

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

Tuesday, 26<sup>th</sup> May, 2015

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

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

#### PRAYERS

#### MESSAGE FROM THE NATIONAL ASSEMBLY

APPROVAL OF THE MEDIATED VERSION OF THE ENVIRONMENTAL  
MANAGEMENT AND COORDINATION (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILL NO.31 OF 2014)

**The Speaker** (Hon. Ethuro): Hon. Senators, I wish to report to the Senate that pursuant to Standing Order No.40 paragraphs 3 and 4, I have received the following message from the Speaker of the National Assembly regarding the approval by the Assembly of the mediated version of the Environmental Management and Coordination (Amendment) Bill, (National Assembly Bill No.31 of 2014).

“Pursuant to the provisions of Standing Order No.150 of the National Assembly Standing Orders, I hereby convey the following message from the National Assembly;

Whereas the Environmental Management and Coordination (Amendment) Bill, National Assembly Bill No.31 of 2014 was referred to a Mediation Committee in accordance with the provisions of Article 112(2)(b) of the Constitution;

Whereas the National Assembly on the 26<sup>th</sup> May, 2015 considered and approved the mediated version of the said Bill as required under Article 113(2) of the Constitution;

Now therefore, in fulfillment of the provisions of Standing Order No.150(4)(b) of the National Assembly Standing Orders, I hereby convey to the Senate the said decision of the National Assembly.”

Hon. Senators, as you are aware, this is one of the Bills with a Constitutional timeline of 27<sup>th</sup> May, 2015 which is tomorrow, Wednesday. You will also note that the report of the Mediation Committee on the Environmental Management and Coordination

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(Amendment) Bill, National Assembly Bill No.31 of 2014 is listed at Order No.8 in today's Order Paper.

I, therefore, urge all hon. Senators to avail themselves to transact this important business as it will require a majority of the delegations to pass.

Next Order!

## STATEMENTS

**Mr. Speaker:** Order, hon. Senators! Are there no Statements today? What is happening to the Committee on Finance, Commerce and Budget? Yes, the Senate Minority Leader.

**The Senate Minority Leader** (Sen. (Dr.) Wetangula): Mr. Speaker, Sir, mine is listed under 2(a).

### PLANS TO OPEN MORE CONSULATES IN USA TO SERVE AS POLLING CENTRES

**The Speaker** (Hon. Ethuro): Where is the Chairperson, Standing Committee on Legal Affairs and Human Rights?

Where is the Vice Chairperson, Sen. Sang?

**Sen. Sang:** Mr. Speaker, Sir, the Chairperson of the Legal Affairs and Human Rights Committee is still not around. We, as a Committee, are concerned that even after obtaining a commitment by the Attorney-General that a response to this statement would be supplied to us within a week; this is the second week and we are yet to receive the statement from the Attorney-General. Following the advice of the Senate Minority Leader, it is not the work of a Committee Chairman to run around the corridors of the Ministries and the Attorney-General's Chamber.

Mr. Speaker, Sir, I seek guidance on whether I can still be allowed more time to solicit for this Statement from the Attorney-General himself and I will gladly do so tomorrow. I will also try to catch him in his office tomorrow.

If the position is still as we were guided by the Senate Minority Leader that we should not be running around these offices, I guess we can still pursue this matter using the official channels through our Clerks. I will be guided by the Chair. However, we, as a Committee, are frustrated by the pace at which the Attorney-General's Office responds to our issues.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, that explanation from the distinguished Senator is mischievous, to say the least.

He started by saying that the Chairman of the Committee is not here. He then went ahead to make unhelpful prepositions as to why the statement is not here. The absence of a Chairman of a Committee is no bar from business being transacted in this House. The Committee is not about a Chairman, but Members. Quite often, you will direct any Member present from the Committee to transact business.

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This is a very critical and urgent Statement. We are trying to forestall a mischief that is being brewed by the Jubilee Government in preparation to cheat the country into the elections of 2017. We need to have a statement so that we can interrogate this attempt to hijack the duty, role and functions of Independent Electoral and Boundaries Committee (IEBC) by the Executive. Could he assure us that tomorrow, there will be a statement on the Floor, so that we get ready to interrogate it?

**Sen. Sang:** On a point of order, Mr. Speaker, Sir. Is the Senate Minority Leader in order to suggest that my response was mischievous? I was just stating that the Chairman of the Committee is not around. That is why I was stepping in as the Vice Chairperson. There is no mischief in that. However, I also said that we have tried through the official channels to push for the Attorney-General to supply us with this Statement. However, that has not been forthcoming.

If this House allows us to go to the doors of these offices so as to solicit for these Statements, I will be willing to do so tomorrow. I will look for the Attorney-General and indicate to him that the commitment he gave that we would get the Statement within one week has not been fulfilled by his staff. That is something I can do tomorrow. However, that does not mean that I will get the Statement tomorrow. I am just making an undertaking that I will try to reach the Attorney-General tomorrow and see whether I can get the statement.

**The Speaker** (Hon. Ethuro): So, when do you want to give us the Statement?

**Sen. Sang:** Mr. Speaker, Sir, I should report progress on whether I can give the Statement tomorrow.

**The Speaker** (Hon. Ethuro): What is it, Sen. Khaniri?

**Sen. Khaniri:** Mr. Speaker, Sir, I am sure you heard the hon. Senator saying that he is even ready to go and beg, knock doors of a Cabinet Secretary to get a Statement. It should be noted here that nobody is doing us a favour by bringing these statements to this House. It is our constitutional right. The Constitution gives us powers similar to the powers of the High Court under Article 125 of the Constitution, to summon anybody. Is he in order to imply that he will be going to beg for statements when he knows that he has powers to summon these people to give these statements and evidence?

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. In fact, I hoped that the Chair would come to my defence when I said on the Floor of this House that Members and chairmen of committees should not go and prostrate themselves before Cabinet Secretaries to get statements to this House. I was not advising any Committee not to discharge its functions, but I was simply having Article 125 that Sen. Khaniri has quoted in mind. You invite them and if they do not show up, you summon. If they do not turn up, you have sanctions. Why would the distinguished young Senator who is a lawyer by profession want to look so meek in the face of the law when the law is there to defend him?

**The Speaker** (Hon. Ethuro): Sen. Wetangula, I am sure by reference to the “Chair” you meant the “Speaker”. I remember very well the day you raised that matter and the Speaker actually came to support you. That was in the matter related to Sen.

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Karaba and is true for everybody else. Where you needed my support was in the mischief which was obvious from the expressions of the Senator from Nandi; creating the impression that he was unavailable to discharge his responsibility just because the Senate Minority Leader had suggested some things. I want to completely agree with the Senate Minority Leader that the issue was not that you go prostrating yourself before the Cabinet Secretaries. They have a responsibility to the country and that some of those responsibilities are being discharged through this House.

**Sen. Orenge:** On a point of order, Mr. Speaker, Sir. I am just concerned that we are continuously being seen to be helpless as regards the responsibility of the Executive to the Senate and to Parliament as a whole. We like citing Article 125 which I think is an important one in relation to the responsibility and obligations of the Cabinet. However, the more appropriate Article is 153 of the Constitution which makes it an obligation for Cabinet Secretaries to attend before a Committee of the National Assembly, or Senate. They have no choice. The words used are “shall attend before a Committee of the National Assembly, or the Senate when required by the Committee.” There is no question of discretion or choice on the part of the Cabinet Secretary.

When part of the Executive, including the Ethics and Anti- Corruption Commission (EACC), gives summons even to Senators to appear, we appear without any doubt in our mind that they are discharging a function. When it comes to the Senate, it looks like the Cabinet Secretaries have a matter of choice. I hope that at one point and as requested by the Senate Minority Leader from your seat, you can make this situation clear to the Cabinet that it is not just being summoned as witnesses, but it is part of their constitutional obligation.

The other issue which gives this statement a very important dimension is that an officer of the IEBC has already said that they do not recognize what the Cabinet Secretary said with regard to this matter and yet there has been no reaction to that statement by the Executive. This means that the Executive is trying to show us that they interfered with the last elections like they want to interfere now. Therefore, this matter requires a quick reaction because all legitimacy of republican governments comes from elections. This is not a matter that should be left in abeyance.

**Sen. Sang:** Mr. Speaker, Sir, I stand guided. We will invoke all the necessary and available constitutional provisions and any supporting legislation. I will also invoked my senior status in the Jubilee side of Government to ensure that we have a statement in the shortest time possible that addresses all those issues.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, if you listened carefully to the remarks of Sen. Orenge, he alluded to the fact that the current Government wants to interfere with the next elections. Could Sen. Orenge substantiate that allegation?

**The Speaker** (Hon. Ethuro): Sen. (Dr.) Machage, there is really no issue before the House. That is an issue that can be addressed when the Statement is brought. Sen. Orenge just raised his fears that it could be possible that the delay was as a result of that. I do not think you expect the Vice Chairperson of the Committee to start giving the House speculative responses.

**Sen. Orengo:** Mr. Speaker, Sir, I said that they want to do it like they did it in the last elections. If I am given an opportunity to say how they did it, I am quite free to do so. However, I stand guided.

**The Speaker** (Hon. Ethuro): Sen. Orengo, you shall be guided here, but my problem is really procedural. There is really no matter before us. We really do not want to lose the very important Statement sought by the Senate Minority Leader by starting to engage in other things. Your issues can be addressed when that Statement is properly before the House so that we have a matter that we can really speak to. I hope Sen. (Dr.) Machage was not holding brief for anybody else.

Sen. Sang, you have immense powers, not imaginary, but real powers, which are enshrined in Articles 125 and 153(4). In fact, Article 153(4) says Cabinet Secretaries should give Parliament regular reports. Given that we are dealing with the office of the Attorney-General of the Republic, he owes it to the country, unto himself and the office and his professional colleagues, to just do the right thing. So, give us a report by tomorrow. In any event, we want that Statement latest Thursday.

**Sen. Orengo:** On a point of order, Mr. Speaker, Sir. Sen. Sang said that he is a senior member of the Jubilee administration. Whereas I have a lot of respect for him and if he cannot get a statement from one Cabinet Secretary, does his seniority count for anything?

*(Laughter)*

**The Speaker** (Hon. Ethuro): What is it, Sen. Wetangula?

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. Have you noticed that repeatedly as the proceedings are going on, Sen. Njoroge has kept on raising his hand as if he is in a classroom?

*(Laughter)*

We have gadgets here that would trigger the Speaker to catch his eye. Unless he was saluting what was going on---

**The Speaker** (Hon. Ethuro): Order, Senators! First, Sen. Njoroge raised his hand, but it was not as dramatic as is being portrayed by the Senate Minority Leader.

Secondly, the Senate Minority Leader is the least qualified to question gestures of communication. He has also been using the verbal one repeatedly and loudly.

*(Laughter)*

At least by raising the hand, there is no other noise being made.

Proceed, Sen. Njoroge.

**Sen. Njoroge:** Mr. Speaker, Sir, I know that I have stretched my hands about three times. I have gadgets here and I can use them. It is already pressed. So, I was not

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waiting to use my hands. It is only that he is always watching me whenever Jubilee issues are mentioned. That is the time I stretch myself. It just happens like that!

*(Laughter)*

**The Speaker** (Hon. Ethuro): Order, Senators! I intimated that my screen is clear and clean. I suspect and given that most of you have been on a voice communication mode, I deduce that the gadgets may not be working. There is nothing on my screen. All the time I have given Sen. Sang the chance to speak, nothing was reflecting on my screen. That was my understanding.

*(Loud consultations)*

*(Sen. Njoroge raised his hand)*

What is it, Sen. Njoroge?

**Sen. Njoroge:** Mr. Speaker, Sir, since I have understood that the gadget is not working, I have decided to use my hand. Last week on Thursday---

**The Speaker** (Hon. Ethuro): In the meantime, the technicians need to look at my gadget.

ESTABLISHMENT OF A BATTERY ASSEMBLY  
FACTORY IN NAIVASHA

**Sen. Njoroge:** Mr. Speaker, Sir, last week, I was to get a reply to a Statement which I had sought three weeks ago regarding the multi-million shillings battery assembly factory in Naivasha, Nakuru County. The reply could not be made on Thursday because of time. Therefore, I request that you intervene so that I get the reply from the Committee on Health.

**The Speaker** (Hon. Ethuro): Sen. Njoroge that one can be done at the end of the listed statements. We will deal with the listed statements first, then we come to your statement.

Proceed, Sen. Adan.

IMPLEMENTATION OF MALKA DAKA IRRIGATION  
PROJECT IN GARBATULA

**Sen. Adan:** Mr. Speaker, Sir, I have two Statements that are ready. If you allow me I will issue them. There was a statement request that I made to the Committee on Agriculture, Livestock and Fisheries on the Malka Daka issue. I believe that the Chairperson is not here, but the Vice Chairperson is here.

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Mr. Speaker, Sir, we had a meeting with the National Irrigation Board. They promised that they will go to the ground to confirm what is happening. Therefore, I want the Vice Chairperson to confirm that for the purpose of the record.

**The Speaker** (Hon. Ethuro): Proceed, Vice Chairperson. Which Committee was that?

**Sen. Adan:** Mr. Speaker, Sir, it was the Committee on Agriculture, Livestock and Fisheries.

**The Speaker** (Hon. Ethuro): Proceed, Sen. Ndiema.

**Sen. Ndiema:** Mr. Speaker, Sir, we had the chance to summon the officials of the Ministry on the issue of Malka Daka Irrigation Scheme. The Senator had the opportunity to attend and interrogate the matter. The main issues that were pending on that day were; why it appeared that two pump houses were being constructed---

*(Loud consultations)*

**The Speaker** (Hon. Ethuro): Order, hon. Senators! Vice Chairperson, the Member only wanted to know. If you are not ready, you will come back to the House later. We cannot prosecute Committee business on the Floor.

Order, let us hear from the Vice Chairperson first.

Proceed, Sen. Ndiema.

**Sen. Ndiema:** Mr. Speaker, Sir, I was just bringing the background. We held the Committee meeting. We summoned the officials of the---

**The Speaker** (Hon. Ethuro): Order, Vice Chairperson! Give us the conclusion first then we will know whether to go for the background or not.

