

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

Tuesday, 18<sup>th</sup> May, 2021

*The House met at the Senate Chamber,  
Parliament Buildings, at 10.00 a.m.*

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

#### PRAYER

#### MESSAGE FROM THE NATIONAL ASSEMBLY

##### PASSAGE OF THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2020

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Hon. Senators, I wish to report to the Senate that, pursuant to Standing Order 41 (3) and (4), I have received the following Message from the Speaker of the National Assembly regarding the passage of the Constitution of Kenya (Amendment) Bill, 2020. Pursuant to the said Standing Order, I now report the Message-

Pursuant to the provisions of Standing Order 41(1) of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly –

“WHEREAS, The Constitution of Kenya (Amendment) Bill, 2020 promoted by the Building Bridges Initiative, proposing to amend the Constitution of Kenya was introduced in Parliament pursuant to the provisions of Article 257(7) of the Constitution in the form forwarded to the National Assembly by the Independent Electoral and Boundaries Commission (IEBC);

FURTHER, WHEREAS the said Bill was Read a First Time on Thursday, 4<sup>th</sup> March, 2021, considered and passed in Second Reading and Third Reading on Thursday, 6<sup>th</sup> May, 2021 by votes supported by a majority of all Members of the National Assembly in accordance with the requirements of Article 257(8) of the Constitution;

NOW THEREFORE, in accordance with the provisions of Standing Order 41(1) of the National Assembly Standing Orders, I hereby convey the said decision of the National Assembly to the Senate.”

I thank you.

Next Order!

**PETITIONS****ACCESS TO JUSTICE DURING THE COVID-19  
PANDEMIC AND THE APPOINTMENT OF COURT REPORTERS**

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Hon. Senators, I hereby report to the Senate that a petition has been submitted, through the Clerk, by Kevin Ndoho Macharia, a citizen of the Republic of Kenya.

As you are aware, under Article 119(1) of the Constitution, and I quote: -

“Every person has a right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation.”

Hon. Senators, the salient issues raised in the said Petition are: -

- i That, there has allegedly been great difficulty in mention/hearing dates before courts during the prevailing COVID-19 pandemic;
- ii That, many matters with mention/hearing dates fail to be listed in the cause list to the great injury of advocates’ reputation as a profession when clients who rely on court diaries find out that their matters were postponed yet in some instances the said clients have travelled from far off places and their matters have lasted over many years without completion;
- iii That, many certificates of urgency applications to the courts are allegedly delayed and take three to four dates to get any feedback on the outcome;
- iv That, obtaining certified and scanned copies of typed court proceedings is allegedly difficult;
- v That owing to the requirement of fidelity to the reduction of oral evidence into typed text and for court reporters to take oath to uphold the rule of law, there is need for court reporters to have trained and certified court reporters. There is need to thus set aside resources to train court reporters and to re-engineer the mission of the national council for law reporting to provide the greatly needed trained and certified personnel; and
- vi That there is need for more resources to be allocated to the function of administration and access of justice to resolve the issues currently being faced.

The Petitioner, therefore, prays that-

- i. The Senate investigates into the issues and provides solutions with set timelines;
- ii. Reviews the Civil Procedure Act and the National Council for Law Reporting Act, with a view to delivering access to justice and remediating the delays and frustrations citizens are facing; and,
- iii. Enacts a Court Reporters Act.

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

**Sen. Cheruiyot:** Thank you, Mr. Temporary Speaker, Sir, for this chance. This is a very important Petition that this House is being invited to consider and perhaps give a way forward on.

Access to justice remains to be one of the founding principles of a modern working democracy, where citizens every time when they feel their rights have been threatened, should know there is an easier way through which they can be preserved.

The Covid-19 pandemic has presented almost every fragment of society with a very difficult and unchartered scenario with regards to exercising of their mandate, be they businesses. You can see the struggle. Our courts and the Judiciary are not strangers to this challenge.

This House is, therefore, being presented with a Petition that I feel we should seriously consider and perhaps, later on, share out findings with, first of all, the Petitioners. This is also one the unique scenarios where after the Petition has been considered, the findings ought to be shared with our colleagues in the National Assembly, especially because they control the power of the purse in the Republic.

Under funding of our Judiciary is a systemic challenge, which if we do not address as a House, is going to pose a serious threat to the rule of law in this country. The fact that you know that when courts of law are not able to meet physically, they do not have a national platform upon which they can conduct court hearings and, therefore, sometimes it is left to who you know in the Judiciary and whose email address you have, the Registrar and such issues. Those should not be things that we are doing in the 21<sup>st</sup> Century.

As Parliament, for example, I know for a fact that we are trying to secure an online presence system that will allow us to transact our business, either physically as we are doing right now, or in instances as happened twice in the last year, where with the increasing cases of Coronavirus, we had to take a break and operate only virtually. Then, as a House, our business then continues uninterrupted.

Unfortunately, the Judiciary does not have that kind of luxury. Many of the times when they place their requests, before the Budget Committee of the National Assembly, they are left perhaps with only salaries and enough just to meet their recurrent expenditure, and very little to do any meaningful development.

We know that there are counties that do not have the requisite number of courts. Secondly, there are people who have to travel such long distances because of the geographical nature of some of the counties and the terrain they have to take for somebody to present a petition either before the High Court, a Magistrates Court or the Court of Appeal.

It is a high time as a country we made a keen determination to understand that the same way we fight for access to health, education, good roads and clean water, access to justice is a basic human right that we need, as Parliament, to ensure that it has been dispensed equally. There should not be a scenario where certain Kenyans can easily access justice, for example, those within Nairobi or any of the former Provincial headquarters, yet there are citizens in other parts of the country that cannot access it.

In this report that will come to the House and the Committee that will consider this Petition, it would be important for them for example to furnish this House with a report of the ratio of citizen to judicial officers' ratio in the various counties. It cannot be that in certain counties within a short proximity, one is able to access the services of the Judiciary, yet in others it would take one perhaps a day or two day's journey.

On this issue I have raised on access to justice during this season of the pandemic, I remember when the whole nation and perhaps entire world was glued to their televisions awaiting the ruling on the ill-fated BBI initiative, it took more than two hours of the country waiting because the judges could not log into the *Zoom* platform. It is a national shame that a country that is endowed resources cannot even purchase--- It showed how starved of resources our Judiciary is; that we have to result to third-rate or perhaps platforms that are not secure. We have scenarios in other countries where people have stormed into *Zoom* meetings and displayed other matters.

Each time I saw those judges reaching out to give some of their rulings, I was bothered what would happen in something unfortunate was to happen, and a hacker or somebody was to log them out. This tells us of the obvious challenge happening in our Judiciary.

There is no rocket science about the solutions they need with regard to that. It is about funding. Let us allow them to set up the Judiciary fund. The Cabinet Secretary (CS) for National Treasury and Planning has never gazetted those regulations to allow the Judiciary to, perhaps, make use of some of the resources they can raise from their services.

Of course, there is a flip side to the argument on what can be done, but at least allow them to run a fund that will allow them to dispense justice and give out the services they give to the citizens of this country as an equal arm of the Government.

This is why if one reads many of the proposals from some of the good thinking Kenyans and all the attempted constitutional amendment initiatives that have come in the last seven years, each has been saying that at least we should set a minimum ceiling of how much Parliament needs to dispense to the Judiciary, the same way we have set the amounts to be devolved to the county governments.

If one looks at the funding of the Judiciary vis-à-vis the other arms of the Government, it is not a proper comparison. It should not be left at the whims of Parliament because we understand how parliamentarians are. For example, with ruling given last week, one does not want to imagine what will happen to the Judiciary budget if it falls into the wrong hands in the National Assembly.

If people were to make good some of their threats that we hear from people who are supposedly leaned and the kinds of things they are saying about the Judiciary, one would be worried. Such scenarios lead to obvious dysfunction in our Judiciary.

Mr. Temporary Speaker, Sir, I do not want to take long. I know that the rest of my colleagues also may want to say something about this issue. My proposal is that the policy decision or whatever proposal that will come out of this Committee should not only be shared with Petitioners. The same needs to be forwarded to the National Assembly and its Budget Committee and the Justice and Legal Affairs Committee, so that they understand that citizens are concerned about the continuous underfunding of our Judiciary.

Thank you, Mr. Temporary Speaker, Sir.

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

**Sen. Faki:** Asante, Bw. Spika wa Muda, kwa kunipa fursa hii kuchangia malalamiko ambayo yameletwa Bungeni na Kevin Ndoho Macharia kuhusiana na

kuzorota kwa huduma za mahakama wakati huu wa janga la Korona yaani (COVID-19). Malalamiko haya yamekuja wakati mwafaka kwa sababu tumeona kwamba huduma za mahakama zimeendelea kupungua kwa sababu ya janga la Korona lililotekea Mwezi wa Tatu mwaka jana.

Kumekuwa na kufungwa kwa mahakama mara kwa mara kwa sababu mmoja au wawili wa wafanyikazi wa mahakama wameweza kupatikana na ugonjwa wa Korona au COVID-19. Kwa hivyo, si salama kwa watumizi na wahudumu wa mahakama kuendelea kufanya kazi wakati wenzao wamepatikana na janga hilo.

Bw. Spika wa Muda, athari zaidi zimewapata mawakili kwa sababu wengi wao hutegemea huduma za mahakama ili waweze kukidhi mahitaji yao na kusimamia ofisi zao. Wengi wameweza kuathirika na kufunga ofisi zao kwa sababu kazi zimepungua, na vile vile, huduma katika mahakama zimeendelea kupungua.

Kumeongezeka msongamano katika jela zetu kwa sababu wengi wa wale ambao wanapewa masharti ya kutoka nje wakati wanangojea kesi wanashindwa kuyatekeleza kwa sababu ya hali ngumu ya uchumi kutokana na janga hili la COVID-19. Kwa hivyo, nakubaliana na mawazo yaliyotolewa na Sen. Cheruiyot kwamba swala la pesa zinazoenda kwa taasisi ya mahakama lazima ziongezwe, kwa sababu wataweza kuhudumia wananchi kwa urahisi zaidi iwapo watakuwa na pesa za kutosha.

Bw. Spika wa Muda, awali ilipotokea janga la COVID-19, mahakama nyingi hazikuwa na hazina ya pesa za kuweka sehemu za kuosha mikono ama kununua viyeyuzi na kupeana barakoa kwa wale ambao labda wameingia mahakamani na hawakuweza kuwa na barakoa, na wale ambao labda zao zimeharibika wakiwa mahakamani. Swala la pesa kwa mahakama ni muhimu sana. Hii ni kwa sababu bila pesa imekuwa ni mambo ya mshike mshike katika mahakama zetu nchini Kenya.

