

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 8th August, 2019

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

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

PRAYER

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM MARELL
ACADEMY, BUNGOMA COUNTY

The Deputy Speaker (Sen. (Prof.) Kindiki): Hon. Senators, I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from Marell Academy in Bungoma County.

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and my own behalf, I welcome and wish them a fruitful visit.

I thank you.

(Applause)

Sen. Dullo: Mr. Deputy Speaker, Sir, I join you in welcoming the teachers and students from Bungoma County. Their Senator was around earlier. I am sure he is held up somewhere.

The delegation from Bungoma County is welcome here. I hope that their stay here will be useful and they will learn something that will help them grow their school.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Sen. Dullo.
Next Order.

PAPERS LAID

The Deputy Speaker (Sen. (Prof.) Kindiki): I do not see any of the Senators who are scheduled to lay documents on the Table. We will come back to that Order later.

Next Order.

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STATEMENTS

The Deputy Speaker (Sen. (Prof.) Kindiki): Let us begin with the Statement by the Senate Majority Leader on the business of the coming week, as we reorganise the business.

BUSINESS FOR THE WEEK COMMENCING
TUESDAY, 10TH SEPTEMBER, 2019

Sen. Dullo: Mr. Deputy Speaker, Sir, pursuant to Standing Order 52(1), I hereby present to the Senate, the business of the House for the week commencing Tuesday, 10th September, 2019.

Pursuant to the Resolution of the Senate adopted on 14th February, 2019, on the Senate Calendar, the House will proceed on a 32-day recess beginning today, at the rise of the House. In this regard, the Senate Business Committee (SBC) has not scheduled any business for next week.

Upon resumption of sittings on Tuesday, 10th September, 2019, the SBC will meet on that day to schedule the business of the Senate. Subject to further directions by the SBC, the Senate will consider Bills scheduled for Second Reading and those at the Committee of the Whole on Tuesday, 10th September, 2019. The Senate will also continue with consideration of business that will not be concluded in today's Order Paper.

On Wednesday, 11th September and Thursday, 12th September, 2019, the Senate will consider business that will not be concluded on Tuesday, and any other business scheduled by the SBC.

Mr. Deputy Speaker, Sir, since we came from the April recess, we have passed six Bills, which have been assented to by His Excellency the President and 23 Bills which have been sent to the National Assembly for concurrence.

I wish to commend you for the commitment you have shown so far. However, there are a number of Bills before the House at Second Reading and Committee of the Whole stages. I hope that we will dispense with them as soon as we resume in September. To emphasize the Statement I made last week, there are also a number of Statements and Petitions pending before Standing Committees. I urge the respective Standing Committees to ensure that the process of consideration of the said business is expedited during this recess period and table reports on them upon resumption of sittings in September.

Mr. Deputy Speaker, Sir, cognizant of the need to enhance the interaction between the Senate and county governments as a means of bringing the Senate closer to the counties and the general public, and pursuant to Article 126 (1) of the Constitution and Standing Order 31 (1) of the Senate, the Senate resolved on Thursday, 13th June, 2019 that its plenary and committee sittings be held in Kitui County from 16th to 20th September, 2019. I, therefore, urge all Senators to plan to attend these important sittings in our calendar of events.

In conclusion, Mr. Deputy Speaker, Sir, allow me to take this opportunity to wish Senators a good recess, as you take time to reconnect with your families, friends and constituents.

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

(Sen. Dullo laid the document on the Table)

The Deputy Speaker (Sen. (Prof.) Kindiki): What is your point of order, Sen. (Dr.) Musuruve?

Sen. (Dr.) Musuruve: On a point of order, Mr. Deputy Speaker, Sir. When the Senate held its sittings in Uasin Gishu County last year, the Committee on Education launched books on special needs education that are supposed to be used as instructional materials in schools. The books that were launched were Kenya Institute of Curriculum Development (KICD) approved. They included charts, learners and teacher's guide copies that are handy to not only persons with special needs, but persons without disabilities.

Mr. Deputy Speaker, the said books are still available in volumes. I would like to go on record that as the Senator representing persons with disabilities, I want to make a donation to Kitui, Machakos and Makueni counties when we go for the sittings in Kitui County.

There is a dire need for people, especially those with special needs, to learn sign language. The President launched the Special Needs Sector Policy which states clearly that there is a void in special needs education because materials are lacking. I would, therefore, like to state that---

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. (Dr.) Musuruve, allow me to summarize your points. Sen. Dullo has read in her Statement that the Senate will sit in Kitui County in September. You are pleading that during that visit, an opportunity be granted to you to donate books to the Ukambani counties regarding persons with disabilities. Is that your request?

Sen. (Dr.) Musuruve: Yes, Mr. Deputy Speaker, Sir. That is my request. Further, I request to be facilitated to ensure that the books reach the destination because they are voluminous.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. (Dr.) Musuruve, I direct you to make a formal request to the Office of the Speaker, so that the matter can be processed through the SBC for it to be accommodated. The request needs to be made early because our Calendar states that we should proceed on recess today. Kindly make that request before the start of the August recess.

What is it, Sen. Wambua?

Sen. Wambua: Mr. Deputy Speaker, Sir, I join Sen. Dullo in wishing my colleagues well during the recess. I would like to confirm to this House that arrangements are being made to assist Sen. (Dr.) Musuruve to make book donations to the schools in the three counties.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very good. Help seems to have come earlier. Sen. (Dr.) Musuruve, please consult with Sen. Wambua, and in case you

need any further help from the Senate Business Committee (SBC), write to the Speaker making that request, particularly on what kind of assistance you may need.

TRAFFIC CONGESTION AT THE GILGIL WEIGHBRIDGE
ALONG THE NAIROBI- NAKURU HIGHWAY

Sen. Prengei: Thank you, Mr. Deputy Speaker, Sir. I rise pursuant to Standing Order 48 (1), to seek a Statement from the Standing Committee on Roads and Transportation concerning traffic congestion at the Gilgil Weighbridge along the Nairobi-Nakuru Highway, Nakuru County.

In the Statement, the Committee should:

- (1) Explain the circumstances that have led to increased traffic congestion at the Gilgil Weighbridge along the Nairobi-Nakuru Highway, including the latest one that lasted over 24 hours.
- (2) State measures being undertaken by the Government to prevent occurrence of such traffic congestion along the said stretch of the Nairobi-Nakuru Highway.
- (3) State when the Government plans to dual the Nairobi-Nakuru Highway as a long-term measure to prevent traffic congestion on the said road.
- (4) State whether the Government has made plans to relocate the Weighbridge located in Gilgil off the Nairobi-Nakuru Highway.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Chairperson, Standing Committee on Roads and Transportation, Vice Chair or Member?

Sen. Wetangula: Mr. Deputy Speaker, Sir, I do not see the Chair of the Standing Committee on Roads and Transportation here, but the Deputy Majority Leader is here. I hope that she will be able to deal with this matter.

The point raised by the distinguished Senator is very important for those of us who come from counties in the western region. It used to take us less than an hour to drive from Nairobi to Nakuru. Now, it takes us three hours. The Chair should tell this House and country the rationale of having that weighbridge.

Most of the trucks going to western neighbours come from Mombasa. There is a weighbridge at Mariakani that weighs trucks that carry containers with seals. So, there is no proximity or possibility of any container being opened and additional cargo put on. When they reach Mlolongo, they are weighed again. On the way to western Kenya, they weigh them in Gilgil. When they get to Webuye, they are weighed again and, in the process, there are terrible snarl-ups.

I raised a question here three weeks ago, and I am happy - I have to give credit where it is due - that Sen. Wamatangi, as the Chair of the Committee, has assured me that next Thursday, he will be coming to Malaba Border point. This is where trucks are queuing up to 28 kilometers, from the border point all the way close to Bungoma Town. This undermines international trade, denies the country quick revenue and causes so many other inconveniences to everybody. The moment trucks have sealed the road for 28

kilometers, it means that only on-coming vehicles can pass and vehicles going the same direction have to queue. So, this is a very important Statement.

Lastly, the road from Mombasa to Malaba is the artery of the economy of this country, carrying 60 per cent of our external trade to Uganda, Rwanda, Burundi, South Sudan, Congo, and sometimes up to northern Zambia, where the goods go up to Bujumbura. They are put on freights on ships in Lake Tanganyika to northern Zambia. When will the road from Mombasa all the way to Malaba be dualized, to open up the growth of the economy?

Sen. Wambua: Thank you, Mr. Deputy Speaker, Sir. I want to congratulate Sen. Prengei for bringing this Statement. I would like to confirm to this House that I am a Member, in good standing, of the Committee on Roads and Transportation. As Sen. Wetangula has said, the Committee will be visiting Malaba on Thursday. Given that it is the same direction, I believe that when we sit as a Committee, we will see how we can arrange to deal with the two issues within next week and report back to the House.

Thank you very much, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): That is a very good proposal, Sen. Wambua, and it is also assumed that you will go by road. This is because, you cannot talk about opening up of roads and you are oversighting from the skies and heavens. It will be very good so that you look at that road from the start to end.

Thank you for your innovative way of looking at it. Anything between Nairobi and Malaba can be accommodated. Maybe you can return differently.

(Laughter)

Sen. Olekina: Mr. Deputy Speaker, Sir, I want to congratulate Sen. Prengei. When he told me about this Statement, I said that I must contribute a little bit in terms of trying to bring sanity into this issue.

Mr. Deputy Speaker, Sir, this issue reminds me of a border called Kazungula in Zambia. It is the border between Botswana and Zambia, where trucks can even last for two weeks, yet they have all the clearing documents. Vehicles with a carnet or any other documentation for export can stay there for two weeks for one reason - corruption.

Let us not try to justify whatever is happening in Gilgil with any other words. If you count the number of weighbridges, from the border of Namanga all the way to Busia, there is nothing that will change. All those trucks, when they pass there, some of them which are on transit, the weight is still the same. It is about time we dealt with this issue of corruption and come up with better ways of weighing these trucks. Why set up a weighbridge in Naivasha, yet they still have to be weighed when they get to Busia? We have to come up with a better way of ensuring that there is constant flow of traffic.

Mr. Deputy Speaker, Sir, sometimes I think that the Transport Department has missed its priorities in terms of growing an economy. I keep on saying that this is a country where laws on dumping are not fully implemented. We are already congesting our roads by making sure that we overtax those people who buy new cars and reducing taxes on old vehicles.

When the Committee on Roads and Transportation will be looking at this issue, if it is possible, the Chairperson should look at the Hansard instead of relying on the Statement by Sen. Prengei. When they are explaining the circumstances that have led to the increase in traffic, they should come up with a better explanation on what measures the Traffic Department is taking to ensure that they come up with a unified system, such that when a truck is weighed in Namanga, the only other place that it should be weighed at is Busia, assuming it is a transit truck. If it is taking the goods from one destination to another, maybe then the National Transport and Safety Authority (NTSA) or someone else should come up with another system that identifies each truck and the final destination.

If a truck goes through Naivasha and the final destination is Busia, then there is no reason we should weigh that truck there because it is on transit. However, if the final destination is Nakuru, then at least we can create a path or maybe a way that the truck going to Nakuru can be weighed.

If we are not creative, this issue of trucks piling there will continue and people will have to pay money so that their trucks can be cleared.

The Deputy Speaker (Sen. (Prof.) Kindiki): I direct the Senate Committee on Roads and Transportation, while addressing the matter concerning the Malaba Border Post during the intended visit on Thursday, to also include within the itinerary a visit to Gilgil Weighbridge and address the issues raised by the request for a Statement by Sen. Prengei.

Since this is a recurring issue and a matter of international trade, movement of goods and services and regional integration is of great concern. We even had a related issue in the House yesterday about the Port of Mombasa. Other than the visit, I will exercise the discretion, under Standing Order No.48, and direct the Committee, once they dispose of the matter, to table a report on the first day after the recess.

It is so ordered.

Proceed, Sen. Linturi.

COUNTY GOVERNMENTS INFRASTRUCTURE PROJECTS

Sen. Linturi: Mr. Deputy Speaker, Sir, I rise pursuant to Standing Order No.47(1) to make a Statement on the county governments infrastructure projects comprising county executive headquarters offices, county assembly chambers, offices and county state officers' residences.

The Standing Committee on Finance and Budget tabled a report in the Senate on 29th November, 2019 on the county government infrastructure projects comprising of the county executive headquarters offices, county assembly chambers, offices and county state officers' residences.

As we may recall from the Committee's Report, the attention of the Committee was drawn by the Commission on Revenue Allocation (CRA) to the issues of ongoing county infrastructure projects, which included those offices and residences projects by the county governments.

The residences projects included houses of the speakers and deputy governors and the headquarters of the county assemblies. Consequently, the Committee invited stakeholders and held meetings with various stakeholders, including the Salaries and Remuneration Commission (SRC), Controller of Budget (CoB), Commission on Revenue Allocation (CRA), the Ministry of Transport, Infrastructure, Housing and Urban Development and Public Works.

Mr. Deputy Speaker, Sir, the Committee arrived at several resolutions, among them, the provision of ceilings for use by county governments. The ceilings are as follows: residence for county governors was pegged at Kshs45 million; deputy governors, Kshs35 million; county assembly speaker, Kshs35 million; and the size of the land should not exceed two acres. The construction of the executive offices should not exceed Kshs500 million. The cost of construction of county assembly chambers for a house that has up to a maximum of 30 members of county assembly should not go beyond Kshs200 million; 31 to 50 members, Kshs250 million; and, 61 to 90 members, Kshs400 million.

Further, the Committee recommended that the counties which had awarded contracts that were above the recommendations should consider renegotiating with a view to adjusting the contract sum.

Mr. Deputy Speaker, Sir, on 14th May, 2019, the Senate adopted the Committee report without amendments. Following the Senate Resolution, the CRA issued a circular to all governors and speakers of the county assemblies, drawing their attention to the resolutions among other information. It also included a letter from the Ministry of Transport, Infrastructure, Housing and Urban Development and Public Works Ref No. CG/GEN/VOL.1/3 dated 19th June, 2019 on county infrastructure projects.

The circular made reference to a response to the letter from the CRA reaffirming the need for counties to adhere to the Senate Resolution, but also advising that the exceptions from the ceilings can only be provided by the Senate on a case by case basis, with recommendations from the Ministry of Transport, Infrastructure, Public Works, Housing and Urban Development.

A few counties namely, Nyandarua, Nyamira, Isiolo, Tana River, Samburu, Mandela, Kilifi and Meru had already started infrastructure development projects by the time the Senate resolved to provide ceilings for the county infrastructure projects. Further, the construction in some of the counties was at various stages. Some were 40 per cent complete and the contractual obligations entered into by the said county governments with the contractors were beyond the amounts provided for in the ceilings.

In view of the above facts, and the set ceilings, county governments are now staring at possible unnecessary lawsuits by the contractors, delays in completing the infrastructure development projects and uncertainty as to how they should proceed in instances where it is not possible to go by the Senate Resolution.

I, therefore, request this august House, through the Standing Committee on Finance and Budget, to relook at the matter with a view to meeting with all the relevant stakeholders again and considering the case of the affected counties, with a view to giving further recommendations and direction on each of the affected counties. This will ensure that we avoid the stalling of the projects and avert the expensive lawsuits that may ensue.

I thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Sen. Linturi. I think that Statement touches on a number of counties. It is under Standing Order No. 47(1). I will, therefore, allow a few comments before I give directions.

I will start with the Senator for Nairobi City County.

Sen. Sakaja: Mr. Deputy Speaker, Sir, Sen. Linturi is seated next to me, but I have a totally contrary opinion from that Statement. We are living at a time, in our country, where majority of Kenyans are struggling even to just eke out a living. Where those projects have started, let them be completed. But leadership in this time and day in our country--- The other day, I saw in Kenyatta National Teaching and Referral Hospital as case where a family lost a member because of Kshs1,950.

We are talking about schools. I saw a school in Kinango, where children do not even have desks, yet we want to give a ceiling of Kshs150 million for a deputy governor to have a house, Kshs200 million for a governor to have a house, a speaker, and tomorrow, it will be Senators. The ceiling for those who have not started these projects should be zero.

We need to start feeling what other Kenyans are feeling. We cannot say that a county has gone up to 40 or 50 per cent completion of a governor's or deputy governor's house, yet they have not built a single infrastructure project for the people that we serve. We must change and refresh our thinking.

