



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – (FOURTH SESSION)

THE SENATE

VOTES AND PROCEEDINGS

TUESDAY, AUGUST 04, 2020 AT 2.30 P.M.

1. The Senate assembled at thirty minutes past Two O'clock.
2. The Proceedings were opened with Prayer said by the Speaker.

3. PETITIONS

- i) Pursuant to Standing Order 230(2)(b), the Deputy Speaker reported to the Senate a Petition by Mr. Salim Mwidadi and others, concerning alleged historical land injustices involving Plot No. 162/V/M.N.CR 1070 in Mombasa County.

Pursuant to Standing Order 231, the Deputy Speaker invited Senators to comment on the Petition and, subsequently, committed the Petition to the Standing Committee on Land, Environment and Natural Resources, pursuant to Standing Order 232(1).

- ii) Pursuant to Standing Order 230(2)(a), the Senator for Nandi County (Sen. Samson Cherarkey, MP), presented to the Senate a Petition by Support Staff in Nandi County concerning alleged non-payment of salaries by the Nandi County Government.

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

4. PAPERS LAID

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

- i. Report of the Standing Committee on Justice, Legal Affairs and Human Rights on the Elections (Amendment) Bill (Senate Bills No. 18 of 2019)
(Sen. Johnson Sakaja, MP on behalf of Chairperson, Standing Committee on Justice, Legal Affairs and Human Rights)
- ii. The Crops (Fibre Crops) Regulations, 2020.
- iii. The Crops (Horticultural Crops) Regulations, 2020.

(The Deputy Senate Majority Leader)

5. NOTICE OF MOTION - SUSPENSION OF THE SITTINGS OF THE SENATE OUTSIDE NAIROBI FOR THE FOURTH SESSION, 2020

(The Senate Majority Leader)

THAT, AWARE THAT, pursuant to Article 126 (1) of the Constitution and Standing Order 31 (1) of the Senate, the Senate, by Resolution passed on 21st June, 2018, resolved that a sitting of the Senate be held away from the traditional premises in Parliament Buildings in Nairobi and that such sittings take place in all regions during the term of the Third Senate;

RECOGNISING THAT, the COVID-19 pandemic has continued to persist in the country, resulting in disruptions to the conduct of business of the Senate and of Parliament as a whole;

APPRECIATING THAT, in accordance with the World Health Organization and the Ministry of Health advisory for the containment of the pandemic, a set of guidelines have been issued for both Senate Plenary and committee to contain the spread of the pandemic in Parliament in particular, and in Kenya as a Whole;

NOW THEREFORE, the Senate resolves that, notwithstanding the Resolution of 21st June, 2018, the sittings outside Nairobi for the Fourth Session, 2020, be suspended.

6. NOTICE OF MOTION -EXTENSION OF MANDATE OF THE AD-HOC COMMITTEE ON MANAGED MEDICAL EQUIPMENT SERVICES

(Chairperson, Ad-hoc Committee on Managed Medical Equipment Services)

THAT, AWARE that on 19th September, 2019, the Senate resolved to establish a select Committee comprising nine (9) Senators to investigate and establish the facts surrounding the leasing of the Medical Equipment, in the now 119 beneficiary hospitals country wide;

APPRECIATING, that the initial mandate of the Select Committee lapsed on 5th October 2019, and extensions of the same approved by the Senate on 12th November, 2019, on 4th March, 2020, and on 14th July, 2020, respectively;

REGRETTING, that new evidence arising from the hearings revealed important gaps that need to be addressed in the inquiry, and further owing to

the sheer scale and magnitude of the investigations, and the amount of documentation involved;

NOW THEREFORE, the Senate resolves to renew the mandate of the Committee by a further period of thirty-four (34) days to enable the Ad-hoc Committee to conclude its work and table its report in the Senate on or before 8th September, 2020.

7. NOTICE OF MOTION - ALTERATION OF THE SENATE CALENDAR (REGULAR SESSIONS) FOR THE FOURTH SESSION, 2020

(The Senate Majority Leader)

THAT, notwithstanding the Resolutions of the Senate made on 27th February, 2020, 17th March, 2020, 14th April, 2020 and 2nd June, 2020 (alteration of the Senate Calendar), the Senate, pursuant to Standing Orders 29 (4) and 31 (3) (b), now resolves to hold a Sitting on Tuesday, 11th August, 2020 at 2.30 p.m., and thereafter, to adjourn and resume sittings on Tuesday, 8th September, 2020, pursuant to the Calendar.

