

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 14th May, 2015

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

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

PRAYERS

COMMUNICATION FROM THE CHAIR

INVITATION TO THE ANNUAL NATIONAL PRAYER BREAKFAST MEETING

The Speaker (Hon. Ethuro): Order, Senators. I have a Communication to make regarding the National Prayer Breakfast Meeting.

The Kenya Parliamentary Prayer Fellowship Group shall host the Annual National Prayer Breakfast on Thursday, 28th May, 2015, at Safari Park Hotel. It is expected that over 1,700 guests shall be in attendance. This prayer breakfast is an interdenominational prayer meeting sponsored by Members of Parliament - Senators and Members of the National Assembly. Invitation cards for all Members have already been dispatched; Members are requested to confirm attendance by 15th May, 2015 in order to facilitate sitting arrangements. You are, therefore, requested to make your contribution to this particular national event. You may also wish, for further information, to contact Sen. Musila on behalf of the prayer breakfast group.

Thank you.

PETITION

FINANCIAL MIS-MANAGEMENT AND IRREGULARITIES IN PROCUREMENT BY NAROK COUNTY GOVERNMENT

Sen. Ntutu: Mr. Speaker, Sir, thank you for giving me this opportunity to make a few comments on the Narok Petition Report. After going through the Report, I realized that according to the Auditor-General, the Report omitted answering Petition No. 8 which was the bottom line of the Petition. Petition No.8 concerns Ooloolo Game Ranch which

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is still collecting park fees from tourists lodging at Kichwa Tembo Camp. What the petitioner requested is to know how much was collected from this lodge for the last 10 years.

Since the Auditor-General avoided answering that, of which I believe the flying brief cases from Narok might have reached him, the assumption of the petitioner with regard to Mara Lodges at Kichwa Tembo which has a bed capacity of 150 is, say for example, 50 beds. A total of 50 clients multiplied by 80 Dollars multiplied by 30 days multiplied by 12 months multiplied by 10 years, which is the period in question, comes to a tune of Kshs1.3billion. This money is supposed to be paid to the County Government of Narok. Who are the beneficiaries of this money?

On the same, the petitioner requested to know who the directors of Oloololo Game Ranch are. One person by the name of Mr. Brian Heath said that the Narok County Governor is not a director of the private game ranch. The Governor also said that he is not a director of the private game ranch. According to the evidence to prove that they lied to the Committee, I have an agreement signed by Mr. Samuel Kuntai ole Tunai as the director for Oloololo on that oppressive transversing agreement and the other director is Kwea Ole Tunai. If the issue of this agreement is raising some concern, the Governor of Narok County is the man who is supposed to defend the position of the county Government yet he is a beneficiary. What will happen?

Mr. Speaker, Sir, the other issue which the people of Narok want to know is: Does that mean that after coming up with that report, Oloololo Game Ranch will continue exploiting the masses of Narok County because of the bogus agreement of 33years? How much will it cost the county residents for that period? If the 10 years is Kshs.1.3billion, what about the 33years? Who will be responsible for this money? The other question is: Did the county Government adopt and agree to this transversing agreement when the Governor took over office?

Mr. Speaker, Sir, the other issue which raised a lot of concern is whether the Senate Committee conducted an interview with directors who were the shareholders of Oloololo Group Ranch. How can we adopt a Report that is not complete? The directors of Oloololo Game Ranch were not interviewed. The other issue is on the evidence I have. According to page 46 of the Report, the Chief Executive Officer (CEO) for Mara Conservancy, Mr. Brian, said that he remits \$5million to the Narok County Government annually. The period in question is March 2013 to October 2014. The same CEO admitted that he only deposited Kshs103,768,205. What did this man collect during that period? The Mara Conservancy collected Kshs266,478,470. He however avoided banking Kshs224,984,911. Therefore, we believe that they must have pocketed that money.

Mr. Speaker, Sir, the other issue is that according to annex 32 of the Report, the CEO, Mr. Brian, admitted that the revenue collected for the month of March and April was not deposited into the account. How much was the revenue that was not deposited into the account? It was Kshs53,777,870.

The Speaker (Hon. Ethuro): Senator, you should be concluding.

Sen. Ntutu: Yes Mr. Speaker, Sir, according to this annex, it shows clearly that the amount was not deposited. Where is that money? Finally, so that I do not take much

time, we have a dollar account in the county. All the dollars collected from the Mara Conservancy are deposited into that account which is in the Kenya Commercial Bank (KCB). They have to transfer the money to the collecting account that is in the Cooperative Bank. What is this man or the Government of Narok doing? They are using the money from the dollar account to pay companies without depositing it to the account first. I believe that is against Article 207 (1) of the Constitution of Kenya.

Mr. Speaker, Sir, my only concern and plea is that the Committee goes back to complete this Report because it is not complete. Oloololo directors were not interviewed. Can this Report be complete without the input of Oloololo shareholders? Besides, who signed this oppressive agreement that cost the Narok County Government Kshs1.3billion? Whoever signed that agreement is none other than one director Samuel Kuntai ole Tunai who is also the current Governor for Narok County. Therefore, my plea is that the Committee finalizes the Report. Another issue is that the Auditor-General avoided addressing many issues raised by the Petitioners, including numbers six, eight and 10. That is also another evidence to prove that the flying briefcases from Narok County might have reached there. I rest my case.

Thank you very much Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Next Order!

PAPERS LAID

REPORTS OF THE FINANCE COMMITTEE ON THE PUBLIC PROCUREMENT AND ASSET DISPOSAL BILL/ THE PUBLIC AUDIT BILL

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, on behalf of the Chairperson of the Standing Committee on Finance, Commerce and Budget, Sen. Billow, I beg to lay the following Papers on the Table:-

Report of the Standing Committee on Finance, Commerce and Budget on the consideration of the Public Procurement and Asset Disposal Bill, 2014.

Report of the Standing Committee on Finance, Commerce and Budget on the consideration of the Public Audit Bill, 2014.

(Sen. (Prof.) Anyang'-Nyong'o laid the documents on the Table)

The Speaker (Hon. Ethuro): Order. What is it Sen. Ntutu?

Sen. Ntutu: Mr. Speaker, Sir, I request the Chair to give two or three Senators an opportunity to make some few comments because it will not be fair not to hear their views.

The Speaker (Hon. Ethuro): I understand what you are saying Sen. Ntutu. Unfortunately, the Standing Order under which I allowed you was Standing Order No.45 (2a) which states that a Senator may make a statement on a county issue or an issue of general topical concern. Although it was related to the Petition, that is a general topic on

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an issue of a county. Therefore, we did not see a lot of interest. However, you have put your case and it is on record but we are past that particular Order. What is it Sen. (Dr.) Khalwale?

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. In view of the fact that this is a very unique matter that led to the riots being ugly and caused loss of lives and property in Narok, could I request the Chair to consider the possibility of finding that the Senator was wrong to move under Standing Order No.45(2)? We should review the entry point to allow the Senate of the Republic of Kenya to make comments; either now or at a later time. I will be requesting you to move under Standing Order No.1 which gives you immense powers in this House.

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. I do not know whether I am in order to say that since this is a Report of a Committee of the Senate then it is a property of the House. Would I be in order to say that any Senator who is interested in a discussion should come up with a Motion at a later date and the Motion can be used to debate the Report if this House finds it necessary for that purpose? I hope you heard me.

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. Our own Standing Orders give latitude for this. Standing Order No.226 and 227 give us the permission to make comments for not more than 30 minutes.

Sen. Mutula Kilonzo Jnr.: On a point of order, Mr. Speaker, Sir. I am a Member of the Committee on Finance, Commerce and Budget. The comments read by Sen. ole Ntutu appear to suggest that the witnesses who appeared before us either gave us wrong information, misled us or falsified documents. Whatever it is, that alludes there was a problem. I am not sure that comments will be good enough.

I have looked at the Standing Orders and did not see a portion where a committee can review a decision that it has already made. That information ought to come to the Committee for a recheck on whether or not there was a mistake or false information or record. What Sen. ole Ntutu has said on record is very serious. You could possibly give direction as to what we should do. The comments will not help because they will not show the fact that the records show what the Committee decided.

Sen. Obure: On a point of order, Mr. Speaker, Sir. I listened very carefully to what Sen. Ntutu has been saying. Clearly, he raised a number of very fundamental issues of great concern not only to himself but also to the larger population in his own county. I know that a committee of this House has made a report following various investigations.

However, it seems as if a number of issues were overlooked. For instance, he says very clearly that a number of directors of some ranches were not interviewed. In light of that and what the Senator for Makueni has said, I was wondering whether we have any avenue under the Standing Orders in which the Committee's report could be reviewed or looked at again to give satisfaction to the people of Narok.

Sen. (Prof) Anyang'-Nyong'o: Mr. Speaker, Sir, thank you for giving me the opportunity to add my voice to the discussion here. I would like to plead with you to recommit this matter back to the committee in which I am a Member. Some of the issues that our colleague, hon. ole Ntutu, has raised cannot be discussed in the House. The House lacks plenty of information that we, in the Committee, have. In light of any new

evidence that would make us make a sound judgment on the matter, I think it would be better if we were given an opportunity to look into it.

Second is about the comments by the Auditor-General. The Auditor-General appealed to us and said that he lacks resources to do thorough work on the Narok issue. This may lead to some of the dissatisfaction that hon. ole Ntutu is expressing today. It will be better if both Sen. ole Ntutu who is the petitioner, the Auditor-General and we relook at the issues so that they are addressed appropriately.

Sen. Orenge: Mr. Speaker, Sir, I also want to make an appeal on behalf of the people of Narok. These people have been left in a very difficult situation. We have circumstances where the whole of Narok rose up to register their complaints by organising a demonstration led by the leaders in Narok including the distinguished Senator for Narok. During those demonstrations, one Kenyan lost his life. The matter has not ended. There are court proceedings that will go on for another year or so. I have not seen a case where somebody is not charged but the suspects are still subjected to going to the police and to court endlessly. One such person is a Member of this House whom I suppose that the Senate will have some sympathy to his petition and appeal.

More importantly since the Senate represents counties, the Senator has made a plea before this august House. It would be unfortunate if on account of a report by a committee of the House, we just say that all is well and left the people of Narok with a bad taste in their mouth. I plead with you to find circumstances that can assist. This is not upon you but as the Sen. for Elgeyo-Marakwet has suggested, somebody could come up with a Motion. I plead that at times, it is better to go the extra mile.

This is just like what happened in Burundi. While people were meeting and saying that this was okay and the President could run for elections; that did not resolve the problem in Burundi. Therefore, this Report has not resolved the problems in Narok. If people heard that the issues brought by the Senator were wound up through comments by a committee saying that there is no issue, we would be committing a great disservice to the people of Narok. This is an issue that has been going on for a very long time.

If Narok cannot succeed and yet it is one of the counties with a lot of resources and revenues, if people cannot have their fair share of resources, our obligation under Article 96 – on account of Narok – would appear not to be fulfilled and yet that is what is required of us. We should have an answer that makes sense to the people of Narok.

Sen. (Eng.) Muriuki: Thank you, Mr. Speaker, Sir. The situation we are having is that the people of Narok County were dissatisfied with certain issues and a petition was brought here. The investigation was done and now the Senator of the area says that he has facts or reasons to believe that some facts were left out or presented inaccurately. The work of the Senate is to defend the interests of the counties. So, when we say “Narok County”, we are not talking about the rivers, mountains or land there. We are talking about the people of that County whose interests we are taking care of. Since they can express themselves directly or indirectly thorough the elected representative, who is the Senator for the area, my appeal is that you give room that some of the specific areas which the Senator for Narok County has raised be revisited.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Order Senators! The Chair is equally sympathetic to the plight of the people of Narok County on the need to find a resolution. This is why even this petition was tabled on 30th of April under very clear provisions on the committal of petitions. Standing Order No. 227(2) says:-

“Whenever a Petition is committed to a Standing Committee, the Committee shall, in not more than sixty calendar days from the time of reading the prayer, respond to the petitioner by way of a report addressed to the petitioner or petitioners and laid on the Table of the Senate and no debate on or in relation to the report shall be allowed, but the Speaker may, in exceptional circumstances, allow comments or observations in relation to the Petition for not more than twenty Minutes.”

I cannot give more time even if I wanted because Sen. Ntutu had already exhausted the time limitation. He made a passionate appeal to me and I understood. That is why I told him that he can use Standing Order No. 45(2)(a). So, Sen. (Dr.) Khalwale, Sen. Ntutu was perfectly in order to use Standing Order No. 45(2)(a) because it is a matter on the county or any general topic. He has brought some information which may not have been taken into account by the Committee which is at liberty, as you all know, to interrogate those issues. The suggestion by Sen. (Prof.) Anyang’-Nyong’o is perfectly in order.

