



REPUBLIC OF KENYA
THIRTEENTH PARLIAMENT – (FIRST SESSION)
THE SENATE
VOTES AND PROCEEDINGS
WEDNESDAY, NOVEMBER 23, 2022 AT 2.30 P.M.

1. The Senate assembled at thirty Minutes past Two O'clock.
2. The proceedings were opened with Prayer said by the Speaker.

3. **QUORUM IN THE HOUSE**

The Speaker, having counted the Honourable Senators present at the commencement of the Sitting and confirming that there was no Quorum, caused the Bell to be rung for five minutes pursuant to Standing Order 40;

And there being a Quorum after expiry of five minutes;

The Speaker invited the Clerk to call the Orders of the day.

4. **COMMUNICATIONS FROM THE CHAIR**

The Speaker issued the following communications from the Chair -

i.) **On visiting delegation from the Nairobi City County Assembly;**

“Honourable Senators,

I would like to acknowledge, in the Speakers Gallery, the presence of Mr. Vincent Kipyator, Principal Security Officer from the Nairobi City County Assembly, who is at the Senate for an attachment programme.

You may stand to be acknowledged in the Senate tradition.

Honourable Senators, on behalf of the Senate and on my own behalf, I welcome you to the Senate and wish you well for the remainder of the visit.

I thank you.”

ii.) **On visiting teachers and students from New Riverstar Secondary School, Embakasi Constituency, Nairobi City County**

“Honorable Senators,

In the public gallery, we have forty (40) students, accompanied by four (4) teachers from New Riverstar Secondary School in Embakasi Constituency, Nairobi City County. They are in the Senate on an education tour.

Honorable Senators,

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them and, on behalf of the Senate and on my own behalf, wish them a fruitful visit.

I thank you.”

5. **MESSAGE FROM THE NYANDARUA COUNTY ASSEMBLY ON THE CONSTRUCTION OF IHITHE – ABERDARE FOREST – KAHURUKO – NDUNYU NJERU ROAD ON CONSULTATION WITH THE NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY (NEMA), THE KENYA NATIONAL HIGHWAYS AUTHORITY (KENHA), THE KENYA FOREST SERVICE (KFS) AND THE KENYA WILDLIFE SERVICE (KWS)**

The Speaker conveyed the following Message from the Nyandarua County Assembly -

“Honourable Senators,

I wish to report to the Senate that, pursuant to Standing Order 48 (3) & (4), I have received a Message from the Speaker of the Nyandarua County Assembly regarding a resolution by the County Assembly to petition the Senate to consult with, and initiate approval of, the National Environmental Management Authority (NEMA), the Kenya National Highways Authority (KenHA), the Kenya Forest Service (KFS) and the Kenya Wildlife Service (KWS) on the Ithite-Aberdare Forest-Kahuruko-Ndunyu Njeru Road construction and tarmacking project.

The Message was received in the Senate by way of a letter communicating a resolution passed by the County Assembly on 2nd November, 2022 as follows-

“THAT, Aware that Paragraph 5 of Part II to the Fourth Schedule to the Constitution of Kenya assigns the County Governments functions and powers pertaining to County transport, including County roads, county planning and development, storm water management and development/regulation of markets;

Further aware that Paragraph 8 of Part I to the Fourth Schedule to the Constitution of Kenya 2010 provides that the National Government has a duty to construct and maintain national trunk roads and standardize construction and maintenance of roads by Counties with the overall aim of providing an efficient road network in Kenya aimed at improving the lives of the citizens and improve service delivery;

Noting that the Kenya National Highways Authority (KeNHA) is a State Corporation established under the Kenya Roads Act, 2007 does on behalf of the National Government deal with management; development; rehabilitation and maintenance of National Trunk Roads comprising Classes S, A, and B roads;

Further Noting that KeNHA is the custodian of the national road network, plays a critical role in providing quality national road network for sustainable social and economic development and has a responsibility to manage and leverage our resources in a way that promotes a healthy and sustainable environment;

Appreciating that the proposed Ihithe-Aberdare Forest-Kahuruko-Ndunyu Njeru Road which was to traverse 25 kilometres of Aberdare National Park and Forest with the alternative being Nyahururu-Nyeri Road which is approximately 180kilometres, was aimed at reducing travel time and potentially lower cost of farm produce, and improve tourism in the region amongst the Counties of Nyandarua, Nyeri, Nakuru and Murang'a, among others;

Concerned that the cancellation of the tender of this road has dampened the hopes of traders in Kiambu, Murang'a and Nyeri counties who were eyeing to establish links with farmers in Nyandarua while noting that for many years, Nyandarua County has been known as Kenya's food basket;