8. STATEMENT PURSUANT TO STANDING ORDER 52 (1)

The Deputy Senate Majority Leader issued a statement on the business of the Senate for the week commencing Tuesday, 8th September, 2020.

9. *THE MUNG BEANS BILL (SENATE BILLS NO. 9 OF 2020)

(Sen. Enoch Wambua, MP)

Order for First Reading read;

Bill read a First time and committed to the Standing committee on Agriculture, Livestock and Fisheries.

10. MOTION - SUSPENSION OF THE SITTINGS OF THE SENATE OUTSIDE NAIROBI FOR THE FOURTH SESSION, 2020

Order read;

Motion made and Question proposed;

THAT, AWARE THAT, pursuant to Article 126 (1) of the Constitution and Standing Order 31 (1) of the Senate, the Senate, by Resolution passed on 21st June, 2018, resolved that a sitting of the Senate be held away from the traditional premises in Parliament Buildings in Nairobi and that such sittings take place in all regions during the term of the Third Senate;

RECOGNISING THAT, the COVID-19 pandemic has continued to persist in the country, resulting in disruptions to the conduct of business of the Senate and of Parliament as a whole;

APPRECIATING THAT, in accordance with the World Health Organization and the Ministry of Health advisory for the containment of the pandemic, a set of guidelines have been issued for both Senate Plenary and committee to contain the spread of the pandemic in Parliament in particular, and in Kenya as a Whole;

NOW THEREFORE, the Senate resolves that, notwithstanding the Resolution of 21st June, 2018, the sittings outside Nairobi for the Fourth Session, 2020, be suspended.

(The Deputy Senate Majority Leader)

Debate arising;

And there being no Senator wishing to contribute;

Before the Question was put and pursuant to Standing Order 79 (1), the Speaker ruled that the Motion did not affect counties.

Question put and, **agreed to.**

RESOLVED ACCORDINGLY

THAT, AWARE THAT, pursuant to Article 126 (1) of the Constitution and Standing Order 31 (1) of the Senate, the Senate, by Resolution passed on 21st June, 2018, resolved that a sitting of the Senate be held away from the traditional premises in Parliament Buildings in Nairobi and that such sittings take place in all regions during the term of the Third Senate;

RECOGNISING THAT, the COVID-19 pandemic has continued to persist in the country, resulting in disruptions to the conduct of business of the Senate and of Parliament as a whole;

APPRECIATING THAT, in accordance with the World Health Organization and the Ministry of Health advisory for the containment of the pandemic, a set of guidelines have been issued for both Senate Plenary and committee to contain the spread of the pandemic in Parliament in particular, and in Kenya as a Whole;

NOW THEREFORE, the Senate resolves that, notwithstanding the Resolution of 21st June, 2018, the sittings outside Nairobi for the Fourth Session, 2020, be suspended.

11. MOTION - EXTENSION OF MANDATE OF THE AD-HOC COMMITTEE ON MANAGED MEDICAL EQUIPMENT SERVICES

Order read;

Motion made and Question proposed;

THAT, AWARE that on 19th September, 2019, Senate resolved to establish a select Committee comprising nine (9) Senators to investigate and establish the facts surrounding the leasing of the Medical Equipment, in the now 119 beneficiary hospitals country wide;

APPRECIATING, that the initial mandate of the Select Committee lapsed on 5th October 2019, and extensions of the same approved by the Senate on 12th November, 2019, on 4th March, 2020, and on 14th July, 2020, respectively;

REGRETTING, that new evidence arising from the hearings revealed important gaps that need to be addressed in the inquiry, and further owing to the sheer scale and magnitude of the investigations, and the amount of documentation involved;

NOW THEREFORE, the Senate resolves to renew the mandate of the Committee by a further period of thirty-four (34) days to enable the Ad-hoc Committee to conclude its work and table its report in the Senate on or before 8th September, 2020.

