



**REPUBLIC OF KENYA**

**TWELFTH PARLIAMENT – (THIRD SESSION)**

**THE SENATE**

**VOTES AND PROCEEDINGS**

**WEDNESDAY, SEPTEMBER 18, 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. **COMMUNICATIONS FROM THE CHAIR**

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

**a) Visiting Students and Teachers from Central Primary School in Kitui County**

“Honourable Senators,

I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from Central Primary School, Kitui 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.”

**b) Visiting Students and Teachers from Muslim Primary School in Kitui County**

“Honourable Senators,

I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from Muslim Primary School, Kitui 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. **MESSAGE FROM THE NATIONAL ASSEMBLY ON PASSAGE OF THE COUNTY ALLOCATION OF REVENUE BILL (SENATE BILLS NO. 8 OF 2019)**

The Deputy Speaker conveyed the following Message from the National Assembly: -

“Honourable Senators,

I wish to report to the Senate that, pursuant to Standing Order No.41 (3) and (4), I have received the following Message from the Speaker of the National Assembly regarding the passage, by the National Assembly, of the County Allocation of Revenue Bill (Senate Bills No. 8 of 2019).

*“PURSUANT to the provisions of Standing Orders 41 (1) and 144 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly:-*

*WHEREAS the County Allocation of Revenue Bill (Senate Bills No. 8 of 2019) was passed by the Senate on Tuesday, 17<sup>th</sup> September, 2019 with amendments and referred to the National Assembly for consideration;*

*AND WHEREAS the National Assembly passed the said Bill on Wednesday, 18<sup>th</sup> September, 2019 without amendments and in the form passed by the Senate;*

*NOW, THEREFORE, in accordance with the provisions of Article 110 of the Constitution and Standing Orders 41 (1) and 144 of the National Assembly Standing Orders, I hereby convey the said decision of the National Assembly to the Senate.”*

Honourable Senators,

The Speaker of the Senate is in the process of transmitting the Bill to His Excellency the President for Assent.

I thank you!”

5. **STATEMENTS**

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

The Senator for Vihiga County (Sen. George Khaniri, MP) issued a statement on an issue of general topical concern, namely the successive failure of County Governments to meet the own source revenue (OSR) targets.

Thereupon, the Senator observed that overall, counties had failed to collect the projected own source revenue since 2013. This situation, he noted, was blamed on several factors, among them over projection, administrative inefficiencies, gaps in policy and legislation, lack of support from the public and corruption.

The Senator also noted that effective collection of own source revenue, in addition to encouraging financial independence of counties, would provide more resources for development. Among the issues that Counties needed to consider in this regard were putting in place legislation concerning own source revenue, ensuring openness and transparency in usage of public funds, resolving the question of double taxation, and exploring additional tax opportunities in their jurisdictions, including through updating of the valuation rolls.

The Senator further underscored the role of the Senate, as the protector of devolution, and urged for the introduction of appropriate legislation to address the existing state of affairs and provide solutions thereto.

**b) Statements pursuant to Standing Order 48(1)**

- (i) The Senator for Makueni County (Sen. Mutula Kilonzo Junior, MP) sought a Statement from the Standing Committee on National Cohesion, Equal Opportunity and Regional Integration on the plight of Internally Displaced Persons (IDPs).
- (ii) Nominated Senator (Sen. (Dr.) Agnes Zani, MP) sought a statement from the Standing Committee on Labour and Social Welfare on the status of inclusion of persons with disabilities (PWDS) in the labour market.
- (iii) Nominated Senator (Sen. (Dr.) Agnes Zani, MP) sought a statement from the Standing Committee on Finance and Budget on issues and status of operationalization of IFMIS in the 47 counties.
- (iv) The Senator for Vihiga County (Sen. George Khaniri, MP) sought a statement from the Standing Committee on Health on the rapid collapse of Kenya's healthcare system.
- (v) The Senator for Vihiga County (Sen. George Khaniri, MP) sought a statement from the Standing Committee on Devolution and Intergovernmental Relations on the status of asset registers in counties.
- (vi) The Senator for Kisumu County (Sen. Fred Outa, MP) sought a statement from the Standing Committee on National Security, Defence and Foreign Relations on the unrest at Kisumu County Assembly.
- (vii) The Senator for Tana River County (Sen. Golich Juma Wario, MP) sought a Statement from the Standing Committee on National Security, Defence and Foreign Relations on the rising cases of insecurity in Tana River County.

