

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 11th November, 2020

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

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

PRAYER

PETITION

The Speaker (Hon. Lusaka): We start with the Petition by the Chair, Standing Committee on Labour and Social Welfare, Sen. Sakaja.

REPORT ON PETITION: ALLEGED TRANSFER/DUMPING OF STREET CHILDREN BY NAKURU COUNTY GOVERNMENT

Sen. Sakaja: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today, Wednesday 11th November, 2020-

Report of the Standing Committee on Labour and Social Welfare on a Petition to the Senate concerning the rounding up, dentition, transfer and dumping of street children by the Nakuru County Government. As is tradition, kindly allow me to give salient features of this Petition because the report is not discussed.

Mr. Speaker, Sir, this Petition was presented to the Senate on 27th February, 2019 by the newly wed, Sen. Susan Kihika, Senator for Nakuru County.

The Speaker further directed that the Petition be dealt with by the Standing Committee on Labour and Social Welfare. The Committee acknowledges that the Petition is long overdue. However, we note that it raises delicate and pertinent matters regarding the welfare of children, in particular, that of street children.

Mr. Speaker, Sir, we held eight sittings including with the petitioner, the Ministry of Labour and Social Protection, (The State Department of Social Protection), representatives of the street families' Rehabilitation Trust Fund and we visited the street children twice. At that point, the Trust Fund had no board and they are in the process of developing the national policy on street families. They have just been nominated to the board. Through our discussion with them, they gave us a draft policy and we will still engage with them once the draft is finalized.

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Mr. Speaker, Sir, we met virtually with the Gov. Lee Kinyanjui, the Governor of Nakuru County, who denied that such an incident occurred despite the fact being on the face of the matter.

We made arrangements for a site visit to Nakuru County. We had planned to meet the county commissioner, the county assembly, the Committee in charge of children welfare, the county government and the petitioners.

During the Site visit, the County Commissioner informed me that he was new in office and had no information. This is more than a year after. The county assembly and the Governor did not meet the Committee. The governor did not give an apology and we saw him attending a funeral on television.

Mr. Speaker, Sir, we visited JOMEC Rehabilitation Centre where the rescued children had been housed and met petitioners, some of the victims and other stakeholders.

Mr. Speaker Sir, following the Committee's engagement with the stakeholders, the petitioner's prays that the Senate investigates the matters and the following observations were made-

(1)The policy approach taken by Nakuru County Government in addressing the plight of street children and families through rounding them up and dumping them in the forest seems to be one that is applied by other counties;

Mr. Speaker, Sir, I remember at some point, Sen. Wetangula brought a similar matter of street children being rounded up. They were taken to Bungoma from Eldoret because their noses looked like that of Hon. Lusaka and I.

(2) On the night of 6th February, 2019, 41 children were forcefully removed from the streets of Nakuru. They were put in the cell and later on, with the vehicle numbers that we have, taken and dumped in Chemasusu Forest in groups of six and five of them have never been found.

(3) Despite the incident of unlawful detention and dumping of the children being reported on Occurrence Book (OB) number, 69/7/2/2019 and subsequent follow ups by the Director of Criminal Investigation (DCI) officers on the issue, it remains inconclusive;

(4) The County Assembly of Nakuru, upon invitation by the Committee, refused to appear.

(5) The County Government of Nakuru, also declined to appear before the Committee on Friday, 2nd October, 2020, despite the fact that this was earlier agreed upon with the Committee. They did not give any reason for non-attendance nor sent a representative of the county government despite a formal invitation by the Committee.

Mr. Speaker Sir, the petitioner's prayer is that the Senate investigates the matter and make appropriate recommendations with a view to ensure that the rights and welfare of the children are upheld. Also, that appropriate measures are taken, including necessary policy and legislative interventions to ensure that street children across the country are protected and treated with dignity.

The Committee made the following observations -

(a)That, both levels of Government have adopted a correctional, reactive, repressive and inhumane institutional approach of addressing the plight of street children and as such, view street children as delinquents and a threat to public order.

This is evident by the obsession with forced removal of the children - which happens all across the country - from the streets, forced detention, in addition, to other extreme measures like dumping children in forest;

(b) That, there are minimal deliberate efforts by both the county and national Governments in addressing the plight of the street children from a humanitarian and rights based approach with focus on rehabilitation and protection of these children alongside prevention of the root causes of their presence on the streets;

(c) That, it is alleged that the reason for the rounding up of street children was for Nakuru to obtain City status;

We know that process is ongoing.

(d) That, the Street Families Rehabilitation Trust Fund, established in March 2003 and whose sole aim was to spearhead national Government response to restore dignity to street families and eradicate the challenge of street children and families only became operational 16 years later in 2019;

(e) That, there exists a national framework for child protection in Kenya that dates back to 2002, that give life to sets of laws and policies that protect children from violence, exploitation including, but not limited, to the Children's Act 2001;

(f) THAT, there exists no policy framework to address issues pertaining to children in difficult circumstances and more specifically the street children and families, which is a growing phenomenon in several towns and cities. A scenario that is likely to be exacerbated post Covid-19 pandemic.

Mr. Speaker, Sir, having reviewed the submissions, meetings and all the material from petitioners and other stakeholders, on the prayers, we recommend the following-

(1) The DCI takes up the matter reported under OB No. 69/7/2/2019 for investigation, conclusively finalize the case and report to the Senate within two months;

(2) The DCI further investigates alleged bribery of the street children.

We have photos and documentary evidence that was presented to us and potential witnesses by county officials whose photos we have presented in the report.

(3) That the Senate suspends the process of conferring Nakuru City Status, until the county government demonstrates plans and efforts it has taken in addressing the plight of street families and making sure it has provisions for children in need of care and protection;

I wish Sen. Kajwang' or any Member of the Committee on Devolution and Intergovernmental Relations were here.

Until the county government demonstrates to the Committee on Devolution and the Intergovernmental Relations, the efforts it has made through budget allocation, the plans to address the plight of street families and making sure that there is provision for rehabilitation of children in need of care, the Senate shall not confer city status on Nakuru County;

(4) The officials mentioned adversely in this report as having participated in the violations of the rights of these children including subsequent intimidation as reported, be investigated and held personally culpable. We have their names, numbers and photos.

Mr. Speaker, Sir, there are six children just like mine and yours, who since that day cannot be traced. They were probably eaten by animals in the forest. Other children

said that it is not the first time it happened. The previous County Government of Nakuru did that to them too.

These children have the same rights as our children. Therefore, this matter cannot be taken lightly by whoever is listening.

Mr. Speaker Sir, on recommendations that appropriate measures are taken in terms of policy and legislative interventions, to ensure that street children across the country are protected, treated with dignity, and accorded the opportunities including but not limited to social protection, the Committee recommends that-

(1)The National Council for Children's Services follow up on the issue of the dumping of street children in Chemasusu Forest and present their own independent report to the Committee in 30 days from the day of tabling of the report;

(2)The County Government of Nakuru ensures that it complies with Sections 40 and 42 of the Children Act by;

(a)Providing for children who are in need of care and protection;

(b)Provision for accommodation and maintenance of children;

(c)Furtherance in the best interest of children in their care;

(d)Provision of financial assistance towards the expenses of maintenance, education or training of children; and

(e)The accommodation of children in voluntary homes, including homes set up by voluntary children's institutions.

(3)The National Council for Children's Services should report to the Senate within two months on the compliance level of Nakuru County. That report shall be shared with the Committee on Devolution and Intergovernmental Relations as well as it addresses the matter of conferment of city status.

(4)The Ministry of Labour and Social Protection working in collaboration with the Street Families Rehabilitation Trust Fund develop and finalise this policy for adoption by Parliament and present it within the next three months;

Mr. Speaker, Sir, in addition, there is another perspective that I will not go into that has been listed in the report from (a) to (h) which goes to the specifics.

We want personal culpability. We first met these children long ago when we were dealing with the Solai Dam incident. We also met them again a few months ago. They are traumatized and need to be compensated. Somebody must take responsibility. Children cannot be put in vehicles with county number plates and the governor says he is not aware. The matter has been in the news but he says that he has not heard the issues nor seen the HANSARD. That irresponsibility cannot be supported by this Senate.

County governors and all public officials must know that the strength of their counties is not on brick and mortar, conferment of city status or a name; it is what they do for the most vulnerable in the county; the least in the society who cannot do anything for themselves.

Mr. Speaker, Sir, we have focused too much on things that are extra and additional and forgotten to focus on basic humanity. That is what this country is dying and crying for.

When we went there, Sen. Shiyonga and others shed tears for these children, whom we now know personally.

In conclusion, allow me to commend hon. John Mututho, former Member of Parliament (MP) for Naivasha. He has housed those children in those numbers, rehabilitated them and taken them through counselling at no cost. The County Government of Nakuru must compensate him.

(Applause)

I know he did not do it to be paid, for politics or to be seen. God will remember what he has done for those children. His own children will never go hungry.

(Sen. Sakaja laid the document on the Table)

Sen. Khaniri: Mr. Speaker, Sir, Sen. Sakaja presented the report under Standing Order No.232(2) which states clearly that the report shall be laid and no debate is permitted. However, the same Standing Orders gives you the powers to allow some observations and comments. I know it has not been the practice but I plead with you that on this particular one, you allow us 10 minutes to make observations.

The Speaker (Hon. Lusaka): Go ahead.

Sen. Khaniri: Thank you, Mr. Speaker, Sir.

I begin by thanking Sen. Sakaja. This is the second Petition he is presenting this week as the Chairman of the Standing Committee on Labour and Social Welfare.

The Petition he presented yesterday was thorough. On this particular one, they have demonstrated that they did a thorough job investigating the matter. I am sure that the petitioners will be happy that the Petition has been done justice.

We thank Sen. Sakaja and the Standing Committee on Labour and Social Welfare for the good job.

Mr. Speaker, Sir, this is a very sad story. Children in this country and everywhere are the same before the law and before God. Even street children must enjoy the same rights that any other children enjoy in this Republic.

What was done by the County Government of Nakuru is to say the least, absurd. That they could go and dump street children so that they could look good to make Nakuru get the status of a city, is criminal and a sin before God and they should never be forgiven.

I want to fully agree with the recommendations that have been made by the Committee that the culprits must bear personal responsibility. If we know the names as Sen. Sakaja has stated, the culprits must be brought to book and face the law as it is. It is a very sad story and we agree fully with the recommendation of the Committee that the Senate suspends making Nakuru a city until they demonstrate that indeed they are ready without doing the camouflages that they are doing.

We support the Committee and I want to urge that the Senate adopts the recommendations of this Committee.

Thank you, Mr. Speaker, Sir.

Sen. Wetangula: Thank you, Mr. Speaker, Sir. Listening to the Report by Sen. Sakaja, one cannot help shedding a tear. In the last Parliament, I brought here a question

where the Governor and the county government of Uasin Gishu rounded up children whom in their opinion looked like Luhyas and went and dumped them at a leprosy center in Busia County. Towards elections, Uasin Gishu County again rounded up children who to them looked like Luhyas and went and dumped them in Kitale.

Then, we have this sad story from Nakuru where the County Government of Nakuru rounded up children. This time I think ethnicity was not an issue because they were trying to play a stupid game of creating a veneer of good looking for them to look and attract a recommendation to become a city. These children were dumped in a forest in Baringo; a forest infested with wildlife. Some of the children have not been found to date. That is criminal nature of the highest count.

Mr. Speaker, Sir, no wonder yesterday, the governors had the audacity to say in Naivasha they want to be *en masse*, excused from criminal liability of any nature. That was their recommendation yesterday as a condition for supporting BBI; that no governor should be held criminally responsible for anything whatsoever, however. This is what they recommended and circulated to all Kenyans. I am sure Senators, you have read that.

These are the same people who are doing these criminal things. These are the kind of people who should be cited for crimes against humanity. You judge a society on how it treats its children, the elderly and persons that have incapacities of whatever nature.

I want to thank the Committee for the in-depth Report that they have tabled here. That is why I keep on crying on this Floor that the Speaker has to bring back the Implementation Committee of this House that can routinely follow up these kinds of transgressions and the hold State officers to account so that when we make recommendations, they are not rhetoric or in vain. We should have a committee that has to report back from time to time.

The leadership of the County of Nakuru must be held criminally liable for the missing children. Seven of them cannot be found and the presumption is that they were mauled and killed by wild animals in Chemusus Forest in Baringo.

I want to support these recommendations fully. People must be prosecuted. I want to urge the House to also look into the case of Uasin Gishu and the children that were dumped at a leprosy center in Busia and in Trans Nzoia. We cannot allow this to happen. We cannot say in our Constitution that we are a unitary State and we are busy discriminating against people on the basis of their ethnicity.

Nairobi belongs to everybody. Every city belongs to everybody. Today, Sen. Sakaja can decide to relocate to Mandera and go and live there and become part of Mandera community. Sen. (Eng.) Mahamud here can choose to come and live in my village in Bungoma and become part of our community. If he has not achieved his four wives under the Quran, he can also pick a local one to add to his numbers and become part of us.

Mr. Speaker, Sir, I want to thank the Committee and thank you for exercising your discretion to allow Members to deal with this issue. This is the kind of Report that if we had changed our Standing Orders, it would have attracted a Motion for Members to debate this kind of callous, reckless and inhumane criminal behavior by people who call themselves leaders. These are people that Robert Mugabe once said that they are worse than pigs. These are the kind of people we do not want in our society.

Thank you, Mr. Speaker, Sir,

Sen. Murkomen: Mr. Speaker, Sir, first of all, I want to thank Sen. Sakaja, the Chairperson of the Committee for doing a fantastic job.

Without any fear of contradiction, I want to say that Sen. Sakaja is one of the Chairs in this house who has led with distinction. Every time a responsibility is given to him, he has delivered 100 per cent.

For avoidance of doubt, I have seen some opinion polls around rating Senators in this House. If I was given a chance to rate my colleagues, I would rate Sen. Sakaja highly for his performance in this House.

I have seen these recommendations and I do not want to spend a lot of time because we spent a lot of time when the Petition was brought here. What I want to appreciate is that the recommendations are solid. Many of these recommendations depend on other people performing their work. That is, the DCI taking responsibility to investigate thoroughly and present a report to the DPP for prosecution.

The other recommendation depends on the culprit, which is the County Government of Nakuru, who are dumping the kids because of a status they want to achieve of a city of Nakuru; which now becomes the moral hazard for harassing and punishing innocent children.

It is a paradox because all cities in the world, including New York City, Chicago, Nairobi and Johannesburg have street children. It is for that reason that there are certain responsibilities required of a county government to deal with street children. It is the city status that attracts street children. Otherwise, it would never be a street if it was a village.

Mr. Speaker, Sir, little children are being punished in pursuit of mortar and brick and status that should be achieved by helping the weak and the poor. Therefore, I want to take recommendation number three seriously. The county government attached a lot of importance to accreditation to the status of a city. I want us to hold the approval until this issue is sorted out. It is the very issue that initiated the punishment of these Children. If we do so, I am sure the county government will respond to the issue of the children within a week since they want the city status.

I am glad I sit in the Committee on Devolution and Intergovernmental Relations chaired by Sen. M. Kajwang'. I will personally ensure that this discussion takes place in the Committee, where Sen. Cherargei also sits. When the Report comes for debate in this House - because this is a recommendation of our Committee - the Senate Business Committee should hold the Report until we achieve the implementation of this section before it is laid in this House.

If there are Sections that the Constitution gives us teeth to bite, we take advantage of such a recommendation to bite hard until the county government of Nakuru responds to the children dumped in Chemasus Forest.

The Speaker (Hon. Lusaka): Sen. (Dr.) Musuruve, keep it short. We have limited time on the matter.

Sen. (Dr.) Musuruve: Thank you, Mr. Speaker, Sir, for giving me time to speak. Sen. Sakaja, has brought an important Petition on the Floor of this House. I congratulate him for being concerned about the vulnerable street children. When it comes to the issue of children, Kenya is a signatory to the Convention on the rights of children. This was

effected in the United Kingdom in 1998. Now that Kenya is part of the signatory, it is bound by international laws.

If we are flouting international laws, then there are repercussions. The county government has a mandate of ensuring that it has a biodata of the vulnerable, including street families in their county and see how to integrate them into the society.

When children become misfits in society, then you will have them joining wrong groups and mugging the rest of the people in the society. What the county government did is wrong, unacceptable and we should know that children have rights. These rights are a subset of human rights and have to be protected. Children need protection and mentorship and it is not their fault that they live in the streets since they never asked for it. We have to emphasize care of those children and see how they can be rehabilitated to be part of the society.