(Sen. Moses Wetang'ula, MP on behalf of the Chairperson, Ad-hoc Committee on Managed Medical Equipment Services)

Debate arising;

And there being no other Senator wishing to contribute;

Before the Question was put and pursuant to Standing Order 79 (1), the Speaker ruled that the Motion did not affect counties.

Question put and, **agreed to.**

RESOLVED ACCORDINGLY

THAT, AWARE that the on 19th September, 2019, Senate resolved to establish a select Committee comprising nine (9) Senators to investigate and establish the facts surrounding the leasing of the Medical Equipment, in the now 119 beneficiary hospitals country wide;

APPRECIATING, that the initial mandate of the Select Committee lapsed on 5th October 2019, and extensions of the same approved by the Senate on 12th November, 2019, on 4th March, 2020, and on 14th July, 2020, respectively;

REGRETTING, that new evidence arising from the hearings revealed important gaps that need to be addressed in the inquiry, and further owing to the sheer scale and magnitude of the investigations, and the amount of documentation involved;

NOW THEREFORE, the Senate resolves to renew the mandate of the Committee by a further period of thirty-four (34) days to enable the Ad-hoc Committee to conclude its work and table its report in the Senate on or before 8th September, 2020.

12. MOTION – APPROVAL OF THE THIRD BASIS FOR REVENUE ALLOCATION AMONG THE COUNTY GOVERNMENTS

Order read;

Motion made and Question proposed;

THAT, the Senate adopts the Report of the Standing Committee on Finance and Budget on the Third Basis for Revenue Allocation Among the County Governments, laid on the Table of the Senate on Monday, 13th July, 2020, and that pursuant to Article 217 of the Constitution, approves the proposed Third Basis for Revenue Allocation Among the County Governments as contained in the Report.

(Chairperson, Standing Committee on Finance and Budget – 28/07/2020)

Debate interrupted on Tuesday, 28th July, 2020 resumed;

Rising on a Point of Order pursuant to Standing Order 105, the Senator for Elgeyo-Marakwet County (Sen. Kipchumba Murkomen, MP) claimed to move –

THAT, the debate be now adjourned.

(Sen. Kipchumba Murkomen, MP)

Debate arising;

And there being no other Senator wishing to contribute;

Before the Question was put and pursuant to Standing Order 79(1), the Speaker ruled that the Question did not affect counties.

Pursuant to Standing Order 83(1), the Speaker directed roll call voting be taken and further directed that the Division bell be rung for one minute;

After the expiry of one minute, the Speaker directed that the doors be locked and the bars be drawn;

The Speaker put the Question and directed the Clerk to call out the names of Senators in alphabetical order;

The results of the Division were as follows-

AYES – 34

NOES - 26

ABSTENTION – 1

AYES

1. Sen. Adan Dullo Fatuma
2. Sen. Ali Abdullahi Ibrahim
3. Sen. Boy Issa Juma
4. Sen. Cheruiyot Aaron Kipkirui
5. Sen. Haji Farhiya Ali
6. Sen. Halake Abshiro Soka
7. Sen. Hargura Godana
8. Sen. Iman Falhada Dekow
9. Sen. Imana Malachy Charles Ekal
10. Sen. Kabaka Boniface Mutinda
11. Sen. Kasanga Sylvia Mueni
12. Sen. Khaniri George
13. Sen. Kilonzo Mutula Junior
14. Sen. Kindiki Kithure
15. Sen. Lelegwe Ltumbesi
16. Sen. Linturi Franklin Mithika
17. Sen. Lokorio Petronilla Were
18. Sen. Madzayo Stewart Mwachiru
19. Sen. Mahamud Mohamed Maalim
20. Sen. Malalah Cleophas Wakhungu
21. Sen. Mogeni Erick Okong'o
22. Sen. Murkomen Onesimus Kipchumba
23. Sen. Mwaruma Johnes Mwashushe
24. Sen. Mwinyihaji Mohamed Faki
25. Sen. Olekina Ledama
26. Sen. Omanga Millicent
27. Sen. Pareno Judith Ramaita
28. Sen. Sakaja Johnson Arthur
29. Sen. Seneta Mary Yiane
30. Sen. Waqo Naomi Jilo
31. Sen. Wambua Enoch Kiio
32. Sen. Wario Golich Juma
33. Sen. Wetang'ula Moses Masika
34. Sen. Zani Agnes Philomena