Therefore, the House should not feel like we have lost the opportunity. There are many other opportunities within the Standing Orders that we you may use, including the suggestion by Sen. Murkomen. I think that Sen. Orengo got it right, that it is not really up to the Chair, as Sen. (Dr.) Khalwale put it, to use immense powers provided by Standing Order No. 1. Those immense powers should be used selectively and sparingly. You will agree with me that the temptation to use powers has led this Continent to the wrong direction. I am going to provide the leadership, at least, from this House.

Thank you.

Next Order!

NOTICE OF MOTION

ESTABLISHMENT OF SELECT COMMITTEE TO LOOK INTO THE AFFAIRS OF THE KENYA AIRWAYS LIMITED

Sen. (Prof.) Anyang’-Nyong’o: Mr. Speaker, Sir, in line with Standing Order No. 48(5), I would like to give notice of the following Motion.

THAT, aware that the Government of Kenya has a 29.8 percent shareholding in the Kenya Airways Limited, thereby being the largest single shareholder in the Company; cognisant of the fact that Kenya Airways Limited, the national flag carrier has been experiencing tremendous delays and cancellation of flights; aware that each delay and/or cancellation has led to grave losses to the airline thereby worsening the debt burden of the corporation; realising that the airline is now in debt to the tune of Kshs18 billion; further aware that the current business plan of the airline does not seem to take into

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account necessary measures to turn the company around; concerned that the situation if left unchecked may lead to the collapse of the company and great loss to the nation, investors and the Kenyan taxpayers; the Senate now therefore, resolves to establish a select committee to conduct an inquiry into the affairs of the Kenya Airways Limited and its subsidiaries and report to the Senate within three months, taking into account the following:-

- (1) The leasing and buying arrangement of aircrafts since 1996.
- (2) The role of offshore companies in the investment affairs of the airline.
- (3) The identity of the shareholders of these offshore companies and their relationship with the management of Kenya Airways Limited.
- (4) The employment policies and practices of personnel including engineers, pilots, cabin crew and ground personnel.
- (5) The reason for delayed and cancelled flights, their frequency and the magnitude of losses attendant therein.
- (6) Any other matter that may shed light on the financial and management crisis currently facing the airline.

Further, that the Members of the proposed select Committee are:-

- (1) Sen. (Prof.) Anyang'-Nyong'o.
- (2) Sen. Mutahi Kagwe.
- (3) Sen. Hassan Omar.
- (4) Sen. Daniel Karaba.
- (5) Sen. (Dr.) Boni Khalwale.
- (6) Sen. (Dr.) Agnes Zani.
- (7) Sen. Lesuuda Naisula.
- (8) Sen. Peter Mositet.
- (9) Sen. (Prof.) Wilfred Lesan.
- (10) Sen. Billow Kerrow.
- (11) Sen. James Orengo

This Motion being a party Motion is signed by the Senate Minority Leader, Sen. Moses Wetangula, EGH,MP and Sen. (Prof.) Anyang'-Nyong'o, EGH, MP, Senator for Kisumu County.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): What is it Sen. Murkomen.

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. I am sure that you will make your determination when the time comes. However, I would like to know in such circumstances when such a serious select committee is going to be formed, was the consideration made as to whether it is a matter concerning counties? Secondly, why is it that the Motion has only been signed by one side, that is, from the Minority side led by its leader? Is it a party Motion? If it is so then---

(Loud consultations)

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I could not have heard. I have a right to be corrected.

The Speaker (Hon. Ethuro): Order, Sen. Murkomen. If you have a right to be corrected, you do not seek those rights. The Senator concluded that this is a party sponsored Motion and it was signed by the leader of that side and himself as the originator of the Motion. You are not going to look for the Jubilee side to be enjoined to the signatures. You can do that during contributions.

I can confirm that the Motion has appeared here with the approval of the Speaker. That should serve your other issue. Other issues should not be determined now because there is a time to do so when we are voting. I am sure your rights to be corrected have been realized.

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. That request could not have come at an opportune time better than now and especially taking in view the fact that the so called “Pride of Africa” is now becoming a plight---

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Machage. This is Order No.6 – Notices of Motion. This is not the time to debate. There is time to do so when the Motion will be before the House for debate. Members, let us make interventions that are relevant to particular orders.

Sen. Orengo: On a point of order, Mr. Speaker, Sir. Actually, I should not be commenting because you hit the nail on the head by saying that this Motion has been approved by the Speaker. What worries me is that the distinguished Senator who raised this matter is a Member of the Speaker’s Panel and he should not be seen to be undermining the authority of that office. Anything that comes to the House with the approval of the Speaker is presumed to be properly before the House unless there is a substantive challenge. He stood up in a very speculative and not a substantive way. So, the Chair got it right by hitting the nail on the head. He is a Member of the Speaker’s Panel and we will be watching him very carefully to see whether he fits to continue sitting on that Chair.

The Speaker (Hon. Ethuro): Order, Senators. You know this week we have serious business. We have three Bills. You are just flogging a dead horse. I just want to assure Sen. Orengo that Sen. Murkomen has various capacities. When he is on the Chair he will act so and when he is down there he will act like the rest of you. So, he is perfectly in order to inquire into certain things and he has been answered.

Sen. (Eng.) Muriuki.

INQUIRY BY DEVOLUTION COMMITTEE
TO ESTABLISH THE COUNTIES THAT NEED
FACILITIES FOR COUNTY HEADQUARTERS

Sen. (Eng.) Muriuki: Mr. Speaker, Sir, I beg to give notice of the following Motion.

THAT, noting that county governments were allocated offices and premises formerly occupied by the defunct local authorities and to some extent by former provincial administration; observing that these arrangements were satisfactory in most counties; aware that some counties had little, no offices or premises to inherit resulting in serious operational challenges of such county governments; appreciating that there are many counties with inadequate physical facilities; whether they inherited the envisaged facilities or not; concerned that the situation continues to impact negatively on the performance of the said counties; acknowledging that it is the mandate of the Senate to protect the interest of the counties and to ensure that their governments are fully operational; now therefore, in order to form the basis for possible assistance to counties for headquarter facilities, the Senate resolves to direct the Sessional Committee on Devolved Government to conduct an inquire into the needs of the following; (a) four counties: Nyandarua, Tharaka Nithi, Tana River and Lamu; and report to the Senate within one month; and (b) all the other 43 counties and report to the Senate within four months.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION OF PUPILS AND TEACHERS OF
RIARA SECONDARY SCHOOL

The Speaker (Hon. Ethuro): Hon. Senators, before we take Statements, I want to recognise the presence of the pupils and teachers from Riara Secondary School, Kiambu County, seated in the public gallery, who are visiting the Senate today. As you all know, the tradition of receiving and welcoming visitors to Parliament is a long time honoured tradition and one that we shall endeavour to continue upholding. On behalf of the Senate and on my own behalf, I extend a warm welcome to the pupils and teachers of Riara Secondary School.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. Allow me to extend my congratulations to that delegation for coming here because just a few days ago, we were led by Sen. Mositet to a fact-finding session in Kiambu County on the issue of taxation. Since the children are here, we learnt that for every litre that an old woman milks from her cow, she has to pay the county government 30 cents. Since some of these children are children of those poor women, they should leave knowing that the Senate is up and ticking and this injustice will not continue on their lives.

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The Speaker (Hon. Ethuro): Sen. (Dr.) Khalwale, you are completely out of order for the second bit of your assertions by discussing issues before a committee. On the first bit of welcoming the delegation, the Speaker had already done it and it shall remain that way.

Sen. Mwakulegwa.

STATEMENTS

STEPS TO AVERT ADVERSE EFFECTS OF FLOODS IN KENYA

Sen. Mwakulegwa: Mr. Speaker, Sir, I rise to seek a Statement from the Chairman, Senate Committee on Devolution.

Recently, Nairobi and other major towns like Narok have experienced devastating effects of floods after the heavy down pour. Major flooding has led to loss of lives and destruction of property worth millions, both in Narok and in Nairobi. Rivers have been diverted from the natural course by construction of poorly planned permanent structures. An example is Mbagathi River which has caused great loss to property as it forced its way through Nairobi West this week.

In my Statement, I would like the Cabinet Secretary for Devolution and Planning to answer the following:-

(1) what is the Ministry of Devolution and Planning, in conjunction with affected counties, doing as part of the emergency response to avert further disaster of the ongoing rains.

(2) what is the Nairobi county government doing to reclaim Nairobi Dam which is a major water reservoir in Nairobi yet it has been invaded by the water hyacinth?

(3) what sustainable measures has the Ministry, in conjunction with the Nairobi County Government Physical Planning Division, put in place to curb rogue developers from developing structures on wetlands and water courses?

Sen. Murkomen: Mr. Speaker, Sir, first of all I thank Sen. Mwakulegwa for coming up with that issue, because this is a serious crisis in Nairobi. I can confess that I was among the people who got stuck near T-Mall because of that flood. I know that the Cabinet Secretary (CS) may need a lot of time to give a comprehensive report. However, I will try to ensure that we get an interim report within a week and may be a comprehensive one after two weeks, because of the emergency nature of what is happening and so that Senators can follow.

The Speaker (Hon. Ethuro): So ordered. One week, because of – I will use your own words – the emergency nature.

Sen. Orengo, do you have a Statement?

Sen. Orengo: Mr. Speaker, Sir, this thing has just gone wild.

The Speaker (Hon. Ethuro): The request was on.

SAFETY OF KENYANS IN BURUNDI

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, yesterday I requested for a Statement on the unfolding ---

The Speaker (Hon. Ethuro): Senator, it should not be you. It should be the Chairperson first.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, but you called me. I am obeying the Chair. I requested for an urgent Statement on the unfolding events in Burundi, which you graciously directed to be issued today. I can see the Chairperson is here, we are ready to receive the Statement.

Sen. Haji: Thank you, Mr. Speaker, Sir. Unfortunately, I do not have this Statement with me. I have followed this very closely. This decision was made in the afternoon and the letter was delivered to the Ministry at 5:45 p.m. yesterday. I am also aware that the CS went with the President to Tanzania. Hopefully, we will follow it up so that we get a Statement, latest tomorrow. We will try our best.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I am not satisfied with the explanation by the distinguished Senator for Garissa County who is the Chairperson of the Committee on National Security and Foreign affairs.

There are continuing reports from Bujumbura and the unfolding events that are being reported are not positive. Like I said, this is a matter of extreme importance and one would have expected a responsible Government to bring the Statement as urgently as is practically possible in obedience to your direction. You may recall that yesterday the President of Burundi attempted to fly to his country from Tanzania but he could not land. He had to go back to Dares Salaam. Reports indicate that there are two factions in the army; loyalists and those who have staged the coup. It is a real risk that armed conflict can ensue.

I need to repeat that we have many Kenyans and Kenyan investments in that country – bankers, hospitality workers, teachers, nurses and many more. Not to mention that the head of one of the United Nations (UN) agencies in Burundi is a Kenyan and immediate former personal assistant to the Secretary-General of the UN. All these persons from our country stand the real risk of being caught up in a cycle of violence, particularly given the history of this country which has had genocidal waves in the past. The Chairperson, even in the interim, could have assured the country that as soon as the air space of Burundi ---

(Sen. Haji stood in his place)

The Speaker (Hon. Ethuro): Order, Chairperson! He is now addressing you specifically. You will have your opportunity.

The Senate Minority Leader (Sen. Wetangula): He could have even given an assurance that we have stand by capacity by our national carrier and our air force planes to airlift Kenyans back to the country, in the event there is need to do so. I am sure there is going to be need to do so. We do not want to get into a situation like what is going on

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in South Africa, where xenophobic attacks have even cost a Kenyan life and the Government has said absolutely nothing about it.

Sen. Haji: Mr. Speaker, Sir, I am surprised that my colleague and brother is asking whether our carriers can land in Burundi when he knows that the airport there has been declared closed. Anyway, the Statement is on its way and I will receive it at any time. You can bear with me; as soon as I get it, I will let you know.

Sen. Hassan: On a point of order, Mr. Speaker, Sir. The Senate Minority Leader is asking this question not only as a matter of urgency, but out of experience. He, himself has been stranded for a couple of days in a coup situation and he can tell you. Therefore, the commitment that we need is not a question of getting it but to live by your directive that it must be delivered on Tuesday or the next possible opportunity.