Mr. Deputy Speaker, Sir, I know that it has been happening even in the last Senate and now. However, we cannot keep doing the wrong thing and expect different results. I would propose an amendment to the Senate Committee on Finance and Budget on this; that the projects which are already started be completed at the lowest cost possible, so that we do not incur litigation. We should then put a freeze on construction of residences for individuals until our economy is in a state where we can afford and say proudly to our people that we have built a house for their governor for Kshs200 million, a deputy governor for kshs150 million, the Senator, *et cetera*. For now, we cannot afford it as a country.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Sakaja. There are no Senators' residences anywhere.

(Sen. Sakaja spoke off record)

Order! Sen. Olekina, proceed.

Sen. Olekina: Mr. Deputy Speaker, Sir, I rise to give my sentiments on this issue of counties spending money without ceilings. Although Parliament can legitimately interfere, we have to put in place a balance between existing projects and think about how we can grant further into the new ceiling.

My biggest problem is the cost of litigation in these counties. Every often, counties come up with huge bills in terms of litigation because sometimes we interfere without looking at existing contracts. Even though Parliament has the power to control these things, first, we need to ask ourselves whether we have legislation that can ensure these ceilings are there before any projects begin.

In my view, I would support certain aspects of Sen. Linturi's Statement in carrying out an audit to find out how many projects have been built and public money utilised effectively. These contracts are conduits of a cabal getting into the public coffers and hurting the public. Those projects have never been completed.

Mr. Deputy Speaker, Sir, when we presented our report on Kilifi County, we found that the Governor there had spent about Kshs300 million to build his residence. Seriously, we cannot spend public money just haphazardly. We have to figure out what it is that we can do.

The first step, as I support certain aspects of Sen. Linturi's Statement, is to carry out an audit of the 47 counties to see how much money has been spent on public infrastructure. I would like to encourage the Chairperson of the Committee on Finance and Budget to go further and follow the paper trail and see if there are any kickbacks going back to the governors. They should involve the Kenya Revenue Authority (KRA) to audit those contracts, so that we can accurately stand here and defend any contractors.

The burden that we have on pending bills is because some contractors team up with governors and find a way of ensuring that eventually, the governors get money in cash. For us to feel the pain that Kenyans are feeling, I would encourage the Committee on Finance and Budget to now follow up thoroughly and audit those projects and the contractors.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Sen. Olekina.
Sen. Dullo, proceed.

Sen. Dullo: Thank you, Mr. Deputy Speaker, Sir. First, I thank Sen. Linturi for this Statement. I know that Isiolo is one of the counties that were mentioned, especially on the office headquarters.

For the record, Isiolo County does not have a headquarters. Two, the delay might not have been on the national Government, but the county government. I remember very well in the last Senate, I sat in a Committee that was chaired by Sen. (Eng.) Karue, and I was the Vice Chairperson. We agreed that five counties were supposed to be allocated a budget for an office for them to be at the same level with the rest. I remember your county also benefitted from that. Unfortunately, for Isiolo County, that has not happened.

I agree that a ceiling must be there so that taxpayers' money is not used anyhow. Thirdly, we cannot allow counties that have already started to get stuck because, at the end of the day, we will lose a lot of money in litigation. Four, some counties engage contractors in long-term projects. A very good example is Isiolo County, where they have engaged a contractor to construct a chamber for three years. That means it will take up to the end of the term of the current assembly.

This means that there is no public participation. In fact, there is no proper budget allocation and ceiling for these kinds of projects. As the Senate, we should not allow people to just get out of their way, come up with contracts and misuse taxpayers' money. That is not a priority, especially for my county that gets only Kshs4 billion.

The Deputy Speaker (Sen. (Prof.) Kindiki): What is your recommendation?

Sen. Dullo: Mr. Deputy Speaker, Sir, my position is that the ceilings must be there, but the contracts that have already started should be allowed to go to completion.

The Deputy Speaker (Sen. (Prof.) Kindiki): Well put.

Sen. Wetangula, proceed.

Sen. Wetangula: Mr. Deputy Speaker, Sir, some of these issues have been canvassed before the Committee on Finance and Budget, and I can see my Chairperson here. We were confronted with a situation where you find one county is building or buying a property, and when you go to the next one, the value is triple.

There is the classic case of Kilifi County, where a certain *mzungu* built two identical houses on the same acreage on a creek. He sold one size to an individual at Kshs45 million and the other house to Kilifi County Government at Kshs300 million. Nobody did anything. It is obvious that this was a fraud and not a purchase.

(Laughter)

We went to Wajir County and saw the former Governor built a fantastic county headquarters. It was a four storey building with a Mosque for prayer, boardrooms and everything at Kshs240 million. When you go to other counties, it is the complete opposite.

The Committee on Finance and Budget – I hope that I speak for my Chairperson – has engaged with the Department of Public Works and set some ceilings; that if you are building a residence or chamber, it cannot be more than a certain cost. However, let me also tell the House that because of budgetary constraints, and you know the national Government is holding more money and giving counties very little, certain projects transcend financial years. So, you can have a project that can run in the first, second and third financial year for completion. In those peculiar cases, we should understand.

Mr. Deputy Speaker, Sir, when Nyandarua started as a county, the governor was sitting in offices in Laikipia County, which was not tenable. Your county had no headquarters. In my view, as we move to the next level when we come back, this House must deal with the Sang Bill. The Bill provided that Senators chair boards of development in our counties, so that we can see how money is spent.

I was very impressed when we went to bury Gov. (Dr.) Joyce Laboso. Our distinguished colleague from Bomet County, Sen. (Dr.) Langat, told us that the late Gov. (Dr.) Laboso – may her soul rest in eternal peace – had invited him to chair all meetings where development programmes were decided. So, he knew what was going on. This idea of governors seeing Senators as enemies, frightful characters or witch-hunters must stop, so that we give the public value for money.

Lastly, let me talk about the enforcement of the Public Finance Management (PFM) Act. It has clear provisions. It is a criminal offence for anybody in authority to procure goods or services without an attendant budget. This idea of pending bills should not even arise if the law was enforced. Everybody must be held to account.

The Deputy Speaker (Sen. (Prof.) Kindiki): I will hear from the Chairman first and then Sen. Linturi will rebut in a minute or two.

Sen. (Eng.) Mahamud: Mr. Deputy Speaker, Sir, let me thank Sen. Linturi for bringing this Statement. This matter of infrastructure projects in counties is one that we have been dealing with in the Committee on Finance and Budget. There is no control in

counties as far as what their priorities are. In the first two years of existence of the counties, everybody went on a spending spree of building infrastructure projects.

Mr. Deputy Speaker, Sir, it was very clear from the advice they got from the CRA that in the first five years, they should not undertake large infrastructural projects. The SRC came up with a plan for them to rent offices at that time. Fair enough; I think offices, county headquarters and assemblies were necessary, but the differential in counties was surprising. In fact, our attention was drawn to a lot of newspaper reports. There was a lot of hue and cry in the counties when we saw the Budget for the Financial Year 2017/2018.

Mr. Deputy Speaker, Sir, there were a lot of variances. Some provided Kshs200 to 300 million. We engaged the Ministry of Transport, Infrastructure, Public Works and Urban Development because they are supposed to be the advisors on public infrastructure. Most counties do not want to use them for obvious reasons.

Mr. Deputy Speaker, Sir, a county like Isiolo awarded a tender for Kshs870 million. They were among the five counties that were supposed to get affirmative action according to what the Senate gave them in the last Senate.

Mr. Deputy Speaker, Sir, out of the five counties, which are, Tana River, Isiolo, Tharaka-Nithi, Nyandarua and Lamu, it is only Tharaka-Nithi and Nyandarua that have started constructing their own county offices. Tana River has not done anything and Isiolo was doing it last year.

We sat down with the Ministry of Transport, Infrastructure, Public Works and Urban Development and went through the possibilities of what the costs of those projects are. This is how the ceilings came. We got prototype designs, which were looked at, and said that the acreage of even the office must be controlled.

Mr. Deputy Speaker, Sir, the typical residence of the former Provincial Commissioners (PCs) in the eight headquarters and premises was our guide. There were very good buildings on two-acre parcels of land. People want to build mansions that are far beyond the capacity of counties.

We also resolved that Kshs500 million was enough to construct county headquarters offices. We realized that there were contracts in force, but there is provision in contract law to downsize projects with agreements to the contractors. In fact, up to 25 per cent can go down.

We said that whereas they have already started contracting, let us allow the negotiation between the contractor and the county government for them to downsize the contracts by 25 per cent. Nobody is interested. On the contrary, contracts are terminated and new ones awarded three times the price of the original contracts. There must be some way of reining in this rogue behavior. I am sorry to use that word. It is serious---

Whereas there is no law that allows us to control how much the ceiling should be, we thought we are giving advisory opinion to our counties so that they go by the figures.

Mr. Deputy Speaker, Sir, we expect the Auditor-General and people who are dealing with finances to come up with those figures and use that as a guide. The Senator is requesting us, through this Statement, to reconsider those ceilings. We will convene our meeting again, but have exhausted all the possibilities and nobody seems to be

listening. I am happy that the CRA has written to them, as a way of implementing the solution.

Mr. Deputy Speaker, Sir, we will engage the CRA, CoB and Ministry of Transport, infrastructure, Public Works and Urban Development and see what the compliance is like, what the difficulties are and what needs to be done. I am sure there is a lot of greed for big projects. We are busy building bricks and stones in this country and nobody wants to do service delivery projects—

The Deputy Speaker (Sen. (Prof.) Kindiki): Chair, you have not told the House what you intend to do about—

Sen. (Eng.) Mahamud: Yes, I have. Sen. Wetangula engaged you. We will engage again with the CRA, CoB and the stakeholders.

The Deputy Speaker (Sen. (Prof.) Kindiki): How much time do you need for that?

Sen. (Eng.) Mahamud: Mr. Deputy Speaker, Sir, now that we are going on recess, once we come back; the first two weeks of our return, we will be able to bring the report to this House.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Linturi, is that prejudicial to the reasons you brought this request? It is under Standing Order No. 47?

Sen. Linturi: Yes, it is.

The Deputy Speaker (Sen. (Prof.) Kindiki): It is just a general statement of general concern or on a general issue.

Sen. Linturi: Yes, it is just a general issue. If you allow me---

The Deputy Speaker (Sen. (Prof.) Kindiki): How would you want this House to be helpful?

Sen. Linturi: Mr. Deputy Speaker, Sir, I want to thank everyone who has made a contribution to this Statement. However, we want to address the specific matter on this one, so that it is not generalized.

I raised that matter because it touched on the seven counties. However, the only aspect that the Chair may not have understood is why this matter required to be relooked at by the Committee again. I raised the aspect or an issue where contracts were entered into between county governments and the contractors before the Senate made its pronouncement, and projects have been done beyond the amounts of money that are set by the ceilings.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Linturi, I heard that very clearly. The Chairperson and the Committee should distinguish between very specific issues about ongoing contracts, which have been entered into between counties and contractors, whose application of these ceilings could lead to legal implications and law suits versus the general issue about the ceilings, ongoing issues and discussions about whether these ceilings are being respected.

Sen. Linturi, under Standing Order No.47, the Speaker may, in appropriate cases, refer specific issues to a committee. If you would want specific attention on those specific issues, I would like to know before I make my direction.

Sen. Linturi: The specific issue that I want to refer to is Meru County.

The Deputy Speaker (Sen. (Prof.) Kindiki): Would you want the Committee to treat that issue about Meru County and a few other counties which are---

Sen. Linturi: Mr. Deputy Speaker, Sir, I may not be able to speak about many others because I do not know. I went through the correspondences from the CRA that mentioned those counties. Therefore, I did not want to bring up the issue of Meru alone, when other counties were mentioned. However, for the purposes of specificity, I would want the matter on Meru County referred to the Committee and be dealt with on its own merit, because we would be able to prove that case to them.

The Deputy Speaker (Sen. (Prof.) Kindiki): I will amend that request and direct as follows. Chairperson, look at the counties whose cases fall under the Meru template and use the request by Sen. Linturi to give this House recommendations by looking at other counties, including Meru and table a report on the first day after recess.

What is it, Sen. (Eng.) Mahamud?

CRISIS IN COUNTIES DUE TO DELAYED
ENACTMENT OF DORA

Sen. (Eng.) Mahamud: Mr. Deputy Speaker, Sir, I rise under Standing Order 51(1)(a) to make a statement relating to the crisis in the counties occasioned by the lack of enactment of Division of Revenue Act (DORA).

This House is aware that we have been dealing with the issue of Division of Revenue Bill for several weeks. Up to yesterday—

The Deputy Speaker (Sen. (Prof.) Kindiki): Chairperson, you are under which Standing Order?

Sen. (Eng.) Mahamud: Mr. Deputy Speaker, Sir, it is under Standing Order 51(1) (a).

The Deputy Speaker (Sen. (Prof.) Kindiki): Okay. Proceed.

Sen. (Eng.) Mahamud: It provides that the Chairperson may make a statement relating to a matter for which the Committee is responsible.

Mr. Deputy Speaker, Sir, as late as yesterday, we did pass the National Assembly Division of Revenue Bill with amendment. Today is 8th August 2019, more than one month into the Financial Year 2019/2020. There is nothing available to the counties in terms of paying for their services including salaries.

Mr. Deputy Speaker, Sir, whereas the national Government is enjoying the benefit of the Appropriation Act whose legality is being contested, they are drawing money from a vote to pay for their services. However, the same is not happening in the counties. They are in a crisis because they cannot pay their salaries. This is deliberate because it has been occasioned by the procrastination of the National Assembly, which believes that the mandate to deal with the budget is theirs and nobody else's.

Mr. Deputy Speaker, Sir, this House must pronounce itself on this matter, so that counties are not starved. Ideally, no arm of Government should enjoy any funding from the Consolidated Fund because the Division of Revenue Act has not been enacted. Without it, the Appropriation Act in the counties and the County Allocation of Revenue Act cannot be enacted. However, the other House has enacted the Appropriation Act, and

they are drawing money. Therefore, we must address ourselves on this matter and find a way.

The law has not foreseen a situation like this. In the event that a delay is occasioned on the Appropriation Act of the counties, they can withdraw money from their County Revenue Fund (CRF), under Section 134 of Public Finance Management Act. However, we are not yet there. There is a big problem and this House should pronounce itself on this matter. It should urge the National Treasury to administratively provide for the counties, so that they continue to provide services to the people of Kenya in the interim period.

Hopefully, we will go to mediation again with the National Assembly. Before the enactment of the Division of Revenue Act, County Allocation of Revenue Act and the Appropriation Act, counties should be supported and given some funding through an administrative process. This is not the first time this will happen; precedence was set in the Financial Year 2014/2015. When there was delay in the enactment of the Division of Revenue Act, some administrative mechanism was put in place and counties were allowed to access funds. We are now facing a crisis that must be dealt with.

This House should resolve that the National Treasury is called upon to provide the required funding, similar to what is provided for in the national Government in terms of votes on account for them to draw, at least, up to half of whatever figure that will come, so that they can run their services. Our hospitals must work, people must get their salaries, the county must buy medicine and Early Childhood Development Education (ECDE) schools must run. However, there is a crisis and we should not sit comfortably in the National Assembly, the Senate or elsewhere when our people are suffering.

I assure the Senators that all the activities happen in the counties. Nairobi City County may service itself with the revenue collection, but it is not supposed to be like that. The National Treasury must give counties their rights under some administrative process because this is not the first time, and it is possible. We will not be breaking any law. I urge that the Senate resolves this. My Committee is prepared to meet and engage the Cabinet Secretary (CS) for the National Treasury so that we can move forward.

Mr. Deputy Speaker, Sir, I beg to submit this matter on the Floor of the House.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Sen. (Eng.) Mahamud. Hon. Senators, as you are aware, yesterday, the House passed the Division of Revenue Bill with amendments. Therefore, as resolved by the House, I confirm that I sent a Message to the National Assembly yesterday.

(Applause)

However, given that we are expected to proceed on recess later today as per our Calendar, I agree with the Chairperson of the Committee on Finance, Commerce and Budget that in spite of our good work yesterday under difficult circumstances, the crisis still lingers. Therefore, as we go away, we must be conscious that we have no control over timelines or substance of the action that will be taken by the other House. Therefore, in line with the comments made by the Chairperson under Standing Order No. 51(1) (a), we must look beyond what we did yesterday and ask ourselves whether there is

something that needs to be done during recess, possibly by the Committee or the Senate leadership, to find out whether there is an intervention that can unlock this stalemate.