Are you ready to respond to her or not?

**Sen. Ndiema:** Mr. Speaker, Sir, yes; I am ready. They will go there in September.

**Sen. Adan:** Mr. Speaker, Sir, I do not know whether I should respond to my brother. He has all the information. We were dissatisfied with the presentation after interrogating the Ministry officials. The Committee agreed to give the Ministry up to September to finish what they are doing so that we can go to the ground. I thought that is what he should have reported here for the purpose of the HANSARD.

Mr. Speaker, Sir, if you allow me---

**The Speaker** (Hon. Ethuro): Order, Senator! That is exactly what he has said finally. He said the Committee will be visiting the county in September. I suppose that is after getting the necessary information from the Ministry.

You may now proceed with other Statements.

ABORTED VISIT TO THE USA BY  
PRESIDENT UHURU KENYATTA

**Sen. Adan:** Thank you, Mr. Speaker, Sir. I have two Statements to make. The first one is with regard to a request by Sen. (Eng.) Muriuki. He wanted to know the objective of the visit to the United States of America (USA) by His Excellency the President. I have shared this Statement with him.

Mr. Speaker, Sir, His Excellency the President was invited as a key speaker to the 2015 Milken Global Conference which was scheduled for 26<sup>th</sup> April to 29<sup>th</sup> April, 2015. The Global conference brings together intellectuals and leaders to explore solutions to challenges in financial markets, industry, health, government and education. This year's conference aspired to increase global empowerment by advancing collaborative solutions in capital creation of employment and improved health, through independent data-driven research and innovative policy initiatives. Specifically, the strategic value of the conference laid its potential to catalyse global investment in infrastructure and the development of our common markets in Kenya and East Africa broadly, hence, the intended representation by His Excellency the President and President Kagame of Rwanda.

Mr. Speaker, Sir, His Excellency the President was going to be the headline speaker at the three major events; Corporate and Investor Roundtable, Global Overview Plenary and Sub-Saharan African Panel: The State of Affairs - a perspective from the Heads of State.

In addition to holding private conversations and interviews to position Kenya and East Africa, His Excellency the President was going to meet the film industry in Hollywood to help revamp the film sector in Kenya. The visit was also going to include a tour to the Los Angeles Ports Authority. Los Angeles recently made major renovations and upgrades to the ports, similar to what Kenya is aspiring to do with the Port of Mombasa.

Mr. Speaker, Sir, secondly, the Senator also wanted us to indicate the scheduled itinerary of His Excellency the President during the said visit. The scheduled itinerary was: Nairobi to Dubai, 23<sup>rd</sup> April, 2015, at 1700 Hrs, by special aircraft; Dubai to Los Angeles, 24<sup>th</sup> April, 2015 aboard Emirates at 0855 Hrs; Los Angeles to Dubai, 29<sup>th</sup> April, 2015, aboard Emirates, at 1645 Hrs, arrival in Dubai on 30<sup>th</sup> April, 2015 at 1935 Hrs and Dubai to Nairobi, 1<sup>st</sup> May, 2015 at 1400 Hrs.

Mr. Speaker, Sir, part (c) of the question wanted an explanation as to why the flight by His Excellency the President had to abort midair. The decision was taken by the pilot due to information about escalated military activity over Yemeni airspace.

Mr. Speaker, Sir, part (d) of the request reads:-

“State the number of persons in the aborted flight and steps taken to ensure their safety after the flight aborted.”



There were 14 persons aboard and eight crew members. A decision was taken to return to avoid exposure to any risk and the Kenya Civil Aviation Authority and Kenya Airports Authority were fully briefed to prepare for the return.

Part (e) reads:-

“Indicate the benefits that the country stands to lose as a result of the President cancelling this visit to the USA.”

Kenya did not lose any benefit as a result of cancellation of the trip to the USA. His Excellency the President was effectively represented by Dr. Fred Matiang’i, the Cabinet Secretary, Ministry of Information Communication and Technology, who was nominated to be the leader of the delegation. With support from the private sector, who also attended the conference, the Kenya delegation clearly reinforced Kenya’s position as a country of choice for USA investors and as a gateway to high growth resource rich East African market.

Part (f) reads:

“State the disciplinary action being taken against all public officers responsible.”

Mr. Speaker, Sir, no blame has been apportioned to any public officer.

Part (g) reads:-

“Explain steps being taken to ensure that such a scenario compromising the security of His Excellency the President does not occur again.”

Mr. Speaker, Sir, the scenario was unpredictable due to the circumstances referred to in (c) above.

Thank you, Mr. Speaker, Sir.

**Sen. (Eng.) Muriuki:** Mr. Speaker, Sir, I think I was entitled to a copy of that statement before it came to the House. Sen. Dullo said that it was shared, but she actually came, showed me and went away, for which I thank her.

A number of aspects of that statement are fairly casual. For example, it says that the flight was aborted because the pilot decided to come back. A pilot is not in charge of an aircraft only when it is in air. He or she starts during the planning stage. He or she is the one who actually determines the route. Therefore, to say that they were not aware there was a warzone in Yemen and hostility between Ethiopia and Eritrea and so they returned, is to be very casual.

Could the Vice-Chairperson go and come back with a more comprehensive answer? How come the plane carrying our President was planned to fly over an active warzone, knowing that only last year a Malaysia passenger aircraft was actually shot down in Ukraine for simply flying over an active warzone?

Regarding what steps are being taken to ensure that, that kind of scenario does not happen again, it is very casual to say that nobody was found responsible. We want to know how that happened in the first place. You go all the way and then discover midair that there is war ahead. Lastly, to say that no disciplinary action was taken against anyone, is to suggest that the decision by the pilot to come back was again quite casual, if there was no problem.

**The Speaker** (Hon. Ethuro): Vice-Chairperson, just note the issues.  
Sen. Wetangula.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, allow me to get embarrassed on behalf of Sen. Dullo for coming to read such a statement to this House.

Mr. Speaker, Sir, when she tells this House that we lost nothing, is she aware that even an image loss is a loss? A country puts its President in the air and casually turns back and then we are told that we lost nothing.

Since that incident, we have had three contradictory statements coming from the Executive. We were told that the plane turned back because it was going to fly over Yemen, which was a warzone. The war in Yemen did not break out that night. Yemen has been on fire for the last several years.

Later, we were told that it was not Yemen, but Ethiopia that made it difficult for the plane to proceed and yet we know that planes are flying in and out of Kenya over Yemen. In fact, yesterday but one, Sen. Orengo and I came on an Emirates aircraft from Dubai. We flew directly over Yemen.

Could the Vice-Chairperson tell this House if it is not a fact that those who lured the President to go to this meeting in Los Angeles did not disclose to him that a notorious Wall Street criminal, who has even been to jail, was the one who was on the forefront of organizing this meeting and they realized that at the last minute? To save the President embarrassment, they turned round midair to come back to Kenya and start duping Kenyans that it is because there was conflict in Yemen, which everybody knew has been there for the last three years.

**The Speaker (Hon. Ethuro)**: Please, proceed, Sen. M. Kajwang.

**Sen. M. Kajwang**: Thank you, Mr. Speaker, Sir. That statement has revealed something that many Kenyans were not aware of; that the President was scheduled to go to Hollywood around the same time when people were dying in Kenya. That is extremely unfortunate. For some reasons, I feel happy that the President did not make it to Hollywood when our children were being killed in Garissa.

Mr. Speaker, Sir, more specifically, I would have wished that the statement told us a number of things. One, it has been reported that the President had been dropped from the detailed programme. If you go to the Milken Institute website, where the detailed programme for that workshop has been posted, the President is not listed. The only other person from Kenya who is listed is Mr. Bob Collymore. Could we get a confirmation that the President turned back because he had been dropped from the programme?

Secondly, is it possible for us to get a confirmation that on the same night, how many other flights made it successfully to Dubai through that route? Why is it that it is only the President's flight that was turned back? We have also been treated to press reports that the Ministry of Foreign Affairs had sent a protest note to Ethiopia and summoned the Ethiopian Ambassador to Kenya. Could we get that confirmation?

Thank you.

**The Speaker** (Hon. Ethuro): Please, proceed, Sen. Billow.

**Sen. Billow:** Mr. Speaker, Sir, I had pressed the button earlier when it was not working. I am sorry.

**Sen. (Dr.) Machage:** Thank you, Mr. Speaker, Sir. The history of African Presidents and tragedy is well known. We know that at one time, a President of Mozambique was killed by having his plane bombed in air. We also know that the Presidents of Burundi, Rwanda as well as Sudan had the same fate. Is it possible that this was an assassination attempt, cleverly planned and executed, to kill the President of the Republic of Kenya under dubious circumstances?

Secondly, who were the planners of this journey, who did not know that the President's flight would go through a warzone? Thirdly, is that the only path to The United States of America (USA) from Kenya?

**Sen. Orengo:** Thank you, Mr. Speaker, Sir. Normally, when it comes to travel of a Head of State, I think that there is standard protocol. For a Head of State to go through a warzone there should either be a military escort by aircraft, whether from the domestic country's own national air force or any of the authorities which are in control of that airspace. We really need to understand what the protocol is in terms of the safety of the President in Kenya. Does he travel anyhow in any warzone to the extent that it is left to the pilot to decide midair that there is increased military activity? What other equipment does he have in the aircraft to know whether there is, indeed, increased military activity?

Mr. Speaker, Sir, this is very important because under Section 40 of the Penal Code, it is treason to imagine or even conceive the death of a President. I do not want to see a situation whereby through carelessness or recklessness we lose a Head of State. There maybe somebody very ready and available to assume that office, but law and behold, I would rather have the one there.

**The Speaker** (Hon. Ethuro): Order, Sen. Orengo!

**Sen. Orengo:** Mr. Speaker, Sir, I thought that I was making a valid point.

*(Laughter)*

Truly speaking, I would rather have this Head of State than any other if he has to come from the Jubilee Coalition. That is why I am asking this question.

Secondly, I think that we should not take for granted what the Senate Minority Leader has said; that it has been in the media that the host of that conference is someone by the name Mr. Milken. That gentleman was prosecuted and jailed for more than ten years for internal trading inside the Wall Street, more that 20 or 30 years ago.

We want to know under what circumstances some conman can come to put a case to the President and tell him that there is a nice meeting in Los Angeles where he is likely to meet Mr. Harrison Ford and make business out of the trip. Is there some standard rule to ensure that the President only goes to meetings which have been organized in a certain fashion? I plead with the Vice Chairperson that we have proper answers to these questions. Otherwise, we may wake up one day and find somebody else, who wears a turban, as President of the Republic of Kenya.

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**Sen. Okong'o:** Thank you, Mr. Speaker, Sir. Mine is to request to a clarification because the last part of the Vice Chairperson's answer, said that nobody has been held responsible. She also said that the pilot decided to turn back. In the recent past---

**The Speaker** (Hon. Ethuro): Order, Senator! Just ask for the clarification. You had started very well.

**Sen. Okong'o:** Mr. Speaker, Sir, we want to know why the pilot decided to turn back, and nobody has been held accountable.

**The Speaker** (Hon. Ethuro): I am going to take the last clarifications from Sen. Abdirahman, Sen. Ndiema and Sen. Mutula Kilonzo Jnr.

Please, proceed Sen. Abdirahman.

**Sen. Abdirahman:** Thank you, Mr. Speaker, Sir. I heard my sister, Sen. Dullo, say that we have not lost anything. We actually lost colossal amounts of money. Presidential trips are expensive. The fact that this trip did not materialize means that we lost so much of the tax payer's money.

Secondly, representation by the Cabinet Secretary, Mr. Fred Matiang'i, is not the same as representation by the Head of State, in any kind of meeting, especially where you have mentioned the various levels. Is Government considering action against those who had planned this aborted trip?

**Sen. Ndiema:** Mr. Speaker, Sir, will I be in order to request that the Committee thoroughly interrogates and investigates that matter because it is very serious? To say that there was no cost does not suffice. There certainly must have been cost in planning such a trip.

Secondly, in view of the danger that has been alluded to against the life of none other than the President and his entourage, I think that the Committee would do better to interrogate this issue further and even call the pilot to ask him whether it is actually him who solely decided to come back. We have heard so many conflicting reports.

**The Speaker** (Hon. Ethuro): Order, Senator! You have put your case.

Please, proceed, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Speaker, Sir. This incident is embarrassing to this Republic. I want to remind the people who think that they own the President that he is actually a symbol of national unity and he does not belong to Jubilee. This is a serious matter. It is possible that the persons who planned this function and whatever it is that they did, are attempting to hide. This Senate may be the only recourse of saving the Head of State the embarrassment that he was caused of having to come back to Kenya and summon his Cabinet Secretary in charge of Foreign Affairs.

In terms of clarifications, I would suggest, just like Sen. Ndiema has suggested, that this matter needs a serious enquiry. Of all the enquiries that we have had under the Commission of Enquiries Act, this is one of them that the Senate must conduct. If not for anything, but to save this Republic the embarrassment of our Head of State who returned to this Republic and then retreated to Sagana in sheer embarrassment of the Government that he is leading.

Thank you, Mr. Speaker, Sir.

**Sen. Njoroge:** Mr. Speaker, Sir, I wonder whether it is by mistake or deliberate that the television today is being switched on and off. I have never seen that before.

**The Speaker** (Hon. Ethuro): Let me find out.

**Sen. Hargura:** Mr. Speaker, Sir, I would like to seek one clarification from the Vice-Chairperson. She said nothing was lost, but we know that when these trips are planned all those who go for the trip are given per diems or imprest. Is she saying that they have all surrendered?

I also want her to substantiate because she said we lost nothing. People must have received imprests and hotels booked. Does it mean that they have surrendered the money?

**Sen. Adan:** Mr. Speaker, Sir, I would like to respond to the concerns raised by my colleagues. I appreciate that the concerns are valid. Nevertheless, some of the issues that were raised are pegged on rumours from the media. We do not have to listen to rumours, especially the concerns raised by criminals on the issues between Ethiopia and Somalia. That is information from the media. I am not in a position to respond to that. The Committee will further clarify the concerns raised by Members, but let me confirm to Sen. (Eng.) Muriuki that I have not mentioned anything about Eritrea.

