

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Wednesday, 7<sup>th</sup> 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

### PETITIONS

#### REPORT ON PETITION: THE ALLEGED DETERIORATING HEALTHCARE SERVICES IN WEST POKOT COUNTY

**Sen. (Dr.) Mbito:** Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today, 7<sup>th</sup> August, 2019:-

Report of the Standing Committee on Health on the petition by the residents of West Pokot County concerning the alleged deteriorating healthcare Services in West Pokot County

*(Sen. (Dr.) Mbito laid the documents on the Table)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki: Hon. Members, we are constrained for time today because we have an important agenda to deal with later today on the Division of Revenue Bill. Kindly, use time well.

Kindly, proceed, Sen. Mpaayeyi.

#### SILTATION OF LAKE MAGADI

**Sen. Mpaayeyi:** Mr. Deputy Speaker, Sir, we, the undersigned citizens of the Republic of Kenya and the residents of Kajiado County draw the attention of the Senate to the following: -

1. THAT, the Tata Chemical Magadi Limited operating from the Lake Magadi is the largest manufacturer of Soda Ash and one of Kenya's leading exporter. The company has been producing soda ash and related products processed from the trona that has been occurring in Lake Magadi for over 100 years.

2. THAT, the lake has been facing serious environmental threats emanating from sedimentation and siltation for the last decade which has gradually led to the loss of about 20 per cent of the lake to the soil and silt deposition. In addition, the accumulation and spread of residue is affecting the quality of soda ash from the lake.
3. THAT, the siltation problem in Lake Magadi has its origin in the upper and middle water catchment areas of the lake where intense soil erosion is occurring. The upper catchment including Keekonyokie and Suswa wards of Narok East Constituency and middle catchment areas covering Mosiro in Narok East and Ewaso Nkidongi and Mosiro wards in Kajiado West Constituency.
4. THAT, the mining operations in Lake Magadi are a source of livelihood for over 50,000 people through trade and direct or indirect employment. The company also supports water provision education facilities, bursaries, health services and enterprise opportunities for surrounding communities
5. THAT, the company has invested heavily in individual effort to save Lake Magadi from destruction through siltation. It initially built three dykes to block the soil deposits, but successive rain periods led to the covering of the dykes.
6. THAT, the company has initiated a project to divert the main river identified to be the main conduit of the siltation as an emergency measure to protect the lake. This was done in partnership with the relevant Government department and agencies and local communities. Environmental due diligence was carried out and necessary approvals obtained from National Environment and Management Authority (NEMA) and Water Resources Management Authority (WARMA). Consideration was taken to ensure that sufficient water remained available for the dependent community downstream. The project took more than three years to complete and it cost the company more than Kshs100 million.
7. THAT, the company is overseeing monitoring of the above project to manage any environmental issue, while partnering with the local communities to address pertinent development issues.
8. THAT, the river diversion is a short-term measure. There is need for a wide spread and long-term solution targeting the catchment areas of the lake to introduce measures that stop soil erosion and movement of the soil to the lake and promote afforestation and sustainable land use practices.
9. THAT, the company urgently needs Government support and interventions to deal with the siltation challenge. The company is dealing with an environmental load that is not of its own making and which, if not urgently and appropriately addressed, may lead to the loss of a national economic resource that has supported local livelihoods for decades and which continues to earn the country the much needed foreign exchange.
10. THAT, we have made the best efforts to have this matter addressed by the relevant authorities like the Ministry of Environment and Forestry and WARMA, all of which nothing has been done herein in the petition.

11. THAT, none of these issues raised in this petition is pending in any court of law, constitutional or any other legal body.

WHEREFORE, your humble petitioners pray that the Senate investigates the matter of Lake Magadi siltation and make appropriate recommendations thereon, with a view to-

- a) ensuring that the siltation to the lake is prevented;
- b) ensuring that appropriate intervention, regulations, and guidelines are put in place to ensure and promote sustainable land use practices and prevent soil erosion and water degradation upstream of Lake Magadi

I thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, I do not see any request for comments.

Pursuant to Standing Order No.232(1), the Petition stands committed to the relevant standing committee, in this case the Standing Committee on Land, Environment and Natural Resources.

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

I thank you

Next Petition.

#### COMPENSATION OF PERSONS AFFECTED BY CONSTRUCTION OF KIBWEZI-KITUI-KABATI-MIGWANI (B7) ROAD

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, Pursuant to Standing Orders Nos.226 (1) (a), and 230(2) (b), I hereby report to the Senate that a petition has been submitted, through the Office of the Clerk, by Mr. John Paul Masai and Mr. Daniel Kasyoki Mwanzia concerning the compensation to land owners affected by construction of the Kibwezi-Kitui- Kabati- Migwani (B7) road.

1. In the Petition, the petitioners state: -
  - a) THAT, in December 2016, the Government of Kenya commissioned construction of the Kibwezi-Kitui-Kabati- Migwani (B7) Road;
  - b) THAT, Article 40 (3) of the Constitution as read together with Sections 111 and 115 of the Land Act oblige the Government, whenever it exercises its power to compulsorily acquire land, to compensate the affected land owners in a prompt, full and just manner;
  - c) THAT, despite the provisions of the Constitution and the law, over 400 land owners whose parcels of land were compulsorily acquired to pave way for the construction of the said road are yet to be compensated by the National Land Commission;
  - d) THAT, the construction of the road is over 50 per cent complete and there are no signs that the land owners will be compensated as there are no funds set aside in 2019/2020 Budget towards their compensation;

2. The petitioners, therefore, pray that the Senate causes:
  - i. the National Land Commission to avail a list of all persons who have been issued with award letters in respect of the said project, including valuation for the acquired pieces of land and any variations made on the original award letters; and,
  - ii. the National Land Commission (NLC) to compensate the affected land owners promptly, justly and in full.

Hon. Senators, pursuant to Standing Order No.231, I shall now allow comments, observations, or clarifications in relation to the petition for not more than 30 minutes.

Kindly, proceed, the Senator for Kitui County.

**Sen. Wambua:** Mr. Deputy Speaker, Sir, I thank you for giving me the opportunity to comment on the petition. It is true that there is need of compensation for land acquired by the Government from private individuals for the construction of the Kibwezi-Kitui-Kabati-Migwani (B7) Road. This is a matter that has occupied conversations within the Committee on Energy, Roads and Transportation.

The truth is that the NLC and the Kenya National Highways Authority (KeNHA) have been involved in ping-pong where the NLC says that they are ready to compensate sections of the road where they have given award letters but then blame the KeNHA for failure to submit funds.

We are now blaming the KeNHA for failure to submit funds for compensation. It will be noted that the responsibility of the National Land Commission (NLC) on compensation is twofold. First, they are supposed value the land and issue award letters to persons affected by the project. After they have issued those awards, they are supposed to calculate the total sum of amount required for compensation to the persons affected by the project and submit it to KeNHA; the agency of Government involved in the construction of the road. Immediately KeNHA receives funds, they are supposed to pass it to NLC for onward transmission to the affected persons.

I am glad that this Petition has come before the Senate at the right time. There are sections of that road which have already been tarmacked, but the NLC has not even issued award letters to persons affected by the project.

Article 40 of the Constitution is very clear. The Government has a constitutional right to acquire private land for public use. When that happens, the Constitution and law requires it to promptly compensate land owners in full and according to market rates.

I urge the Committee where this Petition will be direct to---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Summarize, Sen. Wambua. I am giving you one more minute to do so.

**Sen. Wambua:** Mr. Deputy Speaker, Sir, I am summarizing.

I urge the membership of the Committee to which will deal with this Petition to address themselves fully to it and ensure that people of that region are fully compensated for their land before the completion of that project.

*(Interruption of debate on Petition)*

**COMMUNICATION FROM THE CHAIR**VISITING DELEGATION FROM STAREHE BOYS CENTRE,  
NAIROBI CITY COUNTY

**The Deputy Speaker** (Prof.) Kindiki: Hon. Senators, I would like to acknowledge some guests that we have this afternoon in the Speaker's Gallery.

We have students from Starehe Boys Centre, who are undertaking two weeks voluntary service scheme in the Senate. I request them to stand when called out so that they may be acknowledged.

- |     |                     |   |         |
|-----|---------------------|---|---------|
| (1) | Mr. Lashma Nyakango | - | Form 2D |
| (2) | Mr. Hillary Kirui   | - | Form 3E |
| (3) | Mr. Alvin Otieno    | - | Form 3E |

Boys, you are welcome to the Senate of the Republic of Kenya.

*(Applause)*

VISITING DELEGATION FROM AIC KAPTEI SECONDARY  
SCHOOL, UASIN GISHU COUNTY

Hon. Senators, in the Public Gallery, we have students and teachers of AIC, Kaptei Secondary School, Uasin Gishu County. I also take this opportunity to welcome them to the Senate of the Republic of Kenya.

I thank you.

*(Applause)*

Maybe, the Senators for Uasin Gishu and for Nairobi City County, respectively, would like to say a word to welcome the students and teachers on behalf of the rest of us. You have one minute each to do so.

**Sen. (Prof.) Kamar:** Mr. Deputy Speaker, Sir, I want to thank you for giving me an opportunity to join you in welcoming the students from Kaptei Secondary School in Uasin Gishu County. I started this school from scratch when I was in the Tenth Parliament. I am very proud of these students. They have performed very well, and I wish them well as they visit this Parliament.

I urge them to use their time prudently while in Nairobi so that they can learn from their leaders and see how we conduct business in this House. The virtue they can learn is that hard work pays. That is why most of us are here as Senators today. I urge them to work hard and make a difference in their lives and of their families. It only takes hard work to succeed in life.

I also welcome students from Starehe Boys Centre and wish them well. Starehe Boys Centre is a school that is well known. We know the kind of products that they produce year in, year out. Hard work will take them far and the sky will be the limit.

I welcome the two delegations, enjoy your stay here, learn from your leaders and go home safely.

God bless you.

**Sen. Sakaja:** Thank you, Mr. Deputy Speaker, Sir, I want to welcome the students as well comment on the Petition if that is okay with you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): That is fine.

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, first of all, I join you in welcoming the students from Uasin Gishu County as well as those who are here on the internship programme from Starehe Boys Centre. I want to encourage them because the world belongs to those who believe in the beauty of their dreams. Whatever they put their mind into and work hard, they will achieve. Today, in Kenya, we are striving to make sure that there is equality of opportunity for everybody no matter where you are from, your tribe or your surname is. So, I encourage them to work hard.

Mr. Deputy Speaker, Sir, I want to note that it is very encouraging to see students coming from Starehe Boys Centre for this internship programme. I hope Parliament is opening this up to many more schools from across the country so that they can benefit alongside those from Starehe Boys Centre. We want to see some from Kitui, Mombasa and the rest of the country, so that they can interact with leadership and also with the systems of this arm of Government.

*(Resumption of debate on Petition)*

With regard to the Petition, we have seen very many similar petitions about compensation. I think the more we go without asking ourselves the critical questions, the more we will have similar Petitions.

Chapter 5 of our Constitution is very clear; the principles of land policy include security of land rights. Cap.235 of Land Acquisition Act is also extremely clear on the process through which land is acquired, especially when it relates to a project.

The funds for compensation are provided for in the project firms. How is it that a project is 50 per cent to completion and yet the people have not been compensated? I brought similar issues on Mountain View, old Uthiru, Ruthimitu about the expansion of highways---

*(Sen. (Eng.) Mohamud was observed walking about in the Chamber)*

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it, Sen. Poghio?

**Sen. Poghio:** Mr. Deputy Speaker, Sir, I do not if you know why the Chairman is up on his feet at the same time as the Member of Nairobi City County?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Can I hear that again, Sen. Poghio?

**Sen. Poghio:** Mr. Deputy Speaker, Sir, I thought you had noticed that the Chairman of the Finance and Budget Committee was standing up at the same time as the Senator for Nairobi City County and I could not even see the Chair from here.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Mohamud, can you get back to order. Right away.

*(Sen. Mohamud resumed his seat)*

Proceed, Sen. Sakaja.

**Sen. Sakaja:** Thank you, Mr. Deputy Speaker, Sir. Sen. Poghiso should have invoked our Standing Orders that talk about gang ways and alley ways.

The point I was making is this: I brought up this matter of expansion of Nairobi-Nakuru Highway Project which is affecting business people. We have similar problems in Westlands, Outering Road and so many other places where people are not being compensated despite the fact that the budget of any project includes money for compensation. How come this project is almost 50 per cent complete and yet the people are still waiting for compensation?

Let us make sure that this Ministry does not just see brick and mortar in terms of projects, but compensate those people being displaced from their rightful land before starting a project. We do not want to see this issue of compensation coming up when the project is almost complete. I urge the Committee to address this issue once and for all. Let them ask the right questions. Lastly, I pray that the prayers of the petitioners from Kitui County be answered.

Thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You will each have one minute. Could we first hear from Sen. (Dr.) Kabaka. Do not repeat what has already been said.

**Sen. (Dr.) Kabaka:** Thank you, Mr. Deputy Speaker, Sir. I will not repeat what has already been said by the other Senators.

The law is clear on compensation with regard to compulsory acquisition and that law must be followed. The Constitution states that the Government should compensate the affected citizens when their land is taken. Therefore, no project should be undertaken before the full compensation has been done. What we have envisaged around this state is impunity because the Government will start implementing projects before making the payments. It is as if the Government wants the affected parties to go to court yet the court process takes long and that makes compensation to be intricate.

The same applies to compensation when one is injured. The Attorney-General is known for not compensating as per the degree or judgement passed by the court of law. Therefore, we should revisit our moral turpitude in this state for the implementers of the law to comply with the dictates of law.

**Sen. Mwaura:** Thank you, Mr. Deputy Speaker, Sir. Allow me to congratulate the visiting students and those who are on internship. I also want to congratulate the Senate for this noble initiative because this is the only way to impart knowledge to the future leaders. These young people are the ones who will take over from us.

