



REPUBLIC OF KENYA

THE SENATE

ELEVENTH PARLIAMENT – THIRD SESSION

VOTES AND PROCEEDINGS

THURSDAY, SEPTEMBER 24, 2015 AT 2.30 P.M.

1. The Senate assembled at thirty minutes past Two O'clock.
2. The Proceedings were opened with Prayer.

3. **COMMUNICATION FROM THE CHAIR**

(a) **Visit to the Senate by pupils and teachers from Karatina DEB Primary School**

The Temporary Speaker (Sen. (Dr.) Machage) issued the following communication from the Chair-

"Honourable Senators,

I wish to recognize the presence of the students and teachers from Karatina DEB Primary School from Nyeri County. They are seated in the Public Gallery.

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

I thank you."

(b) **Report of the Commission of Inquiry into the Suspension of the County Government of Makueni**

The Speaker issued the following communication from the Chair-

"Honourable Senators, I have the following Communication to make relating to the Report of the Commission of Inquiry on the Petition to suspend the County Government of Makueni.

As Honourable Senators will recall, at the sitting of the Senate held on 15th September, 2015, the Senator for Makueni County, Senator Mutula Kilonzo Junior, rose on a Point of Order seeking the directions of the Chair with respect

to the tabling of the Report of the Commission of Inquiry on the Petition seeking to suspend the County Government of Makueni.

The Senator observed that the Report of the Commission of Inquiry had been presented to His Excellency, the President but that although the Report was in the public domain, it had not been forwarded to the Senate for tabling and consideration by the Senate. The Senator expressed concern that apart from the recommendation of the Commission of Inquiry that the County Government of Makueni be suspended, there were other recommendations in the Report which required legislative intervention by the Senate. The Senator further expressed concern that the Report had also raised some audit queries and other discrepancies of a financial nature, which required the intervention of the Senate in accordance with its oversight mandate provided for under Article 96 of the Constitution.

The Senator stated that the people of Makueni had waited for a year for a solution to the challenges besetting Makueni County and that therefore, the decision by His Excellency, the President, on the matter could not stop the Senate from seeking that the Report be tabled in the Senate, not just for the sake of the residents of Makueni County but also so that the rest of the country would understand the contents of the Report. The Senator concluded by requesting the Speaker to give directions and a ruling on the tabling of the said Report.

In support of the Point of Order by Senator Mutula Kilonzo Junior, other Senators, namely, Senator Billow Kerrow, Senator Martha Wangari and Senator (Dr.) Boni Khalwale underscored that it was in the interests of Makueni County and the entire country, that the Report be tabled in the Senate, so that the Senate would take appropriate action on the recommendations in the Report in terms of Article 96 of the Constitution.

Honourable Senators, it is public knowledge that on 3rd September, 2015, the Commission of Inquiry into the Petition to suspend the County Government of Makueni submitted its Report to His Excellency, the President. It is also public knowledge that one of the recommendations of the Commission of Inquiry was that pursuant to Article 192 (2) of the Constitution, the County Government of Makueni be suspended. Article 192 (1) of the Constitution, provides that the President may suspend a county government in *an emergency arising out of internal conflict or war; or any other exceptional circumstances*.

Article 192(2) of the Constitution further provides that *a county government shall not be suspended under clause (1) (b) unless an independent commission of inquiry has investigated allegations against the county government, the President is satisfied that the allegations are justified and the Senate has authorized the suspension*.

The County Governments Act at section 123 sets out the procedure relating to the suspension of a county government. Of particular interest, is section 123 (7) which provides that *the Commission shall inquire into the matters before it expeditiously and report on the facts and make recommendations to the President*.