In terms of representation in the conference, we lost nothing. In terms of imprest for officers, the Minister represented the country. Of course, it might not have been effective. However, in the circumstances, he represented the country. In terms of finances, I cannot answer as to whether it was surrendered or not.

Again, there are many other concerns which I might not be in a position to answer. We, as a Committee will meet and discuss on how to deal with the issue and report to the House.

**Sen. (Eng.) Muriuki:** Mr. Speaker, Sir, I have two points to make about this issue. First, Sen. Adan has offered to go back and get comprehensive answers. But alongside that, I suggest that the Chair orders the Committee on National Security and Foreign Relations to investigate this matter specifically. After the pilot casually decided to come back, could they also find out at what stage was the President actually informed that they were headed to Nairobi?

**Sen. Adan:** Mr. Speaker, Sir, as I said earlier, we are going to investigate and also respond to the issues raised by Sen. (Eng.) Muriuki.

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. What is your direction? Is the gracious lady going to bring a further statement or is the Committee going to investigate the matter and bring a report? Will they bring it in form of a Motion so that the House can debate it? What is your direction because she has avoided answering any single question that was asked on the Floor of the House on the matter? All she has said is that she is going to look for information. Is the Committee going to carry out an inquiry or is she going to bring a further statement?

**Sen. (Dr.) Zani:** On a point of order, Mr. Speaker, Sir. There is no “gracious lady” in this House, at the moment.

**The Speaker** (Hon. Ethuro): Order, Sen. (Dr.) Zani. You seem to be speaking with finality. Who are you referring to?

**Sen. (Dr.) Zani:** I think a Senator should refer to another Senator as “Senator so and so”, but not as “gracious lady”.

**The Speaker** (Hon. Ethuro): That is correct.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I meant “the distinguished gracious Senator”.

**The Speaker** (Hon. Ethuro): Order, Sen. Wetangula! That is what you meant, but not what is supposed to be. The Standing Order is very clear.

**Sen. Adan:** Mr. Speaker, Sir, I would request the Senate Minority Leader to withdraw that remark because according to our Standing Orders, we are supposed to call each other Senators. There are no “gracious ladies” here.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I am shocked at this rejectionist philosophy creeping into this House. A distinguished gracious lady Senator is not offensive, unless she is denying any association with grace.

**The Speaker** (Hon. Ethuro): Order, Sen. Wetangula. The Chair has no problem when you use words that describe and are accepted. However, when there are protests, we have no recourse, but to the Standing Orders. The Standing Orders are very clear, elaborate, simple and plain. Standing Order No.90 (6) states:-

“A Senator shall refer to another Senator by the title Senator (name of the Senator)”

I want to believe that the first Senator is you and the other Senator is Sen. Adan Dullo. That is simple. There is no gracious, lady or grace. Why can you not do it; just leave it as it is and we proceed?

**Sen. Orengo:** On a point of order, Mr. Speaker, Sir. This Standing Order is not put in the negative. It does not say you shall only refer to another Senator as Senator only. It just says you shall refer, but it does not say you shall not refer. There is nothing put in the negative. So, it is not exclusive. The rules of interpretation are very clear.

**Sen. Obure:** On a point of order, Mr. Speaker, Sir. Ever since I met Sen. Dullo, I always thought she was a very gracious lady. Am I now being asked not to think so?

**Sen. Ndiema:** Mr. Speaker Sir, the Standing Orders also give allowance for tradition and custom. We have referred to some as “Learned Senator”. When the Senator for Bungoma referred to Sen. Adan as gracious, she did not object. I do not see why Sen. (Dr.) Zani objected. We have always referred to her as “Dr.” we should just refer to her as “that one”.

*(Loud consultations)*

**The Speaker** (Hon. Ethuro): Order, hon. Senators! I am afraid that with all the spirited defence that you have given to the Senate Minority Leader, it cannot work before the Chair. With all due respect to the Senior Counsel, whom we all defer---

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*(Sen. Hassan spoke off record)*

*(Laughter)*

Order! I have not mentioned any name. Why are you appropriating yourself? However, that may be my wish and thank you for at least not taking credit which does not belong to you. That is the spirit of this Standing Order. It is the statement that it is making.

Sen. Obure, it does not mean that Sen. Adan is not a gracious lady. That is different. You can put many other adjectives after the name. A Senator shall refer to another by the title: "Sen. Adan, the gracious, the most beautiful." You should be at liberty to do all those, but after the name.

*(Laughter)*

Sen. Wetangula, I am sure you have been guided. Could you, please, confirm that you have been guided?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker Sir, you have guided the House by reading the Standing Orders selectively.

*(Laughter)*

If you went to Standing Order No.90(3), what is offensive is where you use offensive or insulting language in respect of a senator or another person.

Mr. Speaker Sir, I speak very good English and I am quite well versed with the language. I have never known "grace" to be insulting or offensive. That notwithstanding, I also visit Standing Order No.90(6). It does not say: "A Senator shall only refer". It simply says: "Shall refer". That means that there are many ways of applying it. The Constitution is very clear that:

"This Constitution shall be interpreted broadly and liberally."

These Standing Orders emanate from the Constitution. When I said, in reference to the distinguished nominated Senator, that she was gracious, she smiled broadly in appreciation until the distinguished nominated Senator from my own side incited her to revolt against ---

*(Loud consultations)*

**The Speaker** (Hon. Ethuro): Order, Sen. Wetangula!

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker Sir, I withdraw.

**The Speaker** (Hon. Ethuro): By the way, Sen. Wetangula, you are now dealing with the Chair and not those others.

The Chair has guided the House and all of you are subject to the guidance of the Chair. There is no amount of meandering that will salvage you from the word "shall". In

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any case, those many paragraphs of Article 90 describe each situation in the content of speeches. So, you can use a language and that is what you have referred to in Standing Order No.90(3). Do you know this is what I read on a daily basis? I have looked at it thoroughly, but do not make specific reference to the Senator.

We have been guided properly and I think the word “shall” is quite in your law reading and not just an ordinary word. It is quite compulsive.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker Sir, let us cut a long story short. I will never imagine or even think of grace in relation to any of my colleagues here. I withdraw.

**Sen. Adan:** Mr. Speaker Sir, I think we have concluded that. I have another statement requested by several Senators.

*(Loud consultations)*

**The Speaker** (Hon. Ethuro): Order, Senators! Sen. Adan, just assume your seat. In a way, I would have allowed the Senate Minority Leader to suffer the consequences of his own actions. However, since the Chair cannot act with favour or fear, I will still discharge my responsibility without fear of favour.

First, I confirm that the Vice-Chairperson of the Committee actually confirmed that you have interrogated the Statement further and raised fundamental issues which the Committee is going to interrogate further. That is the request of other Senators who interrogated the matter. Although the direction was solely needed under the circumstances, it was not necessary because there was a kind of consensus. Since it was requested, I will direct that the Committee interrogates the matter further and tables the Report to the House.

Get it ready by the time we resume.

Proceed, Sen. Adan.

#### SAFETY OF KENYANS IN BURUNDI

**Sen. Adan:** Mr. Speaker Sir, I want to respond to another Statement on Burundi that was requested by several Senators. Sen. Wetangula, Sen. (Prof.) Lesan, Sen. Ndiema, Sen. Hassan, Sen. Obure, Sen. (Prof.) Anyang’-Nyong’o and Sen. (Dr.) Khalwale, pursuant to Standing Order No. 45(2)(b), at a sitting of the Senate held on Wednesday, 14<sup>th</sup> May, 2015, asked the following supplementary questions from the Standing Committee on National Security and Foreign Relations:

First, what is the estimated number of Kenyans working in Burundi?

There are about 600 Kenyans registered with our Embassy in Bujumbura. It is, however, to be appreciated that there could be many more since registration with the Embassy is a voluntary one. As has been the case in the past, I take this opportunity to appeal and encourage Kenyans to register with the nearest embassy or the nearest consulate whenever they travel or reside abroad.

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Mr. Speaker, Sir, those registered are professionals, businessmen and teachers in the international school. During the time of the attempted *coup*, many Kenyans had already left Burundi since the international school had closed for the holidays.

Mr. Speaker, Sir, regarding (b) on decisive measures that have been put in place, including standby capacity in the neighbouring countries of Rwanda and Tanzania to mount evacuation of Kenyans if the need arises following the attempted *coup*, the Ministry maintained constant and sustained engagement with our embassies in the region advising them to be on the vigil, monitor the situation closely and keep the Ministry constantly and fully updated, including on any need to intervene.

Mr. Speaker, Sir, so far, no report of a need or distress has been reported to the Ministry.

Mr. Speaker, Sir, part (c) was about the exact decisive measures that have been put in place to evacuate Kenyans not necessarily limited to the Embassy staff. Kenyans were advised to remain indoors until the situation gets clearer. Our Ambassador, who was out of the country, has since reported back on Saturday 16<sup>th</sup> May, 2015, and has been in contact with Kenyans. The report I have is that Kenyans are safe. Furthermore, he has, this morning, confirmed that the situation in Bujumbura and at the countryside is calm. Shops and schools are open and children are going to school.

Mr. Speaker, Sir, in this report, there are no specific measures to evacuate Kenyans from Burundi. However, as has been the case before, should the situation so demand – indeed, our desire is to see the full restoration of tranquility in Burundi – the Government will act in line with the laid down procedure as has been the case in other situations.

Mr. Speaker, Sir, allow me to state that when dealing with such weighty issues, there is need to exercise great caution and diligence. Any late initiatives may not be in the best interest to Kenya.

The second question was about the implication of the relationship between the soldiers of Kenya in Somalia and those of Burundi should Kenya take any side in the conflict in Burundi. Kenya has not taken sides at all. Her action and response is guided by the collective position taken by the East African Community (EAC) Summit. Furthermore, Kenyan and Burundi forces serving in Somalia under the African Union Mission in Somalia (AMISOM) command as mandated by the African Union (AU) in line with the peace keeping initiatives. Kenya is confident that officers will continue to exercise the highest degree of professionalism in discharge of their noble duty.

Mr. Speaker, Sir, the third was about arrangements that have been put in place to vet, receive and decide what to do in the event the refugees come to Kenya.

The vetting and receiving of refugees is a collaborative exercise championed by the United Nations High Commission for Refugees (UNHCR). The procedures are well established under the Convention. It is, however, our hope that this will not happen in view of the progressive unfolding situation there.

Mr. Speaker, Sir, the fourth issue was about what will happen to the assets of Kenyans who have invested in Burundi. It is difficult to speculate at this stage. We can

only report that no incidence has been brought to my attention. Furthermore, it is the responsibility and duty of each government to protect the lives and property within its jurisdiction, both national and foreign.

Mr. Speaker, Sir, the fourth question was about what Kenya has done, as a Member of the EAC, on the protocol agreement and treaty that guides on what should be done in such a situation. Pursuant to the EAC Protocol on Peace and Security, partner states are called upon to cooperate in peace and security matters and collaborate with international and regional organisations to promote peace and security in the region. In that regard, Kenya participated at the High Level Extraordinary Summit of the EAC Heads of State held on 13<sup>th</sup> May, 2013, in Dar es Salaam.

Secondly, Kenya participated in the emergency meeting of the Ministers of the EAC Affairs held in Arusha on 18<sup>th</sup> May, 2015. Thirdly, we will be participating in the planned Follow-up Summit tentatively scheduled to take place in a week's time.

Mr. Speaker, Sir, the fifth issues was in regard to what the Government has done pursuant to the protocols or treaties to ensure that there is peace and tranquility. In line with Article 4(2) of the EAC Protocol on Peace and Security as well as long standing foreign policy, Kenya upholds the spirit of peaceful settlement of disputes. It is in line with this spirit that Kenya has called upon all the political parties to resolve their disputes through dialogue.

Mr. Speaker, Sir, the other issue was about the position of Kenya on the *coup* in Burundi, the protraction of the term of the President and particularly the issue of postponement of an election because of the indecisive environment which is partly created by the President.

The EAC Extraordinary Summit on Burundi in Dar es Salaam last Wednesday, 13<sup>th</sup> May, 2015, pronounced itself on the matter. The Summit called for the respect of laws of Burundi and the Arusha Peace and Reconciliation Agreement. The Summit further condemned all manner of violence and called on all parties to make sure that the violence stopped. In that regard, Kenya is bound by the collective position of the Summit.

There was also the issue of whether the Ministry of Foreign Affairs has a rapid response unit to brief and keep Kenyans abreast of any information at any time.

The Ministry runs on a 24-hour, seven day a week basis. The Department of Public Affairs and Communication is charged with the mandate. Furthermore, the Ministry launched the Diaspora Web Protocol which is an interactive tool for ease of communication in addition to social or new media and the vast global network through embassies.

Regarding whether there was a *coup* in Burundi and if the Government has issued travel advisory to all Kenyans, at the Summit last week, there was a statement of an attempted *coup*. The President has since returned to the country and has taken control of the affairs of the State. The Government of Kenya has not issued any travel advisory.

Finally, there was a question about the position of Kenya on the candidature of President Nkurunziza for the third term. Burundi has a Constitution that guides the affairs of the State, including matters of election. As a sovereign State, Burundi will adjudicate

on this important matter. Further, Kenya will remain engaged with the spirit of the EAC and the AU.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Order, hon. Senators! Before I allow the Senate Minority Leader (Sen. Wetangula) to interrogate the business, look at your Order Paper. Order Nos.9 and 10 are deferred. Order No.11 is a Division. Order No.8, as I had communicated earlier, requires sizeable numbers. Therefore, I hope somebody is working on the numbers.

THE PUBLIC FINANCE MANAGEMENT  
(NATIONAL GOVERNMENT)  
REGULATIONS, 2015

*(Committee of the Whole deferred)*

THE PUBLIC FINANCE MANAGEMENT  
(COUNTY GOVERNMENT)  
REGULATIONS, 2015

*(Committee of the Whole deferred)*

Let us proceed. Sen. Wetangula.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I have listened to the long discourse by the Vice Chairperson; it is gratifying to hear and note that no Kenyan has either died or been harmed or at least, there is no record of such in the events unfolding in Burundi.