**c) Statement pursuant to Standing Order 51(1)(b)**

The Chairperson of the Standing Committee on Agriculture, Livestock and Fisheries issued a statement relating to a matter for which the Committee was responsible, namely the public and stakeholder engagement on the proposed Mung beans Bill.

**6. MOTION – ESTABLISHMENT OF AD-HOC COMMITTEE TO INVESTIGATE MANAGED MEDICAL EQUIPMENT SERVICES (MES)**

Order read;

Motion made and Question proposed;

THAT, AWARE THAT while Health is a devolved function, Article 4(3) of the Constitution states that ‘the governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation’;

FURTHER AWARE THAT, there is no existing comprehensive legal framework to guide the consultative and collaborative process between the Ministry of Health (MoH) and County Governments;

COGNIZANT THAT, when the Managed Equipment Services (MES) project was launched on 6th February, 2015, the Ministry of Health entered into arrangements with five foreign firms for the provision of specialized medical equipment worth Kshs. 38 Billion;

NOTING THAT, according to the Ministry of Health, the project is aimed at improving health infrastructure and enhancing the capacity of counties to provide specialized health care targeting non-communicable conditions such as cancer and renal conditions, as well as to promote diagnostic, radiological and critical care services;

CONCERNED THAT, the Council of Governors (COG) has voiced opposition to the project on the grounds that County governments were not involved in the tender-procurement process, the monies are debited annually from the accounts of the Counties directly by the Treasury, there was lack of proper consultation between the Ministry of Health and County governments, and, that leasing the medical equipment was ultimately more expensive than direct purchase;

CONCERNED FURTHER THAT, the extent to which county government structures or institutions were involved in the project has remained unclear, and the opposition raised by the COG reveals serious gaps in the consultative process between the MoH and county governments, including the terms of the contracts which end in 2022;

NOW THEREFORE in exercise of its oversight function, the Senate resolves to establish an adhoc committee to investigate and establish the facts surrounding the leasing of the Medical Equipment, in the now 119 beneficiary hospitals country wide, including-

- i) whether county governments were involved in prioritizing the medical equipment in accordance with their needs;
- ii) the details of the company from which the equipment was leased;
- iii) the viability and benefit of leasing versus outright purchase;
- iv) the availability of adequate numbers of health human resource to provide specialized health services as envisaged in this project;
- v) the operation, training and maintenance facilities in place for the equipment;
- vi) the terms and period of the lease of each piece of equipment, where the equipment was supplied, the lease amount, and who bears the cost of the residual value of the equipment at the end of the lease term;
- vii) the schedule of equipment supplied to each hospital, and the cost thereof, including proof that the monies disbursed were utilised for the intended purpose; and,
- viii) the results of the exercise, considering the terms of the contract end in 2022, when equipment has remained unused in some counties despite the county having paid annually for the installation, maintenance and utilisation of the same since 2015;

and submit a report to the House within 90 days;

AND FURTHER THAT, the following Senators be appointed to serve in the committee –

- |  |               |
|--|---------------|
| 1. Sen. (Dr.) Mbito Michael, MP          | – Member;     |
| 2. Sen. (Dr.) Abdullahi Ali, CBS, MP ,   | – Member;     |
| 3. Sen. Seneta Mary, MP                  | – Member;     |
| 4. Sen. Kinyua John Nderitu, MP          | – Member;     |
| 5. Sen. (CPA) Ali Farhiya, MP            | - Member;     |
| 6. Sen. Wetang'ula Moses Masika, EGH, MP | - Member;     |
| 7. Sen. Lokorio Petronilla Were, MP      | - Member;     |
| 8. Sen. Masitsa Naomi Shiyonga, MP       | - Member; and |
| 9. Sen. Outa Frederick Otieno, MP        | - Member      |

*(Senate Minority Leader)*

Debate arising;

### **Adjournment of debate Pursuant to Standing Order 105:**

Motion made and Question proposed;

THAT, pursuant to Standing Order 105, the debate be now adjourned.

*(Sen. Cleophas Malalah, MP)*

Debate arising;

Before the Question was put and pursuant to Standing Order 79, the Deputy Speaker ruled that the Question did not affect counties.

Question put and agreed to.

