



REPUBLIC OF KENYA

THE SENATE

ELEVENTH PARLIAMENT – THIRD SESSION

VOTES AND PROCEEDINGS

WEDNESDAY, NOVEMBER 11, 2015 AT 2.30 P.M.

1. The Senate assembled at thirty minutes past Two O'clock.
2. The Proceedings were opened with Prayer.
3. **COMMUNICATIONS FROM THE CHAIR**

The Speaker issued the following communications from the Chair-

a) Visiting delegation from the Parliament of Zimbabwe

"Honorable Senators,

I am pleased to acknowledge and to welcome to the Senate this afternoon, a delegation from the Women Caucus of the Parliament of Zimbabwe, who are seated at the Speaker's Gallery. The members are here on a study visit.

I request members of the delegation that when your name is called out, you stand so that you may be acknowledged in our usual Senate tradition.

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| 1. Hon. Monica Mutsvangwa | -Chairperson of the Women's Caucus |
| 2. Hon. Pauline Mpariwa | -Deputy Chair of the Women's Caucus |
| 3. Hon. Priscilla Mushonga | -Member of the Women's Caucus |
| 4. Hon. Judith Mawire | -Member of the Women's Caucus |

The Delegation is accompanied by;

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| 1. Ms. Farai Hondonga | - Secretary to the delegation |
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Honorable Senators,

I take this opportunity on behalf of the Senate and on my own behalf, to wish the delegation a happy and fruitful visit in the Senate.

I thank you."

b) The Procedure for the disposal of the Presidential Memoranda on the Public Audit Bill (National Assembly Bill No. 38 of 2014) and the Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014)

"Honourable Senators, as you may recall, during the sitting of the Senate on Tuesday, 3rd November, 2015 the Presidential Memoranda on the Public Procurement and Asset Disposal Bill, National Assembly Bills No. 40 of 2014, and the Public Audit Bill, National Assembly Bills No. 38 of 2014 were listed for consideration as Order Numbers 8 and 9, respectively, on the Order Paper of that day.

Before the reading of these Orders, the Senate Minority Leader, Sen. Moses Wetang'ula, rose on a Point of Order to seek the guidance of the Chair on the procedure to be followed in the disposal of the Presidential Memoranda.

In the Point of Order, Sen. Wetang'ula made reference to Article 122(1) of the Constitution which provides that, *"except as otherwise provided in this Constitution, any question proposed for decision in either House of Parliament shall be determined by a majority of the members in that House, present and voting"*.

The Senate Minority Leader argued that Article 122(1) was a general provision which in the usage and precedent of the Senate had not been applied as the Senate had set for itself a threshold such that for the Senate to proceed on a vote on any matter, the Senate required to have a minimum of twenty-four county delegations present in the Senate.

The Senate Minority Leader stated that in light of this practice of the Senate, before the Senate proceeded to vote on the Presidential Memoranda, there would require to be at least twenty-four county delegations present in the Senate. This, Senator Wetang'ula said, ought to be distinguished from the rule requiring a quorum of fifteen members of the Senate as set out under Article 121 of the Constitution

The Senate Minority Leader stated that in respect of a Presidential Memorandum, Article 115 set out the required thresholds. The Senator then stated that since a simple majority of county delegations was required to pass a Presidential Memorandum there would be required to be present in the Senate at least twenty-four county delegations before the Speaker called for a vote on the Memorandum.

He further stated that where the Senate sought to pass the Bill a second time without amendments or with amendments that did not fully accommodate the President's reservations, the required threshold under Article 115(4) of the Constitution was thirty-two county delegations. Senator Wetang'ula therefore argued that pursuant to standing order 76(2), where the Senate did not have the minimum of twenty-four delegations present, the Senate could not, under any circumstances, proceed to vote.

He concluded by seeking the directions of the Chair on the meaning and import of standing order 76(2) as read together with Articles 115(4) (b), 122(1) and 123(4)(a) and (c).

The Senate Majority Leader, Senator (Prof.) Kithure Kindiki took a different view on the matter. He stated that Article 121 of the Constitution was clear that the Senate could not transact any business unless fifteen Senators were present in the Senate. He further stated that Article 121 did not envisage county delegations; it only required the presence of fifteen Senators even if they were all from one county delegation.

The Senate Majority Leader proceeded to argue that there was no connection between Article 121, on quorum in the Senate, and Article 123(4)(c) on the threshold required for voting in the Senate. He further argued that if the law maker had intended that the Senate could not proceed to a vote unless there were twenty-four county delegations present in the Senate, nothing would have been easier than to expressly provide so in the law. He stated that though the Senate had previously applied the "twenty-four Senators present" rule, this was "a gentleman's agreement" which had been agreed on for the purpose of ensuring that a sponsor of a Motion affecting Counties did not lose the Motion when it was put to a vote only on account of lack of the required threshold of twenty-four county delegations required to pass the Motion.

