

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 8th October, 2015

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

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

PRAYERS

POINT OF ORDER

DEMISE OF SENATOR JULIUS MUTHAMIA

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, before I move on to lay Papers, allow me, on a point of order, to draw the attention of the Chair that during the tenure of this Second Senate, the first Senator to die while we are in session is former Senator Julius Muthamia, the first Senator for Meru County. He was also an Assistant Minister. I do not know whether the Chair will allow us to respect him by according him a minute of silence before we transact business.

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Khalwale. The practice of this House is to discourage ambushes. This may be a very sad ambush. I can only act when I have verified the veracity of your assertions.

An hon. Senator: He is in the obituaries!

The Speaker (Hon. Ethuro): You also know that newspapers are not reliable sources of information.

Sen. (Dr.) Khalwale: Indeed, Mr. Speaker, Sir. However, just as you have correctly said about ambushes, death really ambushes people. We have been very busy both in the normal media and in social media communicating with Hon. Gitobu Imanyara and all the prominent leaders from Meru County. We have been sending condolences to the family. However, I stand guided.

The Speaker (Hon. Ethuro): You are so guided. Proceed on with the matter before us.

PAPERS LAID

REPORTS OF THE AUDITOR-GENERAL ON THE FINANCIAL STATEMENTS
OF KILIFI COUNTY ASSEMBLY AND BOMET AND
TAITA-TAVETA COUNTY GOVERNMENTS

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I rise to lay the following Papers on the Table of the Senate today, Thursday, 8th October, 2015:-

Report of the Auditor-General on the Financial Operations of Kilifi County Assembly for the year ended 30th June 2014;

Report of the Auditor-General on the Financial Statements of County Government of Taita Taveta for the sixteen (16) months period ended 30th June 2014.

Report of the Auditor-General on the financial statements of County Government of Bomet for the sixteen (16) months period ended 30th June 2014.

(Sen. (Dr.) Khalwale laid the documents on the Table)

REPORT OF THE INTER-PARLIAMENTARY UNION'S ADVISORY MISSION
TO KENYA ON A FRAMEWORK TO IMPLEMENT THE CONSTITUTIONAL
PROVISION OF THE TWO-THIRDS GENDER RULE

Sen. Ongoro: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Thursday, 8th October, 2015.

Report of the Inter-Parliamentary Union's Advisory Mission to Kenya in July 2015 on a Framework to implement the Constitutional provision of the two-thirds gender rule.

(Sen. Ongoro laid the documents on the Table)

The Speaker (Hon. Ethuro): Is Sen. Nabwala here? Chairperson of the Committee on Delegated Legislation? Sen. (Dr.) Khalwale, which Papers did you lay on the Table?

Sen. (Dr.) Khalwale: I have laid the one on Taita-Taveta---

The Speaker (Hon. Ethuro): Use the nomenclature as listed on the Order Paper.

Sen. (Dr.) Khalwale: I have laid the Papers listed under item "c", "d" and "e".

The Speaker (Hon. Ethuro): Okay.

Proceed, Sen. Kagwe.

REPORT ON THE STANDING COMMITTEE ON INFORMATION AND
TECHNOLOGY ON THE COUNTY OVERSIGHT AND NETWORKING
ENGAGEMENTS IN VARIOUS COUNTIES

Sen. Kagwe: Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate today, Thursday, 8th October, 2015.

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Report of the Standing Committee on Information and Technology on the County Oversight and Networking Engagements (CONE), in Bungoma, Uasin Gishu, Elgeyo-Marakwet, Baringo and Nakuru counties.

REPORT OF THE STANDING COMMITTEE ON INFORMATION
TECHNOLOGY ON THE OFFICE OF THE
COUNTY PRINTER BILL, 2014

Report of the Standing Committee on Information Technology on the Office of the County Printer Bill, 2014.

(Sen. Kagwe laid the documents on the Table)

ADDRESS BY HIS. EXCELLENCY (DR.) JAKAYA MRISHO KIKWETE, THE
PRESIDENT OF THE REPUBLIC OF TANZANIA TO THE PARLIAMENT OF
THE REPUBLIC OF KENYA

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today Thursday, 8th October, 2015.

Address by His Excellency (Dr.) Jakaya Mrisho Kikwete, the President of the Republic of Tanzania to the Parliament of the Republic of Kenya.

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

NOTICE OF MOTION

THANKS OF THE SENATE FOR THE ADDRESS TO PARLIAMENT
BY THE PRESIDENT OF THE UNITED REPUBLIC OF TANZANIA

The Senate Majority Leader, Sen. (Prof.) Kindiki: Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, pursuant to the provisions of Standing Order No.25(3), the Thanks of the Senate be recorded for the address to Parliament by the President of the United Republic of Tanzania delivered on Tuesday, 6th October, 2015.

The Speaker (Hon. Ethuro): Next Order.

STATEMENTS

Sen. (Dr.) Kuti: Mr. Speaker, Sir, yesterday, I informed the House that due to the fact that there were a lot of pending and unanswered statements, we were to call the Cabinet Secretary for Health today morning.

I now report that the Cabinet Secretary (CS) was here this morning and we had a very lengthy two and a half hour deliberations. According to me and my Committee, it

was very fruitful for both our consumption and issues that concern citizens of this country.

The first issue that we dwelt on was the issue of the chronic and persistent health staff strikes that have affected most counties and paralyzed services to *wananchi*. The CS agreed with us that, that was a problem while all the other health indicators after devolution have remarkably improved. Despite infrastructure, health centres, and also facilities within the hospitals improving, the issue of health workers has had minimal progress.

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Kuti. This is a House of procedures. Under what order are you giving that information?

Sen. (Dr.) Kuti: Under Statements. Mr. Speaker, Sir.

I was just briefing the House but I also have statements to give. There are several of them. I wanted to give as preamble to the fact that I have several pending statements from previous requests by the House and not just one.

The Speaker (Hon. Ethuro): Then you will have to wait for the listed ones to be exhausted because we must also allocate time. It is not just a matter of your own presence. You may wish to learn to delegate.

Majority Leader, proceed to Statement “a”.

BUSINESS FOR THE WEEK COMMENCING
TUESDAY, 13TH OCTOBER, 2015

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I rise under Standing Order No.45 to issue the Statement on the business for next week commencing Tuesday, 13th October, 2015.

On Tuesday, Mr. Speaker, Sir, we shall have a meeting of the Rules and Business Committee (RBC) at 12 noon on 13th October, 2015 to schedule the business of the week. Subject to that meeting, the Senate is expected to debate Bills which are in Second Reading and Committee stage including the following Bills:

1. The Climate Change Bill (National Assembly Bill No. 1 of 2014).
2. The Tobacco Control Regulations.
3. The County Early Childhood Education Bill (Senate Bill No. 32 of 2014).
4. The Universities (Amendment) Bill (Senate Bill No. 3 of 2014).
5. The Public Appointments County Assembly Approval Bill (Senate Bill No. 20 of 2014).
6. The County Assembly Services Bill (Senate Bill No. 27 of 2014).
7. The Parliamentary Powers and Privileges Bill (Senate Bill No. 15 of 2014).

On Wednesday, 14th October, 2015, the Senate will continue with the business that will not be concluded during Tuesday’s sitting, especially in giving priority to the Bills in the Second Reading and Committee of the Whole. Any other business will be as directed and approved by the RBC.

On Thursday, 15th October, 2015, the Senate will consider Bills that will be scheduled by the RBC. As I end, for the last two weeks, we have been requesting hon. Members to give the Senate a bit of attention especially because we have a backlog of

Bills that we cannot proceed with because what is required is division which requires the minimum numbers in accordance with the Constitution and the Standing Orders. I appeal, once more, kindly, hon. colleagues, please, show up so that we are able to transact these Bills as soon as possible.

We understand there is a lot of Committee work going on here and outside Nairobi. We also understand that many Senators have county responsibilities but equally we do understand that for three days in the afternoons, we have set those apart for transacting the legislative agenda of this House. I am appealing that we take this seriously and show up so that we can dispense with these Bills as we go towards the end of this year.

I now lay this Statement on the Table of the Senate.

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

Mr. Speaker, Sir, with your permission I have another Statement.

The Speaker (Hon. Ethuro): Let us deal with the first one, first.

Sen. Wako: On a point of order, Mr. Speaker, Sir. I do not know how the order of priority or the listing of this is concerned because yesterday, the next Bill which should have been discussed during Second Reading at conclusion yesterday was the County Attorney Bill.

I expected that when the Leader of Majority was giving a report on what is to be done next week, the County Attorney Bill, having been the next yesterday, would feature somewhere at the top so that we begin debating it on Tuesday. This Bill has been pending for quite some time but as it is now, it is not even mentioned in the Senate Majority Leader's Statement. Yesterday, when we completed The HIV and AIDS Prevention Control and Management (Amendment) Bill, the Bill was next. If the proceedings had continued for another five minutes, I would have began moving that Bill yesterday. But now for next week ---

The Speaker (Hon. Ethuro): Order, Senator. You have put your case and I am sure the Majority Leader and other Members of the RBC have heard you. We will definitely prioritize.

Sen. Obure: Mr. Speaker, Sir, the Leader of the Majority made an appeal to Senators to pay greater attention to the business of the House.

Yesterday, the Chairman of the Health Committee, Dr. Kuti, gave notice of a meeting with the Cabinet Secretary (CS) of Health this morning. That was a very important meeting because Members of this House have expressed concerns about the management of the health sector. This was a tremendous opportunity for them to interrogate the CS.

