sen. Wambua:** Mr. Temporary Speaker, Sir, I hate to interrupt Sen. Faki. However, I would like to get a ruling from the Chair on the matter of Statements Hour.

Since we came to this House today, we have just been on Statements. Is it in order that we continue this way yet there is other business lined up for today? I am not sure how that business is going to be transacted.

We should demonstrate a willingness to stick to our rules and regulations on debate on the Floor of this House. I would want direction on this matter.

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Asante sana Sen. Wambua. Nafikiri kuwa Spika mwenyewe, Hon. Lusaka, aliarifu Jumba hili lakini nitarejelea jambo hilo.

Kwa sababu ya ule uamuzi wa korti, inamaanisha kuwa tuna muda mwingi hivi sasa kwa sababu zile Miswada zote 23 na zingine zaidi ya 10, inafaa kuletwa upya katika Seneti.

Hiyo inamaanisha kuwa, tuna muda mwingi. Ndiposa tumechukua huu muda kupea wale Maseneta walio na Taarifa na Kauli nafasi ili waweze kujieleza. Kwa hivyo, ni jambo la kukusudia. Natumaini tunaielewana.

Mheshimiwa Faki, endelea.

**Sen. Faki:** Ningependa kuchangia Hoja ya Nidhamu ya Sen. Wambua kwamba, kuna Taarifa za Maseneta za kibinafsi na kuna zingine za Kamati ambazo tunafaa kuzipea kipaumbele. Mwenyekiti wa Kamati hawezi kukaa mpaka saa hii ambapo tunajadili Taarifa za kibinafsi.

Mwenyekiti wa Kamati anaweza kuwa na Taarifa ya Kamati ambayo ni muhimu zaidi kuliko Taarifa ya kibinafsi. Wakati tunapanga ule wakati, tungezingatia jambo hilo kwa sababu zile Taarifa ambazo zinasomwa hapa, kwa mfano, nimekaa hapa kutoka saa nane unusu na niko na Ripoti ya Kamati na vilevile niko na Hoja ambayo nimepeana na mpaka hivi sasa, 5.30 p.m., sijapata fursa ya kuzungumzia Hoja hii.

Tukiendelea hivi, itakuwa inatuvunja moyo wengine wetu ambao ni Wenyekiti wa Kamati, kwa sababu tunafungwa hapa Seneti bila kutoa mchango wowote wa kisawa sawa.

Nikirudia Taarifa ya Sen. Were, ningependa kuunga mkono Taarifa hii. Imekuja wakati mwafaka kwa sababu tumeona kuwa Safaricom PLC inaendelea kutumia ueledi na ukubwa wake katika soko la mawasiliano kuwagandamiza wale ambao wanataka kufanya biashara hiyo na kutupa huduma duni, sisi watumizi wa huduma hiyo.

Bw. Spika wa Muda, ukiangalia baadhi ya bidhaa ambazo Safaricom wanauza, kwa mfano, wanauza *airtime* au muda wa maongezi na *data*.

Inapofika kiwango fulani, ile nafasi ama kasi ambayo inatajikana kutumika katika ile *data* umepewa inapungua. Hii ni kwa kusudi, kwa sababu wanajaribu kupunja wateja wao kuhusiana na bidhaa ambazo wanawapatia.

Bw. Spika wa Muda, kwa hivyo, nafasi hii ikipatikana, itakuwa ni wakati mzuri wa kuuliza maswali ya kiufundi ama ya kiteknolojia kuhusiana na hawa wakurugenzi wa Safaricom. Hiyo ni ili kuona kwamba mwananchi hapunjwi katika huduma wanazopata kutokana na mashirika haya.

Asante kwa kunipa fursa hiyo.

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Asante kwa huo mchango mzuri zaidi. Sasa hivi nampatia nafasi Seneta wa Kaunti ya Narok, Sen. Olekina. Umevalia vizuri sana kwa nguo asilia za Kimaasai.

**Sen. Olekina:** Bwana Spika wa Muda, shurkrani. Ningeomba nizungumze kwa lugha ya Kimombo.

I have listened to the Statement by my dear sister, Sen. Were, in terms of the dominance presumed by Safaricom. I am not so sure whether this is an issue that has not been canvassed in this House.

