



REPUBLIC OF KENYA

ELEVENTH PARLIAMENT – FOURTH SESSION

THE SENATE

VOTES AND PROCEEDINGS

SPECIAL SITTING

WEDNESDAY, AUGUST 24, 2016 AT 9.00 A.M.

1. The Senate assembled at thirty minutes past Nine O'clock.
2. The Proceedings were opened with Prayer said by the Deputy Speaker.
3. **COMMUNICATIONS FROM THE CHAIR**

The Deputy Speaker conveyed the following Communications from the Chair-

1. Convocation of the Special Sitting of the Senate

“Honourable Senators,

Let me take this opportunity to once again welcome you back for this third Special Sitting of the Senate during the current August recess and thank you for finding time from your busy schedules to attend the sitting. I am sure each of you has scheduled 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.

Honourable Senators, by a letter dated 18th August, 2016, and pursuant to Standing Order 29 (1) of the Senate, the Senate Majority and Minority Leaders supported by sixteen Senators, requested the Speaker to convene a Special Sitting of the Senate to consider;

- (1) The Report of the Joint Parliamentary Select Committee on matters relating to the Independent Electoral and Boundaries Commission;
- (2) Bills with Constitutional deadline of 27th August, 2016; and
- (3) A procedural Motion to extend the recess by a few days given that the August Recess of Senators has been disrupted severally by special sittings.

Following consideration of the request by the Senate Majority and Minority Leaders, 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 via *Gazette Notice* No. 6780 dated 22nd August, 2016.

I subsequently issued an Addendum to the Gazette Notice to incorporate reports of Mediation Committee on the Energy Bill and the Petroleum (Exploration, Development and Production) Bill.

Honourable Senators may wish to note that urgent business currently pending before the Senate, includes Motions to adopt the four Mediation Committee reports on crucial Bills, all of which are subject to August 27, 2016 constitutional timeline, a Motion to adopt the report of the Joint Parliamentary Select Committee on matters relating to the Independent Electoral and Boundaries Commission (IEBC) and a Constitutional amendment Bill by Sen. Judith Sijeny which is due for Division at Second Reading and later, if approved, Committee of the Whole. As Hon. Senators are aware and pursuant to Article 256 (1) (d) of the Constitution, the Constitutional amendment Bill by Sen. Sijeny requires a threshold of two thirds of all Senators to pass it at Second and Third Readings (that is 45 Senators).

Honourable Senators, as required by Standing Order 29 (5), the Gazette Notice specified the business to be transacted at this sitting and it is the business scheduled in today's Order Paper. Indeed, as specified and in accordance with standing order 29(5) of the Senate, the business listed shall be the only business before the Senate during this Special Sitting, following which the Senate shall stand adjourned until Tuesday, 13th September, 2016 at 2:30 p.m. in accordance with the Senate Calendar.

Honourable Senators, I would like to reiterate that in accordance with Article 123 of the Constitution and standing order 71, for the Senate to approve business scheduled at Orders 4 to 7, the support of a majority of

all delegations (that is 24 delegations) is required. I therefore appeal to you all to remain in the Chamber for the transaction of business as scheduled.

I thank you. ”

2. Procedure for consideration of the Constitution of Kenya (Amendment) Bill, (Senate Bills No. 16 of 2015)

“Honourable Senators,

Order Number 8 is the Constitution of Kenya (Amendment) Bill, (Senate Bills No. 16 of 2015), a Bill sponsored by Senator Judith Sijeny. As indicated in the Order Paper, the Bill is listed for division on Second Reading.

As the House proceeds to the division, it is important that I give guidance on two issues that are important to this matter-

- (1) the first is the manner in which the Senate is to vote on this Bill; and
- (2) secondly, whether the Bill is one that is subject to a referendum in terms of Article 255(1) of the Constitution.

On the matter of how the Senate is to vote, the Constitution of Kenya (Amendment) Bill proposed by Senator Sijeny is an amendment to the Constitution by parliamentary initiative under Article 256 of the Constitution.

Article 256(1)(d) provides that a Bill to amend the Constitution “*shall have been passed by Parliament when each House of Parliament has passed the Bill, in both its second and third readings, by not less than two-thirds of all the members of that House*”.

The upshot of Article 256(1)(d) of the Constitution is that at both the Second and the Third Reading of a Bill to amend the Constitution, the Bill would only have been passed by the Senate if, forty-five Senators vote in support of the Bill.

