



REPUBLIC OF KENYA

THE SENATE

ELEVENTH PARLIAMENT – FOURTH SESSION

VOTES AND PROCEEDINGS

WEDNESDAY, NOVEMBER 23, 2016 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. **COMMUNICATIONS FROM THE CHAIR**

The Speaker conveyed the following Communications from the Chair-

(a) Summit on Peaceful Elections, National Cohesion and Unity for Social-Economic Development.

“Honourable Senators, I wish to inform you that the Kenya Private Sector Alliance (KEPSA) has organized and invited all Senators to a Leaders' Summit on Peaceful Elections, National Cohesion and unity for Social-Economic Development.

Honourable Senators, As you all may be aware KEPSA's key focus areas are:-

- i.) Conducting high-level advocacy on cross-cutting law and policy-related issues, and ensuring Kenya is globally competitive in doing business;
- ii.) Coordinating the private sector in Kenya through various mechanisms and to engage in advocacy that promotes economic growth; and
- iii.) Developing and capacity building of Business Membership Organizations (BMOs) to strengthen growth and represent their sectors adequately.

It is in line with these focus areas that KEPSA have organized the Leadership summit which will bring together all National leaders including Parliamentarians.

The Summit is scheduled to take place from 2nd – 3rd December, 2016 at Leisure Lodge Resort in Mombasa County. Senators should depart for Mombasa on the evening of Thursday, 1st December, 2016.

This is, therefore, to invite you all to this important meeting and urge you to plan to attend. You are requested to forward your preferred travel times to the Office of the Clerk of Senate for planning purposes.

I thank you".

(b) Official visit of Mr. Stanislaw Karczewski, Marshal of the Senate of the Republic of Poland to Kenya.

"Honorable Senators, I would like to acknowledge the presence, in the Speaker's Gallery this afternoon, of visiting delegates from The Republic of Poland.

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

They are:

1. Mr. Stanisław Karczewski, Marshal of the Senate of the Republic of Poland.
2. Mr. Marek Martynowski, senator, Chairman of the Law and Justice Senate Caucus, Member of the Human Rights, the Rule of Law and Petitions Committee and Member of Legislation Committee (Law and Justice).
3. Mr. Andrzej Pająk, senator, Deputy Chairman of the Local Government and State Administration Committee and Member of Emigration Affairs and Contacts with Poles Abroad Committee (Law and Justice).
4. Ms. Margareta Budner, Member of Agriculture and Rural Development Committee and Member of Health Committee.
5. Mr. Andrzej Misiołek, senator, Member of the Human Rights, the Rule of Law and Petitions Committee and Member of Infrastructure Committee.
6. Ms. Wioletta Więclawik, Director of the Office of the Senate Marshal.
7. Mr. Leszek Kieniewicz, Director of the Office for International and EU Affairs.
8. Mr. Przemysław Cebula, Office for Citizen Relations, Press Unit.
9. Ms. Agata Wójcik, Office for International and EU Affairs, secretary to the delegation.
10. Mr. Aleksander Jakimowicz, Interpreter.

On behalf of the Senate and on my own behalf, I welcome them to the Senate and I wish them well for the remainder of their stay.

I thank you."

4. **MESSAGE FROM THE NATIONAL ASSEMBLY ON THE DECISION OF THE NATIONAL ASSEMBLY ON THE PARLIAMENTARY SERVICE (SENATE MONITORING & EVALUATION) (PROCEDURE FOR MANAGEMENT OF FUNDS) REGULATIONS, 2016**

"Honourable Senators,

I wish to report to the Senate that, pursuant to Standing Order 40 (3) and (4), I have received the following Message from the Speaker of the National Assembly regarding the annulment of the Parliamentary Service (Senate Monitoring and Evaluation) (Procedure for Management of Funds) Regulations, 2016.

