



**REPUBLIC OF KENYA**

**THE SENATE**

**ELEVENTH PARLIAMENT – THIRD SESSION**

**VOTES AND PROCEEDINGS**

**THURSDAY, MAY 28, 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**

The Speaker conveyed the following communications from the Chair-

**i) Retreat with the Transition Authority**

"Honourable Senators,

The Transition Authority in collaboration with the Senate has organized a two days retreat for the Senate from the 18<sup>th</sup> to 21<sup>st</sup> of June, 2015, with the travel dates being 18<sup>th</sup> and 21<sup>st</sup>.

Honourable Senators,

The retreat is aimed at sharing experiences in the transition to devolved government, taking stock of what has been done and how much still remains to be done for the full transition to devolved government. The key areas of discussion shall be:

1. Inventory and audit of assets and liabilities
  2. Transfer and Costing of functions
  3. County Umbrella Retirement Scheme
  4. Capacity Assessment and Rationalization of Public Service (CARPS) programme
- County Capacity Assessment of uptake functions
  - County Assemblies' capacity-building

- County Public Service capacity-building
  - County Executive Committee members' capacity-building
  - County legislation capacity-building
  - Transfer and closure of public records and information
  - Human resource deployment in the public service
5. Urban Areas and Cities Amendment Act
  6. Audit of ongoing reforms, projects and programmes
  7. Review of performance of concurrent functions

The Transition Authority is currently preparing an elaborate programme in consultation with technical staff from the Senate. Resource persons for all the sessions shall be drawn from the Senate and the Transition Authority.

Honorable Senators,

The retreat will afford Senators an opportunity to critically discuss issues that have impeded the realization of devolution. The expected output of the retreat is to define the next steps, determine the type of support required to complete the unfinished work and an exit mechanism.

Honourable Senators,

Senators can obtain the necessary additional information on this event from the Office of the Clerk.

I request all Senators to attend and participate in this very important event in our calendar.

I thank you".

## **ii) Senate's Discharge of its Legislative Mandate**

"Honourable Senators,

As you are aware, the Senate will be proceeding on a two week break from this afternoon to resume on Tuesday, 16<sup>th</sup> May, 2015.

I wish to take this opportunity to commend you, Hon. Senators, for your diligent participation in the discharge of your constitutional mandate over the last two months, whereby the Senate has passed the

following seven Bills, out of which five were subject to a constitutional deadline of 27<sup>th</sup> May, 2015:

1. The Public Service (Values and Principles) Bill (National Assembly Bill No. 29 of 2014);
2. The Environmental Management and Co-ordination (Amendment) Bill (National Assembly Bill No 31 of 2014), the Mediated Version of which was passed on 26<sup>th</sup> May, 2015 and transmitted to the National Assembly;
3. The Public Audit Bill (National Assembly Bill No. 38 of 2014), the Mediated Version of which was passed yesterday and transmitted to the National Assembly;
4. The Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014);
5. The Fair Administrative Action Bill (National Assembly Bill No. 10 of 2015);
6. The Potato Produce and Marketing Bill (Senate Bill No. 22 of 2014); and
7. The Public Fundraising Appeals Bill (Sen Bill No. 28 of 2014).

I note with satisfaction and commend you Hon. Senators for considering and approving the Report of the Mediation Committee on the Division of Revenue Bill (National Assembly Bill No. 11 of 2015), yesterday. Hon. Senators, this is very commendable and the onus is now on the National Assembly to expedite the approval of the Mediation Committee Report.

Honourable Senators,

Let me point out that debate was also concluded on several bills which are now due for Committee of the whole and one of which is listed at Order No. 9 for consideration today.

I would like it to go on record that the Senate has risen to the call of duty and effectively discharged its legislative mandate, particularly with regard to passage of Bills with constitutional deadlines and despite the very short timelines this House had as a result of the late submission of the said Bills to the Senate.

I thank you."

**4. PETITIONS**

Pursuant to Standing Order 220 (1) (a), the Deputy Speaker reported to the Senate that a petition had been received from one Hon. Festus Ndeto, Member of Makueni County Assembly on marginalization in implementation of development projects in Kola Ward, in Machakos County.

Pursuant to Standing Order 226, the Speaker invited Senators to comment on the petition and directed that the Petition be committed to the Standing Committee on Finance, Commerce and Budget, pursuant to Standing Order 227.

**5. PAPERS LAID**

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

i) Report on the Tobacco Control Regulations, 2014.

*(Chairperson, Sessional Committee on Delegated Legislation)*

ii) Copies of the Rules of the Inter-Parliamentary games tournament (Attached as Annex I)

iii) Proposed amendments to the Treaty by EALA (Attached as Annex II);

iv) Resolutions of Nanyuki VIII (Attached as Annex III); and

v) Report on the County Governments Disaster Management Bill, 2014.

*(Chairperson, Standing Committee on National security and Foreign Relations)*

vi) Report of the Standing Committee on Finance, Commerce and Budget on the Annual estimates of Revenue and expenditure for the National Government, Judiciary and the Parliamentary Service Commission for the FY 2015/16.

