



**REPUBLIC OF KENYA**

**THE SENATE**

**ELEVENTH PARLIAMENT – THIRD SESSION**

**VOTES AND PROCEEDINGS-SPECIAL SITTING**

**WEDNESDAY, DECEMBER 16, 2015 AT 3.00 P.M.**

1. The Senate assembled at three O'clock.
2. The Proceedings were opened with Prayer.

3. **COMMUNICATION FROM THE CHAIR**

- (a) **On the Special Sitting of the Senate to consider the Water Bill (National Assembly Bill No. 7 of 2014) and the President's Memoranda on the Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014) and the Public Audit Bill (National Assembly Bill No. 38 of 2014)**

The Speaker issued the following communication from the Chair-

"Honourable Senators, I wish to welcome you from recess and thank you for finding time to attend this special sitting of the Senate. I am sure each of you has scheduled major county events, and it is because of the value you attach to the business of the Senate, especially the consideration of key pieces of legislation like the ones before us today, that you have created time to be here.

By a letter dated 15<sup>th</sup> December, 2015, and pursuant to Standing Order 29 (1) of the Senate Standing Orders, the Senate Majority Leader supported by supported by the requisite number of Senators, requested the Speaker to appoint Wednesday, 16<sup>th</sup> December, 2015 as a day for a Special Sitting of the Senate to consider the Water Bill (National Assembly Bill No. 7 of 2014) and the President's Memoranda on the Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014) and the Public Audit Bill (National Assembly Bill No. 38 of 2014).

Following consideration of the request by the Senate Majority Leader, I was satisfied that it met the requirements of Standing

Order 29 (2). It is in this respect that I convened this special sitting of the Senate, by *Gazette* Notice No. 9266 of 15<sup>th</sup> December, 2015, which was carried in a Special Issue of the *Gazette* of the same day.

Hon. Senators, as required by Standing Order 29 (5), the Notice specified that the business to be transacted at this sitting would be the consideration of the Water Bill (National Assembly Bill No. 7 of 2014) and the Presidential Memoranda on the Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014) and the Public Audit Bill (National Assembly Bill No. 38 of 2014).

Honourable Senators, as specified in the Gazette Notice and in accordance with standing order 29(5) of the Senate Standing Orders, the business specified in the notice shall be the only business before the Senate during this special sitting, following which the Senate shall stand adjourned until Tuesday, 9<sup>th</sup> February, 2016 at 2.30 p.m. in accordance with the Senate Calendar.

Indeed, Honourable Senators will observe that at Order Nos. 2, 3 and 4 in today's Order Paper, pursuant to the provisions of the Standing Orders and as indicated in the *Gazette* Notice, the Business to be transacted is the consideration of the Water Bill (National Assembly Bill No. 7 of 2014) and the Presidential Memoranda on the Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014) and the Public Audit Bill (National Assembly Bill No. 38 of 2014).

I thank you".

**(b) On 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)**

The Speaker issued the following communication from the Chair-

"Honourable Senators,

As you are aware, on 23rd June, 2015, I read a Message from the National Assembly forwarding the Presidential Memoranda on the Public Audit Bill, 2014 and the Public Procurement and Asset Disposal Bill, 2014 for consideration by the Senate.

The two Bills are subject to Constitutional timeline of 27th May, 2015, having been extended by 9 months, by the National Assembly. Indeed

Parliament passed the Bills within the timelines but H.E the President declined to assent to the two Bills and referred them back to Parliament, in a Memoranda, with recommendations for reconsideration.

On 23<sup>rd</sup> June, 2015, this House debated and approved Senators to the Joint Committee to consider the President's recommendations on the two Bills. However, the timeline for the Joint Committee lapsed on 20<sup>th</sup> August, 2015 without the Joint Committee tabling a report as contemplated under understanding order 158 (2).

Honourable Senators,

The Joint Committee having failed to table a report within the stipulated timeline, on 1<sup>st</sup> October, 2015, I issued a Communication detailing the procedure to be followed on the disposal of the Presidential Memoranda on the Public Audit Bill, 2014 and the Public Procurement and Asset Disposal Bill, 2014. In the Communication, I directed that the two Memoranda be scheduled for consideration on the week starting 6<sup>th</sup> October, 2015.

After my Communication, several Senators urged the Speaker to stay the consideration of the Memoranda to allow consideration of the issues they had raised including-

- i) Whether the President, who is not a Member of Parliament (unlike in the repealed Constitution) can participate in law making, by exercising veto power;
- ii) Whether the reservations in the Presidential Memoranda can include introduction of new sections that were not contemplated in the Bill as passed in the first place; and
- iii) Whether the new clauses introduced in the Memorandum need to go through the usual legislative processes of First, Second and Third Readings.

Honourable Senators,

On 28<sup>th</sup> October, 2015, I issued another Communication responding to the issues raised by Hon. Senators and directed that the President's Memoranda on the two Bills be placed on the Order Paper for consideration at the Committee of the Whole.

On 29<sup>th</sup> October, 2015, the Committee of the Whole considered the President's Memoranda on the Public Audit Bill, 2014 and the Public Procurement and Asset Disposal Bill, 2014 by canvassing the recommendations by the President and deferred the putting of the question. The Committee then reported progress and sought leave to sit again.

On 11<sup>th</sup> November, 2015, I issued a further communication addressing a request by Honourable Senators on the threshold required to approve or reject the President's recommendations as contained in the memoranda.

In the previous Communications, I gave the following guidance -

- (a) The Senate, pursuant to Article 115(2) of the Constitution, may amend the Bills in light of the President's reservations or amend the Bills 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 (24) delegations; or
- (b) Pursuant to Article 115(4) of the Constitution, pass the Bills 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 (32) delegations.

I also gave guidance on what would happen in the event that Senate does not obtain the twenty-four delegations required to accept the President's reservations or where the Senate does not obtain the thirty-two delegations required to reject the President's reservations. I ruled that the only action that would take the agenda forward is either an acceptance or a rejection of the President's reservations by the requisite numbers and as such any other action that does not result in an outright acceptance or rejection of the President's reservations would put the Bill in a "*Constitutional Purgatory*" requiring some new action that would re-ignite and bring the legislative process to a close.