"PURSUANT to the provisions of standing order 41 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly-

WHEREAS, the Parliamentary Service (Senate Monitoring and Evaluation) (Procedure for Management of Funds) Regulations, 2016 were submitted to the National Assembly on October 16, 2016 in accordance with the provisions of section 11 of the Statutory Instruments Act, 2013;

WHEREAS, the National Assembly considered the said Regulations and pursuant to the provisions of sections 18 and 19 of the Statutory Instruments Act, 2013 annulled the Regulations entirely, on November 17, 2016;

NOW THEREFORE, in accordance with the provisions of Standing Orders 41 and 211 of the National Assembly Standing Orders, I hereby convey the National Assembly's decision to the Senate".

Honourable Senators,

Standing order 215 (1) provides that *'whenever the Senate receives a message from the National Assembly seeking concurrence with a resolution of the National Assembly on a statutory instrument, the National Assembly's resolution shall stand referred to the Committee on Delegated Legislation which shall consider the resolution, together with the statutory instrument and report to the Senate within twenty one days of the referral'*.

Honourable Senators,

As you may recall, the Parliamentary Service (Senate Monitoring and Evaluation) (Procedure for Management of Funds) Regulations, 2016 were published on 27th September, 2016 and tabled in the Senate on 4th October, 2016 by the Chairperson of the Sessional Committee on Delegated

Legislation. The Committee thereafter considered the Regulations on 1st November, 2016 and resolved to accede to the said Regulations.

Honourable Senators,

Upon the approval of the Regulations by the Sessional Committee on Delegated Legislation and pursuant to standing order 214 (4) (a) of the Senate Standing Orders, the decision of the Committee was conveyed to the Chairperson of the Parliamentary Service Commission, who had published the said Regulations.

Honourable Senators,

Arising from the above, I direct that pursuant to standing order 215 (3) (b), the Resolution by the National Assembly be referred to a Joint Committee to be established under standing order 216, to consider the matter and report back to the Houses of Parliament.

I thank you.”

5. PETITIONS

(a) Petition by Workers in flower farms in Naivasha Sub- County, Nakuru County, on poor working conditions in the flower farms.

Pursuant to Standing Order No. 220(1) (b) and No. 225(2)(a), nominated Senator (Sen. Martha Wangari) presented a Petition, to the Senate, on behalf of some workers in flower farms in Naivasha Sub- County, Nakuru County, regarding poor working conditions in the flower farms.

Pursuant to Standing Order No. 226, the Speaker allowed comments on the Petition and directed that the Petition be committed to the Standing Committee on Labour and Social Welfare, pursuant to Standing Order 227.

(b) Petition by Busia County Kengele Forum concerning abuse of office allegations against the Clerk of Busia County Assembly and members of the Busia County Assembly Service Board.

Pursuant to Standing Order No. 220(1) (a) and No. 225(2)(b), the Speaker presented to the Senate a Petition by Busia County Kengele Forum concerning abuse of office allegations against the Clerk of Busia County Assembly and members of the Busia County Assembly Service Board.

Pursuant to Standing Order No. 226, the Speaker allowed comments on the Petition and directed that the Petition be committed to the Standing Committee on Labour and Social Welfare, pursuant to Standing Order 227.

- (c) **Petition by former employees of Premier Oil Limited, on non-payment of redundancy dues, statutory deductions and other monies owed to them.**

Pursuant to Standing Order No. 220(1) (a) and No. 225(2)(b), the Speaker presented to the Senate a Petition by the former employees of Premier Oil Limited, on non-payment of redundancy dues, statutory deductions and other monies owed to them.

Pursuant to Standing Order No. 226, the Speaker allowed comments on the Petition and directed that the Petition be committed to the Standing Committee on Labour and Social Welfare, pursuant to Standing Order 227.

6. **STATEMENT PURSUANT TO STANDING ORDER 45 (2) (B)**

The Senator for Kericho County (Sen. Aaron Cheruiyot) sought a statement from the Chairperson of the Standing Committee on National Security and Foreign Relations regarding the increased number of police check points along Mau Summit- Sotik Road in Kericho County.

7. **THE COUNTY STATISTICS BILL (SENATE BILL NO. 11 OF 2016)**

(Sen. Naisula Lesuuda)

(Second Reading)

(Resumption of Debate interrupted on Thursday, 10th November, 2016)

(Division)

Order deferred.

