



REPUBLIC OF KENYA
ELEVENTH PARLIAMENT – (THIRD SESSION)
THE SENATE
VOTES AND PROCEEDINGS
THURSDAY, NOVEMBER 12, 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. **PAPERS**

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

- a) Statement on the Business of the Senate for the week commencing 17th November, 2015
(Sen. Charles Keter on behalf of the Senate Majority Leader)
- b) Report of the Standing Committee on Health on the visit to the New Nyanza Provincial General Hospital, Kisumu County on 22nd May 2015;
- c) Report of the Standing Committee on Health on the visit to the Kisii Level Five Hospital, Kisii County on 23rd May 2015;
- d) Report of the Standing Committee on Health on the visit to the Kakamega Provincial General Hospital, Kakamega County on 22nd May 2015.
(Vice-Chairperson, Standing Committee on Health)
- e) Report of the Auditor General on the Financial Statements of the County Government of Nakuru for the sixteen (16) months period ended 30 June, 2014;
- f) Report of the Auditor General on the Financial Statements of Samburu County Government for the sixteen (16) months period ended 30 June, 2014;

- g) Report of the Auditor General on the Financial Operations of Nyeri County Assembly for the period 1 July, 2013 to 30 June, 2014;

(Chairperson, Sessional Committee on County Public Accounts and Investments)

4. **NOTICE OF MOTION** - (Sen. Muriuki Karue)

THAT, AWARE THAT the Senate, on 30th July, 2015, resolved to establish a Select Committee consisting of nine (9) Senators to conduct an inquiry into the needs of the forty-seven counties for headquarter facilities and report back to the House within three months of its establishment;

REALIZING THAT the three months period lapsed on 30th October, 2015 but owing to the magnitude of the work involved the Committee was not able to complete its work within the duration;

NOTING THE NEED for more time to carry out a thorough inquiry into this matter;

NOW THEREFORE, the Senate resolves to renew the mandate of the Committee for a further period of forty-five (45) days to enable the Committee to complete its work and report to the House.

5. **NOTICE OF MOTION** (Sen. Kittony on behalf of the Chairperson, Standing Committee on Health)

THAT, the Senate adopts the reports of the Standing Committee on Health on visits to the New Nyanza Provincial General Hospital, Kisumu County; the Kisii Level Five Hospital, Kisii County; and the Kakamega Provincial General Hospital, Kakamega County undertaken between 22nd and 23rd May, 2015, laid in the Senate on Thursday, 12th November, 2015.

6. **NOTICE OF MOTION** – (Sen. Beatrice Elachi on behalf of the Senate Majority Leader)

THAT AWARE that pursuant to Article 124(1) of the Constitution and the Standing Orders of the Senate, at a Special Sitting of the Senate held on Monday, 15th June, 2015, the Senate resolved, to establish a Select Committee on Constitutional and Legal Review to inquire into legal issues arising following the re-allocation by the National Assembly of monies intended for key constitutional organs and institutions, including, the Judiciary, the Salaries and Remuneration Commission and the Senate.

FURTHER AWARE that on 23rd June, 2015, the Senate approved the names of Senators to serve in the said Select Committee whose terms of reference were as follows-

- i. *inquire into the design of the Legislature and in particular, the institutions set out in the Constitution with a view to protecting the interests of the counties and their governments and securing and safeguarding the system of devolved government established in the Constitution;*
- ii. *inquire into the role of the Senate as set out under the Constitution and make recommendations on the appropriate role to be played by the Senate in-*
 - (i) *the budget making process and revenue allocation;*
 - (ii) *the legislative process;*
 - (iii) *oversight over the National Government; and*
 - (iv) *oversight over the County Governments;*
- iii. *examine and make recommendations on the appropriate role to be played by the Senate in the approval of nominees for appointment to State office;*
- iv. *examine and make recommendations on the appropriate inter linkage and interplay between-*
 - (i) *the Senate and the National Government;*
 - (ii) *the Senate and the National Assembly;*
 - (iii) *the Senate and the County Governments; and*
 - (iv) *the Senate and other constitutional offices and Commissions.*
- v. *recommend to the Senate such constitutional and legislative interventions as may be necessary to secure and safeguard the system of devolved government in the Constitution, including measures necessary to ensure the effective discharge by the Senate, of its legislative and oversight role under the Constitution; and*
- vi. *examine and make recommendations on any other matter connected with or incidental to the foregoing.*

COGNIZANT OF THE FACT that the Committee tabled its report on 23rd September, 2015 which report was adopted by the Senate on 21st October, 2015;

NOTING that one of the recommendations in the report was that-
The Senate approves the appointment of a Select Committee to spearhead the processing of the General Suggestion for the Draft Constitution of Kenya (Amendment) Bill, 2015 through popular initiative in terms of Article 257 of the Constitution.