We passed the Land Value Index Laws (Amendment) Bill, 2018. If the question is; how much is one to be compensated, then there is no parameter to gauge that. People, who do not deserve compensation, can also take advantage of such projects to demand for compensation. In the last Parliament, I had a case with the people in Lamu who were eventually compensated though we had cases of people who did not deserve

compensation trying to get into the list. We must look at the projects in totality with regard to such costs. Those people should be settled first for the projects to get the goodwill and support of the community.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity. Kindly, allow me to join you---

*(Sen. (Dr.) Kabaka moved from his seat to consult Sen. Kasanga)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. (Dr.) Kabaka. I hope that you are not leaving the Chamber. We have the Division of Revenue (No.2) Bill (National Assembly Bills No. 59 of 2019) which is an important legislation and we must deal with it today.

Proceed, Sen. (Dr.) Musuruve.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Deputy Speaker, Sir. Kindly, allow me to join you in welcoming the students from Starehe Boys Centre and the students from Uasin Gishu County. It is good for schools to bring students to the House to learn from us. This is a practical way of imparting leadership skills to the learners.

I commend the petitioners for this Petition. A number of petitions have been brought to the Floor of this House concerning land acquisition. The Government takes those parcels of land for a noble cause but---

*(Sen. Sakaja stood on the gangway and consulted Sen. Kinyua)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Sakaja. You cited the Standing Order where it talks of gangways and walkways yet you are the one standing on the gangways and walkways.

**Sen. Sakaja:** Mr. Deputy Speaker, Sir, it was a very important consultation on the Division of Revenue (No.2) Bill (National Assembly Bills No. 59 of 2019).

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order. Were you discussing the Division of Revenue (No. 2) Bill (National Assembly Bills No. 59 of 2019) on the gangways? Order!

Senators, consult in low tones. Could the party whips and the party leaders get the Senators in the Chamber? The country is watching and we have an important legislation to deal with this afternoon.

Summarise, Sen. (Dr.) Musuruve, though I think that you had finished.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Deputy Speaker, Sir. I had not even finished a sentence. There were too many interruptions.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Okay. I will allow you to say two sentences.

**Sen. (Dr.) Musuruve:** Mr. Deputy Speaker, Sir, the petitioners have a legit Petition.

A number of petitions have been brought to the Floor of this House concerning land acquisition. They have always complained about the Government taking their land

without compensation. The Government takes those parcels of land for a good cause but they need to consider the people whose parcels of land have been taken because those people are mentally affected and they also have responsibilities.

The Government should also make a follow up to find out where those people have gone. That is because some of them end up being so stressed. It is unfortunate that the project is 50 per cent complete yet nothing has been done.

The Committee that is going to deal with this matter should work with speed and ensure that justice is not delayed. They should also ensure that compensation is done according to the market rates.

*(Senators consulted loudly)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Order Senators. Consult in low tones.

Senators, the Committee has up to 60 days to respond to the petitioner by way of a report and that report ought to be tabled in the Senate.

This matter concerns roads in the eastern region where the Senate will be sitting for one week after the recess. Therefore, the Committee is urged to treat this matter when we are there subject to the directions of the Senate Business Committee. This matter can be treated from Kitui and that will help us literally work from the ground. The relevant Committee is the Committee on Land, Environment and Natural Resources. It is so ordered.

Next Order.

## PAPERS LAID

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! I want to remind Members not to leave. We need to transact the important business that is oncoming.

Do we have Papers? I can see that there is a Report that is to be laid by the Chairperson of Committee on Delegated Legislation. He is not present.

Could we have the next Paper that is to be laid by the Chairperson of the Committee on Health?

### REPORT ON THE FACT-FINDING TOUR TO KITUI, MACHAKOS AND KAJIADO COUNTIES

**Sen. (Dr.) Mbito:** Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today, Wednesday 7<sup>th</sup> of August, 2019: -

Report of the Standing Committee on Health on the fact-finding tour of Kitui, Machakos and Kajiado Counties.

I thank you.

*(Sen. (Dr.) Mbito laid the document on the Table)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Meanwhile, Senators, please, do not leave the Chamber. Those who can get those who are away outside the Chamber, cause

them to come. As soon as we have the requisite numbers, Whips, approach the Chair so that we can go straight to Order No.8.

Next Order.

REPORT ON THE DIVISION OF REVENUE (NO. 2) BILL  
(NATIONAL ASSEMBLY BILLS NO.59 OF 2019)

**Sen. (Eng.) Mahamud:** Mr. Deputy Speaker, Sir, I want to lay the following Paper on the table of the Senate today, Wednesday 7<sup>th</sup> of August, 2019:

Report of the Standing Committee on Finance and Budget on the Division of Revenue (No.2) Bill (National Assembly Bills. No.59 of 2019).

*(Sen. (Eng.) Mahamud laid the document on the Table)*

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

Next Order.

**NOTICE OF MOTION**

FORMATION OF COMMUNITY FOREST ASSOCIATIONS

**Sen. Kasanga:** Thank you, Mr. Deputy Speaker, Sir. I beg to give Notice of the following Motion: -

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 per cent 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 and 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).

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you. I will indulge the Chairperson on Senate Committee on Delegated Legislation to table a Paper. I would like the Order on Papers to be called.

Let us have the Chairperson of the committee on Delegated Legislation.

### PAPER LAID

#### REPORT ON VISIT TO MACHAKOS AND KAJIADO COUNTIES

**Sen. Poghiso:** Thank you, Mr. Deputy Speaker, Sir. I beg to lay the following paper on the Table of the Senate, today, Wednesday, 7<sup>th</sup> August, 2019:

Report of the Sessional Committee on Delegated Legislation on the Visit to Machakos and Kajiado counties.

Thank you, Mr. Deputy Speaker, Sir.

*(Sen. Poghiso laid the document on the Table)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Next Order.

### STATEMENTS

#### ASSESSMENT OF GRADE THREE PUPILS

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Proceed, Sen. Wetangula.

**Sen. Wetangula:** Thank you, Mr. Deputy Speaker, Sir. Pursuant to Standing Order 48(1), I wish to seek a Statement from the Standing Committee on Education regarding the requirement by the Ministry of Education that Grade Three pupils be subjected to an assessment test before proceeding to the next level.

In the Statement, the Committee should:-

- (1) State the number, level and types of assessments to learners under the new curriculum of education.
- (2) State the objectives and scope of the assessment of Grade Three pupils.
- (3) Outline the method to be used in the grading.

- (4) Explain what will happen to pupils who may fail the assessment test *vis-à-vis* the Government's publicly pronounced policy on a 100 per cent transition rate in education.
- (5) State the cost of setting, printing and administering the exam and whether the cost burden of this assessment will be borne by parents or the Government.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it, Sen. Ochillo- Ayacko? Do you want to say something?

**Sen. Ochillo-Ayacko:** Yes, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Take one minute because it is Sen. Wetangula's time for request for Statement, not yours.

**Sen. Ochillo-Ayacko:** Thank you, Mr. Deputy Speaker, Sir. I hope I have not offended you. You are rather hard today.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): No, you have not. I hope I also have not.

**Sen. Ochillo-Ayacko:** Thank you, Mr. Deputy Speaker, Sir. I just wanted you to notice that the Speaker's mood can affect the House.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): That is noted, Sen. Ochillo-Ayacko.

**Sen. Ochillo-Ayacko:** Mr. Deputy Speaker, Sir, I want to congratulate my brother for raising this important concern. When the Committee responsible for this will be looking at the matter, they should come up with an answer as to how this pronouncement sits with free and compulsory right to education of children. If it is free and compulsory and hurdles are placed, how will children's rights be balanced with the desire to assess them and perhaps to force them to repeat?

Lastly, it would be important for the Committee to also explain to the House where they have picked this kind of practice. Where has it been done and where was it implemented? Was it a success in those other jurisdictions, maybe if it is beyond Kenya?

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): That is a useful addition notwithstanding your comments about the mood.

*(Laughter)*

**Sen. Poghiso:** Mr. Deputy Speaker, Sir, I want to congratulate Sen. Wetangula for bringing this very pertinent Statement. The level playground in this system will depend on the distribution of teachers. If that can be pursued so that we know that every child will be accorded the same attention by the number of teachers provided in the schools. This is a very good test for this Committee to make sure that there is fairness in the distribution of teachers.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Well done. Proceed, Sen. Mwaruma?

**Sen. Mwaruma:** Thank you, Mr. Deputy Speaker, Sir, for this opportunity to support this Statement by Sen. Wetangula. We are not very clear about this Competency Based Curriculum (CBC) and how it will be implemented. This is especially about the summative examinations which we do not know when they will be administered. We

also do not know whether the infrastructure that will be used for lower secondary will be in primary or secondary school. We will be happy to hear the response to this important Statement.

The second matter might be outside this Statement. I have about two statements whose responses I do not have. I do not know if I am supposed to bring the statements again. One is about the recruitment of a substantive Vice Chancellor for Taita-Taveta University. I have had it for more than three months.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You can raise that on a point of order but raise it any way since you have the microphone.

**Sen. Mwaruma:** Thank you, Mr. Deputy Speaker, Sir. I do not know how long we will wait for these responses. The other time, the Cabinet Secretary for the Ministry of Education, Hon. (Prof.) Magoha, was here. We thought we would get the answers. Up to now, we follow the Chairperson but he is nonchalant.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Is the first one on the Vice Chancellor of Taita-Taveta University?

**Sen. Mwaruma:** Yes, Mr. Deputy Speaker, Sir. The second one is the criteria in which promotions are done by the Teachers Service Commission (TSC).

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Where is the Chairperson of the Committee on Education? Yes, Sen. (Prof.) Kamar, proceed.

**Sen. (Prof.) Kamar:** Mr. Deputy Speaker, Sir, let me talk on behalf of the Committee because our Chairperson traveled this afternoon. I first assure the House that the Committee will very keenly look at the Statement from Sen. Wetangula. This is because there are a number of concerns that have come directly or indirectly to the Committee and we will look at that.

I must mention that the question that has been raised by Sen. Mwaruma touches on about four questions that have been sent to the Ministry and responses have not come. Some responses came and we perused and actually discussed them today in our Committee but they did not have the signature of the CS. They were sent back. It is our hope that we get signed responses so that we go through them.

We also think that the number of supplementary questions may be extremely important, and it will be important for us to bring the CSs here so that we have the whole House raise their supplementary questions. That will be better instead of us coming and going back with supplementary questions.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Expedite.

**Sen. (Prof.) Kamar:** Yes, Mr. Deputy Speaker, Sir. We will do that.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Since the committees will be working even during the recess, you need to conclude that matter maybe in the next two weeks and get the Senator the answers he requires.

Very well, Senators. I would like to remind the whips that we just need perhaps one more Senator and we will go to Order No.8. Please, work harder for one more Senator.

Meanwhile, I will allow one more Statement from the Senator for Laikipia County who is the Chairperson for the Committee on Devolution and Intergovernmental Relations regarding progress of the activities of his Committee on one of the issues that have also been of concern to this House.

Proceed, Sen. Kinyua.

CHALLENGES FACING TAITA-TAVETA  
COUNTY GOVERNMENT

**Sen. Kinyua:** Thank you, Mr. Deputy Speaker, Sir. Pursuant to Standing Order No.51(1)(a), I rise to make a Statement relating to a matter for which the Committee is responsible. The Statement is on the challenges facing the Taita-Taveta County Government.

The Senate Standing Committee on Devolution and Intergovernmental Relations is established under Standing Order No. 218(3) of the Standing Orders of the Senate.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Prengei, approach the Chair.

*(Sen. Prengei approached the Chair)*

Sorry, Sen. Kinyua. Proceed.

**Sen. Kinyua:** Mr. Deputy Speaker, Sir, the Committee is mandated to consider all matters relating to devolution; intergovernmental and inter-county relations; governance and, management of county governments, cities, towns and urban areas.

Many counties are facing various challenges such as budget making process and health issues. Kitui and Taita-Taveta counties have faced challenges in the budget making process while Laikipia, Kakamega and Kirinyaga counties are having health challenges. Specifically, let me inform the House on the budget stalemate in Taita-Taveta County.

Let me start with the background of what happened in Taita-Taveta County. The Governor requested the people of Taita-Taveta County to sign a petition to H.E President Uhuru Kenyatta to suspend and dissolve the county government. In the Petition, the Governor is citing the following facts, among others -

- (1) The County Assembly demands for a share of a budget which is more than what is prescribed by law.
- (2) Unilateral increase in allocation of 10 per cent for each department resulting to a budget deficit.
- (3) Operating the ward development fund.
- (4) Payment of pending bills to the Kenya Medical Supplies Authority (KEMSA).

The petition is as a result of impasse between the County Executive and the County Assembly in the approval of the Financial Year 2019/20 Budget.

Mr. Deputy Speaker, Sir, the County budget for the Financial Year 2019/20 was approved by the County Assembly on 26<sup>th</sup> June, 2019 with amendments. The Governor did not agree with the amendments done by the Assembly. He submitted a memorandum to the County Assembly on 28<sup>th</sup> June, 2019, rejecting the approved budget.

The Governor also submitted a request for approval of a vote on account; 50 percent of the submitted draft estimate, to cover both the recurrent and development budget in line with Section 134(1) of the Public Finance Management (PFM) Act 2012. The Assembly rejected the Governor's memorandum on 2<sup>nd</sup> July, 2019 and passed the

vote on account for 50 per cent of the recurrent budget. The vote on account approved did not include the development budget.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Chairperson, we know there is a crisis in Taita-Taveta County. Given the limitation of time, it will be helpful to tell us what your Committee has done, what needs to be done and what you will do other than giving us the history of who wrote which letter to who. Since time is limited, just tell us what you have been able to do - if at all you have done anything - what remains unresolved, why and what you recommend we should do in light of that matter.

**Sen. Kinyua:** Thank you, Mr. Deputy Speaker, Sir, for the advice. I wanted to bring up to speed Senators who were not aware of what has been happening. I stand advised.

We had several meetings with the County Assembly, the executive as well as the Cabinet Secretary (CS) on 18<sup>th</sup> July, 2019. We have not done that because the County Assembly wanted to talk but the Governor had a firm stand that he will proceed with writing the petition. As yesterday, he said he had 52,000 signatures.

The issues that we have picked is that one, there was a delay in approval of Bills for the County. Considering the Constitution under Article 159, we know that as a Committee, we can continue with mediation. So far so good. The Committee has managed to bring both the County Executive as well as the County Assembly in talking terms. Every time we try that after we discuss and think we are moving forward, we get ourselves back to square one.