NOES

1. Sen. Chebeni Mercy
2. Sen. Cherarkey Samson Kiprotich
3. Sen. Inimah Getrude Musuruve

4. Sen. Kajwang' Moses Otieno
5. Sen. Kamar Margaret Jepkoech
6. Sen. Kang'ata Irungu
7. Sen. Kibiru Charles Reubenson
8. Sen. Kihika Susan Wakarura
9. Sen. Kimani Wamatangi Paul
10. Sen. Kirinyaga Ephraim Mwangi Maina
11. Sen. Lang'at Christopher Andrew
12. Sen. Makori Beatrice Kwamboka
13. Sen. Masitsa Naomi Shiyonga
14. Sen. Mbito Michael Maling'a
15. Sen. Mbogo George Ochilo Ayacko
16. Sen. Milgo Alice Chepkorir
17. Sen. Moi Gideon Kipsielei Towett
18. Sen. Mwangi Paul Githiomi
19. Sen. Mwaura Isaac
20. Sen. Nderitu John Kinyua
21. Sen. Ndwiga Peter Njeru
22. Sen. Nyamunga Rose Ogendo
23. Sen. Ongeru Samson Kegengo
24. Sen. Orengo James
25. Sen. Outa Fredrick Otieno
26. Sen. Poghisio Samuel Losuron

ABSTENTION

1. Sen. Wako Sitswila Amos

Question put and, **agreed to.**

RESOLVED ACCORDINGLY

THAT, the debate be now adjourned.

13. MOTION – APPROVAL OF THE THIRD BASIS FOR REVENUE ALLOCATION AMONG THE COUNTY GOVERNMENTS

(Sen. Johnson Sakaja, MP)

THAT, AWARE THAT under Article 217 of the Constitution, the Senate by resolution is required to determine the basis for allocating among the counties the share of national revenue that is annually allocated to the county level of government;

FURTHER AWARE THAT, the Senate mandated the Standing Committee on Finance and Budget to consider the recommendations of the Commission on Revenue Allocation, and consulted the Cabinet Secretary responsible for Finance and the Council of Governors among others and subsequently

conducted public participation pursuant to Article 118(1)(b) of the Constitution, as documented in the report tabled in the Senate on Monday, 13th July, 2020;

NOW THEREFORE the Senate resolves that pursuant to Article 217 (1) of the Constitution, the third Basis for sharing revenue among counties, for the Financial Year 2020/2021 to 2024/2025 be as follows –

a) Equitable share not exceeding Kshs. 316.50 billion

The following formula shall apply

CA_{i1}= Allocation per County for FY 2019/20

b) Equitable share over and above Kshs. 316.50 billion

The following formula shall apply

CA_{i2}= 0.18*Population Index_i+ 0.17*Health Index_i+0.10* Agriculture Index_i+ 0.05*Urban Index_i+0.14* Poverty Index_i+ 0.08*Land Area Index_i+0.01*Fiscal Effort_i+0.06*Roads Index_i+0.01* Prudence Index_i +0.20* Basic Share Index_i¹

Where,

Parameter	Indicator of Expenditure Need
Health services	Health index- health facility-gaps (20%), three years average number of primary health care visits to levels 2 and 3 health facilities (60%)and three years average in-patient days in levels 4 and 5 hospitals (20%) Facilty gap factor _i = $\frac{\text{Facilty gap funding in county } i}{\sum_{i=1}^{47} \text{facilty gap funding in county } i}$ Primary health care factor _i = $\frac{\text{No. of primary health care visits in county } i}{\sum_{i=1}^{47} \text{No. of primary health care visits in county } i}$ In – patient days factor _i = $\frac{\text{No. of in – patient days in county } i}{\sum_{i=1}^{47} \text{No. of in – patient days in county } i}$
Agriculture services	Agriculture Index _i = 0.005 * Minimum Share index + 0.095 * $\frac{\text{Rural households in county } i}{\sum_{i=1}^{47} \text{Rural households in county } i}$
Other county services	Population index _i = $\frac{\text{Population in county } i}{\sum_{i=1}^{47} \text{Population in county } i}$
Minimum share	Basic share index = 0.19 * Equal Share index + 0.01 * $\frac{\text{inverse of population in county } i}{\sum_{i=1}^{47} \text{inverse of population in county } i}$