*(Chairperson, Standing Committee on Finance, Commerce and Budget)*

**6. STATEMENTS****a) Statement Pursuant to Standing Order 45 (2) (a)**

The Senator for Nakuru County (Sen. Mungai) issued a Statement regarding skirmishes in Nakuru County. He informed the Senate that there had been skirmishes in Nakuru County due to the closing by a private developer of a corridor leading to Lake Naivasha. He further informed the Senate that the action by the private developer had

infuriated residents resulting in their barricading of roads leading to flower farms on Wednesday, 27<sup>th</sup> and Thursday, 28<sup>th</sup> May, 2015. He stated that huge economic losses had been occasioned as a result.

He appealed to the Government to take immediate action to enable access to the Lake and prevent further escalation of the problem.

b) **Statements pursuant to Standing Order 45 (2) (b)**

- i) The Senator for Nyeri County (Sen. Mutahi Kagwe) sought a statement from the Chairperson of the Standing Committee on Finance, Commerce and Budget regarding the continued depreciation of the Kenya Shilling against other major world currencies.
- ii) The Senator for Murang'a County (Sen. Kembi Gitura) sought a statement from the Chairperson of the County Public Accounts and Investment Committee regarding action being taken by the Committee to ensure that the Reports of the Auditor General on annual audited accounts of public institutions were availed to the Senate.
- iii) The Vice Chairperson of the Standing Committee on National Security and Foreign Relations issued a statement regarding the forthcoming visit to Kenya by H. E. Barrack Obama, President of the United States of America.

Thereupon, the Vice Chairperson informed the Senate that the reason why President Obama would be visiting Kenya would be in order to attend the Global Entrepreneurship Summit (GES) which would be held in Nairobi in July, 2015. She stated that, as is ordinarily the practice with other Presidential visits, it was expected that President Obama would hold bilateral meetings with the President of the Republic of Kenya on various areas of interest, including trade and investment, security and energy among others.

During the Summit, the government planned to leverage on the opportunity to organize excursions/tours to key areas of interest.

The Vice Chairperson stated that there had been no request from the US Government for President Obama to address Parliament. The Vice Chairperson further stated that the US Government had not communicated whether President Obama intended to visit Kogelo village in Siaya County.

- iv) The Vice Chairperson of the Standing Committee on National Security and Foreign Relations issued a statement regarding a

recent road accident near Daraja Moja in Kisii County involving a truck and a trailer registration number KAD 162N.

Thereupon, the Vice Chairperson stated that traffic police officers had intercepted the lorry loaded with electricity poles which were protruding dangerously. A Police Constable, Lukas Okello, was assigned to escort the vehicle to the police station but the driver lost control of the lorry near Gusii Institute of Technology, whereby it veered off the road, fatally knocking down two pedestrians who were employees of the college.

The Vice-Chair stated that the driver and the turn-boy fled from the scene immediately, leaving behind the injured police officer. Members of the public, who assumed that the police officer was the one driving the lorry proceeded to attack him and that he was saved by a bodaboda operator who took him to Ram Hospital where he was admitted.

She added that subsequently, students engaged police officers in running battles, burnt the lorry and barricaded the road and attempts to disperse them proved difficult. In the course of quelling the riots, six police officers were injured while 6 rioters sustained bullet injuries, with one of them succumbing while undergoing treatment at Ram Hospital.

- v) The Vice Chairperson of the Standing Committee on Legal Affairs and Human Rights issued a statement regarding the Government's plan to open more consulates to be used as polling centres by Kenyans living in the United States of America during the 2017 general elections.

Thereupon, the Vice-Chairperson informed the Senate that the Government had established a Taskforce on Implementation of the Constitution of Kenya 2010 to Facilitate Voting in General Elections and Referenda by Kenyans in the Diaspora pursuant to a Cabinet Decision OP/CAB.58/4A of December 2, 2014.

He also informed that Senate that the Cabinet directed the Cabinet Secretary for Foreign Affairs, the Attorney General and the Independent Electoral and Boundaries Commission (IEBC) to constitute the Taskforce to facilitate voting by Kenyans in the Diaspora in line with the Constitution.

The Speaker directed the Vice-Chairperson to submit a more comprehensive response on the matter.

- vi) The Senator for Migori County (Sen. (Dr.) Machage) issued a Statement on behalf of the Chairperson of the Standing Committee on Health regarding cholera outbreak in the country.

Thereupon, Sen. Machage informed the Senate that cases of cholera had been reported in eleven counties are affected among them, Nairobi, Migori, Homa Bay, Bomet, Mombasa, Murang'a, Nakuru, Kirinyaga, Kiambu, Embu and Baringo.

He further informed the Senate that key prevention and response interventions such as public education on hygiene and sanitation, provision of safe water systems, and management of cholera cases is primarily the function of the county governments and that the National Government role is mainly coordination, technical assistant upon request by a county, provision of guidelines and policy direction, provision of medical supplies and laboratory confirmation services.

