

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 11th November, 2015

*The House met at the Senate Chamber,
Parliament Buildings, at 2.30 p.m.*

[The Speaker (Hon. Ethuro) in the Chair]

STATEMENTS

THE DECLINING PROFITS IN THE TEA INDUSTRY

The Speaker (Hon. Ethuro): Is the Chairperson, Committee on Agriculture, Livestock, Fisheries here?

Proceed, Sen. Ndiema.

Sen. Ndiema: Mr. Speaker, Sir, I am ready to issue the Statement, but the Senator who requested the Statement is not here, he could be on the way coming.

(The Speaker (Hon. Ethuro) consulted Sen. Kivuti)

Sorry. Sen. Ndiema. What are you saying?

Sen. Ndiema: Mr. Speaker, Sir, I do not seem to see the Senator who sought the Statement. Perhaps he is on the way coming.

The Speaker (Hon. Ethuro): Okay. Let us proceed to the next Statement.

Where is the Chairperson Committee on Finance, Commerce and Budget?

REVENUE COLLECTION FROM SAMBURU NATIONAL GAME RESERVE

Sen. Billow: Mr. Speaker, Sir, there was a request for a Statement on revenue collection from Samburu National Game Reserve (SNGR) by the Senator for Samburu County.

First, I wish to apologise because this request was made some time back. It has taken very long for the Ministry to respond. I want to respond as follows:

The Samburu National Game Reserve is managed solely by the County Government of Samburu. On gazettment, the ownership of land within which the reserve lies remained the property of the Samburu community. The County Government of Samburu holds the land in trust and manages the national game reserve on behalf of the community. The revenue collection and management of the game revenue is done by

the County Government of Samburu. Accordingly, details of the revenue collection from the Samburu National Game Reserve can only be provided by the County Government of Samburu.

On the second part of the Statement, the National Treasury provides funding to the relevant Ministry for promotion of tourism. What this means is that with regard to the Statement sought, the details of how much revenue has been earned from Samburu National Game Reserve can only be obtained from the County Government. The national Government is not in a position to provide that information. As you know, the two levels of Government are distinct. Therefore, the county government does not provide information on the amount of revenue collected to the National Treasury on a regular basis.

Sen. Leshore: Mr. Speaker, Sir, the Chairperson should have read Article 207 of the Constitution of Kenya before replying to the statement. Immediately after the elections, the new Government changed all the revenue officers. They brought in a new firm illegally to collect funds. That is why I requested for the answer from the National Treasury. If you read Article 207(1) it states:-

“There shall be established a Revenue Fund for each county government, into which shall be paid all money raised or received by or on behalf of the county government, except money reasonably excluded by an Act of Parliament.”

This is very clear. The usage of those funds must either be given by an Act of Parliament. Article 207(2)(a) states:-

“Money may be withdrawn from the Revenue Fund of a county government only—

(a) as a charge against the Revenue Fund that is provided for by an Act of Parliament or by legislation of the county;”

The county government, using that money, has never sought usage of that money. So, I would like the Chairperson to go further and summon the Cabinet Secretaries for the National Treasury and Devolution and Planning as well as the Director of Budget to answer to this Statement.

Sen. (Dr.) Machage: Mr. Speaker, Sir, maybe the consultations were a bit loud, I could not hear much but there is something that the Chairperson has to clarify on the request for the amount of revenue collected by the reserve. His answer was that he could not get that figure from the national Government. I do not think a Committee can only get such information from the national Government. If it were so, other committees like Health would not be able to work.

Could the Chairperson give us that figure or tell us whether he is in the process of getting the total amount of revenue collected by that reserve? We need to know.

Sen. Billow: Mr. Speaker, Sir, what I said was very clear. The revenue collection for the game reserve is done by the county government. Although the Constitution provides for all revenues to be swept into the County Revenue Fund, in terms of the revenues which are collected and banked, the information can only come as a matter of fact from the Controller of Budget. Even then, the Controller of Budget normally gets the combined revenue which includes licenses and other revenue that is collected.

What I would request, if the Senator for Samburu County would indulge us, is to

write to the Controller of Budget and ask her to provide us with figures relating to the amount of revenue that has been collected by the Samburu National Game Reserve. However, the National Treasury to whom the Statement had been directed does not and will not be in a position to provide information relating to this.

Sen. Leshore: Mr. Speaker, Sir, is the able Chairperson in order to tell me to write to the Controller of Budget while he is mandated to get all the information to this House? This Statement does not belong to me; it belongs to the Senate.

Sen. Billow: Mr. Speaker, Sir, I did not say “he writes”. I said our Committee will write to the Controller of Budget and ask her to provide us with the amount of revenue collected by the County Government of Samburu. I am sure even if he goes into the website of the Office of the Controller of Budget, he will get the same figures. Nonetheless, digital as we are, we will get the information for him.

The Speaker (Hon. Ethuro): Order, Senators! Let that matter rest. What is it Sen. (Dr.) Machage?

Sen. (Dr.) Machage: Mr. Speaker, Sir, evidently the answer was quite inadequate. The Chairperson himself has said he still has to write to the Controller of Budget to get that information. Would I, therefore, be in order to ask that this Statement be deferred to a later date for a proper answer?

Sen. Billow: Mr. Speaker, Sir, that is what I exactly said; that we request it be deferred. I sought the indulgence of the Member who sought the Statement so that we can bring the answer later.

Sen. Hassan: On a point of order, Mr. Speaker, Sir. I seek your direction. Three days ago, I was listening to a news item. I want to seek your clarity on this matter. I heard an attempt by the top executive try and redefine the Standing Orders of this House in terms of security of information. That they will now be submitting information, requested for by committees, through the Speaker.

The Speaker (Hon. Ethuro): Order, Sen. Hassan! Courtesy demands that you notify the Speaker that you have a matter. I thought it was related to the Statement. Time and again, I have said there are no ambushes entertained here.

STATUS OF NYS PROJECTS IN THE COUNTRY

Sen. Khaniri: Mr. Speaker, Sir, I rise to seek a Statement.

Pursuant to the provisions of Standing Order No.45(2)(b) I beg to seek a Statement from the Chairperson of the Standing Committee on Finance, Commerce and Budget, concerning the status of the National Youth Service (NYS) projects in the country for the 2015/16 Financial Year. In the statement, the Chairperson should explain:

1. The specific projects in the counties and their projected cost for the 2015/16 Financial Year, bearing in mind NYS has been allocated Kshs25 billion.
2. The criteria for selecting the specific projects in the various counties and in particular the projects in Vihiga County with the progress and timelines.
3. The sustainability of the projects and the expected period of implementation.
4. The status and timeline of completion of the Kenya-Somali boundary wall that is currently being implemented by NYS.

Sen. Billow: Mr. Speaker, Sir, I thought the question on NYS and their projects should fall under the Sessional Committee on Devolved Governments. I seek your guidance. He asked a specific Statement relating to NYS.

The Speaker (Hon. Ethuro): The majority part of the Statement sought is from your Committee. Just deal with the Statement. If you need support from the Sessional Committee on Devolution, I am sure it can be available to you.

Sen. Billow: Mr. Speaker, Sir, given the importance and significance of the Statement that is being sought in the current political situation we are in, I will need not less than two weeks to provide that information. I seek the indulgence of the Member to give us two weeks to provide that information.

Sen. Mositet: Mr. Speaker, Sir, I rise to request for a Statement on the killing of two youths in Kajiado County by Kenya Wildlife Services Rangers.

The Speaker (Hon. Ethuro): Order! Hold on Sen. Mositet. Sen. Khaniri, what is your problem?

Sen. Khaniri: Mr. Speaker, Sir, I did not get clearly when he wants to deliver his Statement. Yes, he appreciates it is urgent, then he says at least not less than two weeks. When he says that he is not clear, we do not know when to expect the Statement.

The Speaker (Hon. Ethuro): That is true. Chairperson, be specific.

Sen. Billow: Mr. Speaker, Sir, two weeks from now.

The Speaker (Hon. Ethuro): It is so ordered.

Sen. Mositet: Mr. Speaker, Sir, I rise to request for two Statements

KILLING OF TWO YOUTHS IN KAJIADO COUNTY BY KWS RANGERS

The first request is with regard to the killing of two youths in Kajiado County by the Kenya Wildlife Services (KWS) rangers.

I rise pursuant to Standing Order 45(2)(b) to seek a Statement from the Chairperson of the Committee on National Security and Foreign Relations regarding the killing of the two youths, Mr. Andere ole Taki and Mr. Mpiti Kinkune, on 2nd April, 2015, at Mosiro, Kajiado West Constituency, Kajiado County, by the KWS rangers.

In the Statement, the Chairperson should explain:-

- (a) The status of the investigations into the killings of the two youth;
- (b) Whether any prosecutorial or administrative action has been taken against the concerned rangers; and
- (c) The measures that the KWS intends to put in place to ensure that communities living around the wildlife corridors are not mistaken for poachers and killed.

PROPOSED SURVEY OF THE KENYA PIPELINE COMPANY SECURITY SYSTEM

Mr. Speaker, Sir, I also rise to request for a Statement on the proposed survey of the Kenya Pipeline Company (KPC) security system.

I rise pursuant to Standing Order No. 45(2)(b) to seek a Statement from the Chairperson of the Committee on Energy regarding the proposed plan of the KPC to spend Kshs500 million on a survey of its security system. In the Statement, the Chairperson should:-

- (a) Explain why the proposed survey will occasion the use of Kshs500 million;
- (b) Explain the recommendations that were given by the first survey that was done by Optilan (UK) Ltd in 2012 and whether the security system that was installed is efficient;
- (c) Enumerate the cost of the security system that was installed in 2012;
- (d) Explain the recommendations of the internal assessment of the security system that was carried out by the KPC engineers this year.