Honourable Senators,

On 17<sup>th</sup> November, 2015, the President's recommendations on the Public Procurement and Asset Disposal Bill, 2014 were voted on in the Committee of the Whole.

After the Division and the announcement of the results, the Chairperson of the Committee of the Whole, based on the previous rulings by the Speaker, informed Senators on the implications of the results of the division - being that the Senate had not made a clear decision on the recommendations by H.E the President regarding the Public Procurement and Asset Disposal Bill, 2014.

While in the Committee of the Whole, the Senate Majority Leader, moved a Motion, pursuant to standing order 139, to report progress and seek leave to sit again to consider the President's Memorandum on the Public Procurement and Asset Disposal Bill, 2014. The Motion was carried.

However, when the House resumed, several Senators raised points of order on the manner in which progress was reported. This led to the Chairperson of the Committee of the Whole declining to report to the Senate the Committee's consideration of the President's Memorandum on the Public Procurement and Asset Disposal Bill.

In the absence of the report by the Chairperson of the Committee of the Whole, the Speaker deferred the matter and undertook to give further directions.

Honourable Senators,

I have read the Hansard and followed what transpired in the House and in the Committee of the Whole on the consideration of the President's Memorandum on the Public Procurement and Asset Disposal Bill. I wish to point out to Hon. Senators the provisions of the following standing orders-

*171. A Committee of the Whole shall not consider any matter other than a matter which has been referred to it or which it is required by these Standing Orders to consider.*

*172. A Committee of the Whole may not adjourn its own sitting or the consideration of any matter to a future sitting, but the Chairperson may, by Motion, be directed notwithstanding that all matters referred to the Committee have not yet been considered, to report progress to the Senate and ask leave to sit again.*

*173. When all the matters referred to a Committee of the Whole have been considered, the Chairperson shall be directed by Motion to report to the Senate.*

*174. (1) When a Motion is made in Committee to report or to report progress and ask leave to sit again, the question shall be put forthwith and decided without amendment or debate and if the question is agreed to, the Chairperson shall forthwith leave the Chair.*

*(2) Except as otherwise provided by these Standing Orders, every report under paragraph (1) shall be made without question put, and may, by Motion, be agreed to or negatived by the Senate or re-committed to the Committee of the Whole, or postponed for further consideration.*

Honourable Senators,

The Committee of the Whole had pronounced itself having agreed to report progress and seek leave to sit again and the Chairperson of the Committee of the Whole was obliged to report the same pursuant to standing order 173 as the matter ceased being the prerogative of the Chairperson. The specific standing orders that I have just quoted do not give room to the Chairperson to decide as to whether he should report or not. However, in the event that a Chairperson of the Committee of the Whole refuses to report as directed by the Committee of the Whole, he/she will be deemed to be out of order and the Speaker shall require any other Senator present to report.

I also wish to point out that in the event of the Motion, in the Committee of the Whole (as contemplated in SO 174 (1)) to report or report progress is negatived, the Speaker shall resume the Chair and the Chairperson shall report the Resolution of the Committee of the Whole.

In addition, upon a Motion that "The Senate do agree with the Committee in the said Report", the Senate has three options - the Motion may be agreed to, agreed to with amendments (recommitting specific clauses of the Bill) or negatived.

As indicated in Order No. 2 in today's Order Paper, the Senate will resume consideration of the President's Memorandum on the Public Procurement and Asset Disposal Bill and I will be calling upon the Chairperson who chaired the Committee of the Whole on the consideration of the President's Memorandum on the Public Procurement and Asset Disposal Bill on Tuesday, 17th November, 2015 to report to the Senate the consideration of the Committee of the Whole on the President's Memorandum on the Public Procurement and Asset Disposal Bill. Thereafter we shall proceed as per the standing orders and the guidance that I have given.

The guidance that I have given shall also apply to the consideration of the President's memorandum on the Public Audit Bill, 2014, which is listed in Order No. 3 in today's Order Paper.

I thank you".

**(c) On the suspension of Sittings of Committees of the Senate**

The Deputy Speaker issued the following Communication from the Chair-  
"Honourable Senators,

As you are aware, on Thursday 3<sup>rd</sup> December, 2015, the Senate proceeded on recess until Tuesday 9<sup>th</sup> February, 2016 as per the Senate Calendar. It has been a long and hectic year for all of us and I am sure every one of us is looking forward to take a well-deserved break during the festive season.

The recess at the end of the session provides an opportunity for us to reflect on our achievements and challenges throughout the year. We can only do this when our minds are relaxed and devoid of the hustle and bustle of our busy schedules.

Honourable Senators, I believe we are looking forward to the December festivities with our families, friends and constituents, I therefore direct all Senate committees to suspend their sittings as from 18<sup>th</sup> December 2015 to 15<sup>th</sup> January, 2016.

This will enable the Senators to take a break from the heavy business of the Senate and be with their families and their voters. In the same breadth it is an opportunity for the officers to take their annual leave, and join their families and friends during the Christmas season as well as to re-invigorate and recharge in readiness for the next Session in 2016.

Honourable Senators, it is with great pleasure that I wish to extend to you all the best wishes for a MERRY CHRISTMAS AND A PROSPEROUS NEW YEAR -2016.

I thank you".

4. **CONSIDERATION OF THE PRESIDENT'S MEMORANDUM ON THE PUBLIC PROCUREMENT AND ASSET DISPOSAL BILL (NATIONAL ASSEMBLY BILL NO. 40 OF 2014)**

Debate interrupted on Tuesday, 17<sup>th</sup> November, 2015 resumed at Reporting Stage;

Progress Reported and leave to sit again today sought.

Motion made and Question proposed:-

**THAT**, the House do agree with the Committee in the said Report.

*(The Senate Majority Leader)*

Amendment Proposed

**THAT**, Motion be amended by inserting the following words at the end thereof-

'Subject to the re-committal of the President's recommendations on Clause 51 (3) and Clause 124 to the Committee of the Whole'.

