



REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT – (FIRST SESSION)

THE SENATE

VOTES AND PROCEEDINGS

THURSDAY, DECEMBER 1, 2022 AT 2.30 PM

1. The Senate assembled at thirty Minutes past Two O'clock.
2. The proceedings were opened with Prayer said by the Deputy Speaker.
3. **QUORUM IN THE HOUSE**

The Deputy Speaker, having counted the Senators present at the commencement of the Sitting and confirmed that there was no Quorum, directed that the Bell be rung for ten minutes, pursuant to Standing Order 40;

And there being a Quorum after the expiry of ten minutes;

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

4. **COMMUNICATION FROM THE CHAIR - VISITING DELEGATION FROM BARINGO COUNTY ASSEMBLY**

The Deputy Speaker conveyed the following communication from the Chair:-

“Honourable Senators,

I would like to acknowledge the presence, in the Speaker’s Gallery this afternoon, a visiting delegation from the County Assembly of Baringo. The delegation consists of the Leadership of the County Assembly who are undertaking a capacity building programme organized by the Centre for Parliamentary Studies, and Training (CPST).

Honourable Senators,

I request each Member of the delegation to stand when called out so that they may be acknowledged as per the Senate tradition.

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|----|----------------------|---|--------------------------|
| 1. | Hon. Vincent Kemboi | - | Speaker |
| 2. | Hon. Kipruto Kimosop | - | Deputy Speaker |
| 3. | Hon. Lawi Tallam | - | Leader of Majority Party |

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|-----|----------------------|---|---|
| 4. | Hon. Daniel Tuwit | - | Leader of Minority Party |
| 5. | Hon. Josphat Lokorio | - | Deputy Majority Leader |
| 6. | Hon. Paul Lolgiso | - | Deputy Minority Leader |
| 7. | Hon. Ernest Kibet | - | Majority Whip |
| 8. | Hon. Purity Tallam | - | Deputy Majority Whip |
| 9. | Hon. Maria Losile | - | Minority Whip |
| 10. | Hon. Solomon Makal | - | Deputy Minority Whip |
| 11. | Ms. Winnie Chemase | - | Clerk |
| 12. | Mr. Henry Tekeiwa | - | Assistant Director, Research
and Development |
| 13. | Ms. Hilda Kiprono | - | Administrative Secretary |
| 14. | Mr. Willy Koech | - | Serjeant – at - arms |

On behalf of the Senate, and on my own behalf, I welcome the delegation and wish them well for the remainder of the visit.

I thank you.”

5. **PAPERS LAID**

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

- i.) The Statutory Instruments (Exemption from Expiry) Regulations, Legal Notice No. 217 of 2022.
- ii.) Report of the Auditor General for County Governments (County Executives) Volume I for financial year 2019/2020.
- iii.) Report of the Auditor General for County Governments (County Executives) Volume I for financial year 2020/2021.
- iv.) Report of the Auditor General for County Governments (County Assemblies) Volume II for financial year 2019/2020.
- v.) Report of the Auditor General for County Governments (County Assemblies) Volume II for financial year 2020/2021.

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

- vi.) The Parliamentary Service Commission (PSC) Annual Report for financial year 2020/2021.

(Sen. Lelegwe Ltumbesi on behalf of the Vice- Chairperson, Parliamentary Service Commission)

6. **NOTICE OF MOTION – ESTABLISHMENT OF A PARLIAMENTARY JOINT AD-HOC COMMITTEE ON A LEGISLATIVE PROPOSAL TO AMEND THE CONSTITUTION TO ENTRENCH CERTAIN SPECIALISED FUNDS**

(The Senate Majority Whip on behalf of the Senate Majority Leader)

THAT, ACKNOWLEDGING the resolution of the National Assembly on the Establishment of an Ad-Hoc Committee on a Legislative Proposal to amend

the Constitution to entrench certain specialised funds transmitted as a Message seeking concurrence of the Senate;

RECOGNIZING the need for a bicameral approach on the proposal prior to publication of the relevant Bill;

ACKNOWLEDGING THAT the subject matter of the Legislative Proposal is premised on the mandate of Parliament under Article 256 of the Constitution, on amendment of the Constitution by parliamentary initiative;