Further Concerned that due to poor infrastructure, farmers cannot adequately take their products to better markets leading to perpetuated suffering of the residents of these counties;

Recognising that the reason given for the cancellation of the tender on the construction of the road is that it will interfere with the Aberdare Forest eco-system, is not good enough since human beings have always interacted with wildlife and forestry with the following being some of the projects cutting through forests and national reserves-

- a. Thika- Flyover (Magumu) Road*
- b. Naivasha-Njabini-Gatura Road (under construction)*
- c. Nairobi - Mombasa Road (Cutting through Tsavo National Park)*

Now therefore, this House does resolve to petition the Senate to: -

1. *Consult with National Environmental Management Authority, Kenya National Highways Authority, Kenya Forest Service and the Kenya Wildlife Service with an aim of considering the retendering and construction of the tarmacking of Ithite-Aberdare Forest-Kahuruko-Ndunyu Njeru Road and initiate approvals from Kenya Forest Service, National Environmental Management Authority and Kenya Wildlife Service for the benefit of the people of the region;*
2. *Request the Governor, H.E. Dr. Moses Kiarie Badilisha to establish a committee represented by the Nyandarua leadership to spearhead multilateral negotiation amongst Nyeri County Government, The National Treasury and the Ministry of Transport and Energy, Kenya Forest Service, Kenya Wildlife Service, National Environmental Management Authority and Kenya National Highways Authority.”*

Honourable Senators,

I direct, pursuant to Standing Order 48(7)(c), that the matter be considered jointly by the Standing Committee on Roads, Transportation and Housing and the Standing Committee on Land, Environment and Natural Resources.

I thank you.”

6. **PAPERS**

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

- i.) Report of the Auditor General on the Citizens Accountability Audit on Public Participation in the County Budget Making Process for Financial Year 2021/2022.
- ii.) Report of the East African Legislative Assembly, Committee on Accounts on the Audited East African Community (EAC) financial statements for the financial year ended 30th June, 2020.
- iii.) Report of the East African Legislative Assembly, Committee on Legal, Rules and Privileges on the Assessment of the Status of Ratifications and Implementation of EAC Protocols and EAC Laws by the Partner States.
- iv.) Report of the East African Legislative Assembly, Committee on General Purpose of the Oversight Activity to assess the progress made by the Inter-University Council of East Africa in the Harmonization of Education Systems in EAC.
- v.) Report of the East African Legislative Assembly, Committee on Regional Affairs and Conflict Resolutions on Assessing the measures instituted by the Partner States for the Safety and Security of Movement of People and Goods on Lake Victoria and Lake Tanganyika.

- vi.) The East African Community Supplementary Appropriation (No.3) Bill, 2022.
- vii.) The East African Community Surveillance, Compliance and Enforcement Commission Bill, 2022.
- viii.) Resolution of the East African Legislative Assembly to support the ongoing East African Crude Oil Pipeline Project (EACOP).

(The Senate Minority Whip)

7. COMMUNICATION FROM THE CHAIR ON REPORT OF THE AUDITOR GENERAL ON THE SPECIAL AUDIT ON THE PUBLIC PARTICIPATION IN THE COUNTY BUDGET MAKING PROCESS FOR THE FINANCIAL YEAR 2021/2022.

The Speaker conveyed the following Communication from the Chair –

“Honourable Senators,

As you have observed, the Senate Majority Leader has laid on the Table of the Senate the report of the Auditor General on the Citizens Accountability Audit on Public Participation in the County Budget Making Process for Financial Year 2021/2022.

Article 201 (a) of the Constitution requires openness, accountability and public participation in financial management. Article 196 (1) (b) requires a county assembly to facilitate public participation and involvement in the legislative and other business of the county assembly and its committees. Further, Section 125 (2) of the Public Finance Management Act, 2012 requires the County Executive Committee Member for Finance in each county to ensure citizens’ participation in the planning and budgeting processes.

Citizen’s Accountability Audit is a proactive approach in auditing where citizens play a key role in public resources management. Citizen’s participation in Kenya’s governance process is integral in all public decision making processes.

Citizen’s participation in the budget process is anchored in Article 1 of the Constitution which vests all sovereign power to the people of Kenya and to be exercised only in accordance with the constitution. Such power may be exercised either directly or indirectly through their democratically elected representatives. Citizen’s Accountability Audit on the county budget making process assessed the level of compliance with relevant legal requirements and determined the effectiveness of public participation in promoting good governance.