Debate arising;

There being no other Senator wishing to contribute;

Before the question was put and pursuant to Standing Order 72, the Speaker ruled that the question did not affect counties;

Question put and agreed to.

5. **COMMITTEE OF THE WHOLE**  
**The President's Memorandum on the Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014)**

**IN THE COMMITTEE**

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

**President's Recommendation on Clause 51**

Motion made and Question proposed-

**THAT**, the Bill be amended in clause 51 (3) by inserting the words "and licensed" immediately after the word "registered".

*(The Senate Majority Leader)*

Debate arising.

The Acting Chairperson directed that electronic voting be taken pursuant to Standing Order 74 (1) and that the division bell be rung for seven minutes;

After the expiry of seven minutes, the Acting Chairperson directed that the doors be locked and Senators asked to log-in using their cards;

The Acting Chairperson put the Question and directed Senators to cast their votes by pressing either the "Yes", "No" or "Abstain" button;

Before the results of the Division were announced and pursuant to provisions of Standing Order 74 (5), the Acting Chairperson allowed seven Senators to record their vote verbally.

Thereupon, the following Senators recorded their votes as "Yes"-

1. Sen. Adan Dullo Fatuma
2. Sen. Kariuki Godfrey Gitahi
3. Sen. Kembi-Gitura
4. Sen. Kisasa Mshenga Mvita
5. Sen. Murkomen Onesmus Kipchumba
6. Sen. Ochwang'i Hosea

Sen. Mohamud Halima Abdille recorded her vote as "No".

Following the Division, Question agreed to.

The results of the Division were as follows-

**AYES - 26**

**NOES - 9**

**ABSTENTIONS - 1**

**AYES**

1. Sen. Adan Dullo Fatuma – voted verbally on behalf of Isiolo County delegation
2. Sen. Billow Adan Kerrow
3. Sen. Bule Ali Abdi
4. Sen. Chiaba Abu Mohamed
5. Sen. Karaba Dickson Daniel
6. Sen. Kariuki Godfrey Gitahi-Voted verbally
7. Sen. Kembi Gitura- Voted Verbally
8. Sen. Keter Charles Cheruiyot



9. Sen. Kimani Paul Wamatangi
10. Sen. Kindiki Kithure
11. Sen. Kioko Mike Sonko
12. Sen. Kisasa Mshenga Mvita - voted verbally on behalf of Kilifi County delegation
13. Sen. Kivuti Lenny Maxwel
14. Sen. Lesan Wilfred Rotich
15. Sen. Lesuuda Naisula- on behalf of Samburu County delegation
16. Sen. Lonyangapuo John Krop
17. Sen. Melly Isaac Kipkemboi
18. Sen. Moi Gideon Kipsielei
19. Sen. Mositet Peter Korinko
20. Sen. Mungai James Kiarie
21. Sen. Muriuki Karue Muriuki
22. Sen. Murkomen Onesmus Kipchumba-voted verbally
23. Sen. Ntutu Stephen Kanyinke
24. Sen. Ochwangi Hosea- voted verbally on behalf of Kisii County delegation
25. Sen. Okong'o Kennedy Mong'are
26. Sen. Sang Stephen Kipyego

### **NOES**

1. Sen. Hassan Omar Hassan
2. Sen. Kajwang' Moses
3. Sen. Khalwale Boni
4. Sen. Khaniri George
5. Sen. Kilonzo Mutula Junior
6. Sen. Mohamud Halima Abdille- voted verbally on behalf of Wajir County delegation
7. Sen. Ndiema Henry Tirole
8. Sen. Orenge James
9. Sen. Wetang'ula Moses

### **ABSTENTION**

1. Sen. Machage Wilfred Gisuka

### **President's Recommendation on Clause 124**

Motion made and Question proposed-

**THAT**, the Bill be amended by deleting sub-clause (4) and substituting therefor the following new sub-clause-

Selection  
methods for  
requests for  
proposals

(4). Subject to the foregoing provisions of this section, in the evaluation of tenders by public entities, the criteria for assessing the technical and financial capability of the tenderers shall as may be prescribed by the accounting officer in the tender documents.

*(The Senate Majority Leader)*

Debate arising.

The Acting Chairperson (Sen. Murkomen) directed that electronic voting be taken pursuant to Standing Order 74 (1) and that the division bell be rung for seven minutes;

After the expiry of seven minutes, the Acting Chairperson directed that the doors be locked and Senators asked to log-in using their cards;

The Acting Chairperson put the Question and directed Senators to cast their votes by pressing either the "Yes", "No" or "Abstain" button;

Before the results of the Division were announced and pursuant to provisions of Standing Order 74 (5), the Acting Chairperson allowed seven Senators to record their vote verbally.

Thereupon, the following Senators recorded their votes as "Yes"-

1. Sen. Adan Dullo Fatuma
2. Sen. Kariuki Godfrey Gitahi
3. Sen. Kembi-Gitura
4. Sen. Kisasa Mshenga Mvita
5. Sen. Murkomen Onesmus Kipchumba
6. Sen. Ochwang'i Hosea

Sen. Mohamud Halima Abdille recorded her vote as "No".

Following the Division, Question agreed to.

The results of the Division were as follows-

**AYES - 26**

**NOES - 9**

**ABSTENTIONS - 1**

**AYES**

1. Sen. Adan Dullo Fatuma – voted verbally on behalf of Isiolo County delegation
2. Sen. Billow Adan Kerrow
3. Sen. Bule Ali Abdi
4. Sen. Chiaba Abu Mohamed
5. Sen. Karaba Dickson Daniel
6. Sen. Kariuki Godfrey Gitahi-Voted verbally
7. Sen. Kembi Gitura- Voted Verbally
8. Sen. Keter Charkes Cheruiyot
9. Sen. Kimani Paul Wamatangi
10. Sen. Kindiki Kithure
11. Sen. Kioko Mike Sonko
12. Sen. Kisasa Mshenga Mvita - voted verbally on behalf of Kilifi County delegation
13. Sen. Kivuti Lenny Maxwell
14. Sen. Lesan Wilfred Rotich
15. Sen. Lesuuda Naisula- on behalf of Samburu County delegation