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

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

Mr. Temporary Speaker, Sir, the crux of the matter is that the President of Burundi – who is, for your information, a very close personal friend to me and I know him pretty well – is insisting on going for a third term. Could the Chairperson tell this House the position of Kenya as a critical trading partner with Burundi in whose interest peace and security in Burundi is paramount for us to continue trading?

Recently, we had a bizarre statement from our President urging the President of Burundi to postpone elections. I call it “bizarre” because the issue in Burundi is not when elections are to be held.

Mr. Temporary Speaker, Sir, the issue in Burundi is not when elections are to be held, but whether or not the President can go for another term contrary to the provisions of the Constitution of that country. What is the position of our country and our

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Government? I hope we are not slipping back to the old days of “wait and see” as our policy because we shaped this country to have a very pro-active foreign policy where you do not watch the direction of the flag and the wind to decide which way to go. You have to be fair and firm in situations.

Has Kenya taken a position like Tanzania has in advising the President of Burundi to respect their Constitution and not to run for a third term, having done two full five year terms as is provided for under the Arusha Accord and the Constitution of Burundi?

Lastly, the Statement is not clear about our preparedness to evacuate our nationals. Officially, she has said that there are 600 Kenyans in Burundi whereas we know that there are in excess of 5,000 Kenyans living and working in Burundi. Do we have our preparedness to evacuate Kenyans from Burundi in the event of a genocidal upheaval or a full blown civil strife? Two days ago a leading opposition figure was assassinated on the streets of Bujumbura and the situation has become even more volatile. Are we ready to evacuate our nationals and what have we done in furtherance of that?

**Sen. (Dr.) Khalwale):** Mr. Temporary Speaker, Sir, in 2008 after the post election violence, the President of Tanzania was not ashamed and neither was he afraid to request President Kibaki to share power in the interest of the region and Kibaki did it. I recall that President Uhuru was one of the beneficiaries of that power sharing. He became Deputy Prime Minister in charge of finance. Could the Chairman tell us; in view of that history that Uhuru became a beneficiary, in view of the fact that Uhuru is a personal friend of Nkurunziza, why is he not building sufficient courage to face Nkurunziza and tell him to respect the constitution so that Uhuru can be put on record as somebody who is promoting constitutionalism in the region?

Could the Vice-Chairperson tell us whether this is because these young presidents of East Africa are all students of Museveni who is currently attempting to perpetuate himself for life and now he wants to infect the other Presidents?

**Sen. (Prof. Lesan):** Mr. Temporary Speaker, Sir, I would like to know from the Chairperson whether what is being contested in Burundi is clear. I know the Senate Minority Leader has said that the statement issued by the Head of State was bizarre, but I do not think it was so, because I think the whole situation is bizarre. President Nkurunziza is claiming that he is not running for the third time because the first time he was in power in Burundi it was by an arrangement and not via an election and that this time he wants run for a second time and not a third time. In fact, that is what is being contested in that country.

Mr. Chairman, Sir, we should not ignore these facts and assume that there is no issue at hand. The people of Burundi need to be given time for negotiation and that is precisely what the President of this county has been saying. They should postpone the election for a while to understand why he is seeking another term. We are interested in what is going on in Burundi and that is why we should be cautious. We do not want to inflame the Burundi issue in case the consequences affect us as we have indicated before.

**Sen. (Dr.) Machage):** On a point of order, Mr. Temporary Speaker, Sir. As per Standing Order No.91, we are explicitly reminded not to discuss the conduct or character

of a Head of State of another country. Is it in order that we are diverting to that kind of scenario by discussing the character of President Nkurunziza of Burundi?

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Temporary Speaker, Sir. I do not understand what the distinguished Senator for Migori County is asking because nobody is discussing the personal conduct of the President of Burundi. We are talking about his discharge of his constitutional responsibility in relation to an event that is so critical to the country. This is an event that has a bearing to the security, comfort and peace of this country. That is not discussing the personal conduct of a president. We are asking about events unfolding in a country that is friendly to Kenya and hosts Kenyans.

We have a duty to demand to know whether in the event something happens, we can bring Kenyans back to Kenya. We are not talking about his being a member of Hallelujah Football Club, his family, how he chairs his cabinet meetings, how he swims or anything personal. I would request that you rule the distinguished Senator for Migori who is a very good friend of mine and a Member of my team, out of order.

**The Temporary Speaker** (Sen. Mositet): Hon. Senators, as you rise on points of order, I would like to refer you to Standing Order No.90. So, let us restrain ourselves.

**Sen. (Dr.) Machage**: On a point of order, Mr. Temporary Speaker, Sir. Whereas I respect my leader in politics and in the House, I would like to remind him to change his spectacles for better vision and read Standing Order No.90 which talks of any conduct and not personal conduct. I can lend him my spectacles.

**The Temporary Speaker** (Sen. Mositet): I know how important that point is, but because of time we should restrain ourselves as per Standing Order No.90.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, we have not discussed the conduct of any President.

**The Temporary Speaker** (Sen. Mositet): I know you have not discussed the conduct of the President of Burundi, but you have referred to him and maybe that is the reason the hon. Senator wanted to caution the Senators. Let us observe time. Every hon. Senator has one minute.

**Sen. Hassan**: Mr. Temporary Speaker, Sir, just as a matter of seeking further clarification to that statement, I think the world is evolving towards having partnerships based on common values, democracy, human rights and the rule of law. I think whatever happens in one country impacts on another. When elections were stolen in Kenya in 2007/2008, we started this framework of a power sharing agreement. Zimbabwe stole an election immediately thereafter under the same formula. Finally, in Cote d'Ivoire President, Gbagbo, tried to rig an election with the hope of power sharing.

Now, we are seeing an emerging trend in Africa, particularly Eastern Africa where people are protracting their stay in power. This can serve as a very dangerous precedence. The laxity with which the Eastern African leaders are addressing these issues shows complacency to a point where we need, as the people of Kenya, to be reassured that when it comes to time for exit, those in power right now will exit without borrowing precedence from these other rulers. It is raises concern that the Eastern African regional

cooperation is not based on any common values. It is based on partnership and some mundane movements of goods and services. It is about human values. It is no longer about movement of goods and services that must define our foreign policy.

*(Sen. Keter gestured at Sen. Hassan)*

What is wrong with you, Sen. Keter?

**Sen. Adan:** Mr. Temporary Speaker, Sir, I will not take much time in responding to most of the issues raise here. First and foremost, Burundi is a sovereign State. It has a Constitution that guides and directs how they should govern themselves.

Secondly, it does not require President Uhuru Kenyatta to advise them. However, as a member of the East African Community, we are guided by certain rules and regulations. Ours is to advise according to our engagement.

Finally, in terms of preparedness, the Ministry is ready. If it is not adequately provided for, we, as a Committee, will look into that and make sure that wherever Kenyans are, they are safe.

**The Temporary Speaker** (Sen. Mositet): Next order.

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

**The Temporary Speaker** (Sen. Mositet): Who is “temporary five”? Proceed, Senator.

**Sen. Njoroge:** It is me, Mr. Temporary Speaker, Sir. A while ago, I had been promised by the Speaker that a reply to a Statement from the Committee on Health which I have been waiting for, would be given. I am still waiting for it. That is why I had pressed the button. It is only that it is “temporary five” and not my name.

So, I am still waiting for that reply as I had been advised by the Speaker.

**The Temporary Speaker** (Sen. Mositet): Hon. Senator, because of time, we must dispense Order No.8 today. Will you mind to hold on up to tomorrow, please?

**Sen. Njoroge:** Mr. Temporary Speaker, Sir, I can wait, but this has been postponed severally. Even last week on Thursday, it was postponed.

I remember that I had requested that earlier and I wanted to be in the House when that statement is being replied to. It is my prayer if you would kindly allow me to get the reply.

**The Temporary Speaker** (Sen. Mositet): Okay, because of time and I know that it was not even listed on the Order Paper, please, just wait. I know that we will require the numbers when it comes to Order Nos.8 and 11. I request Sen. (Dr.) Machage to be in the House tomorrow, God willing, and make sure that he gives the reply.

Next order, please.

**Sen. Khaniri:** Mr. Temporary Speaker, Sir, ---

**The Temporary Speaker** (Sen. Mositet): Order, Sen. Khaniri. I had requested the Clerks-at-the-Table to read out the next order.

**Sen. Khaniri:** Yes, they did.

**The Temporary Speaker** (Sen. Mositet): Then you are in the right place. You can continue.

### MOTION

APPROVAL OF MEDIATION COMMITTEE REPORT  
ON THE ENVIRONMENTAL MANAGEMENT AND  
COORDINATION (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILL NO. 31 OF 2014)

**Sen. Khaniri:** Mr. Temporary Speaker, Sir, I beg to move:-

THAT, this House approves the Report of the Mediation Committee on the Environmental Management and Coordination (Amendment) Bill (National Assembly Bill No. 31 of 2014) pursuant to Standing Order No.155 laid on the Table of the House on Thursday, 21st May, 2015.

Mr. Temporary Speaker, Sir, first of all, allow me to thank the Speaker for appointing me to this particular Committee. The Mediation Committee on the Environmental Management and Coordination (Amendment) Bill (National Assembly Bill No. 31 of 2014), was constituted by the Speaker of the National Assembly pursuant to Standing Order No. 141(2) of the National Assembly Standing Orders and the Speaker of the Senate on 29<sup>th</sup> April, 2015 and 6<sup>th</sup> May, 2015, respectively.

The Members of the Committee were:-

1. Sen. Lenny Kivuti who was unanimously elected as the Chair by Members from both the National Assembly and the Senate.
2. Hon. Amina Abdalla, MP – Vice Chairperson.
3. Sen. George Khaniri - Member
4. Hon. Ronald Tonui, MP – Member
5. Hon. William Kamoti, MP – Member

Mr. Temporary Speaker, Sir, the Mediation Committee derives its mandate from Article 113 of the Constitution of Kenya, the National Assembly Standing Order No. 149 and the Senate Standing Order No. 154.

The Committee was established to develop a version of the Environmental Management and Coordination (Amendment) Bill (National Assembly Bill No. 31 of 2014) and in particular Clauses 10, 20, 23 and 25 that would be presented to both Houses for approval as provided for under National Assembly Standing Order No.149(6). The specific Clauses of the Bill that were in contention were Clauses 10, 20, 23 and 25.

The Committee held its first meeting on 13<sup>th</sup> May, 2015. As I said, they elected Sen. Kivuti and Hon. Amina Abdalla as Chairperson and Vice Chairperson, respectively. The Committee thereafter deliberated on Clauses 10, 20, 23 and 25 of the Environmental Management and Coordination (Amendment) Bill (National Assembly Bill No.31 of 2014) which were in contention. The Committee also held its second and final meeting on 21<sup>st</sup> May, 2015 to consider and adopt the report.

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Mr. Temporary Speaker, Sir, the Committee deliberated on the contentious Clauses and unanimously agreed on a version of the Bill to be presented to both Houses for approval. The agreed version of the Bill is hereby appended. I am sure the Chairman tabled it. I am glad to announce to this House that, that version of the Bill has since been passed by the National Assembly.

The Committee thanks the offices of the Speakers and the Clerks of the National Assembly and the Senate for the necessary support extended to it in the execution of its mandate. The Chairperson thanks all the Members of the Committee for their sacrifice, commitment and selflessness to the cause of the mediation process until common ground was arrived at.

Mr. Temporary Speaker, Sir, allow me now to take Members through the clauses that were in contention. Members will remember that we passed this Bill with the amendments that we made. These amendments went to the National Assembly which rejected them, and that resulted into the formation of this Committee. So, we will only discuss the four clauses that were in contention, and that is just what I want to refresh the Members' memories on.

Mr. Temporary Speaker, Sir, the first clause that was in contention was Clause 10. The National Assembly's views were as follows:

1. The board of the authority NEMA was a national institution and, therefore, there was no need for representation of counties in the membership.
2. The Fourth Schedule of the Constitution clearly mandated the establishment of a system for the protection of the environment and natural resources to the national Government and, therefore, the constitution of the board was a function of the national Government.
3. The Cabinet Secretary should have full authority without reference to any other institution, to nominate members on the board.
4. Counties may create agencies through county assemblies to implement policies on the environment and, therefore, the representation in national policy formulation was not necessary.
5. It was important to have legal background in the composition of the members of the board and, therefore, it was necessary to retain the appointment of the Attorney-General in the Board.

The views of the Senate were as follows:-

1. There was no objection to the appointment of Attorney-General to the Board.
2. Representation of the counties in the Board would minimize the tendency of county governments to create parallel boards at the county level.
3. The Fourth Schedule of the Constitution does not limit national institutions from having membership that represents counties.

Mr. Temporary Speaker, Sir, Members in the Mediation Committee unanimously agreed that the appointment of the Attorney-General to the board, which the Senate had scrapped, be retained. The Senate amended Clause 10 (f) which states that one person nominated by the Council of Governors be deleted. What this means in essence is that the



proposal by the Senate to have a nominee by the Council of Governors was rejected and we agreed to retain the Attorney-General on this Board. That is how we resolved Clause 10.

Mr. Temporary Speaker, Sir, on Clause 20, Members unanimously resolved that Section 31 (d) of the principal Act be amended, so that the representative of the Council of Governors replaces that of the Non-Governmental Organizations (NGOs) to the Environmental Public Complaints Committee, so as to read as follows:-

“One person who has demonstrated competence in environmental matters, nominated by the Council of County Governors and who shall be secretary to the complaints committee.”

The Members of the National Assembly conceded to our amendment and we unanimously agreed that we will now have a member nominated by the Council of Governors to sit on the Public Complaints Committee.

