



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – (FOURTH SESSION)

THE SENATE

VOTES AND PROCEEDINGS

TUESDAY, SEPTEMBER 8, 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. **COMMUNICATION FROM THE CHAIR ON THE COMMENCEMENT OF PART IV OF THE FOURTH SESSION**

The Speaker issued the following communication-

“I take this opportunity to welcome you back to Part IV (Four) of the Fourth Session. This Part will run from today, 8th September, 2020 to 22nd October, 2020, pursuant to the Senate Calendar.

It is my hope that you have all kept well and safe during the three - week recess, reconnected with your constituents, families and friends; and that you are ready for the business of the Senate.

I urge that we redouble our efforts to enable us to consider and conclude all business that is before us including Bills, Motions, Petitions and Statements, critical among them being the determination of the third basis for revenue allocation among the county governments.

As you will recall, during the Special Sitting on Monday, 17th August, 2020, the House constituted an informal Committee to try to develop consensus on the issue of the formula. The informal Committee has been updating the Senate leadership on a regular basis including the Senate Business Committee. The Committee was informed that consultations were ongoing and that the prospects of achieving a win-win position are very promising. Consequently, following the Senate Business Committee meeting this morning, the Committee agreed as follows-

1. That, a consultative meeting be held between the informal Committee and the Senate leadership on Thursday, 10th September, 2020;
2. That a *Kamukunji* be held on Monday, 14th September to apprise the entire membership on progress made and the outcome of the consultative engagement; and
3. That, the matter of the Report of the Committee on Finance and Budget on the Third Basis for Revenue Allocation Among the County Governments be listed on the Order Paper and disposed of on Tuesday, 15th September, 2020.

I look forward to your cooperation and commitment as we undertake this very solemn duty.

I thank you.”

4. PETITIONS

- a. Pursuant to Standing Order 230(2)(b), the Speaker reported to the Senate a Petition by Mr. Lawrence Mutembei concerning alleged irregular deployment from the Department of Finance and Economic Planning to the Department of Education, Youth Vocational Training, Culture, Sports and Tourism, the County Government of Tharaka Nithi.

Pursuant to Standing Order 231, the 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).

- b. Pursuant to Standing Order 232(2) the Chairperson of the Standing Committee on Finance & Budget presented the report of the Committee on the Petition presented by Sen. Enoch Wambua, MP on non-payment by Kitui County Executive of pending bills incurred during Financial Year 2015/2016.

(Chairperson, Standing Committee on Finance and Budget)

5. PAPERS

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

- i. Report of the Ad-Hoc Committee on Managed Medical Equipment Services on the Inquiry into the Managed Medical Equipment Services Project by the Ministry of Health.

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

- ii. Report of the Standing Committee on National Security, Defence and Foreign Relations on the arrest and whereabouts of three Senators.

(Vice Chairperson, Standing Committee on National Security, Defence and Foreign Relations)

- iii. Report of the Committee of Powers and Privileges on the Inquiry into the Conduct of Senators during the Election of the Chairperson and Vice-chairperson of the Standing Committee on Health.

(Sen (Arch.) Sylvia Kasanga, MP – Member, Committee of Powers and Privileges)

- iv. The Public Health (COVID-19 General Public Safety) Rules, 2020, Legal Notice No. 129 of 2020.
- v. The Public Health (COVID-19 Sale of Alcoholic Drinks) Rules, 2020, Legal Notice No. 163 of 2020.

(The Deputy Senate Majority Leader)

- vi. Statement on the business of the Senate for the week commencing Tuesday, 15th September, 2020.

(The Deputy Senate Majority Leader)

- vii. Report of the Standing Committee on Finance and Budget on the Equalization Fund Bill (National Assembly Bills No. 43 of 2019).
- viii. Report of the Standing Committee on Finance and Budget on the Petition presented by Sen. Enoch Wambua, MP on non-payment by Kitui County Executive of pending bills incurred during Financial Year 2015/2016.

(Chairperson, Standing Committee on Finance and Budget)

6. NOTICE OF MOTION ON ADOPTION OF REPORT OF THE COMMITTEE OF POWERS AND PRIVILEGES ON THE INQUIRY INTO THE CONDUCT OF TWO SENATORS

THAT, the Senate adopts the Report of the Committee of Powers and Privileges on the Inquiry into the Conduct of Sen. Beatrice Kwamboka, MP, and Sen. Mary Seneta, MP, During the Election of the Chairperson and Vice-chairperson of the Standing Committee on Health, laid on the Table of the Senate on Tuesday, 8th September, 2020.