The Senate Majority Leader therefore took the position that technically there was no requirement for the presence of twenty-four county delegations in the Senate before a vote could be taken on a Presidential Memorandum and that therefore, a Presidential Memorandum could be introduced at any time as long as there were fifteen Senators present in the Senate as required under Article 121 of the Constitution. Further, that voting on a Memorandum could therefore take place as long as fifteen Senators were present.

Senator Keter, Senator Murkomen, Senator (Dr.) Khalwale, Senator Wamatangi, Senator Machage, Senator Mutula Kilonzo Jnr., Senator Hassan Omar, Senator Mugo and Senator Elachi also contributed to this matter.

Honourable Senators, you will recall that at the sitting of the Senate held on Wednesday, 1st October, 2015, I made a communication on the procedure for the disposal of a Presidential Memorandum focusing on the options available to Senate under Article 115 of the Constitution. This matter was therefore put to rest. The matter now requiring my direction is the question of the number of Senators required to be present in the Senate before a vote can be taken on a Presidential Memorandum. The numbers of fifteen, twenty-four and thirty-two featured prominently in the contributions by Honourable Senators who spoke to this matter.

Allow me to commence Honourable Senators by stating that the Senate has indeed, by practice, on a number of occasions deferred the taking of a vote until twenty-four county delegations can be realized. This is because of the unique voting threshold of the Senate as set out under Article 123(4)(c) of the Constitution. Under that Article, a matter that is subjected to a vote in the Senate is carried only if it is supported by a majority of all the county delegations; which is twenty-four county delegations. The practice that has developed of requiring twenty-four county delegations to be present before a vote is taken has developed over time so as to ensure that legislative business that would otherwise pass but for the presence of twenty-four county delegations is not, to the detriment of the Senate and the sponsor of the business, defeated only on account of the absence of the twenty-four county delegations required to pass it.

It is important to observe Honourable Senators that this practice is not anchored in the Constitution or the Standing Orders, but rather, it has developed as a necessary practice and usage of the Senate, one that will most probably out-live the Senate of the Eleventh Parliament and become settled practice.

This practice cannot however be taken to have set aside the provisions of Article 121 of the Constitution which expressly sets the quorum required for the transaction of any business of the Senate at fifteen Senators. This is to be distinguished from the number of Senators or county delegations required to pass various Bills and Motions.

Consequently, barring the existence of what the Senate Majority Leader referred to as a *"gentleman's agreement"* to require the presence of twenty-four county delegations before taking a vote, the law does not require the presence of twenty-four or for that matter thirty-two county delegations before a vote is taken. Article 121 of the Constitution requires the presence of fifteen Senators, irrespective of their county delegations, to be present for the transaction of any business in the Senate, including the taking of a vote. Such a vote would only be postponed where standing order 54(3) is invoked. Standing order 54(3) provides that *"the Speaker may, on the request of a Senator, defer the putting of the question to the following day in which case the Speaker shall thereupon nominate a time at which the question shall be put."*

Honourable Senators, this is a House of records. The Senate needs to be consistent in its business. I would invite all Honourable Senators to look at the proceedings of the Special Sitting of the Senate held on 15th August, 2014 at which the Senate considered the report of the Special Committee on the proposed removal from office of Honourable Bernard Kiala, the Deputy Governor of Machakos County. This very issue arose.

At that sitting, Senator Elachi, supported by the bulk of the Majority side, argued that the Senate could not proceed to vote in the absence of a minimum of twenty-four county delegations. Senator Wetang'ula, with the support of many Senators from the Minority side, took the view that the

quorum of the Senate is as stipulated in Article 121 of the Constitution: fifteen Senators. And that therefore the Senate could proceed to take a vote so long as the quorum had been realized. It was the Senator's position that the "*gentleman's agreement*" in the form of the practice of requiring twenty-four county delegations to be present before a vote could be taken could not take the place of the Constitution and the law.

It is evident, Honourable Senators, that the shoe is now on the other foot. The wheel has turned full circle. The Minority now espouses what the Majority held to be the correct position at the sitting of 15th August, 2014, while the Majority now stands with the position of the Minority as at 15th August, 2014.

Honourable Senators, the Office of the Speaker of the Senate, as the custodian and protector of the rules of this House, does not enjoy the luxury of altering its decision according to the dictates of different circumstances where the same set of facts obtains. On that occasion I ruled, as I do now, that the quorum of the Senate as set out in Article 121 is fifteen Senators and that the Senate is therefore competent and able to proceed with its business so long as the minimum of fifteen Senators is present in the Senate. It will be recalled that I stated that "*...if we give another opportunity and do not get the numbers, then we will proceed, because we will have given sufficient notice*". As it turned out, on that occasion, the number of twenty-five county delegations was finally attained.