I support what Sen. Sakaja has said, that the County Government of Nakuru, should not be conferred city status until it is sensitive about street children.

(Loud consultations)

The Speaker (Hon. Lusaka): Let us consult in low tones.

Sen. (Dr.) Musuruve: Mr. Speaker, Sir, I support Sen. Sakaja that, we should all be sensitive on issues of children. There are no two ways about it.

(Loud consultations)

The Speaker (Hon. Lusaka): Hon. Senators, let us consult in low tones.

Sen. (Dr.) Musuruve: Mr. Speaker, Sir, the county government must play its role in ensuring children's rights are observed and that they access education. This is a constitutional right because when you look at Article 53 of the Constitution, the rights of children are indicated. When you talk of children, it is all the children regardless of whether they are street children. Children must be respected.

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

Sen. Farhiya: Thank you, Mr. Speaker, Sir, for giving me this opportunity. First, those children's plight is the fault of the society. If we had taken care of our social fabric, those children would never have been in that situation. We have lost the social fabric as a country. Therefore, the county government and the officials who carried out the uncouth act should be ashamed, because they have no sympathy for children.

Sen. Sakaja said that both the County Assembly and the governor refused to appear before the Committee. What is our role? We oversight the counties. If a governor can decide when to appear before a Committee or not, it is something we should not accept. This House needs to do something about that.

The other day we were talking about *utu*. I seek your permission to mix the language. Where is the sense of kindness from the people who carried out the act? Do you not have any relatives? The county government should be compelled to provide shelter for the children. This is the only way the children will be out of the streets. I agree

with my colleagues that conferment of city status to Nakuru Town be withheld until this matter is concluded.

Mr. Speaker, Sir, when you think about acquiring city status over the life of human beings, then you are an animal who does not deserve to be part of society. We should get rid of you as quickly as possible.

The Speaker (Hon. Lusaka): Sen. Olekina, proceed. Our time is up on that matter.

Sen. Olekina: Mr. Speaker, Sir, with your permission, I will donate two of my minutes. I will take only two minutes. Let me begin by stating clearly that I---

The Speaker (Hon. Lusaka): Pardon me, Sen. Olekina; I did not get what you said.

Sen. Olekina: Mr. Speaker, Sir, if the time is up, with your permission, I can donate a minute to Sen. Mutula Kilonzo Jnr., and a minute to Sen. Dullo.

The Speaker (Hon. Lusaka): Since this is your birthday, contribute. I will give them their own time.

Sen. Olekina: Thank you, Mr. Speaker, Sir. You are very kind. I completely agree with the recommendation by Sen. Sakaja. I visited the street children when we went to visit them at the Solai site. Let me begin by commending the work of the former Member of Parliament of Nakuru East, Hon. Mututho, for the good work he has done.

I am looking at Section 7 of the Urban Areas and Cities Act, 2011, following up on the recommendation given by the Committee led by Sen. Sakaja. It clearly says that-

“The President may, on the resolution of the Senate, confer the status of a city on a municipality that meets the criteria set out in section 5, by grant of a charter in the prescribed form.”

Section 5 (1) of the Act stipulates the following-

(e) Has the capacity to effectively and efficiently deliver essential services to its residents as provided in the First Schedule;

(f) has institutionalized active participation by its residents in the management of its affairs;

(g) has infrastructural facilities, including but not limited to roads, street lighting, markets and fire stations, and an adequate capacity for disaster management; and---“

Mr. Speaker, Sir, when you read the given conditions for conferment to city status, Nakuru municipality does not meet those conditions.

If it did, then they would have provided adequate facilities for all its residents. It would have also involved even the street children in the management of Nakuru County. That is one issue.

I like the fact that slowly by slowly, the Government is beginning to feel the power of this House and the country is beginning to feel the power of this Senate. When we amended the law, we ensured that the role of the Senate is clear.

Let me be the first one to join Sen. Sakaja and his team by saying that I will not vote to allow a county that does not respect its citizens to be conferred city status. Sen. Sakaja has clearly told us, and I concur with him, that being conferred city status is not a matter of brick and mortar.

A month ago, there was a deal signed between the national Government and the County Government of Nakuru where there will be a lot of infrastructure development. A market and a bypass were to be constructed. If that is what that county government perceives as being the only important thing instead of its citizens, then they will not get my vote for them to be conferred a city status. They can have all those buildings which will end up being white elephants because the people will not respect that.

Mr. Speaker, Sir, I want to finalise by saying that I appreciate the work of Sen. Sakaja and his team. That makes me feel good. Today being a very special day for me, I feel great that at least we are talking and caring about people who are less fortunate.

I support the sentiments.

The Speaker (Hon. Lusaka): What is it Sen. Sakaja? Remember this was my discretion and you were not supposed to discuss it.

Sen. Sakaja: Mr. Speaker, Sir, this one is off a bit. Yesterday, you gave Sen. Olekina permission to wear his cultural outfit that represents his county. Happy birthday my brother, Sen. Olekina!

This morning I asked Nairobianians what I should wear and the suggestions I am seeing on *Facebook* are scary. I ask that you give us opportunity to present our county attire and you approve so that once a month we can come in it. What Nairobianians are asking is interesting.

The Speaker (Hon. Lusaka): Let us listen to Sen. Mutula Kilonzo Jnr. before I close the debate.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I want to be clear that I will not ask for permission to wear reeds and sisal things here because it is going to be chaos and pandemonium.

This is a very sad story. It is sad that we got to know about this story when we were investigating the Solai Dam Tragedy. There is a county in this country that transported children and left them in a forest at night and the governor is still in office because they have not been impeached. I cannot imagine something that is a worse violation to the rights of those children than dumping them in a forest and leaving them to die.

The right to human dignity under Article 28 of the Constitution is a fundamental right. The rights of children under Article 53 are also fundamental rights. In fact, Sen. Sakaja and his team are extremely polite. This is not a matter for investigation. It is a matter of violation. If the Governor of Nakuru cannot apologise for the acts and omissions of his officers in order to get a conferment of a city status, that governor is incompetent! We must say so like we did in the case of Solai Dam Tragedy.

We listened to the narration of children. It used to be said that in one of the tribes in this country, in the olden days when they wanted to bury their dead, they used to take them to the forest and leave them to be eaten by hyenas. I am sure Senators have heard of that. It is very sad. Do you have to evacuate children so that you clean up your city and make it look good? That is unlike Gov. (Prof.) Anyang' Nyong'o who has made sure that the city is clean by physically cleaning it.

Whoever investigates this matter must find something that is near attempted murder or murder because that person wanted those children to be eaten by hyenas.

Seven of them were eaten because they have never been found. What is greater violation of International Law and rights of people than this, yet that person is still in office? I pity the people of Nakuru to have a government that can treat children like that. It is unfortunate.

We thank the Committee but hope the Government will take action to ensure that when those children grow up--- Hon. Mututho took some of the children as his own and gave them clothes. The Government ought to find a way of making sure that those children do not live with the memory that somebody wanted them eaten by hyenas. It is so sad.

I hope this is not one of the recommendations that will be made. The Senate should have spoken much more. As a Senate and as a family that respects counties, Sen. Sakaja, it will be nice to ask us to donate clothes and food, so that other than making legal recommendations, we can go out there and make sure that those children feel as if they are Kenyans by showing them love. Even if all these people are charged in Nakuru, the most important thing is that those children need to be shown love.

I thank you.

The Speaker (Hon. Lusaka): I am told Sen. Wako is trying to catch my attention.

Sen. Wako: Thank you, Mr. Speaker, Sir, for giving me this opportunity. The issue of children's rights is an issue that I have been engaging in for quite some time. Before I go further, I want to congratulate the Committee on Labour and Social Welfare ably chaired by my grandson for the excellent report on this particular matter. He is Sen. Wetangula's nephew but he is my grandson. I support all the recommendations proposed.

I would like it escalated to the national level because it is like we are concerned with the children of Nakuru. We should bear in mind that this is a problem that happens in the whole of Kenya. Sen. Wetangula mentioned about what happened in Uasin Gishu. Since those children looked like Bukusus, they were taken to Alupe in Busia which is in my county while others were taken to a forest in Kitale. That was terrible! However, this is a problem that faces the entire country.

Children have at one time not been taken care of under the laws worldwide. When I was a special rapporteur of the UN Commission, I undertook a number of trips to Latin America. My mandate was to investigate the many deaths that were occurring in those countries.

In particular, I remember one country where almost 200 children were being killed every night. The army would go round at night, round them up and take them deep into the forest and shoot them. That is why we have the UN Convention on the Rights of Children.

I assisted in drafting the African Charter on the Rights and Welfare of Children. That is why the children's rights are specifically recognised under Article 53 of our Constitution.

If any nation does not handle its children properly, then that nation is not civilized and has no future. Therefore, it behooves us to look after the rights of children, and not just the county governments, but also the national Government and people should do so. On this, I commend John Mututho, and the people who are philanthropic and have feelings for children. They should take action in their respective ways to look after

children, even if it means to look after one or two. Imagine if every Senator was looking after five children. That would mean that about 300 children are looked after in this country.

My plea is that the country should take the issue of the rights of children very seriously. The things that have occurred, investigated and whose recommendations I support should be condemned. However, we should go further than that and proceed to ensure that children in this country enjoy their rights as enshrined in the Constitution. In fact, the Constitution particularly says that children should not be detained.

However, in those very exceptional circumstances where they are detained, they should be held separately from adults, and in conditions that take account of the child's sex and age. We know that these children were taken to the forest and killed to the extent that seven of them cannot even be accounted for. Perhaps this should go into accounting for those seven who cannot be accounted for.

With those few remarks, I once again commend the Committee for this report and recommend that the Committee's recommendations be implemented. If possible, after six months, we should be told how the County Government of Nakuru and the investigative arms of the Government have implemented this report.

Thank you.

The Speaker (Hon. Lusaka): The next Petition is by Sen. (Dr.) Mwaura. Sen. Murkomen, are you presenting?

Sen. Murkomen: Thank you, Mr. Speaker, Sir. In my new life, I now hold brief for colleagues.

(Laughter)

The Speaker (Hon. Lusaka): Proceed, Sen. Murkomen.

CHALLENGES FACED BY PATIENTS SUFFERING FROM MULTIPLE SCLEROSIS AND NEUROMYELITIS OPTICA

Sen. Murkomen: Mr. Speaker, Sir, I have a Petition to the Senate concerning challenges facing patients suffering from Multiple Sclerosis (MS) and Neuromylitis Optica (NMO). This Petition is presented by three Petitioners; Ms. Marion Juma, who was my student and friend at the Catholic University of East Africa (CUEA), Ms. Jackline Mukiami, Ms. Lucia Ndolo and Mr. Alexander Kyula. This Petition had been given to Sen. (Dr.) Mwaura who requested me to present it on his behalf because he was held up in Ruiru performing other national duties.

The Petition is as follows-

We, the undersigned citizens of Kenya and in particular Multiple Sclerosis (MS) and Neuromylitis Optica (NMO) transplant survivors and families-

MS is a disease in which the immune system eats away the protective covering of nerves resulting to nerve damage disrupting communication between the brain and the body.

Neuromyelitis Optica Spectrum Disorder (NMOSD), also known as Devic Disease, is a chronic disorder of the brain and spinal cord dominated by inflammation of the optic nerve (optic neuritis), and inflammation of the spinal cord (myelitis).

Draw the attention of the Senate to the following-

THAT MS is a rare autoimmune disease that causes the body's own defenses to destroy neurons in the brain and spinal cord.

THAT NMOSD, also known as Devic Disease, is a chronic disorder of the brain and spinal cord dominated by inflammation of the optic nerve (optic neuritis), and inflammation of the spinal cord (myelitis).

THAT both NMO and MS are debilitating diseases because they affect the nerves. When you suffer from MS or NMO, the body destroys myelin, the fatty insulating material that covers the nerve fibers that form part of the nervous system, which controls all body functions.

THAT the demyelinated nerves cannot transmit impulses to the brain or spinal cord, and from the muscles in the body. Consequently, MS and NMO patients sometimes have difficulty with simple things like swallowing food, blinking, vague vision, controlling their bladder and limbs, or focusing their eyes on an object.

FURTHER, symptoms of MS depend on which part of the nervous system is targeted. Common problems may include, fatigue, continence problems, sexual problems, constipation, pain, cognitive thought related changes, altered sensation, and muscular and visual changes.

THAT a person with MS or NMO may struggle to come to terms with their disease. They might fear for the future or suffer from low self-esteem, because of the physical changes that they experience.

FURTHER, MS can target virtually any part of the nervous system. It can affect the nerves of the reproductive organs, which leads to changes in sexual functioning; slowed arousal time, reduced libido or desire, and altered orgasmic response are not uncommon experiences.

THAT the growing burden of MS and NMO disease has been raised as one of the most significant barriers to the attainment of Universal Healthcare (UHC). In line with the Big Four Agenda of UHC, the National Hospital Insurance Fund (NHIF) does not cover MS cases. Most patients end up as Persons with Disabilities (PwDs).

THAT we have made the best efforts to have these matters addressed by the relevant authorities, all of which have failed to give a satisfactory response.

THAT none of these issues raised in this Petition is pending in a court of law, a constitutional or any other legal body.

THEFORE, your humble Petitioners pray that the Senate investigates this matter, and

(1) Initiates the subsidy of the price of medicine to more affordable prices. A Disease Modifying Drug (DMD), or weekly injections can go to as high as Kshs100,000.

(2) Intervenes in the matter with a view to ensure that there are more and qualified specialists in all hospitals, especially district hospitals. MS and NMO resemble several other autoimmune diseases. A pinpoint diagnosis would help management of the disease before one gets to the progressive stage of the disease which is rarely manageable.

(3) Initiates the recognition of this group as a group living with disability and, therefore, be exempted from taxation.

(4) Initiates free counselling and therapy services.

(5) Initiates the process of fund allocation to carry awareness campaigns that will involve the Government and private sector to understand the different conditions of the disease and management of the patients affected.

(6) Intervenes for the group to obtain a proper cover to the affected group under the NHIF like the cases of cancer patients who get free drugs and chemotherapy.

Mr. Speaker, Sir, before I lay the Petition, as I told you, I know one of the Petitioners who is a patient. Ms. Juma was my student.

(Loud consultations)

The Speaker (Hon. Lusaka): Let us consult in low tones.

Sen. Murkomen: She is an advocate. By the time professionals like this have gone to as many institutions as possible to look for help for these autoimmune diseases, how much more is the suffering of those who do not have access to medicine, communication, institutions, or the ability to write Petitions like this?

Mr. Speaker, Sir, you have heard for yourself the complexities and difficulties that they go through because of the same, yet they are not recognized when it comes to insurance covers. You must have watched the United States of America (USA) elections and seen the conversation that they had.

I have been following the United States of America (USA) elections since 2004 and the conversation has always been about healthcare, insurance cover, protection and Obamacare. Their conversation has always been about protecting the vulnerable in society and making sure that their citizens get medical attention. The petitioners have said that their medication cost up to Kshs100,000 a week, which is expensive. Very few families can afford that.

I am glad that many people have faith in this Senate. They brought this Petition to the Senate because they believe that the relevant Committee of this House will reach the institutions that have been unresponsive. I hope that this Petition will be considered and we will get the necessary intervention which will ensure that our counties and the national Government play a key role in giving these patients and others proper medical attention and medical cover.

I beg to lay this Petition and request my colleagues to give it the highest consideration, just as Sen. Sakaja has done in his Committee. I would want to know the recommendations given by the Committee that will deal with this Petition. I hope that I will be notified when that Committee will be meeting the relevant institutions such as the Ministry of Health and the National Hospital Insurance Fund (NHIF).

The Speaker (Hon. Lusaka): Hon. Senators, pursuant to Standing Order No. 231, I shall now allow comments, observations or clarifications in relation to the Petition for not more than 30 minutes.

Sen. Halake: Thank you, Mr. Speaker, Sir. I am familiar with Multiple Sclerosis because I lost a good friend, Bashir, to it a few years ago. The petitioners are

right to say that the disease is not well understood. I am sure that most of us here might also be wondering what it is.

It is unfortunate that we tend to neglect things that affect minority groups. Every life matters and I am glad that this issue has come to the fore. I hope that the Committee on Health will do justice to the Petition just as it did to the Petition presented by Sen. Sakaja. I am sure that Sen. Sakaja's Petition has done a lot of justice to the children and we look forward to the action thereof.