Mr. Temporary Speaker, Sir, earlier on, there was a Statement that was brought to this House regarding competition and the issue of M-Pesa. One of the issues that my sister is seeking to find is whether Safaricom can be declared a dominant corporation.

We have had different pieces of legislation. The first is the Competition Act, which is very clear. The objective of this Act was to ensure that there is increased efficiency in the production, distribution and supply of goods and services.

Mr. Temporary Speaker, Sir, we have to give credit where it is due and deserved. If you have two cellphones as most of us have, one being Airtel and the other Safaricom, in most parts of this country, because of the investment done by Safaricom, it will always have network.

Earlier on when I read the Statement by Sen. Were, it had suggested that Safaricom should be compelled to share their area, unless she changed that Statement.

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Hoja ya nidhamu tafadhali.

**Sen. Were:** Mr. Temporary Speaker, Sir, it is a point of information. I just want to inform the House and Sen. Olekina that being dominant is not illegal. I am not talking about the illegality of it. I am talking about the abuse of that dominance, in such a way that other operators cannot be innovative or competitive.

The market is not competitive any more. The other operators should be allowed to operate, by giving the dominant operator its right, but also allowing the others to operate, and allow innovation in the country. Otherwise, when we do not check this abuse, then we are killing the industry and innovations even from the rest of Kenyans.

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Nafikiri kama ulivyosema, hiyo ilikuwa Hoja ya kuarifu na sio ya Nidhamu.

**Sen. Olekina:** Mr. Temporary Speaker, Sir, let me just clarify this matter. The Competition Act of Kenya is quite clear. It says that the object of this Act is to enhance the welfare of the people of Kenya by promoting and protecting effective competition in markets and preventing unfair and misleading market conducts in Kenya, in order to protect consumers. That is the one I will pay attention to. The second one is to create an environment conducive for investments, both foreign and local.

Today, the European courts slapped *Amazon* with violating the anti-trust laws because they were using their market dominance to influence the prices of the commodities they sell and what can be sold to other individuals.

Mr. Temporary Speaker, Sir, I am not saying that I do not support this Statement by my sister. However, it is about time that we looked at all the anti-trust laws that we have in this country. This is so that we can do those two things. One is to protect the consumers and the second one is to allow competition and foreign direct investments into this country. It is not to create an environment where when you invest so much of your resources and technology, then you are seen to be creating an environment, which is not conducive for other businesses to operate.

Mr. Temporary Speaker, Sir, before I was interrupted, I was trying to give an example between two cellphone companies in this country. I have an Airtel and Safaricom line. In most cases, there is what I would like this Committee on Information, Communication and Technology to investigate.

Why is it that every time when you call someone who has an Airtel line, the line is always busy? You cannot come and fault me for investing so much money in making sure that, first, I have no drop calls and, secondly, my network is stable when you do not want to invest that money.

Mr. Temporary Speaker, Sir, it is quite clear that for you to succeed in this market, you must invest a lot. What I know is that Safaricom policy in terms of marketing is similar to the one of Coca-Cola, which is within arm's reach. Everywhere you go you see Safaricom.

We need to separate two things. One thing I like and I will support entirely, is the point that Sen. Were made asking a very pertinent question that we have asked before. It is the issue of separating the banking services from the telecommunication services. She has raised a pertinent matter that has got to be divorced from the issue of dominance and ensuring that your consumers are getting what you are selling to them.

This House should guide. The Committee on Information, Communication and Technology should look deeply into the legislation. It is either we amend the Competition Act, The Information Communication and Technology Act, and Central Bank of Kenya Act, so that we are clear.

Mr. Temporary Speaker, Sir, as we speak right now, innovation should not be punished. Worldwide, this country is renowned for introducing M-Pesa, which is a mobile money transfer services. There are people out in the rural areas, who right now, when somebody falls sick, they just use electronic money transfer.