I attended that meeting and it was very disappointing that even Members of the Committee on Health did not attend the meeting. Only a few did. I appeal to fellow Senators that this is important, particularly the health sector which is one of the sectors that has been extensively devolved. It is one of the sectors that we oversight directly.

I want to support the appeal made by the Senate Majority Leader that it is our duty to attend to the business of the Senate. Let us try as much as possible to pay greater

attention to the business of this House as part of our individual and collective commitment to the duty of this House.

I also report that the issues which were discussed at the Health *Kamukunji* this morning were very important. In fact, this was one of the best meetings I have ever attended with the CS. The meeting was very effectively presided over by the Chairperson of the Committee on Health, Sen. (Dr.) Kuti. Those who were unable to attend missed a lot.

Thank you.

The Speaker (Hon. Ethuro): I am sure, Members, you have heard.

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

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. I rise to seek guidance from the Chair in my capacity as the Chairperson of the County Public Accounts and Investments Committee (CPAIC)---

The Speaker (Hon. Ethuro): Order! I will come to you if it is on that matter.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, it is not that one; it is a different one. The one I saw you over is different from the one I am prosecuting.

The Speaker (Hon. Ethuro): Proceed.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, as my colleagues, Senators, would have noticed, I have painstakingly been attempting to ensure that all the Reports of CPAIC come before this House timeously so that we can look at them. It has come as a great shock to me that while coming from the bank---

(Sen. (Dr.) Khalwale resumed his seat)

The Speaker (Hon. Ethuro): Proceed, Senator.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I was saying that I have been under a lot of pressure from colleague Senators; they want to see the reports of the Auditor-General concerning their counties tabled in this House.

I have used a lot of energy and effort to have those reports pushed to come before the House. I was shocked today on my way from the Cooperative Bank, Parliament Road, when I was confronted by a member of the public who told me that he did not wish to disclose his name but he said that he comes from Machakos County. He gave me two copies:-

First, the Report of the Auditor-General on the Financial Statements of the County Government of Machakos that was signed by the Auditor-General on 8th July, 2015.

Secondly, he also gave me a copy of the Auditor-General on the Financial operations of Machakos County Executive that was signed by the Auditor-General, Mr. Edward Ouko, on 19th May, 2015.

Mr. Speaker, Sir, the only way these documents can go to the public domain is after we have tabled them here. I have been under a lot of pressure from many Senators and I am at a loss to explain how a document that was signed way back in May has not been brought for tabling and is now in the hands of members of the public.

I would like you to give me guidance on how to treat this particular difficult situation of Machakos County. I wish to table the document.

I am not tabling it as a report from the Auditor-General but as evidence for perusal by the Chair for him to ascertain that what I have said is true; that it is from Machakos and signed by the Auditor-General.

(Sen. (Dr.) Khalwale laid the documents on the Table)

The Speaker (Hon. Ethuro): Order, Members! Just bring those documents. Even as I check on the authenticity of the documents, Sen. (Dr.) Khalwale, I will not be of much help to you. It is not the business of the Chairpersons of this House to be plucking things from thin air, the streets and from encounters of back transactions. Therefore, this is inadmissible especially when we have such a close constitutional relationship with that office. What you need to do is to summon the Auditor-General so that he can give you an explanation. From the interaction with him, you can advise the House. You are better placed than anybody else in this House to do so. Those are my directives.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I am so guided.

The Speaker (Hon. Ethuro): As far as I am concerned, these are just pieces of paper you have collected on the streets.

Let us proceed with Statement (b).

(Sen. (Prof.) Kindiki stood up in his place)

Order, Professor! You are not on Statement (b). It was sought by Sen. Wetangula and the response should be from the Chairperson of the Standing Committee on National Security and Foreign Relations.

Sen. Haji: Yes, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): There is a reason why we publish a document known as the Order Paper.

DEMONSTRATIONS ALONG HARAMBEE
AVENUE AND PARLIAMENT ROAD

Sen. Haji: Thank you, Mr. Speaker, Sir. I am not able to issue Statement (b) this afternoon. However, as I said earlier, we have summoned the Cabinet Secretary to appear before the Whole House on Tuesday. I have asked him to address all outstanding issues that have been raised in this House. I hope that Members will take this opportunity to do so.

An hon. Senator: Which Cabinet Secretary?

Sen. Haji: The Cabinet Secretary for Interior and Coordination of National Government. I only deal with internal security.

The Speaker (Hon. Ethuro): Let us proceed with Statement (c).

What is it, Sen. Wetangula? I hoped you would do so but you are reluctant.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. If the distinguished Senator for Garissa wants the Cabinet Secretary to come here, it would be a good idea for the Chairperson of the Committee on National Security and Foreign Relations to pull out all requested Statements relating to security and apprise Members who have requested for them and those who have had a rider on them so that we can all interrogate the Cabinet Secretary on those pending statements.

The Speaker (Hon. Ethuro): What is it, Sen. (Dr.) Khalwale?

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. Did you hear Sen. Haji say that he is only concerned with matters of internal security? Could the Chairperson be guided to know that his mandate also covers foreign affairs and defence?

Sen. Haji: Mr. Speaker, Sir, that Statement required from me deals with the Cabinet Secretary for Interior and Coordination of National Government. It does not deal with any other Ministry. So, that answers him very well.

Secondly, Mr. Speaker, Sir, ---

The Speaker (Hon. Ethuro): Indeed, I agree with the Chairperson.

Sen. Haji: Thank you, Mr. Speaker, Sir. To answer the Leader of Minority, when I responded, I said that all the Statements that are outstanding with the Cabinet Secretary for Interior and Coordination of National Government will be answered by him on Tuesday. Hon. Members, please, be aware and avail yourself on that day.

The Speaker (Hon. Ethuro): Tuesday at what time?

Sen. Haji: Mr. Speaker, Sir, in the morning at 9.00 a.m. or 10 a.m.

The Speaker (Hon. Ethuro): Let us agree that the meeting will commence on Tuesday at 10.00 a.m.

Sen. Haji: Obligated, Mr. Speaker, Sir. Many people use traffic as an excuse for being late in meetings. So, we shall do it at 10.00 a.m.

The Speaker (Hon. Ethuro): Order, Senator! They still use traffic to come early. Let us proceed with Statement (c).

ACCESS TO FINANCES BY THE YOUTH, WOMEN AND PWDs TO EXECUTE TENDERS WON

Sen. Madzayo: Mr. Speaker, Sir, I have a response to a Statement that was sought by Sen. Chelule. I have discussed with her and she is comfortable with me going through the response despite the fact that the material is quite bulky. I have promised her that I will have them photocopied and make sure that she has the documents by Tuesday.

Therefore, if there are any queries then maybe she can come up with them much later. With your confirmation, I will proceed.

The Speaker (Hon. Ethuro): Proceed to deliver the Statement?

Sen. Madzayo: Mr. Speaker, Sir, to deal with the Statement---

The Speaker (Hon. Ethuro): What about the bulky document?

Sen. Madzayo: I will give it to her---

The Speaker (Hon. Ethuro): Order! We will not act in vain. The Chair should approach me and not the Member. Use the weekend and photocopy. Let the Member and other Members have the document. The Statement is very important; it is about access to

finances by youth, women and persons with disabilities. You should present the Statement on Tuesday when everybody has sufficient information.

Sen. Madzayo: Most obliged.

(Statement deferred)

The Speaker (Hon. Ethuro): The Chairperson or the Vice Chairperson of the Standing Committee on Energy to respond to the Statement (d) on the frequent power blackouts in West Pokot County.

FREQUENT POWER BLACKOUTS IN WEST
POKOT COUNTY

Sen. Mwakulegwa: Mr. Speaker, Sir, on 28th July, 2014, Sen. (Prof.) Lonyangapuo had requested for a Statement on the frequent power blackouts in West Pokot County.

In this Statement, he wanted to know the following:-

1. The plans the Ministry has put in place to mitigate this problem.
2. When constant power supply will be experienced in West Pokot County.

In an effort to make the network supporting supply to this county more robust, flexible and with alternative supplies, the Kenya Power carried out planned outages during the month of August, 2015. The first one was undertaken on 4th August, 2015 which lasted eight and a half hours between Kapenguria and Kainuk to replace rotten wooden poles with concrete poles.

The Second outage happened on 7th August, 2015 which lasted nine and a half hours between Turkwel and Kainuk to replace 72 wooden rotten poles with concrete ones.

The third outage happened on 8th August, 2015 and lasted more than ten hours between Turkwel and Kainuk to create new feeder lines.

The fourth outage happened in Kapenguria Town and lasted four hours, and it was to install new transformers to address those overloaded.

The fifth outage happened on 11th August, 2015 and lasted eight and a half hours between Turkwel and Kainuk to interconnect with new line to create flexibility.

The sixth outage happened on 13th August, 2015 and lasted seven hours between Turkwel and Kainuk to replace wooden poles with concrete ones.

The seventh outage happened between Eldoret and Kitale interconnection line on 14th August, 2015 for 11 hours to replace wooden poles on the 33 kV line.

The eighth one in Kapenguria Town happened on 17th August, 2015 and lasted for nine hours and 50 minutes to install new transformers and protection switch gears.

The ninth outage happened on 22nd August on Kitale-Eldoret line and lasted for 14 hours. This was to service the breakers and the main transformer. The last outage happened on 24th August on the Webuye- Kitale line and lasted for 13 hours to replace rotten poles. This happened to make sure that we improve the supply of power to West Pokot County. After these activities were undertaken, supply has improved.