Sen. Obure: Mr. Speaker, Sir, I was just going to draw the attention of the Chairperson to the fact that there is considerable anxiety among Kenyans today. Parents have anxiety over their children and relatives out there in Burundi. Having served as a Minister for Foreign Affairs some time back, I know that it would be standard practice in the Ministry of Foreign Affairs and International Trade, for Government to update Kenyans on a regular basis in a situation such as this one. Could you remind them that they are failing Kenyans in this respect and considerable anxiety is building?

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, I was very surprised to hear the Hon. Chairperson of the Committee on National Security and Foreign Affairs say that a Statement could not be issued expeditiously because the Cabinet Secretary (CS) for the Ministry of Foreign Affairs and International Trade was accompanying the President to Dar es Salaam. I thought we live in an age where internet and telephones are available and that the Government should not depend on the physical presence of a person.

This matter is of national importance and there should have been a rapid response unit in the Ministry of Foreign Affairs and International Trade. The work of this unit would be not only to brief Kenyans at every moment, but also keep abreast with any information that may be needed by any Kenyan at any time, given the Constitutional rights of Kenyans. It appears as if in the running of Government, the Government has not realized that we have a new Constitution which gives Kenyans enormous rights to get information from it. It is not just delaying in giving information, but contravening the Constitution for which this Government should be dismissed from office.

Sen. (Dr.) Machage: Mr. Speaker, Sir, I remember – as the Minister for East African Community (EAC) – when we had a problem in this country in 2007, I was made to rush to the headquarters of the EAC's Council of Ministers to give an immediate statement on the Kenyan situation at that time. Is it not proper for the concerned Chairman to reassure this House that the Government is actually concerned and taking action instead of us waiting for papers on whichever day they will be ready without the reassurance?

Sen. Murkomen: Mr. Speaker, Sir, just like Sen. (Prof.) Anyang'-Nyong'o has said, we may require an official statement from the Chairman as the rules of the House require. However, all of us are digitally savvy; we understand what is going on; the situation that is unfolding with the President of this country having been in Tanzania

yesterday with his colleagues. As we speak, some of us who have friends in Burundi have been chatting with them on WhatsApp, phone calls and other mechanisms.

Mr. Speaker, Sir, I agree with colleagues, particularly the Senate Minority Leader, that the Chairman should give an assurance to the House. The statement should be delivered as fast as Tuesday. I do not mind if he can commit himself to a non-written statement. He could have a verbal or phone conversation with the Cabinet Secretary (CS) and take notes as the CS speaks. He should then come and give the information as an interim position of what is happening in that country for the sake of our people who are there.

However, if we are talking about being one EAC, I do not understand why the EAC or the African Union (AU) would not have quickly sent the army – I know that there are a number of procedures – to avert the situation because as we speak, those are the things that the Chairman---

The Speaker (Hon. Ethuro): Order, those are the things that the Chairman has been asked to find out.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, just like Sen. (Dr.) Machage, I served in the EAC. One of the things we used to do on a weekly basis was to brief the President on what we had discussed in Arusha. That is how the EAC works.

(Sen. Haji laughed loudly)

Mr. Speaker, Sir, is the Chairman in order to heckle me when I am trying to seek clarification from him?

(Laughter)

The Speaker (Hon. Ethuro): Sen. (Dr.) Khalwale, how do you confuse an appreciation of your contribution through laughter as heckling?

(Laughter)

I only saw him laughing.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I thought that he was heckling.

Mr. Speaker, Sir that is not how the EAC works. It has got all manner of levels right from senior officers to the permanent secretaries and so on and so forth, until the Summit.

Mr. Speaker, Sir, in view of that, many hours have passed and there has been no single official statement from the Government of Kenya to the extent that we are left with the rumours that come through the media, with a lot of confusion. Over and above this, there are workers that were listed by the Senate Minority Leader. We have a lot of truck drivers who, without travel advisories, will continue travelling to Burundi. Could the Chairman issue an official statement to confirm that there has been a coup? If it has been there, he should issue a travel advisory to that effect.

Mr. Speaker, Sir, it is wrong for the Senator for Elgeyo-Marakwet County to mislead the House that he has been communicating with people in Bujumbura when phone calls are not going through.

Thank you, Mr. Speaker, Sir.

Senators: Point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): You have points of order on what?

Sen. Murkomen: Mr. Speaker, Sir, I know the Senator for Kakamega County as a skilled “bull fighter.” However, I do not know whether he is aware that technology has gone beyond just mere phone calls. You can chat on WhatsApp, Skype, Yahoo Messenger or Google Messenger. There are many ways of communicating. I can assure you that – If he could come here – I have been in consistent communication with my former schoolmates in the United States of America (USA) who are in Burundi.

The Speaker (Hon. Ethuro): Order Senator. The challenge was specific; whether you actually communicated by calling. I almost assisted you because I also did not hear you mention “calling.” You actually mentioned all the others which you have repeated and added some more including confirming to us that you are---. No wonder you are asking other points of order because you are not following the proceedings of this House.

(Laughter)

Sen. Hassan: Mr. Speaker, Sir, did you notice that apart from me and Sen. Murkomen, every other Member who stood said, “when I was a Minister for Foreign Affairs, when I was Minister for---.” I realised that Sen. Murkomen and I were probably the only ones who were somewhere else.

(Laughter)

The Speaker (Hon. Ethuro): How relevant is that? The Chair cannot help you be promoted!

(Laughter)

Sen. Orengo: Mr. Speaker, Sir, I just want to speak a little bit in defence of my Chairman because I belong to the Committee. There have been Members here who have been Ministers for Foreign Affairs. However, Sen. Haji has a distinction of not just being a Minister for Defence but holding two portfolios at the same time; Minister for Defence and Minister for Foreign Affairs, simultaneously.

I also know something about my Chairman. On matters like these when there is frustration from the other end, he has never failed to come to this House and tell us the truth that, “I will not talk to the Cabinet Secretary, I have called them enough.” I know he takes his duties very seriously.

More importantly, Mr. Speaker, Sir, we are not seeing the wider problem and we may not get the answer from the Chairman. There is a dysfunctional problem even at the

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level of the summit and the region. This is not the first president who has fled when there has been a coup in his country. The only difference is that one tried to fly and was murdered when he arrived in Rwanda. This one was at least lucky that he returned back to Dar es Salaam. I fear that his own colleagues invited him to a meeting when they knew that there was danger at home. Eventually they allowed him to fly back to the country. I think there is a dysfunction at the regional level because they should have told him not to run in the first place.

Sen. Muthama: Bw. Spika, Sen. Haji ni mmoja kati ya wenyeviti wa Seneti hii wanaoheshimika sana. Rekodi yake inaonyesha alivyofanya kazi. Hata katika Bunge la Kumi hatukuwa na shida naye. Kwa hivyo, ninaamini ya kwamba ataleta ripoti haraka iwezenavyo.

Bw. Spika, Wakenya ndio wengi katika mataifa jirani ya Tanzania, Uganda, Rwanda na Burundi. Ikiwa kutakuwa na madhara, Wakenya wataathirika zaidi kuliko watu kutoka mataifa mengine. Ndio maana tunasema kuwa, kwa njia yoyote, tungenda kusikia kwamba kuna usalama wa Wakenya.

Tunajua kuwa watu wengi wamekufa. Masikio ya Wakenya yamezoea kusikia vifo; wawe watoto, watu wazima, maskini, watu wanaojiweza au wanafunzi. Kila kuchao, kumekuwa na habari za vifo. Hatutaki mazoea kwamba kwa sababu vifo vimeongezeka, hata vikitokea nje ya nchi, Wakenya watavumilia.

Bw. Spika, tunajua yanayoendelea kule Burundi. Wananchi wa huko wana hasira.

The Speaker (Hon. Ethuro): Order! Order, Senator!

Sen. Muthama: Asante, Bw. Spika.

The Speaker (Hon. Ethuro): Chair!

Sen. Haji: Mr. Speaker, Sir, I am told that in the next three minutes the Statement will be with me. We can proceed with the other Statements and when it comes, I will give it. It is on its way to the Journals office and I have asked one of the Serjeant-at-Arms to go and collect it. That is the information that I have. I do not know how true it is.

The Speaker (Hon. Ethuro): Order, Senators! I will allow that Statement when it will be available, even if it is past this particular Order.

Senate Majority Leader!

BUSINESS FOR THE WEEK COMMENCING
TUESDAY, 19TH MAY, 2015

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I wish to issue the highlights of next week's business, pursuant to Standing Order No. 45.

On Tuesday, there will be the normal meeting of the Rules and Business Committee (RBC). Subject to the decision and deliberations of that meeting, the Senate is expected to continue with business that will not be concluded, yet it appears in today's Order Paper. However, as Senators may know, we are working hard, as a Senate, to ensure that the three Bills that have constitutional deadlines are passed as soon as possible, so that they can be conveyed back to the National Assembly and for Presidential assent thereafter, because that deadline is fast approaching. They are The Public Audit

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Bill, which I am happy to note has successfully gone through the Second Reading; The Fair Administrative Action Bill, 2015, which I am also happy to note that debate on the Second Reading started yesterday and hopefully will be concluded this afternoon and the Public Procurement and Asset Disposal Bill, which I hope can also go through the Second Reading today.

Mr. Speaker, Sir, that being the case, it is possible that next week, if the Committees are ready, we can go through the Third Reading of the three Bills and finalize them. Therefore, that being the case, other than any other business that may be suggested by the RBC, the three Bills remain high on the agenda and priority of this House, both on Wednesday and Thursday next week.

Mr. Speaker, Sir, as I end my Statement, I want to take this opportunity to profusely thank my colleagues, the Senators, for being present as we have been discussing these Bills this week. They have debated robustly and very intelligently. I want to thank them also for being present when we required voting, because I know that we also took a vote on Tuesday this week. I want to extend the same appeal that I keep on extending; that kindly be around next week so that we can pass these Bills and move on with the business that lies ahead of us.

Mr. Speaker, Sir, I now lay this Statement on the Table of the Senate.

Thank you.

(Sen. (Prof.) Kindiki laid the document on the Table)

SAFETY OF KENYANS IN BURUNDI

Sen. Haji: Mr. Speaker, Sir, from the outset I want to thank the Principal Secretary, Ministry of Foreign Affairs for responding to my SMS very fast.

Mr. Speaker, Sir, Sen. Wetangula, pursuant to Standing Order 45 (2) (b) of the Senate Standing Orders requested a Statement from the Chairperson of the Standing Committee on National Security and Foreign Relations at the Sitting of Wednesday 13th May, 2015, regarding the Status of Kenyans in Burundi. The Chairperson was requested to state, first, the measures that the Government has put in place to ensure that the safety of Kenyans living in Burundi is guaranteed.

As the situation unfolds our Embassy in Bujumbura has urged Kenyans to avoid nonessential movement and as much as possible remain at their residence until the situation clears. Indeed, today being a public holiday in Burundi, it is expected that all Kenyans will adhere to the advice. The Ministry continues to receive constant updates from the Mission and as I speak, all Kenyans are safe.

The Chairperson was also requested to state what measures the Government has taken to ensure that all Kenyans living in Burundi are evacuated. As the situation evolves many Kenyans have left Burundi on their own volition, as schools are on holiday. The Government has already evacuated family members and two officers, leaving only

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essential staff, namely, the Head of Mission, the Financial Attaché and the Records Officer. Our Ambassador, who at the time was out of the station attending the East African Community (EAC) Extra Ordinary Summit on Burundi held in Dar es Salaam, Tanzania, on 13th May, 2015, is due to travel back to Bujumbura to coordinate the activities, ensure the safety of Kenyans, monitor the situation and advise the headquarters accordingly.

Mr. Speaker, Sir, as you may already be aware, the EAC leaders; the Presidents of Tanzania (Chair), Kenya, Uganda and Rwanda met in Dar es Salaam even as reports came of the attempted coup. They condemned the attempted coup in the strongest terms possible. The Summit further noted that the environment was not conducive for holding of elections and recommended postponement of the same to a date within the current government's term, to give all parties sufficient time to campaign.

At the time the reports of the attempted coup were reaching the Summit, Nkosazana Dlamini Zuma, the Chairperson of the African Union (AU) Commission was also attending the EAC Extra Ordinary Summit. Earlier, she had called on Burundi to consider postponing the elections. She noted that the environment obtaining in Burundi was not conducive for holding a meaningful election amid violent demonstrations and fleeing of thousands of Burundians to neighbouring countries, particularly Rwanda, Tanzania and the Democratic Republic of Congo (DRC). She further stated that although the AU had intended to send an election observer team to Burundi, they have reconsidered this given the deteriorating situation. It is also further noted that the AU does not condone change of Government through unconstitutional means.