Section 123 (8) further provides that *upon receipt of the report of the Commission and upon being satisfied that justifiable grounds exist for suspension of a county government, the President shall within seven days forward the report and the recommendations of the Commission, together with the petition for suspension of the county government to the Speaker of the Senate.*

Honourable Senators, it is evident from a reading of these provisions of the law, that where, pursuant to section 123 (8) of the County Governments Act, the President is satisfied that justifiable grounds exist for suspension of a county government, the President is required to forward the Report of the Commission of Inquiry and the recommendations of the Commission as well as the Petition for suspension of the county government to the Speaker of the Senate. Thereafter, in accordance with section 123 (9) of the County Governments Act, the Speaker would cause a Motion for the suspension of the county government to be laid before the Senate for consideration by the Senate.

It is noteworthy that while the County Governments Act sets out the process to be followed where the President is satisfied that justifiable grounds exist for the suspension of a county government, no procedure is provided to govern a scenario where the President is not satisfied that justifiable reasons exist for the suspension of a county government. The law as it is presently rendered therefore seems to require no further action on the part of the President where, as is the case with the Petition relating to the County Government of Makueni, the President is not satisfied that justifiable reasons exist for the suspension of a county government. There is no obligation under the law for the President to forward the subject Report to the Senate.

This, Honourable Senators, for the reasons that were cited by Senator Mutula Kilonzo Junior, in his Point of Order, as well as the further reasons advanced by Honourable Senators who spoke to the matter, is an area that may require legislative review. As the Honourable Senators noted, the recommendations of the Commission of Inquiry, aside from stating whether or not a county government ought to be suspended would most probably also make recommendations requiring legislative or other interventions by the Senate. The recommendations may specifically relate to the subject county government but may also apply to other or all county governments. It does not therefore appear logical that such recommendations would remain outside of the knowledge of the Senate.

I therefore direct that the Standing Committee on Legal Affairs and Human Rights considers the procedure set out under section 123 of the County Governments Act and proposes appropriate amendments that would ensure that the Senate is not fettered in the discharge of its functions under Articles 94 and 96 of the Constitution. The Senate should, as part of its oversight mandate over the county governments and as part of its mandate to represent the counties and to protect their interests and those of their governments, consider the report of an independent Commission of Inquiry established under Article 192 (2) whether or not the Commission recommends a suspension of a county government and

whether or not the President is satisfied that justifiable grounds exist for suspension of a county government. This being a matter that is critical to the system of devolved government, I further direct that the Committee tables its report on this matter on or before 29th October, 2015.

Honourable Senators, with regard to the Report of the Commission of Inquiry into the Petition seeking the suspension of the County Government of Makueni, although, in the circumstances, there is no requirement for the forwarding of the Report to the Senate, all is not lost.

Our Standing Orders provide various mechanisms through which the Senate could interrogate the issues that require legislative or oversight interventions by the Senate. As examples, nothing in our Standing Orders would bar a Senator from requesting a Statement from the relevant Committee Chairperson on this matter in terms of standing order 45(2) (b). Similarly, an interested Senator may give notice of an appropriate Motion on this matter for deliberation by the Senate. Standing order 45(2) (a) relating to Statement by a Senator on a county issue or an issue of general topical concern may also provide an avenue by which the matter could be deliberated.

Honourable Senators, these and other options in our Standing Orders remain available to interested Senators.

I thank you."

4. PAPERS

The following paper was laid on the Table of the Senate:-

- (a) Statement by the Senate Majority Leader regarding Business of the Senate for the week commencing Tuesday, 29th September 2015.

(Sen. Charles Keter on behalf of the Senate Majority Leader)

5. STATEMENTS

(a) **Statements Pursuant to Standing Order 45 (2) (a)**

- (i) The Senator for Nyeri, Sen. Mutahi Kagwe, issued a personal statement in which he thanked Senators for the support offered to him through personal visits and prayers following the demise of his father. He lauded the way Senators supported him in a non-partisan way and further thanked the Speaker of the Senate for his personal role, both during the funeral arrangements and at the burial.

