



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – THIRD SESSION

THE SENATE

VOTES AND PROCEEDINGS

WEDNESDAY, OCTOBER 09, 2019 AT 2.30 P.M.

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 Lecturers from Nyakach, Kisumu County

“Honourable Senators,

I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and lecturers from Nyakach, in Kisumu 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 Ainsworth Primary School, Nairobi City County

“Honourable Senators,

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

c) Visiting Students and Teachers from Kerugoya Municipality School, Kirinyaga County

“Honourable Senators,

I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from Kerugoya Municipality School, Kirinyaga 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.”

d) Visiting Students and Teachers from Kirura High School, Kirinyaga County

“Honourable Senators,

I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from Kirura High School, Kirinyaga 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.”

e) Visiting Students and Teachers from AIC Matiani Secondary School, Makueni County

“Honourable Senators,

I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from AIC Matiani Secondary School, Makueni 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 THE DECISION OF THE NATIONAL ASSEMBLY ON SENATE AMENDMENTS TO THE PUBLIC PRIVATE PARTNERSHIPS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO. 52 OF 2017).**

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

“Honourable Senators,

I wish to bring to the attention of the Senate that a Message has been received from the National Assembly, pursuant to Standing Order No.41 (3), regarding their decision on the Senate amendments to the Public Private Partnerships (Amendment) Bill (National Assembly Bill No. 52 of 2017).

Pursuant to the said Standing Order, I now report the Message-

“Pursuant to the provisions of Standing Order 41 and 149 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly: -

Whereas the Senate’s amendments to the Public Private Partnerships (Amendment) Bill, (National Assembly Bill No. 52 of 2017) were forwarded to the National Assembly for Consideration on March 5, 2019;

And whereas, by a resolution made on Wednesday, 31st July, 2019, the National Assembly negatived the Motion to consider the said amendments from the Senate;

Now, therefore, in accordance with the provision of Article 112 of the Constitution and Standing Order 149 of the National Assembly Standing Orders, I hereby convey the said decision of the National Assembly to the Senate and seek the appointment of five (5) Senators to the Mediation Committee in respect of the said Bill”

Honourable Senators,

Article 112(1) (b) of the Constitution provides that if one House passes an ordinary Bill concerning counties and the second House passes the Bill in an amended form, it shall be referred back to the originating House for reconsideration. Further, Article 112(2) (b) provides that, if after the originating House has reconsidered a Bill referred back to it under clause (1) (b), that House rejects the Bill as amended, the Bill shall be referred to a Mediation Committee under Article 113.

I wish to inform the House that the Senate has received communication that the Speaker of the National Assembly has nominated the following Members to represent the Assembly in the Mediation Committee that will attempt to develop a version of the said Bill that both Houses will pass-

1. The Hon. Limo Joseph Kirui, MP;
2. The Hon. Murugara George Gitonga, MP;
3. The Hon. Mboni David Mwalika, MP;
4. The Hon. Peter Kaluma, MP; and
5. The Hon. Edith Nyenze, MP

Honourable Senators,

The Speaker of the Senate is in the process of nominating Members to represent the Senate in the Mediation Committee, pursuant to Article 113 (1) of the Constitution.

I thank you!"

5. **PETITIONS**

i. Presentation on Petition

Pursuant to Standing Order 230(2)(b), the Deputy Speaker reported to the Senate a Petition by Mr. Edward Mwangi on behalf of suppliers of the National Youth Service concerning unpaid pending bills.

Pursuant to Standing Order 231, the Deputy Speaker invited Senators to comment on the Petition and, subsequently, committed it to the Standing Committee on Finance and Budget, pursuant to Standing Order 232(1).

ii. Reports on Petitions

The following reports on Petitions were laid on the Table of the Senate:-

- a) Report of the Standing Committee on Labour and Social Welfare on a Petition to the Senate by Residents of Kajiado County concerning delayed salaries and non-remittance of statutory deductions for employees at the Nol-Turesh Loitoktok Water and Sanitation Company Limited.
- b) Report of the Standing Committee on Labour and Social Welfare on a Petition to the Senate concerning non-recruitment of locals by flower farms, institutions and other companies operating in Kaputiei North Ward, Kajiado County.

(Vice- Chairperson, Standing Committee on Labour and Social Welfare)

- c) Report of the Standing Committee on Tourism, Trade and Industrialization on a Petition to the Senate by Mr. Vincent Ombaka, a resident of Nairobi City County, concerning the disruption of local trade by Government action and sanctions.
- d) Report of the Standing Committee on Tourism, Trade and Industrialization on a Petition to the Senate by Mr. Kevin Ndoho Macharia, a resident of Kajiado County, concerning the review of laws relating to business premises.