7. **COMMITTEE OF THE WHOLE**

Order for Committee read;

**IN THE COMMITTEE**

(The Acting Chairperson of Committees (Sen. (Dr.) Lelegwe Ltumbesi, MP) – in the Chair)

**The Commission on Administrative Justice (Amendment) Bill (Senate Bills No. 6 of 2018)**

Clause 2

Motion made and Question proposed;

THAT, Clause 2 be part of the Bill

Clause 2 - vote deferred

Clause 3 - amendment proposed

THAT clause 3 of the Bill be amended –

(i) by deleting paragraph (d) and substituting therefor the following new paragraph –

(d) by deleting subsection (11) and substituting therefor the following new subsection –

(11) Where a nominee is rejected by the National Assembly under subsection (10), the President shall, within seven days, forward to the National Assembly a fresh nomination from amongst the persons shortlisted and forwarded by the selection panel under subsection (5).

(ii) by inserting the following new paragraph immediately after paragraph (d) –

(da) in subsection (12) by deleting the word “Parliament” appearing immediately after the word “If” and substituting therefor the words “the National Assembly”.

Clause 3 - vote deferred.

Clauses 4 - 5

Motion made and Question proposed;

THAT, Clauses 4 - 5 be part of the Bill

Clauses 4 - 5 - vote deferred

New Clause 3A - insertion of new clause proposed

**THAT** the Bill be amended by inserting the following new clause immediately after clause 3 –

**3A.** Section 54 of the principal Act is amended –

- (a) by deleting the word “Parliament” appearing immediately after the word “reports to” in subsection (1) and substituting therefor the words “the National Assembly and the Senate”; and
- (b) by deleting the word “Parliament” appearing immediately after the words “report to” in subsection (2) and substituting therefor the words “the National Assembly and the Senate”.

Motion made and Question proposed;

THAT, the New Clause 14A be now read a Second Time.

*(Sen. Petronila. W. Lokorio, MP)*

New Clause 3A - vote deferred.

The Title and Clause 1

Motion made and Question proposed;

THAT, the Title and Clause 1 be part of the Bill.

The Title and Clause 1 - vote deferred

**Progress report**

Motion made:

THAT, pursuant to Standing Order 148, the Committee of the Whole do report to the House its consideration of the Commission on Administrative Justice Bill (Senate Bills No. 6 of 2019) and seek leave to sit again tomorrow.

*(Sen. Petronila. W. Lokorio, MP)*

Before the Question was put, and pursuant to Standing Order 79, the Acting Chairperson (Sen. (Dr.) Lelegwe Ltumbesi, MP) ruled that the Question did not affect counties;

Question put and agreed to.

- 8. **HOUSE RESUMED** – The Deputy Speaker in the Chair
- 9. **THE COMMISSION ON ADMINISTRATIVE JUSTICE BILL (SENATE BILLS NO. 6 OF 2019)**

Progress reported;

Motion made and Question proposed;

THAT, the House do agree with the Committee of the Whole in the said report.

*(Sen. Petronila. W. Lokorio, MP)*

There being no Senator wishing to contribute;

Before the Question was put and pursuant to Standing Order 79, the Deputy Speaker ruled that the Question did not affect counties;

Question put and agreed to.

10. **SUSPENSION OF SENATORS PURSUANT TO THE PROVISIONS OF STANDING ORDER 117**

Pursuant to the provisions of Standing Order 117 (1) (b), the Deputy Speaker ordered Nominated Senators, Sen. (Dr.) Isaac Mwaura, MP and Sen. Millicent Omanga, MP to withdraw from the precincts of Parliament for the remainder of the sitting day for gross disorderly conduct.

Thereupon, the Senators withdrew from the Chamber.

11. **THE COUNTY TOURISM BILL (SENATE BILLS NO. 5 OF 2019)**

Order for Second Reading read;

Motion made and Question proposed;

THAT, the County Tourism Bill (Senate Bills No. 5 of 2019) be now read a Second Time.

*(Sen. (Dr.) Agnes Zani, MP)*

Debate arising;

And the time being thirty minutes past six o'clock, the Deputy Speaker interrupted the proceedings and adjourned the Senate without Question put, pursuant to the Standing Orders.

12. **SENATE ROSE** – at thirty minutes past six O'clock.

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

*The Speaker will take the Chair on  
Thursday, September 19, 2019 at 2.30 p.m.*