The NHIF and Level 5 hospitals must ensure that patients with Multiple Sclerosis get medical care. Most patients who visit our county hospitals are usually diagnosed with malaria, waterborne disease and another disease and this assumption has led to the death of many patients. We need Universal Health Coverage (UHC). My county was one of the pilot counties for UHC though I do not want to discuss that lest I be accused of focusing on it all the time. Multiple Sclerosis affects many Kenyans and it is expensive to treat. That disease has devastated many families because it is a disease that is not understood. People spend a lot of money before they get the diagnosis of the disease. In fact, some patients die before the diagnosis.

I support this Petition and I will work with the Committee on Health so as to give the patients, who are suffering from this disease, the attention that they deserve. This is also a personal matter because I lost my friend, my big sister, to this disease. Her family spent a lot of money, but she still died.

I hope that this House will stand with the patients who are suffering from this disease.

The Senate Majority Leader (Sen. Poghiso): Thank you, Mr. Speaker, Sir. I support the Petition brought by the people who are suffering from Multiple Sclerosis through Sen. Murkomen and Sen. (Dr.) Mwaura.

These are two conditions and I want to thank the people who identified these rare conditions. The problem with our medical system is that we live and treat people in silos. Our problem is that people do not take interest in rare conditions because it translates to ordering a few drugs which is not considered good business. We need to look at health holistically. Many people do not know that they have this condition because we do not have specialists to diagnose the disease. We need to talk about this condition for others, who have similar symptoms, to come out and get treatment.

Multiple Sclerosis, which is common, is a debilitating condition. I know people who have suffered from this condition and it is likely to cause permanent disability. You have heard about the symptoms and one of them is that they may not have children. Their brains do not have coordination with the other parts of their body. For some, their body's immune system slowly attacks its own myelin sheath which makes it impossible for them to coordinate. They end up feeling as if needles are pricking them all over and that makes them uncomfortable. These Kenyans need assistance.

I know very little about the Neuromyelitis Optica Spectrum Disorder, but it must also have the same problem because it is a chronic disorder of the brain and the spinal cord. It is almost the same condition as Multiple Sclerosis. The Committee that is going to look at this Petition should get to the bottom of the rare conditions that our people

suffer from, and see how we can facilitate treatment. Our people have to go overseas to get treatment or specialized doctors yet they can be treated in Kenya.

I support. We should focus on these two, but we should also find out about the other conditions that our people are suffering from. I congratulate the Senators and the three citizens who brought this Petition.

Sen. (Dr.) Ali: Mr. Speaker, Sir, Multiple Sclerosis is an autoimmune disease. It is one of the very rare diseases in this country, and there are not many doctors who are specialists in this area.

When these issues are found in the rural areas or counties, people are not even able to diagnose themselves most of the times. By the time it reaches where one can get a proper diagnosis, it is usually too late.

It usually starts with blurred vision, and as Sen. Poghio said, tinkling and many other issues that are normally misdiagnosed. It is not very easy. In this country, I think the people who specialize in these autoimmune diseases are very few. It is a very specialized medical field.

Mr. Speaker, Sir, it would be nice to have at least a doctor who deals with these issues in every county, but it is not that easy. When it also comes to the National Hospital Insurance Fund (NHIF) and how the disease is treated, most doctors might not even know what they are dealing with. By the time it is referred on and on, it might even be too late.

Hopefully, when it is referred to the Committee on Health, we will do our best. Hopefully, we will be able to help these individuals in the long term.

Thank you, Mr. Speaker, Sir.

Sen. (Dr.) Musuruve: Thank you, Mr. Speaker, Sir, for giving me an opportunity to speak on this unique form of disability, that is, Multiple Sclerosis. It is unfortunate that many people suffer from Multiple Sclerosis and have no way of being helped in the fraternity of disability. It is unfortunate that anyone at any age can get this disease, which eventually leads to disability.

There is also need for the Government to raise awareness on this issue. This Petition should be handled, so that people with Multiple Sclerosis are categorized as Persons with Disabilities (PwDs). This is because as the disease progresses, persons get low vision, issues with the bowel and the bladder. Sometimes there is also tingling in the thumbs and fingers. They end up not having normal lives as other persons. There is need to ensure that the Committee that will deal with this Petition pursues it with the National Council for Persons with Disability (NCPD) and also the medical assessment doctors, who examine people with disabilities.

Sometimes as a PWD, even when one goes for assessment and the disability is so visible, they still want proof that you are genuinely disabled. Even when I lost part of my pelvis and femur bone as a result of cancer, and wanted to be assessed so that I could be recognized as a PWD, it was so visible, but I was also being told to prove that it truly happened. I had to go with my scans from India to show them what I had lost. I have a hemi-pelvic prosthesis.

This category of PwDs will not have it easy even to be given the disability card or prove that they are PwDs. There is need also for us to come up with laws that speak on

this. Having a disability is not fun. The fact that one has a disability already poses a psychological impact. There is need for this category of persons to be helped.

When it comes to issues of disability, it is a nightmare. Sometimes when PwDs go to hospital, they do not have the finances. They are not economically empowered, and services to PwDs are not free.

As a cancer survivor when it comes to the treatment cycles, they do get them free in hospitals. I have so many phone calls from cancer survivors asking me to give them money for nutrition and medicine. When we see the vulnerable in our society, we should empathize with their situation. Can we empathize with persons with Multiple Sclerosis and know that it not a hereditary disease? Anyone can get it.

When this Petition goes to the Committee on Health, I believe that it will do justice to ensure that these persons are categorized as PwDs.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Finally, on that we have Sen. Shiyonga.

Sen. Shiyonga: Thank you, Mr. Speaker Sir, for allowing me to contribute to this Petition. I wish to thank the three citizens who brought this Petition on Multiple Sclerosis condition.

This condition is next to death. The people who survive do so with a lot of pain throughout their life. The disorder affects the brain, spine and the whole body. It makes it almost impossible for a person to do anything. I would prefer that such conditions be treated with a lot of care if diagnosed.

Most of the victims, when they get into the condition, lose hope very fast and their lifespan decreases. Last year, I came here with a Motion on Sickle Cell Disease, on which most people are spending a lot of money to treat it in certain areas in our communities. Many of them are misdiagnosed.

It is very unfortunate that many of our hospitals in the counties, especially when healthcare has been devolved, are not even able to handle some of the conditions such as this one. It is very clear that if we have such a patient in our communities who is diagnosed with the disease, they should be given free care and treatment.

Insurance covers or NHIF does not help in such conditions at all. Many of the hospitals reject these patients because the expense that comes with this condition is very high. Such a condition then needs to be categorized under the conditions that can be treated without being charged a Shilling, because we need to be our brother's keeper. There are so many who suffer from this condition, but are not coming out.

I urge Kenyans who may have Multiple Sclerosis and even Sickle Cell Disease to come out, so that we can get a law that can assist through the healthcare system that we have.

I support the Petition.

The Speaker (Hon. Lusaka): Hon. Senators, pursuant to Standing Order No.232(1), the Petition is committed to the relevant Standing Committee for consideration. In this case, I direct that it be committed to the Standing Committee on Health.

I am aware that a similar Petition came last year in September. The Committee on Health should, therefore, do something about it because it keeps coming. Please work round it so that the petitioners can get their rights.

In terms of Standing Order No.232, the Committee is required, in not more than 60 calendar days, from the time of reading the prayer, to respond to the Petition by way of a report addressed to the Petitioner and laid on the Table of the Senate.

I thank you.

Next Order.

PAPER LAID

REPORT ON THE MUNG BEANS BILL (SENATE BILLS NO. 9 OF 2020)

Sen. Wambua: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today, Wednesday, 11th November, 2020-

Report of the Standing Committee on Agriculture, Livestock and Fisheries on the consideration of the Mung Beans Bill (Senate Bills No. 9 of 2020).

(Sen. Wambua laid the document on the Table)

The Speaker (Hon. Lusaka): Next Order.

STATEMENTS

TRIBUTE TO THE LATE HON. KYALE MWENDWA

Sen. Wambua: Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No.47(1) to make a Statement on an issue of general topic of concern namely: the passing on of Hon. Kyale Mwendwa, the pioneer, African Director of Education in Kenya, former Member of Parliament (MP) for Kitui West Constituency and the former Cabinet Minister in the Ministries of Livestock and Water.

Mr. Speaker, Sir, I wish to start by conveying my condolences to the family of the late Hon. Kyale Mwendwa who passed away on 3rd November, 2020, at the age of 94. To his wife, Ms. Jacinta, his children, Mumo, Fonza, Suki, Nzambu, Munyoki and Mukeli, I convey my condolences.

Hon. Kyale Mwendwa who came from Kitui County was one of Kenya's pioneer educationists. He served as the first indigenous Kenyan Director of Education in independent Kenya. His demise comes soon after Kitui County lost one of its sons and top legal scholar, the late Phillip Nzamba Kitonga, Senior Counsel.

Mr. Speaker, Sir, during his tenure when he served as the Director of Education, Hon. Mwendwa oversaw the establishment of a number of public primary and secondary schools as well as colleges across this country. His contribution to the education sector will be remembered for many years to come.

Mr. Speaker, Sir, the late Hon. Mwendwa also served as an MP for Kitui West Constituency between 1985 and 1988 following the death, through a road accident, of his brother, the late Kitili Mwendwa.

The late Hon. Mwendwa was among the key figures who founded the Democratic Party (DP) alongside former President Hon. Mwai Kibaki, when multiparty democracy was introduced in the country in 1981. He quit elective politics in 1982 to focus on other interests including his passion, which is the development of the education sector in the country. Upon leaving elective politics, the late Hon. Mwendwa successfully established Riverside Junior Academy, St. Austin's Academy and the Coast Academy.

Mr. Speaker, Sir, the late Hon. Kyale Mwendwa comes from a family of many firsts. His elder brother, Ngala Mwendwa, was Kenya's first Minister for Labour. His other brother, Kitili Mwendwa, was Kenya's first African Chief Justice. His sister in law, Hon. Nyiva Mwendwa, was the first female Cabinet Minister in Kenya.

Mr. Speaker, Sir, the late Hon. Kyale Mwendwa, a son of the late Kitui paramount chief, Mwendwa Kitavi, will be laid to rest on Friday, this week in his home in Matinyani of Kitui West Constituency.

May the soul of the late Hon. Kyale Mwendwa rest in eternal peace.

I thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Order Senators! You have heard that message from the Senator for Kitui County. Given that this was our colleague in Parliament, before I allow comments, I will request that we stand for a one-minute silence in his honour.

(Hon. Senators stood and observed a minute of silence)

Thank you. Sen. Sakaja, kindly, proceed.

Sen. Sakaja: Thank you, Mr. Speaker, Sir, on behalf of the people of Nairobi City County, where the late hon. Mwendwa lived together with his family and breathed his last at Agha Khan Hospital in Nairobi, I want to convey my condolences to the family of the late Hon. Mwendwa, the people of Kitui County and the people of Kenya.

Mr. Speaker, Sir, this is the last surviving Member of the first Parliament. I must say in 2012, my party, The National Alliance (TNA) was newly formed. I was the Chairman. I was a young person. We had a by-election. There were a number of by-elections across the country in the constituencies of Kangema, Kajiado, where Hon. Sakuda came in and Ndwiwa. There were also some wards; one of the wards was Matinyani Ward.

Mr. Speaker, Sir, I led a campaign in Matinyani. My candidate then called Carlie came in a very strong second after the Wiper Party candidate, but the people of Matinyani welcomed us very well including the family. A strong second was very strong.

The Speaker (Hon. Lusaka): Sen. Sakaja, there is no strong second. You were just second. There was a winner and a loser.

(Laughter)

Sen. Sakaja: Mr. Speaker, Sir, that time my party was the new kid on the block, TNA. To date, I have maintained many links in Matinyani where the Mwendwa's are from. Their family was very hospitable to us. I remember we stayed there for a number of days. They were shocked when we were looking for them

It is in times like these when we see such great men who were our founding fathers, so to speak, when they pass on, we reflect as a country especially for the young legislators. What mark are we leaving? What will you be remembered for? Will you be remembered for just wearing a Maasai attire or for standing for the rights of the Maasai?

(Laughter)

Will you be remembered for a fight on a formula or for standing for equity? What is it that Kenyans will remember this generation for?

Mr. Speaker, Sir, I am touched to remember the words of Jomo Kenyatta that in as much as our fathers might have been heroes of the past, our work is to be architects of the future. I want to implore upon all us in this House.

Yesterday, Mr. Speaker, Sir, you made a historic ruling. You will be remembered for many things, but let us remember that history is made every day. Every day we come to this House, we speak out there, history is made every day. There is no event called history making. Let us always have that foresight.

I want to pray to God to give this family strength and fortitude. Mzee lived his years; 94 is no mean feat. His legacy must live on. For the rest of us, let us remember that we have a role to play especially during this time when we are assessing this country; we are looking at the Building Bridges Initiative (BBI) changes that we want to make. Let us make them with posterity in mind. Let us not look at provisions based on today's politics. Let us not look at provisions based on 2022, but let us think of 50, 100 or 150 years to come. Let us have the posterity of this country in mind when we make some of these changes.

Thank you, Mr. Speaker, Sir. May his soul rest in peace!

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

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

Sen. Wetangula: Thank you, Madam Deputy Speaker. I join Sen. Wambua and the House in sending my message of condolences to the family and friends of the late Hon. Kyale Mwendwa who served as a Member of Parliament, a Cabinet Minister and before that, he was a very well-known educationist in this country.

I noticed in the obituaries that the funeral will be a private family affair. Therefore, this is the only opportunity we can be able to send our heartfelt condolences. I recall when his late brother, Ngala Mwendwa passed on, we went to Kitui and gave him a heroes send off.

As Sen. Wambua has said, Kyale Mwendwa comes from a family of great distinction having had the first African Chief Justice. The late Ngala Mwendwa was a

Minister, Kyale Mwendwa was a Minister as well as Nyiva Mwendwa, whom I had the distinction with Sen. Poghismo to be in the seventh Parliament with. It is a family that has made tremendous contribution to the development of the politics and social economic activities of this country.

As we mourn his passing on at the age of 94, we celebrate his life. To live up to that age is a great act of God's providence and a personal achievement. I want to remind Sen. Sakaja that *Mzee* Nathan Waliaula Munoko, a Member of the Legislative Council (LEGCO) and a former member of my constituency, which was then called Bungoma Central, is still living. Kyale Mwendwa was not the last and I think that there are a few others. There is one other in Meru and one or two others that we know of.

Let us all join hands with Sen. Wambua to mourn the great son of his county and this country.

May his soul rest in Eternal Peace.

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

The Senate Majority Leader (Sen. Poghismo): Madam Deputy Speaker, let me take this opportunity to also send my condolences and that of the people of West Pokot to this great son of Kenya. The late Kyale Mwendwa, served in the LEGCO. These are people that the younger generation including Sen. Sakaja might not actually appreciate them.

I had the privilege of knowing some of these people when they were still at strength. The late Kyale Mwendwa ended his political career at the time when I was entering Parliament. He has a great record, was a great educationist and a Member of the LEGCO. I think the LEGCO sat here, in this particular Chamber. He was part of the first 15-member Cabinet of Kenya. That is a person who has achieved a lot.

Therefore, we need to use this opportunity to send to the people of Kitui our condolences and tell them that we appreciate them giving us that great family and also this particular person.

One problem we have in our country is that we do not celebrate people who have who have given us great achievements. There is no single thing that we can remember in future where we can say he was the first Director of Education.

In other places, they would have a monument or a statue or something that represents that forever. We need to start thinking about how we remember this kind of people. This House can lead in that direction. There are many people that we should celebrate.

With those few remarks, I just want to join Sen. Wambua and Senators from the whole region of Ukambani because at that time, these divisions were not there. He was a great man from Ukambani. That is what it was. Therefore, we must say that he has lived a good life and this is a celebration of his life. We need to have memories of this kind inscribed somewhere so that we do not lose the history that is created by knowing this Hon. Member who has passed on.

May God Rest his soul in Eternal peace.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Sen. Poghismo. Now that his colleagues have spoken, can we take two minutes?

I will give two minutes each for everybody else.

Sen. (Eng.) Mahamud: Thank you, Madam Deputy Speaker.

I was not a colleague of the late Kyale Mwendwa, but he signed my CPE certificate, he was the Director of Education. In fact, we were the first class of Certificate of Primary Education (CPE) because the class before us did Kenya Primary Education (KPE). He was the Director of Education then. I remember his name very well.