NOW THEREFORE, pursuant to the resolution of the Senate during the Sitting held on 21st October, 2015, the Senate approves the appointment of the following

Senators to the Select Committee to spearhead the processing of the General Suggestion for the Draft Constitution of Kenya (Amendment) Bill, 2015 through popular initiative in terms of Article 257 of the Constitution-

1. Sen. Kipchumba Murkomen
2. Sen. Kiraitu Murungi
3. Sen. Naisula Lesuuda
4. Sen. (Eng.) Muriuki Karue
5. Sen. Billow Kerrow
6. Sen. James Orengo
7. Sen. (Dr.) Boni Khalwale
8. Sen. Mutula Kilonzo Junior, and
9. Sen. Halima Abdille

And that the committee reports back to the Senate within six months.

7. STATEMENTS

a) Statements pursuant to the provisions of Standing Order 45(2) | (b)

- i. The Chairperson of the Standing Committee on National Security and Foreign Relations issued a statement on the security and welfare of persons living with albinism in the country.

Thereupon, the Chairperson informed the Senate that persons living with albinism were classified as Persons with Disability and that Article 54(1)(a) of the Constitution of Kenya (2010) provides that a person with any disability is entitled to be treated with dignity and respect and to be addressed and referred to in a manner that is not demeaning.

The Chairperson also informed the Senate that the Government had been promoting public awareness on the rights of persons with albinism which is aimed at educating the public as a way of curbing prejudice, stigma, discrimination and attacks.

- ii. The Chairperson of the Standing Committee on National Security and Foreign Relations issued a statement on the killing of Mr. Eliud Wachira Gachoki.

Thereupon, the Chairperson informed the Senate that the deceased, Eliud Wachira Gachoki had travelled to Kariobangi in Nairobi on 24th January 2015 for dowry negotiations, together with other family members and that the function had ended at about 9:30 pm.

The Chairperson also informed the Senate that the following day, Mr. Timothy Wachira, a son of the deceased, found his body lying on the corridor of his house in a pool of blood with deep cuts on the forehead.

The Chairperson further informed the Senate that investigations aimed at apprehending and charging the perpetrators was ongoing.

- iii. The Senator for Trans-Nzoia (Sen. Henry Ndiema) sought a statement from the Chairperson of the Standing Committee on National Security and Foreign Relations regarding the killing of Mr. Edwin Kimutai Masai.

b) Statement pursuant to the provisions of Standing Order 45(2) (c)

The Senate Deputy Majority Leader (Sen. Charles Keter) issued a Statement on behalf of the Senate Majority Leader regarding the Business of the Senate for the week commencing November 17, 2015.

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

(Chairperson, Committee on Legal Affairs and Human Rights)

Order for Second Reading read;

Order deferred.

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

(Chairperson, Committee on National Security and Foreign Relations)

Order deferred.

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

(Sen. David Musila)

Order deferred.

11. **MOTION – FORMULATION OF ADDITIONAL POLICY INTERVENTIONS TO MITIGATE THE PROBLEM OF TRAFFIC CONGESTION IN NAIROBI METROPOLITAN REGION**

(Ministry of Transport and Infrastructure)

THAT, AWARE that traffic congestion in Nairobi Metropolitan Region is increasingly becoming worse leading to increased costs, longer travel times, constrained economic productivity and adverse health and environmental externalities;

CONCERNED that the economic cost of the congestion is estimated to be Kshs.1 billion annually on account of wasted man-hours and wasted fuel due to vehicular queuing;

APPRECIATING the government's effort in mitigating the problem by expanding infrastructure and initiating other interventions such as installation of traffic lights in the Central Business District;

The Senate now calls upon the Government to consider formulating additional policy interventions to mitigate the problem by:-

1. Enacting legislation to allow only high capacity public transport to operate in the city; and
2. Creating regulations to:-
 - a) Require all deliveries to business premises to be done at night;
 - b) Require construction on roads that are in use to be done at night; and
 - c) Reroute heavy commercial vehicles to use the bypasses.

(Sen. Zipporah Kittony)

Order deferred.

12. **MOTION- ESTABLISHMENT OF A TASK FORCE TO SURVEY, MARK AND FIX BEACONS FOR ALL THE COUNTY BOUNDARIES**

(Department of Land)

THAT GIVEN the clear provisions of Article 6 (1) and the First Schedule which establishes the 47 counties of the Republic of Kenya;

CONSIDERING the clear provisions of the Districts and Provinces Act (Cap 105 A) of 1992 which specifically delineates the geographical boundaries of each county;

NOTING the provisions of Article 188 of the Constitution, which clearly state that the boundaries of a county may be altered only by a resolution of an Independent Commission set up for that purpose by Parliament and with the support of at

least two-thirds members of the National Assembly and two-thirds of the county delegations in the Senate;

FURTHER NOTING that the boundaries in counties have not been surveyed and no beacons have been fixed;

CONCERNED that failure by the National Government to mark and fix the county boundaries has led to endless and sometimes violent conflicts, in which innocent Kenyans have been killed and their property destroyed, and is generally perpetuating poverty and underdevelopment in counties;

THIS HOUSE urges the Office of the President and the Ministry of Land, Housing and Urban Development to urgently establish a Task Force to survey mark and fix beacons for all the county boundaries and to submit a report of the said Task Force to this House on or before 31st March, 2016.

(Sen. Kiraitu Murungi)

Order deferred.

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

Motion made and Question proposed;

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 THEREFORE 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)

Debate arising;

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

14. 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, November 17, 2015 at 2.30 p.m.*

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