(b) **Statement pursuant to Standing Order 45 (2) (c)**

- (i) Pursuant to the provisions of Standing Order 45(2) (c), Sen. The Deputy Majority Leader (Sen. Charles Keter) issued a Statement, on behalf of the

Senate Majority Leader regarding the Business of the Senate for the week commencing Tuesday, 29th September, 2015.

6. **THE COUNTY OUTDOOR ADVERTISING CONTROL BILL (SENATE BILL NO. 11 OF 2015)**

(Chairperson, Standing Committee on Information and Technology)

Order for First Reading read.

Bill read a First Time and committed to the relevant Standing Committee.

7. **THE PETITION TO COUNTY ASSEMBLIES (PROCEDURE) BILL (SENATE BILL NO.35 OF 2014)**

Order for Second Reading Division Read;

Order deferred.

8. **THE OFFICE OF THE COUNTY PRINTER BILL (SENATE BILL NO. 42 OF 2014)**

Order for Second Reading Division Read;

Order deferred.

9. **COMMITTEE OF THE WHOLE**

THE CLIMATE CHANGE BILL (NATIONAL ASSEMBLY BILL NO. 1 OF 2014

Order for Committee read;

Order deferred.

10. **COMMITTEE OF THE WHOLE**

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

Order for Committee read;

Order deferred.

11. **COMMITTEE OF THE WHOLE**

**THE COUNTY EARLY CHILDHOOD EDUCATION BILL (SENATE BILL NO. 32
OF 2014)**

Order for Committee read;

Order deferred.

12. **MOTION – NEED FOR REMEDIAL, POLICY, ADMINISTRATIVE AND LEGISLATIVE MEASURES TO IMPROVE THE PROCESS OF REGISTRATION FOR NATIONAL IDENTITY CARDS**

(Department of Interior and Coordination of National Government)

THAT, cognizant that Article 12 of the Constitution guarantees a right to citizenship; noting that it is the right of every Kenyan attaining 18 years to register and be issued with a National Identity Card ; further noting that the National Identity Card is at the core in determining the extent to which an individual enjoys his or her fundamental rights and freedoms; concerned that Orphans and Vulnerable Children attaining the age of 18 years in children's homes have difficulties obtaining the National Identity Cards, the Senate urges the National Government to take remedial, policy, administrative and legislative measures to improve and expedite the process of registration for National Identity Cards especially for the Orphans and Vulnerable Children who live in children's homes and have attained 18 years of age.

(Sen. Beatrice Elachi)

Order deferred.

13. **MOTION – ESTABLISHMENT OF A SELECT COMMITTEE TO REVIEW POLICY AND LEGISLATION ON TREATMENT OF DETAINED PERSONS AND STATE OF CORRECTIONAL INSTITUTIONS IN KENYA**

(Ministry of Interior and Coordination of National Government)

WHEREAS Article 51 of the Constitution of Kenya protects the rights of detained persons, persons held in custody and other imprisoned persons under the law, and requires Parliament to enact legislation to provide for the humane treatment of such persons with due regard to the relevant international human rights instruments;

OBSERVING that international instruments, including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the United Nations Basic Principles for the Treatment of Prisoners set standards on the treatment of persons, including the right to be treated with respect; protection from discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;

AWARE of the deplorable state of correctional services throughout the country including poor living conditions in the institutions of both officers and prisoners, the poor state of sanitation and nutrition, overcrowding, lack of proper medical attention, frequent outbreak of communicable diseases and frequent reports of deaths of inmates leading to a high rate of recidivism and the inability of former inmates to reintegrate into society;

APPRECIATING the urgent need to align the Prisons Act and Borstal Institutions Act with the Constitution of Kenya and the international instruments on the rights of detained persons;

NOW THEREFORE, the Senate resolves to establish a Select Committee to undertake an inquiry into the policy and legislation pertaining to the treatment of detained persons as well as the state of correctional institutions in Kenya, including prisons and Borstal institutions, and to submit a Report to the Senate within three months, with recommendations on such policy and legislative interventions as may be necessary to align the existing legislation on correctional services with the Constitution of Kenya and in compliance with international standards on the rights of detained persons and such other recommendations as may be necessary;