16. Sen. Lonyangapuo John Krop
17. Sen. Melly Isaac Kipkemboi
18. Sen. Moi Gideon Kipsielei
19. Sen. Mositet Peter Korinko
20. Sen. Mungai James Kiarie
21. Sen. Muriuki Karue Muriuki
22. Sen. Murkomen Onesmus Kipchumba-voted verbally
23. Sen. Ntutu Stephen Kanyinke
24. Sen. Ochwangi Hosea- voted verbally on behalf of Kisii County delegation
25. Sen. Okong'o Kennedy Mong'are
26. Sen. Sang Stephen Kipyego

**NOES**

1. Sen. Hassan Omar Hassan
2. Sen. Kajwang' Moses
3. Sen. Khalwale Boni
4. Sen. Khaniri George
5. Sen. Kilonzo Mutula Junior
6. Sen. Mohamud Halima Abdille- voted verbally on behalf of Wajir County delegation
7. Sen. Ndiema Henry Tiole
8. Sen. Orengo James
9. Sen. Wetang'ula Moses

**ABSTENTION**

1. Sen. Gisuka Wilfred Machage

Motion made-

**THAT**, the approval of the President's Memorandum on the Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014) be reported without amendments.

Before the question was put and pursuant to Standing Order 72, the Acting Chairperson (Sen. Murkomen) ruled that the question did not affect counties;

Question put and agreed to.

President's Memorandum to be reported without amendments.

6. **HOUSE RESUMED** - (Deputy Speaker - Sen. Kembi-Gitura - in the Chair)
7. **CONSIDERATION OF THE PRESIDENT'S MEMORANDUM ON THE PUBLIC PROCUREMENT AND ASSET DISPOSAL BILL (NATIONAL ASSEMBLY BILL NO. 40 OF 2014)**

The President's Memorandum on the Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014) reported without amendments;

Motion made and Question proposed-

**THAT**, the Senate do agree with the Committee of the Whole in the said Report.

*(The Senate Majority Leader)*

Debate Arising;

There being no Senator wishing to contribute;

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

Question put and agreed to.

8. **COMMITTEE OF THE WHOLE**

**The President's Memorandum on the Public Audit Bill (National Assembly Bill No. 38 of 2014)**

Order for Committee read;

**IN THE COMMITTEE**

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

**President's Recommendation on Clause 4**

Motion made and Question proposed-

**THAT**, Clause 4 (2) of the Bill be amended by deleting the existing sub-clause and substituting therefor the following new sub-clause-

(2) The Office shall comprise the Auditor –General as its statutory head and all other staff appointed by the Auditor-General as may be delegated in accordance with Article 234 (5) of the Constitution.

*(The Senate Majority Leader)*

Debate interrupted on Thursday 29th October, 2015 resumed on a division;

The Acting Chairperson (Sen. Murkomen) directed that electronic voting be taken pursuant to Standing Order 74 (1) and that the division bell be rung for seven minutes;

After the expiry of seven minutes, the Acting Chairperson directed that the doors be locked and Senators asked to log-in using their cards;

The Acting Chairperson put the Question and directed Senators to cast their votes by pressing either the "Yes", "No" or "Abstain" button;

Before the results of the Division were announced and pursuant to provisions of Standing Order 74 (5), the Acting Chairperson allowed seven Senators to record their vote verbally.

Thereupon, the following Senators recorded their votes as "Yes"-

1. Sen. Adan Dullo Fatuma
2. Sen. Kariuki Godfrey Gitahi
3. Sen. Kembi-Gitura
4. Sen. Kimani Paul Wamatangi
5. Sen. Kisasa Mshenga Mvita
6. Sen. Murkomen Onesmus Kipchumba
7. Sen. Ochwang'i Hosea

Following the Division, Question agreed to.

The results of the Division were as follows-

**AYES - 26**

**NOES - 9**

**ABSTENTIONS - 1**

**AYES**

1. Sen. Adan Dullo Fatuma – voted verbally on behalf of Isiolo County delegation
2. Sen. Billow Adan Kerrow
3. Sen. Bule Ali Abdi
4. Sen. Chiaba Abu Mohamed
5. Sen. Karaba Dickson Daniel
6. Sen. Kariuki Godfrey Gitahi-Voted verbally
7. Sen. Kembi Gitura- Voted Verbally
8. Sen. Keter Charkes Cheruiyot
9. Sen. Kimani Paul Wamatangi - voted verbally
10. Sen. Kindiki Kithure
11. Sen. Kioko Mike Sonko
12. Sen. Kisasa Mshenga Mvita - voted verbally on behalf of Kilifi County delegation
13. Sen. Kivuti Lenny Maxwel
14. Sen. Lesan Wilfred Rotich
15. Sen. Lesuuda Naisula- on behalf of Samburu County delegation
16. Sen. Lonyangapuo John Krop
17. Sen. Melly Isaac Kipkemboi
18. Sen. Moi Gideon Kipsielei
19. Sen. Mositet Peter Korinko
20. Sen. Mungai James Kiarie
21. Sen. Muriuki Karue Muriuki
22. Sen. Murkomen Onesmus Kipchumba-voted verbally
23. Sen. Ntutu Stephen Kanyinke
24. Sen. Ochwangi Hosea- voted verbally on behalf of Kisii County delegation
25. Sen. Okong'o Kennedy Mong'are
26. Sen. Sang Stephen Kipyego

**NOES**

1. Sen. Hassan Omar Hassan
2. Sen. Kajwang' Moses
3. Sen. Khalwale Boni
4. Sen. Khaniri George
5. Sen. Kilonzo Mutula Junior
6. Sen. Mohamud Halima Abdille- on behalf of Wajir County delegation
7. Sen. Ndiema Henry Tiole
8. Sen. Orengo James
9. Sen. Wetang'ula Moses

**ABSTENTION**

1. Sen. Machage Wilfred Gisuka

**Clause 8**

Motion made and Question proposed-

**THAT**, Clause 8 be amended as recommended by H.E. the President as follows-

**Amendment proposed**

**THAT** clause 8 of the Bill be amended by deleting paragraphs (a), (b), (c), (d), (h) and (j) and substituting therefor the following:

Administrative  
powers of the  
office of the  
Auditor-  
General

- (a) develop an organization structure and staffing establishment for the office of the Auditor – General, subject to Article 234 (5) of the Constitution;
- (b) subject to Article 234 (5) of the Constitution, recruit and promote qualified and competent staff to perform the office's functions;
- (c) subject to Article 234 (5) of the Constitution, exercise disciplinary control over staff;
- (d) subject to Article 234 (5) of the Constitution, develop human resource of the office;
- (h) subject to Articles 230 (4) (b) and 234 of the Constitution, determine the remuneration and benefits of each member of staff;
- (i) in addition to what is provided for under any other relevant law, develop and maintain a code of conduct and ethics for the office, specific to auditing, guided by the international code of practice, and code of ethics issued by the International Organization of Supreme Audit Institutions and in consultation with the Public Service Commission and the National Treasury;

*(The Senate Majority Leader)*

Debate interrupted on Thursday 29th October, 2015 resumed on a division;

The Acting Chairperson (Sen. Murkomen) directed that electronic voting be taken pursuant to Standing Order 74 (1) and that the division bell be rung for seven minutes;

After the expiry of seven minutes, the Acting Chairperson directed that the doors be locked and Senators asked to log-in using their cards;

The Acting Chairperson put the Question and directed Senators to cast their votes by pressing either the "Yes", "No" or "Abstain" button;

Before the results of the Division were announced and pursuant to provisions of Standing Order 74 (5), the Acting Chairperson allowed seven Senators to record their vote verbally.

Thereupon, the following Senators recorded their votes as "Yes"-

1. Sen. Adan Dullo Fatuma
2. Sen. Kariuki Godfrey Gitahi
3. Sen. Kembi-Gitura
4. Sen. Kimani Paul Wamatangi
5. Sen. Kisasa Mshenga Mvita
6. Sen. Murkomen Onesmus Kipchumba
7. Sen. Ochwang'i Hosea

Following the Division, Question agreed to.

The results of the Division were as follows-

**AYES - 26**

**NOES - 9**

**ABSTENTIONS - 1**

**AYES**

1. Sen. Adan Dullo Fatuma – voted verbally on behalf of Isiolo County delegation
2. Sen. Billow Adan Kerrow
3. Sen. Bule Ali Abdi
4. Sen. Chiaba Abu Mohamed
5. Sen. Karaba Dickson Daniel
6. Sen. Kariuki Godfrey Gitahi-Voted verbally
7. Sen. Kembi Gitura- Voted Verbally
8. Sen. Keter Charkes Cheruiyot
9. Sen. Kimani Paul Wamatangi - voted verbally
10. Sen. Kindiki Kithure
11. Sen. Kioko Mike Sonko
12. Sen. Kisasa Mshenga Mvita - voted verbally on behalf of Kilifi County delegation
13. Sen. Kivuti Lenny Maxwel
14. Sen. Lesan Wilfred Rotich
15. Sen. Lesuuda Naisula- on behalf of Samburu County delegation
16. Sen. Lonyangapuo John Krop

17. Sen. Melly Isaac Kipkemboi
18. Sen. Moi Gideon Kipsielei
19. Sen. Mositet Peter Korinko
20. Sen. Mungai James Kiarie
21. Sen. Muriuki Karue Muriuki
22. Sen. Murkomen Onesmus Kipchumba-voted verbally
23. Sen. Ntutu Stephen Kanyinke
24. Sen. Ochwangi Hosea- voted verbally on behalf of Kisii County delegation
25. Sen. Okong'o Kennedy Mong'are
26. Sen. Sang Stephen Kipyego

### NOES

1. Sen. Hassan Omar Hassan
2. Sen. Kajwang' Moses
3. Sen. Khalwale Boni
4. Sen. Khaniri George
5. Sen. Kilonzo Mutula Junior
6. Sen. Mohamud Halima Abdille- on behalf of Wajir County delegation
7. Sen. Ndiema Henry Tiole
8. Sen. Orenge James
9. Sen. Wetang'ula Moses

### ABSTENTION

1. Sen. Machage Wilfred Gisuka

### President's Recommendation on New Clause 11A

Motion made and Question proposed-

**THAT**, a new Clause be inserted immediately after Clause 11 of the Bill as follows:

11 A. (1) Where:

Acting Auditor-  
General

- (a) the office of the Auditor- General becomes vacant;
- (b) the Auditor-General has been suspended in accordance with the Constitution
- (c) the appointment of a person as Auditor-General is pending; or
- (d) the Auditor – General is, for any reason unable to perform the function of his or her office,

then, until a person is appointed to and has assumed the functions of that office in accordance with Section 11 above, or until the Auditor-General has resumed the performance of those functions, the Public Service Commission shall recommend the most senior officer in the office of the Auditor-General to the President to designate such a person as the acting Auditor –General



(2) A person designated under subsection (1) shall meet the minimum qualifications for appointment to the office of the Auditor-General and shall serve for a period not exceeding ninety days.

(3) When acting in terms of subsection (1), the acting Auditor-General shall have all the powers of the Auditor-General.

*(The Senate Majority Leader)*

Debate interrupted on Thursday 29th October, 2015 resumed on a division;

The Acting Chairperson (Sen. Murkomen) directed that electronic voting be taken pursuant to Standing Order 74 (1) and that the division bell be rung for seven minutes;

After the expiry of seven minutes, the Acting Chairperson directed that the doors be locked and Senators asked to log-in using their cards;

The Acting Chairperson put the Question and directed Senators to cast their votes by pressing either the "Yes", "No" or "Abstain" button;

Before the results of the Division were announced and pursuant to provisions of Standing Order 74 (5), the Acting Chairperson allowed seven Senators to record their vote verbally.

Thereupon, the following Senators recorded their votes as "Yes"-

1. Sen. Adan Dullo Fatuma
2. Sen. Kariuki Godfrey Gitahi
3. Sen. Kembi-Gitura
4. Sen. Kimani Paul Wamatangi
5. Sen. Kisasa Mshenga Mvita
6. Sen. Murkomen Onesmus Kipchumba
7. Sen. Ochwang'i Hosea

Following the Division, Question agreed to.