The upshot of this, Honourable Senators, is that it will not be necessary for the Senate to defer the consideration of the Presidential Memoranda on the two Bills until either twenty-four or thirty-two county delegations are present in the Senate.

As long as the quorum of fifteen Senators set under Article 121 of the Constitution is realized at the sitting at which the Memoranda are to be considered, there would be no bar to the consideration of the Presidential Memoranda, including the taking of a vote on the Memoranda.

Honourable Senators as I ruled in my communication made on 1st October, 2015, in considering the Motion on the Presidential Memoranda, the Senate may-

- (i) pursuant to Article 115(2) of the Constitution, amend the Bill in light of the President's reservations or amend the Bill in a manner that fully accommodates the President's reservations. This would require the vote of a majority of the delegations in the Senate, which is twenty-four delegations; or
- (ii) pursuant to Article 115(4) of the Constitution, pass the Bill a second time, without amendment, or with amendments that do not fully accommodate the President's reservations. This would require the vote of two-thirds of the delegations in the Senate, which is thirty-two delegations.

It is of course the case that if when the vote on each of the Memoranda is taken there are less than twenty-four county delegations present in the Senate, the Motion shall not have been passed in terms of Article 115(2) of the Constitution but neither shall the Motion have been lost in terms of Article 115(4) of the Constitution. It needs to be noted, however, that even where the number of county delegations present in the Senate falls below the threshold of the twenty-four county delegations required to carry a matter in terms of Article 123(4)(c) of the Constitution, the taking of the vote avails the Senators present the opportunity to express and put on record their position, one way or the other, on the Memoranda.

Honourable Senators, as I explained in my earlier Communication on this matter, Article 115 of the Constitution requires the Senate to pronounce itself on the President's reservations by either accepting or rejecting the reservations. There is no room for "*deeming*" of either an acceptance or a rejection. A specific and express resolution must be made by the Senate to either accept or reject the President's reservations.

As I explained, this means that any other action that does not result in an outright acceptance or rejection of the President's reservations puts the Bill in a "*constitutional purgatory*" requiring some new action that will reignite and bring the legislative process to a close. In this regard the following may occur-

- (i) firstly, since it is evident from the rendition of Article 115 of the Constitution that the legislative process on any Bill only comes to an end when there is agreement between the Legislature and the Executive, and having found none, this may provide the occasion for further consultations between the Legislature and the Executive on the President's reservations. Such consultations may result in a re-submission of the Motion, at an appropriate time, in accordance with the Standing Orders;
- (ii) secondly, it is also possible that the situation could mark the end of the life of the Bill as published and instead result in the introduction of a new Bill which could either exclude the contested provisions or include the provisions in a negotiated format; and
- (iii) As a third possibility, the failure to accept or reject the President's reservations may be an indicator that Parliament does intend to enact new legislation on the matters covered in the Bill and that it would rather retain the existing legislative framework. The legislative process would therefore come to an end. This option must of course be read in light of the fact that the two Bills are Bills that are subject to the constitutional timelines stipulated in Article 261 of the Constitution as read together with the Fifth Schedule to the Constitution.

Honourable Senators, I now direct that the Presidential Memoranda on the Public Procurement and Asset Disposal Bill, National Assembly Bills No. 40 of 2014, and the Public Audit Bill, National Assembly Bills No. 38 of 2014 shall proceed to be disposed of in accordance with this guidance when they appear on the Order Paper.

I thank you."

4. **PAPER**

The following paper was laid on the Table of the Senate-

Report of the Standing Committee on Land and Natural Resources on the Water Bill (National Assembly Bill No. 7 of 2014).

(Vice-Chairperson, Standing Committee on Land and Natural Resources)

5. **STATEMENTS PURSUANT TO STANDING ORDER 45 (2) (b)**

- a) The Senator for Vihiga County (Sen. George Khaniri) sought a Statement from the Chairperson of the Standing Committee on Finance, Commerce and Budget regarding the status of the National Youth Service projects in the country in the Financial Year 2015/2016;
- b) The Senator for Kajiado County (Sen. Peter Mositet) sought a Statement from the Chairperson of the Standing Committee on National Security and Foreign Relations regarding the killing of two youths in Kajiado County by Kenya Wildlife Service rangers;
- c) The Senator for Kajiado County (Sen. Peter Mositet) sought a Statement from the Chairperson of the Standing Committee on Energy regarding the proposed survey of the Kenya Pipeline Company security system;
- d) The Senate Minority Leader (Sen. Moses Wetangula) sought a Statement from the Chairperson of the Standing Committee on National Security and Foreign Relations regarding the arrest of a journalist within the precincts of Parliament and the general harassment of journalists by the government;
- e) The Chairperson of the Standing Committee on Finance, Commerce and Budget issued a statement on revenue collection from the Samburu National Game Reserve.