We need to be careful on the kind of policies and rigid legislations that we introduce. I find that Safaricom has fully invested in this market. Any other person who wants to compete must also be ready to invest.

Mr. Temporary Speaker, Sir, I am also aware that there was a time that Safaricom share of the network was reduced. That was so that two companies; Airtel and Telkom, could merge and take up a little share of this country. However, you cannot force a consumer to go ahead and sign up with Airtel or Telkom when their preference is Safaricom.

This is a very interesting debate. It almost boils down to the issue of two-thirds gender. It is very difficult to make sure that we achieve it because you cannot force. So long as the system of election in this country is universal suffrage, there is no way you can force an individual to elect a person of the opposite gender as a leader if they do not choose to.

Mr. Temporary Speaker, Sir, in this case, when we are dealing with the issue of competition and dominance, we must be guided by the law. The Competition Act is clear. It says that it is there to protect individuals. One thing that concerns me is the point raised by Sen. Faki on the issue of the longevity of the bandwidths that are given.

If we look at those issues, I would be concerned about buying bundles worth Kshs100 only to use them for 30 seconds. I will also be concerned about the issue of drop calls. We all have equal chances of penetrating the market.

When you are born as a child, you have siblings but it is only you sitting in that seat. It is either the angels were in your favor or worked hard to be there. Let us not punish innovation but promote it and encourage other players in the market to catch up.

There will always be one winner and all others will follow. The motto is one will lead and others will follow.

As I conclude, it is important that the Committee on Information, Communication and Technology, which I believe is the one you will task to investigate this matter, divorces these two issues; the issue of the Central Bank, monetary policy *versus* the issue of competitiveness in the industry.

Let us create an environment that will encourage other players to come into this market so that we have diversity. Most importantly, ask yourself a simple question on why when you call somebody on Airtel, all calls are busy. The network is not stable.

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Asante Sana, Seneta Olekina. Ningependa kukusifu kwa mavazi yako ya kiasili. Hiyo inafaa kuwa utamaduni, wala siyo kuvaa suti za kizungu kama ambao bado tunaenzi Ukoloni.

Ni muhimu kwa Mabunge yote ya Afrika, Kenya ikiongoza, tujue tuna tamaduni na hulka zetu. Na Kwamba, mienendo ni muhimu kwa maendeleo. Ningependa kumpa fursa Mratibu wa walio Wengi, Sen. Kang'ata, Seneta wa Murang'a, aweze kuchangia.

**Sen. Kang'ata:** Mr. Temporary Speaker, Sir, Kenya must strive to achieve a perfect competitive economy or an atomistic competitive economy.

Madam Speaker—

**The Temporary Speaker** (Sen. (Dr.) Mwaura): umeniita?

**Sen. Kang'ata:** Mr. Temporary Speaker, Sir, allow me to apologize.

Kenya must strive to achieve what we call atomistic or perfect market competitive economy. Such kind of economy has certain features; number one, no participant ought to be a price fixer, each participant whether a buyer or a seller must be a price taker, which means no single entity should dictate market prices.

In Kenya, you have a situation where one single player dictates how much you are going to pay for data bundles, for calls and Short Message Service (SMS) because it controls almost 90 per cent of the market.

In such a kind of situation, I do not foresee any other entity growing. We are not going to create more jobs and innovation in that industry because of the dominance of one entity. There is what we call termination charges which an entity or company in telecommunication industry pays to the other companies for termination of its calls. Because of the dominance, these small telecommunication companies like Telkom and Airtel owe Safaricom billions of shillings. The effect is that the companies will forever owe billions of shillings to Safaricom and will never grow. This is not a good economic situation.

Mr. Temporary Speaker, Sir, we must foster---

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Mratibu wa walio Wengi, kwa sababu umeniita hilo jina, zungumza kwa dakika mbili pekee.

**Sen. Kang'ata:** Thank you, Mr. Temporary Speaker Sir. We must foster two things. One, we remove all barriers of entry and exit of this economy. Secondly, we must ensure we remove all barriers that have made these small companies not to rise up. Personally, Safaricom should be declared as a dominant abuser of this economy. I strongly believe it is oppressing those small entities.