¹ The formula will use the 2019 population and 2015/16 KIHBS poverty statistics

Land	$\text{Land area index}_i = \frac{\text{Land area in county } i}{\sum_i^{47} \text{Land area in county } i}$					
Roads	$\text{Roads index}_i = \frac{\text{Rural access index in county } i}{\sum_{i=1}^{47} \text{Rural access index in county } i}$					
Poverty level	$\text{Poverty index}_i = \frac{\text{No. of poor people in county } i}{\sum_{i=1}^{47} \text{No. of poor people in county } i}$					
Urban service	$\text{Urban Index } i = \frac{\text{urban household in county } i}{\sum_{i=1}^{47} \text{Urban Household in County } i}$					
Fiscal effort	$\text{Fiscal effort index}_i = \frac{\text{OSR collections of county } i}{\text{GCP of county } i}$					
Fiscal prudence	No.	Variable	Indicator	Score	Responsible	Weighting
	1	Audit Report □	Non-Qualified	4	County Executive Assembly	CE=90% CA=10%
			Qualified	2		
			Adverse	0		
			Disclaimer	0		
	2	Development Expenditure	At least 30%	1	County Government	100%
			Below 30%	0		
	4	Internal Audit Committee	In place	1	County Executive Assembly	CE=90% CA=10%
4	County Budget Economic Forum	In place	1	County Government	100%	
		Not In place	0			

c) Total Equitable share of a County

The following formula shall apply

$$\text{TES}_i = \text{CA}_i1 + \text{CA}_i2$$

Whereas;

TES_i = Total Equitable share of County _i

CA_i1 = Allocation per County for FY 2019/20

CA_i2 = Equitable share over and above Kshs. 316.50 billion

The basis used is as shown

No.	Parameter	Weight
1	Population	18%
2	Health	17%
3	Agriculture	10%
4	Urban	5%
5	Roads	6%
6	Poverty	14%
7	Land	8% capped
8	Basic Share	20%
9	Fiscal Effort	1%
10	Fiscal Prudence	1%

Order deferred.

14. MOTION - PROVISION OF CEMETERY, FUNERAL PARLOURS AND CREMATORIA IN ALL COUNTIES

(Sen. (Dr.) Alice Milgo, MP)

THAT, AWARE THAT under Article 61 of the Constitution of Kenya, land in Kenya is classified into three categories, public, Community and private land;

FURTHER AWARE THAT, public land is vested in both the County and National Governments and is managed on their behalf by the National Land Commission, and that Article 62 (2) clarifies the distribution of public land between the two levels of government.;

COGNIZANT THAT, the Fourth Schedule of the Constitution delegates cemeteries, funeral parlours and crematoria as a function of County Governments;

CONCERNED THAT, cemeteries in the Country are filling up, and counties are finding it increasingly difficult to identify land to allocate as “public” for use as a cemetery with the knowledge that any cemetery or burial-place that is crowded and therefore dangerous to health is defined as constituting a nuisance in the Public Health Act;

NOW THEREFORE, the Senate calls upon the county governments to ensure that funds are allocated in the County Annual Development Plans for FY

2020/2021, towards the planning and development of cemetery, funeral parlours and crematory facilities.

***(Resumption of debate interrupted on Thursday, 12th March, 2020)
(Division)***

Order deferred.

15. MOTION - CONSIDERATION OF THE NATIONAL ASSEMBLY AMENDMENTS TO THE COUNTY OUTDOOR ADVERTISING CONTROL BILL (SENATE BILLS NO. 19 OF 2018)

(Chairperson, Standing Committee on Information and Technology)

THAT, the National Assembly amendments to the County Outdoor Advertising Control Bill (Senate Bills No. 19 of 2018) be now considered.

Order deferred.

16. *THE PROMPT PAYMENT BILL (SENATE BILLS NO. 3 OF 2020)

(Sen. (CPA) Farhiya Haji, MP and Sen. Sakaja Johnson, MP)

(Second Reading)

***(Resumption of debate interrupted on Tuesday, 23rd June, 2020 -
Afternoon Sitting)***

Order deferred.