We have proposed that the Officer of the County Controller of Budget considers the issue raised on the budget formulation and invite both parties – the County Executive and the County Assembly – for a joint meeting. We have agreed to do that tomorrow at 10.00 a.m. We have also said that the issue of legislation should be escalated to the Senate in order to build capacity for the County Assembly on drafting and approval of Bills.

Mr. Deputy Speaker, Sir, another way forward is that the Inter-government Relations Technical Committee (IGRTC) should come up with strategies to address the relationship between the County Executive and the County Assembly because they are not talking to each other. We want the IGRTC to be involved so that we can engage all of them.

Mr. Deputy Speaker, Sir, this is a matter that involves parties. Therefore, we are also engaging the ODM party leader because majority of the Members of County Assembly (MCAs) are from ODM.

*(Sen. Faki consulted loudly)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Faki.

**Sen. Kinyua:** Mr. Deputy Speaker, Sir, we are involving the party leader in these discussions so that we have a solution.

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is out of order, Sen. Wambua?

**Sen. Wambua:** Mr. Deputy Speaker, Sir, I have heard the Chairperson of the Committee on Devolved Government and Intergovernmental Relations say that his

Committee will approach the ODM party leader because majority of MCAs come from ODM. The last time I checked, the County Government of Taita-Taveta is formed by a governor who is elected on a Wiper Party ticket. I am wondering whether the party leader for Wiper Party is consulted on this matter.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Kinyua, you should be sensitive to political parties.

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it, Sen. Wetangula?

Sen. Kinyua, let us hear the concerns of Sen. Wetangula so that you can respond to both.

**Sen. Wetangula:** Mr. Deputy Speaker, Sir, the party that I lead, FORD-(K), has MCAs in Taita-Taveta including, but not limited, to the Deputy Speaker of the County Assembly. How come, the Chairperson of the Committee has not found it necessary to talk to the leader of FORD-(K) as well?

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Kinyua, how come?

**Sen. Kinyua:** Mr. Deputy Speaker, Sir, I was interrupted by Sen. Faki when I was mentioning the names.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): So, which other party leaders are you consulting?

**Sen. Kinyua:** Mr. Deputy Speaker, Sir, I will consult hon. Stephen Kalonzo Musyoka and the party leader of FORD-(K), Sen. Wetangula.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You should also consult any other party which is represented in that Assembly.

It is so ordered. Let that matter lie there. Actually, this matter is not a joke. If a party has representation in that Assembly, I see no reason why they should not be consulted. It is spiteful of our democracy.

We need to move on because of the reasons that I had given earlier. However, I will allow the Senator for Taita-Taveta County to say something because this concerns the county he represents.

**Sen. Mwaruma:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to contribute to the Statement by the Chairperson of the Committee on Devolved Government and Intergovernmental Relations.

It is true that in the last one month, there has been a stalemate between the county executive and the county assembly. The leadership of the county assembly adopted shuttle diplomacy. They moved to Nairobi, Elgeyo- Marakwet and other areas. However, I am happy that we are trying to find ways to solve the crisis. I assure you that on this one, the solution lies within the leadership of Taita-Taveta County. I wish the County Assembly of Taita Taveta approached the elected leaders from Taita-Taveta County. It would have been easier to solve it. However, when they came to Nairobi and despised the leadership of the county, it is where they went wrong. I am telling you the truth that on this one, the solutions lies within the local leadership of Taita-Taveta County.

**COMMUNICATIONS FROM THE CHAIR**

## VISITING DELEGATIONS FROM VARIOUS SCHOOLS

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, we have visiting delegations of students and teachers in the Public Gallery from the following schools:-

- (1) Sena Primary School, Homa Bay County
- (2) Bishop Okinda, Secondary School, Migory County

We welcome them to the Senate of the Republic of Kenya.

Sen. Ochillo-Ayacko, do you want to say something?

**Sen. Ochillo-Ayacko:** Thank you, Mr. Deputy Speaker, Sir, for giving me an opportunity to welcome pupils and students from Migori and Homa Bay counties which are far. So, when pupils and students identify the Senate as an institution worthy of visit, it is good for us to acknowledge that gesture.

To the delegations of Migori and Homa Bay counties, the Senate is the place to be. They will one day make it and become Senators. However, the route to being a Senator, a Member of Parliament (MP) or leader is through education. So, I implore them to be studious and diligent. They need to get good results and inculcate discipline among themselves to excel. I welcome them to the Senate and Parliament.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, I have a Communication to make concerning the matter of the Division of Revenue Bill.

I would like us to proceed to Order No. 8 after this Communication which is the Second Reading of the Division of Revenue Bill (No.2) (National Assembly Bills No. 59 of 2019). I would like to make the following Communication.

CONSIDERATION OF THE DIVISION OF REVENUE (NO.2)  
BILL (NATIONAL ASSEMBLY BILLS NO.59 OF 2019)

As you may recall, in accordance with Article 218 of the Constitution and Standing Orders of the National Assembly, the National Assembly published the Division of Revenue Bill (National Assembly Bills No.11 of 2019). The Bill was passed by the National Assembly on 26<sup>th</sup> March, 2019 and subsequently referred to the Senate in accordance with Article 110 of the Constitution.

As you may further recall, having considered the Bill, the Senate passed it with amendments and referred it to the National Assembly. On 8<sup>th</sup> May, 2019 the National Assembly rejected the Senate amendments leading to the Bill being referred to the Mediation Committee in accordance with Article 113 of the Constitution.

Hon. Senators, you will recall that the Mediation Committee failed to agree on a version of the Bill that both Houses could pass and the Bill therefore stood defeated. This led to a paralysis as Parliament could not proceed to enact the County Allocation of Revenue Bill, which originates from this House and which would in turn allow the counties to conclude on their budgets.

However, as the paralysis was going on, the National Assembly went ahead to irregularly enact the Appropriations Act, 2019 without resolving the issue of division of revenue between the two levels of Government. This led to the Council of Governors

(CoGs) moving to the Supreme Court to seek redress on the same. I do not wish to speak further on this matter because of our traditions and our Standing Orders about the *sub judice* principle.

Hon. Senators, as you are all aware, the mandate of this House in Articles 94 and 96 of the Constitution and in particular Article 96 (1) is to represent counties and protect the interests of their governments.

For this reason, even as the National Assembly appeared unconcerned about the situation and proceeded to adjourn for recess without a clear way forward on the division of revenue process, the Senate, pursuant to its mandate under Article 96 and 218 of the Constitution, published and passed, without amendments, the Division of Revenue Bill (Senate Bills No.13 of 2019) on 23<sup>rd</sup> July, 2019, in an attempt to resuscitate the process and referred the said Bill to the National Assembly for concurrence as provided for under the law.

On 25<sup>th</sup> July, 2019, the Speaker of the National Assembly, conveyed a Message from the Speaker of the Senate on the Bill and directed that the Bill be read a First Time in the National Assembly on 30<sup>th</sup> July, 2019. The Bill was read a First Time as directed and committed to the Committee on Budget and Appropriations of the National Assembly.

The Bill was subsequently scheduled for Second Reading on 1<sup>st</sup> August, 2019. The HANSARD record of the National Assembly indicates that during Second Reading, some Members of the National Assembly claimed that it was unconstitutional for a Division of Revenue Bill to originate from the Senate. Thereafter and on the basis of this claim, the Speaker of the National Assembly ruled that the Division of Revenue Bill (Senate Bills No.13 of 2019) be withdrawn and the Bill was therefore not proceeded with.

Hon. Senators, I would like to draw your attention to Article 218 of the Constitution of Kenya which states *inter alia*;

“At least two months before the end of each financial year, there shall be introduced in Parliament—

A Division of Revenue Bill which shall divide revenue raised by the national Government among the national and county levels of government in accordance with this Constitution”

The word there is “Parliament” and not “the National Assembly” or “the Senate”. The Constitution expressly states that the Division of Revenue Bill shall be introduced in Parliament, which means that a Division of Revenue Bill may be introduced and can originate in either the National Assembly or the Senate.

Hon. Senators will recall that in 2013 when the National Assembly questioned the role of the Senate in the process of the division of revenue, the Supreme Court in its advisory opinion clearly affirmed the role of the Senate in the division of revenue process. There is therefore no doubt in my mind, from a reading of the Constitution as buttressed by the advisory opinion of the Supreme Court, that the Senate has a critical role to play in originating, considering and passing of the Division of Revenue Bill.

Hon. Senators, indeed, this Senate, by this mandate, has previously introduced and passed the Division of Revenue (Amendment) Bill (Senate Bills No.14 of 2018) on 13<sup>th</sup> July, 2018, which was referred to the National Assembly for concurrence. The National Assembly considered and passed the said Bill on 30<sup>th</sup> August, 2018, and the

President assented to it on 5<sup>th</sup> October, 2018. It is therefore baffling to say the least that the same National Assembly can argue that the Senate cannot originate a Division of Revenue Bill. Therein lies the challenge of argument without facts or arguments based on little or no knowledge.

Hon. Senators, as you have observed, Order No.8 lists the Division of Revenue (No.2) Bill (National Assembly Bill No.59 of 2019) for Second Reading. The Bill was passed by the National Assembly on 25<sup>th</sup> July, 2019. On 31<sup>st</sup> July, 2019, the Senate received a Message from the National Assembly on the passage of the Division of Revenue (No.2) Bill (National Assembly Bills No.59 of 2019) and its referral to the Senate for concurrence. The Speaker of the Senate directed that the Bill be read a First Time the following day, just to show how committed this House is to what matters and what is right.

The National Assembly Bill was indeed read a First Time on Thursday, 1<sup>st</sup> August, 2019, and referred to the Standing Committee on Finance and Budget. In compliance with the Constitution and the Standing Orders, the Committee undertook public participation on Tuesday, 6<sup>th</sup> August, 2019.

Hon. Senators, we are at a critical constitutional moment that calls this House to rise above, as it has always done, and provide a clear and concise way forward on the division of revenue process. While the National Assembly may have, without any constitutional or legal justification withdrawn the Senate Bill, the Senate must nevertheless remain true to its calling under Article 3 to respect, uphold and defend the Constitution of our country. I therefore implore this House to rise above the external aberration and politics of brinkmanship that may be displayed by other quarters and proceed with the usual focus to discharge our mandate.

Hon. Senators, it is for this reason that the leadership of the Senate, recognising the importance of the division of revenue process to the operations of both the national and county levels of government, resolved to prioritise the consideration of the Division of Revenue (No.2) Bill (National Assembly Bills No.59 of 2019) as evidenced in today's Order Paper.

Hon. Senators, I want to conclude by saying that what we are about to do is to affirm our position as the House of men and women of dignity and we do not want to be drawn into juvenile antics about nothing. We know we passed a legislation in this House but some of the Members of the National Assembly, whom I cannot discuss for obvious reasons, said very childish and immature things about this House and the process.

I told myself that was a test and an act of provocation, to see how committed we are to the cause, challenge and job that we have been given by the people of Kenya. Colleagues. Whereas you may want to express yourselves on what our counterparts did and the acts of absurdity that have been committed against our process, I plead with you--

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The law and our Standing Orders are very clear on what should happen when one House of Parliament receives a Message from another House. Therefore, we have our pending issue of how our Message was treated. My plea is that we should not fall into the trap of saying because somebody behaved childishly, we should also behave childishly.

I implore you that we treat this matter with the people of Kenya in mind and ignore what has happened. Those are things we can deal with in another forum because

we have a Message before us. The country is in a paralysis for over two months. Some county governments, if not all, are almost grinding to a halt. Strikes have been announced by workers who have not been paid. The Senate should not be seen anywhere near anything that contributes to the unending squabbles. It is my plea that we consider this Bill and return the Message from where it came from. As we go on recess, nobody should blame this House for playing hide and seek with Bills and trying to look big and superior.

Colleagues, I thought I should make that communication but it is not meant to gag you. In fact, on the contrary, I have already said a few things. I will not be surprised if you have some things to say just to express your displeasure because you need to rebuke childish and juvenile behaviour by people who have been entrusted with a serious duty on behalf of the people of Kenya.

Hon. Senators, with those very many remarks, I plead that we go to Order No.8. I can see some points of order. I wonder if I should allow the point of order or wait for debate during the Second Reading debate.

**Sen. Wetangula:** First things first.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well, Members. First things first. Try and be brief because we do not want to lose the quorum. I urge Members not to leave the Chamber.

Kindly, proceed, Sen. Wetangula.

**Sen. Wetangula:** Mr. Deputy Speaker, Sir, from your very diplomatic message, I can see that you are trying to appease the ignoramus. What we saw and heard, one of my heroes in life would have described it as infantile disorder. I listened to the debate from the 'Lower House' and many unsavoury things were said about this House and the Chair.

The Speaker of the National Assembly who has the distinction of having been my classmate departed from the norm and conducted himself in a very absurd manner. The record must be set straight lest in future we shall be asked what did when we were here. Having received the message from this House and correctly directing that the Message and the Bill it carried should go to First Reading; suddenly, at the Second Reading, the Speaker became wiser after the event. The Chairperson of the Budget and Appropriations Committee in absolute ignorance of the law, the Constitution and common sense attempted to tell the House and the country that the Senate was trying to do to increase the tax burden to the people of Kenya. That was total absurdity and falsehood.

Mr. Deputy Speaker, Sir, the Senate has not, cannot and will not impose any tax burden on Kenyans. This Constitution is the holy book of the law. It is the granum and the fundamental law. In some countries, the Constitution is called the basic law. All laws are born out of the Constitution. This House is established and founded from the foundations of the Constitution.

You have rightly read Article 218 of the Constitution that the Division of Revenue Act (DoRA) originates from Parliament. The Constitution does not say that DoRA originates from the National Assembly. This House originated DoRA. Therefore, for the Speaker of the National Assembly to say that the DoRA that was debated in this House, passed and lawfully forwarded to the National Assembly was incurably defective, unconstitutional and unlawful is to say the least. It is cheeky, mischievous and frivolous.

Mr. Deputy Speaker, Sir, this House only acts within the law. The Committee on Finance and Budget chaired by the distinguished Senator for Mandera County has senior

lawyers like yours truly here. We cannot let him go astray or act in ignorance of the law. Sen. (Dr.) Kabaka is a distinguished lawyer and a Member of the Committee. That notwithstanding, our Committee never sits without a lawyer in attendance from the Directorate of Legal Services just in case we, as seniors, may volunteer self-serving opinions, which is human.