Swala lingine ni kuwa huduma za kimtandao katika mahakama mara nyingi huwa zimedorora. Utapata kwamba mawakili wanaingia katika mtandao Saa Tatu lakini inawachukua masaa mawili ndio majaji waweze kuingia. Ukiuliza unaambiwa mtandao ulikuwa uko chini, kwa hivyo hatuwezi kuanza vikao vya korti.

Bw. Spika wa Muda, mara nyingi utapata kwamba mawakili wanapiga kelele na kuuliza: “Je, unanisikiza mheshimiwa? *Can you hear me your Honour?*” Muda mwingi unapotea wakati hawawezi kuelewana baina ya yule wakili ama mhusika na yule anasimamia korti ile. Ikiwa mahakama zetu zitapewa pesa za kutosha, zitasaidia kuimarisha miundo msingi ya mitandao yake. Hii ni kwa sababu bila miundo msingi dhabiti mara nyingi wakati unapotea katika vikao vya mahakama.

Mahakama siku hizi zimefungua ile inaitwa *e-filing*, lakini ukijaribu kuingia kwenye mtandao unaambiwa uko chini. Ukirudi tena Saa Nane, unaambiwa bado mtandao uko chini. Baadaye mtandao unapoimarika unaambiwa sasa kuna msongamano kwa sababu kuna watu wengi ambao wanajaribu kuingia kuweza kusajilisha hati zao, lakini mtandao hauwezi kusaidia.

Bw. Spika wa Muda, inamaanisha kwamba kuna kuchelewa kuwasilisha kesi mahakamani. Kuna kuchelewa kuweza kulipa malipo kwa mahakama. Kuna kuchelewa kuweza kutekeleza yale ambayo yanatakikana yatekelezwe kabla hukumu haijatolewa ama masharti hayajatoka. Kwa mfano, kama kesi inataka kupelekwa kwa haraka, yaani ile wanaita *certificate of urgency*, mara nyingi inakuwa ni shida. Inakuchukua karibu siku

tatu kama wakili kuweza kuhakikisha kwamba maombi yako yamefika mbele ya mahakama ili yaweze kushughulikiwa.

Hili swala la ufadhili ni muhimu. Pia swala la kuongeze mahakama nchini ni muhimu. Mahakima zetu ni chache na huchangia misongamano.

Ninaunga mkono malalamiko haya ambayo yameletwa katika Bunge letu la Seneti. Ningeomba swala hili lishughulikiwe na Kamati yetu ya Haki na Maswala ya Kisheria na Kamati ya Bunge ya Kitaifa ili kuhakikisha kwamba yameweza kutekelezwa.

Bw. Spika wa Muda, mwisho ni kuwa katika maswala ya mtandao wengi hawapati fursa ya kuweza kuelezewa mashtaka kwa lugha wanazozifahamu au wanaotakikana kufuatilia kwa urahisi. Kwa mfano, hatujakuwa na mtandao unaotumia lugha ya Kiswahili ama lugha nyingine ambazo zinatumika mahakamani kama zile sehemu za mashambani ambazo inakuwa ni rahisi kwa mtu kuweza kufuatilia kesi yake. Itakapotafsiriwa kwa mfano kwa Kiswahili, itakuwa inasaidia pakubwa kwa yule ambaye anasomewa mashataka.

Nachukua fursa hii kumpongeza hakimu mmoja katika mahakama ya Shanzu ambaye majuzi aliandika na kusoma hukumu yake kwa lugha ya Kiswahili kuanzia mwanzo hadi mwisho. Hakimu huyo anaitwa Senior Resident Magistrate Odhiambo ambaye anahudumu katika Mahakama ya Shanzu kule Mombasa.

Bw. Spika wa Muda, hii inamaanisha kwamba lugha ya Kiswahili inaendelea kukua na iwapo tutaweza kupata nafasi ya kuajiri wakalimani wa kutosha, itakuwa ni lugha ambayo inatumika vizuri mahakamani bila tashwishi yoyote. Hiyo itasaidia popote kutekeleza swala la upatikanaji wa haki kwa sababu anayesomewa mashtaka atayaelewa. Yule anayesomewa hukumu ameelewa hukumu ile ili asitendewe visivyo katika mahakama ile ambaye inahusika.

Kwa hivyo, ninaunga mkono malalamiko hayo.

Bw. Spika wa Muda, asante.

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

**Sen. Wetangula:** Thank you, Mr. Temporary Speaker, Sir, for an opportunity to also salute this Kenyan, who has sent a Petition, like many others do to this Senate.

I enjoin the views that were ably put forward by Sen. Cheruiyot and the distinguished Senator for Mombasa County, Sen. Faki, that access to justice even under our 2010 Constitution is very clear. It must be unfettered, uninterred and be expeditious. Citizens go to court when they have serious need for justice and must be dealt with in their matters as expeditiously as possible.

For a long time, the Judiciary has been underfunded because sometimes when the Judiciary makes bold decisions against the Executive, the Executive presses the button on funding and tightens the tap. However, I agree with the Petitioner that now we have even extraordinary times with COVID-19 pandemic. In the old days, those of us who have practiced in the corridors of law courts know how difficult it is to run around hidden and misplaced files, and so on and so forth.

Mr. Temporary Speaker, Sir, sometimes you go to court for a certificate of urgency and end up staying there for a week waiting for a matter that was extremely urgent to be addressed. Sometimes it is because of mischievous court clerks or litigants who collude with court clerks to get all these things not to move.

Mr. Temporary Speaker, Sir, this Petitioner is saying that with the Coronavirus Disease (COVID-19) and the extraordinary situation that we face, we need extraordinary efforts to make the *wananchi* access justice, particularly when it comes to *wananchi* seeking redress from courts when their properties are auctioned or their rights are endangered. If you read our newspapers, almost every day, we have six or seven pages of auctions by financial institutions. This is not because *wananchi* are fraudulent or refuse to pay loans, but the economy is so tight that some cannot meet their financial obligations.

When the banks are uncaring and do not listen, the only avenue we have is the courts. The banks and financial institutions have the right to foreclose the borrower, but they should look at the circumstances and see what is best to do. They can restructure the loans, delay the payment or give a moratorium. They can do this or that. Courts have that right, but when you cannot access the court, you are at the mercy of the institutions.

Mr. Temporary Speaker, Sir, equally important is the point raised by the Senator for Kericho. The National Treasury must gazette the rules that will govern how the Judiciary can appropriate some of the monies they raise directly, so that they can meet their day-to-day needs.

This Petition complains about simple issues like photocopying. Many times, you will go to court and want a photocopy of a critical document, but you are told that there is no photocopying paper in the Judiciary, yet the Judiciary raises huge sums of money to the Exchequer through filing fees, because nobody gets to court and gets their services for free. There is filing fees, adjournment costs, fines for those in the criminal justice process, and so on. We, therefore, need to have those rules gazetted. The Committee on Justice, Legal affairs and Human Rights, in which Sen. Faki sits, should look at this and see how to fast-track the drafting and tabling of those rules, so that we can activate how the Judiciary works.

Mr. Temporary Speaker, Sir, this gentleman raises a very important issue, that when we deal with virtual judicial processes, we need to care about how many Kenyans have smartphones. How many people in Samburu can engage and conduct a civil or criminal trial through a virtual process?

We are told that just about under 10 per cent of Kenyans have smartphones. The rest have '*kabambes*' and '*mulika mwizis*.' All they want is to do is make phone calls, receive phone calls, send *M-pesa*, get *M-pesa*, period! There is nothing else they want. Those who have phones that have *YouTube*, *Google* and mailing are very few. When you expect a *mwananchi* in Lamu, Vanga, Bungoma or Isiolo to engage in a court process virtually, it means that you expect them to have a computer, tablet or smartphone. They do not have them.

We need to have a more innovative way of accessing *wananchi* to justice. Instead of cramming in courts, the Government should put aside money and help courts to organize to have open sessions. Justice is not just about buildings. It is about having a judicial officer, litigants, a process of hearing their grievances, and giving them the justice they want.

You can put up a public dome, so that people do not have to cram and endanger their lives in terms of transmission of COVID-19. Justice can then be dispensed. In these extraordinary times, I know that we have courts all over, but the Judiciary should be

innovative to create special spacious courts in regions. It is not asking for too much for someone from Bungoma to go to Kakamega or vice versa, because there is a special facility set up there to dispense justice or somebody from Isiolo to go to Meru to access this kind of structure, is not asking for too much.

Every *mwananchi*, the high, the mighty and the low, must be given an opportunity to access justice fairly, expeditiously and affordably. That is why I support this Petition. The Committee that will be seized of it must act quickly and bring findings to this House to help Kenyans.

Thank you, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Sen. (Dr.) Musuruve.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to support this Petition.

Indeed, during the COVID-19 pandemic, the issue of accessing justice is paramount to everyone in this country. If justice is denied or delayed, it is very inhumane. There is need for the Government to allocate resources, for the purpose of ensuring that all Kenyans get justice.

Even as we talk about online resources and processing of cases, it is also important to know that there is need for capacity building in the judicial system, so that all the judicial officers have the digital literacy to handle online communication. I think it is something that is very important.

There is need for speeding processing of cases, simply because sometimes cases take so long that justice is not achieved. There are cases where people have died, and if it is the head of the family, you will find that the children are not able to access the estate that is rightfully meant for them. This is because of the very many Petitions that are pegged on the head of the family.

There are cases where children have not been able to go to school. They were not able to access money for school fees, simply because the case of the head of the family went on for too long, and the court did not make a ruling that the estate should be shared. Sometimes children end up being denied school fees and their rights.

Mr. Temporary Speaker, Sir, very many families are afflicted because of delay in cases. There is need for the Government to do something about it. I agree with Sen. Wetangula when he says that there is---

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Order, hon. Senators. This is to inform you that we only have five minutes remaining for comments regarding this Petition, and we have a list of Members requesting to make their observations.

Senator, you may conclude your contribution on the Petition.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Temporary Speaker, Sir. As I conclude, I want to state that there is need for justice for everyone. There is need for the judicial department to ensure that they look for innovative ways of ensuring that there is service delivery, not only to families, but everyone in this country, including Persons with Disabilities (PwDs).

We have the Visually Impaired (VI), who cannot see. We also have the deaf. There is need to ensure capacity building on the use of Information Technology (IT) to accessing justice.

Mr. Temporary Speaker, Sir, there is need for the Government to ensure that masks and sanitizers are readily available. There is need to allocate more money to ensure justice is not delayed.

I have not been able to express my thoughts very well because you have hurried me, but thank you for the opportunity.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Thank you, Senator.

Sen. Madzayo, proceed.

**Sen. Madzayo:** Shukran, Bw. Spika wa Muda. Kwanza, ninampa kongole Bw. Kevin Ndobu Macharia, wakili ambaye ameleta hili ombi.