Mr. Speaker, Sir that is the end of the Statement.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, if you have listened carefully, the Chairman of the Committee has made no reference whatsoever to the situation as pertains to Kenyans other than the staff of the Embassy. We know that the Ambassador was out of station - he joined the President in Dar es Salaam - and the airport is closed and, therefore, he cannot fly back to Bujumbura. We also know that the Embassy in Burundi had been stripped to only essential staff. But one would have expected the Chairman and Government to tell Kenyans what the estimated number of Kenyans living and working in Burundi is.

Those are the people that we are most concerned with. Embassy premises are protected territory within the United Nations (UN). It is those Kenyans working and living in Burundi that we are largely and primarily thinking about.

There has been news that in the last two months, over 40,000 Burundians have fled to Rwanda and an even a bigger number has fled to Tanzania.

Mr. Speaker, Sir, you know Kenya is the second largest trading partner with Burundi. So, our truck drivers that the Senator for Kakamega mentioned are sent by their employers to continuously deliver goods to Burundi. The Chairman or the Government has not told us whether they are going to issue any travel advisories to Kenyans going to Burundi in that regard but more importantly a coup has taken place. That is why the President cannot go back, the situation is volatile. We want to hear whether the Government has put in place measures, including standby capacity in the neighbouring

country of Rwanda and Tanzania to mount an evacuation of Kenyans if need arises. What other countries do like the Americans is to send their marines to be within the vicinity to save lives of their nationals. Is this being considered, and if it is, how and when?

Regarding the issue of the African Union (AU), the meeting in Dar es Salaam together with the conduct of the African Union is totally unhelpful to Burundi because you cannot just say postpone the elections because the environment is not conducive. The issue is not the environment; it is whether the President has the right to go for another term. The African Union has done this to other countries by intervening and stopping sitting heads of states from transgressing constitutions. Part of my request is to know what the region is doing to save the situations in Burundi. Africa has had too many problems; we do not need anymore.

Could the Chairman tell us what exact decisive measures have been put in place to evacuate Kenyans, not necessarily limited to embassy staff?

The Speaker (Hon. Ethuro): Senators, there is a lot of interest on this issue but just seek one clarification.

Sen. (Dr.) Machage: Mr. Speaker, Sir, from that brief Statement it is evident that the Government had done nothing, apart from listing three members of the foreign mission staff. We would want to know how many Kenyans are in Burundi and in what categories.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Sen. (Dr.) Khalwale, ask what has not been asked.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, in view of the warm personal relationship between the Head of State of Kenya and the one for Burundi and in view of the lives that have been lost so far, the tens of thousands of Burundians who have been displaced and the coup, that is the biggest Statement these people would say because they want their Constitution to be followed. Therefore, I want to agree with the Chairman that Kenya should not support unconstitutional means of change of Government. If that is true, is our President considering using his warm relationship to prevail upon President Nkurunziza that by wanting to run for office, he wants to use unconstitutional means? The Constitution of that country says that a President can only be in power for two terms which he has served. What is our position as Kenya about his attempt to run for office?

Sen. (Prof.) Lesan: Mr. Speaker, Sir, let me first of all thank the Chairman and the Cabinet Secretary (CS) for Foreign Affairs and International Trade for acting speedily. The issues that are going on are also fast but we all understand that the Kenyan and Burundian soldiers are serving together in Somalia. I would like the Chairman to tell this House the implications of the relationship between the soldiers of Kenya in Somalia and those of Burundi, should Kenya take any of the sides in this conflict in Burundi?

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

*[The Temporary Speaker (Sen. (Dr. Machage)
took the Chair]*

Sen. Ndiema: Mr. Temporary Speaker, Sir, I want to thank the Chairman for that quick response. He has done his part but unfortunately, these events have become too common. Recently, we had Kenyans suffering in South-Sudan and some of them left their properties in a hurry because they were not warned. We should know that we are living in a volatile region. By now, the Government should have a policy on what to do when such situations arise.

Burundi is a big trading country which we trade with and we shall feel the effects even in terms of the refugees. Currently, we are suffering because we are hosting so many refugees. It will not be a surprise if we have an influx of refugees coming from that country. What arrangements have been put in place to vet, receive and decide what to do in the event those refugees come? We also have Kenyans who have invested there and have property. What will happen with their assets in that country?

We are all members of the East African Community (EAC) including Burundi and within the context of the EAC, what have we done because we have a protocol, an agreement and a treaty as to what should be done in such situations? What has the Government of Kenya done in pursuit of those protocols or treaties to ensure that there is peace and tranquility in that country?

The Temporary Speaker (Sen. (Dr.) Machage): Very well, a ruling was made that you limit yourself to one question, try to do that.

Sen. M. Kajwang: Mr. Temporary Speaker, Sir, Burundi is obviously between a rock and a hard place, the rock being an incumbent who is hell-bent on retaining power at all costs and the hard place being the military that is taking over. Unfortunately, the leaders and the summit that is supposed to mediate on this matter- we have some leaders who are famous for scrapping term limits in their own jurisdictions, but to the most specific question and the from Statement read by the Chairperson which I appreciate---. He has talked about an attempted coup yet yesterday President Nkurunziza talked about an imaginary coup. The military leaders were talking about a successful coup. What type of coup are we talking about?

Sen. Muthama: Mr. Temporary Speaker, Sir, the Chairperson should know that Kenyans are the targets in Burundi. This came out so clearly because Burundians believe that the close relationship between the two countries has resulted in steps that have been taken by President Nkurunziza. So, the Chairperson should take this matter seriously and know that because of trade ties, and Kenyans being as adventurous as they are, they are also being seen as the people who have been working and paying taxes to maintain President Nkurunziza's Government. The coup has succeeded; it is not an attempt. Today, Burundians suspect that in fact, President Nkurunziza is hiding in Kenya or somewhere in Tanzania. So, Burundians are looking up to the two countries to save them.

The Temporary Speaker (Sen. (Dr.) Machage): I will allow only one more question. We have a division and I am afraid that we are losing our quorum.

Proceed, Sen. Hassan. Please make it brief.

Sen. Hassan: Mr. Temporary Speaker, Sir, when we bring Statements or responses to this House, whoever is crafting these responses must be extremely serious.

When somebody says that today is a public holiday in Burundi, I think that is a mockery of the intellect of- So, my clarification is---

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Hassan! First of all, that is not good. It is a fact that today is a public holiday in Burundi; you also know that. So, how serious can a Member be to remind you of that? Or how unserious can he be? I think it is unfair to the Senator. I will not demand an apology or whatever but do not repeat that.

Sen. Hassan: Mr. Temporary Speaker, Sir, my clarity was the correlation between a crisis and a public holiday. I see no absolute correlation in that regard. I thought it was a bit below my expectation. Therefore, that is why I needed to seek further clarity.

Secondly, is just to reiterate the African Union (AU) position. It is very categorical in talking about unconstitutional change of governments. We hardly appear brothers and sisters to the unconstitutional violation of the people of those countries and for that matter what Sen. (Dr.) Khalwale said: "The unconstitutional attempt to protract the term." So, what is Kenya's position, broadly, in this region; matters of the coup in Burundi, the protraction of the term of President Nkurunziza and, particularly, the issue of postponement of an election because of an unconducive environment which was partly created by the President himself.

Sen. Haji: Mr. Temporary Speaker, Sir, first and foremost, I want to appeal to my senior Senator, who is the Senate Minority Leader, to listen to Statements when they are being issued. What he is saying is that I only commented about staff in the embassy. That is not correct. This is what the Statement says---

(Sen. Wetangula spoke off record)

The Temporary Speaker (Sen. (Dr.) Machage): Order!

Sen. Haji: You do not have to answer me.

The Temporary Speaker (Sen. (Dr.) Machage): Order, please! Just continue.

Sen. Haji: Mr. Temporary Speaker, Sir, the Statement reads:-

"As the situation unfolds, our embassy in Bujumbura has urged Kenyans to avoid non-essential movements and as much as possible to remain in their residence until the situation becomes clearer."

So, that one is not dealing only with the embassy staff. We are talking about Kenyans generally.

Secondly, the Statement further reads:-

"Our ambassador is due to travel to Bujumbura to coordinate the activities of ensuring the safety of Kenyans who live there, monitoring the situation and advising the headquarters accordingly."

That is also a very clear statement that the Government is not only talking about the staff but also, generally, about all Kenyans. I will avoid the one from the sitting Speaker because I do not want to enter into an argument with him.

Mr. Temporary Speaker, Sir, allow me to comment on Sen. (Dr.) Khalwale's concern, that we should say whether the President is using his good relationship with the President of---

The Temporary Speaker (Sen. (Dr.) Machage): Order! To the best of my knowledge the Speaker has not asked you any question. It is the Senator for Migori who asked the question.

(Laughter)

Sen. Haji: Yes, Mr. Temporary Speaker, Sir, but I have said that the Senator for Migori is now in the Chair. Out of respect, I will not say anything about his request.

Well, the President is using his good office. He went to Dar es Salaam with his other colleagues to try and see what can be done to calm the situation in Burundi.

As to the concerns raised by Sen. (Prof.) Lesan, the relationship between the two armies and the African Union Mission in Somalia (AMISOM); whether any decision reached by Kenya will affect that relationship; I can say with confidence that it will not spoil the relationship between the two countries.

Sen. Haji: Mr. Temporary Speaker, to answer Sen. Ndiema, I think that his concern is legitimate; that Kenyans who are working there have invested and, maybe, they have property. The Government should from now onwards try to identify their properties and wealth and if time comes for them to flee that country, the Government should know how they can be compensated or their properties can be reclaimed from whichever authority which will be there.

On Sen. M. Kajwang's comment, I can say that from what we hear, there is no coup. There is a coup and a counter coup; a counter claim by both parties. So, as things unfold we will know whether this coup is holding and there is change of regime or those who are supporting the current President are winning the fight there.

As to Sen. Hassan's question, it has been the position of the AU that there should be no coups. For quite some time, the military in Africa has adhered to that demand. It was one of the foreign ministers who articulated this very well. It is very unfortunate now that at our door step, Burundi is running into that problem but hopefully this will be resolved as soon as possible.

The Temporary Speaker (Sen. (Dr.) Machage): I very much hope that, that is a just a preliminary answer. We expect to have a detailed answer on Tuesday. For that reason I will put the question so that we put that issue to an end. I will also defer the statements because we have gone far much beyond that time. I will defer the requests for statements and issuance of the same.

Next order, please.

Sen. Njoroge: On a Point of order, Mr. Temporary Speaker, Sir.

What is it Sen. Njoroge?

Sen. Njoroge: On a point of order, Mr. Temporary Speaker, Sir. Last week on Thursday, I was promised by the Committee on Health---

The Temporary Speaker (Sen. (Dr.) Machage): Order, if you listened to me very carefully, you would have know that I have closed that chapter.

CONTINUED CLOSURE OF GARISSA TTC

Sen. Obure: I fully understand you, Mr. Temporary Speaker. I am not in any way challenging you. However, the Speaker made a ruling in respect to a request I had made concerning students of the Garissa Teachers Training College who are in a predicament right now. They have not reported back to college owing to the security situation there. The Speaker had made a ruling and directed the Chairman to provide that statement today. I cannot see the Chairman but I was wondering whether a Member of the Committee, with your permission, could give that statement.

The Temporary Speaker (Sen. (Dr.) Machage): Unfortunately, I will not give permission because I have already made a ruling. We will have the answer on Tuesday.

Sen. Mutula Kilonzo Jnr.: On a point of order, Mr. Temporary Speaker, Sir. Under Standing Order No.39, I kindly request that you go back to Order No.5 on Papers so that I lay a Report of the Legal Affairs and Human Rights Committee on public hearings with regard to the Bill concerning Fair Administrative Action Bill which is a constitutional Bill with a timeline.

We finalised the Report at 2.00 p.m and the Speaker authorized it for tabling when it comes from the secretariat. I beg you.

The Temporary Speaker (Sen. (Dr.) Machage): Very well. The Chair has listened and compassioned this and allowed it. However, do not make it a practice. It is wrong. You can go ahead and lay the Paper on the T able,

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Speaker, Sir, allow me to apologise. The action was not deliberate.

