



**REPUBLIC OF KENYA**

**TWELFTH PARLIAMENT – (THIRD SESSION)**

**THE SENATE**

**VOTES AND PROCEEDINGS**

**THURSDAY, AUGUST 08, 2019 AT 2.30 PM**

1. The Senate assembled at thirty minutes past Two O'clock.
2. The Proceedings were opened with Prayer said by the Deputy Speaker.
3. **COMMUNICATION FROM THE CHAIR ON VISITING STUDENTS AND TEACHERS FROM MARELL ACADEMY, BUNGOMA COUNTY**

The Deputy Speaker conveyed the following Communication from the Chair:-

“Honourable 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.

On behalf of the Senate, and on my own behalf, I welcome them to the Senate and wish them well for the remainder of their stay.

I thank you.”

4. **PAPERS**

The following Papers were laid on the Table of the Senate-

- a) Report of the 51<sup>st</sup> Session of the African Caribbean Pacific (ACP) Parliamentary Assembly and Inter-Sessional Meetings of the ACP-EU Joint Parliamentary Assembly; and
- b) Report of the 52<sup>nd</sup> Session of the African Caribbean Pacific (ACP) Parliamentary Assembly and the 36<sup>th</sup> Session of the ACP-EU Joint Parliamentary Assembly.

*(Sen. (Prof.) Margaret Kamar, MP)*

- c) Statement on the business of the Senate for the week commencing Tuesday, 10<sup>th</sup> September, 2019.

*(The Deputy Senate Majority Leader)*

5. **NOTICE OF MOTION** – (Sen. (Prof.) Margaret Kamar, MP)

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

6. **STATEMENTS**

**a) Statement Pursuant to Standing Order 47(1)**

The Senator for Meru County (Sen. Mithika Linturi, MP) made a statement on the county governments infrastructure projects comprising of county executive headquarter offices, county assembly chambers, offices and county state officers' residences.

The Senator drew the attention of the House to the Report tabled by the Standing Committee on Finance and Budget on 29<sup>th</sup> November, 2018 and adopted on 14<sup>th</sup> May, 2019 without amendments, in which the Committee reported that the Commission on Revenue Allocation (CRA) had drawn its attention to the issue of the aforementioned ongoing county governments' infrastructure projects.

The Senator informed the House that the CRA issued a circular to all Governors and Speakers of county assemblies informing them of the Senate resolution and reaffirmed the need for counties to adhere to the Senate resolution but also advising that the exemptions from the ceilings can only be provided by the Senate on a case by case basis with the recommendations from the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works.

Thereupon, the Senator informed the Senate that few counties had already started infrastructure development by the time the Senate resolved to provide ceilings for the county infrastructure which would affect their contracts.

In conclusion, the Senator requested the Senate, through the Standing Committee on Finance and Budget, to meet with all the relevant stakeholders again and reconsider the cases of the affected counties with a view to giving further recommendations on each of the affected counties so as to avoid the stalling of the projects and/or expensive law suits.

Thereupon, the Deputy Speaker allowed a number of Senators to comment on the Statement and directed the Standing Committee on Finance and Budget to further look into the cases of the affected counties and table a report on the first day after recess.

**b) Statement Pursuant to Standing Order 48(1)**

Nominated Senator (Sen. Victor Prengei, MP) sought a Statement from the Standing Committee on Roads and Transportation on traffic congestion at the Gilgil weigh-bridge along the Nairobi – Nakuru Highway.

**c) Statement Pursuant to Standing Order 51(1)(a)**

The Chairperson of the Standing Committee on Finance and Budget issued a statement relating to the crisis in the counties occasioned by the lack of the enactment of the Division of Revenue Act.

The Chairperson informed the House that more than one month into the Financial Year 2019/2020, no money has been made available to counties. Whereas the National Government is enjoying the benefit of the Appropriations Act whose legality is being contested, the counties are in a crisis because they cannot pay for their services including salaries.

Thereupon, the Chairperson requested the Senate to address and pronounce itself on this matter so that counties are not starved. No arm of the government should enjoy funding from the Consolidated Fund because the Division of Revenue Act has not been enacted hence the Appropriations Act and the County Allocation of Revenue Act cannot be enacted.

The Chairperson also informed the Senate that the law had not foreseen a situation like this. The Senate should therefore urge the National Treasury, following precedent set in the Financial Year 2014/2015, to administratively provide for the counties so that they continue to provide services to the people of Kenya during this interim period.

He concluded by stating that his Committee is ready to meet and engage the Cabinet Secretary for National Treasury to find a way forward.

Thereupon, the Deputy Speaker allowed a number of Senators to comment on the Statement by the Chairperson.