My thinking is that as a matter of *quid pro quo*, the desire to move this Bill is premature. As a matter of *quid pro quo*, we have a DoRA from this House in the National Assembly. The treatment that our Bill gets, begets the treatment their Bill gets in this House. That is called fairness. It is very important to acknowledge that we are senior, mature and reasonable. Reason does not mean that when we are stepped on, belittled, besmirched and abused, you simply say thank you and walk away. That is not an act of fairness.

Mr. Deputy Speaker, sir, I urge you that before this Bill is ever going to be moved in this, we do not want as a House to air too much linen, never mind whether it is dirty or clean, in public. A *Kamukunji* was desirable and necessary for the Members to speak to this issue and make it very clear to our colleagues in the National Assembly that the Constitution writers which included you, the Deputy Speaker, and I were not foolish to create two Chambers of Parliament to co-exist and balance each other. It is for that reason that we have to send Messages to the National Assembly.

I heard one Member of the National Assembly ignorantly saying that DoRA is a money Bill. The DoRA is not a money Bill. It is very clearly defined in the Constitution as such. The DoRA does not levy taxes or raise revenue. The DoRA simply divides revenue that is already collected. The DoRA moves from an advisory from the Commission on Revenue Allocation (CRA).

Mr. Deputy Speaker, Sir, you did not read Article 218 wide enough. Article 218(2)(C) states that when Parliament deviates from the advice of the CRA and if that diversion is significant, then they must give a detailed summary of the deviation. You do not just start shouting obscenities against a House of Parliament simply because you do not agree with it.

There is a notion out there that we must make clear to this country. The national Government does not have money to give to county governments. Revenue is collected nationally from every Kenyan, put at the centre, then the CRA divides the revenue between the two levels of Government. The national Government obviously gets the lion's share – we leave that to another day – while the counties get their share of the revenue. Where do we get the notion that the national Government is giving money to the counties? The national Government does not have money to give to anybody. It is the revenue collected from you, I and the people we represent. Once the revenue is divided, it is incumbent upon the two Houses; this House included, to approve the allocation and then we go to the appropriation.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Kindly, conclude so that other Senators can also raise their points of order.

**Sen. Wetangula:** Mr. Deputy Speaker, Sir, you have rightly said that if there is any institution in this country that is disrespectful and looks at the Constitution with disdain, disrespect and arrogance, it is the National Assembly. How on earth would the National Assembly pass the Appropriations Bill without the DoRA if they are as studious

as they say and respect this document called the Constitution? In fact, the most incurably defective legislation passed in a House of Parliament as at today is the Appropriations Bill passed by the National Assembly.

I urge this House to stand and speak with one voice. Our integrity, dignity and the very existence of this House is under attack. The attack on this House is an attack on devolution. People voted for this Constitution because of devolution.

I beg to submit.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, colleagues. I can see so many requests and I understand. I can also understand the very strong comments made by Sen. Wetangula.

Allow me to make the following little comments: First, we are not debating Division of Revenue Act (DORA). There is no Motion before us. Whoever I gave a chance must have stood on a point of order following my communication. Once a Speaker makes a ruling, you can have an intervention; either to commend or to say something about it. We do not have a debate or Motion. That means you can actually say it in a minute or two, you do not have to take ten minutes.

The second comment I would like to make, Sen. Wetangula, DORA is a legislation. I am saying this for the record because the directions and communications from the Chair is part of the law making process of our legislative jurisprudence. DORA is a legislation *sui generis*. It means that it is a special kind of legislation that is just DORA; it is in a class of its own. It is about taking some money in the national Government and the other in the county government. It cannot be a Money Bill.

That should educate some of the people I heard making loud comments about nothing. These are people who have not led anything. They have not been in charge of anything in this world before they were voted to Parliament. It is a fact that seniority comes with responsibility. To those whom much has been given, much is expected of them. My plea continues nevertheless.

Let us hear the Senator for Nairobi City County.

**Sen. Sakaja:** Thank you, Mr. Deputy Speaker, Sir. It is difficult to talk in one minute and you have given a communication of 15 minutes, but we will try. The question before us is very simple. Whether we are going to debate the DORA that has come from National Assembly or not. Whether we are going to vote or not.

If today Sen. Olekina calls me a goat, it does not make me a goat. I know who I am. If the National Assembly tells us that we cannot do one or two things, it does not depend on what they say. We do not look for affirmation in the National Assembly. We find affirmation as a Senate in the Constitution. It is clear.

In fact, I am very happy that you have said that, indeed, there is even precedent of them receiving DORA that was initiated in this House, passing it and taking to the President for assent.

Mr. Deputy Speaker, Sir, I am really persuaded by your argument, because initially, I was going to side with Sen. Wetangula that if they have not discussed ours, we do not discuss theirs. However, if we follow the law of an eye for an eye, we will all lose our sight. We have serious questions that are before the Supreme Court that they will deal with.

Where we are today, this country is looking for sobriety and wisdom. I think in all fairness at this point, because it is just the Second Reading of this Bill, we can move it on to the Third Reading. We can still affirm our position in the Senate on the amount of Kshs327 billion which we said was just what we gave them; whatever amount we agree on. This is because our amounts did not just come. We did not cook numbers from the air, but there were issues of core inflation. I sat in that Mediation Committee.

At this time, let us be the bigger person as a Senate. Let us be the bigger House. Let us not join the juvenile antics of the National Assembly who are trying to prove a point. They do not affirm and define us. I persuade you to allow us to move quickly to vote and move on to the Committee Stage and agree on the Kshs335 billion and stand our ground. The Chairperson was proposing to amend to Kshs327. Let him persuade us that last time it was Kshs314 billion plus core inflation of 4 per cent and let us pass it.

I rest my case.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you. I will allow a few more, but let us read the Order first. Instead of muting debate, those comments can come as part of the Second Reading. Let us take a few more minutes and move to Committee of the Whole.

Next Order.

## BILL

### *Second Reading*

#### THE DIVISION OF REVENUE (NO. 2) BILL (NATIONAL ASSEMBLY BILL NO. 59 OF 2019)

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Chairperson, Finance and Budget Committee. Sen. (Eng.) Mohamud, you may now proceed.

**Sen. (Eng.) Mohamud:** Thank you, Mr. Deputy Speaker, Sir. I beg to move that The Division of Revenue (No. 2) Bill (National Assembly Bill No. 59 of 2019) be now read a Second Time.

The Bill before us was submitted to this House last week. In fact, we realized that when the National Assembly republished the Bill, they published the figure of Kshs316.5 billion. You should also recall that we passed the same Bill last time and the Bill was submitted to National Assembly with a figure of Kshs335 billion. It was our hope as a Committee that the National Assembly could have at least considered the Bill that will involve them, deal with the amendments and send it back to us.

Mr. Deputy Speaker, Sir, the Bill was read for the First Time and referred to the Committee on Budget Appropriation. Thereafter, it was actually tabled for debate in the National Assembly. After it was moved by the Chairperson of Budget and Appropriation Committee, there were interjections. Very mediocre arguments were brought forward. A Paper which was very detailed was read out by the National Assembly Majority Leader. Apparently, it was maybe written for him by some quarters. I listened to that Statement. It was actually very pathetic because it was raising non-issues.

Mr. Deputy Speaker, Sir, let me say that the reference to one House of Parliament baking a cake--- there is a lot of reference to a cake. The way a cake is made, where it

comes from and ingredients. All these things were talked about. However, no House has the authority to bake cakes here. In fact, the cake is made by Kenyans, of which we are all members. We know how taxes are raised in this country and nobody should arrogate himself or herself that, that is actually their mandate.

The people of Kenya gave us the Constitution of Kenya 2010. The Constitution has a bicameral House. Many issues were raised regarding Article 95(4) on the role of National Assembly. In fact, they read that Article 95(4) (a) that the Assembly determines the allocation of national revenue between the levels of Government as provided in Part 4 of Chapter 12.

Mr. Deputy Speaker, Sir, Article 96 of the Constitution says that the Senate represents the counties and serves to protect the interest of counties and their governments. You cannot protect the interest of counties and their governments without taking part in the revenue sharing process.

The National Assembly should not be telling us that it is their sole mandate to originate the Bill. The argument they were making was that they can determine what goes on between the two levels of Government and just give us to deal with County Allocation of Revenue Act (CARA) and nothing else. That is a fallacy and it cannot work.

Article 218 of the Constitution provides that the Bill can be introduced in Parliament and Parliament has two Houses. Article 110 of the Constitution tells us what a Bill that concerns counties is. Article 114 that they are happy to quote exempts any Bill under Article 218 from that provision.

The issue of the Division of Revenue Bill is the beginning of a budget process. The Budget Policy Statement is the first budget document that comes before Parliament. It is only after you have divided the money between the two levels of Government that the two levels of government can then start distributing the funds that they have.

One cannot purport to proceed with the national Budget when Division of Revenue Act (DORA) has not been put in place. Our sister House should respect the Constitution and the people entrusted with the law, especially those serving in the Attorney-General's Office, should also respect this law. The Head of State should not be allowed to sign laws that are illegal. I will not go far on that because the matter is in court.

The Bill before us proposes to allocate Kshs316 billion to the counties. When you ask the Members of the National Assembly to add more money, they will ask you where you intend to get the rest of the money. When dealing with the issue of Revenue Bill, you look at the revenues that are going to be raised nationally and you apportion that between the two levels of Government. Thereafter, you can start making the budget for national Government. The Members the National Assembly will tell you that they have already drawn a budget which is not legal as per the Constitution.

When they Read the Bill for the First Time and were open for debate, my Committee met and said that we were going to make an amendment to get a figure of Kshs327 billion, which was reached during mediation. We worked in good faith. Now that they are not working in good faith, I propose that we go to the original Bill which had Kshs335 billion for the counties. That is the Bill that we should take to them. We also removed managed equipment services from the Bill. In fact, we were willing to

consider it because we discussed during the mediation period and agreed, that the figure of Kshs6.2 billion be removed from the Bill that we are going to adopt.

This country has not been held hostage by us but by the Members of the National Assembly. The National Assembly believes that they belong to this country more than us. They also believe that they are the 'Parliament' that is supposed to act for Kenyans but they are wrong. DORA will not go anywhere without the concurrence of the two Houses.

I urge that House, including its leadership, to come back to their senses and act in the interest of Kenyans. Let us not act on our own whims, pretend to be superior and bring all sorts of atrocities in parliamentary debate.

I beg to move that the Bill before us, the Division of Revenue (No. 2) Bill (National Assembly Bills No. 59 of 2019) be read a Second Time and be amended as follows:

I am amending it here, on the Floor. I do not need to go anywhere else. In the Schedule where we have lease of 'medical equipment', we are removing the figure Kshs6.2 billion. There is a new conditional grant that was brought---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. (Eng.) Mahamud. Are you moving it in amended form?

**Sen. (Eng.) Mahamud:** Yes, Mr. Deputy Speaker, Sir. We recommend that the management equipment leased services be removed as we did because we were unable to get the contract figures for that contract, we do not know who the contractors are---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Just say what the amendment is about.

**Sen. (Eng.) Mahamud:** Mr. Deputy Speaker, Sir, the amendment is that the figure on the leasing of medical equipment be withdrawn. The figure for County Equitable Share be moved to Kshs335.67 billion. The matter on conditional grants, from loans and grants, came from National Treasury and it should not be controversial. We recommend that the figure under water towers protection and climate change mitigation and adaptation programme be increased by Kshs385 million for it to get to Kshs880 million.

With those amendments, I beg to move and we expect these people to pass this Bill tomorrow.

They have withdrawn the Bill and I agree with you that we should not behave like them; we should be the older sibling, the 'Upper House' for us not to---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. (Eng.) Mahamud.

**Sen. (Eng.) Mahamud:** Mr. Deputy Speaker, Sir, with those many amendments, I beg to move.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. (Eng.) Mahamud. You cannot move a Bill in amended form. You will bring the amendments during the Committee Stage.

Who is seconding?

*(Sen. (Eng.) Mahamud spoke off record)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. (Eng.) Mahamud, you are not on record.

**Sen. (Eng.) Mahamud:** Mr. Deputy Speaker, Sir, I beg to move and I ask Sen. Wetangula to second.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. Could we hear from Sen. Wetangula?

**Sen. Wetangula:** Mr. Deputy Speaker, Sir, notwithstanding my submissions a few minutes ago, I beg to second this Bill.

I wish to enjoin the Chairperson of my Committee and state that we shall move an amendment at the Committee Stage to strike out the figure of Kshs6.2 billion on medical equipment leasing. That is a subject that is very clear on the minds of every Member who is here. It is a subject that is shrouded in mystery. This House has been struggling to get the contracts of the medical leasing but we have not got any idea about them up to date.

We saw a number of scandalous items being leased such as disposable syringes, hand gloves, trays and all manner of things and this House should not condone that. The records are there for colleagues who were not in the last Senate. I know that my brother from Marsabit County and Sen. Dullo remembers what was tabled in this House and it shocked everybody. We cannot allow our counties to lease disposable syringes, hand gloves, trays and wooden chairs if we are indeed protecting counties.

I also enjoin my Chairperson and the Mover of the Bill to state that we are not just banding around the figure of Kshs335 billion. We are in conformity with the recommendations of the Commission for Revenue Allocation (CRA). Their recommendations are the ones that guide the sharing of revenue. Article 218 of the Constitution is clear that one has to give reasons for deviating from the recommendations of CRA. I have looked at the Bill from the National Assembly and there are no reasons. They are just playing “the money or the box” game that we see on television and we cannot play such kind of a game with Kenyans. The CRA appeared before the Senate and they repeatedly appeared before the Committee on Finance and Budget and they said that collectable revenue increased substantially from the previous financial year to this financial year.

As we debate this Bill, I want Members to be clear in their minds. There is no level of Government that gives money to another. That money is revenue shared between the two levels of government and revenue collected from people that we represent in this House. The Council of Governors should know and they should speak loudly that there is no gift of money coming from the national Government to them, neither is there any gift of money coming from the counties to the national Government. The money belongs to the people of Kenya and it is constitutionally and legally shared between the two levels of Government.