PAPER LAID

REPORT ON PUBLIC HEARINGS REGARDING THE FAIR ADMINISTRATIVE ACTION BILL (NATIONAL ASSEMBLY BILL NO.10 OF 2015)

I beg to lay the following paper on the Table of the Senate today, Thursday 14th May, 2015.

Report of the Standing Committee on Legal Affairs and Human Rights on public hearings held on 13th May, 2015 on the following Bill; The Fair Administrative Action Bill (National Assembly Bill No.10 of 2015).

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(Sen. Mutula Kilonzo Jnr. laid the document of the Table)

BILLS

Second Reading

THE PUBLIC AUDIT BILL
(NATIONAL ASSEMBLY BILL NO.38 OF 2014)

(Sen. (Prof.) Kindiki on 12.5.2015)

(Resumption of Debate interrupted on 13.5.2015)

(Division)

The Temporary Speaker (Sen. (Dr.) Machage): Let us have the Division Bell being rung for two minutes.

(The Division Bell was rung)

The Temporary Speaker (Sen. (Dr.) Machage): Order, Senators! We do not have the threshold. Even if we had the exact number, I would still be afraid if one Member decided to vote 'no'. I, therefore, defer the Division on this Order to Tuesday.
Next Order!

(Putting of the Question on the Bill deferred)

Second Reading

THE FAIR ADMINISTRATIVE ACTION BILL
(NATIONAL ASSEMBLY BILL NO. 10 OF 2015)

(Sen. (Prof.) Kindiki on 13.5.2015)

(Resumption of Debate interrupted on 13.5.2015)

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Mukite was on the Floor, but since she is not here, anybody can contribute.

Please, proceed Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Speaker, Sir, thank you for the opportunity to contribute to the Fair Administrative Action Bill (National Assembly Bill

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No.10 of 2015). I am happy to report that the Committee on Legal Affairs and Human Rights has tabled its report on the public hearing, whereupon we have suggested several amendments to the Bill, particularly on the question of review of decisions by public bodies or private entities.

This is a very progressive Bill. In the past, persons in this country have suffered without any legislative framework on how to handle decisions made outside the public sector, particularly the private sector. I have in mind a recent decision to bar women from a certain private club. If this Bill was in place, it would have required that the private club would have to conduct a fair hearing before refusing the admission of those women to the club.

Mr. Temporary Speaker, Sir, in this Bill, we have also proposed that before a person comes or goes to court, seeking judicial review of a decision, he ought to confirm that the internal mechanisms of that particular body have been covered. Using the same example of the ladies who were barred from a private club, it would have required that if the rules of that club required that there should be a hearing, the court would not take action until it has confirmed that they were, in fact, given a hearing.

We have also separated the question of judicial review and review generally and the reason is as follows; Under Order 53 of Civil Procedure Act, which is made pursuant to the Law Reform Act, Sections 8 and 9, where we lifted the British Jurisdiction of 1926 and never bothered to amend it. Many Kenyans have suffered in terms of getting the order of *certiorari* which is limited to six months without any reasons or any provision for extension. Therefore, the persons who have gone to court, where they have discovered that administrative action was taken and the person who was supposed to take the action was supposed to give the decision to the person simply sat on the decision and gave it after six months. This Bill is now attempting to address that, so that we have left it to the court to determine whether a person has not exercised their right without any unreasonable delay, therefore, then giving the court room to deal with it.

Mr. Temporary Speaker, Sir, in our Committee, we provided for some amendments to say that every person is required to get a reason for the decision. For example, if a person is unhappy with a teacher, police officer or any other person and decides to transfer them to Manderu without giving any reason, this Bill requires that those reasons must be provided. If those reasons are not provided, once this Bill becomes law, that action without reason will be deemed to have been made in bad faith. We are, therefore, protecting persons who were acting and using their power and positions to harass their juniors, so that they would be compelled under the Fair Administrative Action Bill (National Assembly Bill No. 10 of 2015) to give reasons within a specific period.

The Committee on Legal Affairs and Human Rights has stated that if you wake up one day and transfer a teacher from Makueni to Loitokitok, you do not need 90 days to give reasons. The National Assembly had left it at 90 days. To me, 30 days is more than adequate to do so. We have expanded the meaning of 'administrator' or the person who is supposed to have taken action to include private and public bodies. The reason we have done so, is that even in the private sector, there are rules that require some element of fair

process when a decision is supposed to be made. There should be some reasons and a certain process followed.

There is something very innovative about this Bill which I want to highlight just for the record. For example, the traffic department has decided to close Parliament Road on both sides. We have made a provision that where you intend to take a decision that will impact on the public, you are then required under this law to give adequate notice, serve notice and give a reasoned decision to the persons who are affected.

Mr. Temporary Speaker, Sir, for the longest time possible, persons like the military were not subject to fair administration. They would make decisions, expel people from the military and keep the decisions to themselves. In this Bill, we have amended the previous Act that had exempted the military, to include military action. Where they make a decision, this law will require that the decision be subject to supervisory jurisdiction of the High Court.

Under Article 23(2), the Committee and I are drafting a law so that we can have what is called 'address of fundamental violation of human rights by subordinate courts.' The current system of justice is that you cannot file a judicial review application in a court other than the High Court. This has created what I call a class of lawyers and judges who are the only ones who can practice the law with regard to the judicial review.

This particular law will enable a person in a court in Makindu, Kithimani, somewhere in Machakos or somewhere in Kilifi to go to a magistrate's court and seek *certiorari mandamus* and any other order under the Constitution, without necessarily travelling to a High Court.

In the case of coastal region, the High Court is in Mombasa. In other places, it is not easy to access High Court because you have to travel far and wide to get it. Part and parcel of this Bill is to ensure that justice goes all the way to where it should be. In other words, we want to see devolution of justice to the lowest possible cadre of judicial organs in this country.

Mr. Temporary Speaker, Sir, we have also provided that other organs other than quasi judicial organs - that would mean tribunals - will also be required even if they have rules, for example, Kenya Revenue Authority (KRA), of dealing with their workers and discipline, to comply with this law. This is the parent law. There was an issue about the Commission of Administrative Justice (CAJ).

Under Section 55 of the CAJ Act, it is contemplated from the Constitution to CAJ that at some point, their term would lapse. They were worried that this law would either attempt to claw back on the powers that they have on administrative justice or alternatively, they said that we should give them some element of powers under Article 47, to be able to conduct fair administrative processes under this Bill. Our position at the Committee on Legal Affairs and Human Rights is as follows. They have a specific mandate which would not include making them a court, but tribunal or any other form of an organ or judicial organ which would make a decision.

Mr. Temporary Speaker, Sir, in Clause 5(2), the Bill proposes that nothing in this section shall limit the power of any person to challenge any administrative action or decision under the commission of administrative justice Act, 2011. Therefore, the persons

who want to complain to the CAJ will have liberty to do so, under the CAJ Act. Then the CAJ will be required to comply with the provisions and decisions set out under the Act only that they would not be able to be in a position as a judicial body or make the decision that would be considered judgments or rulings.

Since the law and the Constitution contemplated that the CAJ would act for a period of five years. We have proposed in an amendment that will come at the Third Reading stage that the successor who is contemplated to be the commissioner of human rights under the Constitution, would then take over the work that was going on at the CAJ. I want to rest and allay the fears of any person, any litigant in court today who is worried that the cases that they have before the High Court would be affected by this law. We have provided, in an amendment, for a transition of the cases that are currently being handled by the High Court under order No.53, so that they are not affected by the fair administrative action Bill.

I want to tell litigants and Kenyans that the days that their rights under the procedure called judicial review in court was limited, is now gone because we have now come up with a Bill that would encompass larger rights and larger room for them and their rights to be addressed by the courts. The Chief Justice would then be called upon to have to ensure that it is done.

Mr. Temporary Speaker, Sir, on the question of regulations, in the past the law has been passed on regulations without a timeline. We had a presentation by CAJ yesterday that there is a law in this country which was passed in 2004 which provided for regulations. However, up to now, they have not been done. We have made provision that there should be a limitation from the time this Act becomes law, for the Cabinet Secretary to have regulations which would then come to Parliament for Approval. We are trying to change the practice from the one that is in the PFM where the regulations are, first of all, gazetted then approved. It would be required under this law that those regulations are drafted and brought to Parliament for approval by both Houses.

Mr. Temporary Speaker, Sir, we have amended in several places, especially the repetitions that were set out there. We have retained some of the things that the National Assembly removed and some definitions of who 'an administrator' under this Act is, to conform to the definition of a person as interpreted under Article 260.

With those few remarks, I beg to support this Bill. It should become an Act of Parliament as quickly as possible so that the private or public bodies or any person who will make a decision that will affect a Kenyan, would then be required to follow a process. What we have been in the past about looking for - judgment both in common law and other jurisdictions - is a thing of the past. The ruling of Tanker De Souza Versus Tanker Town Council, the celebrated case, are all incorporated in this Bill.

With those few remarks, I beg to support.

The Temporary Speaker (Sen. (Dr.) Machage): Very well, I see no other Member interested in contributing on this Bill. So, I call upon the Mover to reply.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I take this opportunity to thank hon. Senators who have contributed to this Bill. I am sure their contributions will enrich the Bill. I am very happy with the contribution,

especially of my brother, Sen. Mutula Kilonzo Jnr. It was very informed and very detailed. I hope during the Committee Stage, we will make specific amendments where Senators feel we need to amend this Bill.

The importance of this Bill in securing the rights of the people of Kenya in their everyday interaction with Government agencies and Government officers at national level and county level, cannot be over-emphasized. This is a very critical Bill. It will ensure that public officers and public servants adhere to the rule of law and they treat the people of Kenya with decorum and dignity. Where somebody has been mistreated, they have a remedy. This Bill is that remedy.

With those few remarks, I beg to move.

The Temporary Speaker (Sen. (Dr.) Machage): I will defer division on this second reading to next week.

Next Order.

Second Reading

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

The Senate Majority Leader (Sen. (Prof. Kindiki): Mr. Temporary Speaker, Sir, I beg to move that the Public Procurement and Asset Disposal Bill (National Assembly Bill No.40 of 2014) be now read a Second Time.

Mr. Temporary Speaker, Sir, just like the Bill that has gone through the Second Reading debate moments ago, this Bill is one of the Bills that are required to be passed by 27th May, 2015. It is such an important Bill that the Constitution itself speaks very clearly as to what is expected when it comes to the critical issue of procurement of goods and services by the Government agencies at the national level and even at the county government level.

Article 227 of the Constitution is the foundation of this Bill. It says that all state organs and/or public entities must contract for goods and services using a system which is fair, equitable, transparent, competitive and cost-effective. So, in a nutshell, this Bill is trying to provide for a legal framework to ensure that when Government entities procure for goods and services, they use a system that is fair, equitable, transparent, competitive and cost-effective.

Mr. Temporary Speaker, Sir, this Bill aims at giving Kenyans economic justice. We have been talking about fair administrative action which is a broad concept that touches on political and other forms of justice. However, this Bill is about economic justice, so that every Kenyan who wants to do business with the Government can have an opportunity to do so. That opportunity should be provided in a fair, transparent and competitive environment.

This Bill also aims at entrenching a number of other constitutional guarantees, including the following:-

(1) To ensure that certain categories of preferences are provided for in the allocation of contracts, in this case, Government contracts.

(2) Protect or advance the position of certain persons or categories of persons or groups, who have previously been disadvantaged as a result of unfair competition or discrimination.

(3) Ensuring sanctions are meted out against persons who have defaulted in tax obligations or those who are guilty of corruption. That way, they will not continue benefitting or enjoying the economic assets of our country, when they are corrupt or have participated in unlawful activities like tax evasion.

Mr. Temporary Speaker, Sir, the long title of this Bill describes it as a Bill to provide for the procedure for efficient public procurement of assets and disposal of public entities. It repeals the existing Public Procurement and Disposal Act of 2005. However, it has certain savings and transitions to secure ongoing procurement processes that will not be affected immediately this Act enters into force.

I will just summarise some of the key provisions of this Bill because it is very extensive. It has over 183 provisions and a few schedules thereto. Allow me at this stage of Second Reading, to highlight a few provisions. The first one is that it does away with the current arrangement of the Public Procurement Oversight Authority (PPOA), where people who want to participate in Government procurement processes and are dissatisfied can lodge their complaints. This is the tribunal that exists today in public procurement. If they are unsuccessful, they can go to the High Court.