NOW THEREFORE the Senate resolves: -

1. to establish *a Joint Parliamentary Ad Hoc Committee on a Proposal to amend the Constitution to entrench certain specialized funds*, comprising eleven (11) Members from each of the Houses of Parliament to –
 - a) facilitate collation of views from Senators during debate, and inviting Senators with similar or related proposals to make submissions before the Committee;
 - b) invite, engage with and consider submissions from stakeholders and relevant constitutional and statutory bodies with a law reform mandate, including the Attorney General; and the commissions and independent offices established under Chapter Fifteen of the Constitution;
 - c) in consultation with the Sponsors, attempt to develop and recommend a harmonized version of the proposal arising from the submissions received; and
 - d) report to the Houses of Parliament within ninety (90) days to enable the Speakers to make a decision and give direction on whether or not the Legislative Proposal is to be published into a Bill or not to be proceeded with.
2. that the Offices of the Clerks of Houses of Parliament provide secretariat services to the *Joint Parliamentary Ad Hoc Committee* in accordance with the Standing Orders;
3. that the following Senators represent the Senate in the *Joint Parliamentary Ad Hoc Committee*-
 - i.) Sen. Wakili Hillary Kiprotich Sigei, MP
 - ii.) Sen. Raphael Chimera Mwinzangu, MP
 - iii.) Sen. Veronica Waheti Nduati, MP
 - iv.) Sen. Samson Kiprotich Cherarkey, MP
 - v.) Sen. William Cheptumo Kipkiror, CBS, MP
 - vi.) Sen. Danson Buya Mungatana, MGH, MP
 - vii.) Sen. Fatuma Adan Dullo, CBS, MP
 - viii.) Sen. Hamida Kibwana, MP

- ix.) Sen. Andrew Omtatah Okoiti, MP
- x.) Sen. Catherine Muyeka Mumma, MP
- xi.) Sen. Erick Okongó Mogeni, SC, MP
- xii.) Sen. Paul Karungo Thangwa, MP – (Co-opted)
- xiii.) Sen. (Prof.) Tom Odhiambo Ojienda, SC, MP – (Co-opted)

6. STATEMENTS

a) Pursuant to Standing Order 52 (1)

Nominated Senator (Sen. Hezema Lemaletian, MP, on behalf of Sen. Crystal Asige, MP), made a statement concerning the “*International Day of Persons with Disabilities*”.

Thereupon, the Senator informed the Senate that the International Day of Persons With Disabilities was first established by the United Nations in 1992 and continues to promote disability mainstreaming and to mobilize global support around disability advocacy and awareness.

The Senator added that Persons With Disabilities (PWDs) across the world, as well as the non-disabled, come together on 3rd of December every year to promote the rights and freedoms, dignity and well-being of approximately 1.2 billion persons with disabilities, which is 15% of the population worldwide, in all spheres of society and to increase awareness of the historical exclusions and inequalities that have plagued persons with disabilities in health, political, social, economic and cultural life.

The Senator urged the government to be at the forefront of championing inclusive development, because when the state leads by example, other African countries will follow.

The Senator lauded Kenya on the achievements it has made so far in disability inclusion, such as the establishment of, inter alia the Economic Empowerment Fund, the National Council of Persons with Disabilities Career Portal and the Access to Government Procurement Opportunities (AGPO) program.

The Senator called upon all Kenyans to reach out to and appreciate a Person With Disability in a special way on this day and every day, and wished all a Happy International Day for Persons With Disabilities.

b) Pursuant to Standing Order 53 (1)

- i.) Nominated Senator (Sen. Mariam Omar, MP) sought a statement from the Standing Committee on Land, Environment and Natural Resources regarding compensation to residents of Mihang’o Ward of Embakasi East Constituency, Nairobi City

County for alleged illegal demolition of houses by the Kenya Power and Lighting Company Limited (KPLC) in 2019.

- ii.) The Senator for Nandi County (Sen. Samson Cherarkey, MP) sought a statement from the Standing Committee on Labour and Social Welfare concerning management of athletics in the country following poor performance at the 2021 Tokyo Olympics.
- iii.) Nominated Senator (Sen. Peris Tobiko, MP) sought a statement from the Standing Committee on Land, Environment and Natural Resources regarding the status of implementation of the Wildlife Conservation and Management Act, 2013.

c) Pursuant to Standing Order 57 (1)

The Senate Majority Whip, on behalf of the Senate Majority Leader, issued a statement on the business of the Senate for the week commencing Tuesday, 14th February, 2023.