Mr. Deputy Speaker, Sir, so that we do not belabour the matter because this matter has been before us so many times, I would want to encourage that as we debate this, Members should not shy away from expressing their disgust and revulsion at the conduct of the ‘Lower House’ in handling this Bill. Yet, they go out there and want to be holier than the Senate and say that it is the Senate that is dragging this matter. The Senate is not, has not and will not drag any matter. It is in our interest to see counties working, developing and people in the counties getting medication, good roads, water and so on.

Never mind the issues of accountability. We are not dealing with issues of corruption in the counties; we are dealing with the constitutional principle of sharing of

revenue. The institutions of governance are called upon that whenever revenue is shared, they must make sure that the revenue is put to good use. It is the duty of the Auditor-General, Ethics and Anti-Corruption Commission (EACC), the Directorate of Criminal Investigation (DCI), this House, the Committee on County Public Accounts and Investment (CPAIC) Committee and all other institutions of governance to make sure that revenue is properly spent.

Mr. Deputy Speaker, Sir, I want to end here by seconding the Bill and giving the necessary notice as my colleague who moved did, that we are going to back to *status quo ante*, 335.

Thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): *Status quo ante*.

Order Senators. I will need some suggestions from the House in terms of how much time we need to spend on the Second Reading so that we go to the Committee Stage. The Chair needs to know how much time we have. We do not want numbers to go down again because we will look like we are playing games. We would want to know how much time of debate we have because I can see the level of interest is still very high.

If there is still Committee and another Division after Committee, we need to be realistic. The other time we passed this Bill in less than an hour; all the stages. Therefore, we should not be seen as if we are playing some funny games and we have already spoken to the country what our interest is. The people are watching and listening. Shall we say maybe half an hour for the Second Reading then after that, there will be the Committee of the whole and then the final Division?

Please be responsible enough; we do not want to go low on numbers.

*(Question proposed)*

To enable as many Senators as possible to speak, I will request that perhaps we take three minutes because if it is five minutes, only six people will speak. Let us do three minutes. Just say what has not been said and in any case, we have debated this Bill many times this year. Let us stick with three minutes. I will start with Sen. (Prof.) Kamar.

**Sen. (Prof.) Kamar:** Mr. Deputy Speaker, Sir, I will be very brief. I stand to support this Bill in the amended form that it is being proposed by the Committee.

As I support, I want to thank the Chair for the Communication that he made earlier because he has referred to Article 218 correctly that any House can initiate this Bill. What the 'Lower House' has done is something - that as you have described - extremely juvenile. I thought we finished this kind of behaviour in High School; when you do the ping pong. It was very disgusting to see what happened because you cannot see a Bill coming in then you rush yours so that you are the ones going ahead.

Mr. Deputy Speaker, Sir, I think it is very mature of this House and I think this is how we should display maturity, going forward. I think it is very important, but the real gist of the matter is the figure that we have. The figure of Kshs335 billion is not from nowhere. It is something that was calculated, and figures were given to us. We had two meetings with the Commission of Revenue Allocation (CRA) and we managed to be convinced because some of us were still talking of higher figures. The reason we were

talking of higher figures and I remember myself raising this, is the fact that Kenya is a signatory of the Maputo Declaration.

In the Maputo Declaration, 10 per cent of the budget - not of audited accounts - is supposed to go to agriculture. The rate of 15 per cent is supposed to go to health. Those two dockets have been devolved 90 per cent. I think it is time we came back and relooked at our budgets in relation to the commitments that we have made internationally, continentally and nationally, so that we budget and allocate money with reasons.

It was for that reason that we were going to push---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senators! Just have your seat, Sen. (Prof.) Kamar. The most honorable thing to do is to make a democratic decision on how to proceed. I am saying this because I am seeing a lot of movement. We should not act like we are playing with the people of Kenya. My request is that we should not move. I am seeing a lot of movement. Let us see how it goes or we might have to make a decision, whichever way it goes, dispose of it just as we have said then we go on.

Therefore, those who are retreating, I hope you will be back when the bell is rang.

**Sen. (Prof.) Kamar:** Mr. Deputy Speaker, Sir, in conclusion, as I had said, we need to start changing the way we are budgeting. We need to budget. This is our money and I agree with Sen. Wetangula that no one has more money than the other and there is nobody donating money to the other. This money belongs to Kenyans and the law provides that we must divide this money between the two levels of Government.

As we divide, we must have reasons why we are dividing the way we are doing. We have continued to depend on CRA and we will continue to do so. However, we want CRA to start looking at the agreements and commitments that we have. When we talk of this one agreement that is continental, we have countries that are already spending 10 per cent on agriculture and 15 per cent on health in this African continent. A lot of people are looking at Kenya and wondering because Kenya was ahead of everybody and we seem to be retreating in the way we are doing our work. I hope that by next year we will have more funding allocated according to the functions that have been devolved.

With those remarks, I support.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you. Sen. Olekina.

**Sen. Olekina:** Thank you, Mr. Deputy Speaker, Sir, I will be brief. I rise to support the Division of Revenue Bill. While supporting this Bill, I am happy that this House which is a House of union; a House that unites the entire country together has allowed wisdom to prevail.

This fight between the national Government, county governments and the National Assembly is something which is dividing this country. It is about time that Kenyans knew that we are not asking for the money to be sent to the Governors. We are asking for what is devolved to be sent to the county governments. Whenever I watch the debate in the National Assembly, so often I feel like the Members of the National Assembly do not really understand their roles.

Mr. Deputy Speaker, Sir, when I was coming into this House this afternoon, I happened to watch the proceedings where another Bill that had been sent from this House was also stepped down. Therefore, I am asking myself, what is it that we are trying to do. It is important that Kenyans understand that this fight is not about this House trying to condone or rather support corruption, it is just that we are trying to ask ourselves; what is

the point of having a bi-cameral system of Parliament, yet when one House performs its role, the other House is always out there saying that it is not your role to divide the revenue. The money is divided by Parliament and Parliament is made up of two Houses.

Mr. Deputy Speaker, Sir, as I support this Bill, I wish to remind Kenyans that as a country, it is important for all of us to understand what it is that we are spending. This will ensure that we do not complain tomorrow and say that there is no money to send to county governments, yet people who work in the county governments are paying taxes and expect services.

With those few remarks, I support.

**Sen. Ndwiga:** Thank you, Mr. Deputy Speaker, Sir. I wish to join my colleagues in supporting this Bill as read. I hope that we shall make the necessary amendments when we get to the Committee of the Whole Stage. I remind this House and the ‘Lower House’ that the reason Kenyans gave themselves this Constitution was, first, to create institutions. When you have a country that does not respect institutions that it has created, that country is headed to anarchy.

Mr. Deputy Speaker, Sir, those of us who have been in this Parliament for many years sat on the Opposition benches and listened to Government telling us that we could only get funding in our constituencies when the Government is happy with us. We are reverting to the same. Some of us will never allow that to happen for as long as we sit in this House.

We created institutions and one of them that Kenyans gave themselves through the Constitution is the Commission on Revenue Allocation (CRA), knowing very well that if we leave it to the Government to decide what to do and where to take resources, that will never be done fairly. Today, we are discussing revenue allocation and, as the Senate, we are not getting figures from the air. These figures were given to us. We sat with the CRA and they showed us why they arrived at the figure of Kshs335 billion.

Mr. Deputy Speaker, Sir, this House must stick to that figure, because first, we respect the Constitution. Secondly, we want to tell this country that institutions created by the Constitution must be respected and allowed to do their job.

I listened to the debate in the National Assembly and heard what the hon. Members said. I pity them because they do not know where they are heading to and what it is we are doing to this country. It is a fact that most of the duties or functions have been devolved. I dare say that the success of the Big Four Agenda will not happen for as long we have a National Assembly that behaves the way it does.

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

**Sen. Dullo:** On a point of order, Mr. Deputy Speaker, Sir. Pursuant to Standing Order 104(1), I beg to move that the Mover be now called to reply. This is because of the urgency of this matter and the fact that we seem to be losing the numbers.

*(Sen. Ochillo-Ayacko spoke off record)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Ochillo-Ayacko. We will go the democratic way. That is what I keep on saying. That is a Procedural Motion that has been moved. Has it been seconded?

I will, therefore, put the question.

*(Question that the Mover be now called upon to reply put and negatived)*

**Sen. Kasanga:** Thank you, Mr. Deputy Speaker, Sir. I will not speak for long. If it were not for your persuasive communication this afternoon, I had also taken the same position as Sen. Wetangula. I was of the view that we should not even begin to give it the light of day.

In a couple of conversations that I have shared with the Members of the National Assembly and their reason the conversation on Division of Revenue Bill always fails, they say that there is no money and that the governors do not deserve money. I say to them that it is most unfortunate because the oath we took as Members of Parliament before the Almighty God required us to respect, uphold and defend the Constitution, and to do so conscientiously.

The National Assembly has failed Kenyans in its duty because of its ignorance and blatant disregard of the Constitution, when it comes to this matter here, which you have clearly stated in your Communication. My prayer is that if this Communication could get to Kenyans. This is because they need to understand where the failure is coming from and why we are in this situation now.

I support the Bill with its amendments and pray that Parliament works towards achieving 40 per cent of revenue going to the counties, because that is what is well deserved.

**Sen. Halake:** Thank you, very much Mr. Deputy Speaker, Sir. I will not take long as well. I stand to support the Division of Revenue Bill as proposed by the Senate Chairperson of the Committee on Finance and Budget. Anybody who says that the Senate has no jurisdiction in this matter as you have already rightly put is totally ignorant, but let me not go there.

I support this amendment to allocate Kshs335 billion for the following reasons: I have noticed that the negative impact of the national debt on division of revenue had been ignored in the first place. To say that counties are misusing money and that is why they should not get more money is---

While there may be some issues around that, these are two different matters and we should not, on that basis, bring the discussion of below optimal use of resources into this debate.

Mr. Deputy Speaker, Sir, I know that the country has been telling us that we do not have money and should give our salaries and what have you, but what about the negative impact of the burden of close to Kshs6 trillion that is affecting our ability to provide services in counties and at the national level?

I also support this amendment because as it stands now, as proposed by the National Assembly, the Division of Revenue Bill deviates from the CRA recommendations. Therefore, this House must stand its ground and ensure that we support this Bill.

Additionally, this House is not doing this for the sake of it, but for the people of this country. Therefore, the point of this Bill was never about 'upper House' or 'Lower House', but the people for this country who need more services. In fact, the minimal

approach of 15 per cent constitutional requirement should be ignored and 35 to 45 per cent adjudicated.

Since the Kshs316 billion is offending the constitutional provisions under Articles 202 and 203, which say that resources must follow functions and the functions that have been devolved must be provided with enough resources. Article 174(f) of the Constitution provides for subsidiarity to ensure services are offered according to the proximity. For instance, the Budget Policy Statement (BPS) of 2019 has shown that we need much more to go to the counties.

I support.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you. I will allow maybe two more.

Proceed, Sen. Faki.

**Sen. Faki:** Asante sana, Bw. Naibu Spika kwa kunipa fursa hii ili niweze kuchangia Mswada huu wa Mgao wa Fedha mwaka wa 2019/2020. Mswada huu umekuja kwa wakati mwafaka kabisa. Tumeona kwamba hapo awali, kumekuwa na mtafaruku mkubwa katika serikali za kaunti kuhusiana na malipo ya malimbukizi ya madeni ambayo yanafuatana na kucheleweshwa kwa pesa hizi.

Bw. Naibu Spika, ilikuwa ni makosa kwa Bunge la Kitaifa kutupilia mbali Mswada wa Seneti kwa sababu sisi sote ni Bunge moja. Ni majina tu mawili ambayo tumepewa kwamba, moja ni la Seneti na linguine ni la Kitaifa. Bunge hizi mbili zinapaswa kufanya kazi ambazo Katiba imewapa.

Bw. Naibu Spika, Kifungu 218 cha Katiba kinasema kwamba, Mswada wa DORA ambao unahusu ugawaji wa pesa za kaunti unaweza kujadiliwa katika Bunge lolote; liwe la Seneti au lile la Kitaifa. Kwa hivyo, ilikuwa ni makosa kwa wenzetu wa Bunge la Kitaifa kutupilia mbali Mswada wetu. Hatufai kuwalaani kwa sababu tutakuwa tunajilaani wenyewe kama Bunge. Lakini sisi kama Bunge ambalo lina hadhi kubwa mbele ya macho ya wananchi, inatupasa kurekebisha matatizo ambayo yametokea.

Bw. Naibu Spika, ningependa kuunga mkono mapendekezo ya kurejesha kiwango cha fedha kiwe Kshs335 billioni kama inavyopendekezwa katika Mswada huu. Ni kwa sababu kiwango hiki kimependekezwa na Kamati ya Ugavi wa Pesa za Serikali (CRA). Sisi kama Seneti tulikubaliana na mapendekezo yao kwa sababu Kamati hii ina mizizi yake katika Katiba yetu. Ni Kamati iliyoundwa kisheria. Hatuwezi kubadilisha mapendekezo yao bila ya kutoa hoja ambazo zinastahiki, kuonyesha kwamba tunaweza kubadilisha fedha zile.

Bw. Naibu Spika, kwa hayo machache, ninaunga mkono Mswada huu.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well, Senator. We need to move on so that a few more people can speak.

**Sen. (Dr.) Kabaka:** Thank you, Mr. Deputy Speaker, Sir. I will be very brief because a lot has been said. I stand to support this Bill. I am a Member of the Finance and Budget Committee. I need to state that the figures which were given by the CRA are very clear. They are scientific. I do not understand the justification of the National Assembly for increasing it from Kshs314 billion to Kshs316 billion. They have no scientific justification of Kshs2 billion. To that extent, they are faulted.

Article 216 (1)(4) of the Constitution which you cited is very categorical that 'Parliament' constitutes of the National Assembly and the Senate. Therefore, we are

called upon to protect the Constitution and promote democratic governance in the Republic in our endeavours. The National Assembly has not done that. In fact, they have failed this Republic under Article 3.

As you have stated clearly, there are matters pending in the High Court, but one thing is very clear that it is straight law that because we have filed our case in the High Court, it has no choice, but is bound by the previous decision of the Supreme Court.

As a lawyer, you are aware of the decision of Leslie and Grindlays Bank during the time of ICA where the Supreme Court then, before we went the bitter way of disintegration of East African Community, where each country retained the Court of Appeal as the bastion of justice.