We have looked at the law in Article 222 and 223 of the Constitution, and it appears that it does not have a solution to what we have now. Given the gravity of this matter, I encourage a few more observations, although we are almost extinguishing our Statements hour.

I will apply Standing Order No.1 and extend the Statements hour, so that we can get a few observations, and perhaps, make a resolution or recommendation of some kind, which the Chair will give in form of directions. The limit in Standing Order No.51, which Sen. (Eng.) Mahamud has used, is 20 minutes. However, I am willing to expand that timeline.

Finally, you will discover that under Standing Order No.51, the Speaker is not given the discretion to commit the matter to a Committee. However, given that this is a situation that is not anticipated in law or the Standing Orders, it is a matter for which Standing Order No.1 applies. Therefore, I will be more than happy, after listening to you, to give directions to the Committee, to see what it can do on behalf of the House as we proceed on recess.

I would like to hear from the Senator for Migori County.

Sen. Ochillo-Ayacko: Thank you, Mr. Deputy Speaker, Sir. Implementation of functions must necessarily and deliberately be funded. If there is no funding, functions of an organisation technically and constructively grind to a halt. Unfortunately, this is the situation that is obtaining in counties. My observation is that the national Government continues to draw from a questionable Appropriation Act, conscious of the fact that it is not anchored on legislation and is probably administrative.

I am glad that the Chairperson of Committee on Finance, Commerce and Budget has identified this priority. He should take the initiative and get in touch with the Office of the Controller of Budget, and find out the basis upon which the national Government is funded.

Mr. Deputy Speaker, Sir, in our Law classes we were told that any law that creates such a situation may only have been drafted by a fool. So, every law must have an exit strategy and safe passage. I am sure that if we look at the totality of the Constitution, our Committee should find a safe passage to negotiate a situation where our county governments will be funded.

Articles 222, 223 and 224 of the Constitution seem to talk of appropriation of funds allocated to the national Government and the County Appropriation Act, but we must find a common situation that will not have county governments crash because that is not the purpose of the Constitution.

Mr. Deputy Speaker, Sir, this is a timely and urgent matter.

The Deputy Speaker (Sen. (Prof.) Kindiki): Hon. Senators, we would like to have practical suggestions as possible. The Senator for Migori County has told us about the possibility of the Committee engaging the Controller of Budget (CoB) and looking for innovations. If they are innovations that work for the national Government, they should be applicable to county governments.

Sen. Sakaja: Mr. Deputy Speaker, Sir, first, I would like to thank the Chairman of the Committee on Finance and Budget because he has been working overtime over the past few days to try and deal with this matter. We are in an awkward place as a country.

I was going through Part 1 of Chapter Twelve of the Constitution on Principles and Framework of Public Finance as well as chapters on devolution. The provisions of devolution and the subsequent laws such as the Public Finance Management (PFM) Act and related Acts of Parliament were not to create a situation where you would have one level of government disadvantaged in such a situation.

It has been eloquently prosecuted in this House that the frame of mind that the money that goes to the counties is money that comes from the national Government is debunked. In true essence of Chapter Twelve, the Division of Revenue Bill is what sets aside some money to go to the national level and some to the counties. It should not be the national Government giving the counties money.

With that in mind and knowing very well that the matter is in the court because of the County Appropriation Act, which many of us feel it was not founded in law, if county governments cannot legislate and appropriate money because the Division of Revenue Bill has not been passed, then similarly, it follows that the national Government should not have been allowed to legislate on the Appropriation Bill. This is because the same Bill that gives each level of government its money has not been passed. What can be done in the intervening situation?

I am glad that yesterday this Senate took a mature demeanor and disposition. As the “upper House” and protectors of devolution, we said that we will not take the approach of an eye for an eye and all lose our sight or get ahead and get even, but find the most pragmatic way of resolving the issue when the legislation is still going on, and the matters are also before the court.

Mr. Deputy Speaker, Sir, this House needs to resolve as follows, and this is my humble submission. This House, through the Committee on Finance and Budget, can--- If you look at the spirit behind vote on account, it is usually 50 per cent of the last amounts that had been appropriated. We already know that Kshs316 billion is what the other House is proposing, but we proposed Kshs335 billion. It should be based on the amount that was appropriated last year because we are a zero-based budgeting regime and must start from there.

If we take 25 per cent of it, we can authorise the National Treasury to allow counties to withdraw the percentage based on the same allocation of revenue which gave each county a formula to budget on the amount. For instance, out of the sharable revenue of Kshs314 billion allocated in the previous financial year, Nairobi City County had 15 per cent of it. If you take a percentage of the sharable revenue that we will agree, such as 25 or 50 per cent, then Nairobi City County should be allowed to draw the same percentage it had in the previous financial year, just to take care of the costs. This will ensure that when the Division of Revenue Bill is eventually passed, Nairobi City County will not have exceeded what it will eventually get.

As the Senator for Nairobi City County, my county can pay salaries because we collect revenue close to Kshs1 billion every month. However, all other counties could

grind to a halt. There are doctors, nurses and county government workers who have to go and explain where rent and school fees for their children will come from.

We should accept that the law exists. However, law was made for man and not man for the law. We should allow that version based on a percentage of the last Division of Revenue Act (DORA) and a percentage of the County Allocation of Revenue Act (CARA) that was applied last year. If we take that approach, our counties will be able to survive within the next two weeks.

With the disposition that the House has taken, led by the Chairman of the Committee on Finance and Budget, I am sure that if we send soft and gentle Senators to mediation – Sen. Olekina, Sen. Mutula Kilonzo Jnr. and I were amiable and not hardliners – we will eventually unlock this as we wait for the courts to pronounce themselves. It is a practical solution which, based on my research, has been done in other jurisdictions. I will be glad to furnish the Chairman of the Committee on Finance and Budget with such similar jurisdictions that have---

The Deputy Speaker (Sen. (Prof.) Kindiki): Could you repeat the proposed solutions?

Sen. Sakaja: I said it is a version of vote on account based on what had gone to the lower level. If you look at South Africa and India, which are countries with similar framework of fiscal decentralisation, once that determination has not been made, the last amount that went to the counties, in their cases the provinces, and using the percentage of the amount they got, they can be given the leeway to withdraw the money.

The CoB can be allowed to support that expenditure in the intervening period, where a time limit of two to three months is put as the matter is sorted out. Otherwise, the courts and every arm of Government are not doing justice to our counties.

I thank you.

The Deputy Speaker (Sen. (Prof.) Kindiki): Well put, Sen. Sakaja. Let us now listen to Sen. Wetangula.

Sen. Wetangula: Mr. Deputy Speaker, Sir, we find ourselves in a situation that requires very innovative thinking to resolve this. Article 6(2) of the Constitution creates two levels of government; the national Government and county governments. They are distinct and interdependent, and should conduct their mutual relations on the basis of consultation and cooperation. There is nowhere in the Constitution either an expressed or implied provision of live and let die. It is live and let live. They must be interdependent and cooperate. Even in this situation that the country has found itself in, thanks to our colleagues in the “lower House,” the national Government is operating. I suspect they operate on the basis of vote on account, as has been ably stated by the Senator for Nairobi City County.

My Chairperson of the Committee on Finance and Budget is here. There are two or three ways of resolving this. First, is the route suggested on vote on account that we know. We are getting into the mess because every society lives incrementally. It is only in Kenya where the National Assembly wants the county assemblies to live by decreasing. Last year can only give way to a better ‘this year.’

Assuming that we are running on the same spot, then the CoB should be innovative enough to allow the counties to draw at least not more than half of an

equivalent of the allocation of last year to continue, particularly with their recurrent requirements. However, knowing how this country operates, the witch-hunts and everybody looking for authority to do something that they ought to do even under the law, I suggest that you direct the Committee on Finance and Budget to bring a Motion to this House that urges the CoB to exercise her discretion and authority to allow drawings on vote on account. If she is looking for any legitimate and legal cover, the Motion and the resolution of this House will give her that legitimate and legal cover, knowing very well that, eventually, the Division of Revenue Bill will be passed.

The current operations of the national Government are not based on the Appropriation Bill, because the Appropriations Bill that was passed is annulled. It could have been legitimate if it came after DORA. If it came before DORA, it is no Bill and it is no law. Therefore, they are operating on a vote on account. When DORA has been passed, we can then move to a fresh Appropriations Bill.

Yesterday, this House took a very extraordinary nationalist position under your guidance to pass the Division of Revenue Bill, even when some Members had very hard positions. It took many of us to convince each other to literally go and persuade our colleagues to come to the House. Of course, there were those who were picketing in the opposite direction. However, we eventually passed Division of Revenue Bill.

Having passed the Division of Revenue Bill yesterday, one would expect the National Assembly not to have a leg to stand on to reject our proposal. The Chairperson should alert the House as we go for mediation, because that is the next step, that we may be called upon anytime during the recess, to come for a special sitting to deal with this issue of financing the counties.

This is now a constitutional moment in the country. The BBI process is not closed. Yours truly and three other Senators went there today to present the views of the Senate. As a House, we need to quickly think, and can be guided by the Committee on Finance and Budget, to see if there are any gaps and lacuna in the Constitution that we need to plug in. That will help us have a solution built in the Constitution in the event that we end up in a similar situation in the future.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Well done. Thank you, Sen. Wetangula.

Sen. (Prof.) Kamar: Thank you, Mr. Deputy Speaker, Sir, for allowing me to add my views to those of the Senator for Nairobi City County and the Senator for Bungoma County.

We have found ourselves in a position that we would not have wanted to be in because we are one country. We all come from counties and constituencies and should have been above this. Be it as it is, I would like to emphasise on the recommendation that has been put forward; vote on account. The most comfortable suggestion would be 50 per cent of last year's allocation because the figure is there, and we should not be warring. If we start the mediation next week, I believe that we can be through in the next two weeks and should be okay after that.

However, we can vote on account and release 50 per cent of last year's allocation using whatever formula that will be used by the National Treasury. We urge the

Chairperson of the Committee to push that in the National Treasury. That will help us to move. We cannot shut down the counties, yet we know that the money is there.

This can also be a lesson for the future because our assumption, in this House, was that without DORA, the national Government would also shut down. However, we have seen that they were able to wiggle their way out and are now spending from the same account.

I support what my colleagues have said. We should have a vote on account and suggest that our Chairperson goes to the National Treasury and insists on 50 per cent of last year's allocation. This is because it is a known figure and they do not have to discuss it, although last year's allocation was also chopped by Kshs9 billion. I am sure that the 50 per cent will take us far. In future, we have to sit and look for ways of surmounting such challenges.

I support the Statement that has been given by the Chairperson. Let us seek for an avenue through the vote on account from the National Treasury.

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

Sen. Olekina: Thank you, Mr. Deputy Speaker, Sir. I am confused. I have listened to the proposals given by the good Senator for Nairobi City County and the distinguished Senator for Bungoma County. Article 222 of the Constitution states that:-

‘If the Appropriation Act for a financial year has not been assented to, or is not likely to be assented to by the beginning of that financial year, the National Assembly may authorise the withdrawal of money from a Consolidated Fund.’

Section 134 of the PFM Act also states that the same will be a problem if the county appropriation bill for a financial year has not been assented to.

We are now in a situation where the National Assembly has taken the Appropriation Bill for assent, yet we have challenged it because of the Division of Revenue Act (DORA). I like borrowing from other jurisdictions. The United States of America has a different approach from this country. It has 12 Appropriation Bills. There are those that are considered as mandatory spending or rather continuing resolutions, and they give the legislators time to sort out their mess and agree on how money shall be spent by the federal government.

We need to ask ourselves if the suggestions that we are giving will violate the Constitution. There is an Appropriation Act that we have termed illegal as per the Constitution. The county governments have come up with budgets, but they are not supposed to come up with them without the County Allocation of Revenue Act (CARA). We are now being confronted with illegalities. I do not see a situation where the National Treasury can release money that they do not have.

I am happy that these things are happening right now when we are talking about a referendum. Having one Appropriation Bill, which can only be altered by a Supplementary Appropriation Act, puts us in limbo. What can we consider as mandatory spending for the Government so as not to get to a point of complete shutdown? We are now relying on one Appropriation Bill that the two Houses have not agreed upon and the county governments are suffering, yet the national Government is proceeding on with its business.

I am not certain that we can come up with any solution as we speak right now, unless we give an okay to the Appropriation Act, which we all know that it is illegal, because it cannot come before DORA. The only solution is to expedite mediation and agree to follow the law. Borrowing from other jurisdictions, which are not supported by our own Constitution, will be opening a Pandora's Box that we will never be able to close.

This is an awkward moment and an interesting time for this country because we are learning. If the referendum is to be brought tomorrow, we will ask ourselves if one Appropriation Bill is good or bad for this country. We can then consider having more Appropriation Bills like the United States of America that has 12 Appropriation Bills where they have a continued resolution, which makes sure that people are paid their salaries. In Narok County, we are lucky. We probably get money from Maasai Mara, hence can continue paying salaries. Nairobi City County is also lucky, but what of the other counties? It is good that this is happening now for it will help us reason, but the solution is to follow the Constitution.

I disagree with the sentiments of my dear brother. It is not true that law was made for man and not man for the law.

Mr. Deputy Speaker, Sir, I am confused by the solutions available to us. We must abide by the Constitution in this House. Wisdom prevailed in this House yesterday and we did not behave like 'hooligans' in the 'lower' House who threw away a clear legislation like this. The law is very clear.

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

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

Sen. Sakaja: Mr. Deputy Speaker, Sir, is it order for the Senator to insinuate that my suggestion was that we do away with the law and not abide by it when I was calling for a more pragmatic approach to the laws that we already have?

I suggested innovative ways of interpreting the laws that we have based on precedence before we had devolution and current practices from other jurisdictions with similar frameworks of fiscal decentralization as ours. The law is read from the beginning to the end using a 360 degree approach and all around. The law is not read word for word like the Bible.

The Deputy Speaker (Sen. (Prof.) Kindiki): The law should also be read in spirit.

Sen. Olekina: Mr. Deputy Speaker, Sir, I agree with my brother that in times of difficulties, you have to come up with very innovative measures to navigate them. However, if we are bound by the rule of law, Section 134 of the Public Finance Management Act (PFMA) on the issue of CARA and the Article 222 of the Constitution, there is no Appropriation Act. If we agree with the Appropriation Act, which money are they going to get that we are unable to divide.

Mr. Deputy Speaker, Sir, even though we want to be creative, the creativity will have to come based on the earlier suggestion by Sen. Sakaja on the country relooking at its budget making process and moving into a zero based budget. That way, we can tell how much money Narok County spent on certain projects. Currently, the National

Treasury has called all the national Government Ministries to submit line item budgets because they are trying to cut down on spending.

In conclusion, I was not trying to demean the suggestion made by the distinguished Senator for Nairobi City County. I was just trying to be realistic in terms of the next steps. In my view, we ought to pray so hard that wisdom prevails in the 'lower' House and the national Government, so that we mediate on this matter and we disburse money to the counties, not governors.

I thank you, Mr. Deputy Speaker, Sir.

COMMUNICATION FROM THE CHAIR

MEASURES TO RESOLVE THE FUNDING STALEMATE IN COUNTIES DUE TO DELAYED ENACTMENT OF DORA

The Deputy Speaker (Sen. (Prof.) Kindiki): Hon. Senators, I take this opportunity to thank the Chairperson of the Committee on Finance and Budget, Sen. (Eng.) Mahamud for bringing this matter to the attention of the House by way of a statement which he has issued under Standing Order 51(1)(a) as a matter for which the Committee is responsible. Further, I thank all the Senators who have made their comments on this matter.

As I observed in the Communication that I issued yesterday, 7th August, 2019, this is a matter like no other. This is a matter that is of utmost importance and goes to the core of our existence as a House. It also goes to the core of our nascent devolved system of government. I say this to prepare us, as a House, to be fully aware that this is a special crisis. Through this crisis, the future of devolution and that of our young system where we are trying to disperse powers and resource from one centre to the rest of the country, is going to be tested.

Hon. Senators, as you have observed in the past few months, all the enemies of devolution from all quarters have ganged up. Therefore, we must be prepared for a long and vicious fight. As you have suggested, we must be prepared to be very innovative and think outside the box. In fact, we should ignore the box all together. The propositions of whether we are inside or outside the box should not even arise. The box should not be featuring in our attempts to look for solutions.