7. THE PARLIAMENTARY POWERS AND PRIVILEGES (AMENDMENT) BILL (SENATE BILLS NO. 5 OF 2022)

(Sen. Danson Mungatana, MP)

Order for First Reading read;

Bill read a First Time and Committed to the Standing Committee on Justice, Legal Affairs and Human Rights.

8. THE NATURAL RESOURCES (BENEFIT SHARING) BILL (SENATE BILLS NO. 6 OF 2022)

(Sen. Danson Mungatana, MP)

Order for First Reading read;

Bill read a First Time and Committed to the Standing Committee on Land, Environment and Natural Resources.

9. THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL (SENATE BILLS NO. 7 OF 2022)

(Sen. Danson Mungatana, MP)

Order for First Reading read;

Bill read a First Time and Committed to the Standing Committee on Justice, Legal Affairs and Human Rights.

10. MOTION - DROUGHT AND HUNGER MITIGATION IN TURKANA COUNTY

Order read;

Motion made and Question proposed;

THAT, AWARE THAT Turkana County continues to experience extremely dry weather conditions with the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) reporting that the aggregate rainfall for the six-month period ending September 2022 represented only 21 percent of the normal rainfall;

FURTHER AWARE THAT the prevailing weather conditions have resulted in the drying up of wells, boreholes, loss of pasture, and crops, therefore rendering any form of farming impracticable;

ACKNOWLEDGING THAT the residents of the County are predominantly pastoralists who keep cattle, donkeys, camels, and goats for food and income, and that the loss of these livestock is a loss of livelihood for them;

NOTING THAT the prevailing drought has resulted in the death of more than half of the livestock in the County thereby pushing eight hundred thousand residents to the brink of starvation and resulting in the highest ever rate of acute malnutrition in the County at 33%;

FURTHER NOTING THAT residents have been forced into migration with their livestock in search of pasture and water which has exposed them to raids by bandits and resulting in children dropping out of school;

CONCERNED THAT droughts have been recorded in the County since the 1960s and that the frequency of their occurrences has progressively increased with drought in the County becoming a yearly phenomenon;

COGNIZANT 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, and obliges the State to provide social security to persons unable to support themselves and their dependents;

FURTHER COGNIZANT THAT Article 11 of the United Nation's International Covenant on Economic, Social and Cultural Rights (ICESCR) places further emphasis on the fundamental right to food and obliges the State to take progressive steps towards achieving full realization of the right to adequate food;

NOW THEREFORE the Senate urges the Ministries of Agriculture and Livestock Development; Water, Sanitation, and Irrigation; Education, and the Ministry of East African Community (EAC), the ASALs and Regional Development through the National Drought Management Authority, to come up with a policy framework to address the perennial drought in the County and to come up with policy programs addressing the current needs of the County to include: -

- i) a roll out of a Rapid Response Initiative (RRI) programme of providing foodstuffs to the affected residents of the County to address immediate critical needs;
- ii) an introduction of feeding programme in schools across the County;
- iii) the drilling of water boreholes; and
- iv) an institution of a livestock off-take programme to buy weak livestock.

(Sen. James Lomenen Ekomwa, MP – 30.11.2022)

Debate interrupted on Wednesday, 30th 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(3) the Temporary Speaker (Sen. Abdul Mohammed Haji, MP) ruled that the Motion does not affect counties;

Question put and agreed to.

RESOLVED ACCORDINGLY.

THAT, AWARE THAT Turkana County continues to experience extremely dry weather conditions with the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) reporting that the aggregate rainfall for the six-month period ending September 2022 represented only 21 percent of the normal rainfall;

FURTHER AWARE THAT the prevailing weather conditions have resulted in the drying up of wells, boreholes, loss of pasture, and crops, therefore rendering any form of farming impracticable;

ACKNOWLEDGING THAT the residents of the County are predominantly pastoralists who keep cattle, donkeys, camels, and goats for food and income, and that the loss of these livestock is a loss of livelihood for them;

NOTING THAT the prevailing drought has resulted in the death of more than half of the livestock in the County thereby pushing eight hundred thousand residents to the brink of starvation and resulting in the highest ever rate of acute malnutrition in the County at 33%;