In the statement, the Chairperson informed the Senate that the Game Reserve is managed solely by the County Government of Samburu, which also collects and manages revenue from the reserve. Consequently, details of the revenue collected from the reserve could only be obtained from the County Government of Samburu. The National Treasury, however, provides funding to the relevant Ministry for the promotion of tourism.

The Chairperson sought for more time to provide the required information.

- f) The Vice-Chairperson of the Standing Committee on Agriculture issued a statement on declining profits in the Tea industry in Kenya.

In the statement, the Vice-Chairperson informed the Senate of the final tea bonuses paid per region for the Financial Years 2013/2014 and 2014/2015. Noting that there were disparities in the amounts of bonuses paid by the various KTDA factories, the Vice-Chairperson informed the Senate that these were as a result of various factors, among them capacity utilization at the respective factories, different prices fetched by teas from different factories, and high production costs in some of the factories.

The Vice-Chairperson further informed the Senate that the Ministry of Agriculture, Livestock and Fisheries had appointed a Task Force to work on modalities of cooperation with county governments and other issues regarding the tea industry, and on maintenance of roads in the tea growing areas to enhance green leaf movement from the farm to the factory for processing.

6. COMMITTEE OF THE WHOLE

The Presidential Memorandum on the Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014)

(The Senate Majority Leader)

(Resumption of Debate interrupted on Thursday, 29th October, 2015)
(Division)

Order Deferred.

7. COMMITTEE OF THE WHOLE

The Presidential Memorandum on the Public Audit Bill (National Assembly Bill No. 38 of 2014)

(The Senate Majority Leader)

(Resumption of Debate interrupted on Thursday, 29th October, 2015)
(Division)

Order Deferred.

8. THE OFFICE OF THE COUNTY ATTORNEY BILL, (SENATE BILL NO. 37 OF 2014)

(Chairperson, Committee on Legal Affairs and Human Rights)

(Second Reading)

(Resumption of Debate interrupted on Tuesday, 27th October, 2015)
(Division)

Order Deferred.

9. THE COUNTY GOVERNMENTS DISASTER MANAGEMENT BILL, (SENATE BILL NO. 40 OF 2014)

(Chairperson, Committee on National Security and Foreign Relations)

(Second Reading)

(Resumption of Debate interrupted on Wednesday, 4th November, 2015)

(Division)

Order Deferred.

10. COMMITTEE OF THE WHOLE

Order for Committee read;

IN THE COMMITTEE

(The Acting Chairperson of Committees (Sen. Ongoro) in the Chair)

The Climate Change Bill (National Assembly Bill No. 1 of 2014)

Progress Report.

Motion made-

That the Committee of the Whole reports progress on its consideration of the Climate Change Bill (National Assembly Bill No. 1 of 2014) and seek leave to sit again tomorrow.

(The Senate Majority Leader)

Before the question was put and pursuant to Standing Order 72, the Acting Chairperson of Committees ruled that the question did not affect counties;

Question put and agreed to.

11. HOUSE RESUMED - (Temporary Speaker - (Sen. Mositet) - in the Chair)

12. THE CLIMATE CHANGE BILL (NATIONAL ASSEMBLY BILL NO. 1 OF 2014)

Progress Reported.

Motion made and Question proposed-

THAT the House do agree with the Committee in the said report.

(The Senate Majority Leader)

There being no other Senator wishing to contribute;

Before the question was put and pursuant to Standing Order 72, the Temporary Speaker (Sen. Mositet) ruled that the question did not affect counties;

Question put and agreed to.

13. COMMITTEE OF THE WHOLEThe Public Appointments (County Assembly Approval) Bill (Senate Bill No. 20 of 2014)

(Chairperson of the Standing Committee on Labour and Social Welfare)

(Resumption of Debate interrupted on Wednesday, 7th October, 2015)

Order Deferred.

14. COMMITTEE OF THE WHOLE

Order for Committee read;

IN THE COMMITTEE

The Acting Chairperson of Committees (Sen. Ongoro) – in the Chair

The County Early Childhood Education Bill, (Senate Bill No. 32 of 2014)Clauses 3 – 4

Motion made and Question proposed-

That, Clauses 3 - 4 be part of the Bill.

Putting of question deferred.

Clause 5

Motion made and Question proposed-

That, Clause 5 be part of the Bill.

Amendment proposed.

Motion made and Question proposed-

THAT clause 5 of the Bill be amended in subclause (1) by inserting the words "in a public education centre" immediately after the words "childhood education".

(Chairperson, Standing Committee on Education)

Debate arising;

Putting of question deferred.

Clause 6

Motion made and Question proposed-

That, Clause 6 be part of the Bill.