Now that we have the Supreme Court of Kenya which will deal with that decision, the court can deviate on its own previous decision. We need good judges, who we have, and our case will go through. As you said, this is a House of *wazees* where wisdom prevails. Clearly, we stand to be guided. It is very important that we do not seem to be subservient to the National Assembly. That is very dangerous and would be setting a very bad precedent. If, indeed, our Bills are rejected and stalled in the National Assembly---

*(Sen. Kabaka's microphone went off)*

Allow me one minute to finish.

Thank you, Mr. Deputy Speaker. This is not a contest of superiority of who is more senior than the other. It is a question of the people of Kenya. More money should devolve and we support. The issue of whether the money goes to the governors to be misappropriated is a different issue. This is because there are agencies to deal with that as we shall deal with governors at the counties appropriately.

I support.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well, the 30 minutes are over.

**Sen. Mwaura:** Thank you, Mr. Speaker, Sir. I rise to support this Bill with amendments. There is reason as to why people refer to the National Assembly as the 'Lower House'. If you get into the House, there is a big hall where they must all fit. The ground is lower there and that might be the reason. People are caught up in this issue of unicameralism, as I have said here before.

They have not woken up to the reality that we have two Houses now. It is that same problem we have with the national Treasury which seems to confuse its mandate under the Public Finance Management Act (PFM) because of the term "national" to mean national Government. May be, it should actually be called statutory.

We are talking about Kshs335 billion. We have a scientific formula where Kshs314 billion is 6.9 per cent inflation. We have been magnanimous to say that we even do core inflation of 4 per cent. However, the National Assembly seems to be confusing this whole exercise as if we are in some butchery where we are tearing apart some carcass. It is really shameful. There is nobody who shares money. There is no donation here. We are not in a harambee where they say we will give you this, take that.

If we were to cut down on the various expenses within the ambit of the national Executive, we would get money that we require. In fact, the issue of national interest has never been properly canvassed because the national Government has confused national

interest to mean the functions of the national Treasury. We need more money to go to counties. This is a statement that we have made many times.

If we had more money we would not have many people dying of cancer because the leaders that we have just buried are just an example of what is happening. Everybody here will confess that we receive a lot of requests from people who want us to assist them when they are suffering from cancer. For example, I deal with so many people with skin cancer because of albinism. There is no treatment. The National Assembly must rise to the occasion.

I want to congratulate the Senate. This is not a defeat. This is magnanimity. It is showing the way. It is actually saying that, I am the bigger brother and I care for my country so that we move forward.

I support.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you Sen. Mwaura. You have concluded where the Chair had started by pleading that however bad it looks, there are some things that you do painfully as a sign of leadership.

Let us have the Mover.

**Sen. Ochillo-Ayacko**: On a point of order, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it. Sen. Ochillo-Ayacko?

**Sen. Ochillo-Ayacko**: I have been trying to catch your eye.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): This is the first time I have seen an intervention unless there was a problem with your gadget.

**Sen. Ochillo-Ayacko**: Mr. Deputy Speaker, Sir, it appears there is a problem. When I tried earlier, I got an opportunity during statements. I have been unable to catch your eyes. I have something to say on this and I believe that it is important.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Yes, what is it?

**Sen. Ochillo-Ayacko**: Mr. Deputy Speaker, Sir, if you allow me to debate the matter before the Mover speaks.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Just say what you want to say because you rose on a point of order. I will give you three minutes.

**Sen. Ochillo-Ayacko**: Mr. Deputy Speaker, Sir, this is a very important issue to me; I do not know whether it is important to other Senators. My little knowledge tells me that if you want to seek freedom and justice, then the one who has been invaded or enslaved must also fight it.

I notice that the mood in this House is for us to behave decently and accommodate the National Assembly. This is because the National Assembly is the smaller brother and should get away with misbehaviour. The biggest problem with that is that we are also expected to defend the Constitution. The first way of defending the Constitution is to ensure that we conduct ourselves constitutionally and also hold others to account.

Mr. Deputy Speaker, Sir, the issue of the Division of Revenue Act (DORA) that was taken to the National Assembly, as you had rightly read in your Statement, was shelved. The Speaker of the National Assembly said that it was unconstitutional. By carrying out the debate in the manner in which we are carrying it, we seem to be acquiescing to the fact that our activities are unconstitutional and what we are debating here is generally agreeing with what the National Assembly is doing.

If it was for me to agree, I would have proposed that we suspend our recess and allow the leadership, including yourself, to have a session with the National Assembly somewhere where it is not recorded because everything we do here is in the public domain.

*(Sen. Ochillo-Ayacko's microphone went off)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Give him another one minute. He was in the middle of a sentence.

Conclude, Sen. Ochillo-Ayacko. You have made your point but just tie it up and conclude.

**Sen. Ochillo-Ayacko:** Mr. Deputy Speaker, Sir, I was proposing that the wisdom that you have used to plead with us, the same wisdom should allow you to discuss with the National Assembly, away from where Membership are, so that when you bring this matter for debate, we are able to debate freely. There are certain things we would have liked to say that we do not want to say because our children and grand-children will read them.

As Leadership, you should take the leadership position and be able to solve or sanitize this matter before it comes to us when we are extremely angry.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Curiously, I agree with you, Sen. Ochillo-Ayacko. Something has to give way. We cannot live like this. That notwithstanding, let us see what we can do now. However, I agree with you that even if it means suspending the recess, the country cannot be put in this kind of situation. It is irresponsible and careless.

Mover, proceed.

**Sen. (Eng.) Mahamud:** Mr. Deputy Speaker, Sir, I beg to move.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Senators. We have visitors.

Sen. (Dr.) Kabaka, I hope you are not leaving because we are proceeding to Division right away.

*(Sen. Dr. Kabaka stood up in his place)*

*(Interruption of debate on the Bill)*

## COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM KORINYANG  
MIXED PRIMARY SCHOOL, TURKANA COUNTY

We have teachers and students from Korinyang Mixed Primary School in Turkana County. They are welcome to the Senate of the Republic of Kenya.

*(Applause)*

Very well. We now move on.

*(Resumption of Debate on the Bill)*

I will now put the Question.

*(Question, that the Division of Revenue (No.2) Bill  
(National Assembly Bills No.59 of 2019)  
be now read a Second Time put)*

I direct that the Division Bell be rung for five minutes. Will the Whips be doing what they should be doing as the Bell is ringing?

*(The Division Bell was rung)*

I direct that the Division Bell be rung for a further two minutes. I think we are almost getting the quorum.

*(The Division Bell was rung)*

Whips, can you confirm if we are okay?

Order Sen. Halake! Proceed to where you should be. Hon. Senators, I want us now to go to Division and pray that we stay on. The Committee of the Whole Stage should not take more than 10 minutes. We know the amendment by the Chairperson, but there are no serious issues.

I now direct that the Doors be locked and Bars drawn.

*(The Doors were locked and the Bars drawn)*

Hon. Senators, I will put the question again, for those who were outside the Chamber, which is that The Division of Revenue Bill (No.2) (National Assembly Bill No.59 of 2019) be now read a Second Time.

Everybody, vote now. The assisted voters should proceed and do the necessary.

## DIVISION

### ELECTRONIC VOTING

*(Question that the Division of Revenue (No.2) Bill  
(National Assembly Bills No.59 of 2019)  
be now read a Second Time, put and the Senate  
Proceeded to vote by County Delegations)*

**AYES:** Sen. Boy, Kwale County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. (Eng.) Hargura, Marsabit County; Sen. (Dr.) Kabaka, Machakos County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. (Prof.) Kindiki, Tharaka-Nithi County;

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Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County; Sen. Linturi, Meru County; Sen. (Eng.) Mahamud, Mandera County; Sen. (Dr.) Mbiti, Trans Nzoia County; Sen. Mpaayei, Kajiado County; Sen. (Dr.) Musuruve, Kakamega County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita-Taveta County; Sen. Mwaura, Kiambu County; Sen. Ndwiga, Embu County; Sen. Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. Omanga, Nairobi City County; Sen. Poghisio, West Pokot County; Sen. Prengei, Nakuru County; Sen. Wambua, Kitui County; Sen. Wario, Tana River County; and, Sen. Wetangula, Bungoma County.

**NOES:** Nil

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, the results of the Division are as follows:-

**AYES:** 26

**NOES:** Nil

**ABSENTIONS:** Nil

The “Ayes” have it.

*(Question carried by 26 votes to nil)*

*(The Bill was read a Second Time and committed to a Committee of the Whole today by leave of the House)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, we will now proceed to the last bit. So, we will go straight to Committee of the Whole. The Chairperson has promised us that it will not take more than five minutes. So, please do not leave the Chamber.

### COMMUNICATION FROM THE CHAIR

#### VISITING DELEGATION FROM CHANGOI PRIMARY SCHOOL, BOMET COUNTY

Meanwhile, we have other students and teachers from Changoi Primary School, Bomet County.

I will give the Senator for Bomet a minute to welcome the pupils.

**Sen. (Dr.) Langat:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to join you in welcoming the pupils from Changoi Primary School from my County. I welcome them to this Senate. I hope they will enjoy their visit. We shall meet later.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Well done. I will apply Standing Order No. 40.

*(Sen. Omanga and Sen. (Dr.) Langat consulted loudly)*

Order, Senator for Bomet! You know what a Senator does when they want to catch the eye of the Speaker. It is not what you and Sen. Omanga are doing. It is not by shouting. You press for an intervention.

*(Sen. Omanga stood up in her place)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it, Sen. Omanga? You seem agitated?

*(Sen. Omanga ' microphone went off)*

Give Sen. Omanga the microphone.

**Sen. Omanga:** Asante, Bw. Naibu Spika. Ningependa kuwajulisha kwamba nilisomea Changoi Primary School. Ninawakaribisha wanafunzi kutoka Bomet. Ningependa kuwaambia yote yawezekana. Siku moja wataweza kuwa Seneta, gavana au Rais wa Kenya. Ninawahimiza na kuwatia moyo kwamba, yote yawezekana.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Omanga, your agitation was justified. I will now apply Standing Order No. 40 (2) and reorganize the business for the convenience of the House. We will skip Order No.9 for now and go straight to Order No.10.

## BILL

### *Second Reading*

THE CANCER PREVENTION AND CONTROL (AMENDMENT) BILL  
(SENATE BILLS NO. 9 OF 2019)

*(Bill deferred)*

Next Order.

## COMMITTEE OF THE WHOLE

*(Order for Committee read)*

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

### IN THE COMMITTEE

*[The Temporary Chairperson (Sen. (Prof.) Kamar in the Chair)]*

THE DIVISION OF REVENUE (NO.2) BILL  
(NATIONAL ASSEMBLY BILLS NO. 59 OF 2019)

**The Temporary Chairperson** (Sen. (Prof.) Kamar): Hon. Senators, we are now ready to commence the procedure in the Committee of the Whole. We will start with Clauses 3 to 5.

*Clauses 3-5*

*(Question that Clauses 3,4 and 5 be part of the Bill proposed)*

**The Temporary Chairperson** (Sen. (Prof.) Kamar): The Division will be at the end.

*The Schedule*

**Sen. (Eng.) Mahamud:** Madam Temporary Chairperson, I beg to move:  
 THAT the Bill be amended by deleting the schedule and substituting therefor the following new schedule-

Type/level of allocation	Amount in Ksh.	Percentage (%) of 2014/15 audited and approved Revenue i.e. Ksh.1,038,035 Millions
<b>A. National Government*</b>	<b>1,535,746,497,191</b>	
Of which:		
1. Leasing Of Medical Equipment		
2. Compensation For User Fees Forgone	900,000,000	
3. Level 5 Hospitals	4,326,000,000	
4. Supplement For Construction Of County Headquarters	485,152,184	
5. Rehabilitation of Youth Polytechnics	2,000,000,000	
<b>B. Equalization Fund</b>	<b>5,760,000,000</b>	0.60%
<b>C. County Equitable Share</b>	<b>335,670,000,000</b>	32.00%
<b>D. Total Shareable Revenue</b>	<b>1,877,176,497,191</b>	
Memo items		
<b>1. County Equitable Share</b>	<b>335,670,000,000</b>	

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<b>2. Additional conditional allocations(National Government share of Revenue) of which;</b>	<b>7,711,152,184</b>	
2.1. Leasing Of Medical Equipment		
2.2 Compensation For User Fees Forgone	900,000,000	
2.3 Level 5 Hospitals	4,326,000,000	
2.4 Supplement For Construction Of County Headquarters	485,152,184	
2.5 Rehabilitation of Youth Polytechnics	2,000,000,000	
<b>3. Allocation from Fuel Levy Fund (15%)</b>	<b>8,984,062,500</b>	
<b>4. Conditional allocations (Loans &amp; grants) of which:</b>	<b>39,089,877,210</b>	
4.1 IDA-Kenya Devolution Support Program (KDSP) Level 1	1,410,000,000	
4.2 IDA-Kenya Devolution Support Program (KDSP) (Level 2 Grant)	4,890,000,000	
4.3 IDA-Transforming Health Systems for Universal Care Project	2,994,247,736	
4.4 DANIDA-Universal Healthcare For Devolved System Program	986,583,544	
4.5 IDA-National Agriculture & Rural Inclusive Growth Project (NARIGP)	7,232,719,940	
4.6 EU-Instruments for Devolution Advice and Support (IDEAS)	492,698,583	
4.7 IDA (World Bank) - Kenya Climate Smart Agriculture Project (KCSAP)	3,643,298,670	
4.8 World Bank- Kenya Urban Support Program(KUSP)- UDG	11,464,702,500	

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4.9 World Bank- Kenya Urban Support Program(KUSP)- UIG	396,000,000	
4.10 IDA- Water and Sanitation Development Project (WSDP)	3,500,000,000	
4.11 Sweden Agriculture Sector Development Programme II ( ASDP II)	849,626,237	
4.12 EU- Water Tower Protection and Climate Change Mitigation and Adaptation Programme (WaTER)	880,000,000	
4.13 Drought Resilience Programme in Northern Kenya	350,000,000	
<b>Total County Allocations= (1+2+3+4)</b>	<b>391,455,091,894</b>	

*(Question of the amendment proposed)*

**The Temporary Chairperson** (Sen. (Prof.) Kamar): The Division will be at the end.

*Clause 2, the Title and Clause 1*

*(Question that Clause 2, the Title and Clause 1 be part of the Bill proposed)*

**The Temporary Chairperson** (Sen. (Prof.) Kamar): The Division will be at the end.

We are now ready for Division. I order that the Bell be rung for one minute.