17. *THE EQUALIZATION FUND BILL (NATIONAL ASSEMBLY BILLS NO. 43 OF 2019)**

(The Senate Majority Leader)

(Second Reading)

Order deferred.

18. *THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO. 51 OF 2017)**

(The Senate Majority Leader)

(Second Reading)

Order deferred.

**19. COMMITTEE OF THE WHOLE
*****THE STREET VENDORS (PROTECTION OF LIVELIHOOD) BILL (SENATE BILLS NO. 10 OF 2019)****

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

Order deferred.

**20. COMMITTEE OF THE WHOLE
THE ELECTIONS (AMENDMENT) BILL (SENATE BILLS NO. 18 OF 2019)*

(Sen. (Eng.) Ephraim Maina, MP)

Order deferred.

21. COMMITTEE OF THE WHOLE

*** THE KENYA SIGN LANGUAGE BILL (SENATE BILLS NO. 15 OF 2019)**

(Sen. (Dr.) Gertrude Musuruve and Sen. (Prof.) Margaret Kamar)

Order deferred.

22. *THE WILDLIFE CONSERVATION AND MANAGEMENT (AMENDMENT) BILL (SENATE BILLS NO. 24 OF 2019)

(Sen. Johnes Mwaruma, MP)

(Second Reading)

Order deferred.

23. *THE LAW OF SUCCESSION (AMENDMENT) BILL (SENATE BILLS NO. 1 OF 2020)

(Sen. Abshiro Halake, MP)

(Second Reading)

Order deferred.

24. *THE COUNTY RESOURCE DEVELOPMENT BILL (SENATE BILLS NO. 2 OF 2020)

(Sen. Rose Nyamunga, MP)

(Second Reading)

Order deferred.

25. *THE SECTIONAL PROPERTIES BILL (NATIONAL ASSEMBLY BILLS NO. 23 OF 2019)**

(The Senate Majority Leader)

(Second Reading)

Order deferred.

26. MOTION - ALTERATION OF THE SENATE CALENDAR (REGULAR SESSIONS) FOR THE FOURTH SESSION, 2020

Order read;

Motion made and Question proposed;

THAT, notwithstanding the Resolutions of the Senate made on 27th February, 2020, 17th March, 2020, 14th April, 2020 and 2nd June, 2020 (alteration of the Senate Calendar), the Senate, pursuant to Standing Orders

29 (4) and 31 (3) (b), now resolves to hold a Sitting on Tuesday, 11th August, 2020 at 2.30 p.m., and thereafter, to adjourn and resume sittings on Tuesday, 8th September, 2020, pursuant to the Calendar.

(The Senate Majority Leader)

Debate arising;

And there being no other Senator wishing to contribute;

Before the Question was put and pursuant to Standing Order 79 (1), the Deputy Speaker ruled that the Motion did not affect counties.

Question put and, **agreed to.**

RESOLVED ACCORDINGLY

THAT, notwithstanding the Resolutions of the Senate made on 27th February, 2020, 17th March, 2020, 14th April, 2020 and 2nd June, 2020 (alteration of the Senate Calendar), the Senate, pursuant to Standing Orders 29 (4) and 31 (3) (b), now resolves to hold a Sitting on Tuesday, 11th August, 2020 at 2.30 p.m., and thereafter, to adjourn and resume sittings on Tuesday, 8th September, 2020, pursuant to the Calendar.

27. *THE COMMUNITY HEALTH SERVICES BILL (SENATE BILLS NO. 5 OF 2020)

Order for Second Reading read;

Motion made and Question proposed;

THAT, the Community Health Services Bill (Senate Bills No. 5 of 2020) be now read a Second time.

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

Pursuant to Standing Order 31(2), the Deputy Speaker interrupted the proceedings and adjourned the Senate at twenty seven minutes past Six O'clock, without Question put.

28. SENATE ROSE - twenty seven minutes past Six O'clock.

M E M O R A N D U M

*The Speaker will take the Chair on
Tuesday, August 11, 2020 at 2:30 p.m.*