As the Chairperson of the Committee on finance and Budget has correctly stated, the Senate has fully discharged its constitutional and statutory mandate on this matter with regard to the Division of Revenue Bill. I say this with a lot of pride. The two Division of Revenue Bills; the one from the National Assembly and that of the Senate, are pending in the National Assembly. I thank you for being patriotic and remaining true to the cause for which this House has been called to advance.

Hon. Senators, you are aware that just like the Senate, the National Assembly is scheduled to proceed on a month long recess. Going by our experience so far, I will not be surprised if it will not be in the interest of the National Assembly to prioritize and make urgent this matter for which we are discussing this afternoon. We have to go back

to Article 96 and say that this is a case where our protective mandate of protecting counties and devolution must be demonstrated to the fullest.

We are also scheduled to go on recess this afternoon. However, I doubt whether there can be a recess worth talking about when we have the kind of crisis that is prevailing. Therefore, whereas I will not be encouraging that we interfere with the calendar of the House, as we proceed on recess, I suggest that technically, we are on standby for duty, more so, our Committee on Finance and Budget. The Committee should help us move to the next level.

Hon. Senators, we have received very good suggestions from Sen. Wetangula, Sen. Olekina, Sen. (Prof.) Kamar and Sen. Sakaja on how we can think without the box and unlock this stalemate.

If you look at the law, in particular Articles 222, 223 and 224, there is no solution. This situation has not been captured anywhere. It talks about, for example, the national Government being able to spend even without an Appropriations Act and seek approval later. It does not talk about county governments.

Out of those three Articles, none of them actually applies to the county governments. However, there are the 2015 Regulations on county governments which, perhaps say county governments can spend up to 50 per cent of what they were entitled to in the previous year, but only where they have not passed Appropriation Bills. This means that the money should already be in the counties and the trouble is how to spend it as opposed to what we have now, where the money is in the National Treasury and has not moved to counties.

This is a special kind of crisis. However, I am convinced in one way or the other, we will get it unlocked. Desperate times call for radical and desperate measures. Accordingly, I want to urge us to be ready to come as soon as possible, subject to the procedures that are needed. For us to be able to engage further on this matter, our Committee on Finance and Budget must help us; being our sectoral committee that is responsible.

I, therefore, would like the Chairperson and Members of the Committee to bear with us. As much as we may have made arrangements for the recess, you may have to hang on a little bit and do for us some ground work in the next seven days as follows: I see no reason and no other superior duty that could be preventing the Cabinet Secretary (CS) for the National Treasury and other relevant people, including the Controller of Budget and the Attorney-General from actually appearing before you in the shortest time possible. We cannot have a country like this, running outside the law.

On the issue of the Appropriations Act, which the national Government is using as an excuse, our position is that it is an unlawful legislation. Therefore, I direct the Chairperson of the Committee on Finance and Budget to look for the Cabinet Secretary for the National Treasury, the Controller of Budget, the Chairperson of the Council of Governors, the Attorney-General of the Republic of Kenya and the Cabinet Secretary for Devolution to appear before you in a sitting on Tuesday.

(Applause)

That meeting should not adjourn until all those officials of State and our Committee of this House on Budget and Finance provide a solution for the Republic of Kenya on this matter.

(Applause)

I direct that the CS for the National Treasury, the CS for the Ministry of Devolution in the National Government, the Controller of Budget, the Chairperson of the Council of Governors and the Attorney-General should appear before the Committee on Tuesday without fail and without delegation.

Finally, I direct the Committee, after the consultations on Tuesday, to submit a Report to the Speaker of the Senate within seven days. Thereafter, the Speaker of the Senate, in consultation with the Majority Leader and Minority Leader will discuss how to push that Report forward. My suggestion is that we need a special sitting whereby we will discuss the recommendations and the findings that would be in that Report tabled by the Committee.

From there, because the special sitting has a specific agenda, it must also provide all the necessary resolutions that are required to protect any officer or public office that may be required to use administrative measures to unlock the stalemate to ensure that counties start receiving monies before the end of this month.

There might be need to make some resolutions to allow, for example, the Controller of Budget to take certain measures so that she is covered or rather that whoever wants to take action against her is prohibited from doing so by the resolution of the House.

In a nutshell, therefore, dear colleagues, we are on standby. We proceed on recess, but we are on standby. The Committee on Finance and Budget should note that the country is looking up to them to unlock this stalemate.

Finally, to all the officers whom I have mentioned, be informed that on Tuesday, you are directed to suspend any other business and appear before the Committee on Finance and Budget, so that, thereafter, we can tell the country when the counties will start getting their monies. It is my view that we cannot have another end month without counties having monies in their banks.

Thank you, Senators.

I think we have exhausted the issue of Statements. I will indulge Sen. (Prof.) Kamar. I direct that we call out the Order on Papers, next the Order on Notices of Motion and then after that, we proceed with the other Orders.

Next Order.

PAPERS LAID

Sen. (Prof.) Kamar: Thank you, Mr. Deputy Speaker, Sir, Sir, I beg to lay the following Papers on the Table of the Senate, today Thursday, 8th August, 2019.

REPORTS OF THE 51ST SESSION OF THE ACP AND
MEETINGS OF THE ACP-EU JPA

Report of the 51st Session of the African Caribbean Pacific (ACP) Parliamentary Assembly and Inter-Sessional Meetings of the ACP-EU Joint Parliamentary Assembly;

REPORTS OF THE 52ND SESSION OF THE ACP AND
THE 36TH SESSION OF THE ACP-EU JPA

Report of the 52nd Session of the African Caribbean Pacific (ACP) Parliamentary Assembly and the 36th Session of the ACP-EU Joint Parliamentary Assembly

(Sen. (Prof.) Kamar laid the documents on the Table)

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Sen. (Prof.) Kamar. Before we go to the next Order, regarding the matter which I have just disposed of, I would like to further direct the Clerk to ensure that the invitations, or summons as the case maybe, to the persons whom I have identified, shall be accompanied by the Hansard Report which must include the directives of the Chairperson and the comments made by Senators this afternoon on this matter.

So ordered. Next order.

Sen. (Prof.) Kamar, you may now proceed.

NOTICE OF MOTION

NOTING OF REPORTS OF THE 51ST AND 52ND SESSIONS
OF THE ACP AND MEETINGS OF THE ACP-EU JPA AND
THE 36TH SESSION OF THE ACP-EU JPA

Sen. (Prof.) Kamar: Mr. Deputy Speaker, Sir, I beg to give a notice of the following Motion -

THAT, this House notes the Reports of the Parliament of Kenya Delegation to the 51st Session of the ACP Parliamentary Assembly and the Inter-Sessional Meetings of the ACP-EU Joint Parliamentary Assembly held in Brussels, Belgium, from 9th to 11th October, 2018; and the 52nd Session of the ACP Parliamentary Assembly and the 36th Session of the ACP-EU Joint Parliamentary Assembly held in Cotonou, Benin, from 25th November to 5th December, 2018, both laid on the Table of the House on Thursday, 8th August, 2019.

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The Deputy Speaker (Sen. (Prof.) Kindiki): We shall go to Order No.9 first, and then later on we can come back to Order No.8 when Sen. Kasanga is in the Chamber.
Next Order.

MOTIONS

RETIREMENT AGE FOR PERSONS WITH DISABILITIES IN PUBLIC SERVICE

(Sen. (Dr.) Musuruve on 7.8.2019)

(Resumption of debate interrupted on 7.8.2019)

THAT, AWARE THAT, Persons with Disabilities (PWDs) and their families are among the world's poorest and are disadvantaged in terms of their late entry into the labour-force;

FURTHER AWARE THAT the reality of employing disabled people does not match the presumptions held by employers, the influence of how they think about disability remains a potent issue for disabled people seeking to work;

COGNIZANT THAT Article 19 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) affirms the equal right of all persons with disabilities to live in a community with choices equal to others, and with equal access to services and facilities that are responsive to their needs;

NOTING THAT, unlike current trends around the world, employers in Kenya are not incentivized to employ Persons with Disabilities and therefore most public organizations and parastatals have not yet achieved the threshold of Article 54(2) of the Kenyan Constitution that obligates 5% appointment of PWDs in elective and appointive positions;

CONCERNED THAT, Article 27(e) of the UNCRPD advocates for party states, of which Kenya is one, to promote employment opportunities and career advancements of PWDs in the labour market as well as assistance in finding, obtaining, maintaining and returning to employment;

NOW THEREFORE; the Senate calls upon the Ministry of Labour and Social Protection and county governments to develop a policy to ensure that:

1. PWDs in gainful employment in public service retire at the age of 65 years instead of 60 years; and,
2. PWDs in academia, such as Universities and colleges retire at the age of 75 years, instead of 70 years.

The Deputy Speaker (Sen. (Prof.) Kindiki): Hon. Senators, Sen. (Dr.) Musuruve, you were moving this Motion, and you have a remainder of 15 minutes to conclude.

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

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

Sen. (Dr.) Musuruve: Thank you, Madam Temporary Speaker, for giving me this opportunity. I started moving this Motion yesterday. Persons with Disabilities (PWDs) are disadvantaged from an early age. When parents have children with disabilities, they do not take them to school immediately. In fact, they get so frustrated with their children because they do not know what is going on in their lives. That is why they take too long to enroll them in schools. They do not start schooling at the same age with their peers. When other children begin schooling at five years, then they begin at the age of 10 or 15 years.

Madam Temporary Speaker, the issue of them being assessed in order for them to begin school takes a long time. When they are under their parents care, most parents prefer educating their other siblings. They are discriminated against and their parents do not see education children with disabilities as a priority. They are disadvantaged from a young age. Even when they go to school, they are disadvantaged in terms of the curriculum. Sometimes even their curriculum takes time to be fine-tuned.

Madam Temporary Speaker, I want to give an example of what happens in early childhood. In most schools, you find that children as young as four years are prepared to get on with the school curriculum. You will even find them speaking English or Kiswahili very fluently and they amaze their parents. However, for children with disabilities, there is nothing to amaze their parents because they do not go back with anything to show that they are getting anywhere. Therefore, when it even comes to the preparation for national exams, you will find that these children have not been prepared adequately to do form four examinations.

Madam Temporary Speaker, even when they go to colleges and universities, they are disadvantaged. When they graduate, most of the time their certificates will not help them compete at the work place because of low grades. However with time, some of these children, out of their own accord, realise that they can struggle and get along. Using their own initiative, some of them even surpass what they learned in school because they had been disadvantaged. By the time they mature at the age of 20 or 25, they enroll to colleges to pursue diploma courses.

Madam Temporary Speaker, while other students also leave university maybe at the age 23 or 24 and get job placement, students with disabilities do not get jobs immediately. Employers shy employing them even in situation where they are qualified and they have certificates. We have many of them qualified, but they are not employed. Organisations fear to employ them because they must have an aide to assist them do their work. Employers want to be incentivized.

The PWDs graduate do not get employment immediately they complete their education. Many of them get into charity organisations where they do research for them. Sometimes they are used as rubber stamps, yet they have the brains and certificates. It is, therefore, a very unfortunate situation that happens in this country,

Madam Temporary Speaker, by the time PWDs, by God's grace, end up getting jobs, probably at the age 35 or even 40, they have very little time to render service and plough back to the society. Therefore, the retirement age of 60 years disadvantages them in the public service. There is need for them to be given more time in order to give back to the society and be productive. PWDs are supposed to be service providers as well, and not just to be on the receiving end.

Madam Temporary Speaker, there is need to ensure that we raise the retirement age limit for PWDs in the public service. There is a policy that came out sometime back; I am not so certain about the year, it was, probably, in 2009, when the retirement age for public servants was raised. Public servants then used to retire at 55 years. Now they retire at 60 years. The same policy stated that PWDs in the public service should retire at 65 years, but that is not what is obtaining on the ground. Some organisations allow them to work at 65 years, others retire them at 60 years.

Madam Temporary Speaker, there is a case of a deputy head teacher in a school in Sen. Khaniri's county. He was given a letter by the Teachers' Service Commission (TSC) dated February, telling him that he needs to retire next year, yet the policy says that public servants with disabilities are supposed to retire at 65. There is need to ensure that this policy is implemented for PWDs with discrimination.

Madam Temporary Speaker, in the university, lecturers retire at the age of 70 years. By the time PWDs are getting the highest degree in the land in order to teach in universities, some of them may be over 60 or 65 years. This is because of the very many challenges they have had to go through during the early years, as they are trying to catch up. By the time they self-actualise in the academia, they are 60 or 65 years.

Madam Temporary Speaker, this Motion intends to ensure that even the PWDs in academia need to retire at 75 instead of 70. Just allow me to give an example of a PWD who has gone up the ladder in the academia, Prof. Ndurumo. He is the father of sign language in this country and yet he has not been recognized. He does not have a voice. There is no one to speak for him, yet he is highly intelligent.

There is so much he can give to this country, but he has not been given an opportunity to give back to the society even an eighth of what he has. I think Prof. Ndurumo could be around 68 years. When he retires, what are we going to do with his knowledge? He has a lot of knowledge that can impart to this country positively.

There is need for PWDs to be in academic levels in order for them to mentor other PWDs. If they are in academia at the age of 75, other PWDs will see that it is possible to reach those heights. There is need to put in place a policy that is workable. It should not just be a policy that will be spoken of on the Floor of this House, but it does not work. The policy should ensure that PWDs who are in universities and university-affiliated colleges retire at the age of 75 years. Persons with Disability in the Public Service should retire at 65 years. There should be a practical solution to ensuring that PWDs are also mentoring others.

PWDs are perceived from a pity paradigm and seen as people who need assistance and charity. The potential they have has never been utilized in this country. There is need for this country to ensure that it is making maximum use of PWDs. This is

because there are those who are highly intelligent and multi-talented. Let us make use of that multi-talent in them and nurture it.

Madam Temporary Speaker, I beg to move the Motion and I ask Sen. Mwaura to second.

The Temporary Speaker (Sen. (Prof.) Kamar): Thank you.

Proceed, Sen. Mwaura.

Sen. Mwaura: Thank you, Madam Temporary Speaker. I want to congratulate my fellow Sen. for PWDs, Sen. (Dr.) Musuruve for this Motion. I am very deliberate because in terms of nomenclature, we are the only two Senators who represent PWDs. People like referring to others as nominated Senators. However, the Constitution anticipates Senators for women, youth and PWDs. That is what we call ourselves because it is not by coincidence that we are in this House. There is always the baggage of how nominations used to happen before without any attendant constituency. That is something we need to correct.

Madam temporary Speaker, sometimes people may ask why we are saying that disabled persons should get an extra five years when they are working. If we look at delayed milestones, when a child is born with disability or if you acquire your disability even when you are a grown up, it will take some time before you recover. That time needs to be compensated. Children with disabilities stay for long without joining school because sometimes they are not seen as educable.

If you look at it from a utilitarian point of view, parents would rather take another child to school, because they think that child will be more beneficial. Even if we were to contextualize this within gender, you will find people saying “*msichana ataolewa.*” Disabled children are not seen to be useful. As a result, most of them start school late. Part of the reason is that some of them will not be accepted in certain schools. We have had to deal with so many cases of children who have been denied access to school. I have had to personally intervene in some cases.

It is not just at the primary level; it goes all the way to the university. Even with C-plus being the minimum university requirement, I have had to push for some students to get access to university. Some of them have gone ahead and graduated, but they are older than their colleagues. The retirement age is some form of reparation. It should be increased by five years to assuage the effect of this loss. That is the principle so that Senators can understand where this is coming from.

In this Senate, there is a young lady who is employed here. She was not born disabled, but last year she was involved in an accident whereby she lost her husband and her leg. She has just reported back to work, but she is still adapting. Her name is Rebecca Maranto. This is a clear example that this can affect any one of us. When we are talking about disability, we are trying to cushion that eventuality if it were to happen. In fact, most of the time we say that disability is a club and anybody can be a member.

The Persons with Disabilities Act No.14 of 2003 provides for reservation of employment to PWDs under Section 13. However, that 5 per cent reservation that is strengthened by Article 54(2) is progressive and not mandatory. We have seen a higher number of PWDs retiring from public service. If you were to compare the ratio with those

who are being absorbed in the public service. This is because these Articles have not been properly drafted and legislated as to occasion the threshold to be attained.