FURTHER NOTING THAT residents have been forced into migration with their livestock in search of pasture and water which has exposed them to raids by bandits and resulting in children dropping out of school;

CONCERNED THAT droughts have been recorded in the County since the 1960s and that the frequency of their occurrences has progressively increased with drought in the County becoming a yearly phenomenon;

COGNIZANT 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, and obliges the State to provide social security to persons unable to support themselves and their dependents;

FURTHER COGNIZANT THAT Article 11 of the United Nation's International Covenant on Economic, Social and Cultural Rights (ICESCR) places further emphasis on the fundamental right to food and obliges the State to take progressive steps towards achieving full realization of the right to adequate food;

NOW THEREFORE the Senate urges the Ministries of Agriculture and Livestock Development; Water, Sanitation, and Irrigation; Education, and the Ministry of East African Community (EAC), the ASALs and Regional Development through the National Drought Management Authority, to come up with a policy framework to address the perennial drought in the County and to come up with policy programs addressing the current needs of the County to include: -

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- ii) an introduction of feeding programme in schools across the County;
- iii) the drilling of water boreholes; and
- iv) an institution of a livestock off-take programme to buy weak livestock.

11. **MOTION - ESTABLISHMENT OF A PARLIAMENTARY JOINT AD-HOC COMMITTEE ON A LEGISLATIVE PROPOSAL TO AMEND THE CONSTITUTION TO ENTRENCH CERTAIN SPECIALISED FUNDS**

Order read;

Motion made and Question proposed;

THAT, ACKNOWLEDGING the resolution of the National Assembly on the Establishment of an Ad-Hoc Committee on a Legislative Proposal to amend the Constitution to entrench certain specialised funds transmitted as a Message seeking concurrence of the Senate;

RECOGNIZING the need for a bicameral approach on the proposal prior to publication of the relevant Bill;

ACKNOWLEDGING THAT the subject matter of the Legislative Proposal is premised on the mandate of Parliament under Article 256 of the Constitution, on amendment of the Constitution by parliamentary initiative;

NOW THEREFORE the Senate resolves: -

1. to establish a *Joint Parliamentary Ad Hoc Committee on a Proposal to amend the Constitution to entrench certain specialized funds*, comprising eleven (11) Members from each of the Houses of Parliament to –
 - a) facilitate collation of views from Senators during debate, and inviting Senators with similar or related proposals to make submissions before the Committee;
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 - c) in consultation with the Sponsors, attempt to develop and recommend a harmonized version of the proposal arising from the submissions received; and
 - d) report to the Houses of Parliament within ninety (90) days to enable the Speakers to make a decision and give direction on whether or not the Legislative Proposal is to be published into a Bill or not to be proceeded with.
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 - xiii.) Sen. (Prof.) Tom Odhiambo Ojienda, SC, MP – (Co-opted)

(The Senate Majority Whip on behalf of the Senate Majority Leader)

Debate arising;

And there being no other Senator wishing to contribute;

Mover replied;

Before the Question was put and pursuant to Standing Order 84(3) the Temporary Speaker (Sen. Abdul Mohammed Haji, MP) ruled that the Motion does not affect counties;

Question put and agreed to.

RESOLVED ACCORDINGLY

THAT, ACKNOWLEDGING the resolution of the National Assembly on the Establishment of an Ad-Hoc Committee on a Legislative Proposal to amend the Constitution to entrench certain specialised funds transmitted as a Message seeking concurrence of the Senate;

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 - x.) Sen. Catherine Muyeka Mumma, MP
 - xi.) Sen. Erick Okongó Mogeni, SC, MP
 - xii.) Sen. Paul Karungo Thangwa, MP – (Co-opted)
 - xiii.) Sen. (Prof.) Tom Odhiambo Ojienda, SC, MP – (Co-opted)

12. **MOTION – ENHANCING HIGHWAY SAFETY AND CONVENIENCE**

(Sen. Wahome Wamatinga, MP)

THAT, AWARE THAT the majority of highway users, most of whom are long distance travelers and some of whom are children, elderly, and sick, face a myriad of challenges including traffic delays and breakdown of their vehicles that cause them to spend long hours on the road exposing them to starvation, insecurity threats, and to the need for sanitary and medical facilities;