The following six projects are being undertaken for future plans to make sure that West Pokot supply is stabilized:-

1. Replacement of wooden poles with concrete poles in Makutano/Alale on the 33 kV line and Kainuk ex Turkwel on 11kv feeder.
2. Reinforcement of 33kV Kapenguria Substation by increasing number of 11kv feeders from two to six to avoid overload situations.
3. Commissioning of the ongoing Turkwel 220/11kv substations projects.
4. The construction of Ortum, 66/33 kV substation at Ortum, which is expected to be completed in December 2015.
5. The construction of 220/33kV Turkwel-Kitale substation which is expected to be completed in March, 2016.
6. The commissioning of Eldoret-Kitale 133kV line and substation which is expected to be completed in October this month which will greatly shorten the length of 33kV lines to Kapenguria.

All these projects will guarantee alternative and reliable power sources with inbuilt flexibility for West Pokot County.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I want to thank the Chairman for the detailed answers to the queries that I raised in this House. I want to remind the Chairman that this question was raised on 28th July, 2015. He is addressing answers from August, 2015.

My greatest concern was that West Pokot County has been experiencing frequent power blackouts until 28th July, 2015. The table he has given us addresses the situation from 4th to 24th August 2015. It shows that West Pokot County has experienced power blackouts during that period. I raised my request before that period. For as long as I can remember, up to 28th July, 2015, there were blackouts in my county. He needs to clarify this.

When the Chairman talks about rotten poles being replaced with concrete poles, could he clarify who is supplying the concrete poles? There is a serious misconception in the villages where Members of the National Assembly are in every village, particularly in Turkana and West Pokot counties, pretending to be the ones supplying those concrete poles. I want the Chair to tell us who is manufacturing the concrete poles and which Member of Parliament (MP) claims to be supplying them.

Mr. Speaker, Sir, I also want the Chairman to clarify because after he talked about future plans, he gave us future plans and replacement of wooden poles from Makutano-Alale up to item number seven. He said that all the above projects will guarantee alternative and reliable sources with inbuilt flexibility for the county. I want a specific date when they will be ready. As at now, the whole sub-county of Pokot North and Kacheliba Constituency does not have power since the world was born and the poles have been in existence. Some have been eaten by termites as the Chairman has confessed.

The Speaker (Hon. Ethuro): Order, Sen. (Prof.) Lonyangapuo. What were the wooden poles doing if not supplying electricity?

Sen. (Prof.) Lonyangapuo: They have been exhibits for as long as I can remember. There are poles but no lines.

Lastly, we talked about contribution of Turkwel Power Station and the Chairman has confessed that since inception, Turkwel Power Station has served the county. Which county is he talking about? Is he talking about West Pokot? It is only until four years ago that we started getting a little bit of power from the Turkwel, which is in West Pokot County. Since 1986 when the Turkwel came into existence, we have not benefited. So, I want you to rewrite and delete what you have put here saying that we have benefited.

The Chairman has even gone further to mention Kainuk, Turkwel, Marich Pass and Lomut. Lessos in Nandi County has been consuming this power from West Pokot from 1986 to date. So, it is important to correct this document so that we do not lie to Kenyans that West Pokot has benefited from the power which is generated there. It has not. We need a clarification.

The Speaker (Hon. Ethuro): Do we have other Members seeking clarifications?

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, the instability of power supply, particularly in the western parts of this country from Busia, Siaya, Kakamega, Bungoma, Trans Nzoia, West Pokot to Turkana is very frequent. Sometimes, we get blackouts for as long as ten hours or a whole day and these have caused a lot of havoc to businesses and home appliances and inconveniences to schools. Since they were connected to the grid, they gave away their generators and rely on grid power for students to study and do their laboratory tests and so on.

In his response, the distinguished Senator from Taita-Taveta said they are replacing wooden poles with concrete poles. Could he tell this House whether a replacement of wooden poles with concrete poles on its own can strengthen and create reliability in power supply? Those are just transmission mechanisms. There cannot be a scientific reason for telling the House that, that will give stability to power. But more importantly, could he tell the House when all schools and institutions of learning will be connected to the national grid in all these areas that I have cited and indeed, the rest of the country? More importantly, what clear measures are being taken to stabilize power supply so that the blackouts that we get so regularly become a thing of the past?

The Speaker (Hon. Ethuro): Order, Senators! Since I see a lot of interest, I will allow each of you to seek one clarification. So, prioritise whatever clarifications you have. I will follow the order as I see here.

Sen. Kagwe: Mr. Speaker Sir, a very young boy told me the other day that the only issue he finds in Kenya is that where he comes from when you switch on the lights, you actually expect that they will go on. In Kenya, you pray that the lights will go on. That is a very bad reputation for an emerging economy.

I will follow up on what Sen. Wetangula has just asked. How will we ensure that we have power that we can rely on for all sorts of things? In line with that, as we head towards the *El Nino* rains, there is a tendency during the rainy seasons for power blackouts to become worse. What preparation is the Kenya Power undertaking to ensure that they remove trees near power lines, so that at the advent of the *El Nino* rains, we do not have a permanent blackout across the city and indeed, the country?

Sen. Billow: Mr. Speaker, Sir, I think the counties that are the source of power, as the Senator for West Pokot said, should not actually be suffering in the manner that the Senator has explained. For a country that is now considering among other things nuclear

option for energy, I think one of the basic things we need to do is deal with power distribution. I want to seek a clarification particularly regarding those counties that are not on the grid, and they are many including my county. The frequency of power blackouts cannot be overstated. It is the routine rather than an exception. What measures is the Kenya Power Company taking to fundamentally and comprehensively modernize its power supply and distribution, particularly in those counties that are on stand-alone generators and so forth? We have a serious crisis.

The Speaker (Hon. Ethuro): Order! You have made your case.

Sen. Ndiema: Mr. Speaker, Sir, it is true that power outages are very common in the western region. Trans Nzoia too is very affected and the situation is worse during the harvest season. It causes a lot of losses to farmers in terms drying maize seed and commercial maize. The National Cereals and Produce Board (NCPB) and the Kenya Seed Company (KSC) cannot dry the maize. Could the Chairman confirm that in this season of *El Nino*, there will be no power outages or rationing of power shall be limited in Trans Nzoia for the purpose of food security?

Sen. Musila: Mr. Speaker, Sir, first, I want to give credit to the Kenya Power Company because wherever you go in the rural areas you find some work going on. I think it is good to give credit where it is due.

The Speaker (Hon. Ethuro): Order, Senator! But they are saying that even where there are power lines, there is no power. How do you give credit there?

Sen. Musila: Mr. Speaker, Sir, even taking the lines there is an effort which we must acknowledge. Having said that, in Kitui County, it is normal that we run without power for a very long time. Every Thursday of the week, we do not have power. I do not know what happens. In fact, I thought that it is only in Kitui that we have blackouts. I am so encouraged to hear that other areas are like Kitui County. When will the Kenya Power Company ensure that Kenya as a whole is connected to the national grid? Secondly, when will they ensure that this power is real, because at the moment, it is not real? There are places without wires and no power. In Kitui, we have blackouts every Thursday and whenever the power goes off at night, we are sure to get it back the following day.

The Speaker (Hon. Ethuro): Order! Sen. Musila, I hear you and by virtual of your age, I can understand. But I want to make it absolutely clear that we are not here to seek favors from state agencies. We are here to demand services to be given to the people of the Republic of Kenya. So, we cannot reward efforts that yield nothing and you cannot get encouraged because your situation is worse than others.

Sen. Musila: Mr. Speaker, Sir, I believe in acknowledging the work of anybody. I think that even taking wires is work done. If you go to the remotest parts of Kitui County, you will find wires even if they are not working. That is an effort.

The Speaker (Hon. Ethuro): What are those wires for?

Sen. Haji: Thank you, Mr. Speaker, Sir. I disagree with what my senior, Sen. Musila, has said. The wires that he is talking about are meant to benefit the contractor and the officer who is giving it. I am saying this because deals from--- In the former Hulugho District, only five kilometres from the Kenya-Somali border, we have the military, police, Deputy County Commissioner and all Government offices. A huge power house was

constructed 10 years ago, posts were put but up to today, there is no power. So, all these wires that you are seeing are for “eating”.

It is very unfortunate that Government should lie. I agree with Sen. (Prof.) Lonyangapuo when he says that the Government should not lie. The Government is lying because it is being said everywhere that power has been connected to 1000 places but it is all lies. We want our light now.

(Laughter)

The Senate Majority Leader (Sen. (Prof.) Kindiki): On a point of order, Mr. Speaker, Sir. I do not know what has become of the Chairperson of the Committee on National Security and Foreign Relations. He has just made very devastatingly incorrect statements here. I am sure even the Leader of the Minority will not support it. I do not think it is right for a Senator – I do not even think that it is honourable in my view – to say that the Government is lying. That statement is exaggerated. May be there could be factors which have not been presented appropriately. However, to say that the Government is lying is an attack on Government. I do not think it should go unchallenged.

The Speaker (Hon. Ethuro): What is it, Sen. Haji, former Minister?

(Loud consultations)

Sen. Haji: Mr. Speaker, Sir, there is no power in this place ---

The Speaker (Hon. Ethuro): Order, Sen. Haji! Just assume your seat. Relax and now enjoy the microphone.