(Chairperson, Standing Committee on Tourism, Trade and Industrialization)

6. PAPERS LAID

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

- (i) Report of the Standing Committee on Labour and Social Welfare on a Petition to the Senate by Residents of Kajiado County concerning delayed salaries and non-remittance of statutory deductions for employees at the Nol-Turesh Loitoktok Water and Sanitation Company Limited.
- (ii) Report of the Standing Committee on Labour and Social Welfare on a Petition to the Senate concerning non-recruitment of locals by flower farms, institutions and other companies operating in Kaputiei North Ward, Kajiado County.

(Vice- Chairperson, Standing Committee on Labour and Social Welfare)

- (iii) Report of the Standing Committee on Tourism, Trade and Industrialization on a Petition to the Senate by Mr. Vincent Ombaka, a resident of Nairobi City County, concerning the disruption of local trade by Government action and sanctions.

- (iv) Report of the Standing Committee on Tourism, Trade and Industrialization on a Petition to the Senate by Mr. Kevin Ndoho Macharia, a resident of Kajiado County, concerning the review of laws relating to business premises.

(Chairperson, Standing Committee on Tourism, Trade and Industrialization)

- (v) The Public Finance Management (Parliamentary Catering Fund) Regulations, 2019.

(The Senate Majority Leader)

- (vi) Report of the Sessional Committee on County Public Accounts and Investments on the Inquiry into the Financial Operations of Baringo, Busia, Elgeyo Marakwet, Embu, Kajiado, Kericho, Kilifi, Kirinyaga, Kisii, Kwale, Lamu, Makueni, Marsabit, Meru, Nakuru, Narok, Nyamira, Uasin Gishu, Vihiga and West Pokot Counties for Financial year 2014/2015 (1st July, 2014 to 30th June, 2015).

(Sen. Fatuma Dullo on behalf of the Chairperson, Sessional Committee on County Public Accounts and Investments)

- (vii) Report of the Sessional Committee on County Public Accounts and Investments on the Inquiry into the Financial Operations of Nandi, Elgeyo Marakwet, Baringo, Laikipia, Machakos, West Pokot, Tharaka Nithi, Siaya, Embu and Nairobi City County Executives for Financial year 2013/2014 (1st July, 2013 to 30th June, 2014).

(Sen. Fatuma Dullo on behalf of the Chairperson, Sessional Committee on County Public Accounts and Investments)

7. **NOTICE OF MOTION** – (Chairperson, Sessional Committee on County Public Accounts and Investments)

THAT, the Senate adopts the Report of the Sessional Committee on County Public Accounts and Investments on the Inquiry into the Financial Operations of Baringo, Busia, Elgeyo Marakwet, Embu, Kajiado, Kericho, Kilifi, Kirinyaga, Kisii, Kwale, Lamu, Makeni, Marsabit, Meru, Nakuru, Narok, Nyamira, Uasin Gishu, Vihiga and West Pokot Counties for Financial year 2014/2015 (1st July, 2014 to 30th June, 2015), laid on the Table of the Senate on Wednesday, 9th October, 2019.

8. **NOTICE OF MOTION** – (Chairperson, Sessional Committee on County Public Accounts and Investments)

THAT, the Senate adopts the Report of the Sessional Committee on County Public Accounts and Investments on the Inquiry into the Financial Operations of Nandi, Elgeyo Marakwet, Baringo, Laikipia, Machakos, West Pokot, Tharaka Nithi, Siaya, Embu and Nairobi City County Executives for Financial year 2013/2014 (1st July, 2013 to 30th June, 2014), laid on the Table of the Senate on Wednesday, 9th October, 2019.

9. **STATEMENTS**

a) Pursuant to Standing Order 47(1)

- i. The Senator for Kakamega County (Sen. Cleophas Malalah, MP) made a Statement on the rampant closure of businesses and laying-off of employees in the country.

Thereupon, the Senator informed the Senate that in the recent past, a number of businesses have been closed owing to unfavorable business environment in the country and the inability of these businesses to sustain themselves. The Senator expressed concern that the closures were resulting in losses of employment in the country and cases of depression and suicides.

The Senator also stated that the country's general rating as a desired destination for foreign investment was falling due to unfair business environment.

The Senator urged the Senate to undertake an inquiry into the matter with a view to providing solutions that offer favourable economic policies that will enable businesses to thrive.

Following concerns expressed by Senators, the Deputy Speaker directed that the Statement be referred to the Standing Committee on Labor and Social Welfare for further consideration, pursuant to Standing Order 47(3).

- ii. Nominated Senator (Sen. Isaac Mwaura, MP) made a Statement concerning profiling and discrimination at the United Nations Head Quarters.