Sen. Haji: Mr. Speaker, Sir, on the question of the people who were murdered close to the national parks, I will attempt to answer it within two weeks. I know that this kind of allegation has been going on both in Mt. Elgon as well as Isiolo, which we have investigated and will soon make our finding known to the House.

On the question of the KPC security system, I would like to be given two or one week.

The Speaker (Hon. Ethuro): In one or two weeks' time?

Sen. Haji: Mr. Speaker, Sir, in one week's time.

The Speaker (Hon. Ethuro): Sen. Ndiema, please, take the Floor before we conclude the order on Statements.

DECLINING PROFITS IN THE TEA INDUSTRY

Sen. Ndiema: Mr. Speaker, Sir, I have a Statement to issue. Since the Senator for Nandi County is in, I am ready to proceed.

The Speaker (Hon. Ethuro): Proceed.

Sen. Ndiema: Mr. Speaker, Sir, Sen. Sang requested for a Statement from the Chairperson of the Committee on Agriculture regarding the declining profits in the tea industry. The questions were many and as you will recall, other honourable Senators rode on those questions and asked many more questions. Let me go directly to citing the questions and the answers.

The first question was on whether the Government is aware that the amount of tea bonuses to farmers has drastically declined in the last three years and reasons for the same.

The Government is aware that the final amount of tea bonus paid to farmers declined to Kshs35.5 billion in 2013 to Kshs19.8 billion in 2014. The payment has since risen to Kshs28.7 billion in 2015. However, it is important to note that the final bonus payment had earlier risen from Kshs30.5 billion in 2011 to Kshs33.9 billion and Kshs35.6 billion in 2012 and 2013 respectively.

The sharp decline in bonus payment in 2014 was attributed to the following:-

- (1) Oversupply of tea in the world market following the good prices which were experienced in 2011, 2012 and 2013 respectively. For example, out of the 157 billion kilogrammes of world tea surplus, Kenya contributed about 50 per cent of the surplus;

- (2) The declining tea prices from US\$3.26 in 2013 to US\$2.43 in 2014;
- (3) Rising cost of production and operations that include wages;
- (4) Over dependence of the Kenya tea industry on black CTC (cut, tear, curl) teas production and export;
- (5) Political instability in key markets in Africa especially Egypt and the Middle East; and
- (6) Changing consumer preferences in the traditional consumer markets such as the United Kingdom (UK) where the millennial demographic group prefers other beverages rather than tea.

On the question of the tea bonuses that will be paid by the Kenya Tea Development Authority (KTDA) factories across the country is that, the final tea bonuses per region for 2014/2015 as compared to 2013/2014 is as indicated in the table. The table is so detailed and the hon. Senator has had time to look at it.

Table 1 – Region 1 Final Tea Bonuses Payment

	Region 1	FY 2014/2015			FY 2013/2014				
		Initial Payment	Second Payment	Total Payment	Initial Payment	Second Payment	Total Payment	Absolute Increase	% Increase
1	Kambaa	14.00	30.00	44.00	14.00	20.50	34.50	9.50	27.54
2	Gachege	14.00	29.10	43.10	14.00	16.00	30.00	13.10	43.67
3	Mataara	14.00	29.25	43.25	14.00	17.40	31.40	11.85	37.74
4	Theta/Kuri	14.00	28.05	42.05	14.00	16.20	30.20	11.85	39.24
5	Kagwe	14.00	33.05	47.05	14.00	23.05	37.05	10.00	26.99
6	Makomboki	14.00	33.00	47.00	14.00	22.65	36.65	10.35	28.24
7	Ikumbi	14.00	30.00	44.00	14.00	20.10	34.10	9.90	29.03
8	Ngere	14.00	35.00	49.00	14.00	23.30	37.30	11.70	31.37
9	Gacharage	14.00	30.50	44.50	14.00	19.10	33.10	11.40	34.44
10	Njunu	14.00	32.00	46.00	14.00	19.00	33.00	13.00	39.39
11	Nduti	14.00	31.50	45.50	14.00	17.10	31.10	14.40	46.30
	Regional Avg.	14.00	31.04	45.04	14.00	19.49	33.49	11.55	34.90

Table 2 – Region 4 Final Tea Bonuses Payment

	Region 4	FY 2014/2015			FY 2013/2014				
		Initial Payment	Second Payment	Total Payment	Initial Payment	Second Payment	Total Payment	Absolute Increase	% Increase
1	Imenti	14.00	38.50	52.50	14.00	26.50	40.50	12.00	29.63
2	Githogo	14.00	38.00	52.00	14.00	21.15	33.15	16.85	47.94
3	Kiegyoi/Igembe	14.00	29.60	43.60	14.00	19.00	33.00	10.60	32.12
4	Kinoro	14.00	36.00	50.00	14.00	21.65	35.65	14.35	40.25
5	Weru	14.00	35.00	49.00	14.00	21.20	35.20	13.80	39.20
6	Kionyo	14.00	33.30	47.30	14.00	22.00	36.00	11.30	31.39

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7	Michimikuru	14.00	33.10	47.10	14.00	17.75	31.75	15.35	48.35
	Regional Avg.	14.00	34.79	48.79	14.00	21.32	35.32	13.46	38.41

Table 3 – Region 5 Final Tea Bonuses Payment

	Region 5	FY 2014/2015			FY 2013/2014				
		Initial Payment	Second Payment	Total Payment	Initial Payment	Second Payment	Total Payment	Absolute Increase	% Increase
1	Litein/Chelal	14.00	21.10	35.10	14.00	12.00	26.00	9.10	35.0
2	Tegat/Toror	14.00	20.05	34.05	14.00	14.00	28.00	6.05	21.6
3	Kapkatet	14.00	22.50	36.50	14.00	14.20	28.20	8.30	29.4
4	Kapkoros/Tirgaga	14.00	24.50	38.05	14.00	14.25	28.25	10.25	36.28
5	Mogogosiek/Kobel	14.00	21.00	35.00	14.00	13.25	27.25	7.75	28.44
6	Kapset/Rorok	14.00	23.00	37.00	14.00	13.45	27.45	9.55	34.79
7	Momul	14.00	25.00	39.00	14.00	15.85	29.85	9.15	30.6
	Regional Avg.	14.00	22.45	36.45	14.00	13.86	27.86	8.59	30.89

The reasons for disparities in the amount of tea bonuses by various KTDA factories are as follows:-

(1) Factories process varied volumes of tea depending on the extent of the tea catchment areas and processing capacities. This normally determines the capacity utilization of the factory and hence cost efficiency.

(2) Tea from various factories fetch different prices in the auction or direct market and the price is determined through consumer preference, demand and supply dynamics.

(3) High production cost in some of the factories mainly based on labour, energy efficiency, cost of credit and investment income.

The following is on the question of the role played by the Tea Board of Kenya (TBK) and the plans that they have in ensuring that tea farmers reap from their hard work.

The roles of the Tea Board of Kenya (TBK) under the Agriculture, Fisheries and Food Authority (AFFA) are:

- (1) Regulation;
- (2) Industry planning and development;
- (3) Industry advocacy;
- (4) Carry out trade promotions and activities; and,
- (5) Organizational capacity building and service delivery enhancement.

The plans that the Tea Directorate have in ensuring that tea farmers reap from the hard work are as follows:-

(1) A programme of product diversification into other tea products such as green tea, farm enterprise, crop diversification and farming systems.

(2) Provision of subsidized fertilizer to tea farmers is ongoing.

(3) The process of developing income stabilization mechanism programme is underway.

(4) The surveillance of tea quality along the value chain has been enhanced.

(5) Tea promotion programmes have been rolled out.

(6) A final draft tea policy document is awaiting submission to the Cabinet for approval. This will guide the tea industry.

Concerning question 2.1.5 on what the national Government in conjunction with the county governments is doing to get the tea sector back to profitability, the response is as follows:-

(1) The county governments will appoint a team to offer extension services.

(2) The Ministry has appointed a Tea Industry Task force to work on modalities of cooperation with county governments and other issues regarding the industry.

(3) Consultative meetings are ongoing between the Tea Directorate and county governments.

Regarding question 2.2.1 on issues raised by other Senators; the number of members sitting at the board of East Africa Tea Trade Association (EATTA) and the counties they originate from, the answer is as follows:-

There are 14 members who sit at the board of EATTA. They are as follows:-

(1) Mr. Nick Munyi, representing buyers from Nyeri, Kenya.

(2) Mr. William Oyosi, representing buyers from Vihiga, Kenya.

(3) Mr. Gitata Macharia representing buyers from Nyeri, Kenya.

(4) Mr. Albert Otochi, a small holder producer from Nyamira, Kenya.

(5) Mr. Samuel Thumbi, plantation producer from Kiambu, Kenya.

(6) Mr. Tom Muchura is a broker representing brokers, from Siaya, Kenya.

(7) Mr. Collins Cheruiyot, representing tea packers, from Kericho, Kenya.

(8) Mr. Simon Gikanga, representing warehouses, from Kiambu, Kenya.

(9) Mr. John Prinsloo representing producers from Uganda.

(10) Mr. Jotham Majyalibu representing producers from Rwanda.

(11) Mr. Nicholas Yiannakis representing producers from Tanzania

(12) Ms. Yvonne Girukwishaka representing producers from Burundi.

(13) Mr. Nelius Kariuki, Independent director from Murang'a, Kenya.

(14) Mr. Edward Mudibo, Managing Director from Busia, Kenya.

Mr. Speaker, Sir, EATTA was registered in 1956 and has 200 members drawn from 10 counties. It is a membership association that consists of five distinct and independent sub-associations. Each sub-association nominates members who are then appointed to the board.