Sen. Haji: Mr. Speaker, Sir, we cannot be gagged for saying the truth. It is daytime and the Government is lying in broad daylight by giving that statement. I want an explanation as to why 10 years down the road, there is no electricity in Hulugho, and yet a huge power house was constructed and poles laid.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. Is it in order for the distinguished Senator for Tharaka-Nithi to purport to gag an honourable Senator, first and foremost, as a representative of Garissa County Government and its people and not as the Chairperson as a Committee? That is just an addendum to his portfolio in this House. Is it in order for the Senate Majority Leader to purport to superintend and police Members of this House in representing their constituencies and airing views that help their people?

The Speaker (Hon. Ethuro): Order, Senators! I heard the Members very clearly. The Senate Majority Leader qualified his statement by saying, “in his view”. That view has been disapproved by the House. It is not anywhere near the majoritarian view, neither is it minority. It is the minority of the minority. I think the mood of the House and the country is such that these are people’s representatives and so they come here and describe the situation that obtains on the ground. The minimum that the Senate Majority Leader would do for us is to promise to do something about it, particularly when these issues are

coming from Sen. Haji whom the Senate Majority Leader knows has been around much longer than him.

Hon. Senators: Yes!

The Speaker (Hon. Ethuro): Sen. Haji senior, who happens to be with Sen. Musila, has conceded that he has seen the wires, just like Sen. (Prof.) Lonyangapuo who was Minister in the former Ministry of Roads and Public Works has seen the wooden poles. The Senate Minority Leader has confirmed that even if you change the wooden poles to concrete ones and they are conveying nothing, it is of no consequence. The Government policy is well stated that all primary schools should be connected with electricity, whether on grid or off grid.

The Senate Majority Leader and I represent counties that need that electricity like yesterday. So, this is a very important issue. Let the Vice Chairperson give us a firm undertaking. Secondly, remember that as we increase electricity production, we will bring down the cost of electricity which makes our country more competitive and attracts investments. I think all of us agree that we need it like yesterday.

Sen. Mwakulegwa: Mr. Speaker, Sir, I thank Members for the interest that they have shown in this subject. I might not have all the answers now. I will deliver the ones that I have, seek appropriate answers for those that I do not have and deliver them to the House at the appropriate time.

Let me start with the clarification from Sen. (Prof.) Lonyangapuo who said that he asked the question on 28th July, 2015 and that I gave the breakdown on 28th August, 2015. As I said after I gave the details, these interventions have improved the stability of power supply. I have not contradicted myself by saying there are no interruptions. All I said is that since this question was asked, they have undertaken some activities in the month of August that have stabilized power supply. I went further to say the programmes that they have and even gave the time limits because he had asked, when. I think I said that they are doing one in December, 2017, another one this month and the other in March, 2016. I gave the dates in terms of the future undertakings.

Mr. Speaker, Sir, in terms of who is the supplier of the concrete poles, I do not have the answer now, but I seek to get the answer and supply to the House later. I would be lying to say that I know who is supplying them. There could be several suppliers. I do not know. I will furnish the House with the details.

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. The word “lie” has been used several times when Sen. Haji was contributing and now the Vice Chairperson of the Committee on Energy. Is it now accepted to be parliamentary?

The Speaker (Hon. Ethuro): It is not. Use the word “mislead”.

Sen. Mwakulegwa: Thank you, Mr. Speaker, Sir. All I said is that, if I give any answer, I will be misleading the House. So, I said I will find out who the suppliers are.

Sen. Kagwe: On a point of order. Mr. Speaker, Sir. You just saw how clear we are about this matter because it is very serious. The issue of lying or not lying seems to be prevailing in the argument. Would I be in order to say that instead of saying the Government is lying, we say the Government is failing to complete the projects?

The Speaker (Hon. Ethuro): You are completely out of order. Those are two different things. Proceed, Chairman.

Sen. Mwakulegwa: Thank you, Mr. Speaker, Sir. In terms of the future power supply stability in West Pokot County, I have given elaborate programmes that will stabilize the power supply. I would request the distinguished Senator that if in future the power supply is not stabilized, then I am more than willing to talk to the Kenya Power and the Ministry of Energy and Petroleum to make sure that power supply, not only to West Pokot but the entire country is stabilized in terms of supply.

The Senate Minority Leader had stated that power supply in Western Kenya is unstable. I would want to go to the Ministry to be able to give a more detailed answer to this because it is a new question. Therefore, I need some time to do that. In terms of reliability of power especially when he said the wooden poles and the concrete ones will not improve supply of power, what happens with the wooden poles is that when termites eat the poles, they fall and interfere with the power supply. In terms of the schools being supplied with power, the Government's undertaking was that by the end of this financial year, all schools will be connected and the ones off the grid will be supplied with solar panels to make sure all learning institutions are supplied with power.

From my own county and the ones I have visited, about 80 per cent to 90 per cent of schools that are on the grid have been connected. It is only the ones who are off the grid that the Government is yet to do that.

Sen. Kagwe had asked that the Government had an ambitious plan of producing 5,000 megawatts so that it can improve the reliability of power supply. I think the programme is on course. As they stated, they have been able to put 370 megawatts to the national grid which has improved the reliability of power supply. There are ongoing plans to ensure Olkaria I and II and other initiatives to improve, especially the Lamu Coal Plant which has delayed due to some other problems, but the Government is on plan and in 40 months, they were to give us 5,000 megawatts. You have seen some improvement and we need them to do more but we are seeing some gradual improvement when it comes to reliability.

The Speaker (Hon. Ethuro): Order! Sen. Kagwe talked about the preparedness for the *El Nino* rains which I think is extremely crucial.

Sen. Mwakulegwa: Mr. Speaker, Sir, it is very important. Apart from them undertaking planned outages to make sure that they have planned well in advance in terms of the forthcoming *El Nino* rains, it is important is that also the users should help Kenya Power reporting any incidents. For example, if I have a tree which is almost falling on a line, I should be report to Kenya Power so that they can cut it because it is during the rains that many trees fall on the lines and, therefore, interrupt power supply.

One of the biggest problems in Kenya is that most of our power supply redistribution is overhead lines. They are now undertaking underground power supply which will greatly improve the liability and supply. They have plans to start with the major towns. When that happens, I will be able to give that information to the House.

Sen. Ndiema's question is almost the same on the issue of the rainy season, the preparedness of the power and lighting in terms of giving stability to power supply. This is the same question as what Sen. Kagwe had asked. I will report back to them when they give me more information on the preparedness on the forthcoming *El Nino* rains. I will make that information available to the Members.

In terms of Sen. Musila saying that the lines have criss-crossed his county but they are not connected, I agree and one of the initiatives that the Ministry of Energy and Petroleum and Kenya Power have done is to talk to the Members of Parliament who have Constituencies Development Funds (CDF), because the lines have crossed but the transformers are not adequate. Therefore, they have asked the Members of Parliament who have the CDF kitty to ensure they fund so that more transformers are supplied so that we can connect to more homes. As the schools are being connected, we also encourage homesteads around the schools to also connect to the power grid.

Sen. Billow said that some of these counties are not in the national grid. What happens to them is that the power is generated through generators, most of them in the northern part of the country. I do not have an answer right now on what Kenya Power has done to make sure that there is continued power supply especially during this forthcoming *El Nino* rains, but if I get more details, I will give it to the House.

Thank you.

(Interruption of Statements)

The Senate Majority Leader (Sen. (Prof.) Kindiki): On a point of order, Mr. Speaker, Sir. I rise to seek your guidance. I had approached you, if you could use your discretion to allow me a few minutes to make a very short Statement under Standing Order No. 45 (2) (a), on an issue of general topical concern namely; the demise of the Hon. Sen. Julius Muthamia, former Senator for Meru county.

The Speaker (Hon. Ethuro): Proceed.

SENATORS' GENERAL STATEMENT UNDER STANDING ORDER NO.45(2)(a)

DEMISE OF SENATOR JULIUS MUTHAMIA

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, on the night of Tuesday, 6th October, 2015, the people of Meru County, the larger Ameru Community and the nation of Kenya lost one of the most illustrious sons of this country in the early years of Independence. Sen. Julius Muthamia passed away quietly in his sleep on Tuesday night. The news has come at a time when this Senate and the country is redefining itself and trying to appreciate the role of the Senate in a devolved system of government.

Sen. Julius Muthamia was known to me personally. He remained very active in public life, even after the first Senate was dissolved. He was the Chairman of Meru Central *Njuri Ncheke* leadership, but he was also part of the Meru leaders' forum, an informal group of leaders that used to support the politics and the socio-economic development issues not only in Meru County but also the larger Ameru Community.

Mr. Speaker, Sir, Sen. Muthamia was a unifier, and even at the time of his demise, he was busy putting together different political camps that were emerging within Meru County. He was very moderate and a Godly man. In fact, during the recess, he had

invited me as a chief guest in his church, Giaki Methodist Church and I was able to make some contribution and also some pledges on behalf of the President and the Deputy President. I hope even now in death, I will be able to follow up on those pledges in honour of the late Julius Muthamia, former Senator for Meru.

I cannot see my senior brother here, Sen. Murungi, but I am sure the remarks I have made about the importance and esteem in which we held Sen. Muthamia, are those which I can make on my behalf and all the leaders who come from that corner of the country. In fact, I am sure Sen. Murungi bears me witness because he was one of the first people to send his condolences. There have been a lot of condolences from across the country meaning that Sen. Muthamia was a leader who had friends from all over the country even having served as an Assistant Minister in the first administration in this country.