Mr. Temporary Speaker, Sir, what we have here is the PPOA which deals with setting the policy framework and enforcing the regulations in the procurement sector. We also have the tribunal which deals with disputes over tenders for those who think they have not been treated fairly. Finally, the High Court becomes the reservoir of justice in the event that a party feels that the tribunal has not treated them fairly. So, it does away with that system and replaces it with a new system which is basically the same. However, it will be just reshaping and strengthening the institutions a little bit.

In Clause 3, the Bill talks about the guiding principles of public procurement. This includes all the principles that are provided for in Article 10 of the Constitution as national values and principles. These are things like human rights, democracy, accountability, transparency, equity, fairness and all those that are provided for in Article 10.

Mr. Temporary Speaker, Sir, the principles of affirmative action are also stated as guiding principles of public procurement and assets disposal. There are provisions that favour certain categories, especially women, youth and persons with disability who have been disadvantaged for a very long time and unable to participate effectively in competing for tenders and other procurement processes. There is a deliberate effort to ensure that there is a reserve of at least 30 per cent of all tenders at all levels and in every institution to be reserved for those groups, in recognition or affirmation of the principles of affirmative action which are very clearly spelt out in Articles 55 and 56 of our Constitution.

The principles of leadership and integrity in Chapter Six of the Constitution as amplified by the Leadership and Integrity Act are also guiding principles of public procurement. It is that way so that leaders do not engage in, for example, conflict of interest. You do not sit in a tender committee where a company associated with you is either interested in bidding or somebody related to you is a participant in that process. So, there are issues about conflict of interest and other leadership and integrity requirements as guiding principles under this Bill.

Finally, Mr. Temporary Speaker, Sir, regarding the issue of international standards, you will find that in this clause, the principles governing the procurement profession and international norms are also part of the guiding principles of this Bill. Kenya is a member of the World Trade Organization (WTO). There are certain international treaties that are part of the WTO system, including the agreement on public procurement. Therefore, based on Kenya's membership to the WTO and further on our own Article 2(5) of the Constitution that talks about the international law provisions being part of the law of Kenya, this Bill tries to mainstream the international best practices and norms as part of our procurement practices in our Country.

Allow me to highlight a few Clauses in Part II. Clause 7 deals with the role of the National Treasury. However, the whole of that Part II is about the various role players and the institutions that have been created to deal with public procurement processes. One of the role players is the National Treasury and its role in matters procurement will remain policy formulation. This stems not only from the Constitution but also the Public Finance Management Act (PFMA) which is a framework law on all matters that have monetary implications on Government. The PFMA empowers the National Treasury to exercise certain policy functions in these matters of finance, including procurement.

Mr. Temporary Speaker, Sir, the other institution other than the National Treasury is the Public Procurement Regulatory Authority (PPRA). This is the replacement of the current Public Procurement Oversight Authority (PPOA). This is a new institution and its work will be to enforce standards, supervise the system of Government procurement at all levels and investigate complaints against procurement processes that are deemed not fair and such like functions. The PPRA will be under the leadership of our Director-General (DG) who will be in charge of the day-to-day operations and overall leadership of that institution.

Other than the Public Procurement Regulatory Authority, another vital institution created by this Bill is the Public Procurement Regulatory Board (PPRB). So, there is the PPRA and now the Board.

The work of the PPRB is to appoint the DG, among other things, and also to give policy guidance in their implementation. In other words, the PPRB will exercise management functions over the PPRA. The PPRA is the Secretariat if you like; the institution that deals with day-to-day matters of procurement.

Mr. Temporary Speaker, Sir, the Board will have a Chairperson who will be nominated by the Cabinet Secretary and appointed by the President for a term of three years which is renewable. There will also be other four appointees nominated by the Law Society of Kenya (LSK), the Institute of Certified Public Accountants of Kenya

(ICPAK), the Kenya Institute of Supplies Management (KISM) and the Association of Professional Societies in East Africa (APSEA). There will also be two other members to the PPRB, one nominated by the organizations representing the youth and the other one by organisations representing persons with disability. That is a big departure from other bodies that have existed in this area before because for the first time we will have – within the PPRB – one member who is nominated by organizations representing persons with disability and another one nominated to represent the interests of the youth. The one representing the youth will be nominated by youth organizations. This is a good departure from what has been there.

In terms of mainstreaming gender, participation and accessibility of both men and women to the largesse – that is procurement in Government bodies – is the fact that in the PPRB, the Bill requires, in Clause 10, that the PPRB must achieve the principle of gender parity, but not gender equity or at least one third rule as is the debate currently in other fora. In this particular context, there should be gender parity. The ratio of men to women must be 50:50. The youth will have a representative in the PPRB as well as persons with disability.

Members of the PPRB must have a degree; be experts in a related area like law, procurement, accounting, economics and finance and so on. Of course, they must meet the requirements of Chapter Six of the Constitution.

As I said, the function of the PPRB is to ensure the proper functioning of the PPRA. The term of the PPRA is three years and its members are eligible for reappointment once for another term of three years.

The DG of the PPRA must be a citizen of Kenya. He or she must have a degree with 10 years' experience in Procurement or Supply Chain Management matters. He or she must meet the requirements of Chapter Six of the Constitution. There is a very interesting provision here – I think this is as a result of what we have seen in this country before – that for a person to be qualified as a DG, he must demonstrate logical progression in acquiring academic qualifications so that you do not have somebody with a PhD, but they have no high school certificate or first degree or somebody with a master's degree but there is no evidence that they went to primary school. It is now easier to manufacture documents contrary to the situation before. It is easy for some people to go to some streets and manufacture certificates or claim to have gone to a university that only exists in the sky or the internet. That will cure that mischief.

Mr. Temporary Speaker, Sir, I also want to highlight Clauses 27 and 28 which deal with another structure; the Public Procurement Administrative Review Board (PPARB). The PPARB will deal with complaints about tenders and procurement disputes before they go to the High Court for judicial review. The Chairperson of the PPARB should have the qualifications of a judge of the High Court of Kenya. There will be 14 other members in the PPARB nominated by institutions such as the LSK, the Chartered Institute of Arbitrators (CIArb) - the Kenyan Chapter, the Certified Public Accountants of Kenya (CPA-K), the Association of Professional Societies in East Africa (APSEA) and so on and so forth. This is basically a dispute resolution mechanism. The PPARB will be

subject to the usual requirements of fair administrative procedures as we discussed in the other Bill.

Mr. Temporary Speaker, Sir, there will be certain responsibilities by county governments in terms of ensuring that this Act is complied with. You will find that in Clause 33 onwards.

Under Clause 35, the PPARB has the power to investigate breaches of this Act, either *suo motu*, which means, “on its own motion” or by request by any person. They must do so judiciously to avoid claims. If somebody complains in writing – we have seen this before – there must be a way of ensuring the complainant gets justice. However, at the same time, you protect people from witch-hunt where some anonymous people complain about imaginary things just to stop a process from taking place simply because they have not got what they wanted. Not because they have been denied, but because they did not qualify. A balance has to be struck in that regard.

There are very strong powers, in Clause 36, to the PPARB to access – when they are investigating – information and make copies of documents and other powers that are associated with investigations.

The DG of the Authority has powers to require a procuring entity to rectify an anomaly before it goes far. They have powers to even terminate the procurement process if they think the law has been breached. They have power to recommend action by other entities such as the Ethics and Anti-Corruption Commission (EACC) and the Director of Public Prosecutions (DPP) if they think that some offence has been committed in a procurement activity.

Any person who is aggrieved by the vast powers of the DG of the Authority has a right to be heard by the Authority before a decision is made. That was very well with the fair administrative action requirements that we have been discussing. However, other than the right to be heard, the person has a right to require judicial review in the High Court.

Clause 41 talks about the possibility of somebody being debarred from participating in future procurement activities of Government if such a person, for example, is shown to be or has engaged in corruption; has defaulted in paying tax; has breached the Code of Ethics for procurement professionals or has breached a contract that he has been given by non-performance. We have very many cases where people present very nice credentials about their company, technical capacity and the financial capacity only for them to default in terms of performance. Such people can be debarred, but they, of course, have a right to be heard by way of judicial review in case the debarment is unfounded. Any person who is party to that decision of the DG may apply for judicial review.

Part 5 is on internal organization of procuring entities. Again, Clauses 44 to 52 are like the technical procedural demands; that every procuring entity must ensure that there is an evaluation committee in every procuring entity. This committee must operate within certain standards, considering both technical and financial aspects of bids. The procurement officers in procuring entities must be professionals; people who are qualified and those qualifications are recognized by the professional body that recognizes

procurement professionals. There must be a tender committee different from the evaluation committee. The accounting officer is also under duty to establish an *ad hoc* inspection committee, which will supervise compliance with the requirements.

There is provision for sector-wide procurement entities to be established where there is common interest by the entities in question. The entities can also form a consortium of buying public goods, if they have a common interest and they can benefit from economies of scale. Also, procuring entities may appoint agents to assist them in terms of procurement and asset disposal activities.

Part 6 deals with general procurement and asset disposal principles, including a principle like criminalizing any behaviour or activity that leads to the procuring entity procuring over and above what they are entitled under the law and budget, and also what they cannot even consume. We have had procuring entities in this country asking for the supply of goods which they do not need. That is wastage of public funds. So, these provisions are aimed at preventing such practices. The Bill goes on and on.

Since this is a highly technical Bill and I know that the biggest benefit that we expect is when the relevant Committee is able to scrutinize it clause by clause, give us a report---. By that time, we can look at it in detail and provide input, even as we hurry up to meet the deadline. The fact that we are in a hurry does not mean that we should not do justice to the law of this country.

This is a very important Bill which will streamline things in this country, where people can legitimately participate in the economic activities of the country, suppliers of goods and services, who have legitimate business, can compete fairly. Those parties that are aggrieved by decisions of procuring entities have a fair opportunity to complain internally. If they are not satisfied, they can go through the normal judicial process. For me, the key highlight is the inclusion of women, persons with disabilities as well as young people, where, as of must and right; not advocacy, gift, mercy or other nebulous impulses, 30 per cent of the procurement business must go to those groups.

Mr. Temporary Speaker, Sir, without much ado, I beg to move and request Sen. Mutula Kilonzo Jnr. to second.

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Speaker, Sir, I rise to second this Bill. This Bill has come yet again at the risk of sounding repetitious, at the right time. I say so, because this Senate has passed the Division of Revenue Bill and we are going into the third year. However, you must ask yourself whether the intention of having youth, women and persons with disability, as the Senate Majority Leader said, benefit from the special privilege that they have been given under Article 227(2)(a) of the Constitution has been complied with. Every time I visit various counties, the youth, women and persons with disability complain. You will discover that counties have done an injustice to Article 227 of the Constitution because the youth are not considered.

I would have loved to see in this Bill a mechanism of how we will find out that, in fact, county “X” and “Y” have complied. I would propose in the Third Reading that we make it mandatory for counties to publish information of these categories, either at county headquarters or in every ward, because that ideally is the purpose for which

Kenyans said that we should give preference. We call it in law “positive discrimination.” I have not seen this.

Mr. Temporary Speaker, Sir, the other thing that I would have loved to see in a little great detail is not covered under Clause 17(6) which I think we will propose an amendment, is this: We know that most problems in this country arise out of people who take contracts for two years and take seven to deliver. There is no recourse or sanctions and nobody bothers with them. They are blacklisted on paper, but they get other contracts from other places and nothing happens. We forgot some of the sanctions.

Article 227(2)(c) of the Constitution says that there should be sanctions against contractors who have not performed according to professionally regulated procedures and persons who have defaulted on their tax obligations. Although the Committee on Finance, Commerce and Budget which I am a Member has conducted public hearings, I would propose that we look at Chapter 15 on offences and sanctions, so that we can put on notice contractors who are famous for doing shoddy work. In my county, we have so many of them who have built 20 kilometres of roads for over ten years. They have disappeared and nobody has taken action against them. I would love to see some action taken against them. If for anything, it will make me sleep well at night.

Mr. Temporary Speaker, Sir, this Bill has introduced very novel clauses. I just want to highlight some of them. There is a proposal that in specialized contracts in public entities exceeding Kshs5 billion, those contracts will have to be cleared by the Attorney General and Cabinet Secretary in charge of procurement. These fly-by-night contractors who are all over the place, who seem to have some element of judicial immunity from prosecution will be tackled at this level.

The establishment of regional panels of the administrative review board is also something that I find very novel in this proposed Bill. That will help in addressing some of the concerns and delays in procurement. We know that the bulk of corruption in this Republic happens at procurement. Procurement in this country has become what I call “a textbook exercise” where before you advertise for procurement the persons who are going to get the job are already known. This is a practice that has devolved to our counties. We are sounding a warning, they should be told that time has run out and we are going to catch up with them soon.