Let me join my colleague from Kitui and the people from Kitui in mourning this great son of Kenya who has contributed to this country immensely as an educationist, parliamentarian and a cabinet minister.

At the time, very few Kenyans could take the job of becoming the Director of Education. That was more than being a politician. For me, being a director or being a professional was something very important to remember.

I take the opportunity on behalf of the people of Manderu to condole with the people of Kitui and the family. I urge them to have courage during this trying moment.

When Nyiva Mwendwa became the first woman Minister of Kenya, I was a civil servant. We took pride in her becoming the first woman Minister of Kenya. She led a delegation to Beijing and my wife was in that delegation. We were very proud that for the first time, there was a lady Minister in Kenya.

I happened to have visited her home in Kitui with Moody Awori who was the then Vice-president and the Cabinet Minister in the Ministry of Home Affairs and I served as the Permanent Secretary (PS) under him.

May God Rest his Soul in Eternal Peace.

Thank you.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Sen. (Eng.) Mahamud. I was also in the delegation led by Nyiva Mwendwa.

Two minutes to Sen. Halake.

Sen. Halake: Thank you, Madam Deputy Speaker, for allowing me to join my colleague, Sen. Wambua, in giving my heartfelt condolences to the family of the late Hon. Kyale Mwendwa.

I already passed my condolences during the Committee meeting this morning. I knew Hon. Kyale Mwendwa personally. He was my neighbor in Riverside. The Office Park, where I am sure a lot of you go to, belongs to him.

In my early years, I used to be his tenant; I used to have an office there. He would always come and walk there, up and down and I would have a small chat with him.

May the good Lord Rest his Soul in Eternal Peace. Having said that, we celebrate his life. The death of a loved one is most painful to the family. Having said that, Hon. Kyale Mwendwa was like a father to all of us. He was a Member of Parliament and a minister and we celebrate his achievements. We celebrate the fact that he has left behind St. Austin's and other academic institutions that are still serving our children.

May his soul rest in Eternal Peace. As we Muslims say: From God we came and to Him we must all return. We are very proud of the footprints he has left in this country.

May God rest him in peace.

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

Sen (Dr.) Milgo: Thank you, Madam Deputy Speaker for giving me this chance to condole the great Minister and Legislative Council of Kenya (LEGCO) leader from Kitui County.

Hon. Mwendwa was great because in the early 1970s, the Mwendwas were a household name. Not because of the fact that they were simply workers, but they did an excellent job. I want to condole with the family of Hon. Mwendwa because this great leader fathered colleges and schools across the country. After he retired from politics, he went ahead and began schools in order to contribute skills and expertise, which went a long way to spur the economy of our country.

Hon. Mwendwa as a politician must have been a great leader because he mentored members of his family. This is why, from the family, we got the first lady Minister in the name of Hon. Nyiva Mwendwa. We are grateful that she was a trailblazer to women.

As my chairperson of the Committee on Labor and Social Welfare has said, as leaders what are we going to leave when our time comes? What kind of legacy shall we leave in terms of what we are doing right now, where people can stand up to recognize issues you contributed to the society?

He was a great leader and, may his soul rest in eternal peace.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you. Sen. Mutula Kilonzo Jnr. I will give you three minutes because of good neighborhood. I almost took it because of noise from that corner.

Sen. Mutula Kilonzo Jnr.: Thank you Madam Deputy Speaker. I was the lawyer of the trustees of the Kamba Agriculture Institute, Mr. Kyale Mwendwa was trustee number one. This good gentleman walked into my office in 2009. I do not know whether you managed to go to South Eastern Kenya University (SEKU) when you were in Kitui.

The Deputy Speaker (Sen. (Prof.) Kamar): I started it.

Sen. Mutula Kilonzo Jnr.: You started it? That is even better because Kyale Mwendwa, Titus Mbathi, David Muoka Mutiso, David Mumo and Archbishop Ndingi Mwana a' Nzeki are the trustees of the land that is 10,000 acres, which has created SEKU in Kitui.

When the former President, His Excellency Mwai Kibaki gave this university to the Kamba region, some very delinquent men filed a case against Ukamba Agricultural Institute and I was instructed by Hon. Kyale Mwendwa, Titus Mbathi and Archbishop Ndingi Mwana a' Nzeki and others.

On behalf of my family, I pass my condolences to this good gentleman and the people of Kitui. When the eulogy was read, I began to think that Sen. Wetangula, Sen. Poghio and yourself; people who have dealt with people like Mr. Kyale Mwendwa and Titus Mbathi, must find a way where we can tell the history of this gentlemen when they are still alive.

This gentleman went to school with President Mugabe and Buthelezi in South Africa. They have such a rich history about the world, unless we tell the story. One of the most interesting things about him is that when he was in school, he managed to force the school to change the National Anthem. Then, they were singing the National Anthem to the Queen, he said 'to their Queen not to our Queen.' This is bold.

The story of people should not be told when they are dead. It is unfortunate. This gentleman called Kalulu from Mbooni, I sat with him and had a good history. You came to Mbooni and saw the forests. He had a story about how those forests were created by Europeans. People were removed at gunpoint so that the forests can be created. Senate Majority Leader, can we find a method where we honor these people for the work they did, but tell the story when they are alive?

Three generations from now; the children of your children will not know who Kyale Mwendwa was and what it meant for a person to say, we will not pledge allegiance to the Queen.

Can we find a method of telling stories about these people because it is unfortunate for a story like the one I have read today in his eulogy to be in it? It should be in a book in a school where people should be reading. When I visited the Robben Island, I found a former prisoner telling us the story about that prison. The story of Kenya should be told by people who fought for Kenya.

It is unfortunate that we have to read the story of these good people when they are long dead. Since God has done what He does best and since He loved him more, may he rest in peace. Nonetheless, can we find another method of doing this when people are alive? I am sure where he was, he knows we did not appreciate him, which we should. Just like in Europe, we should either give him a card to access groceries or a card to access medical care and free parking. When they get to a place, you do not need to hustle them.

Mr. Kyale Mwendwa should have walked into Aga Khan University Hospital without paying a bill. He should get first class access to airports. These are our heroes. Let us not celebrate people when they die. It is not right.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you Senators, for passing good words of comfort to the family. I join all of you in sending our condolences to the family of Kyale Mwendwa, a man whose story I heard when I was the Cabinet Secretary for Education when we went to inspect the South Eastern of Kenya University (SEKU). May his soul rest in peace.

Over and above, there is a Motion sponsored by Sen. Nyamunga on recognizing and appreciating elderly people. This is the opportunity for us to craft in and bring in recognition because we seem to be low in appreciating our people.

We have finished Statements pursuant to Standing Order No.47(1), but we have the Senate Majority Leader's Statement.

BUSINESS FOR THE WEEK COMMENCING
TUESDAY, 17TH NOVEMBER, 2020

The Senate Majority Leader (Sen. Poghiso): Madam Deputy Speaker, pursuant to Standing Order No.52(1), I hereby present to the Senate the business of the House for the week commencing Tuesday 17th November, 2020.

On Tuesday 17th November, 2020, the Senate Business Committee (SBC) will meet to schedule the business of the Senate. On that day, the Senate, pursuant to Standing Order No.24 (5) and (6), will debate on the Motion on the Address by His Excellency the

President, which will be delivered tomorrow, Thursday 12th November, 2020 at a Special Sitting of the Houses of Parliament.

Hon. Senators will note that in today's Order Paper, debate on the Motion to alter the Senate Calendar to allow the Senate to hold one sitting per week will resume. If this Motion passes, Hon. Senators will be advised on the business of the Senate accordingly.

If the Motion does not pass, on Wednesday, 18th November, 2020 and Thursday, 19th November, 2020 the Senate will continue with business that will not be concluded on Tuesday 17th, 2020. The Senate will also consider the Bills for which, following the judgement of the High Court in the Constitutional Petition No. 284 of 2019, the resolution process contemplated under Article 110(3) of the Constitution was completed by both Speakers of Parliament and any other business scheduled by the SBC.

With respect to Bills, hon. Senators are aware that the judgment by the High Court in the Constitutional Petition No.284 of 2019 has had far-reaching implications on the business of the Senate. I continue to urge for patience and understanding as the Offices of the Speaker and the Senate leaderships engage our counterparts in the National Assembly to fast-track the process of regularising, including republishing Bills, to conform with Article 110(3) of the Constitution.

There are 58 Petitions pending consideration by respective standing committees. I urge the committees to use the available opportunity to expeditiously consider the said petitions and table reports pursuant to the Standing Orders.

(Loud consultations)

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, please consult in low tones.

The Senate Majority Leader (Sen. Poghio): Madam Deputy Speaker, I thank you and hereby lay the Statement on the Table of the House.

(Sen. Poghio laid the document on the Table)

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

We will now move to Statements under Standing Order No.48(1). Since we have an urgent matter on the Order Paper, I seek your indulgence that we limit the numbers and the time. I will limit the time to three minutes for every Member contributing after a Statement is read. I will only allow one Member from each side, so that we have only two contributors. That will help us move as fast as possible to the next business of the House.

I cannot see Sen. Were. Therefore, we will skip her Statement. The next one is by Sen. Chebeni.

(Applause)

(Loud consultations)

Hon. Members, let us consult in low tones so that we allow her time to talk. I know her Statement seems to be exciting everybody.

An hon. Senator: Now she can talk.

The Deputy Speaker (Sen. (Prof.) Kamar): Okay, go ahead Senator.

REVIEW OF ACCREDITED ACADEMIC
PROGRAMMES AND COURSES BY THE CUE

Sen. Chebeni: Madam Deputy Speaker, I rise pursuant to Standing Order No.48(1) to seek a Statement from the Standing Committee on Education regarding the review of accredited academic programmes and courses by the Commission for University Education (CUE). In the Statement, the Committee should-

(1) Table the list of both accredited and unaccredited academic programmes and courses being offered by institutions of higher learning in Kenya.

(2) Report on the progress made by the CUE in reviewing and updating the tabled list.

(3) State the measures contemplated by the Government to address the anxiety among university students over the lack of accreditation of the courses and programmes that they are currently undertaking.

(4) Provide information on the progress made by the Kenya National Qualifications Authority (KNQA) towards harmonising the various levels of education and creation of a database of all qualifications in the country.

I thank you.

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. (Dr.) Musuruve you have three minutes.

Sen. (Dr.) Musuruve: Thank you, Madam Deputy Speaker, for allowing me to support Sen. Chebeni on this Statement that is valuable at this point in time.

When it comes to higher levels of learning such as colleges and universities, it is important that courses are accredited so that they safeguard the interests of the learners and employers. Accreditation is important because it ensures that higher levels of learning offer courses that are recognised nationally and acknowledged by international bodies. It also ensures that trainers have the right qualifications.

It can be a sad affair for a student to take a course and spend many years in college or university---

(Loud consultations)

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, please consult in low tones. Sen. Cherargei, please take your seat.

Sen. (Dr.) Musuruve: Thank you, Madam Deputy Speaker, for the protection you have given me.

It is painful for a student to study for a course for four or five years only to realise that the course they took was not accredited. That is a waste of resources and energy and demoralizes the students.

Accreditation is also important because it ensures that qualifications designed for a certain course are actually given. Accreditation should be done intellectually. For instance, if a course is offered, let it have the desired qualifications such as medicine or veterinary.

There is a time game rangers could do what medical doctors do. Qualifications should be on merit. We need to ensure that universities are accredited for purposes of ensuring that courses are market-driven. Apart from being market-driven, there is need for a review, so that even things we desire in our children from an early age through secondary school all the way to the university are enshrined in the courses.

I thank Sen. Nyamunga for coming up with a Motion on the elderly. When we want inculcate national ethos in our children, it has to start from universities and colleges. There is need to have a unit on that, so that by the time the children exit from university to the world of work, they have the ethos that we want as a nation.

As I support this Statement, when it goes to the relevant committee, which is the Committee on Education where I sit, I hope we will do justice---

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

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you Senator. Let us now listen to Sen. Cherargei.

Sen. Cherargei: Thank you, Madam Deputy Speaker, for this opportunity. I congratulate Sen. Chebeni for this Statement. I will only touch on two issues.

To be a country with reforms in education, we should be accrediting courses that are relevant in the market. What happens is that some courses are accredited, but they are not relevant in the current economic situation, or do not consider changes in the societies' culture and values. It is important that the CUE comes up with an innovative way. We should insist on ICT, entrepreneurship and life skills.

There are people trained in some courses, but they cannot even fix a bulb. When someone is an electrical engineer, they should be able to fix a bulb. I am not being blasphemous, but there are engineers with degrees who cannot even fix a bulb.

Secondly, the Ministry of Education is suffering from leadership crisis because we can see the chaos at the Ministry. The other day, the Cabinet Secretary, Prof. Magoha, was insulting some senior officials in Uasin Gishu County. That shows a leadership crisis. When such issues come up, it shows we have a vacuum and leadership crisis in the education sector in this country. I call upon the President to relook at the running of the education sector because it is critical in terms of ensuring that we give opportunity to many young people.

Finally, as we discuss this, we must look at the future of the many young people we have in this country. If you go by the 2019 Census, we have quite a youthful population. Most of them cannot get blue or white collar jobs. We must see how to help them.

As I talk, close to 15 million young people are either uneducated or semi-educated. How do we factor in that when coming up with programmes that benefit the young people? I hope that the education sector, which is suffering from a leadership crisis

will be reformed to look into demand-driven courses that are being approved within the education sector.

I thank you, Madam Deputy Speaker.

The Deputy Speaker (Sen. (Prof.) Kamar): The next Statement is by Sen. (Dr.) Mbito. He is not here.

FAILURE BY M/S TRIDENT INSURANCE COMPANY
LIMITED TO SETTLE CLAIMS

(Statement Deferred)

The next Statement is by Sen. Were. She is also not here.

PROCUREMENT IRREGULARITIES AND GOVERNANCE
MALPRACTICES AT KENHA

(Statement deferred)

The next Statement is by Sen. Loiptip. He is not here.

HARASSMENT OF CYBER AND MOVIE SHOP
OWNERS IN LAMU COUNTY

(Statement deferred)

Hon. Senators, we now move to Statements pursuant to Standing Order No.51 (1) (b) by the Chairpersons of Committees. I would like to start with the Chairperson of the Committee on Justice, Legal Affairs and Human Rights.

Sen. Omogeni, proceed.

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

(Sen. Omogeni spoke off record)

The Deputy Speaker (Sen. (Prof.) Kamar): That is okay. While you are preparing yourself, let us go to the Chairperson of the Standing Committee on National Security, Defence and Foreign Relations.

The Vice Chairperson, Sen. Pareno, proceed.

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

Sen. Pareno: Madam Deputy Speaker, I had earlier approached the Clerks-at-the-Table to ask whether this Statement was there, and they said that it was not. However, I had been given a brief by the Chair to read out. If you could give me some time, I would check.

The Deputy Speaker (Sen. (Prof.) Kamar): That is okay, I will give you time. Let us go to the Chairperson of the Standing Committee on Roads and Transportation. Is the Vice-Chairperson present?

The next one is the Chairperson of the Sessional Committee on Delegated Legislation, Sen. Faki.

ACTIVITIES OF THE COMMITTEE ON
DELEGATED LEGISLATION

Sen. Faki: Thank you, Madam Deputy Speaker. I stand pursuant to Standing Order No.51 (1) (b) of the Senate Standing Orders to make a Statement relating to the activities of the Sessional Committee on Delegated Legislation from 6th May, 2020 to 4th November, 2020.

The Sessional Committee on Delegated Legislation is established under Standing Order No.221 of the Senate Standing Orders. The Committee is mandated to scrutinize statutory instruments laid before the House to ensure that they are consistent with the provisions of the Statutory Instruments Act, 2013.

During the review period, the Committee held 64 meetings, during which we considered 25 draft and published statutory instruments, including regulations, orders and rules as follows-

(a) Regulations

The Committee has acceded to the following regulations-

(1) The Public Procurement and Assets Disposal Regulations, 2020. The Regulations were tabled on 5th May, 2020. The Committee acceded to the Regulations on 4th July, 2020, and the decisions transmitted to the Ministry of the National Treasury and Planning. The approval was reported to the House on 7th July, 2020 via a Statement.

(2) The Sacco Societies (Non-Deposit Taking Business) Regulations, 2020. The Regulations were tabled on 19th May, 2020. The Committee acceded to the Regulations on 30th September, 2020, and the decision was transmitted to the Ministry of Agriculture, Livestock, Fisheries and Cooperatives.