Mr. Speaker, Sir, with those remarks, I end my statement there. Thank you very much for your indulgence.

(Resumption of Statements)

STATUS OF THE CONSTRUCTION OF THE
KAKAMEGA-KABURENGU-WEBUYE ROAD

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I had asked to be allowed to request for a statement under Standing Order No.45(2)(a). Pursuant to Standing Order No.45(2)(b), I rise to seek a statement from the Chairperson of the Standing Committee on Roads and Transportation regarding the status of the construction of the Kakamega-Kaburengu-Webuye Road.

In the Statement, the Chairperson should tell us the following:-

1. When the construction works on this section of the road were officially started and when the project was supposed to be completed?
2. What percentage of the works has so far been completed to date and how much money the contractor has so far been paid?
3. What the original budgetary cost of the project was?
4. The reason for the delay in the completion of the project and indicate when the project will be completed.

Mr. Speaker, Sir, before I do the next one, maybe you want to ask the Chairperson to indicate when he will issue it.

The Speaker (Hon. Ethuro): Where is the Chairperson of the Committee on Roads and Transportation?

What is it, Sen. Wetangula?

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir, I enjoin the distinguished Senator for Kakamega and ride on that request. In answering, could the Chairperson tell us whether it is, in fact, true that the contractor who was contracted to construct this critical road that is part of the Isebania-Migori-Kisii-Kisumu-Kakamega-Kitale-Pokot-Lodwar-South Sudan Highway has abandoned the

road? There is some dilapidated equipment lying by the road side. Some gapping gullies dug across the road are still there.

Could he also tell us why most roads in the western part of Kenya which were started in the last regime of President Kibaki have stalled? For example, the Kamukuywa-Mt. Elgon-Chwele Road has stalled. Stendi Kisa-Butere Road has virtually stalled. Sigalagala Road has stalled. All the other roads that have been extravagantly promised under something called annuity programme have never taken off.

Sen. Obure: Mr. Speaker, Sir, I am not the Chairperson, but I will raise this matter with the Chairperson of the Committee and report back in two weeks because the issues at hand are weighty.

The Speaker (Hon. Ethuro): What is it, Sen. (Dr.) Khalwale?

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. I rise under Standing Order No.45---

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Khalwale! I will allow you to speak afterwards, let me first make one communication.

(Interruption of Statements)

MESSAGE FROM KIAMBU COUNTY ASSEMBLY

PROPOSED AMENDMENTS TO THE COUNTY LIBRARY SERVICES BILL (SENATE BILL NO.6 OF 2015)

The Speaker (Hon. Ethuro): Hon. Senators, I have a Message from the Kiambu County Assembly on the County Library Services Bill (Senate Bill No.6 of 2015).

I wish to report to the Senate that pursuant to Standing Order No.42(1), (3) and (4), I received the following Message from the Speaker of Kiambu County Assembly regarding proposed amendments to the County Library Services Bill (Senate Bill No.6 of 2015).

Pursuant to the provisions of Standing Order No.52 of the Kiambu County Assembly Standing Orders, I hereby convey the following Message to the Senate:-

Whereas the County Library Services Bill (Senate Bill No.6 of 2015), a Bill concerning county governments was introduced in the Senate on Tuesday 30th June, 2015 subsequent to which by way of a letter, the Senate sought the views of the county assemblies on the said Bill.

And whereas the Kiambu County Assembly having deliberated on the contents of the Bill as published by way of a resolution, led on Wednesday 6th September, 2015, adopted a position on the Bill for which a detailed memorandum is herein included.

Now therefore, in accordance with the provisions of Articles 96(1) and 118(1)(b) of the Constitution and Standing Order No.52 of the Kiambu County Assembly Standing Orders, I hereby convey the said decision of the assembly, the effect of which is to beseech the Senate to reflect on the views of the assembly in its consideration and passage of the Bill.

Hon. Senators, pursuant to Standing Order No.42(6)(c), I direct that this Message together with the memorandum herein be referred to the Standing Committee on Labour and Social Welfare for consideration and necessary action.

I thank you.

Proceed, Sen. (Dr.) Khalwale.

(Resumption of Statements)

**SENATORS' GENERAL STATEMENT
UNDER STANDING ORDER NO.45(2)(a)**

**ACTION BY THE SENEGALESE PRESIDENT ON
GRAFT IN HIS COUNTRY**

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I rise under Standing Order No.45(2)(a) which provides that a Senator may make a brief statement on a matter of general topic.

Corruption in this country is a major concern, not only to the leadership, but the entire country. Therefore, it comes as great news for the world to learn that in Senegal, President Macky Sall has upon receiving directions from the Judiciary, allowed that auctioning of properties belonging to Karim Wade, the son of the former President of Senegal, which include luxury cars, hotels, jewels held in banks and the family home in the City of Dakar. This, the son of the former President has been committed to jail for six years.

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

[The Deputy Speaker (Sen. Kembi-Gitura) took the Chair]

Mr. Deputy Speaker, Sir, over and above, this President being desirous to deepening and widening good governance in his country, he has also offered that the law of that land be changed so that the presidential term that runs two terms of seven years each, be reduced to two terms of five years each.

I laud President Macky Sall and hope that the leadership of this country, especially the Senate and the Council of Governors (CoG) who will produce the future presidents of this county, are watching. I hope they will do the same when the time comes and not go the route of President Nkurunziza, President Museveni and others.

Thank you, Mr. Deputy Speaker, Sir.

Sen. Billow: Mr. Deputy Speaker, Sir, the personal statement that the Senator for Kakamega has given with regards to the action of the Senegalese President is appropriate. We, as Africa, need to share the good policies and celebrate when some of the countries in this continent take actions that are desirous of good governance. Good governance has been the biggest challenge in Africa. When we see leaders in many parts of this continent taking action in a manner with which the Senegalese President has done, I find that

remarkable. I, therefore, thank Sen. (Dr.) Khalwale, in his wisdom, for sharing that information with the rest of us here.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, you gave notice of that statement during a transition process; the Speaker was going out and I was taking over. Under what Standing Order did you stand?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I stood under Standing Orders No.45(2)(a) which says that:-

“During Statement Hour -

(a) a Senator may make a statement on a county issue or on an issue of general topical concern;”

Mr. Deputy Speaker, Sir, before I spoke, I approached the Speaker, Hon. Ethuro, who gave me a go ahead.

The Deputy Speaker (Sen. Kembi-Gitura): Did the Speaker give you oral authority?

Sen. (Dr.) Khalwale: Yes, Mr. Deputy Speaker, Sir. He did not ask for a written notice.

The Deputy Speaker (Sen. Kembi-Gitura): That cannot be possible because Standing Order No.45(3) says that:-

“A Senator who wishes to seek leave to raise a matter under paragraph (2)

(a) or (b) shall, before 1.00 p.m., on the day on which the Statement is proposed to be made, hand to the Speaker a written notification of the matter, but the Speaker may refuse to allow the request unless satisfied that the matter may properly be discussed in the Senate.”

Sen. (Dr.) Khalwale, do you have a written notification?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I cannot contradict the Speaker, Hon. Ethuro.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senator! This House is guided by rules which are the Standing Orders. Therefore, it does not matter. I am not blaming or doubting you. However, if you wish to proceed under Standing Order No.45(2)(a), that must comply with 45(3) which talks about a written request.

As I said, you were on your feet when the Chair was transiting.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, if you consult the HANSARD, you will find that what precedes the Statement that has been answered by the Chairperson of the Committee on Land and Natural Resources where the Speaker says: “On that matter which you had seen me on, I will give you an opportunity later.”

The Deputy Speaker (Sen. Kembi-Gitura): I heard that, I was here.

Sen. (Dr.) Khalwale: That is my case, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, it may be a *fait accompli* situation because you have already given your personal statement. Therefore, what I say will not reverse the fact that you have already said whatever you wanted. My point is that it is not procedural. The Speaker cannot have allowed you without having a written request.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I have a written document here which I gave him before 1.00 p.m. The only thing I did not do is give him to approve.

The Deputy Speaker (Sen. Kembi-Gitura): Then that is a different situation. When I asked you, you said that you had talked to him orally. The HANSARD will bear me out.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I just did not want to give the impression that the Speaker read a statement from me and then signed and okayed because I will be misrepresenting facts. I, therefore, chose to state matters the exact same way they transpired.

The Deputy Speaker (Sen. Kembi-Gitura): The main reason I asked you that is because when you were giving the statement, you mentioned Presidents of two friendly countries. If you check Standing Order No.90, you should not have mentioned names of those two Presidents.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I stand guided. In accordance with that Standing Order, I wish to recall the names of those two Presidents of friendly countries and rephrase as follows. "I hope the Senators and members of the CoG who when the time come for them to become presidents of this country, they will not learn from the behaviour of some leaders of certain African countries."

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senator, could you withdraw the statement that you made earlier.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I withdraw the mention of those two Presidents who on the HANSARD read President Nkurunziza and President Museveni and replace them with the words that I have just said.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, allow me to join the two distinguished Senators; Sen. (Dr.) Khalwale and Sen. Billow in lauding the conduct of Macky Sall. He is a distinguished young head of State who came to power through a very contested rapturous election, but he is leading the way.