Ulegevu wa huduma za sheria katika hizi korti umekithiri. Yote haya yanaletwa na hili janga la homa ya korona au COVID-19. Hususan, mawakili wanapata shida kutafuta tarehe ya kesi zao kusikizwa kupitia kwa matandao. Sio kama zamani ambapo mawakili wangeenda kortini, kuorodhesha kesi na kutetea wateja wao mara moja.

Wakati huu, kesi zinalegea na haki za wananchi kucheleweshwa. Kama tunavyojua, ikiwa haki itadidimia kwa mwananchi, ni sawa na kusema mwananchi amenyimwa haki. Kumnyima mwananchi haki yake ni makosa.

Katika Kaunti ya Kilifi, kesi za mashamba ndizo zinachelewa zaidi. Imekuwa vigumu sasa kwa watu kuwania na kuzuia cheti cha dharura. Sasa unapata mabwanyenye wanatumia hilo kama kinga yao. Mara kwa mara wanapata amri na wanavunja mahali ilhali wakili wa ule upande mwingine akitaka kwenda kortini kutumia cheti cha dharura, anapata kwamba hawezi kufikia korti.

Kunatakiwa kuwe na mageuzi na kuweka njia rahisi kupitia kwa mtandao ili hawa mawakili wawasilishe maswala ya dharura kama haya.

Bw. Spika wa Muda, watu wengi wanapata taabu. Ni jambo la kusikitisha kuona kwamba Serikali imeendelea kupunguza pesa za mahakama. Tunahitaji mahakama kila mahali ili watu wasisafiri kwenda mbali kutafuta haki. Hebu fikiria kutoka Mtwapa hadi Malindi ikiwa kesi iko kule. Inabidi maskini achukue pesa zake za matumizi ili asafiri.

Kuna haja ya Serikali kutenga pesa za kutosha ili mahakama za taifa ziimarishe mitandao yao kwa ajili ya mawakili kufanya kazi bila matatizo katika huduma kwa wananchi.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Hon. Senators, pursuant to Standing Order No.232 (1), the Petition is hereby committed to the Committee on Justice, Legal Affairs and Human Rights for its consideration.

*(The Petition was committed to the Committee on Justice,  
Legal Affairs and Human Rights for its consideration)*

In terms of Standing Order No.232(2), the Committee is required, in not more than 60 calendar days from the time of reading the prayer to respond to the Petitioner by way of a report addressed to the Petitioner and laid on the Table of the Senate.

HISTORICAL INJUSTICES SUFFERED  
BY THE TOROBEEK COMMUNITY

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**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Hon. Senators, I hereby report to the Senate that a Petition has been submitted through the Clerk by Paulo Kiprotich Mosbei, a citizen of the Republic of Kenya on behalf of the Torobeek Community.

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

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

Hon. Senators, the salient issues raised in the said Petition are:

- 1) That, the name Torobeek is derived from the name “Dorobo”, who are forest dwellers within the Kalenjin Community. In Kenya, the Dorobos were originally found living together with the Ogiek Community. This was before a forceful eviction and displacement from the regions of Mau Complex of Nakuru and Narok counties, Mt. Londiani across to the forests of the northern Tinderet in Nandi County, Timboroa from Maji Mazuri, part of Koibatek Forest, Tugen Hills, Mt. Elgon Forest and Cherangani Hills.
- 2) That, the Community was allegedly evicted from their original forest habitat, was forceful displaced by the colonialist and thereafter by the Government of Kenya after Independence.
- 3) That, most of Torobeek Community allegedly lived and still live with the Ogiek Community in the Mau Complex, while the rest are scattered across the Rift Valley counties, some as far as Kiambu, Nyandarua, Migori, Isiolo, Bungoma Counties *et cetera*.
- 4) That, there has been delayed resettlement and neglect of Torobeek Community by the Government of Kenya. Therefore, the Community has suffered from marginalization, suffering and abuse of human rights and has not been recognized by the Government of Kenya thus is living in abject poverty and an undignified life.
- 5) That, currently some Internally Displaced Persons (IDPs) and squatters from the Ogiek Community are allegedly in the process of being compensated or re-settled across the country by the Government. However, the Torobeek Community has not been given such considerations.

The Petitioner, therefore, prays that the Senate:

- 1) Addresses our grievances expeditiously hence saving the Community from further marginalization and neglect by the Government.
- 2) Recommends a mechanism or framework with timelines, to resettle or compensate the Torobeek Community members in their respective counties.
- 3) Sets aside funds to compensate and re-settle the Community.

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 thirty minutes.

**Sen. Dullo:** Mr. Temporary Speaker, Sir, I do not know whether you have seen Sen. (Dr.) Lang’at walking in while you were on your feet. I think he needs to go back and come procedurally.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Order, Sen. (Dr.) Lang’at!

*(Sen. (Dr.) Langat walked to the Bar and bowed to the Chair before entering the Chamber)*

Hon. Senators, now we can proceed.

Sen. Cherargei.

**Sen. Cherargei:** Thank you, Mr. Temporary Speaker, Sir. I want to commend the petitioner of the Ndorobo Community. From the onset, these people have suffered long enough. When you look at it historically, under Article 43 of the Constitution of Kenya, their economic and social rights have been violated.

Mr. Temporary Speaker, Sir, when you look at Article 40 on the right to property, most of them are forest evictees that were created in the early 1960s by the Government. Successive regimes have failed to address this issue once and for all, especially across the 14 counties.

In Nandi, for example, these people were evicted and most of them have settled in various sub-counties. The number of families range from between as low as less than 100 to around 1,000 plus families that have been evicted over the years. Most of them stay in Chemundu area, while others stay in Nandi Hills Sub-County and Tinderet. In fact, in 2006 those that were evicted from Kericho County settled with families somewhere in Kamilil. Others stay in Kapchanga, Kipkurere, Kelbui, Lessos, Keben area, Ng'etip Kong', Cherondo and also along Vihiga.

Mr. Temporary Speaker, Sir, I think this community has really suffered. When compensation has been done to internally displaced people, this community has been forgotten largely. I have seen letters or correspondences that these people have tried to do. They have even engaged the Ministry of Devolution and ASALs. At some point, they were being tossed between the Ministry of Devolution and ASALs and the Ministry of Interior and Coordination of National Government and you could see the frustration that this community has undergone.

We have seen letters from chiefs, administrators and assistant county commissioners that have been written. This community has really tried to look for justice. Unfortunately, the Ministry of Devolution and ASALs and the Ministry of Lands and Physical Planning and the Ministry of Interior and Coordination of National Government, when you look at the correspondence, most of these people's issues have not been addressed.

The question is about compensation of the Internally Displaced Persons (IDPs) as well as the forest evictees. Therefore, I think it is the right time. You can see from the prayers that this community believes that the Senate is the only House that will assist them to get justice and compensation. Parents of some of them are dead.

Mr. Temporary Speaker, Sir, this is also part of the marginalized communities and the Constitution provides for how marginalized communities can be taken care of. We need not ignore them even in terms of representation looking into the future.

It is so sad that as we try to address the issue of the Ndorobo people, there is a new creation of evictees by the Government. There were evictions in Nairobi in Ruai involving almost 8,000 families. There was Njiru where people were evicted at the height

of the pandemic. There were evictions that were done in Meru. Even in the Coast, this issue is so rampant.

Mr. Temporary Speaker, Sir, as we address this, we must look into the future where private developers and some people connive with the Government and ensure that they evict people as we have seen happening in the recent past.

I hope that going into the future, most of these issues shall be resolved, once and for all, because the sanctity of ownership of property or right to property, having a title, ownership and possession of property should be protected. Nowadays, when you buy land or purchase property, you need to be careful. I know that there are reforms within the Ministry of Lands and Physical Planning, the *Ardhisasa*. I hope that the digitisation and geospatial mapping of land across the country will assist us in terms of ensuring that this right has been---

Mr. Temporary Speaker, Sir, as I conclude my observations and comments, I hope the Standing Committee on Lands, Environment and Natural Resources will invite some of us who have specific interest to contribute and give them further information.

When Jubilee was still functioning and President Uhuru Kenyatta was addressing the National Assembly, he tabled a report, and we were told that there was Kshs10 billion that was supposed to be used for compensations.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Sen. Madzayo, what is it?

**Sen. Madzayo:** Asante, Bw. Spika wa Muda. Je, kuna haki katika msemu wa ndugu yangu ya kwamba 'wakati Serikali ya Jubilee ilikuwa ikifanya kazi'? Hiyo ni kumaanisha kwamba hivi sasa haifanyi kazi ama inafanya kazi.

Nakumbuka kuwa ndugu yangu, Sen. Cherargei, ni mwanachama sugu ambaye yuko katika hili Bunge la Seneti kupitia kwa tikiti ya Jubilee. Leo akiwa hapa anatoa matamshi kama hayo. Je, ni haki kusema kuwa chama ambacho kinatawala, yeye akiwa mmoja wao, hakifanyi kazi?

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Sen. Cherargei, fafanua ama uweke kando matamshi hayo.

**Sen. Cherargei:** Mr. Temporary Speaker, Sir, I do not need to substantiate the obvious.

Let me conclude by saying this.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Order, Sen. Cherargei! Kindly substantiate your comments or withdraw.

**Sen. Cherargei:** Mr. Temporary Speaker, Sir, every Kenyan knows that there is a lot of dysfunctionality in the country. The economy is not doing well.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Order, Sen. Cherargei!

**Sen. Cherargei:** Mr. Temporary Speaker, Sir, you have told me to elaborate. Why is the Deputy Majority Leader agitated, yet she has not been given a chance?

Mr. Temporary Speaker, Sir, Kenyans are suffering. It is obvious that the issue of COVID-19---

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Order, Sen. Cherargei.

You either withdraw or substantiate your allegations.

**Sen. Cherargei:** Mr. Temporary Speaker, Sir, let me withdraw, but I can say allegedly---

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Proceed.

**Sen. Cherargei:** Mr. Temporary Speaker, Sir, there is a compensation issue of Kshs10 billion. In fact, if you look at the report, the President indicated that they would be compensated in terms of Kshs10 billion that was allocated for issues of compensation in the country.

Mr. Temporary Speaker, Sir, as we talk today, no one knows where that money is and who has been compensated. This Government is very mischievous; they even compensate air. We have seen cases where people supply air to Kenya Medical Supplies Authority (KEMSA) and they are paid millions of shillings. I am happy that in the Order Paper there is a report by KEMSA on the issues of COVID-19.