Mr. Temporary Speaker, Sir, the appointment of membership of the regulatory board has been tackled by the Senate Majority Leader. I do not want to go to that. The setting of terms and conditions of service, Salaries and Remuneration Commission (SRC) to comply with the Constitution but the incorporation of LSK, a body that we respect, the Institute of Certified Public Accountants of Kenya (ICPAK), Kenya Institute of Supplies Management, and the association of professional societies---. We will make sure that we remove quacks and fly by night contractors. I have also mentioned the issue regarding the approval of the Attorney-General (AG), the Cabinet Secretary (SC) of contracts under paragraph 134 that are above kshs5 billion.

Mr. Temporary Speaker, Sir, regarding the preferences and reservations of budgetary allocations to women which is in Clause 53(6), we will reiterate this if it is the only thing that we are going to say, that our women and youth must participate in

economic empowerment of counties, that is the reason there is devolution and it cannot be a public relations exercise. There is a very interesting clause called Promotion of Citizen Contractors. For the benefit of anybody listening or those watching, allow me to introduce you to the promotion of citizen contractors who are Kenyan citizens who own at least 51 per cent shares, they will be getting a bonus of 20 per cent of total score in evaluation provided by the contractors, provided that they attain the minimum technical score.

On Clause 86(2) on corruption in tenders, change of numbers and documents, I am told that envelopes are opened at night and then things are sneaked in. That practice is going to come to an end. This Bill requires that there shall be no correction, amendments and adjustments. We have put corruption cartels on notice; it is time for them to evacuate because if they cannot comply, they will have to go and look for a place where they can do illegal business.

In the previous Bill, I mentioned that we have had practice in legislation where we provide for regulations, but what happens is that because there is no timeline. The person who is supposed to come up with the regulations takes their sweet time and they do not give regulations. In the Bill, there is a timeline of 12 months given to the Cabinet Secretary to operationalize the Act by drafting regulations. What is more interesting is the same thing that we said in the previous Bill on Fair Administration of Justice. These regulations will have to come to this Parliament for approval. Therefore, we will eliminate the bureaucratic delays that are one of the things that are famous in this country other than Maasai Mara.

Mr. Temporary Speaker, Sir, comparatively, the Committee of Finance, Commerce and Budget has gone into great details to check whether we are in good practice with other jurisdictions. You are aware that we have compared our law with that of Botswana. I can confirm on my feet that we have complied with the law in Botswana. We have gone further ashore to the United States of America (USA) and checked whether our Procurement Regulatory Authority enjoys similar functions and whether or not we would have complied in terms of best practice to what they do there. I am happy to say that the law which is the Public Procurement Regulatory Authority Ordinance of 2002, in the USA is on all-force with our current Bill. I would like to say that the Committee on Finance, Commerce and Budget has proposed various amendments which we will be bringing here.

There is something interesting that I noted here which I would like to mention as I support this. There are many methods of procurement that we know, but there is now something called Electronic Reverse Auction. I would love to see electronic procurement; you are aware of it, because when we visited the State of Punjab, they told us that they now have something called e-Procurement. If we have proposed Electronic Reverse Auction, there is no reason we do not have e-Procurement as one of those methods to attain the well written Article 227 on procurement of goods and services.

In attempt to make this fast forwarding digital way of procurement, additional procurement methods have also been addressed, including the one that I have just mentioned. For the benefit of those persons who are worried, I want to say that the Bill

has provided in great detail, transitional clauses on page 120 of the Third Schedule; a lot of the procurement proceedings commenced under the previous law have been reserved. A lot of the things, including Section 51(2) on records of procurement, Section 67 with contracts formed before the commencement, Section 130 with regard to contracts formed before the Act, Section 140 with regards to contracts formed before the Act are all very clear. Section 43 regarding sections formed before the Act, are all covered.

This Bill is well drafted because I have covered transition, the things that are weak in the previous Act and the questions that have bothered Kenyans about the PPOA. We now have a new name and we hope that we have not just baptized it with another name called PPRA and yet it becomes as they famously say, “new wine in old wine skin.” I am hoping that is not what has or will happen. However, in any event even if it happens, this law has proposed methods of dealing with the faster procurement methods and the things that are ailing our economy.

Mr. Temporary Speaker, Sir, the argument going on even in my own county is that procurement could not be done because of the timelines, money has been returned and all those little arguments which do not have a basis in law would be addressed in this Bill, so that no governor of a county government will stand up one day, during the day, in front of the citizens of this Republic and say that they were unable to procure good and services that would help their counties because of timelines, or any other impediments that were there in the other Act which has been dealt with.

I pray that we do not have the excuses that I have seen here in terms of Statements by contractors, like one who has been building a road to my home town in Mbooni, where he claimed that there was delay of 68 weeks because of post election violence yet we did not have post election violence in Mbooni. That is why I urge all Senators to support this Bill because those excuses will now become a thing of the past.

Mr. Temporary Speaker, Sir, I beg to second.

(Question Proposed)

The Temporary Speaker (Sen. (Dr.) Machage): Proceed, Sen. Mositet.

Sen. Mositet: Mr. Temporary Speaker, Sir, let me from the outset support the Bill. This is a very good Bill. The Bill tries as much possible to make sure that it is in line with our new Constitution where we have the devolved governments and procurement becomes very important.

This country is suffering from insecurity and corruption. Corruption starts at the procurement stage. The Bill has tried as much as possible to address how corruption can be fought. Also, we have seen that other than bringing equity, fairness and getting value for money, we are also seeing a case where our citizens are being empowered to go into business through this Bill such that they can compete with international contractors and have a chance to win.

Mr. Temporary Speaker, Sir, other than that, the Bill also states that, at least, even for any international contractors or those who will be getting some business and are foreigners, they have to partner or give Kenyans some shares. Equally, through the

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Committee on Finance, Commerce and Budget, we are proposing an amendment to make sure that we cascade the same to the county level so that at the county level---. If it is Mbooni, Makueni or Kajiado, where we know that in some areas we do not have contractors or business people with capacity, when we get contractors with capacity from other counties, they must make sure that they get also those within that region. The money which was meant not only to deliver services there, but also to empower that region economically, finds its way into that county.

Our Committee will try to bring some amendments. We will try as much as possible to see that we can fight corruption through this Bill. Currently, you hear that we have the technical and then financial aspects to be evaluated. From the outset, all those who were participating were qualified then automatically it means that there is something. Through our Committee on Finance, Commerce and Budget, we will bring an amendment to make sure that the technical and financial aspects carry the same weight so that it can either be 50 per cent and the other one 50 per cent. That way, people will not use the Act to abuse or make sure that they corruptly give jobs to their favoured people.

Mr. Temporary Speaker, Sir, there is also another issue which came out very well from the public; for those who have participated in tenders and lost, sometimes they get notification letters when, already, those who were awarded the tender are on site or executing their jobs. Out of that, it came out very well. It will always be good that, at least, those notifications are done on time so that even the ones who are awarded are aware that already if there were some complaints, then they have enough time. For those who have some complaints to lodge, they will not say that they were not given sufficient time. The winners of the tenders will also be notified.

You also find some funny scenarios whereby when the evaluations are done, we have always had other people complaining that their documents were plucked off, some papers were missing and you could even hear that a certificate of incorporation was missing. Those are documents which you could get straight away from the Registrar of Companies and you are able to see whether the company is genuine or not.

For the PPRA, I believe it will function as per the Bill and will make sure that there is fairness anytime a complaint is made. The fact that we will also have them devolved into regions will make it very easy so that any person who had maybe a complaint in Mandera will not necessarily need to come to Nairobi for the complaint to be heard.

Mr. Temporary Speaker, Sir, with those few remarks, I support the Bill. It is a good Bill. It is very timely and I urged the whole House to support it.

The Temporary Speaker (Sen. (Dr.) Machage): Very well. I see no other Member interested in contributing to this Bill. I, therefore, call upon the mover to reply.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I beg to move.

The Temporary Speaker (Sen. (Dr.) Machage): What is it, Sen. (Prof.) Kindiki?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Similarly, Mr. Temporary Speaker, Sir, I rise under Standing Order No.54(3) to request the Chair to defer putting of the question on this Bill to Tuesday.

The Temporary Speaker (Sen. (Dr.) Machage): Very well, it is so ordered.

(Putting of the Question on the Bill deferred)

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

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

Sen. Mositet: Hon. Senators, I will defer order Nos.11, 12, and 13. I now order that we go to order No.14.

BILLS

Second Readings

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

THE COUNTY ASSEMBLY SERVICES BILL, (SENATE BILL NO. 27 OF
2014)

THE INTERGOVERNMENTAL RELATIONS (AMENDMENT) BILL
(SENATE BILL NO. 36 OF 2014)

(Bills deferred)

MOTIONS

REVIEW OF EXISTING LEGISLATION ON HEALTH
CARE TO MAINSTREAM AND ENHANCE CARE
FOR PATIENTS WITH DEMENTIA

Sen. (Dr.) Machage: Mr. Temporary Speaker, Sir, I beg to move the following Motion:-

THAT, aware that currently there are approximately 44 million persons living with dementia worldwide, a figure that is expected to triple by 2050; acknowledging that caring for dementia patients can be a difficult experience; appreciating the contribution of family members and other care givers of people suffering from dementia across Kenya; noting with concern that mental healthcare does not seem to be a priority in the public health sector in Kenya since the allocation for mental healthcare is less than one per cent

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of the total public health budget; acknowledging the importance of raising awareness of dementia and ensuring that people with dementia are treated with dignity and respect; appreciating the contribution of non-governmental organizations such as the Africa Mental Health Foundation and the International Institute for Legislative Affairs who provide a platform for sharing of views and experiences on care of people with dementia; noting the need to enhance awareness on and provide better care for patients of dementia; the Senate directs the Standing Committee on Health to immediately initiate review of the existing legislation on health care in order to mainstream and enhance care for patients of dementia and further that the Committee submits a report to the House on the matter within ninety (90) days.

Mr. Temporary Speaker, Sir, if blessed by God and after being born you grow up, then old age becomes a gift. This is a gift that a few enjoy. This is a gift that can be very detrimental to somebody's wellbeing, a gift that may not be a blessing at all and which may generate too much weight for the younger generation to carry. I peg this Motion on Article 57 of the Constitution that gives that leeway for good care to the elderly of this country.

Dementia invariably is a syndrome. This is a combination of very many diseases of mental ability. In nature, it is just a deterioration of the cognitive action and that is the ability to process thoughts beyond what may be expected from the normal ageing. This is a major cause of disability and especially to the elderly because it affects memory, thinking, and orientation, and comprehension, calculation, learning capacity, language, and judgment and even eating. It makes one suffer from inability to decide to eat. It causes deterioration of emotional control, social behaviour, interferes with motivation, among other things.

In real sense, the major cause may be one particular disease, Alzheimer's disease which means shrinking of the brain. This may include the following diseases; anxiety disorders, distractive impulse control and conduct disorders, dissociative disorders, feeding and eating disorders, precognitive disorders, neurocognitive disorders, neuro-development disorders, personality disorders, sleep and wake up disorders and many others which include psychosomatic symptoms and related disorders. Even substance and addictive disorders sometimes may follow trauma after an accident. I put this information for the sake of record. You do not have to think very much about it, because it is medically oriented.

It is important to note that Alzheimer's disease is the major culprit here and others like the psychotic disorders, the Parkinson's disease which follows episodes of boxing. Our known famous boxers age with this kind of trembling disease. Mr. Mohammed Ali is a good example. Some people have impulsive grumbling. They sit and start grumbling. There are also schizophrenia disorders which present themselves like madness where somebody starts running around. There is also the bipolar disorder where somebody in the morning is very happy, but one hour later they turn to a completely different person. The person changes and becomes very unpredictable.

Indeed, we have a Bill that was actually legislated in 2012 which, amongst other things, sought to consolidate laws relating to health, provide regulations relating to

healthcare services, consolidate interrelationship between the national and county health institutions, establish or coordinate agency for professionals within the health industry and provide for attachment on the basic rights of health. Of course, we did not have counties at that time. We referred to districts. This Bill was not passed. My intention is to have this Bill passed so that amongst other things we can also include review of procurement and supply of medicine, review of the Kenya Service Authority, Review of the Traditional and contemporary medicine and look at the regulations and access to medicine for the elderly and the intellectual property issues regarding the same.