FURTHER AWARE THAT setting up safe stopping points for road users at regular intervals with the necessary road-side amenities such as fuel stations, parking spaces, restaurants, telephone booths, minor repair shops, medical facilities, and toilets enhances total travel experience and the lack of these points make it impractical for drivers to stop as often as they would wish to resulting into driving-related fatigue, a significant contributor to accidents on the highways;

COGNIZANT THAT the current road-side amenities operated and maintained by private companies, majorly oil companies, are located in urban centers while in the countryside there are inadequate numbers offering limited variety of facilities;

ACKNOWLEDGING THAT the cost of such developments and the uncertainty of the returns on investment restrict the supply of the facilities, the risks too great for small companies and the returns too meagre for large companies, some amenities remain unviable, and

insufficiently provided for by commercial companies necessitating government intervention;

FURTHER COGNIZANT THAT governments across the world such as France and Germany have taken on the task of setting up such amenities through incorporation of the basic provisions in their road transport infrastructure through different models of Public Private Partnership (PPP), lease, or ownership;

NOW THEREFORE the Senate resolves that the Ministries of Roads, Transport and Public Works, Health, the Kenya National Highways Authority, and the National Transport and Safety Authority to come up with a policy framework to include: -

- i) the incorporation of road reserves for road-side amenities in all highway designs;
- ii) undertaking a survey to ascertain the specific amenities required but not available on the existing highways and the most convenient locations to develop them; and
- iii) development of a Public Private Partnership guideline on leasing of the road reserves to developers, financing the construction of the amenities, and the packaging of incentives to attract investors.

Order deferred.

13. **MOTION - INCESSANT HIGH ELECTRICITY COSTS IN KENYA**

(Sen. Mohamed Chute, MP)

THAT, AWARE THAT energy is an essential factor of production and its total consumption is a major determinant of performance of the economy with its cost and reliability spurring or stifling economic growth;

FURTHER AWARE THAT there has been a significant growth in the demand for electricity in Kenya driven by economic growth, increased efforts towards rural electrification, and reinforcement of the transmission and distribution grids while the supply has been constrained majorly due to the overreliance on hydro-electric power generating plants that have been negatively impacted by perennial drought experienced in the country;

NOTING THAT imbalance in the demand and supply of power coupled with payments by the Kenya Power and Lighting Company (KPLC) for produced power not consumed and fluctuation in the foreign exchange rates contribute to the high cost of electricity;

APPRECIATING THAT Kenya has made strides in diversifying its power sources with geothermal plants, offering tremendous potential for zero-

carbon source of power, already producing nearly one (1) Gigawatt (GW) of power;

CONCERNED THAT private power generating companies popularly referred to as Independent Power Producers (IPPs) only supply 28% of power to KPLC but account for 47% of power purchase costs calling for the need to enhance energy management in Kenya;

NOW THEREFORE the Senate resolves that:

a) the Standing Committee on Energy to undertake an inquiry into: -

- i.) Contracts signed by IPPs, detailing the cost, capacity and duration of the contractual agreements and their implications on affordability of electricity in the country;
- ii.) Discrepancy in the cost of electricity sold to Kenya Power by KenGen, imports from Ethiopia and IPPs; and
- iii.) The diversion of the electricity generated by Lake Turkana Wind Power to the national grid, noting that Marsabit and Samburu counties are inadequately supplied.

b) the Ministry of Energy to come up with a policy framework aimed at:-

- i.) Lowering the cost of electricity as a way of addressing the high cost of living; and
- ii.) Enhancing clean energy by switching to renewable sources of energy such as geothermal power, wind energy, among others as a way of reducing the carbon foot print.

Order deferred.

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

(Sen. Moses Kajwang', MP)

THAT, 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.

15. **MOTION – ADJOURNMENT OF THE SENATE**

Order read;

Motion made and Question proposed;

THAT, pursuant to Standing Order 32 (3), the Senate do adjourn until Tuesday, 14th February, 2023.

(The Senate Majority Whip on behalf of the Senate Majority Leader)

Debate arising;

And there being no other Senator wishing to contribute;

The Temporary Speaker (Sen. Abdul Mohamed Haji, MP) adjourned the Senate at thirty-five minutes past Six O'clock, for the convenience of the House, without Question put, pursuant to the Standing Orders.

16. SENATE ROSE - Thirty -five minutes past Six O'clock.

M E M O R A N D U M

*The Speaker will take the Chair on
Tuesday, February 14, 2022 at 2.30 p.m.*

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