Mr. Temporary Speaker, Sir, if this Kshs10 billion was used to compensate these forest evictees from this community, then we would be very safe and ensure that these people receive the compensation. Since this is an urgent matter and I have seen the frustration that these petitioners have, I hope that the Standing Committee on Lands, Environment and Natural Resources, and I do not see any Member. I can see that the Deputy Majority Leader is here. She needs to take up this matter because these people are really suffering and we expect the Members of the Standing Committee on Lands, Environment and Natural Resources and I can see Sen. Faki here, my former Member is present--- can do follow up and ensure that we address this justice once and for all.

Sen. Faki: On a point order, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): What is it, Sen. Faki?

**Sen. Faki:** Mr. Temporary Speaker, Sir, I am no longer a Member of the Standing Committee on Justice, Legal Affairs and Human Rights. I am now in the Committee of Delegated Legislation.

**Sen. Cherargei:** Mr. Temporary Speaker, Sir, my apologies. Changes in this House happen daily; we do not know what is happening.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Sen. (Dr.) Milgo.

**Sen. (Dr.) Milgo:** Thank you, Mr. Temporary Speaker, Sir, for this opportunity to also weigh in on this matter. Article 65 of the Constitution says that every person has the right, either individually or an association to own property in any part of this country. More specifically, to get a place or land to live on.

Mr. Temporary Speaker, Sir, it is a challenge that the Dorobo people have been facing. Many of them have been coming to my office believing that I will be settle them. I have been dodging around this, thinking that they will be settled. It is unfortunate that these Dorobo people are spread all over the country. In all those areas, they are not settled. They are living in very pathetic places, either near forests or at the site of forests where they have been evicted.

Mr. Temporary Speaker, Sir, we have been talking about ensuring that we maintain forests in this country. These particular people are environment friendly. They normally gather fruits and hunt small animals in the forest. However, they have been evicted from the very forests we are maintaining.

Mr. Temporary Speaker, Sir, there is a new methodology of settling people or accessing land in this country through digitization. The Ministry of Land should look into all the issues of land across the country, so that we bring on board each and every

individual and ensure that we settle the Internally Displaced Persons (IDPs). The Dorobo have been ignored. In fact, they are marginalized and they are being marginalized further by not being allowed to settle. Their children do not go to school. They do not access medical services. They do not even access very basic needs. Right now, with COVID-19 issues, I am sure they are suffering a lot.

Mr. Temporary Speaker, Sir, recently some elders came to my office with one learned young Dorobo person. They had hope that one they will be settled. However, many of them have passed on waiting for justice to be served to them. While we are looking at the justice to be done to the Judiciary, these people have been facing a lot of injustices. They hope that through this Petition, their rights will be addressed, so that they are settled once and for all. I would have wished the Ministry of Land would think about these marginalized people. This is because the more we do not settle them, the more we are marginalizing them since we push them to the very peripheries.

As I conclude, in support of this Petition, Sen. Cherargei should not blame the Government for not settling people. He is part of the Government. That is why he was elected through the Jubilee Party.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Order, Sen. (Dr.) Milgo! Sen. Cherargei has already withdrawn the statement.

**Sen. (Dr.) Milgo:** Sen. Cherargei is attacking Jubilee Government. He was elected through Jubilee Party.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): What is it, Sen. Cheruiyot?

**Sen. Cheruiyot:** Mr. Temporary Speaker, Sir, is it in order for a Senator to fundamentally misunderstand the Constitution? The Constitution demands of us as legislators that our key mandate is to represent, oversight and legislate. What Sen. Cherargei was doing falls under the armpit of overlooking the Executive.

I do not think we are sent here to be representatives of the Executive. If Sen. (Dr.) Milgo feels so strongly about the position of what the Jubilee Government needs to be doing, it is better she resigns and seek for somewhere to work in the Executive. I think she is in the wrong place.

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

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): What is it, Sen. Shiyonga?

**Sen. Shiyonga:** Mr. Temporary Speaker, Sir, everyone has a right to speak. I do not think we can be intimidated by being told that we cannot speak. I am talking to those that I cannot mention. Is Sen. Cheruiyot right to ask Sen. (Dr.) Milgo to resign yet she is a representative of the people? She has a right to be here as a nominated Senator under the Constitution of Kenya.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Hon. Senators, we will proceed. We are limited of time. We have only 30 minutes for the comments and observations on this Petition.

**Sen. Sakaja:** Thank you very much, Mr. Temporary Speaker, Sir. Allow me to thank these petitioners for bringing this matter to us. We must acknowledge this community As Sen. (Dr.) Milgo has elaborated and told us that even some of the representatives have been going to see her on this issue. These are people who are have not tired to look for justice. We must tell them that their pursuit of justice is not in vain

when they come to these offices, the Senate of the Republic and other institutions to seek what is right to be theirs.

The Bill of Rights creates and is one of the core parts of our Constitution, what we call basic structure. That is the real basic structure and not what we were hearing last time. These rights are not what is given to you by the Government, but it is what cannot be taken away from you by the Government. We must appreciate them. Tell them that they must know that there are Senators in this country from different communities, not necessarily theirs, not even close to where they are from, who believe in their right to exist in this country.

Mr. Temporary Speaker, Sir, at a time like this, when our country is talking about pursuit of unity and trying to create cohesion, build bridges, we must understand that there is no way we can build bridges or achieve cohesion without equalizing opportunities. We must equalize opportunities for every Kenyan, no matter where they come from or born. If there is a section of Kenyans from Habaswen to Migori, Kilifi to Turkana and anywhere in between who do not feel as Kenyan just because they are tribal is small, or because they have gone through historical injustices and nothing has been done to them, then our claim to building bridges or pursuing cohesion is tainted.

Building bridges cannot focus on four or five big communities or a few big communities. At the raider of this initiative or endeavour, the national spotlight must be first on these communities that have been considered small. The problem we have had apart from competition between communities, especially big communities, is that we have never been able to truly define what is a Kenyan identity. Are we just 43 or 44 communities who are found within 586,000 square kilometres and must get along? Or is there something that runs through that makes us Kenyan, so that we can say we are Kenyan first? What does it mean to be a Kenyan?

If we do not do this, all of these are attempts. I support these attempts. They are not the final attempts, but all of these attempts will come to naught even after you have finish this first amendment and some Kenyans do not feel as Kenyans? When today they cannot access offices, they cannot be responded to on their issues and they are being evicted. Opportunities are not just communities in terms of ethnicity, but they are also about class.

I am very happy Sen. Cherargei has given us example. We have sounded like we have broken records in this House when we talk about evictions, yet we have protocols in this country about how to deal with evictions. I have brought issues of Ruai, Njiru and Kariobangi to this House. Sometimes I sympathize with the Committee on Land, Environment and Natural Resources. They are overwhelmed. That Committee has 27 or 28 Petitions. I am sure you probably give this Petition to them as well. They will not solve these petitions.

Mr. Temporary Speaker, Sir, we must design a better way for us to be effective because we will just bring petitions here but prayers will not be answered. Kenyans will get tired when they keep coming for recourse here and nothing is done.

Unless we fully respond to these issues, unless we make sure that the poor Kenyan understands he has the same rights as rich Kenyans; the small community

understands that they have much place in this country as the big community, all of these efforts we are talking about towards cohesion will mean nothing.

I have brought a Statement that I hope I will get a chance to present this afternoon about what is happening in Nairobi. Look at Mlango Kubwa where young people are being harassed and hounded by police. Can something similar happened in Lavington or Karen? Kenyans are treated differently. What kind of country is this where there is a first class citizen and a second class citizen? A first class country cannot have different classes of citizens.

Every individual Kenyan must be able to enjoy the same rights. That is the true pursuit that we as legislators in this House of equalization--- This is the only House of equalization. This is a House where the Senator for Lamu with 120,000 people has one vote like the Senator for Nairobi with 4.3 million people. This is a House of equalization that balances out the tyranny of majority in the National Assembly. That is why such a petition must take heavy precedence, must be looked at with a lot of significance in the Senate more than even in the National Assembly because that is a House of representatives. Here we have corporate representation.

Mr. Temporary Speaker, Sir, I urge Senators, especially those who have been here for a long time: How do we assist this Committee? I have pending petitions in the Committee of Lands and I know their chairman, Sen. Mwangi, is extremely hardworking. He actually goes out of his way. Sometimes he is in the Labour Committee.

We must be creative. That Committee has too many functions; lands, housing, environment and water. Sometimes they may not be effective. They also have wildlife where they look at issues to do with animals. Moving forward, we cannot operate like that.

I hope this petition goes to the Committee on Justice as opposed to the Committee on Lands. The amount of Kshs10 billion that His Excellency President Uhuru Kenyatta spoke about years ago in the State of the Nation Address when he did one of the things that was recommended in the TJRC Report; he asked for forgiveness on behalf of the Republic of the Government of Kenya. Remember the Government of the Republic of Kenya exists in perpetuity from the colonial government, then the first Government. That was a big thing.

Thereafter, he said that a fund of Kshs10 billion - and I am not sure if the National Assembly then appropriated it - be set aside this fund to help address these historical issues. What is the institutional framework through which this is being done? Many times I have faith in Sen. Omogeni's leadership as the chairperson of JLAC. He has been outstanding. Those are the questions that we must bring answers to. Was it just a promise? I am sure the President had good intentions when he gave that directive. What is the legislative and institutional framework through which we can bring solutions and heal wounds?

Look at what happened in Wagalla. Those people were happy when the President made that apology and committed that money. However, years later, nothing has been done. We need to look at that and I pray that the prayers of these petitioners will not land on deaf ears. I hope that their prayers will not be in vain.

I support his petition.

I thank you.

**The Temporary Speaker** (Sen. Lelegwe): Hon. Senators, for those of us who would wish to contribute to this petition, kindly limit your contributions to three minutes because we have a list of Members who would wish to contribute.

**Sen. Faki:** Mhe. Naibu Spika wa Muda, kwanza kabisa nachukua fursa hii kukushukuru kwa kunipa fursa ya kuchangia ombi hili ambalo limeletwa na Maolo Kiprotich kuhusiana na kuhamishwa na kupokonywa ardhi kwa jamii ya Torobeek ambayo iko katika maeneo ya Nandi.

Jambo hili ni dhuluma za kihistoria ambazo zimefanywa na Waingereza, sio hapa Kenya pekee yake lakini sehemu nyingi ulimwenguni. Hivi tunavyozungumza, kuna dhuluma kama hizi zinazoendelea kule Palestine ambapo Serikali ya Israeli inawahamisha kwa lazima Wapalestina kutoka ardhi zao za jadi.

Hii sio suala geni ulimwenguni. Ni suala ambalo limekuwepo katika vichwa vya habari kwa miaka mingi lakini jambo la kusikitisha ni kwamba taasisi zote za ulimwengu zimekaa kimya wakati Wapalestina wanadhulumiwa haki zao za jadi.