The results of the Division were as follows-

**AYES - 26**

**NOES - 9**

**ABSTENTIONS - 1**

**AYES**

1. Sen. Adan Dullo Fatuma – voted verbally on behalf of Isiolo County delegation
2. Sen. Billow Adan Kerrow
3. Sen. Bule Ali Abdi
4. Sen. Chiaba Abu Mohamed
5. Sen. Karaba Dickson Daniel
6. Sen. Kariuki Godfrey Gitahi-Voted verbally
7. Sen. Kembi Gitura- Voted Verbally
8. Sen. Keter Charkes Cheruiyot
9. Sen. Kimani Paul Wamatangi - voted verbally

10. Sen. Kindiki Kithure
11. Sen. Kioko Mike Sonko
12. Sen. Kisasa Mshenga Mvita - voted verbally on behalf of Kilifi County delegation
13. Sen. Kivuti Lenny Maxwell
14. Sen. Lesan Wilfred Rotich
15. Sen. Lesuuda Naisula- on behalf of Samburu County delegation
16. Sen. Lonyangapuo John Krop
17. Sen. Melly Isaac Kipkemboi
18. Sen. Moi Gideon Kipsielei
19. Sen. Mositet Peter Korinko
20. Sen. Mungai James Kiarie
21. Sen. Muriuki Karue Muriuki
22. Sen. Murkomen Onesmus Kipchumba-voted verbally
23. Sen. Ntutu Stephen Kanyinke
24. Sen. Ochwangi Hosea- voted verbally on behalf of Kisii County delegation
25. Sen. Okong'o Kennedy Mong'are
26. Sen. Sang Stephen Kipyego

**NOES**

1. Sen. Hassan Omar Hassan
2. Sen. Kajwang' Moses
3. Sen. Khalwale Boni
4. Sen. Khaniri George
5. Sen. Kilonzo Mutula Junior
6. Sen. Mohamud Halima Abdille- on behalf of Wajir County delegation
7. Sen. Ndiema Henry Tiole
8. Sen. Orengo James
9. Sen. Wetang'ula Moses

**ABSTENTION**

1. Sen. Machage Wilfred Gisuka

**President's Recommendation on Clause 16**

Motion made and Question proposed-

**THAT**, Clause 16 of the Bill be amended in sub-clause (1) by inserting the expression "and 234 (5)" immediately after expression "230"

*(The Senate Majority Leader)*

Debate interrupted on Thursday 29th October, 2015 resumed on a division;

The Acting Chairperson (Sen. Murkomen) directed that electronic voting be taken pursuant to Standing Order 74 (1) and that the division bell be rung for seven minutes;

After the expiry of seven minutes, the Acting Chairperson directed that the doors be locked and Senators asked to log-in using their cards;

The Acting Chairperson put the Question and directed Senators to cast their votes by pressing either the "Yes", "No" or "Abstain" button;

Before the results of the Division were announced and pursuant to provisions of Standing Order 74 (5), the Acting Chairperson allowed seven Senators to record their vote verbally.

Thereupon, the following Senators recorded their votes as "Yes" -

1. Sen. Adan Dullo Fatuma
2. Sen. Kariuki Godfrey Gitahi
3. Sen. Kembi-Gitura
4. Sen. Kimani Paul Wamatangi
5. Sen. Kisasa Mshenga Mvita
6. Sen. Murkomen Onesmus Kipchumba
7. Sen. Ochwang'i Hosea

Following the Division, Question agreed to.

The results of the Division were as follows-

**AYES - 26**

**NOES - 9**

**ABSTENTIONS - 1**

**AYES**

1. Sen. Adan Dullo Fatuma – voted verbally on behalf of Isiolo County delegation
2. Sen. Billow Adan Kerrow
3. Sen. Bule Ali Abdi
4. Sen. Chiaba Abu Mohamed
5. Sen. Karaba Dickson Daniel
6. Sen. Kariuki Godfrey Gitahi-Voted verbally
7. Sen. Kembi Gitura- Voted Verbally
8. Sen. Keter Charkes Cheruiyot
9. Sen. Kimani Paul Wamatangi - voted verbally
10. Sen. Kindiki Kithure
11. Sen. Kioko Mike Sonko
12. Sen. Kisasa Mshenga Mvita - voted verbally on behalf of Kilifi County delegation
13. Sen. Kivuti Lenny Maxwell
14. Sen. Lesan Wilfred Rotich
15. Sen. Lesuuda Naisula- on behalf of Samburu County delegation
16. Sen. Lonyangapuo John Krop
17. Sen. Melly Isaac Kipkemboi
18. Sen. Moi Gideon Kipsielei
19. Sen. Mositet Peter Korinko
20. Sen. Mungai James Kiarie
21. Sen. Muriuki Karue Muriuki
22. Sen. Murkomen Onesmus Kipchumba-voted verbally

23. Sen. Ntutu Stephen Kanyinke
24. Sen. Ochwangi Hosea- voted verbally on behalf of Kisii County delegation
25. Sen. Okong'o Kennedy Mong'are
26. Sen. Sang Stephen Kipyego

### **NOES**

1. Sen. Hassan Omar Hassan
2. Sen. Kajwang' Moses
3. Sen. Khalwale Boni
4. Sen. Khaniri George
5. Sen. Kilonzo Mutula Junior
6. Sen. Mohamud Halima Abdille- on behalf of Wajir County delegation
7. Sen. Ndiema Henry Tiole
8. Sen. Orenge James
9. Sen. Wetang'ula Moses

### **ABSTENTION**

1. Sen. Machage Wilfred Gisuka

### **President's Recommendation on Clause 19**

Motion made and Question proposed-

**THAT**, Clause 19 (2) of the Bill be amended by-

(a) inserting the words "review and" immediately after the words "year for"; and

(b) deleting the words "with the Cabinet Secretary's comments".