(3) The Railway City Development Authority Order, 2020. The Committee acceded to the Regulations on 29th October, 2020. The decision was transmitted to the Ministry of Transport, Infrastructure, Housing, Urban Planning and Public Works.

The Committee considered the Crops (Tea Industry) Regulations, 2020, and the Crops (Sugar) (General) Regulations, 2020 jointly with the Standing Committee on Agriculture, Livestock and Fisheries. Out of 64 meetings held, the Committee held 22 meetings with the Standing Committee on Agriculture, Livestock and Fisheries to consider the two regulations.

After careful consideration of submissions from stakeholders and the Cabinet Secretary (CS) of Agriculture, Livestock, Fisheries and Cooperatives on 4th November, 2020, the Committee acceded to the Crops (Sugar) (General) Regulations, 2020.

However, the Committee did not accede to the Crops (Tea Industry) Regulations, 2020. The Committee will be seeking a resolution of the Senate to annul the Crops (Tea Industry) Regulations, 2020. Some of the provisions were not in the interest of counties. The regulations should clearly provide for the role of counties, noting that agriculture is a devolved function.

I wish to thank the Chairperson of the Standing Committee on Agriculture, Livestock and Fisheries, Sen. Ndwiga, and the Members of the Committee for their valuable input in the consideration of the two regulations.

Madam Deputy Speaker, other regulations to operationalize the Crops Act are in different stages of consideration as follows-

(1) The Crops (Horticultural Crops) Regulations, 2020, which were tabled on 4th August, 2020. The Committee considered the Regulations on 19th September, 2020 and wrote to the CS for Agriculture, Livestock, Fisheries and Cooperatives raising various issues. The Committee is awaiting a response on the Regulations.

(2) The Crops (Sugar) (Imports, Exports and By-Products) Regulations, 2020. The Regulations were tabled on 21st July, 2020. The Committee considered the Regulations on 5th November, 2020 and is scheduled to meet stakeholders on 11th November, 2020.

The Committee has scheduled the Crops (Fibre Crops) Regulations, 2020 and the Crops (Nuts and Oil Crops) Regulations, 2020 for consideration. These regulations affect counties because agriculture is a devolved function. The Committee is keen to ensure that the devolved functions are not usurped by the national Government.

(b) Orders

Madam Deputy Speaker, the Committee considered 15 orders related to the Coronavirus Disease (COVID-19) restrictions and measures put in place to curb the spread of the pandemic. One of the challenges faced by the Committee is that orders are transmitted to the Senate when they have already lapsed or have only a few days left before they lapse. The Committee resolved not to scrutinize a number of instruments, as this has been an exercise in futility.

These concerns were raised with the Ministry of Health on 9th September, 2020 on the delays in transmitting the statutory instruments, and further raised issue on the lack of public participation on the orders. The Committee noted that the Ministry had endeavoured to ensure faster processing of the regulations with the Office of the Attorney-General.

The Committee, therefore, only acceded to the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) (Dadaab Refugee Complex) (Kakuma Refugee Complex) Order, 2020 and raised further concerns with the Ministry of Health on the Public Health COVID-19 General Public Safety Rules, 2020, which do not have stipulated timelines.

The following is a list of the COVID-19 related orders referred to the Committee-

(1) The Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) (Nairobi Metropolitan) (Extension) Order.

(2) The Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) (Mombasa County) (Extension) Order.

(3) The Public Health (COVID-19 Restriction of Movement of Persons and Related Measures (Kilifi County) (Extension) Order.

(4) The Public Health (COVID-19 Restriction of Movement of Persons and Related Measures (Kwale County) (Extension) Order.

(5) The Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) (Mandera County) Order.

(6) The Public Health (COVID-19) Restriction of Movement of Persons and Related Measures) (Dadaab Refugee Complex) and (Kakuma Refugee Camp) Order.

(7) The Public Health (COVID-19) Restriction of Movement of Persons and Related Measures) (Mombasa Old Town) Order, 2020.

(8) The Public Health (COVID-19) Restriction of Movement of Persons and Related Measures) (East Leigh Area) Order, 2020.

(9) The Public Health (COVID-19) Restriction of Movement of Persons and Related Measures) (Madera County) (Extension) Order, 2020.

(10) The Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) (Nairobi Metropolitan) (Extension) Order, No. 2 of 2020

(11) The Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) (Nairobi Metropolitan) (Extension) Order, No. 3 of 2020

(12) The Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) (Madera County) (Extension) Order, No. 3 of 2020

(13) The Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) (Mombasa Old Town) Order, 2020, No. 3 of 2020

(14) The Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) (Dadaab Refugee Complex and Kakuma Refugee Camp) Order, No. 2 of 2020

(15) The Public Health (COVID-19 General Public Safety) Rules, 2020

The Committee is scheduled to meet the Cabinet Secretary for Health. He is supposed to give further reasons as to why the Ministry had not submitted COVID-19 regulations to the Senate.

(c) Rules

With regard to Rules, the Committee acceded to The Traffic (Driving Schools, Driving Instructors and Driving Licences) Rules, 2020. The Rules were tabled on 19th May, 2020. The Committee acceded to the Regulations on 15th June, 2020 and the decision was transmitted to the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works and the Ministry of Interior and Coordination of National Government. The approval was reported to the House on 7th July, 2020 via a Statement.

(d) Draft Rules

The Committee considered the Draft (Digital Hailing Service) Rules, 2020, pursuant to a request from a stakeholder (Bolt-Kenya) and raised various issues with the National Transport and Safety Authority (NTSA) regarding the Rules. The NTSA indicated that it was still conducting public participation and stakeholder consultation on the Rules and will table the Rules to the Senate for consideration once they are published.

(e) Pending Business

The following Statutory Instruments are pending before the Committee and are scheduled for consideration-

- (1) The Crops (Fibre Crops) Regulations, 2020, tabled on 4th August, 2020 (28 Days lapse of 10th December);
- (2) The Crops (Nuts and Oils) Regulations, 2020, tabled on 4th November, 2020;
- (3) The Public Finance Management (Parliamentary Mortgage (Members) Scheme Fund(Amendment) Regulations, 2020, tabled on 24th September, 2020. Twenty eight sitting days lapse on 23rd February, 2021.
- (4) The Public Finance Management (Parliamentary Mortgage (Staff) Scheme Fund (Amendment) Regulations, 2020, tabled on 24th September, 2020. Twenty eight sitting days lapse on 23rd February, 2021.
- (5) The Public Finance Management (Parliamentary Car Loan (Members) Scheme Fund (Amendment) Regulations, 2020, tabled on 24th September, 2020. Twenty eight sitting days lapse on 23rd February, 2021.
- (5) The Public Finance Management (Parliamentary Car loan (Staff) Scheme Fund (Amendment) Regulations, 2020, tabled on 24th September, 2020. Twenty eight sitting days lapse on 23rd February, 2021.

Madam Deputy Speaker, the role of the Senate in the scrutiny of Statutory Instruments is important and the matter of concurrence should extend to the scrutiny of Statutory Instruments, to ensure that the interest of counties is protected.

I wish to thank your office for the support accorded to the Committee in undertaking its work. I also wish to acknowledge the secretariat support that the Committee has received from the Office of the Clerk.

Lastly, I wish to thank my predecessor, the Senator for Nyamira County, Sen. Omogeni, Senior Counsel, MP, who steered the Committee from May to July, 2020, as well as the past and present Members of the Committee for their diligence in executing the mandate of the Committee.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Senator. This is an elaborate Report from the Committee.

We will now go to the Chairperson of the Committee on Justice, Legal Affairs and Human Rights, Sen. Omogeni.

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

Sen. Omogeni: Thank you, Madam Deputy Speaker. I rise to make a Statement pursuant to Standing Order No.51 of the Senate Standing Orders.

The Committee on Justice, Legal Affairs and Human Rights is established pursuant to Standing Order No.218 (3) of the Senate Standing Orders. On 26th October, 2020, the Report of the Steering Committee on the implementation of the Building Bridges Initiative to a United Kenya Taskforce Report, popularly known as the BBI Report was launched. The highly anticipated Report proposed various Constitutional amendments, policy and legislative amendments that not only affect the Senate, but also devolution in general. The Committee, therefore, resolved to study the proposed amendments to the Constitution and report to the Senate through a Statement, pursuant to Standing Order No.51.

The Committee held substantive deliberations and has made various observations on the proposed constitutional amendments as contained in the BBI Report, as is detailed in the Statement that I am presenting to the House. Additionally, the Committee has made proposals with a view to further achieve the objectives of the BBI Report, which is, to protect the interests of counties and the enhanced important role of the Senate as set out in this Statement.

I want to make it very clear from the onset that it is the view of the Committee that Constitutional amendments should never divide a country, but unite the country. We have borrowed the experiences from many jurisdictions that have made attempts to amend their constitution. An attempt to amend a Constitution should not elicit division or fights amongst citizens of a country.

We looked at various jurisdictions where attempts have been made to amend the constitution with the result being that whenever the proposed amendment is carried, the country remains united and when the vote is lost, the country still remains united. We looked at jurisdictions that have legal framework of amending the Constitution through referendum and picked out the case of Australia.

We noted that Australia has had 44 attempts to amend their Constitution through the referendum and only nine attempts have gone through. We also made an important note from what happens in Australia. Proposals to amend the Constitution are based on questions that are presented to the public, based on a particular issue or an Article. There are instances where the citizens of Australia have agreed to a proposed amendment on a particular Article, but they went ahead to decline to endorse an amendment on another Article, making it to be a win-win, where the entire Bill is not lost just in the event that the people who are participating in the referendum may agree on one issue and disagree on another.

We looked at America where there have been over 10,000 suggestions to amend their Constitution and the prevailing legal position is that two-thirds of the 50 states must endorse or ratify the proposed amendments. That gives us 38 states out of 50 states. We learnt that out of the 10,000 proposals, only 27 amendments have won ratifications from the 38 states of the United States of America. We also noted that people can sometimes make crazy proposals. In 1912, someone proposed an amendment to the American Constitution to bar marriage between different races. Someone proposed that a white person should never be allowed to marry a black person and that proposal never received ratification from the 38 states, which are required to ratify any amendments.

The Committee proposes that there should be discussion amongst various interest groups on the BBI Report for this process to include all Kenyans. The Committee noted that Article 257 of the Kenyan Constitution does not give room for amendments in a case where the Senate loses an opportunity to make its recommendations, which are to enrich the BBI Report, once the Bill is published and sent to Kenyans.

It is on that basis that the Senate emphasizes that the views being proposed by the Senate should be given and ought to enrich the BBI Report. Once the Bill is published and sent to Kenyans, there will be no room for amendment.

It is on that basis that the Senate emphasizes that the views that are being proposed by the Senate should be given due consideration by the team that is drafting the final BBI Report before it is finally released to Kenyans for a referendum.

Madam Deputy Speaker, with your permission, I will very quickly touch on the various articles that the Committee was able to consider. We started by looking at the proposed amendments to Articles 90 and 97 of the Constitution. On these Articles, the Committee made note of the fact that the modalities of identifying the multiple number of constituencies is not clear in the BBI Report. The Committee proposes that the drafters of the BBI Report and the Constitution (Amendment) Bill should provide clarity on this matter to avoid contention on the constituencies that will benefit from the multiple constituencies.

Further, this Committee noted that although the additional 70 seats are meant to serve the missing link on affirmative action, this has not been made clear in the proposed BBI amendments. The Committee noted that the party list does not provide an answer to this problem of affirmative action, in that though a party is obligated to nominate at least 130 members of the opposite gender, there is not guarantee that those that will be elected will attain the deficiency of the affirmative number given in our Constitution.

On population, we noted that in the USA the issue of population keeps shifting every ten years. For example, we noted that if people migrate from one State in America and the population of another State where they migrate to increases, then after 10 years the constituencies in that state increase.

We take note of the State of New York which experienced a decline in population and lost the number of representatives in Congress, but the representatives in the State of California has grown over time because of increment in population. It is the recommendation of the Committee that this issue of population and constituencies needs clarity in the BBI Report.

Madam Deputy Speaker, on the role played by the Senate, this Committee noted that though the body of the Committee has singled out the reasons and objectives of the constitutional amendment has harmonization of the roles that are played by the National Assembly and the Senate, in the Report, there has not been clarity on the roles played by the Senate and the National Assembly.

The Committee, therefore, recommends that Article 96 of the Constitution should be amended so that we give the Senate full mandate on dealing with all legislations, save for Money Bills that should originate from the National Assembly, but still be considered by the Senate.

We have borrowed examples that happened in many jurisdictions, where we have bicameral parliaments. We were able to look at jurisdictions such as Australia. The emphasis in Australia is that since both members of the Senate and the House of representatives are directly elected by the people, as is the case in Kenya, legislative mandate between the House of Representatives, in our case, the National Assembly and the Senate, should be shared. That can be distinguished with jurisdictions such as United Kingdom, where Members of the House of Lords do not enjoy direct mandate from the people through an election.

We were also able to look at the case of the USA, where the Senators enjoy direct mandate from the people through elections. The legislative mandate is shared between the House of Representatives and the Senate.

It was of interest to the Committee that in all these jurisdictions, because Senators campaign in wider regions, they receive compensation by a serving office for a longer period of time than their colleagues in the House of Representatives.

In the USA, the Congressmen in the House of Representatives are elected for a term of two years, but the Senators who are elected through the wider state enjoy a term limit of six years.

When we looked at Australia, those elected to the House of Representatives serve for a period of four years, but Senators---

(Loud consultations)

The Deputy Speaker (Sen. (Prof.) Kamar: Order, Senators! Please, speak in low tones, so that we can follow.

Sen. Omogeni: Senators who campaign in the entire state serve for a period of six years. We can see that there is a distinction in terms of the period that people who are elected from wider constituencies and serve in the Senate, serve for a longer period than those in the House of Representatives.

On Article 96 of the Constitution, we also made note that there is now a paradigm shift in the way the Executive is organized. We noted that the BBI Report proposes that Members of the Cabinet will now be domiciled in the National Assembly.

To draw a clear distinction on the roles played by the National Assembly and the Executive, and now that the Executive will be domiciled in the National Assembly, the Committee proposes that Article 96 be amended to give the vetting powers of various appointees to constitutional offices to the Senate.

We made a very important note that those who will be nominated to serve as Cabinet Ministers, and are not elected Members of the National Assembly, should be vetted by the Senate.

We also noted that there is an attempt to amend Articles 154 and 155 to remove vetting of Principal Secretaries and several other appointees of the Executive. It is the proposal of the Committee that vetting powers should be restored in the Constitution and this mandate be exercised by the Senate, because the Executive will not be domiciled in the Senate.

Again, the Committee has borrowed heavily from what prevails in other jurisdictions. We picked the US where the Senate vets presidential appointees to the offices of Supreme Court, District Judges, Appellate Circuit Judges and all Senior appointees of the Government including ambassadors.

We are making a very strong case that to enhance accountability and responsiveness from the Government, the Senate should get full mandate to vet and approve all constitutional office holders.

(Applause)

On the issue of Article 97, which proposes to transfer the 47 women representatives from the National Assembly, we have proposed that the prevailing situation where the counties elect 47 women be retained.

The Committee went through the entire BBI Report and noted two crucial facts. One, we have not seen any recommendations made by any stakeholder to the BBI that can form justification for the 47 Women Representatives to be transferred from the National Assembly to the Senate.

(Applause)

Secondly, we noted that the 47 Women Representatives play a very critical role in being a link to very many vulnerable women groups. We noted that the Women Representatives from constituencies are given a kitty of Kshs7 million for each constituency that is used for the benefit of women.

If you take an example of Kakamega County that has 12 constituencies, each of those constituencies is going to lose Kshs7 million.

Madam Deputy Speaker, this will cause a lot suffering to our women because there was a purpose why this fund was created and put under the management and responsibility of our Women Representatives.

Madam Deputy Speaker, we also took note of the fact that the Women Representatives elected to the National Assembly have made a very strong case themselves that they want to continue serving as Women Representatives.

We also noted that in the rearranged “new Executive,” there will be Cabinet Ministers appointed from the National Assembly. If you remove all these 47 women, you are denying the women of Kenya a chance to be appointed to the Cabinet.

Therefore, Madam Deputy Speaker, the Committee recommends to this honourable House that the prevailing position of 47 Women Representatives being elected---

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Omogeni, there is a point of order from Sen. Nyamunga.