On question 2.2.2 on the impact of taxes and levies in reducing profitability of the crop to farmers, the response is as follows:-

Profitability of tea bonuses is determined by crop volume, supply and demand and cost of operations including taxation as well as prevailing prices in the world market. Taxes and levies charged on the tea industry emanate from the national tax regime,

county governments and government agencies who directly or indirectly offer services to the tea industry. These taxes and levies are perceived by farmers as hindering ease of doing business and reducing their level of income.

Mr. Speaker, Sir, in this regard, there has been regular consultation between the industry stakeholders and the government to review some of the taxes, cess fees and levies. From the consultations, it has emerged that there are only eight national taxes which include the 16 per cent VAT. Interventions by the Ministry to reduce impact of taxes and levies on tea and profitability are as follows:-

(1) The Ministry has petitioned the National Treasury to exempt locally sold tea from VAT.

(2) The agricultural produce cess has since ceased following enactment of Agriculture, Fisheries and Food Authority Act, 2013.

(3) In the draft tea regulations, it has been proposed that tea *Ad Valorem* levy currently charged at one per cent on tea exports be reduced to 0.7 per cent.

On question 2.2 on why tea farmers have to wait for 12 months to receive a one off payment called bonus while tea payment is usually done by the fall of the hammer at the auction, the Kenya Tea Development Agency (KTDA) managed factories financial year ends on 30th June of every year. Based on the audited accounts that are normally finalized in August, the tea factories boards of directors declare a one off payment called bonus by mid-September. The bonus is promptly paid on 24th October every year.

Further to the bonus payment, the following payments are also made to farmers:-

(1) Monthly payments of Ksh14 per kilogramme.

(2) Mini bonus; this is an interim second payment which is based on six months crop deliveries. The directors of factories could resolve to pay a mini bonus. This resolution to pay mini bonus is largely guided by a combination of the following factors: Performance, factory tradition---

The Speaker (Hon. Ethuro): Order, Chairman! Just summarize; you gave him 24 hours to study the document.

Sen. Ndiema: Mr. Speaker, Sir, I am just about to finish. This is the last one.

Why there are only limited number of auctioneers who sell tea yet this is a free market: There are currently 12 brokers registered by the Tea Directorate to operate at Mombasa auction. However, tea regulations allow qualifying firms to be registered as and when they apply. The existence of adequate tea volume to be traded is also another factor that informs the number of brokerage firms in the auction.

Sen. Sang: Mr. Speaker, Sir, I thank the Chairman for that response. However, I want to seek the following clarifications:-

First, the Chairman seems to blame the disparities in the amount of tea bonuses to the volumes. My request to him is to furnish us with the volumes per factory so that we can understand whether that contributes to that disparity.

Secondly, the Ministry has established a tea industry task force to look into the modalities of cooperation between county governments on issues regarding the tea industry. I would like the Chairman to clarify when we expect this task force to finalize its mandate, report and whether that report will be tabled in this House.

Thirdly, the draft tea regulations are being worked on. When do we expect that this tea draft regulations will be finalized and brought to this House, so that we can address those issues?

Fourthly, who are these 12 brokers licensed to operate in the Mombasa auction? Could the Chairman disclose the names of these brokerage firms, give us the names of the directors and the counties they come from?

Finally, could the Chairman disclose how many brokerage firms have applied to be registered to operate at the Mombasa auction in the last five years and how many of them have been allowed to operate?

Sen. (Prof.) Lesan: Mr. Speaker, Sir, I also wish to thank the Vice Chairperson for the answer which he has given. However, according to me the 200,000 farmers in Western Kenya are not satisfied with that answer. I would like to seek further clarification on two areas. The first one is on auctioneers. The Kenya Tea Development Authority (KTDA) has limited the number of auctioneers who are able to sell KTDA tea in Mombasa to only 12.

Could the Vice Chairperson tell this House why there is this a limit on the number of brokers who are able to sell tea, yet this is a business? If the broker does not think that it is good business, they can leave and we can get another one.

Secondly, I would like to know the eight levies that are charged on tea. Which of the 42 previously charged levies were dropped? Lastly, I would like a clarification on one particular levy called *Ad valorem* levy, which has been reported as an incentive to exporters. Could the Vice Chairperson clarify whether this tax is really an incentive or disincentive to the exporters of particularly Kenyan tea?

Sen. Karaba: Mr. Speaker, Sir, last time I asked the Vice Chairperson an almost similar question. He promised this House that once tea prices improve in the world, the construction of Kirinyaga Tea Factor will commence. What promise will he give now that the prices have improved?

Sen. Khaniri: Mr. Speaker, Sir, I come from a tea growing county and, therefore, know the plight of the tea farmers quite well. I want to agree with Sen. Sang that the returns on tea have been diminishing. One of the reasons for this is because the Government does not have an elaborate plan on how we can process our own tea and add value before we export it. We export raw tea and that is why we get a raw deal. What elaborate plans does the Government have to ensure that we do not export raw but processed tea, that adds value?

Secondly, what plans does the Government have to remove VAT from locally sold tea?

Sen. Obure: Mr. Speaker, Sir, on the occasion of the last conference involving tea stakeholders, it became apparently clear that there were far too many taxes imposed on tea. We were told that there are 42 different levies. It was also demonstrated that there is one particular tax – the *Ad valorem* tax -which has a very negative impact. From the time this tax was introduced, at the end of 2012, tea sales dropped drastically.

Teas from neighbouring countries, which sell their tea through the Mombasa Auction, started gaining at the expense of Kenyan tea. This was demonstrated to have contributed to this sharp decline in profitability, affecting farmers' earnings. We were

told also that there would be an immediate review of the *Ad valorem* tax. Could the Vice Chairperson explain why this has not been done?

The second issue, which is of great importance, is connected with what Sen. Khaniri raised. We want to know the specific measures which the Government has taken to encourage value addition at the local level, to avoid a situation where we sell the bulk of our tea as raw tea.

Sen. Ndiema: Mr. Speaker, Sir, indeed, the issues raised by the Senators are valid. Since some of them had not been raised earlier, I may not have the answers. But I will go back and get answers.

On the task force, our Committee has made sure that it will certainly report to the Senate. In fact, we have our Clerk as a member of the task force. The draft regulations to deal with *Ad valorem* are already in the process. Therefore, reduction of ad valorem tax is on the way.

Regarding the 12 brokers, I said in my Statement that a request has been made by the Ministry to the Treasury to do away with VAT on tea sold locally. The request for the Statement did not include the names of the auctioneers, but I will provide that information together with other issues that may not have been clarified.

Regarding what the Government is doing to ensure value addition, this is a matter for the private sector. Nobody has prevented any entrepreneur or firm from value adding tea for export. That is open and the Government is ready to facilitate.

I promised that I would bring an answer as to when the factory in Kirinyaga will be constructed. I am still waiting for an answer, but that was a separate question, independent of this Statement.

Thank you, Mr. Speaker, Sir.

Sen. Mositet: On a point of order, Mr. Speaker, Sir. You did not allow the Members of the Committee to tell us when they will bring the statement that I requested for?

The Speaker (Hon. Ethuro): Is it the one to the Committee on Energy?

Sen. Mositet: Yes, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Sen. Mwazo.

Sen. Mwakulegwa: Mr. Speaker, Sir, we will respond in two weeks time.

The Speaker (Hon. Ethuro): It is so ordered.

There was request by the Chair of the Committee on Land and Natural Resources to lay a document.

Sen. Khaniri.

PAPER LAID

REPORT OF THE COMMITTEE ON LAND AND NATURAL RESOURCES ON THE WATER BILL, 2014

Sen. Khaniri: Mr. Speaker, Sir, I am sorry that I was not ready to lay this document at the right time. Thank you for indulging me.

I beg to lay the following Paper on the Table of the Senate today, Wednesday 11th November, 2015.

Report of Standing Committee on Land and Natural Resources on the Water Bill, 2014

(Sen. Khaniri laid the document on the Table)

(Resumption of Statements)

The Speaker (Hon. Ethuro): There are two interventions; one from Sen. Hassan Omar and the other from Sen. Wetangula.

In appreciation of your gravitas, I will first give a chance to Sen. Wetangula.

ARREST OF A JOURNALIST ON THE ORDER OF THE CS FOR
INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I rise to seek a Statement from the Chairman of the Committee on National Security and Foreign Relations in relation to a strange and bizarre statement and order given by the Cabinet Secretary for Interior, to the effect that a journalist who had written a story he did not like be arrested, and in fact, he was arrested.

Secondly, he made an appearance on national television and all other television channels, giving a stern warning that anybody who writes a report or story about corruption shall be arrested, frogmarched to a police station and be made to record statements and be locked up.

Mr. Speaker, Sir, this is an abrogation of Chapter Four of the Constitution on the Bill of Rights. In the Statement, the Chairperson should tell the House and country under what law and authority the Cabinet Secretary is issuing these strange and bizarre statements that are blatantly unconstitutional and illegal. Secondly, has Chapter Four of the Constitution, more particularly Article 34 (1) (b), been suspended?

Thirdly, is the Cabinet Secretary, who incidentally is a very good friend of mine and a former member of our coalition, trying to drive the country back to the dark days when journalists were hounded into their bedrooms, including the case of Itumbi who was jailed for writing an item in his diary?

Lastly, could the Chairman also tell the House whether the Cabinet Secretary is on a frolic of his own or he is acting for and on behalf of the Jubilee Government?

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. Is what the Senate Minority Leader has requested for a question or Statement? Whenever a Member seeks a Statement in this House it must be written. But if you make certain statements, like the ones the Senate Minority Leader is making, how will the Chairperson follow from there on?

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, first, I respectfully walked to the Chair and sought permission to rise and request for this Statement. The Chair dutifully, lawfully and graciously granted me the permission. That

the content of what I am asking for is making my distinguished colleague uncomfortable does not give him any right to raise issues. These are matters that concern the whole country, including his constituents. Any journalist is now under threat.