I urge the Committee to take action provided for under Section 24 of the Competition Act and declare Safaricom an abuser of dominance in this economy. There is a Paper that was done by experts, which recommended Safaricom to break. The Paper was an advisory to the regulator; the Communication Authority of Kenya (CAK). It should be implemented to the letter so that we break the monopoly of Safaricom and allow the sector to be competitive if we want to move forward as a country.

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Asante Sana, Mratibu wa walio Wengi. Hujamaliza dakika zako mbili lakini umeniita *Madam Speaker* mara nyingi sana. Yule aliyefanya hayo alikuwa ni Sen. Wako.

Seneta wa Kitui, Sen. Wambua.

**Sen. Wambua:** Thank you, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Samahani, una dakika moja pekee kwa sababu ya muda.

**Sen. Wambua:** How many minutes do I have?

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Dakika moja tafadhali. Lazima tufanye Hoja ya nane.

**Sen. Wambua:** How can I speak in one minute? What will I say in one minute?

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Haya basi, dakika mbili.

**Sen. Wambua:** Thank you, Mr. Temporary Speaker, Sir. In support of the Statement by Sen. Were, I would like to say two things. One, there is a time after the disputed 2017 General Elections that a section of this country which supported a particular political leaning was called upon not to consume Safaricom services.

For reasons best known to me, I opposed that call because I am a firm believer that you cannot criminalize innovation. Secondly, there is a serious matter on whether Safaricom is still entirely a communication company or a banking institution. This distinction should be made as soon as it is practically possible.

I would suggest that Safaricom is split into two. Safaricom the communication company, regulated by the Communication Authority of Kenya (CAK) and the M-Pesa division regulated by the Central Bank of Kenya. That way, we will infuse sanity in this country and attract more players in the industry. I hear many people say - I have reasons to believe that it is true - that Safaricom has become more powerful than the regulator. It is both financially and logistically too strong to CAK—

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Asante Sana, Seneta wa Kitui, unazungumza kwa ufasaha lakini muda hauturuhusu. Sasa hivi, nitampa fursa Sen. Kinyua kutoka Laikipia. Una dakika mbili.

**Sen. Kinyua:** Asante sana, Bw. Spika wa Muda, kwa kunipa fursa hii kuchangia kwa Taarifa ya Sen. Were.

Nataka kuchangia kuhusu utawala wa Safaricom ambao unaonekana umekuwa mkubwa katika uchumi wetu wa nchi. Kwanza, tujiulize ni kwa nini wanaongoza katika hiyo idara. Hii ni kwa sababu, huduma zao ni za kufaa na katika ule ushindani ulioko, wamegeza hela nyingi katika biashara yao ukilinganisha na wengine katika sekta hiyo.

Pengine wale wanaochelewa kidogo hujipata taabani na hawawezi kushindana na kampuni hiyo.

Jambo la kuvunja moyo ni kwamba, huwezi kujua kama maajenti wa Safaricom ni watu wanaohusika sana na mambo ya pesa. Sijui niseme kwamba wanafanya vizuri ama vibaya kwa sababu ukitembea sehemu zote za nchi, utapata maajenti wa Mpesa wako kila mahali. Uzuri ni kuwa, mtu akiwa mgonjwa anaweza kupata pesa kwa haraka. Pia wameleta mambo mengine mapya. Kuna mikopo kutumia simu kama vile *Fuliza*.

Jambo la muhimu ni kuwaambia kuwa kama wanashughulika na mambo ya pesa--

*(Sen. Kinyua's microphone went off)*

**The Temporary Speaker** (Sen. Mwaura): Muda wako umekwisha. Nitampa fursa Naibu Mwenyekiti ambaye ni Sen. Halake aweze kumalizia.

**Sen. Halake:** Mr. Temporary Speaker, Sir, I have to tread carefully because I am the Vice Chairperson of the Committee on Information, Communication and Technology.

As I support Sen. Were in trying to understand the competition within the telecommunication sector, I would also like to urge Kenyans not to punish companies that have invested heavily in innovation and in providing services to the consumers of this country. I do not believe it is the consumers or the customers that are complaining about the competition.