Tusiwaangalie ni kama ni Waarabu wa Palestina; tuwaangalie kama binadamu, kwamba wao wana haki kama binadamu wengine. Wana haki za kuishi kwa amani kama watu wengine wote.

Kwa hivyo, tunavozungumzia swala hili la Turbi ni lazima tuangalie zile dhuluma za kihistoria ambazo zimefanywa na wabeberu wakati wa nyuma na sasa zinafanywa na wananchi wenyewe wa Kenya katika Serikali yao ya Kenya.

Juzi kulikuwepo na eviction kama hii kule mjini Mombasa kati ya mpaka wa Mombasa na Kwale County. Yaliofanyika pale yalikuwa mambo ya dhuluma kabisa kwa sababu watu walivamiwa usiku wa manane. Nyumba zao zilivunjwa bila wao kuonyeshwa court order. Watu walikuja na kuvunja nyumba zao kama vile wanavyofanyiwa Palestina, Gaza na kwingineko.

Swala hili limekuwa donda sugu katika nchi yetu. Tumezungumzia hapo nyuma swala la eviction katika sehemu ya Baba Dogo hapa Nairobi, eneo ya Diani na sehemu za Kilifi. Katika sehemu hizi zote, evictions zinafanyika usiku wa manane.

Kuna suala la curfew. Itakuwaje polisi wakavamie watu usiku wa manane wakati kuna curfew? Je, hii curfew ni ya wale ambao wanazunguka barabarani pekee yake? Wale wanaokuja kuvunja watu nyumba usiku, hawaadhiriwi na curfew?

Ningeomba suala hili lipewe Kamati ya Sheria kwa sababu hii mambo inahusu sheria ya kumiliki ardhi, sheria ya kumiliki nyumba, sheria ya kuhamishwa kiholela kinyume na haki za binadamu na zile haki zingine za kimataifa.

Naomba kamati ambayo itashughulikia swala hili iangalie kwa undani zaidi kwa sababu ni swala ambalo linaadhiri mpaka sasa; sio zile dhuluma za zamanbi. Mpaka sasa, dhuluma hizi zinaendelea katika nchi yetu.

Bw. Spika wa Muda, ninaunga mkono.

**Sen. Dullo:** Mr. Temporary Speaker, Sir, I wish to support this Petition and to also congratulate the petitioners. Land is a very emotive issue in this country and everywhere. Severally, you will see that when people go round to look for justice in this country, when they are unable to get justice they come to the Senate. Unfortunately, it

looks like we are not solving the problems that are brought here by members of the public.

The Petition is actually addressing a very serious concern which touches on fundamental rights of individuals especially right to property. These communities are living everywhere in this country, but their complaint about their injustice is historical. I think as a country we have to have a solution to these problems because these are people who have been marginalized over the years. We keep on recycling their problems without providing solutions.

Apart from the Ndorobo, we have the Endorois and Ogiek who have been having land issues in this country. I remember when I was with the KNCHR the Endorois people went to African Commission. They were given a ruling where the Government should settle them. I know they have a representative in the National Assembly right now who is handling that matter. I hope he will be able to fight for their rights so that their land is given back to them.

Mr. Temporary Speaker, Sir, I have a similar issue in my county where a Petition was brought to the Committee on Lands, Environment and Natural Resources. I know the Chairperson is active and hardworking. The people are being evicted from where they have lived over the years and titles are being given to the Kenya Defense Forces (KDF).

That matter was brought to this House and referred to the Committee on Lands, Environment and Natural Resources. The CS was summoned several times. I think Sen. Khaniri sits in that Committee. It seems as if she has refused to appear before the Committee several times. One can imagine people bringing Petitions to this House and do not get a solution. They will end up raising funds to represent themselves in courts. It is very sad.

I know there is so much that the Committee on Lands, Environment and Natural Resources is handling but if a matter is touching on human rights, I think it is important it be given to a relevant Committee which is the Senate Committee on Justice, Legal Affairs and Human Rights to handle. This is because if we can solve---

*(Sen. Dullo's microphone timed out)*

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Proceed, Sen. Kavindu Muthama.

**Sen. Kavindu Muthama:** Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to, first of all, congratulate the person who has brought this important Petition.

Everyone has a right to living in a clean environment as per our Constitution. Since the people are here in Kenya, I believe they are citizens and they have a right to live in a clean environment. I just wonder where they get their food, where their children go to school and how they work. I wonder what they feel as human beings, knowing that they have no permanent place to call home. This is a matter that should be looked at and dealt with urgently.

I remember the Makonde and the Nubians of Kibera who the President recently recognized as citizens of this country. Something should be done and they should be

allocated some land. I believe we have some idle land in Kenya and every Kenyan has a right to live anywhere in Kenya.

I also plead with the courts and the President of this country to consider and see what can be done to these people because they are here as citizens and should live as Kenyan citizens. They have a right like every other Kenyan.

**Sen. (Dr.) Lang'at:** Thank you, Mr. Temporary Speaker, Sir, for also giving me this opportunity to contribute to this very important Petition.

Eviction in this country has come so inhuman. It is happening in the countryside and in this city. I wish to go on record that I am a member of the Jubilee Party which has formed this Government. I apologise seriously to Kenyans especially in Mau Forest where even the Head of State visited and promised to settle them and yet we have this eviction which lacks structure and formula. He promised those people, it is in video recordings and everywhere.

The Head of State had promised them that they would never suffer again. Immediately after we got this government in fact, the worst part of it started. We do not want to cover the government and say that Jubilee government is not responsible. We are squarely responsible for the mess that has happened to our people.

If trace the historical background of this eviction, it goes back to the colonial period. These people were displaced by the colonialists who established the white highlands farming and were squatted in forests.

After Independence, some of who-is-who in this country took the land which historically belonged to those people and replaced the colonial masters and then pushed these people further to the forests. Later on especially during the Moi Era, these people continued to suffer. They were cheated and their land was taken by these people who established tea plantations and other things.

These people are suffering intentionally because of the failure by the Government to settle them. They have suffered so much; their eviction has never been timely. To make matters worse, there is not proper structure. Even in the Mau and Nandi regions, the Government has stretched its hand. It has been building dispensaries and schools. Whenever eviction takes place, Government resources go to waste.

This inhuman eviction of people should stop. I encourage this House to take serious action through the respective Committee so that---

*(Sen. (Dr.) Lang'at's microphone timed out)*

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Proceed, Sen. (Eng.) Hargura on virtual platform.

**Sen. (Eng.) Hargura:** Thank you, Mr. Temporary Speaker, Sir. I would like to join my colleagues in raising concern. For a long time now since the Senate was established, Kenyans have shown hope in the Senate by bringing their Petitions. Fortunately, it is made clear that any Petition is cleared 60 days from reading of the prayers---

*(Sound interruption)*

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Order, Sen.) Eng.) Hargura. There is a communication that when Senators contribute on virtual platform, they should do so in an appropriate place. You are not in an appropriate place to contribute.

We Proceed to the next Senator.

**Sen. Madzayo:** Asante sana, Mhe. Bwana Spika wa Muda. Kwanza ninampongeza huyu Paulo Kiprotich. Hali wanayoipitia watu hawa wa Torobeek si nzuri. Kwa mara nyingi tumekuwa tukiona Wakenya wanagawanyana kwa sababu ya msingi kama huu.

Si haki ikiwa kila mtu hapa anaishi kama Mkenya kuweza kudharau Wakenya wengine. Ninasema hivi kwa sababu hawa kama alivyosema Sen. Cherargei, pia ni Wakenya. Wanatakikana kutambuliwa na serikali na sheria.

Tunajua kuna wale watu wanaitwa Wadorobo ambao wanaishi huko kwenye milima na misitu. Lakini katika miaka na vikaka, hao hawajaharibu ule msitu. Ikizidi zaidi wanautunza. Ni jambo la aibu hivi leo kuona ya kwamba ni Serikali yenyewe ndio inahusika na kuenda kuwachukua hawa Watorobeek na kuwafukuza katika hizi nyumba ambazo wamekuwa wakiishi.

Mara nyingi tunaona inafanywa katika hali ya ukosefu wa haki za binadamu. Hili ni jambo la kusikitisha hususan likifanywa na maafisa wa Serikali ambao wanajua kabisa vile wanafanya sio utendaji haki.

Bw. Spika wa Muda, ardhi ni kitu muhimu sana katika nchi yetu ya Kenya. Watu wengi wamekuwa wakitengeneza hati milki bandia. Kama kuna zile tunaita stakabadhi za bandia, ziko nyingi sana kupita kiasi ndani ya Kaunti ya Kilifi.

Watu wengi sana wamepata taabu kuweza kufurushwa katika mashamba yao kwa sababu mtu amekuja na cheti. Watu wameishi hapo zaidi ya miaka arobaini ama sabini. Watoto wamesoma, mababu wamekufa na wamezikwa hapo. Kila mtu amezikwa hapo na kuna makanisa na shule watu wanaenda.

Bw. Spika wa Muda, nipatie dakika moja niweze kumaliza kwa hisani yako.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Continue, Sen. Madzayo.

**Sen. Madzayo:** Asante, Bw. Spika wa Muda kwa imani yako. Nilikuwa naweza kumaliza tu kwamba familia ya Mzee Charo Abaha hivi sasa ziko kule mwendo wa panya. Zote zimeweza kufurushwa katika ardhi zao ambazo wameishi miaka na vikaka hali ikiwa ni madharau matupu ambayo yameendelea.

Wale watu waliowafukuza ni watu ambao wako na stakabadhi za bandia. Tunasema ya kwamba Serikali lazima ichukue hatua itetee watu hawa ambao ni wanyonge, wako chini na wameishi katika ardhi hiyo.

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

**Sen. Murkomen:** Mr. Temporary Speaker, Sir, thank you. This is a very important Petition that touches on a very emotive subject. Promises have been made to many minority and marginalized communities whether it is the Dorobos, Elmolos of this great Republic in places like Baringo County or the Malakotes, Sanye, Watta of Lamu, Sengwers of Trans Nzoia, Elgeyo Marakwet and West Pokot.

All these communities have been victims of colonial injustice. Most of them, the areas where they used to live were gazetted as forests without consideration of their settlement. Most of them were given permits by colonial governments in 1932 for

purposes of holding and getting an opportunity to graze their animals in those forests and not to do farming activities.

Mr. Temporary Speaker, Sir, the hope they had was that post-independence, their concerns were going to be addressed. Their concerns were not dealt with in 1932. In the Swynnerton Plan 1954, their concerns were not dealt with. Then Independence came and their concerns were not dealt with.

We came to the second liberation of this Republic. We even had a new Constitution that captures the interests of the minority and marginalized communities. However, still you have communities like the Elmolo and Enduros have a judgement that was given by the African Court of Human Rights that has not been implemented.