Sen. Keter: Mr. Speaker, Sir, I rise under Standing Order 45 (3) which states:-

“A Senator who wishes to seek leave to raise a matter under paragraph (2) (a) or (b) shall, before 1.00 p.m., on the day on which the Statement is proposed to be made, hand to the Speaker a written notification of the matter, but the Speaker may refuse to allow the request unless satisfied that the matter may properly be discussed in the Senate.”

I am saying that the Sen. Wetangula was not seeking for clarification he was just giving us a lecture on what exactly happened. That is why I was saying you needed to seek clarification.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, this is not a House of trivia. We are dealing with very serious issues and those who think that the rights and fundamental freedoms of individuals in this country are for trivia, are in the wrong place. You allowed me to seek a statement and the Chairperson of the Committee, a distinguished Senator from Garissa who is a former Provincial Commissioner and a former Minister for Internal Security is not protesting. Why are they wailing louder than the bereaved?

The Speaker (Hon. Ethuro): Order, the Sen. Wetangula! I think you have finished your statement now. Chairperson, do you have something to respond?

What is it, Sen. Orengo?

Sen. Orengo: Mr. Speaker, Sir, this is a very serious matter. With your indulgence, I know Sen. Haji will be able to deal with this and I have absolute confidence in him. However, an hour ago, another journalist, Alphonse Shiundu has also been summoned to appear at the Criminal Investigations Department (CID). In fact, I have been requested by a group of journalists, the Kenya Union of Journalists and the Editors Guild to go and assist in taking him to the CID headquarters. It is now becoming a trend and I am happy because this is not necessarily a matter from this side of the House, I have seen Sen. Murkomen has made comments on this in the social media. Hon. Sakaja has equally done so. I thought Sen. Murkomen would have contributed in this by supporting the position of Sen. Wetangula.

Mr. Speaker, Sir, in that statement, can it be clear whether journalists are free to pursue their work without interference because what I was worried about was that the journalist who went to the CID headquarters was being told that he must disclose the source of his information? Anybody who is arrested as a suspect or on account of commission of any offence, has a right under Article 50 of the Constitution, to remain silent. That has not changed.

So, in order to clear the air so that we can walk together in this journey of democracy without caring whether somebody is Jubilee or CORD, could the Chairperson come up with a statement and advise the Deputy Leader of Government Business that sometimes it is important to look at the big issues instead of little things which even in your area will make you look ridiculous on an important mission like this?

The Speaker (Hon. Ethuro): Let me allow, Sen. Murkomen one more comment and then I rule on this matter.

Sen. Murkomen: Thank you, Mr. Speaker, Sir. I totally agree with my mentor and senior, Sen. Orendo when it comes to the substance. When Sen. Wetangula raised this issue, I was wondering about the digressions he had, talking about Itumbi and some other miscellaneous people who are not substantially involved in the issue that we are raising. That was my concern.

I want to follow on what Sen. Orendo said and ask the Chairperson in that statement to find out whether in this age and time of democracy, it would not be better for Government officers who are aggrieved by any act of journalist to take civil remedies instead of criminal sanctions. If we continue applying criminal sanctions on matters relating to journalism in the 21st Century, we may give the wrong impression that we are going back to the dark old days where people were held *in-communicado*, and where freedom of expression was not obeyed. If there are people who are insulted daily, it is us; whether on *twitter*, *facebook*, newspapers or rallies. Any person who is aggrieved should take civil remedy instead of going for criminal.

Mr. Speaker, Sir, I want to ask the Chairperson to inform this House why CS for the Interior and National Coordination thought that it was not better to pursue a civil remedy if he was aggrieved instead of using criminal sanctions, particularly where the CS presides over a Ministry that is seen to be in charge of arresting. It would give the impression that there is also a possibility of misuse of office.

Sen. Mutula Kilonzo Jnr: Thank you, Mr. Speaker, Sir. The last time I defended a journalist who had been arrested was Bramwel Njururi. Criminal libel has been declared unconstitutional in this Republic. My concern – even when the Chair is asking the question – is the inviolability of this House. I thought that it would be much better if you as the leader of this institution would issue a direction because the CS only singled out two people he would not arrest; his boss and his deputy.

That means, Mr. Speaker, myself and everybody else here is under siege or threat of being arrested for making a statement. So, a lot of us are not afraid of being arrested, but it would be much better for this country to know that Parliament where we operate is not a place where the CS can wag a finger in protest and all of us fear that we will be arrested and taken to CID or people would be waiting for us outside the gate. While we wait for the statement from the Chairperson, it would be much better for you to do a “*Marende*” and give direction.

Sen. Hassan: Thank you, Mr. Speaker, Sir. In democracies worldwide, public officers are beyond defamation. In fact, the senior counsel will tell you that in emerging democracies, whenever a public officer is accused of any wrong, the onus immediately shifts on that public officer to discharge the pardoned officer innocent. As we evolve as a nation, it is important for us to know that once a public office or public institution is alleged to have done anything, there can be no action against the alleged because then the burden of responsibility immediately shifts to that person.

Mr. Speaker, Sir, I want to take a cue from Sen. Mutula Kilonzo jnr. In addition to what happened, I read in the media that these persons were arrested in the precincts of this Parliament. Sen. (Prof.) Lonyangapuo was served in Parliament. This is supposed to

be a place where democracy is at its highest prism. We want the assurance that this “dark age” is not returning in a manner so pervasive, reminiscent of the heroes that have passed, but we protect the honour of this House and sanction those who committed this arrest, including the Serjeant-at-Arms office which at liberty allows people to come and execute this type of arrests in this Senate.

Sen. (Dr.) Machage: Mr. Speaker, Sir, right from history and the biblical ages, that who God wants to destroy is first made mad, and that is common knowledge. Could this be the writing on the wall? What powers does the Cabinet Secretary (CS) have to order for an arrest? Could that be answered in the statement?

The Speaker (Hon. Ethuro): Hon. Senators, before I ask the Chairperson to respond, there were a number of points of order that were addressed to me, which must be disposed of. Sen. Murkomen raised the issue of the written statement and Sen. Keter raised the issue of 1.00 p.m. I want to agree with them. Members suggested that it was trivial. Sen. Keter, in particular, read from our Standing Orders that guide us, and that must be appreciated.

The request that the Senate Minority Leader made to me was to rise on a point of order so that he could ventilate. You can rise on a point of order at any time. That is what our Standing Orders require. To that extent, he was in order. However, I do not understand how he changed it into a statement to the Chairperson. That seems to be a good approach in the sense that the Committee should get into the bottom of this important issue.

Sen. Mutula Kilonzo Jnr. and Sen. Hassan said that only two people are excluded from arrests, but the rest of us, including the Speakers, could be arrested. I want to reconfirm that the Speaker does not act on his Motion. You need to canvass the matter with the Speaker and he will conduct the necessary investigations and give you a considered opinion.

(Sen. Wetangula consulted loudly)

The Speaker (Hon. Ethuro): Order, Sen. Wetangula! I am giving you a procedure which you are familiar with. For now, the decision that I made in the matter of Sen. (Prof.) Lonyangapuo has always been and will remain the case even as we speak today.

Yes, Chairperson.

Sen. Haji: Mr. Speaker, Sir, this is a very straightforward matter. In view of the fact that you have ruled that the Committee should undertake thorough investigations, I reserve my own views about it, until that time. I undertake to take up the matter with the Cabinet Secretary concerned and report in the next one week.

The Speaker (Hon. Ethuro): Hon. Senators, I direct that the Chairperson brings this matter to the House on Tuesday, next week. I heard him talk of bringing it in less than a week. Tuesday is the earliest day for next week.

Chairperson, you are so directed.

STATUS OF PREPAREDNESS OF IEBC
FOR THE NEXT GENERAL ELECTION

Sen. Obure: Mr. Speaker, Sir, on 26th May, 2015, I sought a statement from the Chairperson of the Committee on Legal Affairs and Human Rights. My request was in respect of four parts and I have not received an answer in respect of what I raised, which pertains to the Independent Electoral and Boundaries Commission (IEBC).

The Speaker (Hon. Ethuro): Order, Senator! We are not revisiting the statement; it is just a reminder.

Chairperson, Committee on Legal Affairs and Human Rights.

Sen. Sang: Mr. Speaker, Sir, I want apologise to the Senator. I have no information with regard to that statement.

It seems like my colleague, Sen. Mutula Kilonzo Jnr., has the statement.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, the IEBC responded by bringing answers to many questions by Senators and we requested them to separate them. If you allow us, by Tuesday, we will have the response specifically on the request by Sen. Obure.

On behalf of the Committee on Legal Affairs and Human Rights, we apologise to him for the delay.

The Speaker (Hon. Ethuro): Sen. Mutula Kilonzo Jnr., the apology does not have to come from you; your Chairperson has already done it. Your bit was just to tell us the complication.

That statement should be on the Order Paper on Tuesday, next week.

POINT OF ORDER

CONFIDENTIALITY OF INFORMATION GIVEN BY THE NATIONAL
GOVERNMENT TO PARLIAMENTARY COMMITTEES

Sen. Hassan: On a point of order, Mr. Speaker, Sir. I want to seek clarity from the Chair. The media was discussing about confidentiality of information. I want to know whether there is any communication from the national Government on the manner upon which information shall be shared to Committees of Parliament. I saw it in the national media on a certain evening that Cabinet Secretaries and all offices have been directed that Committees requisition for any information can only be presented to the Speaker of Senate. In my view, that is a departure from the Standing Orders and the practice of this Parliament.

I, therefore, seek that clarity; if there is direction to that effect and whether any circular has been issued to this House, in respect to that type of communication?

The Speaker (Hon. Ethuro): Sen. Hassan, I can dispose of that one. This country is a constitutional democracy. The Constitution of Kenya, 2010 has Article 125, where any House or a Committee of the House can compel any person to be a witness and produce documents. I would not imagine any Cabinet Secretary, even in his or her

wildest dreams, trying to overturn a constitutional provision. It will not work. Our Constitution still remains as you know it.