(Sen. (Arch.) Sylvia Kasanga, MP – Member, Committee of Powers and Privileges)

7. NOTICE OF MOTION ON ADOPTION OF THE REPORT OF THE AD-HOC COMMITTEE ON MANAGED MEDICAL EQUIPMENT SERVICES

THAT, the Senate adopts the Report of the Ad-Hoc Committee on Managed Medical Equipment Services on inquiry into the Managed Medical Equipment Services Project by the Ministry of Health, laid on the Table of the Senate on Tuesday, 8th September, 2020.

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

8. NOTICE OF MOTION ON OPERATIONALIZATION OF EDUCATION ASSESSMENT RESOURCE CENTRES (EARCs) IN COUNTIES

THAT, AWARE THAT Section 46 of the Basic Education Act, 2013 mandates the county education boards to provide for Education Assessment and Research Centres (EARCs), including a special needs service in identified clinics in the respective counties.

FURTHER AWARE, THAT the functions of the EARCs as provided by the Act include; the study of children with special education needs within the county; the giving of advice to parents and teachers as to appropriate methods of education for such children; in suitable cases, provision for the special education needs of such children in the identified clinics; and, the giving of advice to county education boards regarding the assessment of the needs of any child under special needs education for purposes of any of the provisions of the Basic Education Act, 2013.

NOTING THAT, given the critical role EARCs play in assessment, placement and early intervention of children with special needs, EARCs countrywide are currently in a dilapidated and dysfunctional state.

NOW THEREFORE, the Senate calls upon the county governments to operationalize Section 46 of the Basic Education Act, 2013 by:

1. Ensuring that EARCs in the respective counties are fully furnished and adequately staffed; and
2. Working in tandem with the National Government to develop a national policy on EARCs that will define the expected service delivery in accordance with internationally set standards and regulate the terms of employment for the staff.

(Sen. (Dr.) Gertrude Musuruve Inimah, MP)

9. STATEMENTS**a) Pursuant to Standing Order 47(1)**

- i. Nominated Senator (Dr.) Milgo issued a Statement on appointment of Sen. (Dr.) Getrude Musuruve, MP as co-chair of the International Parliamentary Network for Education.

Therefore, she informed the Senate that the International Parliamentary Network for Education seeks to realize goals of SDG 4 and that the appointment comes at an opportune time when the world is grappling with COVID-19.

She added that although education is meant to be a socio-economic equalizer for all children, with time, children with disability have been adversely affected as they have been most hit by the pandemic.

Further she noted that the achievement of the commitments in SDG 4 is at great risk and the Network should make concerted efforts and reforms towards achievement of these commitments. Sen. (Dr.) Musuruve, MP, is a Member of the Standing Committee on Education and her commitment to issues of learners with disabilities is encouraging as she has written and published books on sign language using her own resources.

Sen. (Dr.) Milgo also informed the senate that Sen. (Dr.) Musuruve, MP, was a Member of the National Council of Nomadic Education in Kenya, represents persons with disabilities in the Senate and was a teacher where she interacted with persons with disabilities. She possesses academic qualifications in special needs education and holds a master's degree in applied linguistics with a bias in sign language as well as a PhD in mass communication with a bias in media portrayal of persons with disabilities.

- ii. Nominated Senator (Dr.) Getrude Musuruve issued a Statement regarding the alleged approval of the use of silicone vaginal ring to curb HIV infection in Kenya.

Thereupon, the Senator informed the Senate that a silicone vaginal ring containing the antiretroviral drug Dapivirine had been approved as a new method of HIV prevention for women. The European Medicines Agency (EMA) announced that it had adopted a positive scientific opinion for its use in low- and middle-income countries.

She further stated that Information in mainstream media, specifically, the Daily Nation of 26th July, 2020, stated that a study proved that the vaginal ring could reduce the risk of Type 1 HIV (HIV-1). The ring

had been developed by the International Partnership for Microbicides, a US non-profit organization. This US non-profit organization, however, has not revealed the methodology used, the participants of the study and the resultant outcome that informed their decision that the ring is best suited for HIV prevention for women in Sub Saharan Africa. Therefore, without verifiable empirical data, the study so far lacks the research thresholds of credibility and objectivity of the trial studies carried out in Malawi, South Africa, Uganda and Zimbabwe.

The Senator also stated that it is common knowledge that HIV-1 is also mostly prevalent in West Africa (at the rate of 7% compared to Uganda's 4.4%) and, as such, the developers of the ring needed to have included samples from that population.