Sen. Orenge who was the Minister of Lands when this judgement was achieved promised the Republic that he was going to ensure that there is a full implementation of that judgement but what happened? The major interest and the people who took land post-independence are very powerful.

In the case of the Enduros, for example, the very powerful politician who sits in this House was already occupying the land that people were supposed to be settled in. In the case of all these other communities in the Mau and all those places you know that their land went to powerful individuals as Sen. (Dr.) Lang'at mentioned about both in Eastern or Western part of the Rift Valley.

Mr. Temporary Speaker, Sir, we are dealing with a systemic disease and a problem that I really agree with Sen. Dullo that this should go to the Committee on Justice, Legal Affairs and Human Rights Committee. We must have a proper report that captures the real problem and human rights violations that these communities face.

When I went to Mau in 2018 after the 'Handshake' - I know Sen. Sakaja issued a Statement that I should apologize to the President - I spoke about the plight of the people who were evicted in a very inhumane manner. I was told that I must respect the President. However, I knew what I was doing. We were willing to sacrifice positions of power and authority because we believed in human rights and the rights of the marginalized. We must do something in the Senate for posterity.

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

**Sen. (Dr.) Musuruve:** Mr. Temporary Speaker, Sir, thank you for giving me an opportunity to support this important Petition. The issue of land is emotive. When people are evicted from land, it has a lot of implications on the family. It has a lot of psychological harm on the family. The Dorobo have a legitimate Petition. There is need to look for mechanisms of supporting them. It is the Senate's mandate to ensure that we are standing with Dorobo people.

When people are evicted like the case of the Dorobo, they are already insecure. When you look at the Constitution in Article 43 (3), it implies clearly that everyone needs to be given security. In fact, even for those who are vulnerable and are not able to offer security for themselves and their families, the state is supposed to offer them security.

Mr. Temporary Speaker, Sir, there is need for speedy support for the Dorobo families because the eviction also affects Article 43 of the Constitution. They are not able to enjoy their socio-economic rights. I can imagine that the evictees' children cannot go to school yet it is a basic right. When it comes to clean water as stipulated in Article 43,

this implies that they are denied. No Kenyan should be even denied the right to a shelter, clean water and education.

There is need to ensure that there is justice for the Dorobo people. There is need to have a policy. When it comes to eviction, the Government should look for mechanisms of ensuring that they also empathize with the evictees, so that eventually they do not become isolated. This is our country and everyone has a right to get that security from the Government.

I support this Petition and I hope that it will be given the justice it needs when it goes to the relevant committee.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Finally, Sen. Shiyonga, proceed. That is the last contribution.

**Sen. Shiyonga:** Mr. Temporary Speaker, Sir, thank you. I thank the sponsor of this Petition, Mr. Paul Kiprotich. I agree with my colleagues that interesting times come with interesting things. Finding in Kenya, that right now we have people who are living and are not recognized as Kenyans is very interesting. Looking at the Dorobo, just like my colleagues have said, the Nubians and Makonde got their rights. They are enjoying the comfort of their country.

If you look at the Dorobo right now what we are discussing, they are people who are all over from what we are hearing. If people are all over, they need to be Kenyans and be recognized in a way that their rights are respected. If you look at the minority and the marginalized in this country, they are suffering. These people have a right to voting, representation, get documentation like identification cards and they need to be taken care of like other Kenyans.

Mr. Temporary Speaker, Sir, if we get that such people are living in Kenya and they do not have a right to what is right for them, then who is to be blamed? We need to blame the Government of Kenya. These people are reproducing and increasing in terms of population. They are people who need to be taken care of. They live in Kenya and still feel insecure.

Mr. Temporary Speaker, Sir, I support Paul Kiprotich for bringing this Petition here. The Ministry of Lands and Physical Planning, which is responsible for the people to get rights to their land, needs to take over this Petition and move with it very fast. We are heading to elections. How do these people vote or get represented? We are even getting the *Huduma Namba*. Who are they in Kenya? The Ministry needs to demarcate the required land to these people. These people are Kenyans, and they need to be looked after, given that it is over 50 years after Independence.

The issues raised here need to be recognized. As we have advocated, they need to be with the Ministry of Lands and Physical Planning. It needs to take up the issue of these people because these are our brothers and sisters. These will be our children's husbands; who will take care of them?

In conclusion, the Committee on Land, Environment and Natural Resources has so many Petitions. They need to allocate time to look into the issues. The issues that have been raised here are emotive. Therefore, we need to address them immediately.

Thank you, Mr. Temporary Speaker, Sir. I fully support Paul Kiprotich on this Petition.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Hon. Senators, pursuant to Standing Order 232 (1), the Petition is hereby committed to the Standing Committee on National Security, Defence and Foreign Relations for its consideration.

In terms of Standing Order 232 (2), the Committee is required, in not more than 60 calendar days from the time of reading of the prayer, to recommend to the Petitioner by way of a report addressed to the Petitioner and laid on the Table of the Senate.

Next Order!

## STATEMENT

### INCREASE IN FUEL PRICES

**Sen. Khaniri:** Mr. Temporary Speaker, Sir, I thank you for the opportunity.

I rise pursuant to the provisions of Standing Order 47 (1) to make a Statement on an issue of general topical concern in the country; that is, the consistent sharp increase of fuel prices in the past few months.

Energy is one of the most important components in life. It is required at every level on a daily basis. Today, one of most crucial source of energy for industries, automobiles and other machines is petrol. It is a big component in Kenya's economic and social life, as it is used both commercially and domestically. Petroleum fuel is used by motorists in cooking, either domestically or for business, manufacturing and in machines. Rising fuel pump price by big margins always results in increase in the overall cost of living in the country, with every negative effect on the majority of Kenyans.

Mr. Temporary Speaker, Sir, the Energy and Petroleum Regulatory Authority (EPRA) revises petroleum product prices that apply across the country from the 14<sup>th</sup> date of every month. The price of fuel has risen consecutively over the last few months to the current, which is a seven-year high. The price of Super petrol has risen by Kshs7.

I just want to let you know that this Statement was made two weeks ago and, therefore, I have not updated the prices. You will remember that there was another increase last Friday, and I have not captured that in my statistics. Therefore, these statistics is before the increases that were made on Friday.

The price of Super petrol has risen by Kshs7.63 per litre, diesel by Sh. 5.75 per litre and kerosene by Sh. 5.41 per litre in the current price schedule. A litre of petrol now costs Kshs122.81 up from Kshs115.18. Diesel is retailing at Kshs107.66 up from Kshs101.91. Kerosene, which is used for cooking and lighting especially in low-income households costs Kshs97.85 up from Kshs92.44. Those in towns far from the Port of Mombasa such as Mandera will be paying much higher prices.

Mr. Temporary Speaker, Sir, understanding the centrality of petroleum products in the daily lives and the spiral effect of increased petroleum products prices is a big blow to the *wananchi*. The world and country is battling the Coronavirus Disease (COVID-19) pandemic, which has battered the economy and condemned many people to job losses and households to poverty.

Already, there are public service vehicles that have understandably hiked fares in their routes. This in itself is reducing the disposable income in most families. *Matatus*,

taxis and *boda bodas* have greatly suffered during the pandemic and are now exposed to even more suffering as a result of reduced profits.

Mr. Temporary Speaker, Sir, a comparison of pump prices of petroleum products across the region reveal that prices in Kenya are the highest in East Africa, higher than even landlocked countries. This scenario has two immediate implications. One is the economic hardship to the general public and, two, closure of industries and capital flight. This will in turn lead to slower growth of the economy.

It does not make any economic sense to invest in a country that has very high costs of production that will eventually eat into profits. The sum total of this capital flight is worsening of the unemployment rates. In addition, this increase in prices might also lead to an increase in circulation of adulterated fuel; a mixture of the relatively cheaper kerosene with diesel or super petrol, so as to push up volumes of the latter two products at cheaper prices. Adulterated fuel is not only harmful to engines, but also to the environment at large.

Mr. Temporary Speaker, Sir, I believe our Speaker's sentiments that we should not always read from the book of lamentations. I also understand the dilemma we are in as a country, bearing in mind that the EPRA is performing its statutory duty in publishing the maximum pump price for petroleum products in strict adherence to the legislation enacted by Parliament, notwithstanding the current revenue shortfalls in the country. However, we still must have this conversation, as it is what the people we represent expect from us. Nobody should gag or reprimand Kenyans in this discourse as we seek solutions.

Mr. Temporary Speaker, one of the core roles of Parliament is legislation by amending parts of the law that require change. Given the nature of money Bills, I believe the other House should make necessary changes on the Petroleum Act, 2019, the Legal Notice No.196 of 2010 and the Legal Notice No.26 of 2012 as soon as possible to provide a caveat to cushion Kenyans from extreme high price increase.

I thank you, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Hon. Senators, I now allow comments regarding the statement.

Sen. Murkomen, proceed.

**Sen. Murkomen:** Mr. Speaker, Sir, this is a very important Statement. I thank Sen. Khaniri for coming up with this Statement about the cost of living, and particularly fuel prices. I do not know how the common mwananchi is surviving because even us, Members of Parliament (MPs) who are paid very good salary by Kenyans, are crying about fuel prices. The cost of coming to Bunge and going back to your house in Nairobi City for a week has doubled. By the end of the month, you spend Kshs30,000 to Kshs40,000 on fuel only. Those resources could go to investment in this country. If this Kshs40,000 was spent by everybody on an investment, it would employ many Kenyans and help deal with unemployment in the country.

At the moment, the cost of living is the greatest threat to national unity. In fact, many people here have accused judges of decisions they make causing this and that. However, the greatest cost of unrest and violence, which is a threat to national unity, is the fact that the cost of living has gone to unprecedented levels. Mark you, it is happening

at a time of a pandemic. We have a serious pandemic in the country to deal with it. As a result of the measures that were put in place, many businesses have closed, many have been left jobless and then we increase the prices.

This is something that shocks me. Many countries in the world, led by the United States of America (USA) through their new President, have adopted measures and policies to help *mwananchi*. President Joe Biden has adopted the bottom-up or centre-wide approach, where a lot of funds have been disbursed to help the poor. Social funds have been disbursed to communities and families to be take care of themselves.

Mr. Temporary Speaker, Sir, what is happening in our country? We are wasting a lot of time discussing politics which has zero benefits to Kenyans. We are talking of creating 70 new constituencies, having more nominated legislators in Parliament and creating the position of Prime Minister and two deputies. The rest of the world is talking of how to deal with common *mwananchi* and how to cushion them from the high cost of living and fuel. We are so much in a hurry to do a referendum which is going to cost the country dearly.