Under the African Peer Review Mechanism (APRM), African heads of States should learn a little bit from such shining examples. Unless and until Africa makes it painful for people who consume and perpetuate corruption, this continent will not move. When you look around the continent, we record very handsome Gross Domestic Product (GDP) growths. However, when you go to countries with those GDPs, you see a few billionaires, but the rest of the people are stuck in poverty.

The Deputy Speaker (Sen. Kembi-Gitura): What is your point of order, Sen. (Prof.) Lesan?

Sen. (Prof.) Lesan: On a point of order, Mr. Deputy Speaker, Sir. I stand under Standing Order No.46, which provides that when a Senator makes a personal statement – like the one that has been made by Sen. (Dr.) Khalwale – there should be no debate because no Motion that has been moved in House. Is he, therefore, in order to continue debating this issue?

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I am not debating anything, but joining---

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Wetangula!

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, I can help you.

The Deputy Speaker (Sen. Kembi-Gitura): Order! I have not sought your help yet.

Proceed, Sen. Wetangula.

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Deputy Speaker, Sir. Indeed, the distinguished professor read the wrong Standing Order.

Mr. Deputy Speaker, Sir, let me finish by saying that Africa will be better off if we make corruption difficult and painful. Those who embrace it must pay for it like it has happened in Senegal. Closer home, the other day, every Kenyan read the obscene headlines about the sharing of the late Koinange's Estate. A proper functioning Government should have quickly moved to inquire how such a massive cache of wealth was acquired in this country because everybody knows---

The Deputy Speaker (Sen. Kembi-Gitura): Order! Sen. Wetangula! We have to end this debate because you are taking advantage and bringing extraneous issues which have nothing to do with the debate. The Koinange Estate should not come in because that is an active matter in court. On what basis can you possibly bring in the Koinange Estate into the House? How will you allow the family members to defend themselves if those issues are there? I will not allow that.

The Senate Minority Leader (Sen. Wetangula): Allow me to finish, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): I allow you one minute to conclude.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, obscenities in primitive accumulation of wealth through corruption must be fought from every direction and front. We should not shy away from talking about it when it happens.

Mr. Deputy Speaker, Sir, I join in lauding the Senegalese President.

The Deputy Speaker (Sen. Kembi-Gitura): Finally, Sen. Kagwe.

Sen. (Dr.) Khalwale: On a point of order, Mr. Deputy Speaker, Sir. Before Sen. Kagwe speaks, I would like the Chair to guide me a little bit. According to how I understand the Standing Orders, the Chair's attention to the breach of rules by Sen. Wetangula should have been drawn by a Senator. When the Chair – without being invited to note that a wrong has been committed – goes ahead and does what he might attempt to do, it might amount to him participating in debate. You are supposed to control debate.

The Deputy Speaker (Sen. Kembi-Gitura): What are you referring to exactly?

Sen. (Dr.) Khalwale: I am referring to when you found that Sen. Wetangula was out of order to veer into---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, are you suggesting that when, for instance, you breach Standing Order No.90, I should just sit here and watch and not talk about it? Are you suggesting that the Speaker does not listen to debates and what goes on? Otherwise, how do I guard Standing Orders if I do not listen?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, because we are both here, I would like to be guided---

The Deputy Speaker (Sen. Kembi-Gitura): Order! Sen. (Dr.) Khalwale. What exactly do you mean when you say that I am participating in the debate? I am sitting here overseeing the debate going on in the House. The purpose of doing that *inter alia* is to

ensure that the Standing Orders are not breached. Therefore, you do not expect me to sit here and watch Members breach Standing Orders until somebody points it out to me. What kind of a House will I be presiding over if I allowed that? What would be the purpose of my sitting here? So, you are out of order!

Sen. Wetangula started talking about the estate of a Kenyan citizen who is now deceased. The case is still in court. Therefore, the matter is still being discussed. The family members have no chance of coming here to defend themselves or state whether or not the wealth was acquired corruptly, or otherwise. Why would you drag the family name regarding matters that are in court and suggest that I should not say that it is not right? You are wrong on that because I am not participating in the debate, nor am I entering the fray. I am just upholding the rules of debate as contained in our Standing Orders.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir. It is not in my habit to disagree or qualify what the Chair has said. However, we need some guidance. Matters of public notoriety or where anybody sitting anywhere can see that something is questionable or wrong cannot be gagged from being aired here. However, I thank you because when you directed that I stop going towards that direction, you did not require me to withdraw or order that the statement be expunged from the record. Given your wide experience in law, I am sure you know that I had not breached any Standing Order.

The Deputy Speaker (Sen. Kembi-Gitura): The point I am making and this will end the debate at the risk of repeating myself is this---

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

The Deputy Speaker (Sen. Kembi-Gitura): Order! I am talking now. The point I am making – it is good to remember that I said this – is that the reason we have due process is to ensure that everybody finds that justice has been done to them; the rich and the poor, those sitting in the Senate and those outside as Kenyan citizens going about their businesses.

We talk about corruption. It is a very important issue that we are discussing and most of us abhor it. However, before you claim that somebody is corrupt or they have done something corruptly, it is important that they too are heard. There is a family dispute going on. It has been going on for many years and that is in common knowledge. It is neither for me nor you to decide whether the property was acquired corruptly or not because, then, there will be no due process. When you will be caught in the same situation, you will want the protection of this Chair, so that you are not discussed by people who think that your notoriety is common knowledge. That is why we have due process. I will guard that as jealously as I can because that is the right of every citizen.

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

The Deputy Speaker (Sen. Kembi-Gitura): Not on the same issue. Sen. Kagwe, proceed.

Sen. Kagwe: Mr. Deputy Speaker, Sir, I laud the new President and caution him. As we praise the action he took, we hope and pray that, at the end of the five years, we will be praising him exactly the same way we are doing now. It is important for the word

to go forth from this House that we are very impressed with what he did. Hopefully, we will continue being impressed during his term, lest after five years Saul turns into Paul.

Mr. Deputy Speaker, Sir, it has been the practice within the African Continent of starting with a lot of excitement. However, you will find that three or four years down the line, the cronies and would be good poets take advantage of the President. They become more corrupt compared to the ones in the previous regimes. Therefore, we should keep him in our prayers so that he does not go the same direction as his colleagues.

The Deputy Speaker (Sen. Kembi-Gitura): That is the end of that matter.
Next Order.

BILLS

First Readings

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

THE MICRO AND SMALL ENTERPRISES (AMENDMENT) BILL
(SENATE BILL NO. 12 OF 2015)

THE PERSONS WITH DISABILITIES (AMENDMENT) BILL
(SENATE BILL NO 13 OF 2015)

*(Orders for First Readings read-Read the First Time and
ordered to be referred to the relevant Departmental Committees)*

MOTIONS

REPORT OF THE SELECT COMMITTEE OF THE SENATE ON
CONSTITUTIONAL AND LEGAL REVIEW

Sen. Orengo: On a point of order, Mr. Deputy Speaker, Sir. I wanted to come and see you, but you were kept very busy. So, I did not give you a notice of the matter I wanted to raise.

Standing Order 39(2) says:

“Business shall be disposed of in the sequence in which it appears in the Order Paper or in such other sequence as the Speaker may, for the convenience of the Senate, direct.”

On the basis of that Standing Order, I request the Chair that Order No.11 be deferred. If you see the proceedings of the House Business Committee (RBC), I had requested the RBC to have this Motion discussed without there being too much business in the House to the extent that the Mover of the Motion will now move this important Motion to an empty House.

This Motion is about the Constitution. We are seeking the approval of the Senate that we proceed with the amendment of the Kenyan Constitution as promulgated in 2010.

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Mr. Deputy Speaker, Sir, I seek your indulgence to reorder the order of business so that the Chair of the Committee, Sen. Murkomen, may be able to move the Motion, not only when we have a full House or more Members, but also at prime time, because the country should know why we desire to amend the Constitution. I know the amount of work that has been done by the Committee and the secretariat of Parliament on this matter. I beseech you that this matter be deferred. I urge through the Chair that this business be put as a single item, probably, on Tuesday or Wednesday. There are weighty matters to be discussed.

Sen. Murkomen: Mr. Deputy Speaker, Sir, I had been informed that last Tuesday that the Senate had blocked Thursday afternoon for two reasons. One, that all Members can have the opportunity to follow the proceedings of the Committee. Secondly, the members of public can follow through live coverage. Unfortunately, today because of the business, we have spent the time on other businesses. I hope that the Members will be given sufficient notice to understand that this is a very important item to the House so that they prepare, not only to come make their contributions, but will also be present.

I do not want to imagine that the fire that we had last time when we formed this Committee is going down. I hope the Senators are still vibrant, focused and committed to ensuring that we take on this process of strengthening devolution, the Senate and Parliament for that matter. I pray that if you will schedule another day, those considerations will be put in place. Otherwise, one will interpret that the faith has gone down. Thank you.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Orengo, the trouble is that you have opened up a fresh debate which will take another long period.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, the Chair and I, are very anxious about this Report for many reasons, but we have been preparing to present it. However, I agree with Sen. Orengo who has raised the concerns although this Motion has been on the Order Paper since yesterday. I have yet another concern that Sen. Wako raised which I think has been forgotten. He proposed that this Report be discussed with the Senators before we present it so that we can take them through it and build a consensus.

I would hate for us to lose this moment because the ignition is getting more politically charged. This is something we are going to lose in the process of taking long to present the Report to this House. Therefore, other than the concerns raised by Sen. Orengo, I have another concern the Members, even if we move this Motion, have very little knowledge of what it is we are trying to build consensus on their behalf.