Hon. Senators, that is the end of statements. I have two Communications to make before we go to the next Order. The first one is to appreciate our visitors.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION OF THE WOMEN CAUCUS FROM THE PARLIAMENT OF ZIMBABWE

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

I request members of the delegation to stand when their names are called out, so that they may be acknowledged in our usual Senate tradition.

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

The delegation is accompanied by Ms. Farai Hondonga, the Secretary to the delegation.

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

I thank you.

(Applause)

Those Members who think that men are endangered must appreciate the wording "women caucus;" it is not "men caucus."

CONSIDERED RULING

PROCEDURE TO BE FOLLOWED IN THE DISPOSAL OF PRESIDENTIAL MEMORANDA

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

Before the reading of these Orders, the Senate Minority Leader, Sen. Moses Wetangula, rose on a Point of Order to seek the guidance of the Chair on the procedure to be followed in the disposal of the Presidential Memoranda. In the point of order, Sen. Wetangula made reference to Article 122(1) of the Constitution which provides that,

“Except as otherwise provided in this Constitution, any question proposed for decision in either House of Parliament shall be determined by a majority of the members in that House, present and voting.”

The Senate Minority Leader argued further that Article 122(1) was a general provision which in the usage and precedent of the Senate had not been applied as the Senate had set for itself a threshold such that for the Senate to proceed on a vote on any matter, the Senate required to have a minimum of 24 County Delegations present in the Senate.

The Senate Minority Leader stated that in light of this practice of the Senate, before the Senate proceeded to vote on the Presidential Memoranda, there would require to be at least 24 County Delegations present in the Senate. This, Sen. Wetangula said, ought to be distinguished from the rule requiring a quorum of 15 Members of the Senate as set out under Article 121 of the Constitution.

The Senate Minority Leader stated that in respect of a Presidential Memorandum, Article 115 set out the required thresholds. The Senator then stated that since a simple majority of county delegations was required to pass a Presidential Memorandum there would be required to be present in the Senate at least 24 County Delegations before the Speaker called for a vote on the Memorandum. He further stated that where the Senate sought to pass the Bill a second time without amendments or with amendments that did not fully accommodate the President’s reservations; the required threshold under Article 115(4) of the Constitution was 32 County Delegations. Sen. Wetangula, therefore, argued that pursuant to standing order 76(2), where the Senate did not have the minimum of twenty-four delegations present, the Senate could not, under any circumstances, proceed to vote. He concluded by seeking the directions of the Chair on the meaning and import of standing order 76(2) as read together with Articles 115(4) (b), 122(1) and 123(4)(a) and (c).

The Senate Majority Leader, Sen. (Prof.) Kithure Kindiki, took a different view on the matter. He stated that Article 121 of the Constitution was clear that the Senate could not transact any business unless 15 Senators were present in the Senate. He further stated that Article 121 did not envisage county delegations; it only required the presence of 15 Senators even if they were all from one county delegation.

The Senate Majority Leader, proceeded to argue that there was no connection between Article 121, on quorum in the Senate, and Article 123(4)(c) on the threshold required for voting in the Senate. He further argued that if the law makers had intended that the Senate could not proceed to a vote unless there were 24 County Delegations present in the Senate, nothing would have been easier than to expressly provide so in the law. He stated that though the Senate had previously applied the “24 Senators present” rule, this was “a gentleman’s agreement” which had been agreed on for the purpose of ensuring that a sponsor of a Motion affecting Counties did not lose the Motion when it was put to a vote only on account of lack of the required threshold of 24 County Delegations required to pass the Motion.

The Senate Majority Leader took the position that technically, there was no requirement for the presence of 24 County Delegations in the Senate before a vote could be taken on a Presidential Memorandum and that, therefore, a Presidential Memorandum

could be introduced at any time as long as there were 15 Senators present in the Senate as required under Article 121 of the Constitution. Further, that voting on a Memorandum could take place as long as 15 Senators were present.

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

Hon. Senators, you will recall that at the sitting of the Senate held on Wednesday, 1st October, 2015, I made a communication on the procedure for the disposal of a Presidential Memorandum focusing on the options available to the Senate under Article 115 of the Constitution. This matter was, therefore, put to rest. The matter now requiring my direction is the question of the number of Senators required to be present in the Senate before a vote can be taken on a Presidential Memorandum. The numbers of 15, 24 and 32 featured prominently in the contributions by Hon. Senators who spoke to this matter.

Hon. Senators, allow me to commence by stating that the Senate has, indeed, by practice, on a number of occasions deferred the taking of a vote until 24 County Delegations can be realized. This is because of the unique voting threshold of the Senate as set out under Article 123(4)(c) of the Constitution. Under that Article, a matter that is subjected to a vote in the Senate is carried only if it is supported by a majority of all the county delegations; which is 24 County Delegations. The practice that has developed of requiring 24 County Delegations to be present before a vote is taken has developed overtime so as to ensure that legislative business that would, otherwise, pass but for the presence of 24 County Delegations, is not, to the detriment of the Senate and the sponsor of the business, defeated only on account of the absence of the 24 County Delegations required to pass it.

Hon. Senators, it is important to observe that this practice is not anchored in the Constitution or the Standing Orders, but rather it has developed as a necessary practice and usage of the Senate, one that will most, probably, out-live the Senate of the Eleventh Parliament and become settled practice. However, this practice cannot be taken to have set aside the provisions of Article 121 of the Constitution which expressly sets the quorum required for the transaction of any business of the Senate at 15 Senators. This is to be distinguished from the number of Senators or county delegations required to pass various Bills and Motions. At that point, there must be a determination whether the Motion is a matter affecting counties for all the Bills require the same threshold.

Consequently, barring the existence of what the Senate Majority Leader referred to as a “*gentleman’s agreement*” to require the presence of 24 County Delegations before taking a vote, the law does not require the presence of 24 or for that matter 32 County Delegations before a vote is taken.

Article 121 of the Constitution requires the presence of fifteen Senators, irrespective of their county delegations to be present for the transaction of any business in the Senate, including the taking of a vote. Such a vote would only be postponed where Standing Order 54(3) is invoked. Provides that:-

“The Speaker may, on the request of a Senator, defer the putting of the question to the following day in which case the Speaker shall thereupon nominate a time at which the question shall be put.”

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

At that sitting, Senator Elachi, supported by the Majority side, argued that the Senate could not proceed to vote in the absence of a minimum of 24 county delegations. Senator Wetangula, with the support of many Senators from the Minority side, took the view that the quorum of the Senate is as stipulated in Article 121 of the Constitution; 15 Senators. Therefore, the Senate could proceed to take a vote so long as the quorum had been realized. It was the Senators’ position that the gentleman’s agreement in the form of the practice of requiring twenty-four county delegations to be present before a vote could be taken could not take the place of the Constitution and the law.

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

Hon. Senators, fortunately, the Office of the Speaker of the Senate, as the custodian and protector of the rules of this House, does not enjoy the luxury of altering its decision according to the dictates of different circumstances where the same set of facts obtains.

On that occasion, I ruled, as I do now, that the quorum of the Senate as set out in Article 121 is 15 Senators and that the Senate is, therefore, competent and able to proceed with its business so long as the minimum of 15 Senators are present in the Senate. It will be recalled that I stated that, “if we give another opportunity and do not get the numbers, then we will proceed, because we will have given sufficient notice”. As it turned out, on that occasion, the number of 24 county delegations was finally attained.

(Applause)

The upshot of this, Hon. Senators, is that it will not be necessary for the Senate to defer the consideration of the Presidential Memoranda on the two Bills until either 24 or thirty-two county delegations are present in the Senate. As long as the quorum of 15 Senators set under Article 121 of the Constitution is realized at the sitting at which the Memoranda are to be considered, there would be no bar to the consideration of the Presidential Memoranda, including the taking of a vote on the Memoranda.

Hon. Senators, this is as per the communication I made on 1st October, 2015. In considering the Motion on the Presidential Memoranda, I said the Senate may do one or two things; One, pursuant to Article 115(2) of the Constitution, amend the Bill in light of the President’s reservations or amend the Bill in a manner that fully accommodates the

President's reservations. This would require the vote of a majority of the delegations in the Senate, which is 24 delegations.

Two, pursuant to Article 115(4) of the Constitution, the Senate may pass the Bill a second time without or with amendment that do not fully accommodate the President's reservations. This would require a vote of two-thirds of the delegations in the Senate, which is 32 delegations.

It is, of course, the case that if when the vote on each of the Memoranda is taken, there are less than 24 county delegations present in the Senate, the Motion shall not have been passed, in terms of Article 115(2) of the Constitution, but neither shall the Motion have been lost, in terms of Article 115(4) of the Constitution. It needs to be noted, however, that even where the number of county delegations present in the Senate falls below the threshold of the 24 county delegations required to carry a matter in terms of Article 123(4)(c) of the Constitution, the taking of the vote avails the Senators present the opportunity to express and put on record their position one way or the other, on the Memoranda.

Hon. Senators, as I explained in my earlier Communication on this matter, Article 115 of the Constitution requires the Senate to pronounce itself on the President's reservations by either accepting or rejecting the reservations. There is no room for demeaning, of either an acceptance or a rejection. A specific and express resolution must be made by the Senate to either accept or reject the President's reservations. As I explained, this means that any other action that does not result in an outright acceptance or rejection of the President's reservations puts the Bill in a constitutional purgatory requiring some new action that will re-ignite and bring the legislative process to a close.

In this regard, the following may occur-

Firstly, since it is evident from the rendition of Article 115 of the Constitution that the legislative process on any Bill only comes to an end when there is agreement between the Legislature and the Executive, and having found none, this may provide the occasion for further consultations between the Legislature and the Executive on the President's reservations. Such consultations may result in a re-submission of the Motion, at an appropriate time, in accordance with the Standing Orders.