It is against this backdrop that the Office of the Auditor General undertook a Citizen’s Accountability Audit on public participation on county budget making process across 18 counties namely - Nairobi City, Kiambu, Kisii, Homabay, Kisumu, Kakamega, Narok, Bungoma, Elgeyo Marakwet, Turkana, Isiolo, Meru,

Kirinyaga, Nakuru, Garissa, Kilifi, Mombasa and Makueni and has submitted a report to the Senate highlighting experiences from the county governments and making recommendations on the same.

Honourable Senators,

In my considered opinion, this report is not an ordinary report on financial statements and operations of county governments, and in this respect, I therefore refer the Report to the Standing Committee on Finance and Budget, working together with the Standing Committee on Justice, Legal Affairs and Human Rights, to scrutinize its contents and make observations and recommendations thereon by way of a report submitted to the Senate for consideration and adoption.

The Committees are required to identify gaps in the public participation processes highlighted by the Auditor General and to come up with legislative interventions that will standardize procedures across the 47 county governments.

Appreciating that the budget cycle for the next financial year is already ongoing, I urge the Standing Committees to expeditiously consider the Report and to submit their recommendations within the next 60 days, for consideration by the Senate.

I thank you.”

8. **STATEMENTS PURSUANT TO STANDING ORDER 53 (1)**

- i.) The Senator for Meru County (Sen. Kathuri Murungi, MP) sought a statement from the Standing Committee on Labour and Social Welfare regarding the establishment and management of sports training academies in the counties.
- ii.) Nominated Senator (Sen. Crystal Asige, MP) sought a statement from the Standing Committee on Health concerning the Ministry of Health Strategic Plan 2018 – 2023, specifically to persons with disabilities.
- iii.) The Senator for Kakamega County (Sen. (Dr.) Boni Khalwale, MP) sought a statement from the Standing Committee on Health regarding the status of construction of health facilities in informal settlements in Nairobi City County.
- iv.) The Senator for Kakamega County (Sen. (Dr.) Boni Khalwale, MP) sought a statement from the Standing Committee on Roads, Transportation and Housing regarding the status of operation of the Green Park Terminus and the upgrade project of Uhuru and Central Parks in Nairobi City County.

- v.) The Senator for Kakamega County (Sen. (Dr.) Boni Khalwale, MP) sought a statement from the Standing Committee on Finance and Budget regarding the status of pending bills by the Nairobi Metropolitan Services.
- vi.) The Senator for Nandi County (Sen. Samson Cherarkey, MP) sought a statement from the Standing Committee on Agriculture, Livestock and Fisheries concerning the planned importation of maize by the Ministry of Agriculture, Livestock, Fisheries and Cooperatives.

9. **MOTION - STATE OF FOOD SECURITY IN KENYA**

Order read;

Motion made and Question proposed;

THAT, AWARE THAT Article 43 of the Constitution of Kenya, 2010, stipulates the rights of every person to be free from hunger, to have adequate food of acceptable quality, and to clean and safe water in adequate quantities;

FURTHER AWARE THAT there is a prevailing food shortage in Kenya which is as a result of among other factors, lack of and inadequate rainfall over the last two years, the consistent decline in the number of farmers and lands committed to farming, and the Russia-Ukraine war that has led to an increased cost of fertilizer and fuel products which are critical farm inputs, subjecting 4.1 million Kenyans in the Arid and Semi-Arid Lands (ASALs) to an acute food insecure situation and about 942,500 children under five years and 134,270 pregnant and lactating mothers to acute malnutrition according to the Kenya Food Security Steering Group (KFSSG) report;

NOTING THAT about 1.5 million deaths of livestock have so far been reported in the Arid and Semi-Arid Lands (ASALs) and that the situation is expected to be dire in light of expert projections that we may miss the normal cycle of rain expected in October, November, and December, 2022 and that this could be the worst drought we have experienced in 40 years;

CONCERNED THAT the country is recording incidences of conflict between crop farmers and pastoralists over the scarce resource of water and pasture which results in the destruction of crops and deaths of livestock further exacerbating the food crisis and that the challenge of food shortage is now spreading to areas previously presumed to be rain-rich such as Mt. Kenya whose residents are now relying on government emergency food supplies;

NOW THEREFORE the Senate urges the Ministry of Agriculture and Livestock Development to develop targeted policy programs aimed at addressing the food insecurity in the country including the following: -

1. Coordinate with county governments to establish strategic grain reserves across the country, with drought-stricken areas receiving priority;

2. Develop livestock feeding programs in ASAL regions, providing water and feeds to the livestock farmers;
3. Coordinate with the National Drought Management Authority to do quarterly reports to the Senate on the drought situation in the country;
4. Subsidize agricultural production;
5. Establish abattoirs in ASAL Counties; and further recommends that the National Treasury and Economic Planning increases funding to the National drought disaster fund.