Mr. Temporary Speaker, Sir, on Clause 23, the National Assembly's views were that it was practically not possible for NEMA to prepare a national environmental action plan within one year of the commencement of the Act and, secondly, the review of the said plan after three years was too soon and did not give enough time for implementation. The Senate on the other hand said that it was possible for NEMA to prepare the national environmental action plan within one year, since the document would be a reflection of the 47 county environmental action plans. The Senate also said that the county governments had the capacity to prepare the county action plan, since they had prepared the county integrated development plans in a period of one year, yet they are more involving to prepare.

The Senate also said that it was important to consider that the implementation of the national environmental action plan was dependent on the Government in power, whose term was five years. It was on that basis that the five year period to prepare a new plan was arrived at. This matter was quickly resolved and Members unanimously agreed that Section 23 of the principal Act be amended in the proposed New Clause 37 (1) to read as follows:-

“That the Authority shall within two years of the commencement of this Act and every six years thereafter formulate the national environment action plan and shall ensure that it has undertaken public participation before the adoption of the plan. The plan would be reviewed within three years of the commencement of this Act.”

On that one, we struck a middle ground. Whereas they were going for six years, we settled for three years to review. Therefore, it was unanimously agreed by the Mediation Committee.

Section 23 of the principal Act will be amended in the proposed New Clause 37 to read as follows:-

“The Authority shall review the national environment action plan every three years.”

Members agreed that the amendment by the Senate on Clause 25 of the Bill, as proposed in the new subsection 40 be adopted as follows:-

“Every county environment committee shall within one year of the commencement of this Act and every five years thereafter, prepare a county environment action plan in respect of the county for consideration and adoption by the county assembly.”

Members agreed that the amendment by the National Assembly on Clause 25 of the Bill, as proposed in the new subsection 40(3) be adopted as follows:-

“The executive committee members of every county shall submit the county environment action plan referred to in subsection (1) to the Cabinet Secretary, for incorporation into the national environment action, referred to in section 37.”

Mr. Temporary Speaker, Sir, those were the four clauses that we had contention on. I want to once again thank the Speaker for appointing Sen. Kivuti, Sen. Chelule and I to this Committee. When we were appointed, I heard some murmurs from my side of the divide. I did not know what the murmurs were for, but when this Bill was brought to this House, it is our Committee that handled it. It is us who took it to the public hearing at Shimba Hall at the Kenyatta International Convention Centre (KICC). Therefore, it is us who are versed in this Bill and in your wisdom, you picked on the right people who understood it and moved the actual amendments that were in contention. You had the right team to go and represent the Senate in the Mediation Committee.

Mr. Temporary Speaker, Sir, when we met on the first day, we agreed from the beginning that as the two Houses of Parliament, we must always act in the interest of the people of Kenya. We forgot about the imaginary differences that are there between the Senate and the National Assembly and looked at this matter very objectively, with the interests of the people of Kenya in mind. That is why we were able to resolve the issues in one meeting. In fact, the second meeting was just a matter of going to adopt what we had agreed on and sign the resolutions.

Mr. Temporary Speaker, Sir, I beg to move that the House adopts this Report and call upon Sen. Kivuti, who was the Chairman of the Mediation Committee, to second.

**Sen. Kivuti:** Thank you, Mr. Temporary Speaker, Sir. As you can see, I have a very able Vice Chairperson as well as the membership in the Committee including the Senator for Kisii County, who was to second this Motion in case I was out. I would like to thank the Committee members from both the Senate and the National Assembly because the way we handled this mediation matter sets a very good history and precedence which I would like to recommend that this House and the National Assembly adopt. When we met, we did not even plan how we were going to look for the Chairperson of the Committee. The National Assembly Committee proposed that I Chair the Mediation Committee and went ahead to second.

After all is said and done, I requested that instead of us looking at these issues as the Senate and National Assembly, we raise ourselves above our egos and look at the issues at hand as Kenyan leaders by looking at the posterity of this law in light of Kenyans. That is what carried the day. We listened to the arguments from the National Assembly and gave them our arguments. We agreed to go for tea and reflect on all that

we had brought forward and then meet to look at issues above board as leaders of Kenya. When we did that, we reached an amicable decision within 20 minutes after the tea break.

Mr. Temporary Speaker, Sir, one lesson that I would like this House to adopt is that we agreed and saw the need that in future, instead of the National Assembly looking at issues on their own as we also do the same, if there could be a way to have a joint meeting, during the final deliberations of any Bill, the issues of mediation would come to an end. We even had a meeting today to look at the Climate Change Bill, 2014 and because the process of getting Joint Committees is long, we chose to invite the author of that Bill, Hon. Otichilo, to sit with us and explain what he is likely to explain to the National Assembly after we move that Bill. I believe that this is the spirit of leading Kenya; not necessarily looking at who is bigger than the other in law making.

The amicable solutions that were reached have already been expressed. This Bill is not anything new to this House. I would, therefore, move that as I second this Motion, that we only need to vote because most of the debate was done in the National Assembly. We had a public hearing and debate was also done here. The only four issues have already been agreed on and I would request that we do not subject this Bill to any further interrogation. However, I leave the decision to the Chair.

I second the Motion and thank the Committee.

**The Temporary Speaker** (Sen. Mositet): Hon. Senators, the Mover has moved very well. On behalf of all other Senators, I commend the mediation team for doing a good job. It is good to carry on in that spirit. Any time we have a mediation team, we should look at this nation as one and people who love their county.

*(Question proposed)*

**The Temporary Speaker** (Sen. Mositet): Hon. Senators, as the seconder has indicated, we have a constitutional deadline. So, I request that as I give a chance to those who wish to contribute, to please limit your contributions to two minutes. I will start with Sen. Obure.

**Sen. Obure:** Thank you, Mr. Temporary Speaker, Sir. I first thank Sen. Khaniri for a very clear and authoritative presentation, as well as for the good news which has been brought here, that an agreement has been reached and that we are now in a position to meet the deadline of 27<sup>th</sup> May 2015, in respect to this particular issue.

I also thank the Chairman of the Committee on Land and Natural Resources, Sen. Kivuti, for seconding this Motion and providing guidance in the proceedings that led to this agreement. I also thank the Speaker of the Senate for selecting a strong team of Senators to represent the Senate; people who understand the issues that were in contention and are familiar with the policies that guide issues of environment management. More importantly, they are committed and focused. This is the reason that we have been able to reach an agreement on these issues under contention.

Mr. Temporary Speaker, Sir, I agree with you entirely that we are all very impressed with the record time within which all the issues in dispute were resolved. I

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congratulate Members who participated in the Mediation Committee from both Houses for their exemplary work and bringing this matter to a satisfactory conclusion. I believe that Mediation Committees set up by the Senate and the National Assembly in future could greatly benefit by borrowing from the experiences of this particular Mediation Committee. I believe that they could benefit a lot from the foresight and from the manner in which this particular Committee worked, and that would be for the benefit of both Houses and the nation as a whole.

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

**The Temporary Speaker** (Sen. Mositet): You have done so well, Sen. Obure.

Please, proceed Sen. (Dr.) Zani

**Sen. (Dr.) Zani:** Mr. Temporary Speaker, Sir, I would like to support and appreciate the work that was done by this Committee especially within such a short time. They were able to put their issues together quickly and make a resolution. The report is very clear and very well articulated because it gives the position of the National Assembly, the Senate and the amalgamated position. It is also important to note that there was public participation. Therefore, the views of the public have been taken on board. I would like to congratulate Sen. Kivuti and Hon. Amina, who were the Chair and Vice Chair, respectively.

As Sen. Obure said, this is the way mediation committees should go. It is about the benefit that goes out there to Kenyans. It is not about the competition or the differences between the two Houses. It was very clear from the beginning that they had specific clauses which they needed to look at; that is, Clause 10, 20, 23 and 25. For each of this, they have been able to find a position.

For example, for Clause 10, the agreement is that the Attorney-General will be a member of this Board. Clause 20 stipulates that it is important to have somebody with demonstrated competence who will be appointed from the Council of Governors to the Board. They have also articulated in their report that they loop in the county governments. Therefore, they replaced one person who was nominated previously from a Non-Governmental Organisation (NGOs) to one from the county government.

Mr. Temporary Speaker, Sir, also the consensus that they were able to achieve at both Clause 23 and 25 enabled them to think about a time span that is going to be realistic in terms of coming up with plans and with the way they are going to be articulated. For example, within two years the authority is going to come up with an action plan. They have given themselves sufficient time and I am sure with the right representation, the right plans will be brought on board to further ensure that the mandate for which the Committee was put in place is working. The Act itself will be very important in serving Kenyans.

Lastly, they have also ensured that a report will go to the Cabinet Secretary. This will be important for incorporation into the National Environment Action Plan, not only at the county level but also at the national level. As I wind up, I wish to congratulate the Committee and wish that we continue in this light. We are in a bicameral system and that

is the way that Kenyans decided, that is, by having a National Assembly and the Senate of Kenya.

**The Temporary Speaker** (Sen. Mositet): Sen. (Dr.) Zani, you took a lot of time. If I give you two minutes, let it be two minutes please. We want to dispense with this Motion because of the constitutional deadlines. I can see that we have so many interests.

Please note that we have other Orders to deal with. Sen. M. Kajwang, you have two minutes.

**Sen. M. Kajwang:** Mr. Temporary Speaker, Sir, I would like to hail the Committee that went into mediation and came up with this formula. Due to the amount of effort the Committee has expended, I do not think it would be fair for us to re-open this debate. I just wish to thank them for having the foresight to come with a negotiated position. The environment is the only inheritance that the current generation can hand over to the future generation.

This Bill, which hopefully will become an Act, sets the framework and lays the foundation for us, as a generation to hand over something tangible to the future generation. When we set out mediation committees, it is on the understanding that we work for all Kenyans whether in the National Assembly or in the Senate. I want to join my other colleagues in stating that this is a spirit that should drive us as we try to come up with legislation in the two Houses.

My good friend, Sen. Khaniri, has alluded to some grumbling when this particular team was being set up. I wish to correct that position because I was in the Chamber when the Deputy Leader of Minority raised the issue. It was not grumbling on the composition but the consultation that had been undertaken to come up with the committee.

*(Sen. Khaniri walked into the Chamber  
without bowing)*

**The Temporary Speaker** (Sen. Mositet): Sen. Khaniri, there is a way we enter the Chamber. You have to go back and do the right thing.

*(Sen. Khaniri went back and bowed)*

**Sen. M. Kajwang:** Mr. Speaker, Sir, I was referring to my good friend, Sen. Khaniri. As a member of the CORD Coalition, when this Committee was set up, I had full confidence in the membership and I wish to thank them and vindicate that it was the right Committee that was set up. The grumbling was on the consultation rather than on the composition of the Committee.

**Sen. Melly:** Mr. Temporary Speaker, Sir, I want to thank the members of my Committee, through the Chair and the Vice Chair, who is here, Sen. Khaniri, for the wonderful job they did. I appreciate the fact that they had diverse opinions in terms of what they believe in this Bill. They reached an agreement and today, we have a Bill.

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In the year 2010, the same Bill was passed in the National Assembly but the President did not assent to it. The reason is that there was insufficient public participation. This time round, public participation has been done very well. Therefore, all the ideas that were not captured in the last Bill are here. The way to go is to ensure that this Bill becomes law so that all these challenges that we face in the issue of environment can be dealt with.

With those few remarks, I thank and congratulate Members of my Committee.

**Sen. Chelule:** Mr. Temporary Speaker, Sir, I am happy to report that I was one of the Members of the mediation Committee. I want to report that we did it harmoniously. We exchanged our issues and I stand here to congratulate the Chairman, Sen. Kivuti, and the Vice Chair, who is also the Chairperson in the National Assembly. I want to thank them for the wonderful work they did.

With those few remarks, I beg to support.

**The Temporary Speaker** (Sen. Mositet): I will now put the question. I order the Division Bell to be rung for two minutes.

*(The Division Bell was rung)*

**The Temporary speaker** (Sen. Mositet): Draw the Bars.

Hon. Senators, please, provide the tellers so that we can begin voting.

## DIVISION

### ROLL CALL VOTING

*(Question, that the House approves the Report of the Mediation Committee on the Environmental Management and Coordination (Amendment) Bill (National Assembly Bill No.31 of 2014, put and the Senate proceeded to vote by county delegations)*

**AYES:** Sen. Adan, Isiolo County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Bule, Tana River County; Sen. Chelule, Nakuru County; Sen. Hassan, Mombasa County; Sen. M. Kajwang, Homa Bay County; Sen. G.G. Kariuki, Laikipia County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Kivuti, Embu County; Sen. (Prof.) Lesan, Bomet County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Melly, Uasin Gishu County; Sen. Mositet, Kajiado County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Obure, Kisii County; Sen. Orengo, Siaya County; Sen. Sijeny, Nairobi County; Sen. Wamatangi, Kiambu County; and Sen. (Dr.) Zani, Kwale County.

**Teller of Ayes:** Sen. Hassan.

**NOES:** Nil

**Teller of the Noes:** Sen. Sijeny.

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**The Temporary Chairperson** (Sen. Mositet): Hon. Senators, the results of the Division are as follows:-

**AYES:** 24

**NOES:** Nil

**ABSENTIONS:** Nil

The “Ayes” have it

*(Question carried by 24 votes to nil)*

**The Temporary Chairperson** (Sen. Mositet): Next Order.

*(Sen. Murkomen stood up in his place)*

Order, Sen. Murkomen

**Senators:** We do not need a Division.

**The Temporary Chairperson** (Sen. Mositet): That is why the Bars have not been drawn.

## **BILLS**

### *Second Reading*

THE PARLIAMENTARY SERVICE (AMENDMENT)  
BILL (SENATE BILL NO.21 OF 2014)

*(Sen. Murungi on 5.5.2015)*

*(Resumption of debate interrupted on 20.5.2015)*

**The Temporary Chairperson** (Sen. Mositet): Hon. Senators, as you can see, what was remaining in this Bill was just a Division. So, let us go straight to Roll Call Voting and then the results will be announced.