Amendment proposed-

Motion made and Question proposed-

THAT clause 6 of the Bill be amended-

- (a) in paragraph (a) by inserting the words "in public education centres" immediately after the words "childhood education";
- (b) by inserting the following new paragraph immediately after paragraph (a)-
 - (aa) establish such public education centres as may be necessary for the provision of free and compulsory early childhood education within the county;
- (c) by deleting paragraph (c);
- (d) in paragraph (d) by deleting the word "develop" appearing immediately before the words "in consultation with" and substituting therefor the word "implement"; and
- (e) by inserting the following new paragraph immediately after paragraph (k)-
 - (l) develop a best classroom model for early childhood education centres within the respective county in accordance with the specifications set out in the First Schedule.
(*Chairperson, Standing Committee on Education*)

Debate arising;

Putting of question deferred.

Clause 7

Motion made and Question proposed-

That, Clause 7 be part of the Bill.

Amendment proposed-

Motion made and Question proposed-

THAT clause 7 of the Bill be amended-

- (a) in subclause (1) by deleting the words "a pre-primary education institution" appearing immediately after the words "may be, to" and substituting therefor the words "an education centre"; and

- (b) in subclause (2) by deleting the words "one hundred" appearing immediately after the words "not exceeding" and substituting therefor the word "ten".

(Chairperson, Standing Committee on Education)

Debate arising;

Putting of question deferred.

Clause 8

Motion made and Question proposed-

That, Clause 8 be part of the Bill.

Amendment proposed-

Motion made and Question proposed-

THAT clause 8 of the Bill be amended-

- (a) in subclause (1) by inserting the words "in collaboration with the village administrator" immediately after the words "principal shall"; and
- (b) in subclause (3) by deleting the words "five hundred" appearing immediately after the words "not exceeding" and substituting therefor the word "ten".

(Chairperson, Standing Committee on Education)

Debate arising;

Putting of question deferred.

Clauses 9-19

Motion made and Question proposed-

That, Clauses 9-19 be part of the Bill.

Putting of question deferred.

Clauses 20

Motion made and Question proposed-

That, Clause 20 be part of the Bill.

Amendment proposed

THAT clause 20 of the Bill be amended in sub clause (2) by deleting the word "principal" appearing immediately after the words "whether or not the" and substituting therefor the word "proprietor".

(Chairperson, Standing Committee on Education)

Debate arising;

Putting of question deferred.

Clauses 21-26

Motion made and Question proposed-

That, Clauses 21-26 be part of the Bill.

Putting of question deferred.

Clause 27

Motion made and Question proposed.

That, Clause 27 be part of the Bill.

Amendment proposed

Motion made and Question proposed-

THAT clause 27 of the Bill be amended in sub clause (1) by deleting the words "and sponsored public education centres" appearing immediately after the words "public education centres" at the beginning of paragraph (b).

(Chairperson, Standing Committee on Education)

Debate arising;

Putting of question deferred.

Clause 28

Motion made and Question proposed-

That, Clause 28 be part of the Bill.

Putting of question deferred.

Clause 29

Motion made and Question proposed.

That, Clause 29 be part of the Bill.

Amendment proposed

Motion made and Question proposed-

THAT clause 29 of the Bill be amended by deleting sub clause (3) and substituting therefor the following new sub clause-

No.14 of 2013. (3) Where an education centre exists or is established in an existing institution of basic education, the management board of the education centre shall comprise of the principal of the early education centre in addition to the members set out under section 56(1) of the Basic Education Act.
(Chairperson, Standing Committee on Education)

Debate arising;

Putting of question deferred.

Clauses 30-34

Motion made and Question proposed.

That, Clauses 30-34 be part of the Bill.

Putting of question deferred.

Clause 35

Motion made and Question proposed.

That, Clause 35 be part of the Bill.

Amendment proposed

Motion made and Question proposed-

THAT clause 35 of the Bill be amended by inserting the following new paragraphs immediately after paragraph (c)-

(ca) academic progress assessment reports in relation to each child who is registered in the education centre;

(cb) a record of the immunizations administered with respect to each child who is registered in the education centre;

Debate arising;

Putting of question deferred.

Clause 36

Motion made and Question proposed.

That, Clause 36 be part of the Bill.

Amendment proposed

Motion made and Question proposed-

THAT clause 36 of the Bill be amended-

(a) in sub clause (1) by-

(i) deleting the words "and recruited as a teacher or caregiver by the early childhood education recruitment committee" appearing immediately after the words "Teachers Service Commission" in paragraph (c);

(ii) deleting paragraph (e);

(b) in sub clause (2) by-

(i) deleting the words "and recruited as a teacher or caregiver by the early childhood education recruitment committee" appearing immediately after the words "Teachers Service Commission" in paragraph (b);

(ii) deleting paragraph (c);

(c) in subclause (3) by deleting all the words appearing immediately after the words "within the county";

(d) by deleting subclause (4) and substituting therefor the following new subclause-

(4) The County Government shall pay to early childhood education teachers employed in public education centres within the county, such remuneration as it shall, in consultation with the Salaries and Remuneration Commission, determine.