*(The Senate Majority Leader)*

Debate interrupted on Thursday 29th October, 2015 resumed on a division;

The Acting Chairperson (Sen. Murkomen) directed that electronic voting be taken pursuant to Standing Order 74 (1) and that the division bell be rung for seven minutes;

After the expiry of seven minutes, the Acting Chairperson directed that the doors be locked and Senators asked to log-in using their cards;

The Acting Chairperson put the Question and directed Senators to cast their votes by pressing either the "Yes", "No" or "Abstain" button;

Before the results of the Division were announced and pursuant to provisions of Standing Order 74 (5), the Acting Chairperson allowed seven Senators to record their vote verbally.

Thereupon, the following Senators recorded their votes as "Yes"-

1. Sen. Adan Dullo Fatuma
2. Sen. Kariuki Godfrey Gitahi
3. Sen. Kembi-Gitura
4. Sen. Kimani Paul Wamatangi
5. Sen. Kisasa Mshenga Mvita
6. Sen. Murkomen Onesmus Kipchumba
7. Sen. Ochwang'i Hosea

Following the Division, Question agreed to.

The results of the Division were as follows-

**AYES - 26**

**NOES - 9**

**ABSTENTIONS - 1**

**AYES**

1. Sen. Adan Dullo Fatuma – voted verbally on behalf of Isiolo County delegation
2. Sen. Billow Adan Kerrow
3. Sen. Bule Ali Abdi
4. Sen. Chiaba Abu Mohamed
5. Sen. Karaba Dickson Daniel
6. Sen. Kariuki Godfrey Gitahi-Voted verbally
7. Sen. Kembi Gitura- Voted Verbally
8. Sen. Keter Charkes Cheruiyot
9. Sen. Kimani Paul Wamatangi - voted verbally
10. Sen. Kindiki Kithure
11. Sen. Kioko Mike Sonko
12. Sen. Kisasa Mshenga Mvita - voted verbally on behalf of Kilifi County delegation
13. Sen. Kivuti Lenny Maxwell
14. Sen. Lesan Wilfred Rotich
15. Sen. Lesuuda Naisula- on behalf of Samburu County delegation
16. Sen. Lonyangapuo John Krop
17. Sen. Melly Isaac Kipkemboi
18. Sen. Moi Gideon Kipsielei
19. Sen. Mositet Peter Korinko
20. Sen. Mungai James Kiarie
21. Sen. Muriuki Karue Muriuki
22. Sen. Murkomen Onesmus Kipchumba-voted verbally
23. Sen. Ntutu Stephen Kanyinke
24. Sen. Ochwangi Hosea- voted verbally on behalf of Kisii County delegation
25. Sen. Okong'o Kennedy Mong'are
26. Sen. Sang Stephen Kipyego

**NOES**

1. Sen. Hassan Omar Hassan
2. Sen. Kajwang' Moses
3. Sen. Khalwale Boni

4. Sen. Khaniri George
5. Sen. Kilonzo Mutula Junior
6. Sen. Mohamud Halima Abdille- on behalf of Wajir County delegation
7. Sen. Ndiema Henry Tiole
8. Sen. Orengo James
9. Sen. Wetang'ula Moses

**ABSTENTION**

1. Sen. Machage Wilfred Gisuka

**President's Recommendation on New Clause 40A**

Motion made and Question proposed-

**THAT** a new Clause be inserted immediately after Clause 40 of the Bill to read as follows:

Auditor-General  
not to question  
Government policy  
objective

40A. Notwithstanding the provisions of this Act, in an examination under this Act, the Auditor-General shall not question the merits of a policy objective of the national government or county government or any other public entity.

*(The Senate Majority Leader)*

Debate interrupted on Thursday 29th October, 2015 resumed on a division;

The Acting Chairperson (Sen. Murkomen) directed that electronic voting be taken pursuant to Standing Order 74 (1) and that the division bell be rung for seven minutes;

After the expiry of seven minutes, the Acting Chairperson directed that the doors be locked and Senators asked to log-in using their cards;

The Acting Chairperson put the Question and directed Senators to cast their votes by pressing either the "Yes", "No" or "Abstain" button;

Before the results of the Division were announced and pursuant to provisions of Standing Order 74 (5), the Acting Chairperson allowed seven Senators to record their vote verbally.

Thereupon, the following Senators recorded their votes as "Yes"-

1. Sen. Adan Dullo Fatuma
2. Sen. Kariuki Godfrey Gitahi
3. Sen. Kembi-Gitura
4. Sen. Kimani Paul Wamatangi
5. Sen. Kisasa Mshenga Mvita
6. Sen. Murkomen Onesmus Kipchumba
7. Sen. Ochwang'i Hosea

Following the Division, Question agreed to.

The results of the Division were as follows-

**AYES - 26**

**NOES - 9**

**ABSTENTIONS - 1**

**AYES**

1. Sen. Adan Dullo Fatuma – voted verbally on behalf of Isiolo County delegation
2. Sen. Billow Adan Kerrow
3. Sen. Bule Ali Abdi
4. Sen. Chiaba Abu Mohamed
5. Sen. Karaba Dickson Daniel
6. Sen. Kariuki Godfrey Gitahi-Voted verbally
7. Sen. Kembi Gitura- Voted Verbally
8. Sen. Keter Charkes Cheruiyot
9. Sen. Kimani Paul Wamatangi - voted verbally
10. Sen. Kindiki Kithure
11. Sen. Kioko Mike Sonko
12. Sen. Kisasa Mshenga Mvita - voted verbally on behalf of Kilifi County delegation
13. Sen. Kivuti Lenny Maxwell
14. Sen. Lesan Wilfred Rotich
15. Sen. Lesuuda Naisula- on behalf of Samburu County delegation
16. Sen. Lonyangapuo John Krop
17. Sen. Melly Isaac Kipkemboi
18. Sen. Moi Gideon Kipsielei
19. Sen. Mositet Peter Korinko
20. Sen. Mungai James Kiarie
21. Sen. Muriuki Karue Muriuki
22. Sen. Murkomen Onesmus Kipchumba-voted verbally
23. Sen. Ntutu Stephen Kanyinke
24. Sen. Ochwangi Hosea- voted verbally on behalf of Kisii County delegation
25. Sen. Okong'o Kennedy Mong'are
26. Sen. Sang Stephen Kipyego

**NOES**

1. Sen. Hassan Omar Hassan
2. Sen. Kajwang' Moses
3. Sen. Khalwale Boni
4. Sen. Khaniri George
5. Sen. Kilonzo Mutula Junior
6. Sen. Mohamud Halima Abdille- on behalf of Wajir County delegation
7. Sen. Ndiema Henry Tiole
8. Sen. Orengo James
9. Sen. Wetang'ula Moses

**ABSTENTION**

1. Sen. Machage Wilfred Gisuka

**President's Recommendation on Clause 66**

Motion made and Question proposed-

THAT, clause 66 of the Bill be amended by deleting the words "Auditor-General" immediately after the word "The" and substitute therefor the words "Cabinet Secretary responsible for matters relating to finance".