Secondly, it is also possible that the situation could mark the end of the life of the Bill as published. It could instead result in the introduction of a new Bill which could either exclude the contested provisions or include the provisions in a negotiated format.

The third possibility is that the failure to accept or reject the President's reservations may be an indicator that Parliament does not intend to enact new legislations on the matters covered in the Bill and that it would rather retain the existing legislative framework. The legislative process would, therefore, come to an end. This option must be read in light of the fact that the two Bills are Bills that are subject to the constitutional timelines stipulated in Article 261 of the Constitution as read together with the Fifth Schedule to the Constitution.

Hon. Senators, I now wish to direct as we go to the next order, that 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 Bills No.

38 of 2014) shall proceed to be disposed of in accordance with this guidance when the Order is called out.

I thank you.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I thank you for your ruling. I substantially identify myself with that ruling and I am bound by the entire ruling like all of us are. However, I hope in future - because jurisprudence is made continually- you will give us an opportunity to canvass one point. On the first point on how many Senators are required to transact business, you have come out clearly and you have been consistent with that. I thank you for that.

Notwithstanding the fact that both the Majority and the Minority side have had change of positions, I hope the Chair will appreciate that neither the Majority nor the Minority enjoy the impartiality and the clarity of mind that is associated with your Chair. We are guided by law, but there is a lot of tumult and uncertainty associated with pushing political agenda. I am saying this on behalf of the Majority side and also my brother the Senate Minority Leader who changed his position dramatically in this occasion.

Lastly, on the question of the passing of a Presidential Memoranda through acceptance, I go on record that I agree with the ruling and I have a different view. I hope, in future, the Chair will give us an opportunity to canvass that point so that you can improve on the jurisprudence.

The Senate Minority Leader (Sen. Wetangula): On a point of order. Thank you, Mr. Speaker, Sir, for that ruling that has some issues that I raised, succinctly clarified and others left hanging. One point that I raised, but the Chair has not touched it at all, and I am not contesting the ruling, is the question of proxy votes.

Mr. Speaker, Sir, each delegation is headed by an elected Senator. We have at times been a bit liberal, so to speak, in allowing Members of delegation to vote because they are in the House without asking whether they are designated and nominated to vote. For instance, on a matter as contentious as this - I am sorry the distinguished Senator colleague and sister from Kilifi County - the head of delegation is an elected Senator sitting on this side. It is unlikely that on a matter of this magnitude, he could designate her to cast his vote if he is not there when they are standing on opposite sides.

Consequently, my argument was and remains - I would have loved the Chair to give clarity to this - that every single vote is distinct from another. Where proxy votes are required, they must have up to date written, signed designations for Members of delegation to cast a vote on behalf of the head of delegation. Otherwise, when there are serious constitutional issues such as this, there is a possibility of delegated voting being convoluted if not abused. This is a point that your able Deputy Speaker has been consistently arguing on the Floor and in Committees.

In fact, when we were sitting in the 'garage' at the Kenyatta International Convention Centre (KICC), he constantly wanted every nominated proxy vote supporting the head of delegation to be current. That is the point I argued which, perhaps, the Chair may not have found necessary to address, but is important. It would have been good to address.

Mr. Speaker, Sir, secondly, on the issue of changing positions on the matter, that is academic, intellectual and only fools never change their minds on issues. The

distinguished colleague, the Senate Majority Leader, quickly jumped to the other side and I also did to this other side when the matter came up. We are quite comfortable with that. It depends on which client you are representing as you pursue an argument.

Sen. Murkomen: On a point of order, Mr. Speaker, Sir.

The Senate Minority Leader (Sen. Wetangula): I am on a point of order. You cannot interject with another point of order.

The Speaker (Hon. Ethuro): He is on a point of order, but I think your point of order is allowing other points of order.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, you are right in affirming the duty of the Chair to be consistent. I also encourage that when the Chair takes a position, and on hindsight realises that a better position is around the corner, I want you to visit the words of Lord Denning when he said that you may hold a good idea, but a better idea arrives and you are duty bound to change your position. The best idea arrives and you are more duty bound to change your position.

The Speaker (Hon. Ethuro): Can I dispose of those ones before I allow those other points of order with a lot of gusto?

Sen. Murkomen: On a point of order. Mr. Speaker, Sir. The Senate Minority Leader talked about a category of people who change their mind and those who do not. Is he insinuating that the Chair belongs to that other category because your position has been consistent?

(Laughter)

Sen. Elachi: Mr. Speaker, Sir, this is the fifth time the Senate Minority Leader has been complaining so much about the proxy vote. However, when I look at Article 98 of the Constitution, I cannot see the word 'proxy.' The Article 98 (1) 9(b) provides that:-

“Sixteen women members who shall be nominated by political parties according to their proportion of members of the Senate elected under clause (a) in accordance with Article 90”

In Article 123 (4) (b) that brings in the issue of delegation of voting it provides that:-

“The person who votes on behalf of a delegation shall determine whether or not to vote in support of, or against, the matter, after consulting the other members of the delegation.”

Mr. Speaker, Sir, this means that the drafters of the Constitution knew that there shall be Members nominated by parties to the Senate and shall consult with the leaders of their respective delegations. Is he in order to refer to us as “proxies”?

The Speaker (Hon. Ethuro): Sorry Senator, instead of?

Sen. Elachi: Mr. Speaker, Sir, instead of the delegations. Nominated Members are Members of delegations either of Nairobi or any other county. They are not proxy Members of a delegation. The issue is not the diction, but the word and the perception of the word.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, I stand on a point of order to seek a clarification from the Chair. First, would it be in order if I asked the Chair to

clarify whether or not the two Presidential Memoranda raise county issues or not? It is my impression from the content of the Memoranda that there are county matters.

Secondly, I was part of the Mediation Committee that dealt with the memorandum of the Public Audit Bill. One issue rose whether it is a Memorandum in law to Parliament or is the President writing a law for Parliament. This issue has been discussed far and wide, not only in the House, but outside as well. Therefore, unless and until that issue is laid to rest, I find it difficult to accept what is in the Order Paper as a Presidential Memorandum or the President writing law and usurping the role of Parliament.

The Speaker (Hon. Ethuro): Hon. Senators, first, I want to agree that I did not address the issue of proxy vote according to the Senate Minority Leader. I was dealing with more substantive constitutional issues. I must admit this is a matter I have agonised over time. I have given it my best shot. I want to thank the leadership for appreciating as much even if they have some disagreements here and there.

Both leaders of the House said that even the Speaker can change opinion. As the Senate Minority Leader talked about Lord Denning, I thought he would take the words of the late former Vice President Kijana Wamalwa. That is the one who was alive with us, especially at a time when there was a serious political question to be addressed. He said in Nanyuki that ‘a good idea must give way to a better idea’.

I want to invite the leadership that if you come up with a better idea, my good idea will give way. However, you must convince me that it is a better idea than my good idea. So, that should not be in contest. I appreciate the political positions you have. That is why you have the Chair. I qualify my statement that I remain consistent when the same set of facts obtain. It is not just being obstinate. It is after examination of the facts around a particular issue that you realize they are the same.

(Sen. Wetangula spoke off record)

I will not accord the Senate Minority Leader the opportunity to be a teacher to the Speaker. I will certify it to have an excellent command of the English language.

On the proxy vote matter, Sen. Elachi has contested. I believe that the Senate Minority Leader was not using it with a desire to impute improper motives. My understanding was just a plain reading of the English. The Constitution appreciates that the vote is sealed by the leader of the delegation. However, the leader of the delegation can delegate that vote to any other Member of his delegation. That is the way I understood the proxy bit.

However, Sen. Wetangula since you have been advising the Speaker, a reasonable advice from a fair lady can be taken into account. In my other profession called Economics, there is something called optimality. If you can improve your welfare on a particular section of a cap., without affecting others, the welfare of society has improved. So, if by not using that word, you make a segment of our society within the Senate happy and you are not disadvantaged, then the better for all us. That is something you should reconsider.

The procedure we have put in terms of voting, we have a whole file here. It is kept by the Clerk. Leaders of delegations have actually given a list even in terms of who signs first, just like when they are present, in the absence of one, if they are more than two, then it goes to the particular one present and in the absence of that one, another one. This was what we, as a House, agreed collectively and made a resolution in one of our retreats; that in order to expedite the way we act, we should proceed that way.

On the matter of the members of Kilifi delegation, I do not know the basis on which you think the two of them cannot agree. Even on weighty matters, they can agree.

(Laughter)

You raised the remote possibility of disagreement. For us, we will go by the list. If the leader of delegation feels at that particular moment that the one he has delegated may not represent the views of the leader of delegation, he has an option of writing that for certain purpose so and so will not vote on his behalf. That will also be taken into account. I have on record other leaders of delegation that have done the same. We always honour their instructions. The provision of the Constitution is clear. It is the leader of delegation to tell us whether it is him or someone else. So, we will be guided by that provision.

Sen. (Prof.) Anyang'-Nyong'o, yours is more of an argument which we can look for another opportunity because the Chair may not necessarily be supportive. However, that is not for now. Now we are just disposing of procedural issues and that should suffice for now.

Thank you.

Just hold. Order, Members! What is it, Senate Majority Leader?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I rise on Standing Order No.54(3) because of the Order which has just been read, listed as Order No.8 on the Order paper as well as Order No.9 on the two memoranda on the two Bills. My understanding is that there will be need for voting. Given what you have just ruled, we do not have the numbers to vote. I ask if the Chair can defer until we get that threshold. If we can exercise our gentleman's agreement that you have upheld, at this particular time for those two Orders, we would appreciate.