On the question of whether the Bill is one requiring a referendum, Honourable Senators will recall that on 28th June, 2016, I ruled that “*after the conclusion of the debate on the Bill and before the question for Second Reading of the Bill is put in terms of standing 131(1) of the Senate Standing Orders, the Speaker shall make a ruling as to whether the Bill falls within*

the ambit of Article 255(1) of the Constitution and therefore whether it is one that would require ratification by the people of Kenya in a referendum.”

It is therefore necessary that before we proceed to the division on second reading, I make a ruling as to whether the Bill is one that requires a referendum in terms of Article 255(1) of the Constitution.

Article 255(1) of the Constitution provides that-

255. *(1) A proposed amendment to this Constitution shall be enacted in accordance with Article 256 or 257, and approved in accordance with clause (2) by a referendum, if the amendment relates to any of the following matters —*

- (a) the supremacy of this Constitution;*
- (b) the territory of Kenya;*
- (c) the sovereignty of the people;*
- (d) the national values and principles of governance mentioned in Article 10 (2) (a) to (d);*
- (e) the Bill of Rights;*
- (f) the term of office of the President;*
- (g) the independence of the Judiciary and the commissions and independent offices to which Chapter Fifteen applies;*
- (h) the functions of Parliament;*
- (i) the objects, principles and structure of devolved government; or*
- (j) the provisions of the Chapter.*

As Honourable members will observe, the Constitution of Kenya (Amendment) Bill, 2015, seeks to amend Articles 81, 90, 97 and 98 of the Constitution so as to give effect to the two-thirds gender principle through the creation of special seats. These are not matters that are listed in or fall within matters listed under Article 255(1) of the Constitution. Consequently, the Bill would not be one that requires approval by referendum in terms of Article 255(1) of the Constitution.

With this guidance, Honourable Senators, we shall now proceed as indicated in the Order Paper.

I thank you.”

4. PAPERS LAID

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

- a) The Report of the Mediation Committee on the Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015);

- b) The Report of the Mediation Committee on the Energy Bill (National Assembly Bill No. 50 of 2015).

(Sen.Moi, Vice-Chairperson, Mediation Committee)

5. **NOTICE OF MOTION-** *(Sen.Moi, Vice-Chairperson, Mediation Committee)*

THAT, the Senate adopts the Report of the Mediation Committee on the Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015) laid on the Table of the Senate on Wednesday, 24th August, 2016 and pursuant to Article 113 of the Constitution and Standing Order 155 (3) of the Senate, approves the mediated version of the Bill;

6. **NOTICE OF MOTION-** *(Sen.Moi, Vice-Chairperson, Mediation Committee)*

THAT, the Senate adopts the Report of the Mediation Committee on the Energy Bill (National Assembly Bill No. 50 of 2015) laid on the Table of the Senate on Wednesday, 24th August, 2016 and pursuant to Article 113 of the Constitution and Standing Order 155 (3) of the Senate, approves the mediated version of the Bill;

7. **NOTICE OF MOTION-** *(The Senate Majority Leader)*

THAT, pursuant to Standing Order 28 (4), the Senate resolves to alter its Calendar in respect of Part III of the Fourth Session for the sittings scheduled to resume on 13th September, 2016 instead commences on 20th September, 2016.

8. **MOTION- ADOPTION OF THE REPORT OF THE MEDIATION COMMITTEE ON THE NATURAL RESOURCES (CLASSES OF TRANSACTIONS SUBJECT TO RATIFICATION) BILL (NATIONAL ASSEMBLY BILL NO. 54 OF 2015)**

Motion made and Question proposed;

THAT, the Senate adopts the Report of the Mediation Committee on the Natural Resources (Classes of Transactions subject to Ratification) Bill (National Assembly Bill No. 54 of 2015) laid on the Table of the Senate on Thursday, 18th August, 2016 and pursuant to Article 113 of the Constitution and Standing Order 155 (3) of the Senate, approves the mediated version of the Bill.

(The Senate Majority Leader on behalf of the Vice-Chairperson, Mediation Committee)

Debate arising;

There being no other Senator wishing to contribute;

Mover replied;

Before the Question was put and pursuant to Standing Order No. 72, the Deputy Speaker informed the Senate that the Motion affected counties and voting would be by Delegations;

The Deputy Speaker directed that a Roll Call vote be taken pursuant to Standing Order No. 76 (2) and that the Division Bell be rung for five minutes;

The names of the Tellers for the “Ayes” and for the “Noes” were submitted to the Deputy Speaker;

The Deputy Speaker directed that the doors be locked;

The names of the Tellers were announced and directed to take seats at their designated place;

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

Following the Division, Question **agreed to**.