## **DIVISION**

### ROLL CALL VOTING

*(Question that the Parliamentary Service (Amendment) Bill (Senate Bill No.21 of 2014) be read a Second Time, put and the Senate proceeded to vote by county delegations)*

**AYES:** Sen. Adan, Isiolo County; Sen. (Prof.) Anyang’-Nyong’o, Kisumu County; Sen. Billow, Mandera County; Sen Bule, Tana River County; Sen. Chelule, Nakuru County; Sen. Hassan, Mombasa County; Sen. M. Kajwang, Homa Bay County;

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Sen. G.G. Kariuki, Laikipia County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. Kivuti, Embu County; Sen. (Prof.) Lesan, Bomet County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Melly, Uasin Gishu County; Sen. Mositet, Kajiado County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Obure, Kisii County; Sen. Orengo, Siaya County; Sen. Sijeny, Nairobi County; Sen. Wamatangi, Kiambu County and Sen. (Dr.) Zani, Kwale County.

**Teller of the Ayes:** Sen. Hassan, Mombasa County.

**NOES:** Nil.

**Teller of the Noes:** Sen. Sijeny.

**The Speaker** (Hon. Ethuro): Order, Senators. I wish to announce the results of the Division as follows:-

**AYES:** 24

**NOES:** Nil.

**ABSTENTIONS:** Nil.

*(Question carried by 24 votes to nil)*

*(The Bill was read a Second Time and committed to a Committee of the Whole tomorrow)*

*Second Reading*

THE REPRODUCTIVE HEALTH CARE BILL  
(SENATE BILL NO.17 OF 2014)

*(Sen. Sijeny on 21.5.2015)*

*(Resumption of Debate interrupted on 21.5.2015)*

**The Temporary Speaker** (Sen. Mositet): The Mover had already moved the Bill and it was yet to be seconded.

**Sen. Anyang'-Nyong'o:** Mr. Temporary Speaker, Sir, the Reproductive Health care Bill of 2014 that has been shepherded through this House by Sen. Sijeny requires our total support. This support is important in so far as this Bill, as I have already said in this House, meets one of the obligations of Members of this House to translate the Constitution into Bills or laws that can be implemented by Government.

The Constitution says that life begins at conception. I remember when we were debating some of these basic rights, especially the right to life, the issue was very important and many people felt that it be enshrined in the Constitution that life begins at conception. This is because we had two tendencies in the nation; those who were fervently opposed to termination of life before birth and those who felt that there are

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good reasons at times that life can be interrupted after conception. One of those reasons which is enshrined in the Constitution is that if there is good medical reason for terminating life so as to save the life of the mother, the child or both, then with such medical advice, terminating life would be justifiable.

Mr. Temporary Speaker, Sir, we now know that there are many other medical, psychological and social reasons why women should have the right to terminate life before conception without receiving any kind of social stigma from society.

*(Sen. Murkomen spoke off record)*

Mr. Temporary Speaker, Sir, the young Senator for Marakwet is highly irresponsible for uttering such words before an elder like myself and he is young enough to be my son.

*(Laughter)*

Mr. Temporary Speaker, Sir, one of the things that this Bill brings forward is the fact that, in exercising their rights, women should do so under some legal framework. Left outside the legal framework, we will quite likely have a wanton interruption with life which is, itself, also destructive.

The Bill is about reproductive healthcare in general; we should put some things in place to ensure that reproductive health care is well looked after in our laws and nation. When I was the Minister for Medical Services, one of the things that we discussed was the issue of having a health law that would encompass all aspects of health including reproductive health. That is one of the reasons why in the Constitution, it is said that health care insurance, which not only covers inpatient and outpatient, but also covers reproductive health should be put in place.

One of the reasons why there has been what I call the “unwarranted” interruption with life for expectant mothers is because some of our young women do not have access to reproductive health care facilities, for example, contraceptives. When we talk about contraceptives, we do not mean that when people use contraceptives, then they become immoral. We mean that contraceptives help us have responsible reproductive health, responsible motherhood and safe motherhood.

We should not bury our heads in the sand like the proverbial ostrich and pretend. Young women or young girls at times have children out wedlock or even before marriage. Therefore, the only two ways you can help such mothers either have children responsibly who can be taken care of or avoid doing so is by addressing the issue of reproductive health.

Mr. Temporary Speaker, Sir, Part IX of this Bill talks about reproductive health of adolescents. Two important issues that this Bill addresses are to make sure that adolescents are aware of their reproductive health responsibilities and the reproductive health services that are available to them. This means that in Government as well as in

civil society in general, we should have useful information and services for these adolescents. Some of our religious organisations have become very responsible in this. They have special services for the young people. I have attended one of these services for the young at Mavuno Church.

We have several responsible churches in this city. One of the reasons why Mavuno Church has a huge membership among the young people is because it realistically addresses itself to young people's problems and speaks in their language. Mavuno Church does not bury its head in the sand like the proverbial ostrich and pretend that talking about sex matters among the young is a taboo or something which is not becoming of a religious person.

Mr. Temporary Speaker, Sir, we should read the Bible very carefully. One of the things that God apparently told Adam not to do is to taste the fruit; a special fruit in the Garden of Eden. Apparently, the Bible subsequently interpreted this fruit to be sex. I do not know whether this is true or if it is what God meant. If God meant that, then He meant that Adam should only taste the fruit with knowledge of the consequences of doing so and not for his own selfish reasons. That is why the Bible says that God took the rib out of Adam and made the woman. Once God had made the woman, God, of course, knew why he was doing so. He was not doing so for fun.

God wanted the issue of reproduction to be handed over to his creation so that he did not need to continue creating people all the time. God was becoming very efficient in his own way of doing things. He created a woman so that reproduction could go on. The whole point was that Adam had to do these things responsibly, making sure that he bore responsibility after that. The fact that work came after that is not a punishment. It is only conservative religion that interprets that as punishment; that man was then punished to work all his life. No! Work was necessary so that even the job of reproduction would continue so that God does not have to do it every day. I do not want to go into that homily.

I want to end by saying that this is a very good Bill. I fully support the initiative to produce this Bill. It meets our responsibility in the Constitution of translating the general principles in the Constitution into law. For example, the principle in that Bill of Rights which is that we have a right to life and life begins at conception.

This Bill tells us the importance of that, and also, the importance of the subsequent phrase in that particular section of the Constitution which says that it can only be terminated with good reason or good medical advice. There is a rider to that so that we are not, as some people have been saying in the public there, that Sen. Sijeny is now trying to legalise irresponsible sex. No! We are simply implementing that part of the Constitution that gives us a right to life and the right to terminate life under very specific circumstances. The appropriate institutions are laid out in this Bill that will make that a reality.

I beg to support.

*(Question proposed)*

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**Sen. (Dr.) Machage:** Mr. Temporary Speaker, Sir, matters of reproduction, bearing of children and how children are made, most often are difficult subjects or a taboo to discuss in some communities. I congratulate Sen. Sijeny for coming up with this Bill. This Bill will not only enhance this kind of process but make it safe for the mother, child and practitioner. Therefore, this Bill which has several parts is well intended. It is not a “condom” Bill like some people said. It talks about reproductive health care, safe motherhood; it defines who medical practitioners are; it talks about assisted reproduction and so on.

However, I am concerned with Part V which talks about termination of pregnancy. If you read through, this chapter will open a practice that may not be accepted in this country by opening up abortion to all manner of practitioners of health. When you say that a pregnancy may be terminated by a trained professional--- According to the definition of a trained professional by Sen. Sijeny, she includes medical practitioners, clinical officers, midwives and general nurses, some of whom the training they get may not be sufficient to carry out this kind of procedure. She continues to say that a decision will be made by anyone of these. She says further that termination of pregnancy at the first trimester, which means, the first three months may be carried out by any of these.

As a trained doctor, the most difficult time to procure an abortion usually is around the fourth month of pregnancy. The first month and second months may be easy, but the third, fourth, fifth and sixth months are difficult because there is difficulty in placental detachment from the uterus. Allowing paramedics or quasi-trained personnel on the medical subject to carry out a procedure, when they have not even been trained on matters of surgery and gynecology is a little bit opening up a loophole for malpractice.

We will end up having an increase in maternal deaths, statistics which we are already concerned about. We have about 400 per 1,000 maternal deaths in this country. It is so easy to kill a mother at this level because of bleeding. Therefore, the whole of this part needs to be amended, and I am going to come up with those amendments, to make it professionally acceptable; to limit the people who may have a bearing on making decisions on this issue and maybe even seeking the opinion of a psychiatrist on matters of mental illness when deciding on procuring an abortion.

I beg that every Member of this House reads Part V carefully and sees the hazards that it opens up. Actually, this Part, as prescribed to us by Sen. Sijeny, may be a prerequisite for the rejection of a well intended Bill. We, therefore, need to look at it, especially those who have a professional mind, to try and direct Sen. Sijeny to give us a document and law that will be acceptable by both practitioners and the church.

Mr. Temporary Speaker, Sir, I need not say more than that.

Thank you.

**Sen. (Prof.) Lesan:** Thank you, Mr. Temporary Speaker, Sir. I wish to thank Sen. Sijeny for bringing this Bill. I am aware of the passion, great interest and enthusiasm with which the Senator has followed up on this Bill. I wish to commend her for that.

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

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

From the outset, I think that this is perhaps one of the very difficult Bills to make. As has been mentioned by my colleague Senator, there are many faiths and individuals who have varied opinions regarding a Bill like this one. I think that this Bill is in tandem with the current technology. With the current technology, it is only worthwhile to use it to solve some of the problems that have been outstanding for a long time.

Technology has developed so far that things that previously caused sterility on individuals are no longer of that significance. For example, the closure of fallopian tubes should no longer be a reason for being barren or having no children, given the current technology. I am glad that this Bill has tried to define a way in which this can be done and how advantages of technology can be utilized to make sure that some of the things that have been difficult in the past are no longer impossible to do.

Mr. Temporary Speaker, Sir, secondly, we are aware that in this country we have several cases of child theft in various institutions of health and hospitals. The Senate Committee on Health is currently dealing with a very difficult case of missing twins from Pumwani Maternity Hospital. I am sure that to a very large extent the reason for these child thefts is because of childlessness of many parents. Therefore, with the arrival of a good Bill like this one, that defines how we can use technology, I am sure that to a very large extent, we are also going to reduce the urge to snatch other people's children, both at home and in health facilities. Therefore, I support this Bill because it addresses some of the challenges that we have seen in the past.

Mr. Temporary Speaker, Sir, recently, we were in Kampala for a ministerial health conference and various things were addressed, one of which was maternal child health and mortality. You would be surprised to know that of all the East and Central African countries, Kenya continues to have the highest maternal mortality in this region. Losing 292 mothers for every 100,000 childbirths is such a high figure that we cannot afford at all costs. These mothers die, not because they are sick, but just in the process of delivering babies.

Therefore, there should be no reason why we should not use the technology and knowledge that we have to ensure that these mothers are safe. This Bill addresses some of those challenges in order to reduce this mortality. This has been done by our neighbouring countries. We were very impressed by Burundi, the poorest of the countries in the East and Central Africa, having reduced the maternal mortality to just over 102 mothers for every 100,000 childbirths. It is the lowest in the East African Region and this is simply because they have put together laws and regulations that are able to manage these cases and also attract funding. Once there are programmes that have been laid down and they are well understood, funders will come in and assist. The passage of this Bill in

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this country also would go to a large extent in convincing funders to fund our programmes, so that we are able to support and assist the Beyond Zero Campaign, to try and reduce the maternal mortality in this country.

Mr. Temporary Speaker, Sir, what worries me is Chapter 5 which deals with abortion or termination of a pregnancy. I think this is going to be the most difficult bit of this Bill, to convince Kenyans of various faiths and beliefs. This is an area that we will need to work on. Sen. Sijeny, who is a lawyer, is capable of working around this, to make sure that this chapter to do with abortion is taken care of and is convincing to all faiths.

It is very clear that to date, because of the unsafe abortions which are being carried out in unsafe environments and with no proper legislations to follow; we are losing a lot of women. I can see the figures that have been quoted here, given by the African Population and Research Centre. About 1,200 women die annually because they carried out an abortion which was not legalized to make it acceptable.

Mr. Temporary Speaker, Sir, this is an area that I think we need to make serious amendments to this Bill so that it is acceptable. I am sure that we are working in a country that is religious with people who hold very firmly certain beliefs, that for whatever reasons, the price of losing that many women is enough to justify the faith that they have. We should overcome this and look at it in terms of making sure that we have the legislation that can permit this properly; that abortions can be carried out by defining very well who is eligible to make the final decision to terminate a pregnancy. There must sufficient reasons that will be accepted across the board by almost all the persons who are concerned or involved in the issue.

Secondly, we should look at the penalties of those who will go against the regulations that have been set to follow this. We should make penalties that are deterrent for all those involved and the ones who carry the pregnancy and are willing to terminate it without necessarily following the laid down procedure. I think that with some amendments, that can be made on the chapter on abortion.

This is a very useful Bill that is not only going to address directly the safety concerns, but the health challenges that are associated with reproductive health. There are also very big issues on HIV and many other issues that are related entirely with the whole area of sexuality in this Bill.

Mr. Temporary Speaker, Sir, I support this Bill and will suggest some amendments that will improve it. This Bill will go a long way in utilizing the technology to solve some of the very difficult cases of childlessness in this county.

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

**Sen. (Dr.) Zani:** Thank you, Mr. Temporary Speaker, Sir. Let me start by congratulating Sen. Sijeny for the effort she put into formulating this Bill and the passion she showed, putting into account that we are talking about nearly 52 per cent of women who most of the time carry these issues, but not forgetting that men are also involved in one way or another. This is because, when there is a family that is missing a child, then it affects both the man and the woman. So, we are talking about a big proportion that is going to be touched by this Bill.

Secondly, we have reached a point in Kenya where matters reproduction have to be discussed in the way we are doing. We need to come out and be more forthright. We have a situation in this country where, for instance, if you cannot get a child and need to be assisted, it becomes a problem and an issue of secrecy. You find people going all the way to South Africa to have in-vitro fertilization. The issue of surrogate motherhood is now beginning to be acceptable. However, all this is happening without regulation and legal statutes being put into place.