*(The Division Bell was rung)*

*(Voting in progress)*

**The Temporary Chairperson** (Sen. (Prof.) Kamar): That is the end of voting time. Can we have Members who need assistance to vote approach the Table?

*(Several Senators approached the Table)*

Hon. Senators, we will announce the results at the end. Let us now go to the second one.

Voting is over. Who needs assistance? There is only one person who did not vote.

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Hon. Members, that is the end of the Division.

### DIVISION

#### ELECTRONIC VOTING

*(Question, that the Schedule should be amended as proposed put, and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. Boy, Kwale County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. (Eng.) Hargura, Marsabit County; Sen. (Dr.) Kabaka, Machakos County; Sen. Kibiru, Kirinyaga County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kinyua, Laikipia County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. (Dr.) Langat, Bomet County; Sen. Linturi, Meru County; Sen. (Eng.) Mahamud, Mandera County; Sen. (Dr.) Mbito, Trans Nzoia County; Sen. Mpaayei, Kajiado County; Sen. (Dr.) Musuruve, Kakamega County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita Taveta County; Sen. Mwaura, Kiambu County; Sen. Ndwiga, Embu County; Sen. Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. Omanga, Nairobi City County; Sen. Poghisio, West Pokot County; Sen. Prengei, Nakuru County; Sen. Wambua, Kitui County; Sen. Wario, Tana River County and Sen. Wetangula, Bungoma County.

**NOES:** NIL

**The Temporary Chairperson** (Sen. (Prof.) Kamar): Hon. Senators, the results are as follows:-

**AYES:** 27

**NOES:** Nil

**ABSENTIONS:** Nil

The 'Ayes' have it.

*(Question carried by 27 votes to Nil)*

### DIVISION

#### ELECTRONIC VOTING

*(Question, that Clauses 3, 4, 5, the Schedule (as amended), Clause 2, the Title and Clause 1 be part of the Bill, put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. Boy, Kwale County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. (Eng.) Hargura, Marsabit County; Sen. (Dr.) Kabaka, Machakos County; Sen. Kibiru, Kirinyaga County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kinyua, Laikipia County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. (Dr.) Langat, Bomet County; Sen. Linturi, Meru County; Sen. (Eng.) Mahamud, Mandera County; Sen. (Dr.) Mbito, Trans Nzoia County; Sen. Mpaayei, Kajiado County; Sen. (Dr.) Musuruve, Kakamega County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita Taveta

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County; Sen. Mwaura, Kiambu County; Sen. Ndwiga, Embu County; Sen. Ochiillo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. Omanga, Nairobi City County; Sen. Poghisio, West Pokot County; Sen. Prengei, Nakuru County; Sen. Wambua, Kitui County; Sen. Wario, Tana River County and Sen. Wetangula, Bungoma County.  
**NOES: NIL**

**The Temporary Chairperson** (Sen. (Prof.) Kamar): Hon. Senators, the results are as follows:-

**AYES:** 27

**NOES:** Nil

**ABSENTIONS:** Nil

The 'Ayes' have it.

*(Question carried by 27 votes to Nil)*

Hon. Senators, may I now invite the Mover to report to the Committee of the Whole.

**Sen. Dullo:** Madam Chairperson, I beg to move that the Committee do report to the Senate its consideration of the Division of Revenue Bill (No.2) Bill (National Assembly Bill No. 59 of 2019) and its approval thereof with Amendments.

*(Question proposed)*

*(Question put and agreed to)*

**The Temporary Chairperson** (Sen. (Prof.) Kamar): Hon. Senators, we will go straight to the Third Reading. Please do not go away.

*(The House resumed)*

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I now call upon the Chairperson to report progress.

## **REPORT, CONSIDERATION OF REPORT AND THIRD READING**

THE DIVISION OF REVENUE (NO.2) BILL  
(NATIONAL ASSEMBLY BILLS NO.59 OF 2019)

**Sen. (Prof.) Kamar:** Mr. Deputy Speaker, Sir, I beg to report that the Committee of the Whole has considered The Division of Revenue (No.2) Bill (National Assembly Bills No.59 of 2019) and its approval thereof with amendments.

**Sen. Dullo:** Mr. Deputy Speaker, Sir, I beg to move that the House do agree with the Committee on the said report. I request Sen. Olekina to second.

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**Sen. Olekina** seconded.

*(Question proposed)*

**Sen. Mwaura:** Mr. Deputy Speaker, Sir, I wish to congratulate the Movers and the whole House for a job well done. This is historical because if a child keeps on making the same mistake, you should give them a second and a third chance. By passing this Bill, we have given ourselves a chance to show the “Lower House” of our magnanimity. Indeed, theirs is a three-streamed school with over 300 people. I am sure that we can now reason together, if they take this golden opportunity.

I beg to support.

*(Question put and agreed to)*

**Sen. Dullo:** Mr. Deputy Speaker, Sir, I beg to move that The Division of Revenue (No.2) Bill (National Assembly Bills No.59 of 2019) be now read a Third Time. I request Sen. Olekina to second.

**Sen. Olekina** seconded.

*(Question proposed)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Wetangula, do you have a comment?

**Sen. Wetangula:** Mr. Deputy Speaker, Sir, I beg that upon conclusion of this Business, the Message should be delivered to the “Lower House” this afternoon.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Is that the opinion of the House?

**Hon. Senators:** Yes!

**The Deputy Speaker** (Sen. (Prof.) Kindiki): It will be done. Thank you Sen. Wetangula.

I will now put the Question.

We will go to the Division. I order that the Division Bell be rung for a minute.

*(The Division Bell was rung)*

You should now get ready to vote. Start voting now.

*(Voting in progress)*

Those who wish to be assisted to vote should approach the Clerks-at-the-Table.

*(Several Senators walked to the Clerks-at-the-Table and registered their votes)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, I am now ready to announce the results of the last Division. Before I do that, I want to make two quick points. One, I require your consent and views. We have Order No. 9, which is the Cancer Prevention and Control (Amendment) Bill, which is just a Division with no debate; no nothing. We were wondering whether after this, we can just vote and then have the Senators released in terms of quorum. However, if you think that, that is something that can wait, I will leave that to you. Can I hear any views or comments? Can we vote on it? Let us have a proposal; do you feel we can vote now? Can I have proposals? It will take one minute, because there is no debate.

Yes, Sen. Olekina?

**Sen. Olekina:** If we have three of them, we can just vote for them; it is a one vote.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Let us have another view. Is there any other view? Can we vote on the Cancer Prevention and Control (Amendment) Bill now? I will put the question.

*(Question, that the House votes on the Cancer Prevention and Control (Amendment) Bill, put and agreed to)*

The second one is that I just wanted to reaffirm that the request that has been made by Sen. Wetangula and approved by acclamation by the House, will be done. When the Chair rises from this Chair, that Communication will leave the Senate towards the National Assembly within five minutes.

## DIVISION

### ELECTRONIC VOTING

*(Question, That the Division of Revenue (No.2) Bill (National Assembly Bill No.59 of 2019) be now read a Third Time, put and the Senate proceeded to vote by county delegations)*

**AYES:** Sen. Boy, Kwale County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. (Eng.) Hargura, Marsabit County; Sen. (Dr.) Kabaka, Machakos County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kibiru, Kirinyaga County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County; Sen. Linturi, Meru County; Sen. (Eng.) Mahamud, Mandera County; Sen. (Dr.) Mbito, Trans Nzoia County; Sen. Mpaayei, Kajiado County; Sen. (Dr.) Musuruve, Kakamega County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita Taveta County; Sen. Mwaura, Kiambu County; Sen. Ndwiga, Embu County; Sen. Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. Omanga, Nairobi City County; Sen. Poghisio, West Pokot County; Sen. Prengei,

Nakuru County; Sen. Wambua, Kitui County; Sen. Wario, Tana River County and Sen. Wetangula, Bungoma County.

**NOES:** Nil

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, the results of the Division are as follows:-

**AYES:** 27

**NOES:** Nil

**ABSENTIONS:** Nil

The “Ayes” have it.

*(Question carried by 27 votes to Nil)*  
*(The Bill was accordingly read the Third Time and passed)*

## **BILL**

### *Second Reading*

THE CANCER PREVENTION AND CONTROL (AMENDMENT) BILL  
(SENATE BILLS No.9 OF 2019)

*(Sen. (Dr.) Ali on 30.7.2019)*

*(Resumption of Debate interrupted on 31.7.2019)*

## **DIVISION**

### **ELECTRONIC VOTING**

*(Question, that the Cancer Prevention and Control (Amendment) Bill  
(Senate Bills No.9 of 2019) be now read a Second Time, put  
and the Senate proceeded to vote by county delegations)*

**AYES:** Sen. Boy, Kwale County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. (Eng.) Hargura, Marsabit County; Sen. (Dr.) Kabaka, Machakos County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kibiru, Kirinyaga County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County; Sen. Linturi, Meru County; Sen. (Eng.) Mahamud, Mandera County; Sen. (Dr.) Mbiti, Trans Nzoia County; Sen. Mpaayei, Kajiado County; Sen. (Dr.) Musuruve, Kakamega County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita Taveta County; Sen. Mwaura, Kiambu County; Sen. Ndwiga, Embu County; Sen. Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. Omanga, Nairobi City County; Sen. Poghisio, West Pokot County; Sen. Prengei, Nakuru County; Sen. Wambua, Kitui County; Sen. Wario, Tana River County and Sen. Wetangula, Bungoma County.

**NOES:** Nil

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, the results of the Division are as follows:-

**AYES:** 27

**NOES:** Nil

**ABSENTIONS:** Nil

The “Ayes” have it.

*(Question carried by 27 votes to Nil)*

*(The Bill was read a Second and committed to a Committee of the Whole tomorrow)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, at this point, I direct that, finally, the doors be unlocked and the bars withdrawn.

*(The doors were unlocked and bars withdrawn)*

At the same time, I want to thank you, because of the Communication I had issued earlier on. I want to thank each and every one of you, distinguished colleagues, for accommodating the views of the Chair and his suggestions. Considering the fact that we have sat here the entire afternoon, thanks to your patience.

Hon. Senators, I will again apply Standing Order No. 40, Paragraph two, which allows the Speaker to rearrange Business for the convenience of the Senate. For that reason, we will skip the Committees of the Whole so that we do not keep you here anymore. I will now defer Orders No. 11, 12, 13, 14 and 15.

I direct that Order No. 16 be called out.

### **COMMITTEE OF THE WHOLE**

THE NATURAL RESOURCES (BENEFIT SHARING) BILL  
(SENATE BILLS NO.31 OF 2018)

*(Committee of the Whole deferred)*

### **COMMITTEE OF THE WHOLE**

THE PUBLIC FINANCE MANAGEMENT (AMENDMENT)  
BILL (SENATE BILLS NO.3 OF 2019)

*(Committee of the Whole deferred)*

### **COMMITTEE OF THE WHOLE**

THE RETIREMENT BENEFITS (DEPUTY PRESIDENT AND  
DESIGNATED STATE OFFICERS) (AMENDMENT) BILL

(SENATE BILLS NO. 2 OF 2018)

*(Committee of the Whole deferred)*

### COMMITTEE OF THE WHOLE

THE KENYA MEDICAL SUPPLIES AUTHORITY  
(AMENDMENT) BILL (SENATE BILLS NO.38 OF 2018)

*(Committee of the Whole deferred)*

### BILL

*Second Reading*

THE CONTROL OF STRAY DOGS BILL  
(SENATE BILLS NO. 4 OF 2019)

*(Bill deferred)*

**Sen. Wetangula:** Mr. Deputy Speaker, Sir, Order No.16 is a Motion by the distinguished Senator for Vihiga County, Sen. Khaniri; and he is out of the country on official duty. Can we defer it like the others? If he wanted it moved on his behalf, he would have asked me.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I think that you were far this time round. He wrote a letter and asked Sen. Kasanga to move it on his behalf.

Next Order.

### MOTIONS

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

**Sen. Kasanga:** Thank you, Mr. Deputy Speaker, Sir. I beg to move the following Motion-

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 posttraumatic stress counselling 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 counselling and support centers in all premises housing disciplined forces, and provide mandatory counselling to all service personnel and the families of those currently serving, and those who may have been killed in the line of duty.

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

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

**Sen. Kasanga:** Madam Temporary Speaker, this Motion was prepared by Sen. Khaniri, who is away. I want to first congratulate him for taking this matter to heart. He brought a Petition on behalf of True North, an organisation that fights for the rights of the disciplined forces and mental wellness. True North is championed by Major (Rtd.) Mukiri, who had personal challenges after serving in the disciplined forces. I commend the passion that he has for this matter, and I also want to thank him for bringing the matter to the attention of the Senate and Kenyans.

Madam Temporary Speaker, this House passed the Mental Health (Amendment) Bill 2018, because we appreciated that mental illness is now a national disaster. That Bill did not canvass the matters of disciplined forces, because the Committee on Health felt that the matter should be handled in a different legislation. It is good that Sen. Khaniri is now asking the Ministry of Interior and Coordination of National Government to look into it. It is possible for us to have a legislative framework at the end of this Motion, to deal with the mental wellness of our disciplined forces.

Madam Temporary Speaker, none of us can authoritatively speak or give a testimony on what our men and women who fight for the peace of this country go through. Those men and women do not know if they are going to wake up tomorrow or the day after; and they do not know if they will be able to see their spouse, children, parents and siblings again. It is only those men and women who fight for us who can give a true testament of what their life is like. The best that we know is based on what we see in the movies, and that is where we can relate with the kind of impact and trauma that they go through when they are in the line of fire.

Unfortunately, a video once went round on social media showing our men and women being attacked in Somalia by the Al-Shabaab, and I was unable to comment when I saw it. We cannot feel what they go through, yet we have sent them out there to protect our borders. They are the same people we call upon when we have terrorist attacks within the country. However, when they are done with their service, we send them home without thinking of how they will be assimilated back into their families.