In terms of inter-operability or business functions, be it data, voice calls or money transfer, big investments by Safaricom have gone into that. This is not the first time this question of dominance has come to us because we have dealt with it before not as a Committee but as Kenyans. Safaricom is one company that has a sustainability strategy.

One reason I am impressed with is that, they have a sustainability strategy where they look at every action they take and the reaction it has on the consumer and the market. For us as legislators to seek to influence the market forces, we will be doing a disservice to this country.

If we may remember, Safaricom and the other companies started at the same time. I am not holding any brief for them. They have really invested in this nation. Personally, I was not a Safaricom client because I used to be on Kencell when it started. However, because---

*(Sen. Halake's microphone went off)*

**The Temporary Speaker** (Sen. Mwaura): Muda wako umekwisha. Kwa kuwa utakuwa na muda mwingi wa kuchangia, acha tuahirishe mjadala huo mpaka wakati ambapo Taarifa hiyo italetwa kwa Kamati yako.

Kwa sababu muda umeyoyoma, hatutaweza kuangalia Ripoti za Kamati tofauti tofauti. Sen. Faki alikuwa amesema kuwa Ripoti za Wenyeviti huchukua muda mwingi.

Kwa kuwa tumesalia na kama robo saa, ningependa kumwita Kiongozi wa Wengi katika Seneti ama mwakilishi ili tushughulikie Hoja ya Nane.

**MOTION**

## ALTERATION OF THE SENATE CALENDAR

**Sen. Kang'ata:** Mr. Temporary Speaker Sir, I rise to move the following Motion.-

THAT, notwithstanding the Resolutions of the Senate made on 27<sup>th</sup> February, 2020 (approval of the Senate Calendar), on 15<sup>th</sup> September, 2020 and on 8<sup>th</sup> October, 2020, (alteration of the Senate Calendar); pursuant to Standing Orders 29(4) and 31(3), the Senate resolves to further alter its Calendar (Regular Sessions) for the Fourth Session, 2020, in respect of Part V, to hold one Sitting on Tuesdays, beginning on Tuesday, 10<sup>th</sup> November, 2020, until Tuesday, 1<sup>st</sup> December, 2020, and that the Senate Calendar (Regular Sessions) for the Fourth Session, 2020, be altered accordingly.

Mr. Temporary Speaker, Sir, during the House Business Committee meeting that was held today, it was proposed that we alter the Senate's calendar, reason being that we are experiencing a spike of COVID-19 cases, in the entire Republic and also in the Senate.

I urge Members of this House to pay their respects and tribute to some of our colleagues, whose names I will not disclose, who have passed on because of this pandemic. We must take into account that those were our colleagues, we loved them---

*(An hon. Senator spoke off record)*

Yes, of course, I am referring to our working colleagues here, in the sense that they work to support this House. It is only a reasonable House and a good employer that must take and respect our workers who have suffered because of this pandemic.

Mr. Temporary Speaker, Sir, when you look at what is happening in the entire country, so many persons are currently dying because of this pandemic. This pandemic started in March 2020, it peaked in the middle of July, then it started going down. We are now experiencing a second wave, which is deadlier and is causing more suffering to our people.

It is true that we must strive to work and we ought to be in this House coming up with ideas on how to help Kenyans, but on the other hand, we must also bring to the people's attention that this pandemic is so grave, and we must also take precaution measures.

It is on that account that the House Business Committee recommended that we take some break, so that we only come on Tuesdays, but we shall endeavor to ensure that each and every business is transacted on Tuesday.

I want to assure Kenyans and also hon. Senators that if for any reason you agree to my Motion, please, no business will be impacted negatively. We will come up with measures to ensure that we come and transact all business appearing on the Order Paper.

That may include shortening debating period, and devising various mechanisms so that we do not have a backlog.

Mr. Temporary Speaker, Sir, this House must also be proud of the good work that it has done, reason being, for the last seven months or so, we have been able to process a record 10 Bills. We have also processed several Motions, and very contentious Motions and Bills, including the Motion on the division of revenue sharing. Therefore, we must be proud of the work that we have done.