The results of the Division were as follows:

AYES - 25

NOES - 0

ABSTENTIONS - 0

AYES

1. Sen. Billow Kerrow
2. Sen. Haji Mohammed Yusuf
3. Sen. Hassan Abdirahman Ali
4. Sen. Hassan Omar Hassan
5. Sen. Kembi-Gitura James
6. Sen. KhalwaleBoni
7. Sen. Khaniri George
8. Sen. KindikiKithure
9. Sen. Kivuti Lenny Maxwell
10. Sen. AdanDulloFatuma-on behalf of Isiolo County Delegation
11. Sen. Lesan Wilfred Rotich
12. Sen. LesuudaNaisula- on behalf of Samburu County Delegation
13. Sen. Machage Wilfred Gisuka
14. Sen. KisasaMshengaMvita- on behalf of Kilifi County Delegation
15. Sen. Moi Gideon KipsieleiTowett
16. Sen. Mungai James Kiarie
17. Sen. MurkomenOnesmusKipchumba
18. Sen. MurungiKiraitu
19. Sen. MutulaKilonzo Junior

20. Sen. Ntutu Stephen Kanyinke
21. Sen. Nyong'o Peter Anyang'
22. Sen. Obure Christopher Mogere
23. Sen. Orengo James
24. Sen. Wako Amos Sitswila
25. Sen. Wetang'ula Moses Masika

RESOLVED ACCORDINGLY

THAT, the Senate adopts the Report of the Mediation Committee on the Natural Resources (Classes of Transactions subject to Ratification) Bill (National Assembly Bill No. 54 of 2015) laid on the Table of the Senate on Thursday, 18th August, 2016 and pursuant to Article 113 of the Constitution and Standing Order 155 (3) of the Senate, approves the mediated version of the Bill.

9. **MOTION- ADOPTION OF THE REPORT OF THE MEDIATION COMMITTEE ON THE FOREST CONSERVATION AND MANAGEMENT BILL (NATIONAL ASSEMBLY BILL NO. 49 OF 2015)**

Motion made and Question proposed;

THAT, the Senate adopts the Report of the Mediation Committee on the Forest Conservation and Management Bill (National Assembly Bill No. 49 of 2015) laid on the Table of the Senate on Thursday, 18th August, 2016 and pursuant to Article 113 of the Constitution and Standing Order 155 (3) of the Senate, approves the mediated version of the Bill.

(The Senate Majority Leader on behalf of the Vice-Chairperson, Mediation Committee)

Debate arising;

There being no other Senator wishing to contribute;

Mover replied;

Before the Question was put and pursuant to Standing Order No. 72, the Deputy Speaker informed the Senate that the Motion affected counties and voting would be by Delegations;

The Deputy Speaker directed that a Roll Call vote be taken pursuant to Standing Order No. 76 (2) and that the Division Bell be rung for five minutes;

The names of the Tellers for the "Ayes" and for the "Noes" were submitted to the Deputy Speaker;

The Deputy Speaker directed that the doors be locked;

The names of the Tellers were announced and directed to take seats at their designated place;

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

Following the Division, Question **agreed to**.

The results of the Division were as follows:

AYES - 25

NOES - 0

ABSTENTIONS - 0

AYES

1. Sen. Billow Kerrow
2. Sen. Haji Mohammed Yusuf
3. Sen. Hassan Abdirahman Ali
4. Sen. Hassan Omar Hassan
5. Sen. Kembi-Gitura James
6. Sen. KhalwaleBoni
7. Sen. Khaniri George
8. Sen. KindikiKithure
9. Sen. Kivuti Lenny Maxwell
10. Sen. AdanDulloFatuma-on behalf of Isiolo County Delegation
11. Sen. Lesan Wilfred Rotich
12. Sen. LesuudaNaisula – on behalf of Samburu County Delegation
13. Sen. Machage Wilfred Gisuka
14. Sen. KisasaMshengaMvita – on behalf of Kilifi County Delegation
15. Sen. Moi Gideon KipsieleiTowett
16. Sen. Mungai James Kiarie
17. Sen. MurkomenOnesmusKipchumba
18. Sen. MurungiKiraitu
19. Sen. MutulaKilonzo Junior
20. Sen. Ntutu Stephen Kanyinke
21. Sen. Nyong'o Peter Anyang'
22. Sen. Obure Christopher Mogere
23. Sen. Orengo James
24. Sen. Wako Amos Sitswila
25. Sen. Wetang'ula Moses Masika