8. **THE TREATY MAKING AND RATIFICATION (AMENDMENT) BILL (SENATE BILL NO. 5 OF 2016)**

(Chairperson, Standing Committee on National Security and Foreign Relations)

(Second Reading)

(Resumption of Debate interrupted on Tuesday, 15th November, 2016)

(Division)

Order deferred.

9. **THE WAREHOUSE RECEIPTS SYSTEM BILL (NATIONAL ASSEMBLYBILL NO. 12 OF 2015)**

(Senate Majority Leader)

(Second Reading)

(Resumption of Debate interrupted on Wednesday, 16th November, 2016)

(Division)

Order deferred.

10. **THE IMPEACHMENT PROCEDURE BILL (SENATE BILL NO. 8 OF 2016)**

(Sen. (Eng.) Muriuki Karue)

(Second Reading)

(Resumption of Debate interrupted on Wednesday, 17th November, 2016)

(Division)

Order deferred.

11. **THE CONSTITUTION OF KENYA (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 26 OF 2013)**

(The Senate Majority Leader)

(Second Reading)

(Resumption of Debate interrupted on Thursday, 3rd November, 2016)

(Division)

Order deferred.

12. **THE CONSTITUTION OF KENYA (AMENDMENT) (NO. 2) BILL (NATIONAL ASSEMBLY BILL NO. 2 OF 2015)**

(The Senate Majority Leader)

(Second Reading)

(Resumption of Debate interrupted on Thursday, 3rd November, 2016)

(Division)

Order deferred.

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

(Sen. Judith Sijeny)

(Second Reading)

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

(Division)

Order deferred.

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

(Sen. Hassan Omar)

(Resumption of Debate interrupted on Tuesday, 15th November, 2016)

(Division)

Order deferred.

15. **COMMITTEE OF THE WHOLE**
THE PERSONS WITH DISABILITIES (AMENDMENT) BILL (SENATE BILL NO. 13 OF 2015)

(Sen. Godliver Omondi)

(Resumption of Debate interrupted on Tuesday, 15th November, 2016)

(Division)

Order deferred.

16. **COMMITTEE OF THE WHOLE**
THE BASIC EDUCATION (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 35 OF 2014)

(The Senate Majority Leader)

(Resumption of Debate interrupted on Tuesday, 15th November, 2016)

(Division)

Order deferred.

17. **COMMITTEE OF THE WHOLE**

**THE NATIONAL CEREALS AND PRODUCE BOARD (AMENDMENT) BILL
(SENATE BILL NO. 15 OF 2015)**

(Sen. (Dr.) Zipporah Kittony)

*(Resumption of Debate interrupted on Wednesday, 16th November, 2016)
(Division)*

Order deferred.

18. **COMMITTEE OF THE WHOLE**

**THE COUNTY STATUTORY INSTRUMENTS BILL (SENATE BILL NO. 10
OF 2015)**

(Chairperson, Sessional Committee on Delegated Legislation)

*(Resumption of Debate interrupted on Wednesday, 16th November, 2016)
(Division)*

Order deferred.

19. **COMMITTEE OF THE WHOLE**

**THE PHYSICAL PLANNING BILL (NATIONAL ASSEMBLY BILL NO. 46
OF 2015)**

(The Senate Majority Leader)

(Resumption of Debate interrupted on Wednesday, 9th November, 2016)

Order deferred.

20. **THE LOCAL CONTENT BILL (SENATE BILL NO. 13 OF 2016)**

(Sen. Gideon Moi)

(Second Reading)

(Resumption of Debate interrupted on Tuesday, 22nd November, 2016)

Order deferred.

21. **THE CYBER SECURITY AND PROTECTION BILL (SENATE BILL NO.12
OF 2016)**

(Senator MutahiKagwe)

(Second Reading)

Order deferred.

22. **THE KENYA ROADS BILL (NATIONAL ASSEMBLY BILL NO. 26 OF
2016)**

(The Senate Majority Leader)

(Second Reading)

Order deferred.