Article 81 of the Constitution is clear that PWDs should have fair representation. In the Eleventh Parliament, through my own Motion we were able to increase that age to 65 years through legislation. However, as Sen. (Dr.) Musuruve has said, it is not being implemented. There are people who are supposed to benefit from this, but they only get the shock of getting their retirement letter. This needs to stop.

It is not about the retirement age. If you look at the minimum accessibility standards, they are there in law under Sections 21, 22, 23, 24, 39 and 40 of the Persons with Disabilities Act, are very clear about adjustments and modifications even of vehicles. However, if you look at the chassis of our *matatus*, it is actually meant for a lorry. That is why wheelchair users find it difficult to board them. We have laws that are not being implemented; laws that may have come through this august House by way of Motion and then legislation and now we are coming back again to do the very Motion to ensure that they are implemented.

Madam Temporary Speaker, what does that mean? It means that the law by itself has ceased to be a means to an end. We have just come from representing the Senate under the Building Bridges Initiative (BBI) with Sen. Wetangula, Sen. Ochillo-Ayacko, Sen. Dullo, Sen. Shiyonga, Sen. Halake and I. That is the question that everyone is grappling with. How comes there is a failure of the rule of law?

In the Kenyan Constitution, PWDs are mentioned 18 times, women 9 times and youth 6 times, respectively. We have not seen a post-disability society even with the advent of the 2010 Constitution. We have not seen public buildings becoming more accessible. We have not seen employers taking advantage of Section 15 of the Persons with Disabilities Act in order to claim allowable expenses to the tax authority for the modification they make, so that they can provide for reasonable accommodation towards PWDs.

Kenya has been cited as the first among equals around the inclusion of PWDs primarily because of the provisions of the Constitution. But then, people do not eat laws. You have your laws, so what? What purpose will they serve if a disabled teacher can be denied access to her legitimate five years of continued service in order to continue taking care of the family?

Madam Temporary Speaker, there is also the point about disability and medical care; the two are inseparable. Sometimes, people do not understand disability. It is good that I take this opportunity to explain. Disability is a social construct that results from the interactions between persons with various forms of impairment – and there can be as many impairments as there are individuals; physical, mental, visual, *et cetera* – and environmental or attitudinal barriers on the other hand. Therefore, disability like gender can be deconstructed. Impairment maybe biological or congenital, but disability is sociological. Gender is sociological, but sex is biological.

We are making strides. That is why for the first time in the upcoming census, we will be counting inter-sex people through the instrumental support of others, including yours truly. This year's census will be moving away from the medical model. We will be asking the question, "Can you see properly using glasses?" The multiple choices will be

“yes, a little bit, with difficulty and not at all.” That way, we will be able to capture as many PWDs, so that the data can be usable. I was very privileged to be part of the technical working group on the same.

Madam Temporary Speaker, what will we do with this data if we cannot keep our PWDs in employment? What will we do with the information we got from the Huduma Number, if the people who are of various impairments and who need constant medical attention are being denied the opportunity to earn a decent living by way of being retired illegally? When you come to the academia, generally professors retire at the age of 70 years. However, because the age of 65 for the public service is already so stipulated, then the members of the faculty who happen to be disabled are not being accorded the extra five years. Therefore, this Motion seeks to confer the equal benefit to members of the academia, so that they too can continue to contribute.

By the way, you may ask, “What is the utilitarian value of keeping a disabled person in the office?” I mean disabled people do not move around a lot. They take their work very seriously. They are very diligent and the best example we have is none other than Sen. (Dr.) Musuruve, who is always here. You do not need to go anywhere further; she is here. That is what many are able to do. In fact, some research that was done by Ipsos-Synovate proved that when given the necessary facilities, PWDs are able to have more productivity than an average worker. You can even get that from Safaricom Ltd, which is the biggest employer of disabled people. They have a target of having five per cent of their employees being PWDs by 2021. I hope they can get it. They are now at one per cent.

We are working with other employers like Barclays Bank, Loreal and recently Shoprite, to ensure that there is a special measure just to include PWDs within the programmes of diversity and inclusion. You have to make a deliberate effort. Otherwise, on average, the stories that people have when they are looking for employment is that, yes, on a *prima facie* basis, you make an application. However, when you appear before the interview panel, they do not know how to deal with you.

Madam Temporary Speaker, I am reminded of Dr. Reginald Oduor, who is a Professor of Philosophy at the University of Nairobi (UoN). He taught at the Kenyatta University (KU), but when he was applying for that position at the UoN, the panel could not help, but ask him how he will mark examinations, yet he had always marked papers.

Recently we had a meeting at the Salaries and Remuneration Commission (SRC) – Sen. (Dr.) Musuruve can remember – and we have been able to successfully push for every PWD within the public service to get an aide equivalent to the position that they hold. Therefore, it is a question of also facilitating PWDs to perform their duties. That way, if you look at it from a social welfare model, you are then reducing the burden of the State in having to take care of these individuals through these programmes such as the Cash Transfer and *Inua Jamii, et cetera*. This is because if you can give somebody some work and they can deliver, then you do not have to take care of them by giving them alms or handouts. In fact, when you employ a PWD and keep him or her in the public service, it is not a handout, but a hand-up.

Madam Temporary Speaker, ladies and gentlemen, distinguished Senators, I implore you to consider this Motion because it is not a superfluous, unnecessary or a

filibuster. It is a Motion to ensure that the rights so conferred to PWDs by dint of the constitutional and statutory provisions get some life. It is putting some fan into flame so that we can then have an equitable society for PWDs.

I beg to second.

(Question proposed)

The Temporary Speaker (Sen. (Prof.) Kamar): Proceed, Sen. (Dr.) Kabaka.

Sen. (Dr.) Kabaka: Thank you, Madam Temporary Speaker, for giving me this opportunity this afternoon, as we close the Session. First, I wish to congratulate Sen. (Dr.) Musuruve for bringing this very important Motion, which seeks an extension of the retirement age for PWDs in the public service and the academic realm.

Sen. (Dr.) Musuruve and Sen. Mwaura have passionately presented and supported it. Therefore, with equal strength and might, I will endeavour to support it.

It is clear that the Mover of the Motion has given a nice synthesis of the international laws that deals with persons with such challenges. She has cited Article 19, Convention on the Rights of Persons with Disabilities (CRPD) and our local position where we have domesticated the similar international law. In replica, Article 54(2) of the Constitution of Kenya has bequeathed a marginal percentage 5 per cent. However, when the opportunity to revisit the amendment of the Constitution knocks the door, we will need to double or triple it, so that persons who have that challenge can benefit.

The legal realm on other enabling statutes that deals with employment and labour laws has not been mentioned, but it also needs to be amended. As suggested by the Mover of the Motion, the period will change from 60 to 65 years in the civil service and from 70 to 75 years in the realm of academia. This needs to be captured in other employment plethora of statutes. If causes of action in law are delayed or deemed not to run because of challenges, for example, physical disabilities or personal injuries which is normally three years, I do not see any problem if the period is extended by only five years. A five year extension is not asking for too much taking cognizant of the fact that persons with physical or mental challenges take quite a while to acclimatize to the environment. Any of us can we wake up tomorrow disabled because of attacks, accidents or act of God. Therefore, this Motion calls upon each and every one of us to support it fully.

Madam Temporary Speaker, I supports this Motion and urge other speakers to accelerate it without much ado.

Sen. Shiyonga: Thank you, Madam Temporary Speaker, for giving me this opportunity to support the Motion by the able Sen. (Dr.) Musuruve on retirement age for PWDs. It is true PWDs face a lot of changes. This contributes to the delay in acquiring what they need, especially in education, marriage and other social undertakings. Therefore, I support the increment of their years of service in academia to 75 years.

Madam Temporary Speaker, this cadre of people is not only stigmatized because of their disability. Their morale to live and economic gains are derailed. It puts them in a corner where they need to start life afresh. Therefore, the society needs to recognize them. When most people get disabled they have to change their normal environment that they lived in. If they are not well up, they are disappointed with life. I support my

colleague in the proposal on extension of the retirement age from the previous one to 75 years.

When mature people become disabled, their work routine is destabilized and their undertakings interfered with. They become vulnerable and are unable to continue with their lives. Most of us live in communities where there are disabled people while some are our relatives. We should not pretend that we do not know their challenges. It is hard for people with disabilities, especially in rural areas, to acquire infrastructure or facilities to enable them to go back to their roadmap and work normally. This is because they have to change the structures that they are used to. However, due to the economic constraints that we experience nowadays, they do not have morale to achieve what they need or continue with life.

I am saddened that most of the legislations on this category of persons are not implemented or adhered to. Therefore, the laws that we pass, including this one, need to be implemented so that we can facilitate the lifestyles and livelihoods of these persons. Also, the working time needs to be improved and prolonged.

I beg to second.

Sen. Ochillo-Ayacko: Thank you, Madam Temporary Speaker, for giving me an opportunity to speak to this important Motion. I appreciate Sen. Shiyonga who requested to speak before me. I generally understand that disability is made worse by marginalization. The topic about women in the country is also made worse because of marginalization. So, it was out of the desire to put women in the forefront that I acceded that she speaks before me. I am happy to be a practical person.

I take this opportunity to congratulate Sen. (Dr.) Musuruve for thinking about the disabled persons, being a disabled person herself. She told me that up to 2013, she was like any one of us who purport or claims not to be disabled. It is because of cancer that she has---

Sen. Sakaja: On a point of order, Madam Temporary Speaker.

The Temporary Speaker (Sen. (Prof.) Kamar): There is a point of order, from the Senator of Nairobi City County.

Sen. Sakaja: Madam Temporary Speaker, as we support this Motion, it is proper for us to know the proper terms to use. In this new regime of dealing with this sector, they are referred to as persons living with disability and not disabled persons. May be, Sen. (Dr.) Musuruve can guide us. I have heard Sen. Ochillo-Ayacko call her a disabled person and she has smiled broadly. Is that the term used and should we continue to use it?

The Temporary Speaker Sen. (Prof.) Kamar: Sen. (Dr.) Musuruve, maybe you could tell us this because a lot of us have been corrected in various quarters.

Sen. (Dr.) Musuruve: Thank you, Madam Temporary Speaker, for giving me the opportunity. I want to thank Sen. Sakaja for being very sensitive about issues of disability. It is true that we talk of Persons with Disabilities (PWDs) not even Persons Living with Disabilities.

The Temporary Speaker Sen. (Prof.) Kamar: Thank you. I think we are well informed.

Proceed, Sen. Ochillo-Ayako.

Sen. Ochillo-Ayako: Thank you, Madam Temporary Speaker. We keep on learning. Those of us who want progress, must be open to learning. Those of us who want to stay where we are, must be impervious to learning. So, I accept that important piece of information.

As I was saying, Sen. (Dr). Musuruve was living a normal life. Her current condition was something she did not invite; it invaded her very active life. She has written books about disability. She has trained a disabled person and is a leading proponent and advocate for PWDs. Despite the fact that she was visited with this tragic situation, here she is. It has not impaired or disabled her ability to articulate matters affecting PWDs. She is an asset and a knowledgeable person. The fact that she has brought this Motion is a testimony to her commitment to the cause of everybody who is living with any condition that disables them or anyone with the potential of suffering such a condition.

All of us who are here have that potential. Any day that you go through without any incident, you thank God. In my previous tenure, we were at the National Assembly with two Members: hon. Shidiye and the then Chief Whip Sammy Leshore. On one innocent Thursday evening they had gone to town to shop for their families. They got shot. One of them became disabled and returned to the House in a wheelchair. We also know that the Member for Kamukunji also suffered a similar incident. As we legislate this, we must know that the line between living normally and living with a condition that makes you disabled is very thin. It can happen to anybody and it happens any time.

Madam Temporary Speaker, the point I am trying to make is that the kind of society that we want to build, must be a society that is able to put in place programmes that take care of the less fortunate and less advantaged people. If we do not do so, I can assure you that our turn is on the way. Such misfortunes may invade our children, families, spouses and our parents. When we have this kind of platform, we should encourage such Motions. We should graduate them into legislation, so that we have a legislative framework that is able to support this kind of situation.

If you look at the public service and the private sector, there is a general policy that five per cent of employees should be PWDs. That policy is not implemented. There is absolutely no incentive to implement it. PWDs start from a disadvantaged position. You will notice first that they are unable to mix normally with other children. Therefore, without any kind of incentive, they may not acquire the skills and resources to be able to compete evenly with us. It is our duty both as an institution and individuals to ensure that we encourage them to work hard. We should encourage them to acquire competences and skills to get into business.

We are also duty-bound to encourage guardians or people who support PWDs not hide them. Most of our disabled relatives are hidden in backrooms because families are embarrassed to say that my sister is blind or my daughter has this kind of disability. We keep them at home for too long because we appear to be afraid of being associated with such people. We must put in place policies that give incentives to these persons because it is them living with the burden of trying to live a normal life. We should also give incentives to their guardians or the people living around them to be able to bring them forward so that they can be streamlined into normal activities of society.

One way of giving incentives to PWDs is to support this Motion and tell them that if they train, have the capacity and get employed, they will be able to work until they are 65 years of age. I do not think that is asking too much. That is being decent, nice, and being a person who cares about society. You care about society in two ways. You give incentive to a PWD to work hard and seek employment, but you also ensure that a disabled person does not double depend on society by seeking gifts or handouts from the Government when they retire too early.

They need to support themselves because they are decent people who deserve to be treated decently. Nobody wants to be a beggar or their options be limited such that since you are disabled, you have to beg somebody for money to buy something at your local market or send someone to go to that market on your behalf. It is important for us to ensure that the policy that is already in place that disabled persons should be in employment up to the age of 65 years is implemented to the letter. A penalty should be imposed to those who want to retire a disabled person before the age of 65 years who are ordinarily working.

It is very rare to come by people in academia, particularly in universities, who are disabled persons. I am sure that proposing that the retirement age of these people in academia to be moved from 70 years to 75 years will not be asking too much. There are very few professors who are suffering from disability.

The Chair is also a professor. I am sure in the institution in which you were learning, you could not count many disabled persons. I have a friend called Prof. Joe Malo who we worked with at the Kenya Nuclear Electricity Board (KNEB). He was disabled, but a very able professor. Prof. Joe Malo, other people and I, were able to steer that organization to great heights.

The Mover of this Motion proposes that people in academia, particularly PWDs should be given a few more years of service. I think that is a wonderful proposal that will encourage our PWDs to continue excelling in academia.

Since they are very few, if we give them incentives, majority of them who may be holders of PhDs or masters may continue doing research, writing and dispensing services as professors beyond the age of 70 years.

Madam Temporary Speaker, this is a good proposition. I just want to encourage the Mover to think of other more opportunities that we should afford our PWDs, so that we do not just start and stop with extending the contracts of employment. I believe we owe it to God, society and everybody to do much more for PWDs.

I would have wished that Sen. Mwaura who seconded this Motion spoke more about how people misunderstand the disability of being an albino. Many people may not understand how it is a disability. We may just be speaking, but I wish he explained more. People treat them different and others tend to marginalise them. It is something that we should be sensitive towards.

Madam Temporary Speaker, with those many remarks, I beg to support.

Sen. Sakaja: Madam Temporary Speaker, Sen. (Dr.) Musuruve has continued to distinguish herself as a true champion for the people for whom she was elected by her party to represent in the Senate. As the Chairman of the Committee on Labour and Social Welfare where she is a strong Member, I am extremely proud of the work that she and

Sen. Mwaura have been doing and the value they have added to our Committee when it comes to dealing with matters of PwDs. That is how I knew the proper term to use. It has been an evolving journey.

As I support this Motion, I will propose a few lines of thought. First of all, we are in a constitutional dispensation that has the Bill of Rights which stands at the core of the Constitution. Matters of disability are human rights issues which require human rights approach that is now being used in line with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) to which Kenya is a signatory.

Many years ago, James Wolfensohn, the former President of the World Bank said that unless PWDs are brought into the development mainstream, it will be impossible to cut poverty by half in 2015 or to give every girl and boy the chance to achieve a primary education by the same date. This was agreed to by more than 180 world leaders at the UN Millennium Summit in September, 2000. Many years later, we must see it in the same manner.

The former UN Secretary-General Kofi Annan said that growth will not by itself guarantee that most people in a country have a chance to lives of dignity and fulfillment. He added that a healthy society is one that takes care of all its members and gives them a chance to participate in decisions that affect their lives.