RESOLVED ACCORDINGLY

THAT, the Senate adopts the Report of the Mediation Committee on the Forest Conservation and Management Bill (National Assembly Bill No. 49 of 2015) laid on the Table of the Senate on Thursday, 18th August, 2016 and pursuant to Article 113 of the Constitution and Standing Order 155 (3) of the Senate, approves the mediated version of the Bill.

10. **MOTION- ADOPTION OF THE REPORT OF THE MEDIATION COMMITTEE ON THE PETROLEUM (EXPLORATION, DEVELOPMENT AND PRODUCTION) BILL (NATIONAL ASSEMBLY BILL NO. 44 OF 2015)**

Motion made and Question proposed;

THAT, the Senate adopts the Report of the Mediation Committee on the Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015) laid on the Table of the Senate on Wednesday, 24th August, 2016 and pursuant to Article 113 of the Constitution and Standing Order 155 (3) of the Senate, approves the mediated version of the Bill.

(Vice - Chairperson, Mediation Committee)

Debate arising;

There being no other Senator wishing to contribute;

Mover replied;

Before the Question was put and pursuant to Standing Order No. 72, the Deputy Speaker informed the Senate that the Motion affected counties and voting would be by Delegations;

The Deputy Speaker directed that a Roll Call vote be taken pursuant to Standing Order No. 76 (2) and that the Division Bell be rung for five minutes;

The names of the Tellers for the “Ayes” and for the “Noes” were submitted to the Deputy Speaker;

The Deputy Speaker directed that the doors be locked;

The names of the Tellers were announced and directed to take seats at their designated place;

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

Following the Division, Question **agreed to**.

The results of the Division were as follows:

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3. Sen. Hassan Abdirahman Ali
4. Sen. Hassan Omar Hassan
5. Sen. KembiGitura James
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9. Sen. Kivuti Lenny Maxwell
10. Sen. AdanDulloFatuma-on behalf of Isiolo County Delegation
11. Sen. Lesan Wilfred Rotich
12. Sen. LesuudaNaisula- on behalf of Samburu County Delegation
13. Sen. Machage Wilfred Gisuka
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21. Sen. Nyong'o Peter Anyang'
22. Sen. Obure Christopher Mogere
23. Sen. Orengo James
24. Sen. Wako Amos Sitswila
25. Sen. Wetang'ula Moses Masika

RESOLVED ACCORDINGLY

THAT, the Senate adopts the Report of the Mediation Committee on the Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015) laid on the Table of the Senate on Wednesday, 24th August, 2016 and pursuant to Article 113 of the Constitution and Standing Order 155 (3) of the Senate, approves the mediated version of the Bill.

11. **MOTION- ADOPTION OF THE REPORT OF THE MEDIATION COMMITTEE ON THE ENERGY BILL (NATIONAL ASSEMBLY BILL NO. 50 OF 2015)**

Motion made and Question proposed;

THAT, the Senate adopts the Report of the Mediation Committee on the Energy Bill (National Assembly Bill No. 50 of 2015)laid on the Table of the Senate on Wednesday, 24th August, 2016 and pursuant to Article 113 of the Constitution and Standing Order 155 (3) of the Senate, approves the mediated version of the Bill.

(Vice - Chairperson, Mediation Committee)

Debate arising;

There being no other Senator wishing to contribute;

Mover replied;

Before the Question was put and pursuant to Standing Order No. 72, the Deputy Speaker informed the Senate that the Motion affected counties and voting would be by Delegations;

The Deputy Speaker directed that a Roll Call vote be taken pursuant to Standing Order No. 76 (2) and that the Division Bell be rung for five minutes;

The names of the Tellers for the “Ayes” and for the “Noes” were submitted to the Deputy Speaker;

The Deputy Speaker directed that the doors be locked;

The names of the Tellers were announced and directed to take seats at their designated place;

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

Following the Division, Question **agreed to.**

The results of the Division were as follows:

AYES - 25

NOES - 0

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AYES

1. Sen. Billow Kerrow
2. Sen. Haji Mohammed Yusuf
3. Sen. Hassan Abdirahman Ali
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9. Sen. Kivuti Lenny Maxwell
10. Sen. AdanDulloFatuma-on behalf of Isiolo County Delegation
11. Sen. Lesan Wilfred Rotich
12. Sen. LesuudaNaisula – on behalf of Samburu County Delegation
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15. Sen. Moi Gideon KipsieleiTowett

16. Sen. Mungai James Kiarie
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21. Sen. Nyong'o Peter Anyang'
22. Sen. Obure Christopher Mogere
23. Sen. Orengo James
24. Sen. Wako Amos Sitswila
25. Sen. Wetang'ula Moses Masika

RESOLVED ACCORDINGLY

THAT, the Senate adopts the Report of the Mediation Committee on the Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015) laid on the Table of the Senate on Wednesday, 24th August, 2016 and pursuant to Article 113 of the Constitution and Standing Order 155 (3) of the Senate, approves the mediated version of the Bill.

12. **MOTION – EXTENSION OF THE SITTING TIME OF THE SENATE PURSUANT TO STANDING ORDER 30 (3) (a)**

Motion made and Question proposed;

THAT, pursuant to Standing Order 30 (3) (a), the Senate resolves to extend its sitting until conclusion of business appearing in today's Order Paper.

(The Senate Deputy Majority Leader)

Debate arising;

The Mover replied;

Before the Question was put, and pursuant to Standing Order No. 72, the Deputy Speaker informed the House that the Motion did not affect Counties.

Question put and **agreed to.**

13. **THE CONSTITUTION OF KENYA (AMENDMENT) BILL (SENATE BILLS NO. 16 OF 2015)**

(Sen. Judith Sijeny)

(Second Reading)

(Resumption of Debate interrupted on Tuesday, 26th July, 2016)

(Division)

Order deferred.

14. **COMMITTEE OF THE WHOLE**
THE CONSTITUTION OF KENYA (AMENDMENT) BILL (SENATE BILL
NO. 16 OF 2015)
(Sen. Judith Sijeny)

(By leave of the Senate)

Order deferred.

15. **MOTION -ADOPTION OF THE REPORT OF THE JOINT**
PARLIAMENTARY SELECT COMMITTEE ON MATTERS RELATING TO
THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

Motion made and Question proposed;

THAT, the Senate adopts the Report of the Joint Parliamentary Select Committee on Matters Relating to the Independent Electoral and Boundaries Commission laid on the Table of the Senate on Thursday, 18th August, 2016.

(Co- Chair, Joint Parliamentary Select Committee on IEBC)

Debate arising;

There being no other Senator wishing to contribute;

Mover replied;

Before the Question was put and pursuant to Standing Order No. 72, the Deputy Speaker informed the Senate that the Motion did not affect Counties.;

Question put and **agreed to.**

RESOLVED ACCORDINGLY

THAT, the Senate adopts the Report of the Joint Parliamentary Select Committee on Matters Relating to the Independent Electoral and Boundaries Commission laid on the Table of the Senate on Thursday, 18th August, 2016.

16. **MOTION – ALTERATION OF THE SENATE CALENDAR IN RESPECT OF**
PART III OF THE FOURTH SESSION

Motion made and Question proposed;

THAT, pursuant to Standing Order 28 (4), the Senate resolves to alter its Calendar in respect of Part III of the Fourth Session for the sittings scheduled to resume on 13th September, 2016 instead commences on 20th September, 2016.

(The Senate Majority Leader)

Debate arising;

There being no other Senator wishing to contribute;

Mover replied;

Before the Question was put and pursuant to Standing Order No. 72, the Deputy Speaker informed the Senate that the Motion did not affect Counties;

Question put and **agreed to.**

RESOLVED ACCORDINGLY

THAT, pursuant to Standing Order 28 (4), the Senate resolves to alter its Calendar in respect of Part III of the Fourth Session for the sittings scheduled to resume on 13th September, 2016 instead commences on 20th September, 2016.

And there being no other business, the Temporary Speaker (Sen. (Dr.) Machage) adjourned the Senate at twenty eight minutes past Four O'clock without Question put pursuant to the Standing Orders.

17. **SENATE ROSE** –at twenty eight minutes past Four O'clock.

M E M O R A N D U M

*The Speaker will take the Chair on
Tuesday, 20th September, 2016 at 2.30 p.m.*

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