23. MOTION - INSTALLATION OF CCTV CAMERAS IN POLICE STATIONS.

Motion made and Question proposed;

THAT,

CONCERNED about the numerous reports of the arbitrary arrests of innocent people by the police;

FURTHER CONCERNED that a large number of those arrested are allegedly locked up in police cells without being recorded either in the Occurrence Book or elsewhere;

DEEPLY CONCERNED that some of the arrested people disappear without a trace and that many who are subsequently traced are found dead away from where they were known to have been locked up;

ALARMED by the recent incident where three young men were locked up for hours at Syokimau Police Post without any record indicating they had been at the police post, only for them to be found days later, in another area far from the police post, having been brutally killed;

APPRECIATING that the Closed Circuit Television (CCTV) system installed by the Government in Nairobi has helped a lot in criminal investigations;

NOW THEREFORE the Senate calls upon the National Government to-

- a) install CCTV cameras in all police stations and police posts in order to record each and every person going in and out of the station;
- b) have the CCTV system designed in such a way that it is capable of capturing the Occurrence Book entries every twelve hours; and
- c) ensure the CCTV system is connected to a central depository in order to minimize chances of subsequent tampering.

(Sen. (Eng.) Muriuki Karue - 17.11.2016)

Order deferred.

24. MOTION - COUNTRYWIDE AUDIT ON THE DISTRIBUTION OF TEACHERS IN ALL PUBLIC SCHOOLS

WHEREAS Article 43(1)(f) and 53(1)(b) of the Constitution guarantees every citizen a right to education and every child a right to free and compulsory basic education, respectively;

NOTING that the Teachers Service Commission is mandated to handle employment, deployment, remuneration and discipline of teachers in public schools in Kenya;

CONCERNED that there are great disparities in the distribution of teachers in public schools across the country leading to oversupply in some schools and undersupply in others and ultimately leading to major teacher shortage especially in rural and marginalized areas;

APPRECIATING efforts made by the national government to improve the teacher pupil ratio to international standards in all public schools through yearly employment of teachers;

FURTHER CONCERNED that the statistics on the number and distribution of teachers in public schools is not readily available;

NOW THEREFORE, the Senate directs the Ministry of Education, Science and Technology to conduct a countrywide audit on the distribution of teachers in all public schools indicating the requisite establishment per school and the corresponding number of teachers who are in-post and further that the Ministry submits a report to the House on the matter within ninety (90) days.

(Sen. George Khaniri)

Order deferred.

25. **MOTION – CREATION OF THE OFFICE OF AN AUDITOR TO SPECIFICALLY AUDIT THE BASIC EDUCATION INSTITUTIONS' FUNDS**

THAT, whereas Article 53 (1)(b) of the Constitution provides that every child in Kenya has the right to free and compulsory basic education;

RECOGNIZING the importance of education in the alleviation of the main challenges facing Kenya's sovereignty identified at independence, namely; poverty, illiteracy and disease;

APPRECIATING the gains made following the implementation of the free primary education program in 2003 and cognizant of the principles set out in the Basic Education Act of 2013 whose objectives include promotion and regulation of free and compulsory basic education besides providing for accreditation, registration and management of basic education institutions;

NOTING the substantial resources invested by the national and county governments, parents, sponsors and development partners in the provision of basic education;

FURTHER NOTING that pursuant to the Basic Education Act, the County Director of Education is vested with numerous responsibilities including facilitation of auditing of all basic educational institutions in the respective county thereby leaving fundamental gaps of governance especially in the management of the available resources;

NOW THEREFORE, the House recommends to the Cabinet Secretary for Education to facilitate the creation of the office of an auditor to specifically audit the basic education institutions' funds to enhance transparency and accountability and improve governance in the management of these institutions.

(Sen. (Prof.) John Lonyangapuo)

Order deferred.