He stated that devolution of health services would require time to be yield results and that as part of trying to seek solutions to the cholera outbreak, the Ministry of Health would hold a major stakeholder meeting with representation from all the 47 counties and other stakeholders.

c) **Statement Pursuant to Standing Order 45 (2) (c)**

The Senate Minority Whip, on behalf of the Senate Majority Leader issued a Statement on the Business of the week commencing Tuesday, 16<sup>th</sup> June 2015.

7. **MOTION FOR THE ESTABLISHMENT OF A SELECT COMMITTEE TO CONDUCT AN INQUIRY INTO THE AFFAIRS OF KENYA AIRWAYS LIMITED**

Motion made and Question proposed-

**THAT**, aware that the Government of Kenya has a 29.8% shareholding in Kenya Airways Limited thereby being the largest single shareholder in the company;

**COGNIZANT** of the fact that Kenya Airways Limited, the National Flag carrier, has been experiencing tremendous delays and cancellation of flights;

**AWARE** that each delay and or cancellation has led to grave losses to the airline thereby worsening the debt burden of the corporation;

**REALIZING** that the airline is now in debt to the tune of 18 Billion Kenya Shillings;

**FURTHER AWARE** that the current business plan of the airline does not seem to take into full account necessary measures to turn the company around;

**CONCERNED** that the situation, if left unchecked, may lead to the collapse of the company and great loss to the nation, investors and the Kenyan taxpayers;

**NOW THEREFORE**, the Senate resolves to establish a select committee to conduct an inquiry into the affairs of Kenya Airways Limited and its subsidiaries, and report to the Senate within three months, taking into account the following-

- i) The leasing and buying arrangement of aircrafts since 1996;
- ii) The role of off-shore companies in the investment affairs of the airline;
- iii) The identity of the share holders of these off-shore companies and their relationship with the management of Kenya Airways Limited;
- iv) The employment policies and practices of personnel, including engineers, pilots, cabin crew and ground personnel;
- v) The reason for delayed and cancelled flights, their frequency and the magnitude of losses attendant therein; and
- vi) Any other matter that may shed light on the financial and management crisis currently facing the airline;

**AND FURTHER** that the Members of the Select Committee are:-

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

*(Sen. Peter Anyang' Nyong'o – 27.05.15)*

Order deferred.



8. COMMITTEE OF THE WHOLETHE NATURAL RESOURCES (BENEFIT SHARING) BILL (SENATE BILL NO. 34 OF 2014)

(Chairperson, *Ad hoc* Committee on Legislation on Royalties accruing from Natural Resources)

Order deferred.

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

(Sen. Judith Sijeny)

*(Second Reading)*

Order deferred.

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

(Chairperson of the Standing Committee on Labour and Social Welfare)

*(Second Reading)*

Order deferred.

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

(Chairperson, Standing Committee on Education)

*(Second Reading)*

Order deferred.

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

(Chairperson, Standing Committee on Legal Affairs and Human Rights)

*(Second Reading)*

Order deferred.

13. THE UNIVERSITIES (AMENDMENT) BILL (SENATE BILL NO. 31 OF 2014)

(Sen. Halima Abdille)

*(Second Reading)*

Order deferred.

14. **THE COUNTY HALL OF FAME BILL (SENATE BILL NO. 33 OF 2014)**  
(Chairperson of the Standing Committee on Legal Affairs and Human Rights)

*(Second Reading)*

Order deferred.

15. **THE INTERGOVERNMENTAL RELATIONS (AMENDMENT) BILL (SENATE BILL NO. OF 36 OF 2014)**  
(Chairperson, *Ad hoc* Committee on Establishment of Public Compensation Bureaus)

*(Second Reading)*

Order deferred.

16. **MOTION – NEED FOR POLICY AND LEGISLATIVE MEASURES TO IMPROVE AND EXPEDITE 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.

17. **MOTION – ESTABLISHMENT OF NATIONAL AIDS CONTROL COUNCIL (NACC) COUNTY OFFICES IN ALL COUNTY HEADQUARTERS**  
(Department of Health)

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

Constitution; recognizing that under the Fourth Schedule, the health function has been devolved except for the health policy and referral hospitals; concerned that an estimated 1.2 million Kenyans are infected with HIV/AIDS and a 100,000 are infected annually; recognizing the need to achieve an “AIDS free society” by stepping up the fight against the pandemic at the County level, the Senate urges the National Government to set up the National AIDS Control Council (NACC) County offices in all County Headquarters with the National Headquarters providing overall co-ordination and that the resources allocated for the fight against HIV/AIDS be disbursed and managed at the County level.

*(Sen. Sammy Leshore)*

Order deferred.

18. **MOTION - ADJOURNMENT OF THE SENATE PURSUANT TO STANDING ORDER 28 (3)**

Motion made and Question proposed;

**THAT**, the Senate do now adjourn until Tuesday, 16<sup>th</sup> June, 2015.

*(Sen. Billow Kerrow on behalf of the Senate Majority Leader)*

Debate arising;

And the time being thirty minutes past Six O'clock, the Deputy Speaker (Sen. Kembi Gitura) adjourned the Senate without question put pursuant to the Standing Orders.

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

**MEMORANDUM**

*The Speaker will take the Chair on  
Tuesday, June 16, 2015 at 2.30 pm*

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