The Deputy Speaker (Sen. Kembi-Gitura): So, Sen. Mutula Kilonzo Jnr., you are also supporting the position taken by Sen. Wako?

Sen. Mutula Kilonzo Jnr.: Yes, Mr. Deputy Speaker, Sir. The Chair of the Committee on Legal Affairs and Human Rights was of the view that we, as the Members of the Committee, need to take the Senate through this process so that we can speak by one voice when we come on live television. That is the position we agreed.

Sen. Wako: Mr. Deputy Speaker, Sir, Indeed, this is a weighty matter because:-

(a) We are dealing with constitutional amendments which will restore the Constitution today to what it ought to have been after some years of experience on how it is going out.

(b) The Committee has done a commendable job under the Chairmanship of Sen. Murkomen, ably supported by Sen. Mutula Kilonzo Jnr and other Members like Sen. Orenge.

This afternoon, I am the only one outside that Committee speaking about the Report. I should be put on record in support of what has been moved. If you recollect when this matter came before the House, I rose under a point of order which was well received if you revisit the HANSARD. Before we discuss this matter in the House, the Senators should meet so that the Committee goes through the Report and we are better informed. When we come to the House, hopefully, arrangements will be made, that the debate will be live and that each Member will be given an opportunity to speak. Even if we will take one, two days or a week, it is worth because we are talking about the Constitution. This may be the last legislation we will ever do before the General Elections in 2017. My plea is that we take into account what the Members have said that a proper notice be given and we spare a day or two to debate this report exclusively.

Thirdly, maybe the leadership of the House can guide us. Whereas the mood of the House at that time was quite clear that we should have a retreat before it comes to this House and the Speaker said that he would look into it, you can apply your minds and think it through. If you feel that because of constraints of time we should go ahead with the debate, we can have a retreat afterwards which will be focused more now on strategy and how we can get the issue through the referendum and so on. However, clearly it is not good for us to start debate this afternoon when we are only about ten Members. It will give a very wrong signal to the public that even the Senate itself is not taking this matter with the seriousness that it deserves.

I support what the Members of the Select Committee have stated and appeal that the leadership of the House thinks through whether we should have the debate before or after the retreat, taking into account the time factor and other programmes of the House.

Thank you, Mr. Deputy Speaker, Sir.

Sen. Murkomen: Mr. Deputy Speaker, Sir, what Sen. Wako is proposing is basically what we have already done. During our meeting at the Stanley Hotel we went through the whole document and agreed. Nothing much changed after that. We also had a meeting here which was poorly attended. It was the final *Kamukunji* before the tabling of the Report. Nothing had changed, except the percentage of the resources that will go to the counties. This was also achieved by consensus.

I have no fear at all that bipartisanship has not been achieved, because the meeting at the Stanley Hotel was well attended. There were almost 40 Senators and nobody raised a contrary opinion. We have moved to a place where all other views that will be said here during the debate can only enhance the strengthening of the Bill. Should some people have ideas beyond the Stanley Hotel meeting that will be welcome, because you will realize, when we move this Motion that it is not going to the public as a Bill, but as a general suggestion. So, we have room to make amendments ultimately even after collecting signatures.

Sen. Hassan: Mr. Deputy Speaker, Sir, what I wanted to allude to is what Sen. Murkomen has said. I do not think it serves any particular purpose for us to have subsidiary meetings, where only 10 or 15 of us will show up. However, I would suggest that we give this debate sufficient time and notice, so that anybody who wants to make a contribution to this Report exhaustively discusses it. I support the recommendation by Sen. Orengo.

Sen. G.G. Kariuki: Thank you, Mr. Deputy Speaker, Sir, for giving me a chance to say something about this issue. I also wish to congratulate those who participated in the preparation of the proposed amendments to our Constitution.

I wish to state that I did not attend the meeting that was held at the Stanley Hotel because I was away. Again, when we had a meeting here that was chaired by the Speaker very few Members turned up and we had to adjourn it. We agreed that there would be no need for another meeting before the report is tabled.

As far as I know, there are always political parties' decisions regarding any matter. I am not so sure whether our political party was consulted or even called for that matter. We are going wrong by coming up with issues here and forgetting that there are other factors and important areas of consultation that we need to consider. A Member could bring a Motion that is very good and popular, but he does not go very far with it.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. G.G. Kariuki! I would not normally stop you from debating in this Chamber, but now you are going to the merits of the Motion; whether it is a good Motion or a bad one. We have not reached there. We will get there sooner than later, when finally it is moved by Sen. Murkomen or anybody else from that Select Committee. This would not be the correct forum or time to ventilate on the pros and cons of the Motion. What we are debating right is whether or not it should be moved now or at a future date.

Sen. G.G. Kariuki: Mr. Deputy Speaker, Sir, I apologise if I went out of the rail. However, I agree with those who think that we should postpone the Motion. It is very important for all of us to agree on the next stage. Therefore, I support the idea of waiting a little while so that further consultations can be done.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senators! I have listened to the point of order raised by Sen. Orengo. It has raised a lot of interest in the House. I concede that this matter should be taken back to RBC for reallocation. With due consideration, particularly to whether or not, it should be listed alone after the normal preliminaries of the House on any given day or it should come down again, like it is today, on the Order Paper.

There is a lot of merit in what you have said. I, therefore, direct that the Order be dropped from the Order Paper for this afternoon. I am doing so also having consulted and listened to Sen. Murkomen who was supposed to move the Motion. He also concedes that maybe that would be the best way to proceed in the circumstances.

It is so ordered.

(Motion deferred)

Next order.

Proceed, Sen. Adan.

Sen. Adan: Why are people running away?

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Adan! Before we proceed, I have a very short communication to make. You may take your seat.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION OF STAFF FROM TURKANA COUNTY ASSEMBLY

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Members, I would like to acknowledge the presence in the Public Gallery this afternoon of a visiting delegation of county assembly staff from Turkana County Assembly. The county assembly staffers are here on a one week attachment programme at the parliamentary library and human resources department.

Since they are in the Public Gallery, I will not ask them to stand and be recognised because they were not able to be in the Speaker's Gallery for reasons that are known to them.

I hope that the delegation has had a fruitful programme. On behalf of the Senate and my own behalf, I welcome them to the Senate and wish them well for the remainder of their stay and that they will learn from the Senate which is continuing to render its services of human resource development in the counties.

I thank you.

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

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I thank you for declining to read their names. However, on the same yard stick, the Speaker is not able to see visitors who are in the Public Gallery. He can only see visitors who are in the Speaker's Gallery. I would you're your guidance on this. Are we changing tradition? Traditionally, the people who you see are the ones in your Gallery.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. (Dr.) Khalwale! You know that in this particular case, they ought to have been in the Speaker's Gallery, but the reason I did not call their names out is because I cannot see them. The Speaker has not yet stopped from recognizing people in the Public Gallery like we always recognise students from various schools when they are in the Public Gallery.

What is your point of order, Sen. Mutula Kilonzo Jnr.?

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, we have been through this road before and I do not think we have learnt much. You were on the Chair last time when this happened. We are just pleading with you that you restore the dignity of the Senate of treating our guests accordingly. This is because we have people who you can see and who you have not recognised. We do not know who they are, but there are people who are supposed to be here. We do not want them to take a message back to their counties that the Chair failed to recognise them when they were here.

I plead with you---

The Deputy Speaker (Sen. Kembi-Gitura): Order. If you had approached the Deputy Speaker, I would have told you why they are not in the Speaker's Gallery and you could have understood why. So, I do not think you need to take issue on this matter. It has nothing to do with what transpired last week. As I have told you, these are interns who are already working in the Senate.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, but we even recognise interns who work in our Committees. These are future leaders of this Republic and we need to recognise them.

Thank you for your understanding.

The Deputy Speaker (Sen. Kembi-Gitura): You are raising pertinent issues and we should discuss them openly and dispassionately. Unless you are saying that nobody in the Public Gallery should be recognised. That would be wrong because when pupils and students come they go to the Public Gallery, partly because they cannot fit in the Speaker's Gallery. Sometimes it is more than one school which visits us. So, they cannot fit there. They come to learn, we recognise, appreciate and encourage them to learn and go back to their schools and do well. That is the outstanding tradition of this Senate. However, as I said last week, it is not obligatory to recognise people in the Public Gallery because many times, we do not even know that they are there.

Therefore, if you go to the Public Gallery and want to be recognised, we have to know that you are there because you cannot see the Public Gallery from where I am sitting.

However, to be on the Speaker's Gallery, you have also to be dressed formally in the same dress code that also pertains to the Chamber. If you are not dressed formally, you cannot be allowed to go there. That is why I said if you had approached the Deputy Speaker, you would have learnt what is going on without anticipating the situation. Again, it must be a learning curve for the staffers from Turkana County who are sitting in the Public Gallery because they know they cannot sit in the Speaker's Gallery for the reasons that have been explained to them. That is the position.

Sen. Sang: On a point of order, Mr. Deputy Speaker, Sir. You have addressed the issue. However, my point of order was whether the hon. Members were in order to raise issues about the same when in your communication you clearly indicated it is for reasons known to them. This debate was unnecessary.

The Deputy Speaker (Sen. Kembi-Gitura): Maybe they were not listening and we must give everybody a chance to speak. You do not want to appear like you are gagging them. Before you came in, we had a debate about gagging Members from saying what they want to say. I do not want to be accused of gagging anybody from doing what they are supposed to do but I have heard you.