(e) by deleting subclause (5).

(Chairperson, Standing Committee on Education)

Debate arising;

Putting of question deferred.

Clause 37

Motion made and Question proposed-

That, Clause 37 be part of the Bill.

Amendment proposed

Motion made and Question proposed-

THAT the Bill be amended by deleting clause 37.

*(Sen. (Prof.) Wilfred Lesan on behalf of Chairperson,
Standing Committee on Education)*

Debate arising;

Putting of question deferred.

Clause 38

Motion made and Question proposed-

That, Clause 38 be part of the Bill.

Putting of question deferred.

Clause 39

Motion made and Question proposed-

That, Clause 39 be part of the Bill.

Amendment proposed

Motion made and Question proposed-

THAT the Bill be amended by deleting clause 39 and substituting therefor the following new clause-

Recruitment of early childhood teachers. **39.** The Teachers Service Commission shall, in consultation with the Council of County Governors, be responsible for the-

(a) recruitment, training and discipline of early childhood education teachers; and

(b) maintenance of a register of early childhood education teachers recruited by it under paragraph (a).

*(Sen. (Prof.) Wilfred Lesan on behalf of Chairperson,
Standing Committee on Education)*

Debate arising;

Putting of question deferred.

Clause 40

Motion made and Question proposed-

That, Clause 40 be part of the Bill.

Amendment proposed

Motion made and Question proposed-

THAT clause 40 of the Bill be amended in subclause (2) by inserting the words "and the respective Parents Teachers Association" immediately after the words "County Education Board" appearing in paragraph (b).

*(Sen. (Prof.) Wilfred Lesan on behalf of Chairperson,
Standing Committee on Education)*

Debate arising;

Putting of question deferred.

Clause 41

Motion made and Question proposed-

That, Clause 41 be part of the Bill.

Putting of question deferred.

Clause 42

Motion made and Question proposed-

That, Clause 42 be part of the Bill.

Amendment proposed

Motion made and Question proposed-

THAT clause 42 of the Bill be amended-

(a) by deleting sub clause (1) and substituting therefor the following new sub clause-

(1) A child who has attained the age of three years and who is not more than six years of age shall be eligible for admission in an education centre.

(b) by inserting the following new sub clause immediately after subclause (1)-

(1A) Notwithstanding the provisions of subsection (1), the principal of an education centre may, where the principal considers it appropriate, admit a child who is more than six years of age.

*(Sen. (Prof.) Wilfred Lesan on behalf of Chairperson,
Standing Committee on Education)*

Debate arising;

Putting of question deferred.

Clause 43

Motion made and Question proposed-

That, Clause 43 be part of the Bill.

Amendment proposed

Motion made and Question proposed-

THAT clause 43 of the Bill be amended by deleting the words "A public" appearing immediately before the words "education centre" and substituting therefor the word "An".

*(Sen. (Prof.) Wilfred Lesan on behalf of Chairperson,
Standing Committee on Education)*

Debate arising;

Putting of question deferred.

Clause 44

Motion made and Question proposed-

That, Clause 44 be part of the Bill.

Putting of question deferred.

Clause 45

Motion made and Question proposed-

That, Clause 45 be part of the Bill.

Amendment proposed

Motion made and Question proposed-

THAT clause 45 of the Bill be amended-

(a) in subclause (2) by deleting the words "subject to subsection (3)" appearing immediately after the words "centre shall"; and

(b) by deleting subclause (3).

*(Sen. (Prof.) Wilfred Lesan on behalf of Chairperson,
Standing Committee on Education)*

Debate arising;

Putting of question deferred.

Clause 46

Motion made and Question proposed-

That, Clause 46 be part of the Bill.

Putting of question deferred.

Clause 47

Motion made and Question proposed-

That, Clause 47 be part of the Bill.

Amendment proposed

Motion made and Question proposed-

THAT clause 47 of the Bill be amended-

(a) by deleting subclause (2) and substituting therefor the following new subclauses-

(2) The Kenya Institute of Curriculum Development shall review the curriculum framework to be administered by all licensed education centres within the county in consultation with the county executive committee member-

(a) within a period of five years after the development of the curriculum under subsection (1); and

(b) subsequently every five years after each review.

(2A) The Kenya Institute of Curriculum Development shall, in carrying out the review under subsection (2), take into account the specific or special needs of children within the respective county.

(b) in subclause (3) by deleting paragraph (b); and

(c) in subclause (4) by deleting the words "county executive committee member" appearing immediately after the words "unless the" and substituting therefor the words "Kenya Institute of Curriculum Development".