We, as a country, should take a human rights approach on issues of disability and development because our Constitution says that international laws and treaties form part of our law. That is why we, as a country, are bound to the UNCRPD. I am glad to have attended many sessions of the UNCRPD as the head of delegation and Kenya has made strides when it comes to issues of PWDs. The proposal by Sen. (Dr.) Musuruve is nothing much to ask for. In fact, this should be passed quickly, so that we continue to look at larger inventions.

Human rights approach will tell you that a child living with disability needs to have an equal opportunity in life just like a normal child. Human rights-based approach will also tell you that all of us need a hand when it comes to accessing opportunities. It is just that our level of inaccessibility I different. If you went to Kenyatta International Convention Centre (KICC) and there were no stairs and lift, none of us would go to my office on the 26th Floor. There are stairs for those of us who can walk and a lift. When we fail to provide further for those who have a disability of a physical nature, then we will be denying them their right of accessing the same offices that normal persons can. That should be the way of thinking.

The conventional way had been to look at disability as an abnormality or medical condition. Sen. Ochillo-Ayacko has just told us that anything can happen even to those of us without disability. He forgot to mention a Member from his County of Migori who was able-bodied in the previous Parliament, but she got an accident. I used to sit with her in the House Business Committee (HBC) of the National Assembly.

When she got an accident, it took us time to realise that PWDs could not access the First Floor of the Main Parliament Buildings. She could no longer attend Committee meetings because the lifts had not been working for months. Unless we open our eyes to see how our friends are disadvantaged socially, economically and politically, we will not have meaningful interventions to address these issues.

Madam Temporary Speaker, there is a research I had looked at a while ago that I would like to quote from that talks about a rights-based approach because that is what we are dealing with. This is a paper by the Southern Africa Federation of the Disabled (SAFOD). According to the Paper, a rights-based approach to disability and development is about leveling the playing field so that people with disabilities can access jobs, education, health and other services.

A rights-based approach is about the removal of physical and social barriers, just as I have explained using KICC and Parliament Buildings. It is about attitude adjustment for policy makers, employers, teachers, healthcare professionals and even family members. A rights-based approach is about ensuring universal design, accessible technology and coordinated public programmes and services. The approach requires government to provide the resources necessary to implement these goals and to enforce penalties for those who refuse to cooperate. Without legislators like Sen. (Dr.) Musuruve in this House and the National Assembly, it is very easy for other legislators to ignore or not to think about such interventions because that is not what comes at the top of their mind.

Madam Temporary Speaker, I am glad that with partners in Nairobi City County, I have been able to see beyond what would be pity to you when it comes to providing facilities for PWDs. As I said before in this House, I am glad that with the help of the President and the First Lady, we donated a bus to one of the greatest champions. She happens to be a sister to a Senator from Kajiado and runs a programme for children. The bus will facilitate her to go around the slums of Nairobi to pick up children and take them to a centre where certain support can make them go back to normal

Due to poverty in many parts around this City, many parents, especially mothers, do laundry for other people and get Kshs150 per day. However, they do not have people to take care of their children. What they do is to lock up those children in their houses in the slums. Those children are kept almost like goats in a pen for years. That is stifling the ability of such a mother to provide for that child and for that child to get a better education. That is creation of vicious circle of poverty. We have helped a few and we hope that we will do more.

It is clear that entry to the job market is delayed for PWDs because of their education process. I happened to have gone to a primary school where there is a unit for the deaf. They take many years to finish than they should. That means that once they finish high school and higher levels of learning, they enter the job market possibly at the age of 30, 32 or 33 years and yet others are out in the job market at the age of 23 or 24 years. Therefore, it follows that there should be an extension at the other end of the spectrum for them to have a delayed retirement age.

Similarly, Madam Temporary Speaker, even as we look at that side of the spectrum, it is important to consider what measures are put in place to encourage and incentivize the employment, by the private sector of PWDs who are young. We have a huge problem with unemployment and it follows then that even within the disabilities sphere of things, those who are young also are much more disadvantaged.

The Government – which is the one that strictly follows limitations of the retirement age, whether it is national or county governments and Government agencies –

is not the biggest employer in any economy. The biggest employer is the private sector. How do we, therefore, incentivize the private sector to employ more PWDs, and to make true to the affirmation of the Constitution that at least 5 per cent must be employed? The easiest and quickest way is tax-based incentives.

This could be, for example, giving tax relief, even if it is through the Pay as You Earn (PAYE), to companies in the private sector that have a certain percentage of PWDs. For instance, if I am employing five people at Kshs50,000 and I get an incentive of Kshs50,000, I am able to employ another extra person using that tax relief or even use that money to expand my business.

Madam Temporary Speaker, we should find a way where these incentives – which many times are just pronouncements during the reading of the Finance Bill or the budget – are actually practically implemented. That is something that I am willing to push, as the Chairperson of the Committee on Labour and Social Welfare, together with the Committee on Finance and Budget. We have had these pronouncements for many years. If we look at that end of the spectrum, we will be able to make any entrepreneur, private organization or multinational to be more encouraged and inspired to actually look out for PWDs.

Madam Temporary Speaker, as I move to closing my remarks, because I can see that the time is not good, we need to also look at the built environment, this country has standards on buildings by the Kenya National Bureau of Standards (KEBS). I have travelled with you to many countries around the world, and if you look at the curbs or pavements, their ending is not an abrupt one. It is rather, a gradual ending where a wheelchair can use it as a ramp. When we tell policy makers in Kenya that we need to have that, they say, “But we do not see people in wheelchairs in the streets.” That is the reason you do not see people with wheelchairs on the streets; because the streets are not built or created for them to be able to move. It is, therefore, not a matter of the egg and the chicken, but actually about providing for them.

If you go to many of these states, you will find a lot of dots at the junction, and the texture changes. Therefore, if someone is walking with a cane and they are blind, they will know that this is where the street has ended and I need to stop. If you look at the buses, we have standards in Kenya. I will share this with Sen. (Dr.) Musuruve. We have building standards, and I will even show you that this is the width of the door of a toilet; this is how you put props for somebody who is using a wheelchair or is blind for them to touch and tell.

In an elevator, it is usually written first floor, second floor or third floor. However, there is brail that is incorporated, even in lifts and in buildings, that we should actually ensure are implemented. We need to make sure that public transport are PWD compliant, especially now that we are talking about the buses that are coming to Nairobi for mass transit. I hear that they are coming from South Africa or wherever they are coming from. Are they disability friendly? Is the entry low enough; and is the width of the door wide enough?

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

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

If we do not provide for these people, who will?

Madam Temporary Speaker, I keep saying this, even if I sound like a broken record. The strength of a country is not the size of its military or the amount of dollars in its Central Bank; it is what it does for the most vulnerable in the society. That is how you know that, this is a strong country. I believe that we will aspire for our country Kenya, to remain a strong country.

Therefore, Madam Temporary Speaker, I support this Motion wholeheartedly. I hope that we can move it to even becoming a Bill that we can amend, whether it is the Employment Act, possibly that is what we need to amend. We need to amend certain aspects of the Finance Act that gave certain provisions and the Income Tax Act and PAYE to actually provide these incentives. We should stop saying that Government should provide these incentives. We are legislators, and we are the ones who should provide those incentives. Let the Government assent to or refuse to assent to those Bills, but let us make our mark known.

Thank you very much and congratulations, Sen. (Dr.) Musuruve.

The Temporary Speaker (Sen. Pareno): There are no more requests. I, therefore, call upon the mover to reply.

Sen. (Dr.) Musuruve: Thank you, Madam Temporary Speaker, for giving me this opportunity. I beg to reply.

Madam Temporary Speaker, I thank my fellow Senators for supporting this Motion. I thank Sen. Mwaura, Sen. (Dr.) Kabaka, Sen. Shiyonga, Sen. Ochillo-Ayacko and Sen. Sakaja. What has been emphasized by these Senators is that everyone is a candidate of disability. Even as we are in Parliament as legislators, we have to figure out how to come up with laws that will help issues of disability.

Madam Temporary Speaker, something that has come out is that, we need to take a Human Rights Approach when looking at issues of disability. We also have to acknowledge that PWDs have challenges, and that as a nation, we have to ensure that we are taking care of our vulnerable if we have to go far as a nation. Additionally, it has also been emphasized that PWDs commence school late and that they face challenges that affect them eventually in the job market. Consequently, they are not able to get into the job market at the right age. Therefore, asking for an extension of five years for PWDs in the public service – meaning that PWDs in the public service should retire at 65 years, while those in the academia or constituent colleges at 75 years – is something commendable and everyone has supported it.

Madam Temporary Speaker, I thank my fellow Senators, particularly Sen. Sakaja, who has come out strongly on this Motion. It is important for Kenyans to know that it should not just stop as a Motion, but rather it should come as a Bill. I am sure that after this session, Sen. Sakaja and I will sit together and come up with a Bill that will ensure that these issues are factored into law. This includes factoring into law the issue of giving incentives to employers and the retirement age of PWDs, both at the university level and in public service.

I want to believe that this Motion will not just end here, because I have the support of all Senators.

Thank you very much.

I beg to reply.

The Temporary Speaker (Sen. Pareno): Hon. Senators, pursuant to Standing Order 79(1), I find that this matter does not affect counties. I will, therefore, proceed to put the question.

(Question put and agreed to)

Hon. Senators, I wish to rearrange the Order Paper. Pursuant to Standing Order No. 42 and for our own convenience, I ask that we proceed to Order No. 15.

NOTING OF REPORT OF SENATE DELEGATION TO THE
63RD COMMISSION ON THE STATUS OF WOMEN

Sen. Sakaja: Thank you, Madam Temporary Speaker. I beg to move the following Motion -

THAT, the Senate notes the report of the Senate Delegation to the 63rd Commission on the Status of Women (CSW63) held in the United Nations Headquarters, New York, USA, from 11th to 22nd March, 2019, laid on the Table of the Senate on Tuesday, 9th July, 2019.

Allow me to give some background on this. This year's Commission on the Status of Women (CSW63) was held in New York on 11th to 22nd March, 2019. I was greatly honoured to join the following great women Senators who formed the delegation to the CSW63. We had Sen. Kihika, Sen. Dullo, Sen. Kwamboka, Sen. Pareno, Sen. Shiyonga and Sen. Iman and I was the luckiest Senator in the history of this country to lead this delegation as a true champion on issues of women as well as issues of people with disability.

Our delegation was competently accompanied by Ms. Nyawira Kamau, who was the secretary to the delegation. On behalf of the entire delegation, I want to give a special mention to Ms. Nyawira Kamau. I have been a legislator since 2013 and I have gone to many high level engagements around the world, chaired many meetings and had preparatory notes prepared but I have never seen a parliamentary staff go out of her way to produce notes, logistics memos and ensure that every Member is okay as Ms. Nyawira did. The Members asked me to give a special commendation to Ms. Nyawira Kamau for what she did for us.

This should probably not be on record but this trip helped me to realise that Members of a delegation deserve to be sorted out with certain things which I have never known for all these years that I have travelled. I commend her and I wish her well as she continues to work here. Indeed, the Senate has a top cream of professionals and I want to thank the leadership of the Senate secretariat for providing that leadership.

The delegation constituted the wider Kenyan Government delegation. We had the First Lady of the Republic of Kenya, Members of the National Assembly that was also accompanied by one man, representatives of Government Ministries that also had a male Minister, representatives of county governments who were accompanied by the Governor for Kericho County and the County First Ladies Association was also represented though the lady governors were not accompanied by the first gentlemen.

We also had the civil societies, Non-Governmental Organizations (NGO) and the private sector. The overall Kenyan delegation was led by the Cabinet Secretary for the Ministry of Public Service, Youth and Gender Affairs, Prof. Margaret Kobia.

Over the years, CSW, which is an annual event, attracts men and women from around the world. The 63rd Session attracted more than 5,200 delegates with at least 1,850 were from the governments. Many of the delegates were legislators and members of civil societies. The United Nations CSW is the principal global intergovernmental body exclusively dedicated to the promotion of gender equality and the empowerment of women.

The functional commission of the economic and social council called ECOSOC was established in June, 1946. Over the years, the commission has held a two week annual event where representatives of the UN member states, civil society groups, NGOs and the media converge to discuss priority themes critical to the well-being of women around the globe.

You may have seen people questioning the objective of the trips based on yesterday's media coverage of the 85 Members of Parliament who have gone to Tennessee and Nashville. In our case, our objective was very clear. The first objective was to share experiences and to learn the best practices in areas relating to the priority theme. If I had time, for the record of this House and for our later legislative intervention, I would have taken you through some of those best practices. I am not sure of the amount of time that I have.

I am told that I have 20 minutes before we move to the Motion of Adjournment.

The other objective was to strengthen existing partnerships and establish new partnerships, negotiate a common position for Africa on the agreed conclusions and identify priority areas for Kenya to implement.

This year's theme was 'Social Protection Systems, Access to Public Services and Sustainable Infrastructure for Gender Equality and Empowerment of Women and Girls'. We prepared before going for that conference. We had meetings at Serena Hotel, met the Ministry and agreed on Kenya's Position Paper. We also agreed on the representations for different panels and ended up with a good showing. You were actually part of the people who did well at CSW. This year, there were more than 320 side events hosted by different countries and Kenya hosted a number of them.

This Report will be available to the public and the Members. Our position Paper as a country elaborated the social protection measures that our Government has been part of and has embarked on. Many countries commended us for creating opportunities and enhancing capacities for the poor and vulnerable in order to help them sustain their livelihoods. They commended us for doing all that having in mind the state of our economy and many other aspects such as cultural aspects.

The following are some of the programs that we talked about: We talked about social protection response that is cash transfers, hunger response interventions, school feeding program, the hunger safety nets and fertiliser cost reduction programs. Please do let me know when ten minutes are over. We also talked of the managed equipment services under health security response because you do not go out there with all your dirty linen. When you are out there, we leave some of our issues here and talk of what we are working on even as we sort out the issues. We also talked of the Linda Mama Program, the menstrual health management program and the Beyond Zero Initiative. The First Lady had a side event which she headlined Beyond Zero.

On the education response, we talked of the Higher Education Loans Board, the presidential secondary schools bursary and private sector scholarships. Under the water and sanitation response, we talked of the national open defecation free Kenya 2020 campaign, the community led total sanitation and the Kenya integrated water sanitation and hygiene program.

We got standing ovation, as a country, when we talked of the social protection and peace response. In that response, we talked of the Uwezo Fund Women Enterprise Fund, the Uwiano Platform for Peace and Huduma centres. On infrastructure response, we talked of the energy and information communication technology and the rural electrification which majorly benefits women in this country. It was clear from this that Kenya has made steady progress in securing income security for vulnerable and poor members of the society.

I was a panellist during the side event on social protection that was on transformation and the theme was “Transforming the Social Economic Landscape for Women, Girls and other Vulnerable Groups”. I made a presentation on the role of Kenyan Senate in Accelerating Social Protection for Women and Girls. I presented the legislative oversight and other interventions that Members of the Senate, some of whom are in the Senate as I speak, have been able to embark on in accelerating social protection for women and girls. As Senators, we all want to see increased allocation to counties because that will help the counties to have better infrastructural development which will see women, girls and boys have better access to hospitals, schools and markets which will reduce poverty and open up more opportunities for women.

I also spoke to the issue of conditional grants to Level 5 hospitals and leasing of medical equipment. We opined that if this is well managed, it will ensure that women in our counties have better maternity services and reduced child mortality.

Madam Temporary Speaker, on the legislative front, I raised the Bills that Senators considered which were geared towards ensuring social protection. Some of the Bills that I spoke about are the Food Security Bill that we have dealt with, the Warehouse Receipt Systems Bill and the County Early Childhood Education Bill.

If, for example, the provisions of the County Early Childhood Education Bill are implemented, women will have an opportunity to take their children to educational centres and free up themselves to get involved in economic activities as caregivers and take care of the very young babies.

Yesterday we had a situation in the National Assembly that was very uncalled for, where a female legislator was ejected from the precincts of the House for coming with a

baby into the Chambers. That story is juxtaposed with a picture of an Australian legislator, breastfeeding a baby while she is debating on the Floor of the House. That tells you some of the nuances and the lenses through which we view our women in this very natural and important process.

We, indeed, need provision of a crèche and caregivers, but you cannot put a crèche at the Red Cross Building while Parliament is two or three blocks away. If you want to put up a crèche and even lactation rooms for our ladies in this House - which they need to have – these facilities must be placed furthest at the Media Centre, right next to the plenary because this Floor is your workstation. No one should think in this Parliament that by providing for these things, we are doing women a favour. It is not a favour. As I spoke earlier on the other Bill, it is a rights-based approach on what each one of us in the society needs to play our role.