The Speaker (Hon. Ethuro): Order, Members! The Standing Orders allow for that. The gentleman's agreement was not outlawed. It is still operational for purposes of ensuring the passage of any issue that requires that particular threshold. We put the matter on hold, pending confirmation from the Senate Majority Leader. That should also be applicable to order Nos.10 and 11. We should, therefore, go to Order No.12.

COMMITTEE OF THE WHOLE

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

(Deferred)

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

(Deferred)

BILLS

Second Reading

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

(Deferred)

Second Reading

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

(Deferred)

COMMITTEE OF THE WHOLE

(Order for Committee Read)

[The Speaker (Hon. Ethuro) left the Chair]

IN THE COMMITTEE

[Temporary Chairperson (Sen. Ongoro) took the Chair]

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

The Senate Majority Leader (Sen. (Prof.) Kindiki): Madam Temporary Speaker, I rise under Standing Order No. 54(3) ---

The Temporary Chairperson (Sen. Ongoro): The Senate Majority Leader, please, come and consult us.

(Sen. (Prof.) Kindiki consulted with the Clerk-at-the-Table)

PROGRESS REPORTED

The Senate Majority Leader (Sen. (Prof.) Kindiki): Madam Temporary Chairperson, pursuant to Standing Order No.139, I beg to move that the Committee do report to the Senate its consideration of The Climate Change Bill (National Assembly Bill No.1 of 2014) and seek leave to sit again tomorrow.

The Temporary Chairperson (Sen. Ongoro): I will now put the question.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[The Temporary Speaker (Sen. Mositot) in the Chair]

REPORT

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

Sen. Ongoro: Mr. Temporary Speaker, Sir, I beg to report that the Committee of the Whole is considering The Climate Change Bill (National Assembly Bill No.1 of 2014) and seeks leave to sit again tomorrow.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the Committee on the said report.

I request Sen. (Prof.) Lonyangapuo to second.

Sen. (Prof.) Lonyangapuo seconded.

(Question proposed)

(Question put and agreed to)

Next Order!

COMMITTEE OF THE WHOLE

THE PUBLIC APPOINTMENTS (COUNTY ASSEMBLY APPROVAL) BILL (SENATE BILL NO. 20 OF 2014)

The Temporary Speaker (Sen. Mositot): Because of the same challenge that made us defer the previous Order, we will also defer Order No.13.

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(Deferred)

Sen. Karaba, are ready to move the amendments under the next Order?

Sen. Karaba: Yes, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Mositet): Okay.

Next Order!

COMMITTEE OF THE WHOLE

(Order for Committee read)

[The Temporary Speaker (Sen. Mositet) left the Chair]

IN THE COMMITTEE

[The Temporary Chairperson (Sen. Ongoro) took the Chair]

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

The Temporary Chairperson (Sen. Ongoro): Sen. Karaba, allow us a few minutes to put some things in order.

Sen. Karaba: Most obliged.

*(The Temporary Chairperson (Sen. Ongoro)
consulted with the Clerk-at-the-Table)*

The Temporary Chairperson (Sen. Ongoro): Hon. Senators, we are now in the Committee of the Whole to consider The County Early Childhood Education Bill (Senate Bill No.32 of 2014).

Clause 3

The Temporary Chairperson (Sen. Ongoro): There are no amendments on Clause 3.

(Question, that Clause 3 be part of the Bill proposed)

Clause 4

(Question, that Clause 4 be part of the Bill proposed)

Clause 5

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Sen. Karaba: Madam Temporary Chairperson, I beg to move:-

THAT Clause 5 of the Bill be amended in sub-clause (1), by inserting the words “in a public education centre” immediately after the words “childhood education.”

Madam Temporary Chairperson, the purpose of this amendment is to clarify that every child has the right to free and compulsory early childhood education in public education centres.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Ongoro): We will do a division at the end.

Clause 6

Sen. Karaba: Madam Temporary Chairperson, I beg to move:-

THAT, Clause 6 of the Bill be amended-

- (a) in paragraph (a) by inserting the words “in public education centres” immediately after the words “childhood education”;
- (b) by inserting the following new paragraph immediately after paragraph (a)-
 - (aa) establish such public education centres as may be necessary for the provision of free and compulsory early childhood education within the county;
- (c) by deleting paragraph (c);
- (d) in paragraph (d) by deleting the word “develop” appearing immediately before the words “in consultation with” and substituting thereof the word “implement”; and
- (e) by inserting the following new paragraph immediately after paragraph (k)-

(l) develop the best classroom model for early childhood education centres within the respective county in accordance with the specifications set out in the First Schedule.

Madam Temporary Chairperson, the purpose of this amendment is to ensure clarity in providing that county governments, in promoting the right to early childhood education, shall provide free and compulsory early childhood education in public education centres in the county. In this regard, they shall establish public education centres as may be necessary to realise the right to early childhood education.

This amendment further seeks to remove the aspect of training, registration, staffing and provision of early childhood education personnel from the ambit of county governments. This amendment further seeks to obligate each county government to develop the best classroom model.

(Question of the amendment proposed)

Clause 7

Sen. Karaba: Madam Temporary Chairperson, I beg to move:-

THAT Clause 7 of the Bill be amended-

- (a) in sub-clause (1) by deleting the words “a pre-primary education institution” appearing immediately after the words “may be, to” and substituting therefor the words “an education centre”; and
- (b) in sub-clause (2) by deleting the words “one hundred” appearing immediately after the words “not exceeding” and substituting therefor the word “ten”.

Madam Temporary Chairperson, this amendment seeks to clarify that the Bill deals with early childhood education centres and further to reduce the penalty imposed on a parent or guardian who fails to present their children for admission into a public early childhood education centre from Kshs100,000 to Kshs10,000.

(Question of the amendment proposed)

Clause 8

Sen. Karaba: Madam Temporary Chairperson, I beg to move:-

THAT Clause 8 of the Bill be amended-

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

Madam Temporary Chairperson, this amendment seeks to, first, incorporate village administrators into ensuring attendance of children in early childhood education centres, and secondly, to reduce the penalty proposed to be imposed on a parent who fails to show cause in the event of non-attendance of a child in an early childhood education centre, from a fine not exceeding Kshs500,000 to Kshs 10,000.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Ongoro): As proposed earlier, the division will be taken at the end.

(Question, that Clauses 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 be part of the Bill proposed)

Clause 20

Sen. Karaba: Madam Temporary Chairperson, I beg to move:-

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

Madam Temporary Chairperson, this amendment seeks to clarify that the requirements imposed by the Bill on the suitability of premises used for purposes of ECDE education shall apply to all education centres whether or not the proprietor owns or leases the premises.

(Question of the amendment proposed)

(Question, that Clauses 21, 22, 23, 24, 25 and 26 be part of the Bill proposed)

Clause 27

Sen. Karaba: Madam Temporary Chairperson, I beg to move:-

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

Madam Temporary Chairperson, this amendment seeks to remove sponsored public education centres from the categories of early childhood education centres.

(Question of the amendment proposed)

(Question, that Clause 28 be part of the Bill proposed)

Clause 29

Sen. Karaba: Madam Temporary Chairperson, I beg to move:-

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

(3) Where an education centre exists or is established in an existing institution of basic education, the management board of the education centre shall comprise of the principal of the early education centre in addition to the members set out under Section 56(1) of the Basic Education Act.

Madam Temporary Chairperson, this amendment seeks to provide continuity in the management of early childhood education centres that are in operation within institutions offering basic education. The amendment, therefore, provides that the management boards of these centres shall comprise of the principal of the centre in addition to the members of the management board of the basic education institution.

(Question of the amendment proposed)

(Question, that Clauses 30, 31, 32, 33 and 34

be part of the Bill proposed)

Clause 35

Sen. Karaba: Madam Temporary Chairperson, I beg to move:-

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

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

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

Madam Temporary Chairperson, this amendment seeks to expand the record keeping requirements imposed on an early childhood education centre by requiring the centre to keep a record of academic progress reports of the children enrolled in the centre and a record of immunization administered.

(Question of the amendment proposed)

Clause 36

Sen. Karaba: Madam Temporary Chairperson, I beg to move:-

THAT, Clause 36 of the Bill be amended-

(a) in sub clause (1) by-

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

(ii) deleting paragraph (e);

(b) in sub clause (2) by-

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

(ii) deleting paragraph (c);

(c) in sub clause (3) by deleting all the words appearing immediately after the words “within the county”;

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

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

(e) by deleting sub clause (5).

Madam Temporary Chairperson, the purpose of this amendment is to provide that the recruitment of early childhood education teachers shall be carried out by the Teachers Service Commission (TSC). The amendment also seeks to provide that county governments shall, in consultation with the Salaries and Remuneration Commission

(SRC), remunerate early childhood education teachers employed in a public early childhood education centre.

(Question of the amendment proposed)

Clause 37

Sen. (Prof.) Lesan: Madam Temporary Chairperson, I am a Member of the Committee on Education. On behalf of the Chairperson, I beg to move:-

THAT, the Bill be amended by deleting Clause 37.

Madam Temporary Chairperson, the amendment seeks to remove the aspect of recruitment committee from the ambit of the Bill. Recruitment of early childhood education teachers will be carried out by the TSC.

(Question of the amendment proposed)

(Question, that Clause 38 be part of the Bill proposed)

Clause 39

Sen. (Prof.) Lesan: Madam Temporary Chairperson, on behalf of the Chairperson, I beg to move:-

THAT, the Bill be amended by deleting Clause 39 and substituting therefor the following new clause-
Recruitment of early childhood teachers.

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

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

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

Madam Temporary Chairperson, this amendment provides that the TSC, in consultation with the Council of County Governors, shall be responsible for the training, recruitment and discipline of early childhood education teachers. This is in a bid to ensure that there are uniform standards of competence and professionalism in the persons employed in the early childhood education sector.