(Sen. Mwenda Gataya Mo Fire, MP – 22/11/2022)

Debate interrupted on Tuesday, 22nd November, 2022 resumed;

And there being no other Senator wishing to contribute;

Mover replied;

Before the Question was put and pursuant to Standing Order 84 (1), the Temporary Speaker (Sen. Hillary Sigei, MP) ruled that the Motion does not affect counties.

Question put and agreed to.

RESOLVED ACCORDINGLY

THAT, AWARE THAT Article 43 of the Constitution of Kenya, 2010, stipulates the rights of every person to be free from hunger, to have adequate food of acceptable quality, and to clean and safe water in adequate quantities;

FURTHER AWARE THAT there is a prevailing food shortage in Kenya which is as a result of among other factors, lack of and inadequate rainfall over the last two years, the consistent decline in the number of farmers and lands committed to farming, and the Russia-Ukraine war that has led to an increased cost of fertilizer and fuel products which are critical farm inputs, subjecting 4.1 million Kenyans in the Arid and Semi-Arid Lands (ASALs) to an acute food insecure situation and about 942,500 children under five years and 134,270 pregnant and lactating mothers to acute malnutrition according to the Kenya Food Security Steering Group (KFSSG) report;

NOTING THAT about 1.5 million deaths of livestock have so far been reported in the Arid and Semi-Arid Lands (ASALs) and that the situation is expected to be dire in light of expert projections that we may miss the normal cycle of rain expected in October, November, and December, 2022 and that this could be the worst drought we have experienced in 40 years;

CONCERNED THAT the country is recording incidences of conflict between crop farmers and pastoralists over the scarce resource of water and pasture which results in the destruction of crops and deaths of livestock further exacerbating the food crisis and that the challenge of food shortage is now spreading to areas previously presumed to be rain-rich such as Mt. Kenya whose residents are now relying on government emergency food supplies; NOW THEREFORE the Senate urges the Ministry of Agriculture and Livestock Development to develop targeted policy programs aimed at addressing the food insecurity in the country including the following: -

1. Coordinate with county governments to establish strategic grain reserves across the country, with drought-stricken areas receiving priority;
2. Develop livestock feeding programs in ASAL regions, providing water and feeds to the livestock farmers;
3. Coordinate with the National Drought Management Authority to do quarterly reports to the Senate on the drought situation in the country;
4. Subsidize agricultural production;
5. Establish abattoirs in ASAL Counties; and further recommends that the National Treasury and Economic Planning increases funding to the National drought disaster fund.

10. **MOTION - INTEGRATING CLIMATE EDUCATION INTO NATIONAL EDUCATION CURRICULUM**

(Sen. Moses Kajwang', MP)

AWARE THAT climate change is a complex social and scientific issue which is characterized by uncertain and context specific knowledge, demanding that educators engage in inquiry and co-learning with students, while noting the lack of time and curriculum opportunities to address climate change in the classroom;

COGNIZANT OF THE FACT that the Constitution of Kenya in Article 42 provides for the right to a clean and healthy environment for every Kenyan, which includes the right to have the environment protected for the benefit of the present and future generations;

NOTING THAT Climate change is a global nightmare with consequences that are already quite visible and should be a priority for the national education curriculum, in accordance to Article 12 of the Paris Agreement which espouses the enhancement of climate change education, training, public awareness, public participation and public access to information;

FURTHER NOTING THAT climate change education explores mitigation and adaptation at both local and global level, critical and creative thinking and capacity building that will enable youth to engage with the information, inquire,

understand, ask critical questions and take what they determine are appropriate actions to respond to climate change;

ACKNOWLEDGING THAT the Climate Change Act 2016 addresses the integration of climate change into various disciplines and subjects of the national education curriculum at all levels, as well as requiring that the National Climate Council advises public agencies responsible for regulating universities and tertiary institutions curricula on integration of climate change into their curricula;

NOW THEREFORE the Senate calls upon the Ministry of Education in liaison with the Kenya Institute for Curriculum Development to:

1. Mainstream climate change education throughout formal education systems through integrating climate education in the school curriculum to creatively prepare children and young people for a rapidly changing, uncertain, risky and possibly dangerous future; and
2. Train and equip teachers and school administrators with the necessary information and skills to teach climate education and explore new approaches to learning that can contribute to the transformation of unsustainable climate systems, values and routines.

Order deferred.