In 2014, the National Super Alliance (NASA) proposed a constitutional amendment. However, President Uhuru Kenyatta said it would be foolish of us to put aside Kshs20 billion for a referendum when we should be implementing the current Constitution to ensure Article 43 of the Constitution on social and economic rights, achieved. The cost of living and the lives of our people is unbearable. It was also about the rights of our people in Chapter Four of the Constitution.

Mr. Temporary Speaker, Sir, what are we doing? We want to increase layers and layers of leadership. We want to make ourselves better and make sure we stay in leadership for as long as we want. When will that child of a poor person get an opportunity to reach where we have when his parents cannot pay school fees? It is a pity that their children cannot go to school! Even if you made education free, they cannot afford simple items like clothing, soap and food. How many children in this country do not go to school because they are hungry?

This Statement is timely, but the problem is that we have become a country of hypocrites. We will say and preach these things. However, when it matters most, we will vote with our political demigods. We will take positions instructed to us because we want to be politically-correct. Let me say it here without any fear of contradiction, the only line of defense remaining for the poor people of Kenya is the Judiciary. If there was no strong Judiciary in Kenya to provide orders to stop certain measures, including evictions, increase in cost of living and matters related to housing, many of us would have suffered.

Since we are politicians and we want to get more power and positions to perpetuate our leadership and control leadership of this country even when we have retired, we are insulting the judges. We are calling them names. From the Floor of this House, may I tell the Judiciary, please save the Republic of Kenya. Help us! Help the citizens of this country, since this Parliament has already been taken captive by the Executive. In turn, the Executive has been taken captive by the interests of families and persons in power. So, the only place where common *mwananchi* can go is the Judiciary.

Sen. Khaniri, beyond your Petition just coming here, we need to encourage more citizens of this Republic, through public interest litigation, to go to court and stop these orders. How come the ERC is always increasing the price of fuel?

Mr. Temporary Speaker, I have never seen any member of ERC holding public participation in Korogocho, Kibera or Embobut where I come from. How come they just wake up one morning and increase or reduce the price of fuel without proper public participation? They never reduce. In fact, if they have the power to increase, why do they not ever reduce? The excuse we are always given is international prices. When the international price improves, why do they not reduce the cost of fuel?

I encourage citizens of this country; somebody needs to take up this matter to court under public interest litigation. Maybe this time, Sen. (Prof.) Kindiki should be the lawyer of the next Omtata. It may not be the Omtata we know. All of us here can be behind Sen. (Prof.) Kindiki to take public interest litigation about the cost of fuel and how the cost is being increased. We can do this until we are provided with transparent, verifiable and clear mechanisms being used to increase the cost of fuel.

I agree with Sen. (Dr.) Langat who said we were part of Jubilee. We are the ones who went everywhere saying *kumira kumira, tano tena* and *wembe ni ule ule*. The other side, I am facing, were saying *mambo yabadilika* and *mambo yawezekana*. Now, they are in the Government and they are saying *wembe ni ule ule*. Those of us who were on this side are the ones who are now speaking on behalf of Wanjiku. Those who were in the Opposition and we used to tell them *wembe ni ule ule*, are telling us *wembe ni ule ule*.

Mr. Temporary Speaker, Sir, this game of musical chairs must stop. We must wake up as politicians and start putting public interest in place.

I have told my colleagues who are in the opposition who are insulting judges that when we lost, I have said this even on my *Twitter* account, the elections of 2017 and President Uhuru Kenyatta's election was declared null and void; we were so close to the President and it was crazy. Of course, we are not going to say some things here and it is left to our memoirs.

However, one thing I remember and must admit is that most of us criticized the judges. I was there when the President said that we will revisit. I was there. We thought it was a joke. We were cheering and happy, we went to Muthurwa and said we are criticizing judges.

Mr. Temporary Speaker, Sir, we now have the benefit of history and experience. Those who used to defend the Judiciary and got that court order against President Uhuru Kenyatta and nullification of his election are now sitting on the same table with President Uhuru Kenyatta. They are brothers, even though jokingly they are being called null and void. However, what they call themselves is that they are brothers. Those brothers sitting at that table must now not fall into temptation of attacking the Judiciary.

I saw the Secretary General of Jubilee threatening judges that in any case, you will need police to take you home. That is a thinly veiled threat that we will withdraw your protection. This is very serious. You know that hon. Tuju would never be holding any office today had the courts not given him an order against his bankruptcy.

Mr. Temporary Speaker, Sir, we must respect the Judiciary. I am a very junior lawyer. I am not as senior as many colleagues who are here including my teacher, Sen. (Prof.) Kindiki, Sen. Faki and the Deputy Minority Leader, Sen. Madzayo.

The changes that are taking place in this House are very confusing. The way people are being removed from positions in this House is like *firirinda* dance. Sen. Pareno is here and all my seniors are here. The only junior who is here and I pride myself in is my student, Sen. Cherargei.

Mr. Temporary Speaker, Sir, as a House, we must do everything humanly possible and as politicians to protect the Judiciary. I have seen that there is a great temptation to fight the last defence of *mwananchi*.

If we are going to survive going forward, we will need more orders from the Judiciary to stop this rollercoaster that is being exercised by the Executive at the moment to increase the cost of living at the expense of the common *mwananchi*.

Mr. Temporary Speaker, Sir, I beg to support.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Hon. Senators, let us keep our comments to the subject matter of the Statement.

**Sen. Shiyonga:** Mr. Temporary Speaker, Sir, I want to thank you and the sponsor of this Statement, Sen. Khaniri.

The issue raised in this Statement is of great concern. Looking at the prices of fuel currently as my colleague, Sen. Murkomen is saying, is putting Kenyans in a very awkward state, taking into consideration that most of Kenyans live below the poverty line and putting into consideration that not everyone enjoys using his or her privilege to use Government of Kenya vehicles (GK) that are fueled by the Government.

Mr. Temporary Speaker, Sir, it is so sad that the prices have increased with a great margin that we are seeing currently, from Kshs115 per litre to Kshs126.

In the Statement, Sen. Khaniri has said Kshs122, it is Kshs126 per a litre. The stakeholders here need to be blamed. The Government needs to call all the stakeholders and re-ask or re-question themselves why all this is happening. Is it that somebody is making some benefits from this commodity?

When we talk about price increase in fuel, it cuts across the board of the lives of Kenyans; everything increases. If Kenya wants to improve and be seen as a country that is moving from one level to another, we need to recognize that when we increase petroleum, we kill the Kenyan economy for the majority.

Mr. Temporary Speaker, Sir, currently, we are undergoing problems in this pandemic. Nobody should think about increasing the prices of fuel. Nobody should think or feel that he is comfortable where he is seated and so be it to punish a common *mwananchi*.

If you look at Mombasa Road, if you have not gone there, I will take you there this evening. Just go to Mombasa Road and look at the way Kenyans are suffering in the snarl-ups. These are just common *wananchi* that we need to protect. I look at Mombasa Road and any other road and imagine the amount of fuel that they are pumping into their vehicles. The stakeholders of this sector in Kenya need to rethink about these prices that they just wake up and increase them with this big margin.

Mr. Temporary Speaker, Sir, the roads in Kenya are being improved. That is a plus to us. However, even if there is a plus, we need to think about the period in time to increase a commodity that cuts across any other Kenyan's life. We should not just leave it to the stakeholders to enjoy monopoly. It is not good.

I want to support the sponsor, Sen. Khaniri, my brother from Western that we should look at these Kenyans and urge the stakeholders to take in question what it means to Kenyans as an important commodity.

Thank you. I Support.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Sen. (Eng.) Hargura on virtual.

**Sen. (Eng.) Hargura:** Mr. Temporary Speaker, Sir, I would like to support the Statement by Sen. Khaniri.

Other than having the roads, the most important thing is having vehicles moving on the roads and vehicles run on fuel. The cost of fuel has been rising and is not commensurate with the pricing of crude oil.

We have been having cases where the price of crude oil rises from the point of production and the next day, we would hear the price of fuel has increased in Kenya while we know very well at that time the crude oil which is within the country is not of that particular consignment.

However, when the prices go down internationally, even as low as they have gone sometimes back, that drop is not there or commensurate. Recently, when there was a human cry as to the increase in cost of fuel, there was a brief moment for that cost and you realise that most of these are taxes by the Kenyan Government and not the cost of fuel and pumping.

I think the Kenya Government should be sensitive and reduce the taxes. More than 50 per cent of the cost of fuel per litre is actually taxes by the Kenyan Government. They need to reduce that because they only tax a lot and it affects the cost of living of Kenyans.

This negates the purpose of tax because the Government is supposed to facilitate so that the normal *mwananchi* or the ordinary citizen can, on their own, contribute to the development of the economy.

When you look at the transport sector, right now, there is the issue of COVID-19 where the vehicles are carrying 60 per cent of the capacity and the cost of fuel has increased. It does not matter whether it is 100 per cent capacity, still the vehicle will need fuel to move from one point to another. That will mean more cost to the operator, which is transferred to the common *mwananchi* who is using that mode of transportation to move from one point to another.

There must be a very clear way of making sure that this price of fuel does not just escalate like that.

Anytime there is change in fuel prices in terms of the crude oil, the Government needs to look at its own tax regime, so that it can cushion the public by reducing its tax margin.

Mr. Temporary Speaker, Sir, I support that Statement and urge the relevant Committee to task the authority dealing with price of fuel. People are trying to improve

and introduce public transport, but the cost is so much on the individual, that they cannot even meet the cost because of that increase in fuel prices.

You will be surprised that a litre of diesel costs over Kshs118. When there is an increase in Nairobi, the next day there will be an increase in Marsabit. This is because of the mentality that without making the consignment, the dealers' price will have increased.

I support the Statement and urge the relevant Committee on Energy, Roads and Transport to make sure that Energy and Petroleum Regulatory Authority (EPRA) is held to account and make sure that when there is increase in crude oil prices, they should see how they are going to manage direct tax by the Government, so that the push comes from that side, but not transfer it directly to the consumer.

Thank you.

**The Temporary Speaker** (Sen. (Dr.) Lelegwe): Sen. Cheruiyot, kindly, proceed.

**Sen. Cheruiyot:** Thank you, Mr. Temporary Speaker, Sir. I also want to join the rest of my colleagues in supporting this Statement from Sen. Khaniri and speak on behalf of citizens of this Republic who continue to suffer the misadventure of this current administration that strangely believes that you can tax your way into prosperity. Somehow, by continually increasing taxes, they will fill the budget deficit for their poor economic policies.