26. **MOTION – IMPLEMENTATION OF POLICY STATEMENTS AND STRATEGIES MADE IN THE NATIONAL SPECIAL NEED POLICY FRAMEWORK, 2009.**

AWARE that Article 43 (1) (f) of the Constitution of Kenya provides that every person has the right to education and that Article 53 (1) (b) of the Constitution provides that every child has the right to free and compulsory basic education;

COGNIZANT that Article 54 (1) (b) of the Constitution provides that a person with any disability is entitled to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person;

RECOGNIZING that education in Kenya is a shared function of both the county and national governments;

CONCERNED that while significant gains have been made under the Free Education Programme introduced in the year 2003, access and participation of children with special needs is generally low across the country and their needs have not been specifically addressed;

NOW THEREFORE the Senate directs the Standing Committee on Education to inquire into the performance of the Ministry of Education, Science and Technology in the implementation of the policy statements and strategies made in the National Special Needs Education Policy Framework, 2009 and report back to the Senate within three months.

(Sen. Peter Mositet)

Order deferred.

27. **MOTION - TO ADOPT THE REPORT OF THE STANDING COMMITTEE ON ROADS AND TRANSPORTATION ON A STAKEHOLDERS' FORUM HELD ON 3RD FEBRUARY, 2016 AT SAFARI PARK HOTEL, NAIROBI**

Motion made and Question proposed;

THAT, the Senate adopts the Report of the Standing Committee on Roads and Transportation on a Stakeholders' Forum held on 3rd February, 2016 at Safari Park Hotel, Nairobi laid on the Table of the House on 14th April, 2016.

(Vice-Chairperson, Standing Committee on Roads and Transportation)

Debate arising;

There being no any other Senate wishing to contribute;

The Mover replied;

Before the Question was put and pursuant to Standing Order 72, the Temporary Speaker (Sen. Sang) informed the House that the Question did not affect Counties.

Question put and agreed to.

RESOLVED ACCORDINGLY

THAT, the Senate adopts the Report of the Standing Committee on Roads and Transportation on a Stakeholders' Forum held on 3rd February, 2016 at Safari Park Hotel, Nairobi laid on the Table of the House on 14th April, 2016.

28. **MOTION – TO NOTE THE REPORT OF THE STANDING COMMITTEE ON NATIONAL SECURITY AND FOREIGN RELATIONS ON THE EALA REPORTS AND RESOLUTIONS**

THAT, the Senate notes the Report of the Standing Committee on National Security and Foreign Relations on the EALA Reports and Resolutions pursuant to standing order 235 laid on the Table of the House on Tuesday, 19th April, 2016.

(Chairperson, Standing Committee on National Security and Foreign Relations)

Order deferred.

29. **MOTION– TO NOTE THE REPORT OF THE 133RD AND 134TH ASSEMBLIES OF THE INTER-PARLIAMENTARY UNION AND RELATED MEETINGS HELD BETWEEN 15TH AND 21ST OCTOBER, 2015 IN GENEVA, SWITZERLAND AND 17TH AND 23RD MARCH, 2016 IN LUSAKA, ZAMBIA**

Motion made and Question proposed;

THAT, the Senate notes the Report of the 133rd and 134th Assemblies of the Inter-Parliamentary Union and Related meetings held between 15th and 21st October, 2015 in Geneva, Switzerland and 17th and 23rd March, 2016 in Lusaka, Zambia, respectively, laid on the Table of the House on Wednesday, 8th June, 2016.

(Sen. Catherine Mukiite)

Debate arising;

There being no any other Senate wishing to contribute;

The Mover replied;

Before the Question was put and pursuant to Standing Order 72, the Temporary Speaker (Sen. Sang') informed the House that the Question did not affect Counties.

Question put and agreed to.

RESOLVED ACCORDINGLY

THAT, the Senate notes the Report of the 133rd and 134th Assemblies of the Inter-Parliamentary Union and Related meetings held between 15th and 21st October, 2015 in Geneva, Switzerland and 17th and 23rd March, 2016 in Lusaka, Zambia, respectively, laid on the Table of the House on Wednesday, 8th June, 2016.

And there being no any other business, the Temporary Speaker (Sen. Sang') adjourned the Senate at sixteen minutes past Six O'clock without Question put, pursuant to the Standing Orders.

30. **SENATE ROSE** - at sixteen minutes past Six O'clock.

M E M O R A N D U M

*The Speaker will take the Chair on
Thursday, November 24, 2016 at 2.30 p.m.*

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