



REPUBLIC OF KENYA

THE SENATE

ELEVENTH PARLIAMENT – THIRD SESSION

VOTES AND PROCEEDINGS

THURSDAY, OCTOBER 29, 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 LAID

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

- i) Statement by the Senate Majority Leader regarding the Business of the Senate for the week commencing 13th October, 2015.

(Deputy Senate Majority Leader on behalf of the Senate Majority Leader)

4. STATEMENTS

(a) Statements pursuant to Standing Order 45(2)(b)

- i) Nominated Senator (Sen. Godliver Omondi) sought a statement from the Chairperson of the Standing Committee on National Security and Foreign Relations regarding the security of persons living with albinism in the country.
- ii) The Senator for Kisii County (Sen. Christopher Obure) issued a statement on behalf of the Chairperson of the Standing Committee on Roads and Transportation, on the status of road construction projects in urban centres by the Kenya Urban Roads Authority (KURA), as had been requested by Senator for Trans Nzoia County (Sen. Henry Ole Ndiema).

In his response, the Sen. Obure informed the Senate that KURA conducts feasibility studies which enables it to establish the status of roads that require urgent intervention, the traffic volumes and capacity of towns as well as areas that require decongestion. He tabled a list of new roads designed and constructed by KURA since its inception, as well as a list of the roads repaired under routine and periodic maintenance.

The Acting Chairperson also informed the Senate that KURA had repaired several roads within Kitale Municipality including rehabilitation with asphalt concrete overlay. He stated that in the Financial Year 2015/2016, KURA had advertised for routine and periodic maintenance of road projects to be undertaken as per its Annual Work Plan and that KURA has been in consultation with the county governments regarding road prioritization and preparation of the Annual Work Plan as well as involving them in running of the projects.

- iii) The Senate Deputy Majority Leader issued a statement on El-Nino preparedness across the counties as had been requested by Nominated Senator Catherine Mukiite.

The Deputy Majority Leader informed the Senate that the El-Nino rains were expected in most parts of the country and that the hazards associated with the excessive rainfall as had been forecasted by the Kenya Meteorological Department include; flooding, landslides and lightning strikes, outbreaks of waterborne diseases and human population displacement.

The Deputy Senate Majority Leader further informed the Senate that the Ministry of Health, working with county governments, development partners and health sector stakeholders had put in place preparedness measures which include sensitization of all county health departments to put in place mechanisms to counter the adverse effects of the rains; convening of a disaster risk management inter-agency coordinating committee with a contingency plan costing Kshs. 2.9 billion; advise to county health departments to plan for El-Nino with their county multi-sector stakeholders; and stepping up of surveillance for water-related diseases countrywide.

The Speaker directed the Senate Deputy Majority Leader to bring a further response on Thursday, 5th November, 2015.

(b) Statements pursuant to Standing Order 45(2) (c)

Pursuant To Standing Order 45 (2) (c), the Deputy Senate Majority Leader issued a Statement on the Business of the Senate for the week commencing Tuesday, 3rd November, 2015.

5. COMMITTEE OF THE WHOLE

Order for Committee read;

IN THE COMMITTEE

(The Chairperson of Committees – in the Chair)

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

Raising a point of order, the Senator for Siaya County (Sen. James Orengo) pursuant to Standing Order 99, claimed to move "**That, the Chairperson do report progress**".

And the Chairperson of Committees acceding to the request;

Question put and negatived.

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 Deputy Senate Majority Leader)

Debate arising.

Putting of question deferred.

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 Deputy Senate Majority Leader)

Debate arising.

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 Chairperson of Committees ruled that the question did not affect counties;

Question put and agreed to.

6. **HOUSE RESUMED** - Deputy Speaker - in the Chair.

7. **THE PRESIDENTIAL MEMORANDUM ON THE PUBLIC PROCUREMENT AND ASSET DISPOSAL BILL (NATIONAL ASSEMBLY BILL NO. 40 OF 2014)**

Progress Reported.