Beyond that, as I skim through, you can see that we did a lot of work. Some Members sometimes go out there for shopping and to gallivant. However, we did very little of that. We were in all the sessions. That is why the other day I was a little upset when a Member said that I was uncomfortable.

Madam Temporary Speaker, the power of women agents in transforming norms for better health outcomes and well-being was another side event that Kenya showcased. This was graced by Her Excellency the First Lady Margaret Kenyatta who is also the patron of Beyond Zero campaign. They were able to showcase to the rest of the world the special focus that the campaign has had to reduce the high number of maternal and infant mortality deaths. Further, the campaign also focuses on treatment of reproductive health challenges facing women such as fistula. For the record of the House, we want to encourage Her Excellency the First Lady Margaret Kenyatta to continue with this very noble initiative that has touched lives.

Among some of the events that we attended are: There was an event where the Minister for Women for Australia had lined up; there was one for Malawi which we co-hosted and I also happened to be on that panel. There was an Inter-Parliamentary Union (IPU) event which was led by Sen. Kihika who is the President of the Women Legal Inter-Parliamentary Union which we attended. There was a Hungary side event about supporting single parents; this was amazing.

One of the biggest challenges I have in this city and I am sure it is in many counties in this country is the issue of single mothers because they are not provided for or taken care of. When we talk about economic interventions that the Government is doing, when it comes to the Youth Fund, it is the boys who get this. When you talk about Women Fund, it is women above 35 years of age who get it. There is a gap of young ladies between the age of 18 years and 35 years who are left out in the political, economic and social life of our country.

Madam Temporary Speaker, allow me to go straight to the recommendations and I would urge Members, especially those who really believe in this movement of gender equality to go through this Report. The recommendations that we put forth for all the observations were the following -

- (1) Social protection systems, access to public services and sustainable infrastructure are key in ensuring gender equity and empowerment of women and girls.
- (2) Increased investment and allocation of funds to Kenyan counties - which is what we are talking about even in the Division of Revenue Allocation Bill - will ensure better infrastructural development that will enable women, girls, boys and men to have access to better, safer public services, such as hospitals, schools and markets.

Madam Temporary Speaker, whenever we go for these functions - you are a Member of the Committee on Foreign Affairs, Defence and National Security - Members from the other House keep asking: "Why is the Senate talking about foreign relations or what business does the Senate have in going for international meetings?" A lot of the treaties signed by Kenya are for devolved functions. We have a greater role in those international platforms where treaties of devolved functions are being discussed. We are talking about health, agriculture, early childhood education, trade and markets. That is why we opined that greater resources must be allocated for that.

Madam Temporary Speaker, there are five other observations which Members should be able to read. The Recommendations were as follows -

- (1) The delegation - I am glad there are two Members of that delegation in the House right now in addition to me. The Senate Standing Committee on Finance and Budget to propose amendments to the relevant laws in order to compel gender-responsive budgeting in the counties and nationally.
- (2) The Senate Standing Committee on Justice, Legal Affairs and Human Rights considers the state of human trafficking and migrant workers and proposes relevant amendments to exist in law. We are very specific in our recommendations.
- (3) The Senate Standing Committee on Labour and Social Welfare chaired by Sen. Sakaja ensures the anchoring of social protection systems into the law, which we have already begun and Sen. (Dr.) Musuruve will attest to that, and looks into the establishment of a one-stop gender-based violence centres in the 47 counties and safe houses as already provided for in the Protection Against Domestic Violence Bill that we passed in the last Parliament.
- (4) The Senate Standing Committee on Justice, Legal Affairs and Legal Rights to consider and propose mechanisms that can be used to increase the representation of women in elective and appointed positions. We have an opportunity now as we are talking about amending the Constitution in fulfilment of Article 100 of the current Constitution.
- (5) The Senate Standing Committee on Lands, Environment and Natural Resources follows up on the implementation of existing policies and laws to ensure environmental management, planting of trees and preservation of water catchment areas in the counties.

- (6) The Senate Standing Committee on Labour and Social Welfare considers the state of single parents in the country and puts in place policy measures and legislation to address their plight.

This has already been forwarded to the relevant Committees for them to take action after this was tabled.

Madam Temporary Speaker, in conclusion, undoubtedly, the participation of the Senate delegation to the 63rd CSW has brought forth the importance of social protection as enshrined in the Universal Declaration of Human Rights.

Once again, I want to thank all Members who participated in our sessions. Unfortunately, one of our Members was unwell during our stay there. We wish her full recovery as she recuperates. I would like to again give special mention to Ms. Nyawira Kamau for what she was able to do for us during this visit.

I beg to move and request Sen. Shiyonga to second the Motion.

Thank you.

Sen. Shiyonga: Thank you Madam Temporary Speaker, for giving me this opportunity to second the Motion. I would like to second this Motion on the Report of the Senate Delegation of the 63rd Commission on the Status of the Women (CSW).

First, I appreciate Sen. Sakaja for eloquently moving this Motion and ably leading the delegation to the 63rd CSW. I am happy to have had Sen. Sakaja lead the delegation because he engaged the conversation on various issues affecting women around the world. I am proud to say that we now have a new male champion in gender equality.

Equally, I want to thank Ms. Nyawira Kamau who we commend for her contribution. She did a lot of work, including waking us up to attend the sessions when the weather was not conducive for us. She did well and attended all the sessions. I thank Ms. Nyawira Kamau and appreciate her work.

Madam Temporary Speaker, focussing on CSW, I realized that over the years the CSW has developed a partnership with countries regionally and internationally that have yielded lasting values. From the resolutions of the Commission over the years, great changes have been observed in women matters globally. In Kenya, the county governments had their representation, meaning some of the policies agreed on will trickle down to the county level.

On economic empowerment, this provides sufficient push that makes women full and equal participants in communities. This is a means of social protection. Women with money in their pockets have reduced poverty and have improved health and education outcomes. The cash transfer programs, for example, ensure that women and the aged have something in their pockets. This makes their lives meaningful and endurable.

Madam Temporary Speaker, talking about funding and budgeting, countries, including Kenya, must provide adequate funding and ensure gender sensitive budgeting. This should apply in counties and nationally. The 30 per cent tenders allocated to women, PWDs and the youth must be provided.

On leadership, if we truly want to change the world, we need to have female leaders. This is still a big challenge in Kenya. There are very few women leaders globally and locally, and we need to improve on this. The proportion of women in parliaments globally is still very low. Our neighbour, Rwanda, is doing very well, with 61 per cent

representation. However, we are still struggling in Kenya. We are below average and hence we need to pull up our socks. We had two Bills on the Two-Thirds Gender Bill rule, which flopped. This needs to be worked on again and again so as to achieve it.

What can women who represent a half of the world's population do to increase their participation in the political sphere? I urge women to contest and win political seats. When they do, let them participate in legislation to ensure additional representation of women.

Madam Temporary Speaker, I noted that the challenges affecting women are of similar nature across the globe. They include sexual violence, discrimination, trafficking, modern day slavery, health, lack of opportunities in institutions and governance. This Report has, therefore, put a strong emphasis on social protection and the role of Parliament. Social protection guarantees a minimal standard for all. This includes the poor and disadvantaged women and men, boys and girls.

Madam Temporary Speaker, access to health care, including maternity care, is a major component of social protection. Counties that are now facing challenges in the health care sector by sacking doctors, are now facing challenges. By sacking doctors, they are denying public rights to social protection. Another important component of social protection is the National Safety Net Program, which consists of cash transfers to orphans and vulnerable children. The Hunger Safety Net, the Person with Severe Disabilities Programs and Older Men Cash Transfer Program, which started in 2007, provide cash transfers to poor and the vulnerable persons who are 65 years and above.

We need to emphasise that the Kshs2,000 currently being paid through the bank is yet to be realised in some communities. This is a very noble program, but a few challenges have been experienced. For example, is this Kshs2,000 adequate to the beneficiaries? Sometimes the cash is diverted by the caregivers. Therefore, who eventually has the money? Those are the questions to be answered.

Madam Temporary Speaker, the proceedings of CSW focused on emerging populations on single parents. Historically, the death of a partner was the most common cause of single parenting. Today, there are many cases of single parenting caused by, among others, abandonment, teenage pregnancies, *et cetera*. Countries such as Hungary now consider single parents as full parents with equal rights. Therefore, children from single parents are treated equally with those with both parents.

Parliament must ensure that any discriminatory laws that exist should be removed. Such laws should influence the institutions that discriminate against children from single parents. For example, enrolment to schools should not be based on whether one is from a single parent family or not. In this new generation, we should not have discrimination in rights to inheritance, social stigma and harmful traditions which impede the full realisation of human rights.

Madam Temporary Speaker, on the matter of climate change, the Commission emphasised that the stability of nations is being affected by what we do with our environment. We have an unpredictable and destructive weather conditions that are affecting farming and compromising security at the borders. This is not new to Kenya. As early as this year, we experienced drought. The rains were not reliable and, as we speak,

there could be a shortage of maize which will affect its provision as our staple food. As a protector of counties, we should work closely with the county governments to ensure---

The Temporary Speaker (Sen. Pareno): Sen. Shiyonga, please try to be brief. You are almost through with your minutes.

Sen. Shiyonga: Thank you, Madam Temporary Speaker. As the protectors of counties, we should ensure that we have conversations with our counties to seeing to it that more trees are planted.

I will skip most of the inputs, because the Mover of this Motion or the report has already highlighted them. The 63rd CSW also made reference to access to public spaces and infrastructure for the safety of women and children. These include removing features that may cause insecurity, for example, poor lighting in public places and poor public transport, which needs to be improved. I am very impressed with the county first ladies who showcased various projects that they have done in their counties. My concern is that the First Ladies, who greatly influence their counties, should be facilitated to get funding for their activities that are changing the lives of people in their communities.

Madam Temporary Speaker, in conclusion, social protection schemes would typically include unemployment insurance, maternity leave, child care *et cetera*. We may have achieved some of those, but legislators must ensure that we pass laws that will give coverage to all of them. We should, therefore, support the Big Four Agenda that seeks to ensure social security for all.

Thank you.

I beg to second.

(Question proposed)

The Temporary Speaker (Sen. Pareno): Sen. (Dr.) Musuruve, I am giving you five minutes, because we still have the Motion of Adjournment to be processed.

Sen. (Dr.) Musuruve: Thank you, Madam Temporary Speaker, for allowing me the opportunity to support this Motion. I commend Sen. Sakaja for the fact that he allowed himself to accompany female legislators who went to the CSW. When it comes to the issue of gender, people should note clearly that it is about men and women holding hands and walking together to ensure that they are working together for economic development.

Women alone cannot manage without men. We need our men to come on board so that we can go very many miles because they will help us in decision making.

Madam Temporary Speaker, I also commend Ms. Nyawira from the secretariat for doing a commendable job when they were in New York City. It is important that we acknowledge our staff who do a commendable job when they accompany us.

The Commission on the Status of Women (CSW) is important because it gives women a platform to engage, interact and to share experiences globally. When women share experiences, they come back with information that will help them in leadership and bring proper decisions to the table.

I applaud this year's theme which was on social protection for women and girls. The CSW came at a very special time when we are talking about women empowerment, the girl child and how exactly we can ensure that women come to the decision table.

I also commend the First Lady for accompanying the team and also for having a side event on Beyond Zero Campaign. It was possible for the whole world to see what the first lady is doing. That is a good example for us to emulate that we need to follow the same path.

I wish to commend what came out from my Chairperson, Sen. Sakaja, when he talked about the need to have a crèche near the working place. I like the way he is so sensitive about issues of women. When I was doing my Masters, I was expectant of my last born and had an innate desire to finish my Masters and going on for my Doctor of Philosophy (PhD). I remember I hopped from the lecture hall to the labour ward and back to the lecture hall when I was a student because I had a desire to succeed and I knew that if I did not work hard, the society can be very harsh to women.

Therefore, I thank Sen. Sakaja because he has really seen that there is need for women to have upward mobility by ensuring that crèches are near the working place. This Statement should not just end up here on this Floor, but should be implemented in the entire Parliament, so that we also give an opportunity to women, especially young women who are still giving birth to children to excel and at the same time enable them to climb up the ladder.

I have observed that there are many women who want to climb the ladder but they fear giving birth to children. It is because they fear that once they get children, they will not have an opportunity to continue with their work. We should encourage women to do these things at the same time be productive, bear children and climb up the ladder.

Madam Temporary Speaker, I am happy about the recommendations that this team came up with. The recommendations should not be taken for granted. Like the issue of having gender responsive budgets in our counties is one that should be taken up from this theme. When counties are keen about gender issues and development of women, then it will be possible for women to quickly get into leadership positions. That is what we really want.

As Governor Ngilu has said, there is no single time women will be given the two-thirds. It will never happen; we have to go for it. We can go for it through the gender responsive budget, where we are given an opportunity to be economically empowered. When we are economically empowered, we will have a voice.

Madam Temporary Speaker, there was a recommendation that also came up on social protection issues and devolved functions. There is need to have mechanisms of increasing women visibility in leadership. Those recommendations are noble for this country.

I support the Motion.

The Temporary Speaker (Sen. Pareno): Sen. Were, I am giving you five minutes.

Sen. Were: Thank you, Madam Temporary Speaker. Even one minute is fine because I just want to talk about one thing that happened at the CSW; that this country has not picked it up on women. This is on a special category of women called widows and how they are treated when they lose their husbands. They go through frustrations and problems in the hands of the families of their husbands, especially on the issues of property inheritance, especially land.

Once a husband dies, the widow and her children have problems accessing land documentation like title deeds. As we know, you can do so much with a title deed. You can get a loan and do business even after your husband has passed on. Widows suffer a lot because they do not have documentation of assets like land from which they can grow their families that have been left behind.

That special category of women needs attention from our Government and we should not just leave it to Non-Governmental Organisations (NGOs) and churches to handle. The Government needs to set up a special programme to help widows deal with the issues they encounter when they lose their husbands.

That is the only issue I wanted to bring to the attention of the House, that it is an important issue at CSW, which is a global meeting. This country is a signatory to all the charters that the United Nations (UN) has developed. Therefore, we should do something about widows.

The Temporary Speaker (Sen. Pareno): There being no other request, I call upon the Mover to reply.

Sen. Sakaja: Madam Temporary Speaker, I beg to reply.

The Temporary Speaker (Sen. Pareno): That sounds like an anti-climax, having done so well.

This being a matter that does not concern counties, I, therefore, proceed to put the question.

(Question put and agreed to)

Hon. Senators, for the convenience of the House, I defer Order Nos.8, 10, 11, 12, 13 and 14.

CREATION OF SUPPORT SERVICES FOR MEMBERS OF THE DISCIPLINED FORCES AND THEIR FAMILIES

THAT, APPRECIATING the commitment and sacrifice by members of the disciplined forces in protecting our country from both internal and external aggression;

AWARE of the risky and stressful environment that the officers are exposed to daily in the line of duty, combined with the increased terrorism threats at home, and abroad;

NOTING that members of the disciplined forces, and by extension, their families are exposed to traumatic incidents both at home and abroad that manifest as living in constant fear, debilitating depression, nightmares, crippling anxiety and thoughts of suicide commonly referred to as Post Traumatic Stress Disorder (PTSD) leaving them exposed to the stigma of society and unable to care for themselves and their families the way they could before;

RECOGNIZING that there is no structured national comprehensive program for post-traumatic stress counseling either for active or returning soldiers and their families;

NOW THEREFORE the Senate calls upon the Ministry of Interior and Co-ordination of National Government, in partnership with the Ministry of Defence, to establish counseling and support centers in all premises housing disciplined forces, and provide mandatory counseling to all service personnel and the families of those currently serving, and those who may have been killed in the line of duty.