If you look at the issues, especially of fertilization, whether it is internal or external, we are not the first county to deal with this. Even in developed countries; it creates and brings up quite a number of issues that have to be addressed. For example, can the gamete that is produced from somebody who is no more be given to somebody else? We are talking about a child who is going to be born, and essentially does not have a parent. If somebody's embryos have been removed, for how long should they be frozen until they can actually be used? What happens in cases of mistaken identity? We have had cases where after the gamete has been produced, it is put into the wrong mother. We have also had cases where, for example, a black family ends up with a white child and that creates problems.

Mr. Temporary Speaker, Sir, the issue of regulation becomes almost mandatory. I feel that especially in Kenya now, as we move into the issues of complexity that surround reproduction, we should extend our congratulations to Sen. Sijeny for this Bill that comes to address all these issues. We should have even moved with faster speed with this Bill, taking into consideration that some aspects of it have already been taken up by the National Assembly, dealing with matters like surrogacy, for instance, and yet Sen. Sijeny's Bill puts everything together in one comprehensive package. We can look at all the provisions once and for all, create a way forward and give hope to the many couples out there who are trying to get a child and facing all these legal issues that do not have a framework.

I am looking at this Bill as one that is essential for that legal framework. It is very extensive, because it gives a legal framework across each of the various assisted reproduction mechanisms that have been put into place. I think that it is extensive and has gone into the realm where we must go. It has gone to a place where we must go, given the challenges and rising technology and the options that the modern parent has now, compared to the one of days yonder.

Mr. Temporary Speaker, Sir, the Bill has started off by giving adequate definitions across the board. If you look at this realm and the issues that come up, it is usually about definition. What does one thing or the other mean? I remember that even as I read through this Bill, every time I thought of a concept, I thought of whether it has been handled, and when I checked, I got that it had been handled. Therefore, a lot had been put into it. For example, what does cytoplasmic transfer and embryo and sperm cryopreservation that is critical mean? There are also embryo transfers that have to be moved, for example, from one place to another; in-vitro fertilization which is actually

fertilization outside the body for both the sperm and the ovum, putting them together and coming up with a gamete is very critical.

One of the issues that are also very complicated is usually the issue of informed consent and the legal provision. You find that a Kenyan woman, who wants to have a child, has an agreement with a surrogate mother, a young person who is about 20 years old. They make an agreement that she is going to carry the child up to a particular point, gives the fee and the agreement document. Midway, because we are human beings, things happen, emotions grow and one finds that they are attached to the baby and do not want to give it away. How do we handle those issues?

In this Bill, the issue of informed consent is canvassed very clearly; that at any one point, there has to be understanding and this is so critical because we are dealing with human beings. The person who is going to be born is a human being with equal rights like anybody else who is alive. Therefore, canvassing across the whole issue of consent, ensuring that there is no sort of inducement and that both parties---Sometimes it might even involve up to three different parties who are fully aware of what is happening.

Mr. Temporary Speaker, Sir, the objects and purposes of this Bill are very clear and critical. We need to provide for the protection and advancement of reproductive health for every person. Reproductive health touches on 12 and 15 year olds, both boys and girls, promotes women's health and safe motherhood. We have seen the statistics. In fact, the Bill even provides that, for example, in each of the counties, we have referral hospitals and facilities. Long gone should be the days that a mother dies because they are trying to get to hospital to give birth to a baby. No more should a woman die because they are bringing forth life.

These issues have been canvassed including the issue of drives that have been made by the First Lady to ensure that there are mobile clinics. With devolution, we expect that in the next three years, we should reach a point where nobody should worry about the statistics that they might end up being dead either because of a complication as a result of child birth, the process, lack of enough money and could not go to hospital or because they did not have information.

We are talking about 50 years after Independence. There is a process that if somebody is pregnant, they should follow through. However, most of the time, it has not happened and it has caused women's lives. It is not difficult for it to stop. If we have the determination, then it can stop. The Bill puts into place a very critical board. The Reproductive Health Care Board looks at various aspects, for example, coordination and implementation of national and county policies, which is very important in creating awareness to members of the public about their reproductive health and rights which is a critical point.

Cultural and social issues are the real problems in reproductive health. I remember when we were at a seminar on the same Bill, one of the issues that came up is that in certain situations, action was not taken. When a woman wants to have a caesarian section, the man has to be consulted to give consent. This is a question of being able to

move away from the hidden array of issues including taboos and cultural practices. This is where we are behind because most of these issues are not canvassed very well.

I only have an issue with the membership of the board because I think we should reduce it a little bit. We have 16 members and I think in terms of navigation and decision-making, if there is a way to reduce that board, it would make it most effective. There should be representation from various groups of people including key Ministries like health, education and Treasury. If possible, we should find where the convergence can be made across the various sectors so that we have a smaller board. We should make sure that the board has an odd number so that when it comes to voting, a stalemate is avoided.

Mr. Temporary Speaker, Sir, there is one aspect that I wanted to discuss in detail in this particular Bill. That is the way the various sections have been covered very extensively. When people talk about assisted reproduction, they think of surrogate mothers and so on. In this Bill, Sen. Sijeny has ensured that even the most complicated assisted reproduction is taken into consideration including intra-uterine inseminations, embryo transfers, other assisted reproduction services, pre-implementation genetic diagnosis and all others have been put very well and need to be taken into consideration.

Also key in this Bill is the fact that information in counseling has to be given at various points so it is not just a matter of one deciding to opt for one particular assisted reproduction and not the other. There should be knowledge about the choice of the system chosen. Therefore, some sort of pre-analysis must have been done including a medical examination to ensure that people choose the best option for getting a child.

The Bill also ensures that issues are addressed at the national and county level. The issue of consent is also addressed in the Bill where there is freedom to withdraw. The awareness of the rights of the child has also been very well stipulated. At any one point, any sort of critical decisions are made when people are very clear. We have to go beyond the point where we think natural birth is the only way to go but think about all the other options that people have to engage in.

One of the issues that keep creating problems over and over again is the issue of confidentiality. There is going to be a register with information with the full names of the donor, the physical address and so on. That information is not necessarily for sharing but it will be there. Under certain circumstances, children later on will come and will want to have an idea of what happened. Therefore, under specific provisions, that information can be given. A clause addressing confidentiality of the register has been put in place so that people do not use or misuse that particular information in any way.

Mr. Temporary Speaker, Sir, one of the other provisions for surrogate parenthood is that this agreement has to be done in writing, signed by the two parties, entered into in Kenya and in accordance with the prescribed form as contained in the schedule. This was the legislative aspect that I was talking about earlier which is important to conceptualize to make sure that nothing goes wrong even as the agreement is signed. Requirements are also made for the surrogate parenthood agreement; what must go there. For example, these people should be competent in entering the agreement. The surrogate mother must be 21 years and above. All these provisions are aimed at ensuring that this is not some



sort of careless endeavour; that people must use the provisions appropriately, according to the set law.

The provisions for a valid parenthood are put into place. For example, any child of a surrogate mother in accordance with the agreement is for all purposes a legal child. This is to protect the child so that it can have identity, citizenship and things like that. There are many other provisions that I cannot go into details due to time.

As I move towards the end, the need for health facilities has been stipulated. What is so important is that we must have a functional referral system so that matters reproduction can be handled with at least five ambulances and well equipped pharmacies in every county. I urge Kenyans to read this Bill and try to understand it. They should not look at specific provisions and say that this is something that will not benefit them.

This is a law that is going to be beneficial to this country and it is going to save many families from the heartache that sometimes come to families as a result of the issues that have been pre-thought and pre-analysed. For example, it says that parental consent shall be required for adolescent children aged 18 years and below. These are matters regarding the reproductive health of adolescents. It does not mean that adolescents will be free to go and get any protection they need to. There is a provision for those aged below 18 years to get consent from the parents.

From the statistics we are getting, we know that on most Monday mornings, people rush to pharmacies to buy the morning after pill, when considerations have not been made even before engagement in the act. It is important as we go on to look at the benefits. There might be sections where we might want to make some amendments and bring some changes but I think this Bill is good for Kenya. Kenya needs this Bill.

Thank you, Mr. Temporary Speaker, Sir.

**Sen. Obure:** Mr. Temporary Speaker, Sir, I want to start by appreciating and thanking Sen. Sijeny for her work on this Bill. She has managed to put together this very complex Bill. I know she has worked very hard and I also know that this is the product of great commitment, great focus and determination. The objectives of this Bill are very clear; to provide a framework for advancement of reproductive health rights. I think we need that kind of legal framework that promotes, protects and advances reproductive health rights.

Another function is to promote women's health and safe motherhood. That is a very noble object. At the end of the day, we expect to see a reduction in maternal and child mortality rates. That is something that we all look forward to. More importantly, it will ensure access to quality and comprehensive health services for all. Again, that is a very desirable objective. I have looked at this Bill and I am convinced that it is consistent with the word and spirit of the Constitution.

It, therefore, requires the total support of all of us. Broadly speaking, it will provide a legal framework or a basis for improved health care particularly for women. This Bill is about responsible and safe motherhood, improving overall reproductive health services and, generally, provides a framework for health care services. I see nothing wrong with this Bill.

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Mr. Temporary Speaker, Sir, for example, Section 3 of this Bill is on the issue of safe motherhood and it tells us who are authorised to handle these issues. It also says that maternal health care services will only be provided by trained health professionals. The emphasis here is on trained health professionals. Again, it gives us guarantee that it will not just be anybody or any professional in the medical field. It will be those who are trained to do so – trained medical practitioners, clinical officers, nurses and midwives – thereby guaranteeing safety of the patients.

This particular section also compels both national and county public hospitals and other health care facilities to ensure access to the highest standard and quality of services. Again, this is something that we desire to see; services in support of reproductive health rights. This is very important.

Under this Bill, public and county facilities will be required to provide free services to pregnant women. That is my understanding. I know that many times we take that for granted that people will go to hospitals when they feel they need to. However, many in the villages including my own village are unable to go to hospital particularly when they know that they will be required to raise fees to pay someone. Here, they are being guaranteed that they will get free services from public institutions. I think this Bill is moving in the right direction.

Mr. Temporary Speaker, Sir, under this Bill, we are creating a Reproductive Health Care Board (RHCB). I think this is necessary and the functions of the Board are very clear; to ensure coordination and implementation of national and county government policies. Emphasis here is on coordination and implementation. We know that there are policies and that both levels of government have put in place various policies but the critical feature here is the absence of coordination. There is no coordination mechanism and the Board is being created under this Bill to ensure that there is coordination and implementation of all the policies, regulations and laws that may be made under the two levels of government on issues relating to the reproductive health care rights.

This Board will be charged with the responsibility of creating awareness and educating the general public on all issues relating to reproductive health care rights. This is important particularly for those of us who represent rural counties. It is also a huge challenge. We feel that there is a place for such a Board and there is a role for it – to educate the public on their reproductive health rights. It is also required to develop policies to protect all persons from physical and sexual violence and discrimination of any kind. We know what that means especially in the communities that we represent.

There are cultural practices that contradict health care rights and we will now have an institution, the RHCB, whose responsibility will be to wage campaigns against cultural practices which contradict reproductive health care rights of Kenyans. However, Sen. (Dr.) Zani talked about the composition of the Board being too huge. Some thoughts should be given to reducing it in order to ensure more effective representation of all the stakeholders in this sector.

In conclusion, I thank Sen. Sijeny and all those who have worked with her to come up with this Bill which gives us the direction that we want to go.

I support.

**Sen. M. Kajwang:** Thank you, Mr. Temporary Speaker, Sir. Let me start by looking at Section 3 of this Bill which talks about the objects and purposes. I wonder whether reproductive health or rights are only for women. The first object says: "Provide a framework for protection and advancement of reproductive and health rights for the women." I need to be corrected on this so that we are clear that reproductive health and rights do not only apply to women but to all equally.

Having said that, let me talk about four things that every leader must take a position on. One is abortion. As a leader, you either support it or not. Two, is on same sex marriage. You either support it or you do not; you cannot afford to be a watermelon on that. The third one is contraception and you either support it or not. The final one is the family unit.

Mr. Temporary Speaker, Sir, this Bill has attempted to address some of these issues that I have talked about. From an ideological position, the first issue that I have talked about on abortion is very clear in the Constitution. On the right to life in Article 26 of the Constitution, it says:

"Abortion is not permitted unless, in the opinion of a trained health professional, there is need for emergency treatment, or the life or health of the mother is in danger, or if permitted by any other law." I would not wish this to be the law that permits abortion in this country.

*(Applause)*

Article 26 of the Constitution has really addressed the issue of abortion. Probably, all we needed to do was to define who a health care professional is and I believe that has also been defined in other statutes. All that we needed to have done was to strengthen penalties for people who violate that article. If we say that life begins at conception and someone undertakes abortion, that someone has killed something that is alive.

Therefore, when it comes to the issue of penalties which other speakers have also touched on, Clause 21 of the Bill is too docile. Talking of a fine of Kshs200,000 or a jail term of not more than three years is too docile. If we say that life begins at conception, then someone kills a life without any proper reason, should we subject them to just a fine of Kshs200,000 or should they be treated as murderers? Should it be the same sentence as manslaughter or murder? That is something we need to look at.

Probably, this section on abortion will be the straw that will break the camel's back. We need to be very careful about it so that it is not the "other law" that legalises abortion.

Mr. Temporary Speaker, Sir, the second point I want to talk about is on same sex marriage. Our Constitution, Article 45, talks about the family. It says that the family is the basic foundation of a society. It says that marriage shall be between two partners of the opposite sex.

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When it comes to the issue of gestation or surrogacy, what is there to prevent two boys who do not want to associate with girls to find ways of creating a baby without being in a proper family marriage arrangement? This Bill must be carefully dealt with to ensure that we close all the doors to any effort or attempt for people to try to create babies when they are not in a proper marriage as envisioned in Article 45 of the Constitution.

The third point, Mr. Temporary Speaker, Sir, is on contraception. You either support it or not. This is an issue that I personally support. Young people are having sexual relations all over because the society is full of sexually explicit photographs, images and songs. A lot of that is happening. We must get to a point where we say that contraception should be a basic provision to all adolescents or to all citizens.