*(Sen. (Prof.) Wilfred Lesan on behalf of Chairperson,
Standing Committee on Education)*

Debate arising;

Putting of question deferred.

Clause 48

Motion made and Question proposed-

That, Clause 48 be part of the Bill.

Putting of question deferred.

Clause 49

Motion made and Question proposed-

That, Clause 49 be part of the Bill.

Amendment proposed

Motion made and Question proposed-

THAT clause 49 of the Bill be amended in subclause (2) by inserting the words "and the respective Parent Teachers Association" immediately after the words "County Education Board" appearing in paragraph (b).

*(Sen. (Prof.) Wilfred Lesan on behalf of Chairperson,
Standing Committee on Education)*

Debate arising;

Putting of question deferred.

Clause 50

Motion made and Question proposed-

That, Clause 50 be part of the Bill.

Putting of question deferred.

Clause 51

Motion made and Question proposed-

That, Clause 51 be part of the Bill.

Amendment proposed

Motion made and Question proposed-

THAT clause 51 of the Bill be amended by inserting the words "on weekends" immediately after the words "school holidays".

*(Sen. (Prof.) Wilfred Lesan on behalf of Chairperson,
Standing Committee on Education)*

Debate arising;

Putting of question deferred.

Clause 52

Motion made and Question proposed-

That, Clause 52 be part of the Bill.

Amendment proposed

Motion made and Question proposed-

THAT the Bill be amended by deleting clause 52 and substituting therefor the following new clause-

Feeding programmes in education centres **52.** The county executive committee member shall, in consultation with the County Education Board, implement school feeding programmes in early childhood education centres within the respective county and shall for this purpose-

(a) issue guidelines and facilitate the implementation of the feeding programmes; and

(b) provide adequate nutritious foods taking into account the physiological and regional demands of children in the early childhood centre within the respective county.

*(Sen. (Prof.) Wilfred Lesan on behalf of Chairperson,
Standing Committee on Education)*

Debate arising;

Putting of question deferred.

Clauses 53-55

Motion made and Question proposed-

That, Clauses 53-55 be part of the Bill.

Putting of question deferred.

Clause 56

Motion made and Question proposed-

That, Clause 56 be part of the Bill.

Amendment proposed

Motion made and Question proposed-

THAT clause 56 of the Bill be amended by inserting the following new sub clause immediately after sub clause (1)-

(1A) An education centre shall submit the application made under subsection (1) together with a certificate from the Kenya Institute of Curriculum Development containing a statement that the foreign curriculum adheres to the set curriculum for early childhood education.

*(Sen. (Prof.) Wilfred Lesan on behalf of Chairperson,
Standing Committee on Education)*

Debate arising;

Putting of question deferred.

Clauses 57-67

Motion made and Question proposed-

That, Clauses 57-67 be part of the Bill.

Putting of question deferred.

Clause 68

Motion made and Question proposed-

That, Clause 68 be part of the Bill.

Amendment proposed

Motion made and Question proposed-

THAT clause 68 of the Bill be amended in sub clause (1) by deleting the words "subsection (1)" appearing immediately after the words "specified under" and substituting therefor the words "subsection (2)"

*(Sen. (Prof.) Wilfred Lesan on behalf of Chairperson,
Standing Committee on Education)*

Debate arising;

Putting of question deferred.

Clause 69

Motion made and Question proposed-

That, Clause 69 be part of the Bill.

Amendment proposed

Motion made and Question proposed-

THAT clause 69 of the Bill be amended in sub clause (1) by inserting the following new paragraph immediately after paragraph (c)-

(ca) implement emergency response capacity building programmes for all members of staff working in education centres within the county;

*(Sen. (Prof.) Wilfred Lesan on behalf of Chairperson,
Standing Committee on Education)*

Debate arising;

Putting of question deferred.

Clause 70

Motion made and Question proposed-

That, Clause 70 be part of the Bill.

Putting of question deferred.

Clause 71

Motion made and Question proposed-

That, Clause 71 be part of the Bill.

Amendment proposed

Motion made and Question proposed-

THAT clause 71 of the Bill be amended in subclause (1) by deleting the words "the relevant period for registration" appearing immediately after the words "licensed for" and substituting therefor the words "a period of one year after the commencement of this Act".

*(Sen. (Prof.) Wilfred Lesan on behalf of Chairperson,
Standing Committee on Education)*

Debate arising;

Putting of question deferred.

Clause 72

Motion made and Question proposed-

That, Clause 72 be part of the Bill.

Putting of question deferred.

Clause 73

Motion made and Question proposed-

That, Clause 73 be part of the Bill.

Amendment proposed

Motion made and Question proposed-

THAT clause 73 of the Bill be amended in sub clause (1) by deleting the words "County Education Board" appearing immediately after the words "consultation with the" and substituting therefor the words "Council of County Governors".