Thereupon, the Senator informed the House of an incident that happened at the United Nations Headquarters that amounted to discrimination against minorities and, specifically, persons living with albinism.

The Senator informed the Senate that the United Nations Human Rights Council adopted a resolution in 2013 (A/HRC/RES/23/13) calling for the prevention of attacks and discrimination against persons with albinism. Following adoption of the resolution, the Council created the mandate of Independent Expert on the enjoyment of human rights by persons with albinism. Further, 13th June was set as the International Day of Albinism awareness. He however noted that following the incident, it was sad that he experienced discrimination at United Nations Headquarters.

The Senator urged that Kenya needed to take the lead in order to educate the world about persons living with albinism.

b) Pursuant to Standing Order 52(1)

The Senate Majority Leader to issued a statement on the business of the Senate for the week commencing Tuesday, 15th October, 2019.

10. **THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) (NO. 3) BILL (NATIONAL ASSEMBLY BILLS NO. 35 OF 2019)**

(The Senate Majority Leader)

Order for First Reading read;

Bill read a First Time and committed to the Standing Committee on Justice, Legal Affairs and Human Rights.

11. **COMMITTEE OF THE WHOLE THE NATURAL RESOURCES (BENEFIT SHARING) BILL (SENATE BILLS NO. 31 OF 2018)**

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

Order deferred;

12. **COMMITTEE OF THE WHOLE THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL (SENATE BILLS NO. 3 OF 2019)**

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

Order deferred;

13. **COMMITTEE OF THE WHOLE**
THE COMMISSION ON ADMINISTRATIVE JUSTICE BILL (SENATE BILLS
NO. 6 OF 2019)

(Sen. Petronilla Were Lokorio, MP)

Order deferred;

14. **THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (NO. 2) BILL**
(NATIONAL ASSEMBLY BILLS NO. 13 OF 2018

(The Senate Majority Leader)

Order deferred;

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

Order read;

Motion made and Question proposed;

THAT, 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; and
4. THAT all County Assemblies initiate processes of enacting legislation on Forestry Functions for County Governments (as per FCMA Section 21).

(Sen. (Arch.) Sylvia Kasanga, MP – 08.10.2019)

Debate interrupted on Tuesday, 8th October, 2019 resumed.

There being no other Senator wishing to contribute;

Mover replied;

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

Question put and agreed to.

RESOLVED ACCORDINGLY

THAT, 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;

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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; and

4. THAT all County Assemblies initiate processes of enacting legislation on Forestry Functions for County Governments (As per FCMA Section 21).

16. **MOTION - ENGAGEMENT OF COMMUNITY HEALTH WORKERS BY COUNTY GOVERNMENTS**

Order read-

THAT, AWARE THAT county health facilities, and the promotion of primary health care are devolved functions, and each county government is striving to offer the best healthcare to the people of Kenya;

COGNIZANT THAT, the provision of healthcare services is continuously riddled with numerous challenges ranging from understaffing of personnel to inadequate facilities and equipment resulting in congestion in hospitals further restricting effective service delivery;

NOTING THAT every Kenyan has a right to affordable and accessible healthcare, and the President has launched a pilot universal health care program called “*Afya Care*” that will see many Kenyans access improved healthcare;

CONCERNED THAT, the diverse nature of counties and wanting infrastructural development is compromising the quality and accessibility of health centres especially during emergency situations, resulting in the loss of many lives occasioned by the failure by patients to reach health facilities in time;

FURTHER CONCERNED THAT, in each county there are numerous unemployed community health workers who are adept at working with communities in emergency situations, and have the requisite experience to support the medical practitioners in our country where, according to the World Health Organization 2014 report, there are two (2) doctors for every ten thousand (10,000) people;

NOW THEREFORE, the Senate resolves that the Council of Governors in partnership with the Ministry of Health –

- 1) Develop a policy for the training, certification and employment of community health workers to enhance the emergency health service delivery in the Counties, and
- 2) Facilitate the said community health workers with the necessary basic equipment for use during emergency cases.

(Sen. Rose Nyamunga, MP)

Order deferred.

17. **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-ICGLR)**

Order read;

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.

(Sen. Samuel Poghisio, MP)

Order deferred.

And there being no other Business on the Order Paper, the Temporary Speaker (Sen. Rose Nyamunga, MP) adjourned the Senate at Fifteen minutes past Six O'clock without Question put, pursuant to the Standing Orders.

18. **SENATE ROSE** – at Fifteen Minutes past Six O'clock

MEMORANDUM

*The Speaker will take the Chair on
Tuesday, October 15, 2019 at 2.30 p.m.*

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