(Question of the amendment proposed)

Clause 40

Sen. (Prof.) Lesan: Madam Temporary Chairperson, on behalf of the Chairperson, I beg to move:-

THAT, Clause 40 of the Bill be amended in sub clause (2) by inserting the words “and the respective Parents Teachers Association”

immediately after the words “County Education Board” appearing in paragraph (b).

Madam Temporary Chairperson, the amendment seeks to incorporate Parents Teachers Association (PTAs) in the process of determining whether additional charges should be imposed in a public early childhood education centre.

(Question of the amendment proposed)

(Question, that Clause 41 be part of the Bill proposed)

Clause 42

Sen. (Prof.) Lesan: Madam Temporary Chairperson, on behalf of the Chairperson, I beg to move:-

THAT, Clause 42 of the Bill be amended-

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

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

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

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

Madam Temporary Chairperson, this amendment seeks to provide for the admission age of a child to an early childhood education centre shall be the ages of three to six. The amendment further seeks to give direction to the principal of an early childhood education centre to allow, in appropriate circumstances, the admission of a child who is more than six years of age.

(Question of the amendment proposed)

Clause 43

Sen. (Prof.) Lesan: Madam Temporary Chairperson, on behalf of the Chairperson, I beg to move:-

THAT, Clause 43 of the Bill be amended by deleting the words “A public” appearing immediately before the words “education centre” and substituting therefor the word “An”.

Madam Temporary Chairperson, this amendment seeks to proscribe the administering of admission examinations by all early childhood education centres.

(Question of the amendment proposed)

(Question, that Clause 44 be part of the Bill proposed)

Clause 45

Sen. (Prof.) Lesan: Madam Temporary Chairperson, on behalf of the Chairperson, I beg to move:-

THAT, Clause 45 of the Bill be amended-

- (a) in sub clause (2) by deleting the words “subject to subsection (3)” appearing immediately after the words “centre shall”; and
- (b) by deleting sub-clause (3).

Madam Temporary Chairperson, this amendment seeks to unconditionally prohibit the expulsion of a child from an early childhood education centre.

(Question of the amendment proposed)

(Question, that Clause 46 be part of the Bill proposed)

Clause 47

Sen. (Prof.) Lesan: Madam Temporary Chairperson, I beg to move:-

That Clause 47 of the Bill be amended-

- (a) by deleting sub-clause (2) and substituting therefor the following new sub-clauses-
 - (2) The Kenya Institute of Curriculum Development shall review the curriculum framework to be administered by all licensed education centres within the county in consultation with the county executive committee member-
 - (a) within a period of five years after the development of the curriculum under subsection (1); and
 - (b) subsequently, every five years after each review.
 - (2A) The Kenya Institute of Curriculum Development shall, in carrying out the review under subsection (2), take into account the specific or special needs of children within the respective county.
- (b) in sub-clause (3) by deleting paragraph (b); and
- (c) in sub-clause (4) by deleting the words “county executive committee member” appearing immediately after the words “unless the” and substituting therefor the words “Kenya Institute of Curriculum Development”.

Madam Temporary Chairperson, this amendment seeks to empower the Kenya Institute of Curriculum Development in consultation with the respective county executive committee members responsible for education to determine and regularly review the curriculum offered at an early childhood education center.

(Question for the amendment proposed)

(Question that Clause 48 be part of the Bill proposed)

Clause 49

Sen. (Prof.) Lesan: Madam Temporary Chairperson, I beg to move:-

THAT, Clause 49 of the Bill be amended in sub-clause (2) by inserting the words “and the respective Parent Teachers Association” immediately after the words “County Education Board” appearing in paragraph (b).

Madam Temporary Chairperson, the amendment seeks to incorporate the Parent Teachers Association in a consultative process through which charges in relation to tuition at Early Childhood centres may be imposed.

(Question of the amendment proposed)

(Question, that Clause 50 be part of the Bill proposed)

Clause 51

Sen. (Prof.) Lesan: Madam Temporary Chairperson, I beg to move:-

THAT, Clause 51 of the Bill be amended by inserting the words “on weekends” immediately after the words “school holidays”.

Madam Temporary Chairperson, this amendment seeks to prohibit Early Childhood Education centres from offering their services on weekends in addition to national days and school holidays.

(Question of the amendment proposed)

Clause 52

Sen. (Prof.) Lesan: Madam Temporary Chairperson, I beg to move:-

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

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

- (a) issue guidelines and facilitate the implementation of the feeding programmes; and
- (b) provide adequate nutritious foods taking into account the physiological and regional demands of children in the early childhood

centre within the respective county.

Madam Temporary Chairperson, this amendment seeks to obligate the county government to implement school feeding programmes in Early Childhood Education centres.

(Question of the amendment proposed)

(Question, that Clauses 53, 54 and 55 be part of the Bill proposed)

Clause 56

Sen. (Prof.) Lesan: Madam Temporary Chairperson, I beg to move:-

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

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

Madam Temporary Chairperson, this amendment seeks to provide that an application to offer foreign curriculum in an Early Childhood Education Centre should be accompanied by a certificate issued by the Kenya Institute of Curriculum Development indicating that the foreign curriculum adheres to the set curriculum.

(Question of the amendment proposed)

(Question, that Clauses 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, and 67 be part of the Bill proposed)

Clause 68

Sen. (Prof.) Lesan: Madam Temporary Chairperson, I beg to move:-

THAT, Clause 68 of the Bill be amended in sub-clause (1) by deleting the words “sub-section (1)” appearing immediately after the words “specified under” and substituting therefor the words “sub-section (2)”

Madam Temporary Chairperson, this amendment seeks to clarify on the correct sub-section referred to.

(Question of the amendment proposed)

Clause 69

Sen. (Prof.) Lesan: Madam Temporary Chairperson, I beg to move:-

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

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

Madam Temporary Chairperson, this amendment seeks to impose additional safety requirements on Early Childhood Education Centres by requiring the centres to build capacity for their staff to respond to emergencies.

(Question of the amendment proposed)

(Question, that Clause 70 be part of the Bill proposed)

Clause 71

Sen. (Prof.) Lesan: Madam Temporary Chairperson, I beg to move:-

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

Madam Temporary Chairperson, this amendment seeks to provide for a transition period of one year for all Early Childhood Education centres that will be in existence at the coming into effect of the law. The amendment proposes that such centres shall hold their licences for one year after which they will have to seek registration under the present proposed law.

(Question of the amendment proposed)

(Question, that Clause 72 be part of the Bill proposed)

Clause 73

Sen. (Prof.) Lesan: Madam Temporary Chairperson, I beg to move:-

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

Madam Temporary Chairperson, this amendment seeks to provide that the Cabinet Secretary responsible for education shall make regulations in consultation with the Council of Governors for carrying out the law in a better way.

(Question of the amendment proposed)

(Question, that Clauses 74 and 75 be part of the Bill, proposed)

First Schedule

Sen. (Prof.) Lesan: Madam Temporary Chairperson, I beg to move:-

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

This amendment seeks to provide one of the requirements of suitable premises; that a classroom in an Early Childhood Development Education (ECDE) centre shall not hold more than 40 children.

(Question of the amendment proposed)

Second Schedule

*(Question, that the Second Schedule
be part of the Bill proposed)*

Clause 2

Sen. (Prof. Lesan): Madam Temporary Chairperson, I beg to move:-

THAT, Clause 2 of the Bill be amended-

(a) in the definition of the term “early childhood education ”by inserting the words “pre-primary” immediately after the words “education means the”;

(b) by deleting the definition of the term early childhood education recruitment committee;

(c) by inserting the following new definitions immediately after the definition of the word “sponsor”-

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

“Teachers Service Commission” means the Teachers Service Commission established under Article 237(1) of the Constitution;

This amendment seeks to define certain terms as used in the Bill.

(Question of the amendment proposed)

Title and Clause 1

(Question, that Title and Clause 1 be part of the Bill proposed)

PROGRESS REPORTED

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

Sen. Karaba: Madam Temporary Chairperson, I beg to move that the Committee of the Whole do report progress on its consideration of The County Early Childhood Education Bill (Senate Bill No. 32 of 2014) and seek leave to sit again tomorrow.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[The Temporary Speaker (Sen. Mositot) in the Chair]

REPORT

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

Sen. Ongoro: Mr. Temporary Speaker, Sir, I beg to report that the Committee of the Whole has considered The County Early Childhood Education Bill (Senate Bill No. 32 of 2014) and seeks leave to sit again tomorrow.

Sen. Karaba: Madam Temporary Speaker, I beg to move that the Senate do agree with the Committee in the said report.

Sen. (Prof.) Lesan seconded.

(Question proposed)

(Question put and agreed to)

BILLS

Second Readings

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

The Temporary Speaker (Sen. Mositot): This Bill is deferred.

(Bill deferred)

Second Reading

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

The Temporary Speaker (Sen. Mositot): This Bill is also deferred.

(Bill deferred)

MOTION

REPORT OF THE IPU EXPERT MISSION TO KENYA ON
THE FRAMEWORK TO IMPLEMENT THE CONSTITUTIONAL
PROVISION OF THE TWO-THIRDS GENDER RULE

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

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

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

NOW 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. Ongoro: Mr. Temporary Speaker, Sir, the Motion that I was supposed to move is very emotive. The Motion touches on a very important issue concerning the two-thirds gender rule that has been debated in this country for some time. I beg that you allow me to move it tomorrow when we have a full House because I want all the Senators to have the benefit of listening to what we have as women and we are putting on the table as a proposal.

The Temporary Speaker (Sen. Mositet): I order that the Motion be put in tomorrow's Order Paper as requested by the sponsor.

(Motion deferred)

ADJOURNMENT

The Temporary Speaker (Sen. Mositet): Order, Members! It is now time to interrupt the business of the House. The House stands adjourned until tomorrow, Thursday, 12th November 2015 at 2.30 p.m.

The Senate rose at 5.30 p.m.