Mr. Temporary Speaker, Sir, it is important to note that this disease affects between 2 per cent to 10 per cent of all the old people above the age of 60. This is worrying because quite a few of us in this House are either entering that bracket or are within the bracket. Therefore, we need that kind of care especially knowing that in Kenya, despite the Abuja Declaration which put medical care to be given, at least, 15 per cent of the budget allocated to any country, we only use about US\$ 84 per person per capita on health, out of which less than one per cent is dedicated to matters of mental healthcare.

My request is on the last sentence. I request that this House gives the mandate to the Standing Committee on Health to immediately initiate and review existing legislation on healthcare in order to mainstream and enhance healthcare for patients of dementia and further that the Committee submits a report to the House on the matter within 90 days. That is the only prayer. Forget about the hullabaloo which we are trying to introduce and teach in a very short lesson on what the disease is all about.

That is what the Motion is pegged on. I beg to move and request Sen. Kithure Kindiki to second the Motion.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I beg to second this very important Motion from the Senator for Migori, Sen. (Dr.) Wilfred Machage. Dr. Machage is a well known Kenyan and a medical doctor of repute. Therefore, it is not strange that a Motion like this one would be sponsored by my brother Sen. (Dr.) Machage.

The Holy Bible, in the book of Psalms says; the life of a human being is only, but three score years plus ten. Mathematically put, that is 70 years and the rest of human life is a bonus from God. Therefore, the fact that many Kenyans are growing older while active is a reality. The complexities of modern life have brought some of the health challenges which were not very common in our society to the fore. Today, you will find certain diseases like dementia which may not have been very common in the past becoming common in our country.

I am sure that Sen. (Dr.) Machage, being a health expert, must have good reasons he believes that this country has come to a point in time when we must have legislative interventions to ensure that we provide reasonable and adequate healthcare so that people who live with dementia can live in dignity.

The issue of the complications that come with older people was anticipated when the Constitution was drafted. That is why in Article 57 of the Constitution, the State is under obligation to take measures to ensure that all older persons have reasonable care

from their family and the State. The State is also enjoined by Article 57 of the Constitution to ensure that older persons fully participate in the affairs of the society and pursue their personal development. Article 57(c) is critical to this Motion where the state is under obligation to take measures to ensure that older persons receive reasonable care and assistance from their families and the State. What are these measures the State is supposed to take? They are policy, legislative and administrative measures.

Mr. Temporary Speaker, Sir, I look at what the Mover of the Motion, Sen. (Dr.) Machage, is looking for. He is looking for a comprehensive audit of the existing legislation. However, if you look at the content of the Motion, you will find that he is also decrying the fact that the budgetary allocations that have been done on the issue of mental health are inadequate. In my view, if this Motion passes, which I hope it does, the Senate Committee on Health must not only help us to come up with proper legislation on this issue, but must also find ways of ensuring that we achieve the budgetary objectives that are appropriate and can deliver health care support for people living with dementia. They must live in dignity and we give effect to Article 57 of our Constitution.

Mr. Temporary Speaker, Sir, the issue of taking care of older people, or people who have certain health challenges like people with dementia, has for a long time been left to the relatives and sometimes friends. However, because of the increasing complexities of modernity in African societies, it is no longer possible for children, young adults and other family members to be available to take care of their aging parents some of whom could be patients of diseases like dementia.

As much as we are still very alive to our values as Africans, it has become impossible because of the complexities of modernity. Their availability is not guaranteed. However, the type of care that these patients who are unable to process thought properly any more require is so intense and time consuming that they require professional care givers sometimes. Therefore, the whole question of resources being available, so that these patients can be taken care of, like it would happen in other developed countries, becomes extremely important.

Other than family members, the work of giving care to such elderly people and patients of dementia and similar diseases such as mental health patients has been left to Non-Governmental Organizations (NGOs). However, I want us to remind ourselves that the duty to provide health, including mental health and the health of older persons is not the primary duty of NGOs. The primacy of the responsibility lies on the State. This is the more reason there is need for adequate legislation and policy interventions, including appropriate budget allocations to ensure that this area of mental health receives the attention it deserves.

Mr. Temporary Speaker, Sir, dementia is a reality and the complexities of modern life have made certain diseases that were not common in Kenya before become common. The realities of modernity have made it impossible for family members to give adequate care to elderly people, including people with dementia. For that reason, the only remedy is to make sure that we obey the Constitution and come up with legislative measures to help us take care of patients of dementia. Since I am not an expert in health, I do not want

to take the risk of saying more than I have said. However the importance of this Motion cannot be over emphasized.

Mr. Temporary Speaker, Sir, I beg to second this Motion.

(Question Proposed)

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Speaker, Sir, I rise to support this Motion. From the outset, I would like to say that it is only a doctor of medicine that would think of something like this. I thank Sen. (Dr.) Machage for this Motion.

At this instance, I want to disclose that my family and in particular my cousin, suffered from dementia for a long time. These people are treated as outcasts. Where I come from, when somebody suffers from dementia or some elements of lunacy, someone would say that there has been a spell cast on him. However, the doctors will tell you that in the definition of dementia, it is a gradual death of brain cells which causes and leads to impairment of memory, reasoning, planning, and behavior; this includes Alzheimer and many other things.

Mr. Temporary Speaker, Sir, Mathare Hospital has remained the same for eternity. The last time that there was anything about the hospital is when our own boxer, Ms. Congestina Achieng was taken there. There was an outcry in the whole Republic. People contributed money and went to visit her. They were alarmed that somebody could suffer from dementia. This is just one case of a person we know very well. If statistics had been taken, you would find that maybe out of every 10 families, there is somebody who suffers from dementia. The ones who are lucky manage to find their way into a market to borrow some food and walk around. In some communities, particularly in my work at Rotary Club, you will find that these people are locked up in dog kennels or in chains like I saw in a place called Ndia, in Kirinyaga.

The Government, under the public sector, is only allocating one percent of the total public health budget to mental health. This financial year, the total allocation of the national Budget is Kshs51 billion. Therefore, they are just receiving one per cent. There is a category of people called dementia. These are persons who have suffered from loss of brain cells. If you go to other countries, they take care of the old people. There is a home called Huruma Home somewhere in Runda. It takes care of the old people. We do not have a deliberate attempt, other than the one the Senator has mentioned by AMREF to set up homes to take care of people who suffer from dementia.

Mr. Temporary Speaker, Sir, the right to life in this Constitution, includes the right for a person with dementia or diminished mental capabilities to live with human dignity. That includes proper dressing, proper medication, care and attention. We must stop this issue of complaining like they do in some communities, including mine, when we see a person running around without clothes and imagine that person has been bewitched. That is not the case. The only way we can do so, is by removing these practices that are with us and have been with us since our forefathers; is to go the way that Sen. (Dr.) Machage has proposed. If we do not want to discriminate anybody, why are we discriminating people suffering from dementia or reduced mental capacity?

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Mr. Temporary Speaker, Sir, even other than the Standing Committee of Health reviewing existing legislation on health care, they must review their budgets. They must actually visit Mathare Hospital physically, count the number of people there, find out what amenities they have, find out the number of care givers they have, find out the conditions under which they sleep, find out whether the persons who are treating these people are also remunerated well. We complain about nurses in Pumwani and Kenyatta National Hospital (KNA), but nobody ever considers the persons who are working in Mathare Mental Hospital.

In fact, in the HANSARD, in my proposals, I suggest that other than reviewing legislation on health care, they should also give us the facilities available, not only in Nairobi, but in the 47 counties. We need to know whether the national Government has a provision for it in any of the other hospitals that exist in the Republic. More importantly, since the governors and counties have requested for this function of health, we must also insist that they put a certain allocation of their health budget to take care of the persons with dementia. That person with dementia is a person who could be our relative, especially knowing how we live in our African society.

Mr. Temporary Speaker, Sir, without further ado, I would like to support this Motion. Once again, I congratulate Sen. (Dr.) Machage for this noble Motion. I have seen it before on the Order Paper, but it has taken too long to get to the Floor of this House. I want to repeat that the right of life to any person who breaths, walks, sees or not; any person who has no right faculties is the same and we cannot discriminate. Just like it was said in a famous case in the Supreme Court of India that the right of life, includes the right to live with dignity. Persons who are considered insane or mad should be treated well, clothed, bathed and fed, just like any other Kenyan.

Thank you, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Mositot): Since there are no more requests, I ask the Mover to reply.

Sen. (Dr.) Machage: Mr. Temporary Speaker, Sir, as I reply to this Motion, I take this opportunity to thank the contributors. The Statements they have made will remain in our HANSARD and can be quoted.

Sen. (Prof.) Kindiki says that dementia is a reality and that must be appreciated. Sen. Mutula Kilonzo Jnr. says that we must take care of our aged and the patients whose mental capacities and faculties are in doubt. The integration of health mental policy in our primary health care issues has been an objective in this country for about two decades, but there has been insufficient allocation of resources. Therefore, no implementation at all has been made apart from singing that song.

Indeed, the management of health care in Kenya has not been sufficiently addressed. The country has only 75 psychiatrists. Out of that, 21 are in the university system. Again, out of this, 28 per cent are in private clinics. We have only about 500 psychiatric nurses of whom 250 work at mental healthcare associated facilities deployed in national and county levels. Therefore, each sub-county or county hospital will only have about two nurses. Each sub-county will have about 1,500 people with psychosis

and, maybe, about 15,000 people with common mental disorders at any particular time of the year.

We have concentrated a lot of our efforts in the treatment of communicable diseases such as tuberculosis, the HIV/AIDS scourge, malaria, cholera, measles and so on, but non-communicable diseases are a reality. In the text books that some of us read earlier when studying medicine, you would say a statement like “cardiac diseases are rare or non-existent in the black African community”. This is totally false, especially knowing that we had little research and no proper diagnostic facilities to give a proper diagnostic preference. The truth is that we see a lot of cardiac diseases now that our facilities have improved. Indeed, this is a major killer even for Members of Parliament now.

Therefore, dementia has to be looked at. It does not have to be a full-blown dementia. Even if you took a medical assessment of all the Members of Parliament from the ages of 30 years, you will find early degrees of dementia in some of the normal appearing characters. Madness is not necessarily there, it is just the degree of madness and the community from which you come from that will dictate whether you are defined as mad or not.

Mr. Temporary Speaker, Sir, if you go to the Maasai Community where you come from, madness may be described as bravado, where you decide to go to hunt for a lion for no reason at all. In some other communities that might be defined as madness. So, it depends on where you come from, your social structure, beliefs to really define what madness is all about. Some cases of dementia may be looked at in the society as; “Oh! My grandfather forgets these things.” It just stops there, and you think it is normal. Some of these people could live well with early intervention.

Mr. Temporary Speaker, Sir, my prayer is very basic and simple. This is not even a county Motion. Give us that leeway; that fulcrum; support us, so that we can come up with a proper legislative sort of form to mainstream and enhance care of patients with dementia. Further, to order the Committee that this report be submitted in this House within 90 days.

The Temporary Speaker (Sen. Mositet): Hon. Senators, just like the Mover said, this Motion does not affect the counties. I, therefore, put the question:

(Question put and agreed to)

The Temporary Speaker (Sen. Mositet): Next order

ESTABLISHMENT OF NACC COUNTY OFFICES

THAT, cognizant that the core mandate of the National AIDS Control Council (NACC) is to develop strategies, policies and guidelines relevant to the prevention and control of HIV and AIDS in Kenya; noting that the operational structure of NACC has not been aligned to the Constitution of Kenya 2010; acknowledging the objects of devolution as set out under Article 174 of the Constitution; recognizing that under the Fourth Schedule, the health function has been devolved except for the health policy and

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referral hospitals; concerned that an estimated 1.2 million Kenyans are infected with HIV/AIDS and a 100,000 are infected annually; recognizing the need to achieve an “*AIDS free society*” by stepping up the fight against the pandemic at the County level, the Senate urges the National Government to set up the National AIDS Control Council (NACC) County offices in all County Headquarters with the National Headquarters providing overall coordination and that the resources allocated for the fight against HIV/AIDS be disbursed and managed at the County level.

The Temporary Speaker (Sen. Mositet): Since the Mover of the Motion is not here, I order the same Motion to be deferred to the next sitting.

(Motion deferred)

ADJOURNMENT

The Temporary Speaker (Sen. Mositet): Hon. Senators, there being no other business, the Senate stands adjourned until Tuesday, 19th May, 2015 at 2.30 p.m.

The Senate rose at 6.04 p.m.