Mr. Temporary Speaker, Sir, I urge you to make an observation one day at the supermarkets. You will see the conduct of people when buying contraceptives, especially, a condom. It is as if they are committing a crime. We should create a society where access to contraception is not seen as a criminal or immoral affair.

I support this Bill for talking about adolescent friendly reproductive health services. Reproductive health services must be adolescent friendly. Young people must feel free and confident to walk anywhere. However, it should not just be young people alone. Even an old woman or old man should feel confident and free to walk in a supermarket without being seen as a sinner. Contraception is not sin.

The fourth point is; a leader must take a position on the family unit. The Constitution already says this. A family is a relationship between a man and a woman. Children are the ultimate consummation of a marriage. It is unfortunate that in certain cases, a partner is unable to provide or play their part in raising children. This Bill tries to give those kinds of partners or most kind of relationships recognition. Those of us who profess the Christian faith, the book of Psalms talks about children and the kind of blessing it brings. Psalms 127:2-5 says:-

“Behold, children are a heritage from the Lord, the fruit of the womb a reward. Like arrows in the hands of a warrior are the children of one’s youth. Blessed is a man who fills quivers with them.”

Mr. Temporary Speaker, Sir, it should not be a curse if, for some biological reasons, a partner cannot get children. This Bill allows such kind of people and families to enjoy the blessings, the joy and warmth of children.

Mr. Temporary Speaker, Sir, I support this Bill. However, we have to make certain amendments so that we do not introduce certain things through the back door.

Thank you, Mr. Temporary Speaker, Sir.

**Sen. Okong’o:** Thank you, Mr. Temporary Speaker, Sir for this opportunity. From the outset, I thank the proponent of this Bill, my learned friend, human rights crusader and a mother who thought it is wise to fight for the interests of young people and those, who by virtue of biological deformities are aggrieved.

Mr. Temporary Speaker, Sir, I also thank Senators who sat in the backrooms and boardrooms to assist Sen. Sijeny to come up with this Bill.

Mr. Temporary Speaker, Sir, time has come in this country when we need to confront the challenges facing Kenyans – young and old – in one accord. As we debate this Bill, I hope that it will not become part of historical pieces of advice that lack implementation after being passed.

Mr. Temporary Speaker, Sir, I want to dwell briefly, on issues affecting adolescents in this country. As my friend, Sen. M. Kajwang' has just put it, the youth in this country access very many sexual orgies through the internet. From that information superhighway, it is important that we have an Act of Parliament which will assist the adolescents to understand how they grow up, issues of sex, and issues of abstinence and matters which are considered taboo especially when they are spoken; for instance, matters of HIV/AIDS, substance abuse and issues of family planning. The youth are only told about the issues of careers. It is important that this has been captured in this Bill as an extract from the Constitution of 2010.

Mr. Temporary Speaker, Sir, there are many issues in this Bill which some of us had an opportunity to look into when we were called to a retreat. It will be better to address some issues. As you and your colleague, Sen. (Dr.) Khalwale, have alluded, the issue of termination of pregnancy is a very touchy topic. However, I know that this House has men and women of repute who will amend the relevant clauses to fit the Constitution and the old structure of society.

Mr. Temporary Speaker, Sir, there is another issue affecting young women in this country; that is Female Genital Mutilation (FGM). It is very alarming that in this country, 20 years after the campaign started, we have not moved a notch higher in matters of FGM. This is because the crusaders who purport to be educating our people about FGM only reach places with tarmac roads and end their campaigns there.

The Statistics from the medical fraternity in this country are alarming. Where I come from, I thought that we had slain the idea of FGM. However, I was surprised to learn that in Gusiland, FGM is at 9.7 per cent. That is 30 years after the campaigns began. Remember, donors have put money into that.

Mr. Temporary Speaker, Sir, I was challenged at that time in a forum. Sen. (Dr.) Khalwale said that we must sometimes think outside the box on how to deal with the issue. He wondered why we should not legalise FGM so that cultural practices can be acceptable in a realm of tradition and care. However, you will realise that that cannot be accepted by Western donors. They would think that they are pumping money – which does not make sense – into our country.

Mr. Temporary Speaker, Sir, it is important that when some of these Bills come, we think outside the box. We can debate on some of the issues like the FGM and then agree on a way forward which is practically and culturally acceptable in order to move forward.

Therefore, Mr. Temporary Speaker, Sir, other issues which have been mentioned and alluded to by preceding presenters will assist this country to move. As I said, Sen. Sijeny has only extracted the requirements of the Constitution to come up with this Bill. She talks about the particular number of ambulances required and the rights of mothers.

You heard very well when Sen. Obure mentioned that there are many things we take for granted. When we say that pregnant mothers should be taken care of for free, it is taken for granted by those who enjoy the other status in life. It is very important that such a Bill is enacted so that any mother anywhere in this country can access certain facilities as a right but not as a favour from the state.

I think as I said earlier, I have gone through this Bill and I only wanted to support it on the Floor of this House. I thank all of you who have made their contributions. Sen. Sijeny should be prepared to come up with the necessary amendments. I know she has consulted with all the stakeholders and taken their views on board. Some even referred to her as “Mrs. Condom”, but a human rights crusader of her caliber could not be dissuaded by such remarks. She has been forthright and she is still on course for this.

With those remarks, I beg to support.

**Sen. Muthama:** Bw. Naibu Spika, ninasimama nikiwa nina shukrani nyingi sana, kwanza kwa---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order Sen. Muthama, just take your seat for one minute. I have received a very important message that cannot wait until you finish your contribution.

### MESSAGE FROM THE NATIONAL ASSEMBLY

#### REJECTION OF SENATE AMENDMENTS TO THE PUBLIC AUDIT BILL (NATIONAL ASSEMBLY BILL NO.38 OF 2014)

This is a Message from the National Assembly on the rejection of Senate amendments to the Public Audit Bill, National Assembly Bill No.38 of 2014.

Hon. Senators, I wish to report to the Senate that pursuant to Standing Order No.40 (3) (4), I have received the following Message from the Speaker of the National Assembly regarding the rejection by the Assembly of the amendments made by the Senate to the Public Audit Bill (National Assembly Bill No.38 of 2014).

Pursuant to the provisions of Standing Orders Nos.49 and 149 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly.

Whereas the Public Audit Bill (National Assembly Bill No.38 of 2014) which was published in the Kenya Gazette Supplement No.162 of 8<sup>th</sup> December 2014 as a Bill originating in the National Assembly and passed by the National Assembly on 2<sup>nd</sup> April, 2015, and was passed by the Senate with amendments on 20<sup>th</sup> May, 2015;

Whereas the Senate forwarded its amendments to the Public Audit Bill (National Assembly Bill No.38 of 2014) on 22<sup>nd</sup> May, 2015, for the concurrence of the National Assembly;

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And whereas through a resolution, the National Assembly on 26<sup>th</sup> May, 2015 passed the Senate amendments to the said Bill, but rejected the amendments of clauses 5, 11, 19, 24, 32 and 39;

Now, therefore, in accordance with the provisions of Article 112 (1) (a) of the Constitution and Standing Order No.149 of the National Assembly, Standing Orders, I hereby convey the said decision of the National Assembly, the consequence of which the Bill stands referred to a Mediation Committee.

Hon. Senators, Article 112 (1) (b) of the Constitution provides that if one House passes an ordinary Bill concerning counties and the second House passes the Bill in an amended Bill, it shall be referred back to the originating House for reconsideration.

Further, Article 112 (2) (b) of the Constitution provides that if after the originating House has reconsidered a Bill referred back to it under Clause 1 (b), that House rejects the Bill as amended, the Bill shall be referred to a Mediation Committee under Article 113. For the benefit of the Senators, Article 113 provides the following:-

(i) If a Bill is referred to a Mediation Committee under Article 112 the Speakers of both Houses shall appoint a Mediation Committee consisting of equal numbers of Members of each House to attempt to develop a version of the Bill that both Houses will pass.

(ii) When the Mediation Committee agrees on a version of the Bill, each House shall vote to approve or reject the version of the Bill.

(iii) If both Houses approve the version of the Bill proposed by the Mediation Committee, the Speaker of the National Assembly shall refer the Bill to the President within seven days for assent.

(iv) If the Mediation Committee fails to agree on the version of the Bill within 30 days or if a version proposed by the Committee is rejected by either House, the Bill is defeated.

Hon. Senators, in the circumstances, I concur with the Speaker of the National Assembly to form a Mediation Committee in accordance with Articles 112(2)(b) and 113 of the Constitution. In this regard, I have received Communication from the National Assembly that the Speaker of the National Assembly has appointed the following Members to represent the Assembly in the Mediation Committee that will attempt to develop a version of the Bill that both Houses will pass:-

1. Hon. Benjamin Lang'at, MP
2. Hon. Johnson Sakaja, MP
3. Hon. Makali Mulu, MP

Similarly, the Speaker of the Senate has appointed the following Senators to represent the Senate in the Mediation Committee:-

1. Sen. Billow Kerrow
2. Sen. Stephen Sang
3. Sen. Mutula Kilonzo Jnr.

Hon. Senators, this is one of the Bills with a constitutional timeline of tomorrow, 27<sup>th</sup> May, 2015.

*(Loud consultations)*

I repeat and beg that you listen. Hon. Senators, this is one of the Bills with a constitutional timeline of tomorrow, 27<sup>th</sup> May, 2015. I, therefore, direct that the Mediation Committee meets urgently and tables their report at 2.30 p.m. tomorrow, Wednesday, 27<sup>th</sup> May, 2015.

Hon. Members, that is the end of the communication but I notice that the Members who I have picked to be in the Senate's team are not in the House as I speak. I, therefore, order that the Clerk to the Senate makes sure that these Members have received this information and that they are given the necessary transportation and facilitation to start their work immediately.

Thank you.

What is it, Sen. (Dr.) Khalwale?

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Temporary Speaker, Sir. I thank you for that most important Communication. How unfortunate that the "Lower House" is virtually precipitating a crisis in this country. Where were they all these months? Now, they have brought the Bill here too late, and without realizing the importance of timelines, they are treating it casually. How on earth can a Committee work and possibly present a report in time that is meaningful to beat the deadline? We would like the Speaker of the Senate to move an extra mile and ensure that such things are avoided in future.

**The Temporary Speaker** (Sen. (Dr.) Machage): Thank you for that comment. Let me also remind you that it is not the whole Bill that has been rejected, but attention should be drawn only to Clauses 5, 11, 19, 24, 32 and 39. God forbid that this had to happen. This is derogatory. It is an abuse to the Senate. I completely agree with your concern and comment on this matter. The people of this country should take note of the mischief with which the "Lower House" treats the Senate.

Proceed, Sen. Muthama.

**Sen. Muthama:** Mr. Temporary Speaker, Sir, just to ride on what you have communicated; one, the time is not there. It is not just by coincidence that this Message is communicated to the Senate at this hour. It was a deliberate effort to make sure that we act under total harassment to meet the deadline. If you look at the time given for the Members to sit down and negotiate, it is very short.

Secondly, it is very clear that such appointments must meet the requirements of the Constitution. If you look at the names, you will realise that there is no gender balance. Members have been picked from one gender and it is being done deliberately so that there is confusion. They want us to cite the lack of gender considerations and send it back, yet time is running out. The National Assembly is driving this country into a crisis.

This House does not consider political affiliation when transacting business, but there is division along political party lines in the National Assembly. I want to urge those who have been shying away, especially the Jubilee Coalition, from the constitutional amendment that we are proposing, as the CORD Coalition, to empower this House, to be

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a true upper House, to support us. This will ensure that once a decision has been made in this House, it will not go back to the other House. That is my appeal to the Jubilee side, and I want Sen. Lesan to consider this when he talks to his colleagues---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! Order! Please, continue with your contribution to the Bill by Sen. Sijeny.

*(Resumption of Debate on Bill)*

**Sen. Muthama:** Mr. Temporary Speaker, Sir, I had just started my contribution in Kiswahili and now I have spoken in English.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! You must continue in Kiswahili.

**Sen. Muthama:** Bw. Spika wa Muda, ningependa kumshukuru Sen. Sijeny kwa kuleta Mswada huu katika Seneti hii. Mswada huu ni muhimu sana kwa sababu unazungumzia maswala ambayo yanahitajika katika taifa letu, haswa katika ukurasa wa 295. Nakumbuka ulileta Hoja kuhusu moja ya maswala hayo wakati Seneti ilikuwa katika Jumba la Kenyatta International Convention Centre (KICC). Hoja hiyo ilikuwa inatafuta mwenendo ambao ungeiwezesha taifa hili kuwa na hospitali za Level 5 katika kila kaunti. Jambo hilo limezingatiwa katika Mswada huu wa Sen. Sijeny.

Nitaanza na kipengele cha 22. Dada yangu, Sen. Sijeny, ameangalia ni wapi kuna shida. Nimewasikiliza Maseneta ambao wamechangia Mswada huu na wamesema mambo mengi haswa kuwasaidia akina mama na kuokoa maisha ya akina mama na mama wenye akili punguani na mtoto ambaye ni mjamzito. Hayo yaliozungumziwa yanahusu kuokoa maisha. Kipengele cha 22 kinasema kwamba itakuwa ni haki ya mtoto yeyote aliyezaliwa kupata matibabu. Leo katika taifa letu, watoto wa masikini hawapati matibabu ya kutosha. Wale wanaojiweza wanalakiwa vizuri katika hospitali na kupewa matibabu. Lakini msichana masikini ambaye anapata mimba kwa bahati mbaya hapati matibabu anapofika hospitalini.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! You will have 11 minutes to contribute tomorrow.

## ADJOURNMENT

**The Temporary Speaker** (Sen. (Dr.) Machage): Hon. Senators, it is now time to interrupt the business of the Senate. This House, therefore, stands adjourned until tomorrow, Wednesday, 27<sup>th</sup> May, 2015, at 2.30 p.m.

The Senate rose at 6.30 p.m.

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