Trauma is a serious thing, and we live in a society where we do not understand the effects of trauma. I am not an expert, but the research that I did when I was working on the Bill helped me to learn that trauma is the source of a lot of our societal problems; yet it is something that can be easily treated and managed. Some of the effects of living with trauma include gender based violence, use and abuse of drugs, alcoholism, depression, disorders that come with post-traumatic stress; strange addictions, such as addiction to pornography, sex, insomnia and others that I cannot mention here.

Essentially, Madam Temporary Speaker, our men and women in uniform cannot live a full life on a daily basis. In fact, their experiences reduce their life expectancy. This is the scenario that our disciplined forces face, and the question is what kind of impact does their experience have on their families? The effect of such experiences on one person are easily transmitted to the immediate family and to the larger family. Mental illness has a way of affecting the larger family because of the stigma that is around it. When we were debating the Mental Health (Amendment) Bill, 2018, we spoke a lot about fighting stigma, because it is the first way of dealing with mental illnesses.

Can you imagine what the immediate families of our disciplined forces go through when a member has come home with trauma, is dealing with its effects, and has received absolutely no support? It creates a vicious cycle. The children are affected, because they grow up with a parent who has effects of trauma, which he projects onto them. The children have their own trauma that is created from growing up with a traumatised parent, and then it becomes a vicious cycle. We can then see how broken families begin to happen in such scenarios, yet we are talking about something that can be managed through psychosocial support, counselling and medication in extreme cases. It is possible to deal with these things.

Madam Temporary Speaker, I wish to refer to something from True North, which they had shared with Sen. Khaniri. The psychosocial support should be in the creation of circles of care that cover mental and physical health rehabilitation, legal representation, financial aid, transition and reintegration support. Reintegration is so critical because when one has been in the line of fire, the kind of trauma one has is such that even having a basic conversation with somebody can be easily affected. When we talk of reintegration, we are talking about the kind of support for them to continue with life as normal as it can be.

There are also acts of recognition and celebration of living. I cannot speak authoritatively, but when one has been faced with death, there is no way you can go through life just like somebody who is normal. There is that which they have to be retaught to be reintegrated to appreciate and celebrate life. Honour and validation of the dead is another very critical aspect that needs to be looked into when it comes to our disciplined forces. Imagine the impact it has when you can see your colleague not being appreciated or celebrated, yet they lost their life in the line of fire. Imagine what it does to the spirit of the rest of them who are still fighting for Kenyans. Honour and validation of the dead is also a celebration of those who have put their lives on the line of fire.

On work and deployment considerations, a lot of this happens once they are released, and they have nowhere else to go. What are the effects when they are sitting at home? How about being given something to do, away from just sitting at home? There is also family and parenting coaching, which is part of the rehabilitation that is required.

These are ideas and thoughts that have been put forward by somebody who has lived through this trauma. She has struggled to get her life back in order. She is able, but many others may not be able.

Madam Temporary Speaker, this Motion is more than timely. I know that these issues were debated when the Petition was brought to the Floor of the House. However, it cannot be lost that the Government definitely needs to do something, through the Ministry of Defence and the Ministry of Interior and Coordination of National Government. Something must be done urgently, with posterity and sustainability in mind. Some of these programmes that will be set up, especially when it comes to honouring and validation of the dead, must be done in a way that can appreciate the lives of Kenyans who have risked their all to protect us so that we can enjoy the peace that we enjoy in this country.

Madam Temporary Speaker, as I move this Motion, I congratulate Sen. Khaniri for bringing it forward and being passionate about it. There is no health without mental health. That does not mean that our disciplined forces are not included. Even if it was not in The Mental Health (Amendment) Bill, some legislation must also come from this House that takes care of all our disciplined forces.

I beg to move and request Sen. (Dr.) Musuruve to second.

**Sen. (Dr.) Musuruve:** Thank you, Madam Temporary Speaker, for giving me this opportunity to second this Motion. Sen. Khaniri has come up with a Motion that is quite noble for this country. It seeks to ensure that we appreciate the work that the armed forces are doing.

From a broad perspective, when we talk of the disciplined forces, we are talking about the National Police Service (NPS), the Prisons Service, the military, the National Intelligence Service (NIS) and the witness protection agencies. All these people do a lot for this nation and even world over, wherever they are, they do a lot for their countries.

They have quite a number of roles they play in the countries they come from. For example, in instances of xenophobia, people will be killed recklessly just because of hatred. There are people who hate to see foreigners, and it is in such situations that these armed forces will come in and ensure that they save lives.

Madam Temporary Speaker, Article 26 of our Constitution assures everyone a right to life. We cannot ignore what our armed forces do and the fact that they are able to detect and prevent crime. Even when we are sleeping soundly in our beds, they are always watching over us. Sometimes they do not even sleep, simply because they want to ensure that they protect the people they are mandated to.

Madam Temporary Speaker, we have to look for a way in which we can create services to appreciate them. Sometimes when there are offenders amongst us, and there is need to ensure that that law is enforced, many times they come in handy. They just do what they are told to do without question. If they are told to turn right, they will not say, "I think it is not safe to turn right." If they are told to leave a certain town and go to another one, they will go without question. Sometimes they are even taken away from a peaceful area to a war-torn area. They cannot question it simply because of the commitment they have made to themselves and their nation, that they will defend their people regardless of all things.

These are people who live selflessly, such that they have surrendered their lives for the purpose of ensuring that they protect their borders; and that law and order is enforced. They eventually lose their civility in terms of thinking, in that they cannot think like any civil citizen. They cannot decide on their own accord when to go on holiday, attend a birthday party or a funeral.

Some of them are even detached from their families simply because when they are sent somewhere to work, they are supposed to be there. Some of them even leave the country to ensure that they are protecting the borders.

Madam Temporary Speaker, while doing so, they go alone, leaving their families behind. While away, they will not think like any civil person. They will miss out on social places and are completely cut off from the society. If it is communication, I believe it will just by a phone call.

As the armed forces are serving, they have quite a number of challenges. Some of them, as Sen. Kasanga has mentioned, are psychological, because they live in fear. They are not sure whether they will break through wherever they go to work. For example, if they come from a peaceful town to a war torn area, they are not sure whether they will survive even for three months. They are affected psychologically and even have personal worries about their children, spouses and families. This worry must be addressed wherever they are. If they are far from their families, there should be a centre to psychologically help them address those worries.

When it comes to erratic transfers, they have to go when they are sent. They are sent far away from their families, where they are detached from their children. They see their children when they are fully grown.

Madam Temporary Speaker, they also have challenges with their own families. This is because the children may not understand why their fathers or mothers are absent in their lives. Therefore, they get a lot of psychological stress that needs to be addressed. We need to help them manage the situation. They should be made to understand that their parents are away on duty, and that they can only see them maybe during Christmas or when on leave for about three or four weeks in a year.

A lot of psychological torture is going on in the families of the disciplined forces. Some of them come back home only to find their spouses have left or eloped with other people, and it becomes a challenge. There is also psychological trauma even for the extended families. For example, when a mother has a child working in the armed forces, she will appreciate that God has given her child a job. However, there is usually that worry in a parent on whether their child is fine; if he will brave though, and all that. There is need for centres to ensure that significant others of these disciplines forces are given psychological treatment in terms of psychosocial talks.

They may not be financially faring well. The disciplined forces ensure you and I are protected. There is need to devise a mechanism to ensure that they are financially compensated. We must make sure their children access free education in our learning institutions. This is because of the risks and financial obligations that the armed forces go through. There is need to give them a reason to risk their lives. We, as a country, need to move with speed to stand with the armed forces and their families, because of what they do for this nation.

Madam Temporary Speaker, about a month ago, I saw on television a disciplined officer who came back with a disability; his face was deformed. When he came back home, his only beloved wife parked and went away, and he was very devastated. He came back home and there was no any kind of psychological talk to integrate him into the society. That culture shock can be very bad for an individual. Imagine that you came back from another country, where you have been defending your own country, only to be deformed and your wife deserts you. It might be very depressing knowing that you have no family or job.

These people get disabilities while on duty. Therefore, they should be compensated in such a way that they will appreciate that they risked their life, but it was worth the risk. There is need to ensure that even those who acquire disability in the line of duty are retained. If they are unable to run up and down because of the disability they acquired while on duty, then they should be given a lesser duty that will not require them to run up and down. There are many jobs that they can do, including that of a desk officer, and they will be productive. There is need for us, as a country, to ensure that we are helping them.

These officers are used to shooting while protecting our country. When they come back, they are not able to live as civilians. It becomes a challenge because they are used to language of commanding. Sometimes we may think they are rude and not courteous because of their training. However, we need to understand and accommodate them in the society.

Madam Temporary Speaker, let us also remember their children and wives. When it comes to compensation in terms of when they lose lives in the line of duty, there is need for it to be in such a way that the family will feel that the Government appreciates their parents, who died in the line of duty. The children should even be educated for free up to their optimal. If a child is able to go up to university or Technical and Vocational Education and Training (TVET), so be it.

Mr. Deputy Speaker, Sir, very few people can voluntarily decide that they want to fight and die for their nation. These are the people who give their lives for the service of their nation. Good deeds must, therefore, be rewarded. There is need for the relevant Committee of this House and Ministry to ensure that there is a kitty for the armed forces for the purpose of ensuring they are well taken care of as they defend their country and its people. Apart from a kitty, there is also need to have rehabilitation centres that will help them be integrated into the society. Some of them may not be aware that they are impolite in their language.

I do not want to use the word uncouth, but some of them are not aware that their language is harsh and sharp. There should be a centre to help them in terms of communication, so that they are accepted in the society. The centre should also encourage and give psychological counseling to the family.

Madam Temporary Speaker, this is a timely Motion that should see the light of day. I, therefore, encourage Sen. Khaniri to come up with a Bill that will ensure that the country protects our disciplined forces so that they feel appreciated and give their best. When a person has sacrificed his or her life, he has given his or her best.

Madam Temporary Speaker, I beg to second the Motion.

*(Question proposed)*

**Sen. Were:** Thank you, Madam Temporary Speaker, for giving me the opportunity to support this Motion by Sen. Khaniri, which was ably moved today by Sen. Kasanga. Members of the disciplined forces provide service to the country; they keep our borders safe and friendly so that Kenyans can continue to do their businesses appropriately. However, it is absurd that we do not have a policy or programme to take care of members of the society who make sure that we are safe. What these people have to go through, in maintaining law and order in this country, is immeasurable.

The effect of this is PTSD, which is real. In developed countries, they have what they call veteran or retired disciplined forces programmes. This is where when members of the disciplined forces return from a mission, they are taken care of under a programme that is guided by policy. It is absurd to hear that we do not have such a policy in the country.

Madam Temporary Speaker, PTSDs have effect on families. There are so many broken families whom we do not know of, because there is a lot of secrecy in the disciplined forces. For example, they get depressed and become violent. The disciplined forces usually employ professionals, for example, psychiatric and counselors, to offer psycho-social support. How are these professionals guided in the disciplined forces?

We also have public servants and their families in our embassies. In the course of their work, they undergo many challenges, for example, transfers should be done with a human face. If people have children in the final year of school, that family should not be transferred to the next station until the children complete their final year. This is because making those abrupt changes affects families.

It is, therefore, not just in the disciplined forces, but also in other cadres of Government employees who are sometimes referred to as public or civil servants. We should not take advantage of them because they are civil. Let us take care of these people so that those who come after them are motivated to work with commitment to serve this country.

Madam Temporary Speaker, with those remarks, I beg to support this Motion. I encourage that we move beyond the Motions. From my experience, Motions are in motion; they are moving. There is no action taken when these Motions are passed in this House. This Motion should come as a Statement so that the concerned authorities can explain to us how exactly they will implement some of these things that we are proposing in this House.

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

**The Temporary Speaker** (Sen. Pareno): What is your point of order, Sen. Kasanga?

**Sen. Kasanga:** Madam Temporary Speaker, pursuant to Standing Order 105(1), I beg to move that the debate on the Motion on creation of support services for members of the disciplined forces and their families be now adjourned.

I request Sen. (Dr.) Musuruve to second.

**Sen. (Dr.) Musuruve:** Madam Temporary Speaker, I second.

*(Question proposed)*

**Sen. Were:** Madam Temporary Speaker, I support the adjournment of debate on this important Motion. We would like to have many more Senators speaking to it so that these issues are broadly discussed. We would also like to have more Kenyans listening to these issues and joining the fight for the recognition of the problems in the disciplined forces.

**The Temporary Speaker** (Sen. Pareno): Hon. Senators, noting that this is just a simple question of adjournment of debate, it does not, therefore, require Division. I will proceed to put the question.

*(Question, that debate on the Motion be now adjourned,  
put and agreed to)*

*(Debate on the Motion was adjourned)*

Next Order.

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 per cent to the globally accepted minimum of 10 per cent, 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 per cent 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.

**The Temporary Speaker** (Sen. Pareno): I do not see Sen. Kibiru. Therefore, this matter is deferred.

*(Motion deferred)*

Next Order.

#### RETIREMENT AGE FOR PERSONS WITH DISABILITIES IN PUBLIC SERVICE

**Sen. (Dr.) Musuruve:** Madam Temporary Speaker, I beg to move the following Motion:-

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 per cent 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.

Madam Temporary Speaker, issues of disability need to be taken with the seriousness they deserve. Many countries around the globe are looking for ways to help their PWDs break the cyclic nature of poverty. Some countries deliberately ensure that there are positions for the PWDs.

Madam Temporary Speaker, the PWDs have quite a number of challenges which affect their entry age in school and eventually into the workforce. When some parents get children with disabilities, they do not take them to school at the required age. When normal children are taken to school at the age of five years, most parents with children with disabilities go from pillar to post, wondering what to do with their children. Others do not believe that their children have disabilities, and end up getting frustrated. Some of them take time to accept and love their children and make sure that they get education, which is a basic need as stipulated in Article 43 of the Constitution.

**The Temporary Speaker** (Sen. Pareno): Sen. (Dr.) Musuruve, you will have a balance of 15 minutes when this matter appears next on the Order Paper.

## ADJOURNMENT

**The Temporary Speaker** (Sen. Pareno): Hon. Senators, it is now 6.30 p.m., time to adjourn the House. The Senate, therefore, stands adjourned until tomorrow, Thursday, 8<sup>th</sup> August, 2019, at 2.30 p.m.

The Senate rose at 6.30 p.m.