The unfortunate thing is that as a leadership jointly or cumulatively as Parliament do share in the blame because we are all Members of this House or Parliament (MPs). We have our own Committee on Energy, Roads and Transport where I was a Member for quite a long time, both last term and for the longer part of this current Session of Parliament. On many occasions, we used to receive these Petitions continually from Kenyans, whether it regards the cost of fuel as the case is being prosecuted right now, or the cost of power by Kenya Power Company (KPC).

Mr. Temporary Speaker, Sir, to date, none of those Petitions or Statements have been successfully resolved. It is an unfortunate occurrence that we as a House jointly stand accused of not being able to call the Ministry of Energy and Petroleum to task. To bring them here and ask questions on behalf of the people that we represent, so that we understand the policy direction with regard to the cost of energy in this country.

We read daily in our newspapers about businesses that are relocating because of the high cost of energy in this Republic. Be it petrol, or other sources of energy like KPC. We have never been able to give Kenyans a substantive answer. In fact, Kenyans have almost given up on us as a House.

That is why we have Petitions and public pleadings like the switch off KPC campaign that was run by a renowned activist, Jerotich Seii, who pushed Kenya Power Company, though unsuccessfully. This is because some of these corporations are extremely influential. The people that own them control the labours of power in this country. Therefore, it is not easy to take on them.

Those are courageous Kenyans who do not have a platform like us, who are MPs. The things that we can say in this House is not out of careless abundance of caution that the Constitution gave us this platform where anything that you say here in the House of Parliament, nobody can take you elsewhere to try you for it, because it is assumed that you are doing it in pursuit of the interests of the people that you represent.

This Statement by Sen. Khaniri presents us a very important opportunity. I do not know if there is any Member of the Committee on Energy, Roads and Transport who is in this House. Such are the Statements that one day when the Ministry appears before us, when EPRA, send an invite all Senators should be present.

The Zoom meetings are not sufficient. Some of these engagements, without them being physical, people do not understand the plight and pain that Kenyans are facing.

Like Sen. Murkomen observed or the Senator that spoke earlier, the best paid public servants like MPs feel the pain nowadays. When you fuel, you can see the difference in the amount that you are paying.

Imagine the pain that ordinary citizens who have not had an increase in their earnings, they were barely able to survive, and they rely on kerosene as a way of cooking or even lighting their house yet on yearly basis, for the last almost seven or eight years, there have been a consistent increase in the cost of fuel.

At some point, we will have to have a discussion and say, what is the end of this? We are pricing Kenyans out of basic rights that are guaranteed by this Constitution. A Senator spoke about Article 43. These are grounds for impeachment. This is gross violation.

Yesterday we impeached a governor here for denying the citizens of his county health services. This is an impeachable offence by those who are in charge of our energy sector. They are denying other Kenyans the chance to enjoy a good or decent life. What kind of life is this that we are forcing Kenyans to live?

You need to take a drive down Mbagathi Road as you come to work to see the number of Kenyans who have to walk to their work places. They are not going anywhere near. Some of them are walking as far as Lunga Lunga Road in Industrial area. They cannot afford the cost of bus fare. On each increase of fuel price, the *matatus* increase fare. It is always instant.

When it is released on the Friday at 2.00 p. m., I can assure you by 5.00 p.m., on that same evening, for routes where people were paying say Kshs50 or Kshs60 to get to the Central Business District (CBD), by evening, they are paying Kshs70 or Kshs80. Those people have no other alternative. It is us as a House who have to introspectively look within. Do we allow our citizens to continue to suffer or do we put an end to this madness?

I plead with my colleagues who serve in the Committee on Energy, Roads and Transport that this Statement should not be taken casually. Secondly, these are the Statements that you do not need 14 days; expedite. This is a matter of national importance. Such are the Statements that you can even call EPRA to be here on Friday and many of us will avail ourselves. The people that we represent look up to us.

In other jurisdictions, people work even on Sundays when there are issues such as these. You have to do away with some of these useless traditions that we have developed as a House. That, the only days we can consider issues are Tuesday, Wednesday and Thursday. The world is evolving. People are suffering. We are in a midst of a global pandemic. So many people have lost their jobs, yet somebody just sits in a well air conditioned office in Upper Hill at EPRA headquarters and says please add on to the cost. This is totally unacceptable.

I hope Sen. (Eng.) Maina, the Chairperson of the Committee on Energy, Roads and Transport of the Senate is either watching or will be notified of the feelings and the views of Members when this Statement came to this House.

First, they need to notify us, so that we join in on that meeting on the day that EPRA and Ministry of Energy and Petroleum will come before us, so that we can raise these questions with them and come out of the meeting with a clear roadmap on how this cost can be brought down. This is completely unacceptable.

Thank you.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Temporary Speaker, Sir, for giving me an opportunity to add my voice to this Statement by Sen. Khaniri. This is a very heavy Statement that really needs to be executed in a speedy manner.

When you look at fuel, it has economic and even social benefits. It also has domestic benefits. When you look at the domestic benefits - I am talking about the common *mwananchi* - many families use fuel. When the prices go up it means that the common *mwananchi* has to really look for ways and means of getting money for fuel yet even jobs are not there; the shilling is not really easy to come by.

When it comes to economic benefits, it has primary and secondary effects because when fuel goes up it means that the economy will also go up. It means that business people will also strain trying to look for fuel and even prices of transport will go high.

Fuel aids in transport of people. It also aids in people moving from one point to another and businesspeople also selling their merchandise from one place to another; looking for their merchandise and ensuring that they are also bring it to the market.

When the prices are high this affects businesspeople. All kinds of persons are affected. The high and mighty are also affected. Increase of fuel also flouts the economy of scale and deviates from it highly. The economy of scale intends that when the demand is high, then the production of goods is in high demand, meaning that the prices are supposed to be low.

It is ironic that fuel is in high demand, production is voluminous but then the prices are high. This irony needs to be ironed out with the Committee on Energy which needs to really interrogate this issue of fuel for the purpose of ensuring that the common man in alleviated from the burden of having to look for money for fuel.

Mr. Temporary Speaker, Sir, when you are driving from here to Eldoret you use more than Kshs50,000 in just one trip alone, even before going into the interior. This is because when you go there as a legislator, you have to go to the grassroots and meet the people. You end up spending more than you had anticipated.

There is need for the Government to relook at this issue so that everyone can be helped in the matter of fuel. Transport allowance that people get at their place of work needs to be raised so that people are able to work effectively.

We must see how this issue of fuel can be addressed because people do use electricity but there are cases when electricity is not there in the house. What is subsidized is the generator. The generator is usually fuel-powered and consumes a lot of fuel. There is need for the Committee to ensure that something is done to ensure that the prices of fuel come down.

Yes, it is doable because there is a lot of demand for fuel in this country. There is also fuel in Turkana and many parts of the country, so there is need for the Government to relook on this issue of electricity in order to benefit families, the manufacturing sector and the economy of this country. We support the manufacturing industry so much. There is need for us to see how we can bring down the fuel cost so that we support the manufacturing industry because this is one of the Big Four agenda that we really truly support.

I support the Statement.

**Sen. Sakaja:** Mr. Temporary Speaker, Sir, Sen. Khaniri continues to distinguish himself as a Senator who clearly and consistently brings issues that are affecting not just the people of Vihiga but also the people of Kenya. I would like to thank Sen. Khaniri, my distinguished elder brother for bringing this.

I do not know what words can be used truly to express the situation that many Kenyans are going through. Things are tough. We need to move beyond just commiserating with them. I like the example that Sen. Cheruiyot has used of people in my county.

Many people in ivory towers think that these people are walking long distances for fitness or they are walking because they want to exercise.

You are going to Baba Dogo, the industries in Lunga Lunga and you live in Kibera or Kawangware. You are going to earn Kshs300. The *matatu* fare to the city centre is Kshs100. If you choose to go by public transport, which is a whole other issue we need to address because there is nothing public about our transport. The only thing public is the road and the people. It is really private. However, if you choose to use public transport, you will not get food for your children. It is a choice between food or transport.

When 48 percent of discharge is foreign exchange adjustments and fuel surcharges, the tax component brings it around to 60 percent, then there is need for a solution. It means we are not listening to what the people are saying.

It is not just the commuters; all aspects of our economy are affected. In the North Rift, ploughing costs have gone up by 30 percent because the owners of tractors are now charging Kshs3,000 because of the increase in fuel cost, meaning the increase of the cost of food production to the farmer. He will then pass on that to the ordinary person.

For us to truly address the cost of living we must be innovative in that pricing formula. Yes, the Government must earn its taxes but it costs us nothing to say that because now fuel is Kshs127 and kerosene is now Kshs98, which is what many people are using in their houses. There was a plan to bring wananchi cooking gas but it ran into tender woes.

We can say that, yes, use the pricing model but if it goes above Kshs100 that extra is then cushioned by either temporary adjustment of that tax or by that fund that was created for that specific purpose.

That is a one-line amendment. We can do that and save Kenyans. All of these people who are hustling or looking for a living they are just trying to eke out a living.

The ordinary *mwananchi* today feels that everything around them is set up for their failure. That is why they will not understand all these other big projects you are trying to do. They will not understand the expressway that you are trying to build in

Nairobi which will actually help in future but it does not make sense because there is nothing that is left in their pocket at the end of the day.

Many a times we would say when it goes up by Kshs2 you will not feel it. However, even I have noticed that when I fuel my vehicle there is an actual pinch now that you can notice the difference. Before you would not necessarily notice. What about that common mwananchi?

Mr. Temporary Speaker, Sir, I would like to you to exercise your discretion; when you sit on that Chair you have a lot of power. You can say that we invite or summon EPRA, the National Treasury who will come with the KRA and the Ministry of Petroleum to come next week and tell us what mitigating interventions we can do so that we can put a stop to this situation.

They should come next week to a Committee of the Whole House and we sit and go through it step by step. That formula cannot be what is preventing Kenyans from--

They will not understand BBI. They will not understand any Motion we are discussing if there is nothing in their pockets. That frustration that people are feeling, I can speak about my residents in Nairobi. There is COVID-19 and then now there is fuel increase. They are being hit right, left and centre. When you go up, you are pulled down.

I know time is up but please issue that directive before you adjourn the House that they come next week and we will all be here to help the Committee on Energy swap this thing up. If we cannot deal with this, I do not know what else we are dealing with. Anything else is poetry.

Thank you.

**The Temporary Speaker** (Sen. Lelegwe): Hon. Senators, I therefore, refer the Statement, pursuant to Standing Order No. 47(1), and subject to 47(3), to the relevant committee. The relevant committee is the Committee on Energy. The Committee should report to the House in the next two weeks.

### ADJOURNMENT

Hon. Senators, it is now 12.30 p.m. time to adjourn the House. The Senate, therefore, stands adjourned until today Tuesday, 18<sup>th</sup> May, 2021, at 2.30 p.m.

The Senate rose at 12.30 p.m.