(Motion deferred)

PLANTING OF TREES ALONG MAJOR
INFRASTRUCTURE PROJECTS IN KENYA

THAT, AWARE of the numerous benefits that trees play in environmental conservation, combating climate change, air and water purification, carbon sequestration, flood control, prevention of soil erosion, human and wildlife sustenance, urban planning, as well as other social and economic benefits;

NOTING THAT Kenya has and continues to implement various infrastructure projects across the country, among them railways, roads and highways, airports, sea and inland ports, pipelines, dams, among others;

CONCERNED by the extent of environmental degradation that takes place when undertaking such infrastructure projects, entailing clearance of trees, foliage, soils, rocks, excavation of quarries, interference with forests, wetlands, rivers, drainage systems and other embankments, as well as human and wildlife displacement along the paths of the infrastructure projects;

ACKNOWLEDGING THAT the Environmental Management and Coordination Act (No.8 of 1999) and the Guidelines issued thereon require an environmental audit to be undertaken before any infrastructure projects are undertaken, with a view to identifying potential environmental impacts of the proposed projects, assessing the significance of those impacts, and proposing mitigation measures to address the negative impacts of the said projects on the environment;

CONCERNED, HOWEVER, THAT the implementation of these provisions has failed to comprehensively address the continued large - scale environmental degradation that takes place during construction of these infrastructure projects, and that the mitigation measures undertaken thereon have failed to compensate for the damage done to the environment as well as the negative effects to human and wildlife populations along the infrastructure project paths;

AWARE THAT the National Government has launched an ambitious plan to plant 1.8 billion trees by the year 2022, with a view to enhancing the country's tree cover from 6.2% to the globally accepted

minimum of 10%, and that this entails, among others, planting at least 1 million trees annually in each of the forty-seven Counties;

UNDERSCORING the need to balance between development and sustainable environmental management, for the benefit of present and future generations, as enshrined in the preamble to the Constitution of Kenya;

NOTING that planting of tree buffers alongside and around major infrastructure projects in the country would help offset the carbon footprint of these projects, enhance the beauty and aesthetics of the projects, create safe spaces for human recreation and for wildlife to thrive, and help in meeting the target of 10% national tree cover by the year 2022;

NOW THEREFORE, the Senate resolves that the National Government, together with the County Governments, formulate a policy mandating the planting of trees alongside and around all major infrastructure projects across the country, setting out the roles of various actors at both the national and county levels, and outlining incentives and penalties to ensure that the policy is complied with, in ensuring a balance is attained between development and environmental conservation.

(Motion deferred)

LEGAL AND POLICY INTERVENTIONS FOR
CAREGIVERS OF PERSONS WITH PERMANENT
MOTOR AND NEUROLOGICAL DISORDERS

THAT, AWARE that Cerebral palsy, Down syndrome, Autism and other permanent motor and neurological disorders are birth defects characterised by, among others, disturbances of sensation, perception, cognition, hearing loss, congenital heart defects, lower than average IQ, impairment in social interaction, and rigid, repetitive behaviors.

COGNIZANT that persons born with these and other permanent motor and neurological disorders face considerable difficulties in the social and behavioral aspects of their lives, including discrimination, physical challenges, mental and emotional health issues, and problems with inclusion and social isolation.

ACKNOWLEDGING the critical role that parents and caregivers of persons with permanent motor and neurological disorders play in ensuring that they realize their potential to the fullest extent possible and that they have long, healthy, and satisfying lives.

RECOGNIZING that, in taking care of these persons, caregivers make considerable sacrifices in the pursuit of education, employment, investment, and other opportunities for their own advancement and, in some cases, spend the most productive years of their lives taking care of persons with these disorders;

NOTING that most caregivers lack the training, tools and psychosocial support required in taking care of persons with these permanent disorders, are often subjected to the same stigma as the persons they take care of, and are exposed to stresses and pressure that have an adverse impact on their mental and physical wellbeing;

CONCERNED that, while a lot of progress has been made in taking care of other vulnerable and disadvantaged members of the society, equivalent efforts have not been made to recognize the important role that caregivers play, to create, through policy and legislation, a conducive environment for the provision of adequate, safe and informed care to persons with these disorders;

NOW THEREFORE, the Senate resolves that the Ministry of Labour, Social Security and Services, together with the County Governments, formulate a policy framework for the recognition, training, empowerment and protection for caregivers of persons with permanent motor and neurological disorders, including:

- a) provision of financial assistance and incentives to caregivers, including inclusion in the list of beneficiaries under the Inua Jamii Cash Transfer Programmes;
- b) provision of appropriate tax reliefs and exemptions to caregivers, equivalent to those advanced to other Persons with Disabilities (PWDs);
- c) exemption from taxes on goods and services required for the care and protection of persons with the disorders; and,
- d) provision of the specialized training, psychosocial and other support necessary to engage in income-generating activities for caregivers of persons with permanent motor and neurological disorders, including accessing the quota set aside in law for vulnerable groups for the supply of goods and services to government entities.

(Motion deferred)

FORMATION OF COMMUNITY FOREST ASSOCIATIONS

AWARE THAT, natural and forest resources prevent floods, droughts, erosion and sedimentation, and increase water supply needed to generate more power, expand farm productivity, and meet the ever-increasing demand for domestic consumption of our exploding population;

NOTING THAT, Article 69 of the Constitution and Section (5), (6) and (21) of the Forests Conservation and Management Act (FCMA) 2016 mandates National & County Governments with the responsibility of protecting, collaborating, maintaining, utilizing and attaining a tree cover of at least 10% of the land area in Kenya;

APPRECIATING THAT, there is need to achieve a holistic ecosystem approach to forest resource management, so as to prevent irreversible consequences of human activities on the environment, it is time to make an urgent call upon our citizenry to actively participate in the protection of forests and plant trees;

NOW, THEREFORE, the Senate urges:

1. THAT, all Citizens as per Article 69(2) of the Constitution, and Sections 48 – 52 of the Forest Conservations Management Act be encouraged through the relevant National Government ministries and County departments to contribute in formation of Community Forest Associations to expedite Community Participation in Forest Resources Management;
2. THAT, the National Government and all the 47 County Governments operationalize Tax & Fiscal Incentives (as per FCMA Section 53 – 55) to promote forest conservation and management, and prevent degradation of tree cover in Public, Private and Community Lands (as measures of ensuring sustainability);
3. THAT, the National Government communicates progress towards establishment of a National Tree Planting Week, so that State Agencies, Corporations and Kenyans can adequately prepare for the event;
4. THAT, all County Assemblies initiate processes of enacting legislation on Forestry Functions for County Governments (As per FCMA Section 21).

(Motion deferred)

NOTING OF THE REPORTS OF THE ACP AND INTER-SESSIONAL
MEETINGS OF THE ACP-EU JOINT ASSEMBLY

THAT, this House notes the Report of the Parliament of Kenya Delegation to the 50th Session of the ACP Parliamentary Assembly and the 35th Session of the ACP -EU Joint Parliamentary Assembly held in Brussels, Belgium, from 13th to 20th June, 2018, laid on the Table of the House on Wednesday, 20th February, 2019; and the Reports of the Parliament of Kenya Delegation to the 51st Session of the ACP Parliamentary Assembly and the Inter -Sessional Meetings of the ACP-EU Joint Parliamentary Assembly held in Brussels, Belgium, from 9th to 11th October, 2018 and the 52nd Session of the ACP Parliamentary Assembly and the 36th Session of the ACP-EU Joint Parliamentary Assembly held in Cotonou, Benin , from 25th November to 5th December, 2018, both laid on the Table of the House on Thursday, 8th August, 2019.

(Motion deferred)

NOTING OF REPORT ON THE 3RD STATUTORY MEETING OF THE
FP-ICGLR COMMITTEE ON ECONOMIC DEVELOPMENT

THAT, this House notes the Report on the 3rd Statutory Meeting of the Committee on Economic Development, Regional Integration and Natural Resources of the Forum of Parliaments of the International Conference of the Great Lakes Region (FP -ICGLR) held in Bujumbura, Burundi, from 13th to 14th March, 2019, laid on the Table of the House on Tuesday, 21st May, 2019.

(Motion deferred)

Let us move to order No.16.

MOTION FOR ADJOURNMENT

ADJOURNMENT OF THE SENATE PURSUANT TO THE APPROVED CALENDAR FOR THE 2019 SESSION

Sen. Sakaja: Thank you, Madam Temporary Speaker. I beg to move:-

THAT, pursuant to Standing Order Nos. 28 and 29, the Senate do adjourn until Tuesday, 10th September, 2019.

This has been a Session that has had a lot of moments for this House and also constitutional moments for this country. We are going to recess while our counties have not received their equitable share of revenue for them to budget for their operations; and there is a level of uncertainty.

If you remember the proceedings earlier in the House, I am glad that a Solomonic ruling has been made today by the Deputy Speaker, Sen. (Prof.) Kindiki. He has provided some options of what we can do as a House to address this.

We must take a pragmatic approach as the Senate. We are leaders and leaders never hit dead ends. Leaders always make a way even where there seems to be no way. Even as we take that pragmatic approach, this will not mean that as a House, we are either shirking our responsibility or that we then develop a complex that allows us to be trampled upon by other institutions of Government, be it the National Assembly or the Executive.

Our Constitution is clear on our sacred role and noble mandate that we have to protect the highlight of our Constitution, which is the greatest gift that Kenyans have received since Independence; the gift of devolution. We are the midwives. We are the ones who have the baby called 'devolution' in our hands. We can make the wrong move and strangle the baby or make sure that it is nurtured and comes out healthy.

Madam Temporary Speaker, I implore upon my colleagues to come during this time of recess, if called upon. We must go out and explain to Kenyans that devolution is under threat. It is not under threat because of the amount of money that we are trying to get for the counties; it is because of the patronizing attitude of a centralist system of Government that was done away with by the Constitution of Kenya, 2010. That is the biggest threat to devolution. It is not whether counties get Kshs200 billion or a trillion.

There are people who think that money given to counties belongs to the national Government and that “*wanagawiwa pesa kutoka Serikali Kuu*”.

Madam Temporary Speaker, there must be a paradigm shift in our thinking. Our Constitution is extremely clear that revenue raised nationally throughout the country is divided by the Houses of Parliament to one level of government and the other. It is not that the national Government divides its revenue to the county governments. That is a fundamental point of departure philosophically that we have with the National Assembly.

It is the division of revenue process that says that in Kenya, we have collected one or two trillion. Some is given to the national Government and another to the county governments to budget. The Government does not budget for money to give to counties. Unless we put our foot down to make sure that the fundamental shift in thinking that could have existed pre 2010 stops to exist, then this baby that we are cradling right now and is taking first steps to kindergarten will live a short life.

Madam Temporary Speaker, the principles of public finance and devolution are clear and spelt out in our Constitution. We must protect our counties.

I must say on the Floor of this House that it was sad to hear the Chairman of the Council of Governors (CoGs) almost throw the protector of devolution under the bus by saying that two bulls are fighting and it is the grass that is hurting. We are not fighting. We are not interested in a fight, ego trips or turf wars. We are protecting the Constitution and devolution. In fact, if anything, he should have kept quiet. After that, we have had people within our platforms as Senators, including myself, say why not reduce the money if they do not want it.

However, we remember that we are not giving this money to governors even if some of them have been dipping their filthy fingers in the cookie jar. It is not their money; it is money for our people.

Every part of this country is a county. There is no annex that the national Government lives in the left and county governments on the right. We are all part of one country. So, we must change our thinking and look at this, objectively. I have heard today that the National Assembly has negated the Division of Revenue Bill that we sent to them. We shall go back to mediation. I am sure that we will have a strong team of mature leaders who will not give in to any antics that will bring side shows but will say that in all fairness, this is what we need to give our counties.

Madam Temporary Speaker, I was in the last Mediation Committee where all reason was thrown out of the window by our colleagues. We simply said that in the division of revenue counties have been using zero based budgets on this expenditure. Since Article 219 of the Constitution says that we cannot change what is given to counties, how do we increase it in a sustainable way that takes into cognizance the state of our economy?

In the last Division of Revenue Bill, we gave our counties Kshs314 billion. So, due to these issues, for example, fiscal consolidation and austerity measures, we only want to increase the county allocation by core inflation in the market which is a figure that comes from the economic survey. The core inflation of 4 per cent was taking it to our compromise figure of Kshs327.5 billion.

However, our colleagues were throwing figures from wherever as if it is an auction on Luthuli Avenue or Accra Road. We cannot say that we have tough times yet the national Budget is going up by 14 per cent and we only want an additional of 4 per cent based on core inflation. It would set a bad precedent. We told them that none of us can come back to the Senate and say to Members that we have brought an extra Kshs2 billion which is less than 2 per cent from the last provision yet we know counties are still struggling.

Therefore, I urge Senators to be on standby as the Deputy Speaker directed earlier. This is because we will definitely come for a Special Sitting to set up the Mediation Committee and later come to adopt the report. We must change our approach to how we implement the Public Finance Management Act and finance laws.

The principle of the Constitution is that both arms of Government are given a certain amount based on the division of revenue. Therefore, if that division of revenue is not done, one arm of Government grinds to a halt while the other continues with its operations. That goes against the spirit of the Constitution. I was one of its authors and I know its spirit. It also goes against the principles of an equitable financial system of public finance in this country.

Madam Temporary Speaker, I am glad that on Tuesday, there will be a sitting in the intervening period as has been done in similar jurisdictions. This is because division of revenue says 'x' amount will go to counties. However, we agree that on 50 per cent of the last division of revenue provided, out of that counties will budget based on the ratios they used last time as we sort out our issues both in the courts of law and two in mediation which takes 60 days.

However, many counties cannot survive for 60 days without money. Salaries are not being paid yet the normal *mwananchi* works in a county government, for example, a driver, nurse or accountant. They are unable to pay rent and feed their children. Let us think about them before the juvenile utterances of we are the 'Upper House' or 'Lower House'. That Kenyan wants to pay rent. He or she does not care who is the 'Upper House' or 'Lower House'.

Madam Temporary Speaker, I wish my colleagues a fruitful and restful recess. Fortunately, for many of us, it coincides with holidays for our children. Please spend time with them. Yesterday, I was hurt when I saw three beautiful girls on Jeff Koinange Live, *Citizen* Television weep when asked about their absentee fathers. So, some have not physically abandoned their children but they are absent in terms of the time they spend with them.

Find out how they are doing, what they are learning in school, play with them and take them out. You spend so much money with your colleagues in recreational facilities around the city but you do not have time to spend with your children. I know this because I monitor all of us. So, spend time with them. This is because they are the trustees of posterity. Whatever good we want for this country must start within the family setting.

Madam Temporary Speaker, with those many remarks, I wish Members a good recess. I can see a Member of my Committee and I would like to inform them that we will still be meeting once or twice before I release you because we have work to do. Please, let us come back with the right demeanor of the Senate which is a House that

protects devolution of this country. I beg my senior, the Senator for West Pokot County to second this Motion of Adjournment.

Sen. Poghiso: Madam Temporary Speaker, I beg to second the Motion for Adjournment. Before I do that, I thank Sen. Sakaja for moving this particular Motion.

We know that Article 174 of the Constitution 2010, is about objects of devolution of Government. Some of the objects are to give powers of self-governance in all parts of the country, to promote social and economic development, to ensure equitable sharing of national and local resources and to facilitate the decentralisation of State organs, their functions and services, from the capital of Kenya. It is the work of the Senate to make sure that devolution is felt.

My colleague has said that there are people in this country who probably have not come to terms with the fact that devolution is here and it is not a token. We would have postponed the recess to deal with the Division of Revenue Bill and finish with it but I know it is not possible. Since we are going on recess, we have to keep in mind that we made our own Calendar and we must follow it.

Madam Temporary Speaker, there can be burnout in the process. Therefore, recess is good for us. It is important to get a few days off to go and mingle with our constituents and families and also continue with our Committee work. I believe we still have work cut out for us. A lot has been said about what recess is all about but we have a lot of work not only as lawmakers but we also have to go back to the counties and see what has been going on there and do oversight. Therefore, this is an extended period for oversight. We will have an opportunity to go and see what the county executives have been up to.

Our recess has come during school holidays; a time when there are a lot of activities. I hope that we will keep young people busy during the school holiday by allowing them time to play games and get some moments with them and help them construct life. Some of them do not know what to do during long holidays. I hope we will help them to spend the time well. Maybe they would like to ask us questions. So, we should make ourselves available for the young people to ask questions so that we answer them.

I thank all Members and wish us a good recess and safe travels until we see each other when we come back.

I beg to second.

(Question proposed)

The Temporary Speaker (Sen. Pareno): I cannot see any request to contribute on this.

ADJOURNMENT

The Temporary Speaker (Sen. (Prof.) Kamar): Hon. Senators, pursuant to Standing Order Nos. 28 and 29, the Senate, therefore, stands adjourned until Tuesday, 10th September, 2019, at 2.30 p.m.

The Senate rose at 6.20 p.m.