11. **MOTION - PLIGHT OF KENYAN DOMESTIC WORKERS IN THE MIDDLE EAST**

Order read;

Motion made and Question proposed;

THAT, AWARE THAT foreign workers from developing countries make up a large majority of the Gulf's labour, a trend driven in Kenya by the high rate of youth unemployment which stands at 34.21%, forcing young Kenyans to continue to go beyond our borders in pursuit of lucrative employment opportunities;

FURTHER AWARE THAT the *Kafala* or sponsorship system found in the Gulf Cooperation Council (GCC) countries such as, Kuwait, Oman, Qatar, Saudi Arabia, the United Arab Emirates, Jordan and Lebanon, defines the relationship between foreign workers and their local sponsor, under which the state gives local individuals or companies, sponsorship permits to employ foreign labourers, and covers travel expenses and provides housing, in the case of domestic workers in the sponsor's home;

APPRECIATING THAT the Kenyan recruitment process of domestic workers for Saudi Arabia involves a number of stakeholders including the Saudi employers,

the Saudi Arabia Employment Agencies, Ministry of Labour (Labour Department), National Employment Authority (NEA), National Industrial Training Authority (NITA), prospective domestic workers, Kenya Private Employment Agencies (KPEA), Saudi Arabian Embassy and the immigration Department;

NOTING THAT numerous Kenyan migrant domestic workers in Saudi Arabia have documented various forms of abuses including passport confiscation, physical abuse, sexual abuse, sleep deprivation, food deprivation, labour exploitation, imprisonment prior to deportation, religious intolerance and psychological abuse leading to some of these workers losing their lives;

COGNIZANT THAT Articles 10, 11, & 14 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families adopted on 18 December, 1990 espouses that no migrant worker shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, shall be held in slavery or servitude, or be subjected to arbitrary or unlawful interference with his or her privacy, family, correspondence or other communications, or to unlawful attacks on his or her honour and reputation, and the right to the protection of the law against such interference or attacks;

FURTHER APPRECIATING THAT staffing shortages and inadequate funding faced by the labour attaches in Saudi Arabia hinder the effective supervision of migrant workers in distress, lack of safe houses, lack of a comprehensive mechanism to handle labour disputes, and a lack of a legal framework defining the roles of migrant workers in order to adhere to the terms of their contracts, are some of the challenges that need to be overcome;

CONCERNED THAT under the Bilateral Labour Agreement (BLA) between the Government of Kenya (Gok) and the Government of the Kingdom of Saudi Arabia (KSA) on the recruitment of domestic workers that was developed and adopted in January 2016, Kenya was obligated to provide qualified and medically fit workers needed by Saudi Arabia according to the job specifications, and in turn Saudi Arabia was obligated to ensure that the welfare and rights of employers and domestic workers employed in the Kingdom are promoted and protected in accordance with the applicable rules and regulations which has not been the case, including the enforcement of rest hours and the identity and work permits remaining in the possession of the migrant worker;

NOW THEREFORE, the Senate resolves that the Ministries of Interior and National Administration, Labor and Social Protection, Foreign Affairs & Diaspora Affairs, Immigration Department, the National Employment the Kenya Private Employment Agencies (KPEA) cease all travel by Kenyan migrant workers to the Gulf states with immediate effect until: -

1. the Ministry of Labour and Social Protection amends the national labour migration regulatory framework policy to address labour exportation management;

2. the Ministry of Labour and Social Protection, and the Ministry of Foreign Affairs & Diaspora Affairs adopt/ratify the multilateral declarations relating to the protection of workers such as the International Labour Organisation (ILO) Domestic Workers Convention, 2011 (No. 189) and the Private Employment Agencies Convention, 1997 (No. 181);
3. the establishment of functional overseas labour offices for the administration and enforcement of the Ministry of Labour and Social Protection policies for migrant workers;
4. a review of the Bilateral Agreement between the Government of Kenya, and the Kingdom of Saudi Arabia by the Ministry of Foreign Affairs & Diaspora Affairs to adequately address identified gaps and emerging issues;
5. there are established safe houses to serve as central huts of welfare and assistance to migrant workers and temporary shelters for overseas Kenyans in distress; and,
6. any Kenyan in distress, and in particular, Hellen Kemunto, is rescued and brought back to Kenya from Riyadh, Saudi Arabia.

(Sen. Veronica Nduati, MP)

Debate arising;

And the time being thirty minutes past Six O'clock, the Temporary Speaker (Sen. Hillary Sigei, MP) adjourned the Senate without Question put, pursuant to the Standing Orders.

12. **SENATE ROSE** – at thirty minutes past six O'clock.

MEMORANDUM

*The Speaker will take the Chair on
Thursday, November 24, 2022 at 2.30 p.m.*

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