Notwithstanding that, we must also understand that we are living in very precarious moments where COVID-19 is causing some of our staff to be affected. I also know of several Senators who have had this misfortune, and, therefore, on such an account, we may need to slow down a little bit. Various Committees will continue transacting business. About 85 per cent of our work; processing of the Motions and legislative proposals, occurs at Committee level.

I want to reassure the Republic of Kenya that the work of the Senate will continue when we pass this Motion. We shall be meeting virtually, through the Committees. I am proud of the new Chairpersons who have brought a new mojo to the entire Senate Committee structure. I urge our colleagues to support this Motion because it does not mean that we are slowing down. We are just taking precaution.

I want to bring to your attention the fact that the Committees are now transacting more business as opposed to the time when we used to transact business physically. We will use those two days productively. I beg to move and ask Sen. Were to second.

**Sen. Were:** Mr. Temporary Speaker, Sir, I am not sure if I should second the Motion because I have an amendment to that Motion. Can I second and disagree or can I second and amend?

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Sidhani kama unaweza kuunga mkono na kupinga kwa wakati mmoja. Kwa hivyo, tupate mtu mwingine aweze kuiunga.

**Sen. Kang'ata:** Yes, Mr. Temporary Speaker, Sir, Sen. Omogeni can second.

**Sen. Omogeni:** Mr. Temporary Speaker, Sir, I rise to support the Motion as presented to the House by the Senate Majority Whip.

When this virus hit the world, we were told that there is the first wave and the second wave. We were also told that the second wave would be more deadly than the first wave. Various institutions have taken a number of steps to respond to this pandemic. As I speak, Nyamira County offices have been closed for 14 days. We are proposing to have one day to transact business but Nyamira County has ceased provision of all services for 14 days because of Covid-19.

As we speak, the Chinese Government has closed its borders and one cannot enter China even if they have a valid visa. That is their way of dealing with Covid-19. Australia is not allowing citizens from any other country apart from New Zealand to enter its territory. Covid-19 is causing a lot of risk to all of us.

The World Health Organisation gave the world some hope that there could be some vaccine at the end of the year. Therefore, a decision by the leadership to scale down on the activities in this House is for the safety of all of us. I have talked to a number of my colleagues---

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

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Sen. Cherargei.

### QUORUM

**Sen. Cherargei:** Thank you, Mr. Temporary Speaker, Sir. Standing Order No. 35 states that;-

‘A quorum of the Senate or of a Committee of the Whole shall be fifteen Senators.’

Looking across, we barely make 10 Senators. The leadership of the House is mischievously bringing in this Motion. I want you to order the Serjeant-At-Arms and the clerks to confirm if we are, indeed, 15 Senators in this House. We can only proceed if Sen. Kang’ata can prove that we do have ghost Senators. They are violating Standing Order No. 35.

*(Loud Consultations)*

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Tafadhali Maseneta, tuwe na nidhamu katika Bunge la Seneti. Endelea Sen. Olekina.

**Sen. Olekina:** Mr. Temporary Speaker, Sir, following the intervention by Sen. Cherargei, I request you order that the Quorum Bell be rung. I had seen that many Senators had gone to take tea and a small break. This will enable us to finalize this matter.

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Muda umeyoyoma sana. Naagiza kengele ipigwe kwa dakika moja.

*(The Quorum Bell was rung)*

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Waheshimiwa---

*(Loud consultations)*

Tafadhali tuwe na nidhamu kwenye Bunge la Seneti.

### ADJOURNMENT

**The Temporary Speaker** (Sen. (Dr.) Mwaura): Waheshimiwa Maseneta, sasa hivi ni saa kumi na mbili unusu na hatuna akidi – yaani *quorum* - ya Kikao hiki cha Bunge la Seneti.

Tuko na Maseneta kumi na moja. Kwa hivyo, ninaahirisha kikao hiki cha Seneti mpaka kesho, Jumatano, tarehe kumi na moja, Novemba, 2020, saa nane unusu.

The Senate rose at 6:32 p.m.