Subsequently, the Deputy Speaker issued the following Directions:

- 1) That, the Standing Committee on Finance and Budget holds a consultative meeting on Tuesday, 13<sup>th</sup> August, 2019 and invites the Cabinet Secretary for National Treasury, the Cabinet Secretary for Devolution and ASAL, the Controller of Budget, the Chairperson of the Council of Governors and the Attorney General, with the aim of arriving at an administrative framework for availing funds to the counties pending the passage by Parliament of the Division of Revenue Bill and the County Allocation of Revenue Bill;
- 2) That, the Committee submits a report to the Speaker of the Senate within seven days after the consultative meeting on Tuesday;

- 3) That, thereafter, the Speaker of the Senate in consultations with the Senate Majority Leader and the Senate Minority Leader discuss how to push the report forward by possibly convening for a special sitting of the Senate; and
- 4) That, the invitations to appear before the Committee to the said Constitutional office holders be issued by the Office of the Clerk forthwith, and be sent together with a copy of the Hansard.

7. **MOTION - CREATION OF SUPPORT SERVICES FOR MEMBERS OF THE DISCIPLINED FORCES AND THEIR FAMILIES**

Order read;

Motion made and Question proposed -

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.

*(Sen. (Arch.) Sylvia Kasanga, MP on behalf of Sen. George Khaniri, MP – 07.08.2019)*

*(Resumption of debate interrupted on Wednesday, 7<sup>th</sup> August, 2019)*

*(Balance of Time – 2 hours 29 minutes)*

Order deferred.

8. **MOTION – RETIREMENT AGE FOR PERSONS WITH DISABILITIES IN PUBLIC SERVICE AND IN ACADEMIA**

Order read;

Motion made and Question proposed -

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.

*(Sen. (Dr.) Getrude Musuruve, MP – 07.08.2019)*

Debate interrupted on Wednesday, 7<sup>th</sup> August, 2019 resumed;

And there being no other Senator wishing to contribute;

Mover replied;

Before the Question was put, and pursuant to Standing Order No. 79 (1), the Temporary Speaker (Sen. Judith Pareno, MP) informed the House that the Motion did not affect counties.

Question put, agreed to.

**RESOLVED ACCORDINGLY:**

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.

9. **MOTION - PLANTING OF TREES ALONG MAJOR INFRASTRUCTURE PROJECTS IN KENYA**

(Sen. Charles Kibiru, MP)

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.

Order deferred.

10. **MOTION - LEGAL AND POLICY INTERVENTIONS FOR CAREGIVERS OF PERSONS WITH PERMANENT MOTOR AND NEUROLOGICAL DISORDERS**  
(Sen. Millicent Omanga, MP)

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.

Order deferred.

12. **MOTION - FORMATION OF COMMUNITY FOREST ASSOCIATIONS TO AID IN MANAGEMENT OF FOREST RESOURCES WITHIN COUNTIES**

(Sen. (Arch.) Sylvia Kasanga, MP)

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).

Order deferred.

13. **MOTION -REPORT OF THE PARLIAMENT OF KENYA DELEGATION TO THE SESSIONS OF AFRICAN CARIBBEAN PARLIAMENTARY (ACP) ASSEMBLY AND THE SESSIONS OF THE ACP – EU JOINT PARLIAMENTARY ASSEMBLY**  
(Sen. (Prof.) Margaret Kamar, MP)

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

Order deferred.

14. **MOTION - REPORT ON THE THIRD 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-CGLR)**  
(Sen. Samuel Poghisi, MP)

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 13<sup>th</sup> to 14<sup>th</sup> March, 2019, laid on the Table of the House on Tuesday, 21<sup>st</sup> May, 2019.

Order deferred.

15. **REPORT OF THE SENATE DELEGATION TO THE 63<sup>RD</sup> COMMISSION ON THE STATUS OF WOMEN (CSW63)**

Order read;

Motion made and Question proposed -

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

*(Sen. Sakaja Johnson, MP)*

Debate arising;

And there being no other Senator wishing to contribute;

Mover replied;

Before the Question was put, and pursuant to Standing Order No. 79 (1), the Temporary Speaker (Sen. Judith Pareno, MP) informed the House that the Motion did not affect counties.

Question put, agreed to.

**RESOLVED ACCORDINGLY:**

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

16. **MOTION – ADJOURNMENT OF THE SENATE**

Order read;

Motion made and Question proposed -

THAT, pursuant to Standing Orders 28 and 29, the Senate do adjourn until Tuesday, 10<sup>th</sup> September, 2019.

*(Sen. Sakaja Johnson, MP on behalf of the Senate Majority Leader)*

Debate arising;

There being no Senator wishing to contribute;

And there being no other business, the Temporary Speaker (Sen. Judith Pareno) adjourned the Senate at twenty minutes past Six O'clock without Question put, pursuant to the Standing Orders.

17. **SENATE ROSE** – at twenty minutes past six O'clock.

**M E M O R A N D U M**

*The Speaker will take the Chair on  
Tuesday, September 10, 2019 at 2.30 p.m.*

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