In conclusion, she requested that the Senate engage the concerned Ministry in Kenya so that public participation is carried out before adopting the use of silicone vaginal ring to curb HIV infection in Kenya.

- iii. Nominated Senator Abshiro Halake issued a statement concerning the imposition of Value Added Tax (VAT) on clean and renewable energy products in Kenya.

Thereupon, she informed the Senate that on 23rd June, 2020 the president assented to the Finance Bill, 2020 imposing a 14% VAT to the supply or the importation of the specialized equipment for the development and generation of solar, wind energy, including deep cycle batteries and hydro energy, as well as clean cook stoves.

She further stated that this taxation of clean energy or renewable energy will have far reaching consequences as it will not only increase the tax burden of the poor and the marginalized but also act as an impediment to the national development objectives as affordable universal access to clean energy is at the core of modern civilization and renewable energy sources are specifically designed to power and empower the poorest and most marginalized citizens of Kenya.

In conclusion, she recommended that the initial VAT exemptions on equipment used for the development and generation of the solar and wind energy be retained.

b) Pursuant to Standing Order 48 (1)

- (i) The Senator for Wajir County (Sen. (Dr.) Abdullahi Ali, MP) sought a statement from the Standing Committee on Labour and Social welfare regarding misappropriation of Staff emoluments, statutory deductions and other labour relations violations.

- (ii) The Senator for Mombasa County (Sen. Mohamed Faki Mwinyihaji, MP) sought a statement from the Standing Committee on Information and Technology regarding the state of affairs at the Postal Corporation of Kenya.
- (iii) Nominated Senator (Sen. (Dr.) Alice Milgo, MP) sought a statement from the Standing Committee on Land, Environment and Natural Resources regarding alleged continued destruction by fires, of the conservation area around the Tsavo National Park.
- (iv) The Senator for Isiolo County (Sen. Fatuma Dullo, MP) sought a statement from the Standing Committee on National Security, Defence and Foreign Relations regarding an alleged assault against a resident of Isiolo County by police officers at Barambate Police Post in the County.
- (v) The Senator for Lamu County (Sen. Anwar Loitiptip, MP) sought a statement from the Standing Committee on Roads and Transportation concerning the status of dock work job opportunities at the Lamu Port for youths in Lamu County.
- (vi) The Senator for Isiolo County (Sen. Fatuma Dullo, MP) sought a statement from the Standing Committee on Land, Environment and Natural Resources concerning alleged human – wildlife conflict in Isiolo County.
- (vii) The Senator for Wajir County (Sen. (Dr.) Abdullahi Ali, MP) sought a statement from the Ad-hoc Committee on COVID-19 Situation in Kenya concerning the status of preparedness for COVID-19 by the Wajir County Government.
- (viii) Nominated Senator (Sen. Petronila Were Lokorio, MP) sought a statement from the Standing Committee on Labour and Social Welfare regarding alleged frustrations faced by retired public servants or their beneficiaries in claiming benefits at the Pensions Department.
- (ix) The Senator for Lamu County (Sen. Anwar Loititip, MP) sought a statement from the Standing Committee on National Security, Defence and Foreign Relations concerning the killing of chiefs, police officers and community volunteers in Lamu East Constituency, Lamu County.
- (x) The Senator for Nandi County (Sen. Samson Cherarkey, MP) sought a statement from the Standing Committee on Agriculture, Livestock and Fisheries concerning alleged reduction of tea prices by tea companies in Nandi County.
- (xi) Nominated Senator (Sen. Abshiro Halake, MP) sought a statement from the Standing Committee on Justice, Legal Affairs and Human Rights regarding derogatory reference of mentally challenged victims of sexual violence in the Penal Code.

c) 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, 15th September, 2020.

d) Pursuant to Standing Order 52 (2)

The Senate Majority Leader issued a statement concerning access by the County Governments to their share of nationally raised revenue for Financial year 2020/2021.

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

Order read;

Motion made and Question proposed;

THAT, the Sectional Properties Bill (National Assembly Bill No. 23 of 2019) be now read a Second time.

(The Senate Majority Whip on behalf of the Senate Majority Leader)

Debate arising;

And the time being thirty minutes past Six O'clock, the Temporary Speaker (Sen. Judith Pareno, MP) interrupted the proceedings and adjourned the Senate without Question put, pursuant to the Standing Orders.

11. SENATE ROSE – at thirty Minutes past Six O'clock.

M E M O R A N D U M

*The Speaker will take the Chair on
Tuesday, September 15, 2020 at 2:30 p.m.*