*(Sen. (Prof.) Wilfred Lesan on behalf of Chairperson,
Standing Committee on Education)*

Debate arising;

Putting of question deferred.

Clauses 74 - 75

Motion made and Question proposed-

That, Clauses 74 - 75 be part of the Bill.

Putting of question deferred.

The First Schedule

Motion made and Question proposed-

That, the First Schedule be part of the Bill.

Amendment proposed

Motion made and Question proposed-

THAT the First Schedule to the Bill be amended in item 2 by deleting the word "fifteen" appearing immediately after the words "not more than" and substituting therefor the word "forty".

*(Sen. (Prof.) Wilfred Lesan on behalf of Chairperson,
Standing Committee on Education)*

Debate arising;

Putting of question deferred.

The Second Schedule

Motion made and Question proposed-

That, the Second Schedule be part of the Bill.

Putting of question deferred.

Clause 2

Motion made and Question proposed-

That, Clause 2 be part of the Bill.

Amendment proposed

Motion made and Question proposed-

THAT clause 2 of the Bill be amended-

- (a) in the definition of the term "early childhood education "by inserting the words "pre-primary" immediately after the words "education means the";
- (b) by deleting the definition of the term early childhood education recruitment committee;
- (c) by inserting the following new definitions immediately after the definition of the word "sponsor"-

"teacher" means a person registered as a teacher by the Teachers Service Commission;

"Teachers Service Commission" means the Teachers Service Commission established under Article 237(1) of the Constitution;
(*Sen. (Prof.) Wilfred Lesan on behalf of Chairperson,
Standing Committee on Education*)

Debate arising;

Putting of question deferred.

Title and Clause 1

Motion made and Question proposed-

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

Putting of question deferred.

Progress Report

Motion made;

THAT, the Committee of the whole House do report progress and seek leave to sit again tomorrow.

Before the question was put and pursuant to Standing Order 72, the Acting Chair of the Committee of the whole (Sen. Ongoro) ruled that the question did not affect counties;

Question put and agreed to.

15. **HOUSE RESUMED** - Temporary Speaker (Sen. Mositet) in the Chair.

16. **THE COUNTY EARLY CHILDHOOD EDUCATION BILL, (SENATE BILL NO. 32 OF 2014)**

Progress Reported.

Motion made and Question proposed-

THAT the House do agree with the Committee in the said report.
(*Sen. (Prof.) Wilfred Lesan on behalf of Chairperson,
Standing Committee on Education*)

There being no other Senator wishing to contribute;

Before the question was put and pursuant to Standing Order 72, the Temporary Speaker (Sen. Mositet) ruled that the question did not affect counties;

Question put and agreed to.

17. **THE KENYA NATIONAL EXAMINATIONS COUNCIL (AMENDMENT) BILL, (SENATE BILL NO. 7 OF 2015)**

Motion made and question proposed;

THAT, the Office of the Kenya National Examination Council (Amendment) Bill, (Senate Bill No. 7 of 2015) be now read a Second time.
(*Sen. David Musila - 10.11.2015*)

Order Deferred.

18. **THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL (SENATE BILL NO. 8 OF 2015)**
(Sen. Hassan Omar)

Second Reading

Order deferred.

19. **MOTION - TO NOTE THE REPORT OF THE INTER-PARLIAMENTARY UNION EXPERT MISSION TO KENYA ON THE FRAMEWORK TO IMPLEMENT THE CONSTITUTIONAL PROVISION OF THE TWO-THIRDS GENDER RULE**

THAT, AWARE that the Parliament of Kenya is an active member of the Inter-Parliamentary Union (IPU) which is the international organization of national Parliaments;

FURTHER AWARE that the IPU provides support to Parliaments in areas such as law and policy-making, as well as representation;

NOTING WITH APPRECIATION that, upon a request by the Speaker of the Senate, the IPU sent an expert delegation to Kenya from 12th to 16th July, 2015 to offer advice on the way forward in implementing the constitutional requirement on the two thirds gender rule;

NOW THEREFOR the Senate notes the report of the Inter-Parliamentary Union Expert Mission to Kenya on the framework to implement the constitutional provision of the two-thirds gender rule laid on the Table of the Senate on Thursday, 8th October, 2015 and extends its appreciation to the IPU for support on the matter.

(Sen. Elizabeth Ongoro)

Order deferred.

There being no other business and the time being twenty two minutes past Five O'clock, the Temporary Speaker (Sen. Peter Mositet) adjourned the Senate without question put pursuant to the Standing Orders.

20. **SENATE ROSE** - at twenty two minutes past Five O'clock.

M E M O R A N D U M

*The Speaker will take the Chair on
Thursday, November 12, 2015 at 2.30 p.m.*

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