AND FURTHER that the Members of the Select Committee are-

1. Sen. Fatuma Dullo
2. Sen. (Dr.) Zipporah Kittony
3. Sen. (Dr.) Boni Khalwale
4. Sen. (Prof.) John Lonyangapuo
5. Sen. Stewart Madzayo
6. Sen. Liza Chelule
7. Sen. Judith Sijeny
8. Sen. Mutula Kilonzo Jr.
9. Sen. Stephen Sang'
10. Sen. Joy Gwendu
11. Sen. Moses Kajwang'

(Sen. Fatuma Dullo)

Order deferred.

14. **MOTION – NEED FOR THE NATIONAL LAND COMMISSION TO INITIATE LEGISLATION TO ADDRESS HISTORICAL LAND INJUSTICES**
(Department of Land)

Motion made in amended form and Question proposed;

THAT, WHEREAS the National Land Commission was established following the enactment of the National Land Commission Act, 2012 to, among others, give effect to the objects and principles of devolved government in land management and administration;

NOTING the principles of land policy as set out in Article 60 of the Constitution including equitable access to land and encouragement of communities to settle land disputes through recognized local community initiatives consistent with the Constitution;

RECOGNIZING that land ownership and utilization is at the centre of many interpersonal and community conflicts in the country since independence;

ALSO NOTING that section 15 of the National Land Commission Act mandates the Commission to recommend to Parliament appropriate legislation to provide for investigation and adjudication of claims arising out of historical land injustices for the purposes of Article 67 (2) (e) of the Constitution;

FURTHER NOTING with concern that the envisaged legislation has not been enacted five years after promulgation of the Constitution;

AND NOTING that historical injustices on land matters was among the main justifications for the new Constitution;

This Senate urges the National Land Commission to urgently recommend to the Senate within the next 60 days a Bill to address historical land injustices to provide a framework to ensure that land is properly utilized for the economic benefit of the affected communities.

(Sen. Mutula Kilonzo Jnr.)

Debate arising;

Mover replied.

Before the Question was put, and pursuant to Standing Order 72(1), the temporary Speaker (Sen. Mositot) informed the Senate that the motion did not affect counties.

Question put and agreed to.

RESOLVED ACCORDINGLY-

THAT, WHEREAS the National Land Commission was established following the enactment of the National Land Commission Act, 2012 to, among others, give effect to the objects and principles of devolved government in land management and administration;

NOTING the principles of land policy as set out in Article 60 of the Constitution including equitable access to land and encouragement of communities to settle land disputes through recognized local community initiatives consistent with the Constitution;

RECOGNIZING that land ownership and utilization is at the centre of many interpersonal and community conflicts in the country since independence;

ALSO NOTING that section 15 of the National Land Commission Act mandates the Commission to recommend to Parliament appropriate legislation to provide for investigation and adjudication of claims arising out of historical land injustices for the purposes of Article 67 (2) (e) of the Constitution;

FURTHER NOTING with concern that the envisaged legislation has not been enacted five years after promulgation of the Constitution;

AND NOTING that historical injustices on land matters was among the main justifications for the new Constitution;

This Senate urges the National Land Commission to urgently recommend to the Senate within the next 60 days a Bill to address historical land injustices to provide a framework to ensure that land is properly utilized for the economic benefit of the affected communities.

And the time being thirty minutes past Six O'clock, the Temporary Speaker (Sen. Murkomen) interrupted the proceedings and adjourned the Senate without Question put, pursuant to the Standing Orders.

15. SENATE ROSE - at thirty minutes past Six O'clock.

M E M O R A N D U M

*The Speaker will take the Chair on
Tuesday, September 29, 2015 at 2.30 p.m.*

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