Motion made and Question proposed-

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

(The Deputy Senate Majority Leader)

There being no other Senator willing 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.

8. **COMMITTEE OF THE WHOLE**

Order for Committee read;

IN THE COMMITTEE

(Acting Chairperson of Committees (Sen. Peter Mositet) – in the Chair)

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

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 Deputy Senate Majority Leader)

Debate arising.

Putting of question deferred.

President's Recommendation on Clause 8

Motion made and Question 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;
- (j) 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 Deputy Senate Majority Leader)

Debate arising.

Putting of question deferred.

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 Deputy Senate Majority Leader)

Debate arising.

Putting of question deferred.

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 Deputy Senate Majority Leader)

Debate arising.

Putting of question deferred.

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 Deputy Senate Majority Leader)

Debate arising.

Putting of question deferred.

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.
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(The Deputy Senate Majority Leader)

Debate arising.

Putting of question deferred.

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 Deputy Senate Majority Leader)

Debate arising.

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 Chairperson of Committees (Sen. Peter Mositet) ruled that the question did not affect counties;

Question put and agreed to.

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

10. **THE PRESIDENTIAL MEMORANDUM ON THE PUBLIC AUDIT BILL (NATIONAL ASSEMBLY BILL NO. 38 OF 2014)**

Progress Reported.

Motion made and Question proposed-

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

(The Deputy Senate Majority Leader)

There being no other Senator willing to contribute;

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

Question put and agreed to.

11. **THE OFFICE OF THE COUNTY ATTORNEY BILL (SENATE BILL NO. 37 OF 2014)**

(Chairperson, Standing Committee on Legal Affairs and Human Rights)

Second Reading (Division)

Order deferred.

12. **COMMITTEE OF THE WHOLE**

The Public Appointments (County Assembly Approval) Bill (Senate Bill No. 20 of 2014)

(Chairperson, Standing Committee on Labour and Social Welfare)

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

Order deferred.

13. **COMMITTEE OF THE WHOLE**

The County Early Childhood Education Bill, (Senate Bill No.32 of 2014)

(Chairperson, Standing Committee on Education)

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

Order deferred.

14. **COMMITTEE OF THE WHOLE**

The Universities (Amendment) Bill (Senate Bill No. 31 of 2014)

(Sen. Halima Abdille)

Order Deferred.

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

Motion made and question proposed;

THAT, the County Governments Disaster Management Bill, (Senate Bill No. 40 of 2014) be now read a Second time.

(Chairperson, Committee on National Security and Foreign Relations - 28.10.2015)

(Resumption of debate interrupted on Wednesday 28th October, 2015)

Order Deferred.

16. **THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL (SENATE BILL NO. 8 OF 2015)**

(Sen. Hassan Omar)

Order for Second Reading Read;

Order Deferred.

17. **MOTION – CALLING UPON THE GOVERNMENT TO CONSIDER FORMULATING ADDITIONAL POLICY INTERVENTIONS TO MITIGATE THE PROBLEM OF TRAFFIC CONGESTION IN NAIROBI METROPOLITAN REGION**

(Ministry of Transport and Infrastructure)

Motion made and Question proposed-

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 - 17.09.2015)

Debate interrupted on Thursday, 17th September, 2015 resumed;

There being no other Senator wishing to speak;

Mover replied;

Raising a point of order, pursuant to Standing Order 54 (3), the Nominated Senator, (Sen. Zipporah Kittony) requested the Speaker to defer putting of the question to another day;

And the Temporary Speaker (Sen. Ongoro) acceding to the request, deferred putting of the question to Wednesday, 4th November, 2015.

18. **MOTION- URGING 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**

(Department of Land)

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;

There being no other business and the time being fourteen minutes past Six O'clock, the Temporary Speaker (Sen. Ongoro) adjourned the business of the Senate without Question put pursuant to the Standing Orders.

19. **SENATE ROSE** - at fourteen minutes past Six O'clock.

M E M O R A N D U M

*The Speaker will take the Chair on
Tuesday, November 03, 2015 at 2.30 p.m.*

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