Sen. Nyamunga: Madam Deputy Speaker, I do not know if we are supposed to interrupt and make recommendations on this. Are we going to be allowed to interrupt the Chair? He is misleading this House.

The Deputy Speaker (Sen. (Prof.) Kamar): I will give you a chance after he finishes.

Sen. Omogeni: Thank you, Madam Deputy Speaker. I am simply making a Statement of the Committee.

The Deputy Speaker (Sen. (Prof.) Kamar): We want you to read your Statement. Do not campaign for women either in the National Assembly or the Senate. Please, read your Statement.

Sen. Omogeni: Thank you, Madam Deputy Speaker. On that particular Article, it is the recommendation of the Committee that the composition of the Senators be retained as it is currently.

Madam Deputy Speaker, on the issue of Article 123 that is proposed to be deleted, the Committee made note that Article 123 plays a very important role for the Senate because it is the one that gives guidelines on how decisions are made in the Senate.

This Committee has proposed that the proposal to delete Article 123 from the Constitution should be disregarded and the prevailing position retained, so that Senators who are delegates from counties are allowed to cast their votes as delegates.

Madam Deputy Speaker, we have borrowed this from various jurisdictions where Senators represent states. They do not represent constituencies. In our case, we present counties.

Madam Deputy Speaker, on Article 108 of the Constitution, we noted that the BBI has proposed amendments and provided for leadership positions in the National Assembly. It is the recommendation of this Committee that there should be a provision for leadership positions in the institution of Parliament and not the National Assembly.

Madam Deputy Speaker, the Committee proposes that whereas the National Assembly will have the position of Leader of Official Opposition and the Prime Minister, the BBI should consider either creating the position of Leader of Government Business in the Senate or retaining the prevailing position, where there is the Leader of Majority. Leadership of the Senate should also be anchored in the Constitution.

Madam Deputy Speaker, on Article 153, the Committee noted that now that we have rearrangement of the Executive, there should be clarity that to enhance the oversight role of the Senate, the Prime Minister and all Cabinet Ministers should be allowed to appear before the Senate to respond to questions on accountability as may be raised by the Senate.

Madam Deputy Speaker, on Article 171 of the Constitution, which creates the office of Ombudsman, the Committee supports in principle the creation of the Office of Ombudsman, but in view of the fact that this office will be investigating judges, the Committee recommends that the Ombudsman should be an ex-officio Member of Judicial Service Commission (JSC) without voting powers.

Madam Deputy Speaker, to also reduce the politics or the politicization of the institution of the Judiciary, the Committee recommends that the report of the Ombudsman should be tabled to the JSC and not Parliament or the Head of the Executive.

Madam Deputy Speaker, this is to enhance the independence of the Judiciary and balance the interest of Kenyans of wanting to have some accountability on the institution called the Ombudsman. We also recommend that the Ombudsman should be vetted and approved by the Senate and not the National Assembly.

Madam Deputy Speaker, on the proposed Article 200 and amendment to the Fourth Schedule that wants to give different status to the County of Nairobi, we made an observation that this may be a violation of Article 27, where the County of Nairobi is being singled out for discrimination and treatment that is not the same with the other 46 counties. This may elicit court litigation.

The Committee recommends that all the counties should be given equal status, and where necessary, transfer of functions should be through an Act of Parliament.

Madam Deputy Speaker, on the issue of Ward Development Fund, the Committee supports the creation of the Ward Development Fund. However, it makes a recommendation that the issue of how much should go to counties should be left to legislation. This is because there may be need in future to increase the 5 per cent, so that we do not need to do a referendum anytime there is need to increase the 5 per cent. The Committee recommends that this 5 per cent should be increased upwards for counties. We have the view that 5 per cent is on the lower side.

Madam Deputy Speaker, on the issue of division of revenue in the proposed Article 218 (a), the Committee is of the view that this amendment will create confusion and water down the role that is undertaken by the Senate under Article 96.

Madam Deputy Speaker, we have also made an observation that the High Court in Petition 294 of 2019 made it very clear that division of revenue is a very critical role on defending the interests of counties and their governments. The Senate should play a very critical role. If we do not agree on division of revenue, then even appropriation of the Budget should not take place before this is agreed.

Madam Deputy Speaker, transferring veto powers to the National Assembly will undermine devolution greatly. It is the proposal of the Committee that the prevailing position in Article 218 of the Constitution should be retained.

Madam Deputy Speaker, that is the Statement by the Committee, and I beg to table.

(Sen. Omogeni laid the document on the Table)

Thank you, Madam Deputy Speaker.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Sen. Omogeni, for the elaborate Report. I will give a few Members an opportunity to ventilate on this. I want to ask Sen. Omogeni to listen keenly because we do not give you a right of reply here. You are going to take notes and go back to your Committee before you submit on behalf of the Senators, because that was a Committee Report.

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

The Deputy Speaker (Sen. (Prof.) Kamar): What is your point or order, Sen. Wetangula?

Sen. Wetangula: Madam Deputy Speaker, before you exercise that discretion--- Ordinarily, we do not debate this kind of Statement. It is simply given and left to lie where it has fallen. What I suggest to you is that the Statement has made very important propositions on improving the BBI process, particularly in relation to the Senate.

So that we do not look bad out there, as engaging in altercations over a Statement that is coming from our own Committee, I would suggest that Members who have got any dissenting ideas on the Report to improve it by giving their views to the Committee, other than us engaging in debate over the issue and looking like, as a Senate, we are running helter-skelter.

The Committee represents all of us and anybody can sit in that Committee as a friend of that Committee, when it is sitting. We did not because, probably, we were not told.

I want to encourage us that this House is under assault and attack. To destroy this House is to destroy devolution. We should not give our detractors an opportunity to see that we do not speak with one voice and assault us even more.

Thank you, Madam Deputy Speaker.

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

However, if you look at the Standing Order 51(3), it says, “The Speaker may allow comments or observations in relation to the report tabled under paragraph (1),” which is the Report that has just been forwarded. I will only allow two Members from each side of the House. What I agree with Sen. Wetangula is that we are not opposing or supporting; we are just enriching. Please, enrich and do not take us to the arguments of BBI.

We are now trying to enrich our document because the Chairperson of the Committee is assuring us that, that Report will reach where it is required.

Therefore, please, let us not debate on whether or not it will go, or where is it going. Let us just enrich what he has done, and if there are any comments that you want to add, please add. I agree with Sen. Wetangula that this is no time for us to fight against our own Committee.

With that, I will start with Sen. Cheruiyot. Please, do not let me stop you if you stray. Sen. Cheruiyot, it is not you in particular, I am talking about all the Members. Let us not stray away from debate.

Sen. Cheruiyot: Madam Deputy Speaker, you know very well that as my teacher at the university, I followed all your instructions keenly. Therefore, I do not intend to change that today.

I agree with the wisdom of our senior colleague, Sen. Wetangula, that while we may have divergent views on maybe one or two issues, the document largely reflects the views of many of us in this House, if not all of us, especially where they have dwelt on provisions of the Senate. Article 123 is such an important Article, perhaps, the most important. Perhaps, it is stronger than Article 96 that establishes the Senate.

Why do I say this? I say this because having been in this House for fairly some good time, each time you see the Whips of this House move around and look for that magical number “24”, it should always stick somewhere at the back of your mind that they are looking for half the country to agree on a particular issue.

If you water down the provisions of Article 123 such that just by a decision of even the loudest of “Ayes” carry any particular issue, including very important issues as to the existence of a nation, then you are beginning to erode the gains that we have made as a society since 1963.

Therefore, I agree with the proposals largely. I am one of those who agree 100 per cent, if I was to quantify my agreement with the propositions that have come from this Committee.

Another very important provision, and I beg to have the attention of our colleagues, women Senators who strongly feel about this issue where every time we discuss the provision where there is a proposal to move what are currently referred as Women Representatives to the Senate, that do not reduce it to be a gender issue. In fact,

to the best of my knowledge, this is not a gender question. It is about the dilution of the position of the Senate, as compared to the rest of the six other positions on the ballot.

When we go to the ballot every five years, there are six positions that we vote on. The question that Senators are asking is if on the other five positions you are voting on the basis of the strength of an individual, how comes it is only the Senate that you want to reduce to be voted on the basis of gender, where you are voting a man and a woman?

If you feel that you want to be completely inclusive, then pass on the same provision right from the Member of County Assembly all the way to the President. It is as simple as that. It has absolutely nothing to do with us saying that we feel lesser.

I wish to plead with our colleague, women Senators, that let us raise the bar of the debate even on this issue of a deputy governor. The issue is not about whether you are a man or a woman. To the best of my knowledge and if you ask many of the deputy governors that serve in this current dispensation, they will tell you that their biggest cry for help is the fact that there are no clearly defined responsibilities and functions for them. Functions rank way above issues of gender.

If you want to propose and say it must be a woman, personally, I do not hold very strong views about it. However, at least, give that woman some work. Do not just put any other woman without defining responsibilities for them. That is the discussion that we need to have. We are saying we need to find ways of improving and enriching this conversation, so that it can benefit all of us, as Kenyans.

The Deputy Speaker (Sen. (Prof.) Kamar): Your three minutes are almost over. You have one minute left.

(Loud consultations)

Sen. Cheruiyot: Madam Deputy Speaker, you need to protect me. I am speaking right in front of the most vicious defenders of some of the things that I am saying. I think that is what has made me dry on the throat.

In conclusion, since the Table Office is here, this is such a wonderful presentation by the Senate that should not just be left as a Report of this Committee that will be presented somewhere. We have our social media pages as the Senate. This Report should be out for people to read and know the position of the Senate on this particular matter. Newspapers need to know. We need to tell our Public Relations Office to up their game. By tomorrow, newspapers will be out with provisions and what the positions of most Senators on this particular issue are.

This Committee has done exemplary work. Out of the 10 or 15 provisions that they are producing, if you disagree with one or two, it does not mean that the 13 others do not make sense.

Therefore, I plead that these issues be properly highlighted. Let us discuss them soberly. Convince us with reason. Nobody is opposed to many of the issues that are being canvassed on the Floor of this House.

Most importantly, the final thing that I wish to say is that a Constitution is a social contract; it binds us all. Let us avoid the temptation where certain people would wish to exclude others. It is unfortunate that I say this when the leadership of the House is not

here. What happened in Naivasha is regrettable. The fact that you can invite Members of Parliament to a meeting to the exclusion of others without giving a proper justification and criteria--- Do not take us for fools. Do not tell us about COVID-19, yet we know what your considerations are. That was extremely shameful of our leadership.

I want to say thank you to the Standing Committee on Justice, Legal Affairs and Human Rights for finally rescuing the conduct and the stature of Senate by doing this particular document.

Thank you.

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

Actually, I am very surprised. If we are talking about gains and the unity of this House, then why are we identifying a particular issue that was proposed by the public of Kenya? The issue of doubling the Senate was not a matter of women; it was a matter that came from the public because the public felt that they needed more representation here. All the views that were collected were coming from the public.

Secondly, if we want to enrich the gains that we have made in the presentations, then I do not think that we should be talking about the numbers; that we do not need the 47 women because that is again for the Senate. We should be looking for other issues, like how much money are we going to get so that we can do proper monitoring and evaluation? Those are the things we should be talking about.

If you are giving this House information, it has to be very accurate. If you are talking about the 47 women at the National Assembly and the money that has been allocated to them, kindly go ahead and look at what is going to happen to that money because it has already been allocated. That money will not move from the National Assembly. It will go to the top up of the number of women that will be topped up after the elections are done. Therefore, that money will not move from there to any other House.

What I am opposing is the fact that we want to tamper with the gains that we are making, and we must know that Kenya belongs to all of us. We need each other. I am not saying that because maybe I will be sitting here next time. I do not know where we will be sitting, but the truth is that we should make a proper law that will be beneficial to all of us. We should not tamper with any gain we have made in the BBI.

We can converse or add any other thing, but not lose the gains we have made.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you. Sen. Farhiya, proceed.

Sen. Farhiya: Thank you, Madam Deputy Speaker. Sen. Nyamunga has spoken about most of the things I wanted to say. I thank the Committee for doing a thorough analysis of the document. There are many good recommendations they came up with, which we appreciate.

The only problem I have with the Committee recommendation is the removal of the 47 women from the Senate. In this country, when we talk about gender parity, people look at it from one side of the coin; that this is about women, which is not true.

Now that there is 35 per cent increase of money to the counties, there will be women who will look at the soft side of that. Together with our male counterparts, they accept critical issues that need to be looked at which are different from their views.

One of the issues that do not go right in our leadership is that 50 plus 1 per cent of this country is not represented on the table. In this Senate there are 18 women who are nominated. Of the 18, none of them has voting rights on matters concerning counties, which means that you can only vote on normal procedural Motions. The impact of the nominated women is not being felt.

I beseech our colleagues that if we wanted an amendment, we should propose that they move with the funds. If you retain the funds for the 47 women, there are some counties that will not get their top-up. If they move to the Senate with their funds, they will protect matters concerning the society. Since women take care of societal issues, which is well known, there are certain soft issues that our male counterparts who think about the whole country might not get right.

The Deputy Speaker (Sen. (Prof.) Kamar): The last one is Sen. Wetangula. I had said the first two on each side of the House.

Sen. Wetangula: Thank you, Madam Deputy Speaker. I encourage this House to appreciate---

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. (Dr.) Musuruve, are you on a point of order? I hope it is not to complain about the two, but a real point of order.

Sen. (Dr.) Musuruve: Madam Deputy Speaker, I seek your indulgence because the information issued is like representing the views of the Senate. We have women here who are affected. There is some information coming to the Floor of this House that I am not certain is accurate.

Is the issue of transferring 47 women to the Senate in the BBI? This is a new post being created. Is it written that the transfer is there?

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senator, you are asking the questions that I was going to rule on. I was going to rule on what we do after this. We have two Motions that we must execute today; the Tea Bill and the Senate Majority Leader's Calendar change Motion. We will not have enough time.

However, I was going to rule later. I can mention now that the Committee and the Chair are willing to receive any comment directly from Members and they can bring back the Report. We will give them a deadline on when to bring back a report.

Sen. (Dr.) Musuruve: Madam Deputy Speaker, before talking to the media or going public and saying what women have said in the Senate, they should talk to us.

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. (Dr.) Musuruve, if you heard what I said, they want to receive submissions before they come back with the report again. It means that we are going to receive the report, most likely next week, because we will give them an opportunity to have an online *Zoom* meeting with all Members who are ready to join. I was going to rule that we have a *Zoom* meeting, where all feedback and any written submissions will be given to them.

Sen. Cheragei, do you have a point of order?

Sen. Cheragei: On a point of order, Madam Deputy Speaker. This issue involves the entire Senate. Having been a former Chairperson of the Committee, I am happy that they have raised the bar. I thought you would give us some latitude. On the issue of altering the Senate Calendar, I will not move any amendments, and it will pass within two minutes.

Why do we not converse on this and move to the Tea Bill? On altering the Senate Calendar, I have agreed and it will pass.

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Wambua, please proceed. Give my other student the microphone.

Sen. Wambua: Thank you, Madam Deputy Speaker, for acknowledging that I was your student, which confirms that I went to school. There is no matter before us today, yesterday and tomorrow that is as important as the position of the Senate on the BBI conversation. As your student and a Senator, I beseech you to find it in your heart to allow Members to comment on this matter.

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

Sen. (Dr.) Langat: Thank you, Madam Deputy Speaker. I want to concur with what Sen. Cherargei and Sen. Wambua have said. This is an important matter that most of us should make our contributions on. Kindly extend time.

The Deputy Speaker (Sen. (Prof.) Kamar): Point taken.

Sen. Kinyua, proceed.

Sen. Kinyua: Thank you, Madam Deputy Speaker. I concur with my colleagues because this is a live matter, and if we talk in different directions, we will send mixed signals to Kenyans. Give us three minutes for every Member to be heard.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you. Your point is taken.

Sen. Were.

Sen. Were: Madam Deputy Speaker, I request you that since this matter is important, you could reduce the time from two minutes to one minute, so that a Senator can make their point in 60 seconds. It is possible because they will just be repeating themselves.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you. Sen. Shiyonga, please, proceed.

Sen. Shiyonga: Thank you, Madam Deputy Speaker. I rise to request for more time as my colleagues have requested. This issue is a livewire that we need to speak to, in support or not in support of BBI. We need to be given time to ‘scoop’ this matter.

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

Hon. Senators, for avoidance of repetition, we have said that we are not going to the challenging debate; we are only enriching and adding. Please, use two minutes, but since I started with three minutes, I do not want to reduce. Sen. Nyamunga set a good precedent by speaking for two and a half minutes.