*(The Senate Majority Leader)*

Debate interrupted on Thursday 29th October, 2015 resumed on a division;

The Acting Chairperson (Sen. Murkomen) directed that electronic voting be taken pursuant to Standing Order 74 (1) and that the division bell be rung for seven minutes;

After the expiry of seven minutes, the Acting Chairperson directed that the doors be locked and Senators asked to log-in using their cards;

The Acting Chairperson put the Question and directed Senators to cast their votes by pressing either the "Yes", "No" or "Abstain" button;

Before the results of the Division were announced and pursuant to provisions of Standing Order 74 (5), the Acting Chairperson allowed seven Senators to record their vote verbally.

Thereupon, the following Senators recorded their votes as "Yes"-

1. Sen. Adan Dullo Fatuma
2. Sen. Kariuki Godfrey Gitahi
3. Sen. Kembi-Gitura
4. Sen. Kimani Paul Wamatangi
5. Sen. Kisasa Mshenga Mvita
6. Sen. Murkomen Onesmus Kipchumba
7. Sen. Ochwang'i Hosea

Following the Division, Question agreed to.

The results of the Division were as follows-

**AYES - 26**

**NOES - 9**

**ABSTENTIONS - 1**

**AYES**

1. Sen. Adan Dullo Fatuma – voted verbally on behalf of Isiolo County delegation
2. Sen. Billow Adan Kerrow
3. Sen. Bule Ali Abdi
4. Sen. Chiaba Abu Mohamed
5. Sen. Karaba Dickson Daniel
6. Sen. Kariuki Godfrey Gitahi-Voted verbally



7. Sen. Kembi Gitura- Voted Verbally
8. Sen. Keter Charkes Cheruiyot
9. Sen. Kimani Paul Wamatangi - voted verbally
10. Sen. Kindiki Kithure
11. Sen. Kioko Mike Sonko
12. Sen. Kisasa Mshenga Mvita - voted verbally on behalf of Kilifi County delegation
13. Sen. Kivuti Lenny Maxwell
14. Sen. Lesan Wilfred Rotich
15. Sen. Lesuuda Naisula- on behalf of Samburu County delegation
16. Sen. Lonyangapuo John Krop
17. Sen. Melly Isaac Kipkemboi
18. Sen. Moi Gideon Kipsielei
19. Sen. Mositet Peter Korinko
20. Sen. Mungai James Kiarie
21. Sen. Muriuki Karue Muriuki
22. Sen. Murkomen Onesmus Kipchumba-voted verbally
23. Sen. Ntutu Stephen Kanyinke
24. Sen. Ochwangi Hosea- voted verbally on behalf of Kisii County delegation
25. Sen. Okong'o Kennedy Mong'are
26. Sen. Sang Stephen Kipyego

### **NOES**

1. Sen. Hassan Omar Hassan
2. Sen. Kajwang' Moses
3. Sen. Khalwale Boni
4. Sen. Khaniri George
5. Sen. Kilonzo Mutula Junior
6. Sen. Mohamud Halima Abdille- on behalf of Wajir County delegation
7. Sen. Ndiema Henry Tiole
8. Sen. Orengo James
9. Sen. Wetang'ula Moses

### **ABSTENTION**

1. Sen. Machage Wilfred Gisuka

Motion made-

**THAT**, the approval of the President's Memorandum on the Public Audit Bill (National Assembly Bill No. 38 of 2014) be reported without amendments.

Before the question was put and pursuant to Standing Order 72, the Acting Chairperson (Sen. Murkomen) ruled that the question did not affect counties;

Question put and agreed to.

President's Memorandum to be reported without amendments.

9. **HOUSE RESUMED** - (Deputy Speaker - Sen. Kembi-Gitura - in the Chair)

10. **CONSIDERATION OF THE PRESIDENT'S MEMORANDUM ON THE PUBLIC AUDIT BILL (NATIONAL ASSEMBLY BILL NO. 38 OF 2014)**

The President's Memorandum on the Public Audit Bill (National Assembly Bill No. 38 of 2014) reported without amendments.

Motion made and Question proposed-

**THAT**, the Senate do agree with the Committee of the Whole in the said Report.

*(The Senate Majority Leader)*

Debate Arising;

Raising a point of order pursuant to standing order 98 (2) the Senator for Elgeyo Marakwet County (Sen. Murkomen) claimed to move "**THAT**, the question be now put";

And the Deputy Speaker declining to allow the Motion;

Debate interrupted resumed;

There being no Senator wishing to contribute;

Before the question was put and pursuant to Standing Order 72, the Deputy Speaker ruled that the question did not affect counties;

Question put and agreed to.

11. **COMMITTEE OF THE WHOLE**  
**The Water Bill (National Assembly Bill No. 7 of 2014)**

(Resumption of debate interrupted on Thursday, 3<sup>rd</sup> December, 2015)

Order deferred.

There being no other business, the Deputy Speaker adjourned the Senate at eighteen minutes past Six O'clock, without Question put, pursuant to the Standing Orders.

12. **SENATE ROSE** - at eighteen minutes past Six O'clock.

**M E M O R A N D U M**

*The Speaker will take the Chair on  
Tuesday, February 09, 2016 at 2.30 p.m.*

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