Sen. Wetangula: Thank you, Madam Deputy Speaker. The Statement by the Chairperson, Committee on Justice, Legal Affairs and Human Rights, Senior Counsel, Sen. Omogeni, is good. It is good because it is dealing with the real issues.

Are we looking for a strengthened Senate or an expanded and weakened Senate altogether? Are we looking at quantity or quality as my colleague there is saying?

Madam Deputy Speaker, Sen. Mutula Kilonzo Jnr. and I representing different formations appeared before the drafting committee that is dealing with the final editorials of the BBI Report. We conversed on most of the issues that Sen. Omogeni has said here on behalf of the Senate. We even went further and presented to the committee the draft

Bill that this House collectively worked on regarding what this Senate should be in the bicameral system in the Republic of Kenya. We have done that on behalf of the Senate.

Since there are so many competing forces and high interest out there, if we honestly want to be listened to and taken seriously, let us have a united voice by speaking with one voice. As I speak, all these men are either husbands or fathers because we live with our women in whatever formation. So, nobody here in their right senses is resting the upgrading and progression of our womenfolk. What we are saying is that we want to have changes that make sense. That is all we are talking about.

I read the proceedings of the BBI Report at the collections of views and the validation level. There is not a single proposal to enlarge the Senate by doubling its membership. Wherever that came from, let us look at the rationale and practicality of it and how it will operate. Why should people say that when you say we do not need 94 Senators you are removing gains? Nobody is removing gains because life is about progressive gaining of rights and that is what we want.

I urge my distinguished sister Sen. Nyamunga not to be hyper on these issues. Let us have a conversation that is rational, so that we all appreciate each other's point of view. If we were to tell them what we want, including but not limited to having more women here, we should speak with one voice.

I thank you.

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Cherargei you have three minutes.

Sen. Cherargei: Madam Deputy Speaker, I commend Members of my former committee and I congratulate the current Chair. I would have expected Sen. Omogeni to thank me for steering the committee to where he got it.

Under your guidance, Madam Deputy Speaker, I remember we met in Villa Rosa Kempinski and came up with a draft Bill that was later presented by you and others to the BBI task force. I am happy that those issues have come to fruition.

I think the issue of gender has been canvassed well. I am happy Sen. Faki was in that meeting.

I agree with Sen. Wetangula that the Senate should have veto powers. The question should be whether we want an expanded or strengthened Senate. That is the conversation we should have as a House. We do not have a problem having our female colleagues joining us in this honourable House.

Madam Deputy Speaker, under your guidance, we moved to court to reverse the effectiveness of 24 pieces of legislation that were passed without the concurrence of the Senate. Sen. Omogeni should factor in the decision of the High Court on the reversal of 24 pieces of legislation. We must also be the "Upper House."

Finally, since the Cabinet Ministers will be coming from the National Assembly, the role of appointment and vetting of senior Government officials should be given to the Senate, so that the Senate has the necessary muscles even as we look forward to have an expanded Senate.

It is good to have women around. I will be excited to have more women in this House because we will be able to concur on many issues, both private and public.

I thank you.

Sen. Shiyonga: Thank you, Madam Deputy Speaker, for the opportunity. I congratulate Sen. Omogeni for bringing up this issue on the Floor of the House.

Members need to know that Sen. (Dr.) Musuruve, Sen. (Dr.) Milgo and I are behind the idea of having 47 elected women Senators in the BBI Report. We were denied the right to vote just because we are nominated. It is good that 47 women will be elected in the Senate if the proposal passes. That is a big gain. Can you all Senator clap for me! If you do not, then you are not a Senator.

(Laughter)

The proposed 47 elected women Senators is not transfer of the Women Representatives from the National Assembly. These are new positions in the Senate because we have been having nominated Senators. The three women elected Senators, including you, Madam Deputy Speaker---

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

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Kinyua, let it be a proper point of order because we do not want to finish her minutes.

Sen. Shiyonga: Yes, they should not finish my minutes because they are men.

Sen. Kinyua: Madam Deputy Speaker, we should treat this matter with the seriousness it deserves.

The Deputy Speaker (Sen. (Prof.) Kamar): What is your point of order?

Sen. Kinyua: This is not a public rally for her to ask us to clap and that if you do not, then you are not a Senator. Some of her statements should be removed from the HANSARD because this is a serious matter.

The Deputy Speaker (Sen. (Prof.) Kamar): You have not told us what was out of order.

Sen. Shiyonga: I need to continue, Madam Deputy Speaker, because he did not inform me anything.

The only thing we need to do in this House is to unite and make sure that funds follow the functions, so that we strengthen devolution which is one of our mandates. It should not be a matter of fighting back.

Male Senators who are here should thank God because we shall be equal and work together to make sure that gains are achieved. It should not be perceived that we are here to waste time because we are here with a purpose.

I thank you.

Sen. Faki: Asante Bi. Naibu Spika kwa kunipa fursa hii. Kwanza, tukubaliane kwamba ripoti iliyotolewa na Kamati ya Sheria na Haki za Kibinadamu inafaa kuungwa mkono. Tunafaa kujua jinsi tutakavyosongeza mjadala huu mbele.

Kuna msemu wa Kiswahili kuwa “wingi si hoja”. Seneti inaweza kuongezewa Maseneta hadi 290 lakini hatutakuwa tumesaidia kwa yale ambayo Seneti inafaa kufanya kwa sababu haitakuwa na uwezo wowote. Tunafaa kuwa na Seneti iliyo na mamlaka kama vile wengine katika taasisi tofauti tofauti wameongezewa.

Kwa mfano, Ofisi ya Rais itakuwa na fursa ya kuchagua Waziri Mkuu na kumfuta wakati wowote wanapotaka. Hizo ni nguvu zaidi ambazo zitaongezwa kwa Ofisi hiyo kuliko vile ilivyo sasa kwa sababu hakuna nafasi ya Waziri Mkuu kwenye Katiba.

Sisi katika Seneti lazima tuangalie mapungufu tuliyonayo na jinsi tutaongeza nguvu zetu ili Seneti itakayofuata iwe na nguvu na mamlaka zaidi ya kutekeleza kazi yake ya kutetea ugazuti katika nchi yetu ya Kenya.

Wanapendekeza kuongeza Maseneta wengine 47 wa jinsia ya pili. Sio kwamba tunaongezewa nguvu; ni kupewa idadi ya watu ambayo haitasaidia popote katika kutetea ugatuzi katika nchi yetu.

Kwa kumalizia, ofisi za wawakilishi wa wanawake zinapoteza zaidi ya Kshs2 billion kwa mwaka. Ukifanya hesabu, Kshs6 million kwa maeneo mbuga 290 ni Kshs1.7 billion kila mwaka. Tunafaa kujiuliza pesa iliyotakikana kwenda kwa akina mama inakwenda wapi.

Badala ya kuteta katika Seneti eti tunataka Maseneta 47, ata wawe 100 tuko tayari. Tunataka kujua, hii Shilingi 1.7 bilioni ambayo Serikali itatoa katika ofisi za *Women Representatives* itaenda wapi?

Bi. Naibu Spika, kwa kumalizia, wabunge waliochaguliwa hapo mbeleni kwa viti tofauti katika Bunge wamefanya kazi kubwa kupeleka mbele miswada inayo husu akina mama kuliko wale tunao sasa. Huo ndio mjadala tunataka kuangalia. Ni njia gani tutatumia kusukuma mbele mjadala wa akina mama, ili haki zao na za watoto wetu wa kike zilindwe? Vili vile, pia bibi zetu wapate haki sawa katika Katiba yetu. Mjadala si kwa nini awe mume ama mke, mjadala ni vipi tutaweza kuongeza nguvu za Seneti ili liheshimike inavyo takikana.

Asante, Bi. Naibu Spika.

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Were.

Sen. Were: Thank you. Madam Deputy Speaker. I also want to join my colleagues in thanking the Committee on Justice, Legal Affairs and Human Rights for this report. At least our voice will be heard. However, I expected that the Committee would say something about an Oversight Fund for the Senate, knowing that we are fighting to be strengthened in our oversight role. That particular idea of an Oversight Fund has not been included.

The Building Bridges Initiative (BBI) should have focused on strengthening the Senate, and not just the numbers. We cannot strengthen the National Assembly by making sure that Cabinet Secretaries (CSs) and deputy CSs come from the National Assembly, then remove women from the crucial role of budget making, leave the National Government Affirmative Action Fund (NGAAF) in the National Assembly, then remove the women and bring them here just to vote.

Madam Deputy Speaker, I agree with my colleagues that if we are bringing women to this House, they should move with the NGAAF and not to just have them here for voting. Those women are also eligible for appointment to be CSs and deputy CSs. We do not want women to come here to just add on to numbers to vote. We are bigger than voting!

(Applause)

We think and have very great ideas. I helped in the stalemate on the revenue sharing formula, and I am a nominated woman. Therefore, if you bring me here to just be a voter, then we are not living up to our expectations.

I support this report if they make some amendments like putting in the Oversight Fund and asking that the gains made for women in the 2010 Constitution are not lost. We can only add on, we should not lose.

Thank you, Madam Deputy Speaker.

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. (Dr.) Langat.

Sen. (Dr.) Langat: Thank you, Madam Deputy Speaker, for giving me this chance to congratulate the Committee on Justice, Legal Affairs and Human Rights for the tremendous work that they have done on matters concerning these constitutional amendments.

Constitutional making is a very important process. The Constitution determines the development of a country because it sets a framework for everything that will be done. As Sen. Wetangula said, when it comes to matters that touch on this Senate, we must work together and have one voice. We want to make sure that we strengthen the Senate.

I also want to congratulate the governors---

(Loud consultations)

The Deputy Speaker (Sen. (Prof.) Kamar): Order, Members. Senator, you have two minutes.

Sen. (Dr.) Langat: Madam Deputy Speaker, I wanted to say something very important. Yesterday, governors said something very important. They mentioned that the Senate should be strengthened. If others outside there, including the citizens of this country, are working hard to make sure that the Senate is strengthened, what about us?

Imagine the strength of the National Assembly. All the Ministers will come from the National Assembly, including the ministries that serve the devolved functions. The CS for Devolution will come from that quarter. You can see how strong the other House will be compared to this one.

The ladies in the other House have affirmative fund and my question is; will they come with that fund to the Senate? If they do so, what happens to the male Senators who will not have that fund?

I was a teacher of literature and we do have a process of reading referred to as exegesis where one reads different scripts with the perception and ideas that they have. However, we are most likely to get an important document when we with an open mind and give room for further analysis. You will realise that very little has been addressed on matters agriculture.

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

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

I congratulate this Committee for their effort. Let us put our political principles aside. We did put aside our political principles when we had issues with division of revenue and *wananchi* were on our necks because they wanted money to get to them. We shall achieve great milestones when we leave our political godfathers and principles and discuss this matter in a sober manner.

The Temporary Speaker (Sen. Nyamunga): Can we hear from Sen. Cheruiyot?

(A Member spoke off record)

I am told that Sen. Cheruiyot has spoken.

Sen. Wambua: Thank you, Madam Temporary Speaker. I want to congratulate the Committee on Justice, Legal Affairs and Human Rights, led by Sen. Omogeni. This is not the first time Sen. Omogeni is rising to the occasion. He did the same thing in Naivasha when our leadership was unwilling or unable to push the agenda of the Senate forward. He did stand for the Senate. I thank, Sen. Omogeni, and congratulate him. I will say a few things about this document.

We are making a big fuss over the matter and the conversation on where the 47 elected women should sit. In my opinion, this matter is neither here nor there. Moving the same number of women legislators from the National Assembly to the Senate is like taking money from one pocket to the other pocket then arguing that you are richer. The women of this country deserve more and much better. Moving elected women from the National Assembly where they stand a chance to be appointed Prime Minister, Deputy Prime Minister and Cabinet Secretaries and bringing them to the Senate where we are not even talking about oversight fund is demeaning the women of this country.

When we were in Naivasha, I heard Members of the National Assembly fight for the National Government Constituency Development Fund. I have heard Members of the County Assemblies fight for the ward funds.

The Senate of the Republic of Kenya must fight to win the battle for oversight funds. This is because what we are doing is not a favour to anyone. We are undertaking a constitutional responsibility as a House.

(Sen. Wambua's microphone went off)

The Temporary Speaker (Sen. Nyamunga): What you are asking is not possible. I can give you one minute, but we have a Motion that we need to pass. Just do your one minute.

Sen. Wambua: Madam Temporary Speaker, the success of devolution is entirely dependent on the success of institutions that champion and guarantee devolution. We should be moving to strengthen the institution of the Senate, not expanding it. An expanded Senate without commensurate powers and authority to carry out oversight and ensure the success of devolution is a useless House.

Thank you, Madam Temporary Speaker.

Sen. (Dr.) Mwaura: Madam Temporary Speaker, we are having very interesting discussions here about what would constitute a functional Upper House. We were in

Naivasha and the mobocracy there could not allow the Senate to have its way, to the extent that even our presenter had to be bulldozed to discuss even that---

Congratulations, Sen. (Dr.) Kabaka. I liked your boldness. You are the one who led the pack.

(An hon. Senator spoke off record)

No, it was Sen. (Dr.) Kabaka; I know whom I am talking about. He even 'frog-marched' me from my chair to join the charade. You and Sen. Wambua did a very good job. Were it not for that, we were outnumbered, and there was a gag.

There is an idea that has now permeated the Legislature; that if you have the representatives of the Executive, you must shut up and be very grateful, and only some people can speak.

Madam Temporary Speaker, we have a golden opportunity to make the Senate the Upper House. Personally, I do not even mind even if women were to be doubled. I know that people are saying the male and female Senator. Let us not go that direction. Even the Senate of US has two Senators from each of the states. Let us strengthen the Senate and let it be the Upper House, so that the women who are here also seem to be the 'upper women' in terms of legislation in Parliament.

Let us refuse the temptation of making this a man and a woman issue; that if we have more women in the Senate, then it has been degraded because of the status of women. I think that is what we call systemic discrimination and marginalization. Let us call a spade for what it is.

Why are people considering that the Senate has been---

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

Sen. (Prof.) Kamar: Thank you, Madam Temporary Speaker, for giving me the opportunity to add my voice to this. I first thank the Chair of the Committee of Justice, Legal Affairs and Human Rights for giving us a very comprehensive report. They are creating room for us to do a presentation, and have assured us that there will be a presentation that will be heard and added to the BBI Report. I think that is the bottom line of this, and we are very happy about it.

Secondly, I agree with Members who have said that we need a strengthened Senate that does oversight in reality because our job is oversight, legislation and representation. It would be very sad that when we release 35 per cent of the revenue of this country to the counties, oversight goes down. We must bring the county executive to account and ensure that when they are given that money, we see the impact on the ground.

As Senators, we must think of how we can do a proper oversight. For that, I support that the Oversight Fund must feature in the Report that we are giving out. It must feature because we discovered that it has been difficult for eight years to get this funding coming forward.

In fact, Madam Temporary Speaker, I am surprised that we are debating about the representation of women and men in this House. That is not the issue. We need to add

value. It is value for us to have women and men. Why am I saying so? I am saying that because we are representing the same country that the National Assembly is representing. It is the same country; the same counties have constituencies and if we are going to take this just by the quarter, if we use the quarter that, we are going to take more than 30 per cent of the money, then the representation should be more than 30 per cent. Having 94 Members is the best thing that can ever happen to us.

I want also to disabuse the fact that it was not in the document. I wish Sen. Wetangula was here. This is because I would have told him that we presented it. I was in a committee of women that presented that. We said that we really need to have Senators Vote.

Madam Temporary Speaker, it is until you are stopped like Sen. Shiyonga was saying. It is until you are stopped like Sen. (Dr.) Musuruve and Sen. (Dr.) Milgo were stopped from voting that you realize that the 16 nominated women Senators are doing very little. They are at the mercy of the Leaders of Delegations and they are not able to do much. We want them to perform.

Madam Temporary speaker, I have sat on that Chair and I have seen the performance of the women who are nominated. For them to be stopped from voting is the most ridiculous thing. It is good for them to be here in their own right. It is good for them to vote for this country. It is good for them to serve the country.

For the amount of revenue that we are giving, we must have 30 per cent of representation in the Senate.

Thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, I would like to change the sequence of business. We are going to come back to this debate because there is still interests. However, we have to move to the next Motion, so that we can dispense of it, then come back this Report.

Next Order.

MOTION

ALTERATION OF THE SENATE CALENDAR

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.

(Sen. Kang'ata on 10.11.2020)

(Resumption of debate interrupted on 10.11.2020)

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, if you want to debate on the Motion, kindly, clear. Anybody who has logged in, kindly, clear and log in again. For the Motion at Order No.8; if you want to contribute on Motion, clear and log in again.

Kindly, make your requests.

Sen. (Dr.) Musuruve, kindly, proceed.

Just a minute, we had Sen. Omogeni on the Floor seconding. Kindly, continue.

Sen. Omogeni: Madam Temporary speaker, I had made my remarks yesterday. I was merely seconding the Motion. The concluding remarks I wanted to make is that we are now at the peak of the COVID-19 in this country. Some of us who have had some reports from the Parliamentary Service Commission (PSC), we know that there are a number of our staff and colleagues who have contracted COVID-19.

Let us be realistic as hon. Members and take note of the fact that we are now at the peak of COVID-19. We should agree with our leadership that they should put in place measures that protect our own safety.

In supporting this Motion, it is principally for the well being of hon. Members of Parliament.

I second the Motion.

(Question proposed)

The Temporary Speaker (Sen. Nyamunga): Sen. Wambua, proceed.

QUORUM

Sen. Wambua: Madam Temporary Speaker, remember yesterday we started a debate on that matter. Since we are a House of order, a House of tradition, the reason why we were unable to continue with debate on that matter yesterday was the issue of quorum.

I rise under Standing Order No. 35 to ask the Speaker to satisfy herself that we have quorum for that debate.

I thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. Nyamunga): Can the Division Bell be rung for about three minutes.

(The Division Bell was rung)

The Temporary Speaker (Sen. Nyamunga): Can you ring the Bell for another seven minutes?

(The Division Bell was rung)

The Temporary Speaker (Sen. Nyamunga): We now have quorum. Kindly stop the Bell.

Sen. Dullo, proceed. I do not see any interest on that.

Sen. Dullo: Madam Temporary Speaker, thank you. I beg to move the following amendment to the Motion-

THAT, the words “Tuesday 10th November” appearing after the words “beginning on” be deleted and substituted with the words “Wednesday 11th November”.

I call upon Sen. (Prof.) Kamar to second this amendment. I thank you.

The Temporary Speaker (Sen. Nyamunga): Sen. (Prof.) Kamar, proceed.

Sen. (Prof.) Kamar: Thank you, Madam Temporary Speaker. I support the Motion in the amended format. I support because I think this COVID-19 pandemic seems to be going up instead of going down. We had reached a situation where we thought things were coming down.

However, as we are talking, the number of infected persons is increasing in the country. We cannot be safe as a Senate because we interact with our constituents. We interact with other members of the public. I do support that we take one day in a week so that we reduce the number of days that we are in contact between ourselves, and further, that we also are able to have the place sanitized. This is very important.

Madam Temporary Speaker, I say this because painfully we lost an MCA in Uasin Gishu County through COVID-19. Thereafter when the other MCAs who had been in contact with him were tested, unfortunately we had another 12 MCAs who were already positive. We also had 27 staff who tested positive and this brought down the whole assembly.

Bearing in mind that you can have a whole assembly with 40 people going down, it is possible anywhere including this Senate. We need to remove that possibility of this Senate being totally affected.

For that reason, I really believe that the House Business Committee was wise to recommend that we take a break and come back for only one day in a week. With that, I support.

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, I think this is a simple Motion that is touching all of us. I would like to stop the debate and ask Sen. Dullo to make a reply.

Sen. Dullo: Madam Temporary Speaker, thank you.

The Temporary Speaker (Sen. Nyamunga): Just one minute Sen. Dullo. Sen. Dullo, go ahead. There is a bit of confusion.

(Question of the amendment proposed)

(Question of the amendment put and agreed to)

(Question of the Motion as amended proposed)

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, we go back to the main Motion. We can debate on it as amended. I will give just one Senator to make comments and then we will conclude this Motion.

Sen. Faki, proceed.

Sen. Faki: Asante, Bi Spika wa Muda, kwa kunipa fursa hii. Nimesimama kupinga Mswada huu wa kubadilisha vikao vya Bunge kutoka Jumanne, Jumatano na Alhamisi mpaka Jumanne ambayo ni siku moja kwa wiki. Nimekuwa hapa kutoka jana na Ripoti muhimu ya kamati yangu.

Jana nilikaa hapa kuanzia saa nane unusu mpaka saa kumi na mbili unusu tulipoahirisha kikao. Sikuweza kupewa fursa ya kuweza kuendeleza hiyo Ripoti. Leo vile vile, nimekuwa hapa kutoka saa nane na nusu mpaka saa hii, saa kumi na mbili, na sijaweza kupata fursa ya kuendeleza Ripoti yangu.

Bi Spika wa Muda, hii inamaanisha kwamba wakati ambao tuko nao katika Bunge ni mchache na haitatuwezesha sisi kukamilisha ratiba ya kazi ambayo inatakikana kufanyika kwa ile siku ambayo tunakaa.

Kwa hivyo, iwapo tutapunguza vikao na iwe ni kikao kimoja kwa wiki, ina maana kwamba kutakuwa na msongamano wa kazi inayofanyika hapa katika Bunge la Seneti. Hiyo itamaanisha kwamba kazi nyingi itachelewa. Maseneta ambao wanashughuli zao katika Bunge hili wataweza kuvunjika moyo na hawataweza kuhudhuria vikao.

Bi Spika wa Muda, ijapokuwa tunatahadhari kwamba ugonjwa wa COVID-19 upo, na umeweza kuathiri baadhi ya watu wetu, lakini vile vile, ni kwamba, hata kikao cha mara moja kwa wiki kinaweza kusababisha maambukizi ya ugonjwa wa COVID-19. Kwa hivyo, itakuwa siyo salama kwa Wabunge kuhudhuria hata kama ni kikao kimoja.

Nimesimama kupinga Hoja hii ya kuahirisha vikao na kuwa na kikao kimoja kwa wiki kwa sababu hautasaidia pakubwa kupunguza kazi ambayo tuko nayo mbele ya Bunge kabla ya vikao kuahirishwa 2.12. 2020.

Bi Spika wa Muda, naongezea tu kwamba, ni muhimu kwamba, kwa vile tunafikia mwisho wa mwaka, tuweze kuzingatia zile kazi ambazo zilikuwa zimeratibiwa kufanyika, zifanyike ili tukiondoka kuenda mapumziko ya Krismasi na mwaka mpya, tuwe tumemaliza kazi zetu ambazo zimeweza kupangwa.

Kwa kumalizia, nasema kwamba, wale ambao wameathirika na ugonjwa huu, tunawatakiya afueni ya haraka. Lakini pia ni kuwa, tukifunga Bunge ama tukiwa na vikao vichache, hatutaweza kukamilisha kazi yetu ya kuweza kuchunguza na kuangalia Serikali kwa wakati huu mgumu wa COVID-19, hususan huu wakati ambapo sasa limekuja shambulio la pili la haya maradhi.

The Temporary Speaker (Sen. Nyamunga): Sen. Wario, proceed.

Sen. Wario: Asante Bi Spika wa Muda, kwa kunipatia nafasi hii. Nimesimama kupinga Hoja iliyotolewa ili kuahirisha Bunge na kuweka siku moja kwa wiki.

Vile msemaji aliyenitangulia, Seneta wa Kaunti ya Mombasa alivyosema, kwa hakika, hata siku moja tukikaa katika kikao hapa, kama maambukizi yatakuwa yanaendelea, basi hata hiyo siku moja, maambukizi yanaweza kuendelea.

Tuko mwezi wa kumi na moja na tuko na kazi nyingi ambazo bado zinasalia katika Bunge. Tukipunguza kwa siku moja, hiyo inamaanisha kwamba, kazi nyingi ambayo ingeweza kufanyika mwaka huu itavuka kuenda mwaka ujao.

Bi Spika wa Muda, mambo muhimu kama Building Bridges Initiative (BBI) saa hii inaendelea kuzungumzwa. Kama Bunge hili litakuwa na siku chache, Wakenya kule nje watavunjika moyo sana, kwa sababu watu wako na imani sana na Bunge la Seneti kutokana na vile ambavyo tulifanya mambo ya ajabu na kuweza kuleta moyo wa

Wakenya wote pamoja. Imani yao ni Bunge hili la Seneti liweze kufanya kazi yake kwa siku tatu.

Nilikuwa nikiomba leo yote ili niweze kuongea, lakini sikupata fursa hiyo. Hiyo inamaanisha kwamba, kuna msongamano wa maombi mengi katika Bunge hili. Ndio sababu sisi tunasalia kuendelea kuomba na hatupati nafasi hiyo.

Bi. Spika wa Muda, kwa hivyo, tusijinyime hiyo haki ya kuzungumza mambo ya watu wetu katika Bunge hili. Mambo ya maambukizi ya COVID-19 kusema ukweli yako duniani kote. Mimi ninaona huu ugonjwa hautaondoka hapa nchini Kenya. Kama wakati ule tulifunga shule, vyo vikiu, misikiti na makanisa ilhali huu ugonjwa bado unasambaa.

Leo hata tukifunga Bunge, makanisa na misikiti, huu ugonjwa bado utatufuata. Kwa hivyo, tusitoroke kwa ule ukweli na tusiwe waoga wa kuenda kwa siku moja ama kufunga Bunge hili. Hilo halitakuwa suluhisho.

Bi Spika wa Muda, tusimame kidete na tuweze kuleta mikakati ambayo ni ya kupigana na ugonjwa huu ili tuweze kuomaliza. Tukitoroka huu ugonjwa, basi itakuwa sio suluhisho na mambo yote yataendelea kudorora.

Nimesimama kupinga.

The Temporary Speaker (Sen. Nyamunga): Let me call upon the Mover. Senate Majority Leader, proceed.

The Senate Majority Leader (Sen. Poghiso): Madam Temporary Speaker, I beg to reply. This is a straight forward procedural Motion. We have actually tried to tell Members why we are doing this. It is not a permanent thing. We are doing it for a very short time. We can come back once a week for a very short time. It is not forever. We will come back and any time, we can change the Calendar. I am asking for us to support this so that we can use it next week and maybe the following week.

Madam Temporary Speaker, I appeal to my Chairperson, Sen. Faki, please support this Motion, so that we have this change. Let us have a break. Many assemblies are actually closing completely for weeks. We are saying, we just come back once a week.

I appeal to my colleagues to support this change in the calendar.

I beg to reply.

(Question of the Motion as amended put and agreed to)

Resolved accordingly-

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 Wednesday, 11th November, 2020, until Tuesday, 1st

December, 2020, and that the Senate Calendar (Regular Sessions) for the Fourth Session, 2020, be altered accordingly.

(An hon. Senator stood on a point of order)

The Temporary Speaker (Sen. Nyamunga): What is your point of order? You have not logged in. First of all log in before we give you the opportunity. If a Senator wants to raise a point of order, you know what to do.

As it is, Sen. (Dr.) Musuruve, proceed.

Sen. (Dr.) Musuruve: Thank you, Madam Temporary Speaker for giving me this opportunity. Before the Motion that has just ended, there is a report from the Committee on Justice, Legal Affairs and Human Rights that we were ventilating on. We mentioned that we will get back to it so that we can also express ourselves.

The report was talking about the entire Senate with regard to the stand on the Building Bridges Initiative (BBI). I just seek your indulgence because I have a few points that I would like to go on the Floor of this House concerning the Senate's position on the BBI report.

The Temporary Speaker (Sen. Nyamunga): Senator, I have gotten your point. What I would ask you to do is that I have seen interest from Members. I do not know whether it is on Order No. 9. However, I had given a ruling that we will go back to make comments on that report. Can you log out and then log in, so that we go back to the report? Take your seat. I can see interventions. Sen. Kinyua, what is your intervention?

Sen. Kinyua: Madam Temporary Speaker, I am rising because I already keyed in. I wanted to talk just before that Motion. However, you did that deliberately to gag me. Even if we lost on that Motion, we did not lose genuinely.

The Temporary Speaker (Sen. Nyamunga): Sen. Wario, I can see you have an intervention.

Sen. Wario: Madam Temporary Speaker, equally, when the voting was going on, we had no quorum and I wanted to raise the same.

The Temporary Speaker (Sen. Nyamunga): Senators, we cannot go backwards to a decision that has already been made. It depends on when you start the debate. By the time we were starting that debate, we had quorum. You can only stop a debate at the beginning. You cannot come at the end of it all. That one is irregular.

Sen. (Dr.) Musuruve, proceed.

STATEMENT

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

(Resumption of debate on Statement)

Sen. (Dr.) Musuruve: Madam Temporary Speaker, thank you for giving me this opportunity and talk time to ventilate and comment on the issue of the Committee on

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Justice, Legal Affairs and Human Rights. The Committee must be candid that the views they are representing are not views of all women.

We already have gains in the BBI report where we have the two thirds gender rule observed. You can remember very well even before this report, there was already a case in court and the Chief Justice, Hon. Maraga, has given a ruling concerning the two thirds gender rule. However, the BBI comes in to solve it in the Senate.

Madam Temporary Speaker, when women are in the Senate, whatever goes to the male Senators will also go to the female Senators in terms of oversight. They should be fighting to get their oversight so that both Senators are empowered.

The male Senators should not be afraid of an expanded Senate because I have observed and gone through a lot of humiliation. When I was supposed to vote and Sen. Malalah wrote a letter to the Speaker to say that I and Sen. Shiyonga should not vote because we are delegation---

Madam Temporary Speaker, when we have 50-50 Senators, it means that even women Senators will have the right to talk about issues that concern women. Article 43 of the Constitution talks about the socioeconomic rights which women can talk about. They can also ensure that money goes to the counties for the purpose of ensuring that Article 43 is executed.

In fact, what should happen is that the Senate should talk about Persons with Disabilities (PWDs) and also the youth. They have no representation. The gains they have in 2010 Constitution should not be lost. The men should be mindful of the women here. They should not use divide and rule tactics so that women fight each other yet we already have gains.

Madam Temporary Speaker, I am happy that the Rt. Hon. Raila Amollo Odinga and the President are keen on issues of inclusivity. Inclusivity has been achieved in the Senate 50-50. I suggest that we should give our presentations to the male counterparts. They should not go to the media and say that this is what the Senate has said.

The Temporary Speaker (Sen. Nyamunga): Sen. (Dr.) Milgo, proceed.

Sen. (Dr.) Milgo: Madam Temporary Speaker, thank you. I wish to speak to the same issue on representation in the Senate. I had not seen the reason why 50-50 is a challenge in this Senate. As I am speaking right now, I have a letter that in this case does not allow me to vote on any issue in this Senate.

I am still very humiliated and it has taken me time to come back after receiving such a letter. Many of the speakers who came ahead of me felt that voting is of no use. However, voting has done several things. In the USA, President Trump was trounced by Joe Biden because of the vote.

Madam Temporary Speaker, voting in the same vein goes a long way to ensure that Bills and Motions pass. During the Division of Revenue Bill, we spent a long time to ensure that we had the right numbers. That does not mean that voting is not important. Therefore, we want to have women in this Senate who are empowered to vote. We are speaking to issues of 47 women in the National Assembly who have been given what we call National Government Affirmative Action Fund (NGAAF).

Madam Temporary Speaker, I think you came from there as well. These women have suffered because that amount is so little. They are even demonized to the extent that

people refer to Members of Parliament and governors and those women are taken as just women representatives. When people are being introduced, they become secondary women.

Out of that 70, maybe they can still retain the 47 women. What we should be speaking to as a Senate is to have Cabinet Secretaries (CSs) appointed from Parliament so that we shall have some Senators joining ministerial positions as well. Being a Senator empowers any Senator to have representation, speak to issues of legislation as well as oversight.

Madam Temporary Speaker, we should be speaking and fighting for oversight funding and not fighting to remove the gains of women that are already in the Senate in the future. Our male counterparts, with due respect, should not be afraid of the women who will be in the Senate come the future.

If you look at this House right now and in most cases, you will find that it is the nominated women who have ensured that this Senate goes up to 6.30 p.m. each sitting day. Therefore, women Senators are as equally important as the male Senators.

Madam Temporary Speaker, I thank you.

ADJOURNMENT

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, it is now 6.30 p.m., time to interrupt the business of the Senate. The House, therefore, stands adjourned until Tuesday, 17th November, 2020 at 2.30 p.m.

The Senate rose at 6.30 p.m.