Proceed, Sen. Adan.

SELECT COMMITTEE TO INQUIRE INTO THE POLICY AND LEGISLATION
PERTAINING TO THE TREATMENT OF DETAINED PERSONS AND
STATE OF CORRECTIONAL INSTITUTIONS IN KENYA

Sen. Adan: Mr. Deputy Speaker, I wish to move:-

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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 Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Adan. Are you going to move the Motion?

Sen. Adan: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Move the Motion then.

Sen. Adan: Thank you, Mr. Deputy Speaker, Sir. Let me move the Motion with the following points.

First let me say that this Motion is quite overdue in the sense that we have had---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Adan, you have to move the Motion. You have to start that, you want to move the following Motion which is now this one, and then you have to read it.

Sen. Adan: Mr. Deputy Speaker, Sir, I am not getting you because I was trying to go through the Motion and you stopped me.

The Deputy Speaker (Sen. Kembi-Gitura): I did not stop you. You were not reading the Motion; you were giving some preliminary information and other things.

Sen. Adan: Sorry, Mr. Deputy Speaker, Sir.

I beg to move the following Motion:-

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'

Mr. Deputy Speaker, Sir, I wish to move the Motion with the following points. As I said earlier, this Motion is long overdue because the Constitution guarantees the inmates and the prisoners the right to be treated fairly.

I used to work with the Kenya National Commission on Human Rights (KNCHR). I realized that the problems that affect the prisons department or correctional service is because they operate in a colonial legal set up, heavy on punishment and light on rehabilitation. Sometimes if a person is arrested with a minor offence, for example, hawking, that person is jailed for months or years instead of being put under community service order. This raises a heavy burden on the Government because this particular prisoner will consume a lot of taxpayers' money.

Financial allocation to these institutions is always inadequate and delayed, occasioning debt. In the prisons department, today, they have pending bills that run into billions. In this circumstance, it is difficult for the institution to run the heavy burden they have in terms of the welfare of the inmates.

They also lack authorization to directly use cash generated from farms and industry, instead it is taken to the exchequer fund. The prisons firms and industries generate a lot of revenue. Unfortunately, it does not directly benefit from this particular

revenue. It ends up in the exchequer account and this does not help the correctional services.

On the issue of staff welfare, there is lack of clear mechanism for airing staff grievances. Historically, when prison officers raised grievances on their remuneration, most of them ended up in jail. It is important for them to have clear mechanism of how to air their grievances. There is low motivation due to skewing and a top heavy command structure which causes burden on the welfare of staff that needs to be looked into.

There is also poor and inadequate housing with little water and sanitation facilities. If you go to Kamiti Maximum Prison, you will find that the staff houses are in deplorable condition because the number is very high. You will find two families with babies sharing one cubicle with a curtain dividing them. They only have a bed. It is the same area they use for cooking. This is challenging. In some prisons, they live in mud houses. This is very sad. This aspect needs to be looked into.

The prisons warders also have poor remuneration and allowances. Prisons are part of the security department in this country. Unfortunately, they are not regarded in that manner. We really need to look at this particular aspect. Most of the working conditions of prison warders are very poor. They do not have gadgets and facilities. When inmates are taken to prisons, they end up carrying some contraband and the warders do not have gadgets to check the prisoners. They end up using their hands which is not hygienic and secure. This is a critical thing which we need to look into.

In prisons department, there are gender challenges in leadership. Women are not given positions of leadership at high level. This is another aspect that we need to look at.

There is also lack of adequate tools and materials for rehabilitation services and programmes such as machinery and training. In prisons today, most of the equipment that they have is outdated and unserviceable. Someone may be arrested for being drunk, psychological problems or a criminal and instead of rehabilitation programmes geared towards rehabilitation of an individual, for example, someone who is arrested for hawking is taken to farming. That will not help in rehabilitating them.

Mr. Deputy Speaker, Sir, I want to bring out the issue of delayed conviction of appeals. People stay in remand for two or three years waiting for their cases to be determined or appeals made after one's judgment has been made. This is a violation of the rights of inmates and it has to be changed. There is also lack of facilities for mothers with children in places of detention. Sometimes, pregnant women are arrested. Unfortunately, the prisons do not have facilities for pregnant mothers, especially when they are due for delivery. Sometimes, there are babies who accompany the mothers because they do not have anywhere else to go. Those of school going age do not attend school because there are no facilities for them in prisons.

Mr. Deputy Speaker, Sir, congestion is another aspect. Most prisons are ten times smaller than the capacity they are supposed to carry. This is a factor that really needs to be looked into. Poor sanitation is also another factor that needs to be looked into. Most prison facilities are outdated and cannot match the number of inmates in our prisons. Facilities are not enough for them.

Health service is another factor that we really need to consider, especially inmates who are suffering from HIV/Aids and other diseases. They do not have enough facilities. These patients need adequate diet.

Mr. Deputy Speaker, Sir, there is occasional torture in prisons which is inhumane treatment. We need to come up with a policy to change this. There is also lack of access to legal aid services by the prisoners. Most Kenyans do not have access to the services of lawyers. It is important for us to come up with a policy on legal aid services for Kenyans who are poor and cannot afford the services of a lawyer. There are also child related concerns and poor age determination process.

The legislation that is available today in this country provides that children who are below four years are the ones who can accompany their parents. Unfortunately, those who are above four years cannot accompany their mothers. This is denying the right of motherhood to most of the children who are affected in this kind of circumstance. There are few child friendly courts and rehabilitation centers available in this country. This has to be looked into. The other concern is poor recreational facilities, especially for children who are put with their mothers in prison. The challenge of legal representation is also another factor that we really need to look into.

Finally, I would like to say that this is an institution that Kenyans and even the leadership forget; that one day one might end up in prison. This has happened to several leaders who have served in high level offices in this country. Therefore, I think it is high time that this country looked into the legislation and aligned it to the current Constitution, so that the prisoners and the people who are put in custody can enjoy their rights.

I beg to move and invite Sen. Hassan to second this Motion.

Sen. Hassan: Mr. Deputy Speaker, Sir, I thank Sen. Dullo for this great Motion. This demonstrates her commitment to human rights. For the purpose of this House, Sen. Dullo and I served in the Kenya National Commission on Human Rights (KNCHR), where she was in charge of penal reforms. This is an extremely important Motion for this Senate, so that we can start to interrogate the aspirations of our Constitution, particularly, when it comes to Chapter Four, which is the Bill of Rights.

The Bill of Rights ensures that all persons are accorded a certain standard of treatment. Those we jail and those who are free must ascribe to a certain standard of treatment. I remember the words of Mirugi Kariuki, the late Assistant Minister for Internal Security and Provincial Administration and who also served as the Nakuru Town Member of Parliament. He once said that a society is best judged not by how it treats the highest and mightiest of its citizens but how it treats its most undesirable citizens. Therefore, how we treat those in our correctional facilities tells the type of society that we are in.

This is a country that likes to condemn those people just on mere allegations. That is why I said the media, Parliament and every institution has what I call social responsibility to ensure that rights and issues pertaining to the dignity of humans and certain aspersions that are cast on them are treated with caution to avoid what I call irreparable damage of image.

Sen. Dullo has brought this Motion pursuant to Article 51 of the Constitution, which undeniably states that a person who is detained or held in custody under this law retains all rights - that is what is most important - and fundamental freedoms in the Bill of Rights, except to the extent that any particular right or fundamental freedom is clearly incompatible with the fact that the person detained, held in custody or imprisoned.

Therefore, if you read or do issues around penal reforms, you will find that, that confinement itself is what is denied of you; that freedom of all other freedoms. That is where most Kenyans probably miss the point. They think that once you are imprisoned then you must be punished irreparably. I think it says: "We restrict you so that we can correct you." Other countries have first moved from calling prisons "prisons" to "correctional facilities." Maybe that is one of the progressive steps that this Committee can discuss; how we want to brand our penal system. Do we want to call them correctional facilities or prisons? Is there need to continue having the borstal institutions that we have or are there most appropriate ways to treat our children when they err? These are some of the most fundamental issues that we must interrogate because this new Constitution gives us that opportunity to interrogate the values that we have had over the years.

Article 28 is one of the most cardinal provisions of this Constitution. It provides that every person has an inherent dignity and the right to have that dignity respected and protected. It does not matter whether you are in or out of custody. Article 28 gives every person what is called human dignity and not animal dignity. That human dignity presupposes that the Bill of Rights is about human dignity.

Article 19 of the Constitution is about human dignity. Therefore, once you are incarcerated, that is enough sanction in itself. All other human dignities that are preserved by this Constitution continue to exist.

It is followed closely by Article 29 on freedom and security of the person. It says:-

"Every person has the right to freedom and security of the person, which includes the right not to be—

(a) deprived of freedom arbitrarily or without just cause;

(b) detained without trial, except during a state of emergency, in which case the detention is subject to Article 58;

(c) subjected to any form of violence from either public or private sources."

Mr. Deputy Speaker, Sir, if there was a time in this country we used to have corporal punishment. We used to constantly whip our prisoners every evening. This has been done away with although it does exist in certain pockets. I am happy that the penal institutions particularly the prisons have been quite progressive and thanks to particularly, the former Vice-President, Moody Awori, who was the father of freedom reforms in this country. He transformed our prisons fundamentally to a point where I remember he received criticism from people even in the trade unions, like Mr. Francis Atwoli who once asked: "How can you fix televisions for prisoners?"

I think life does not stop. Most of these people are under a transformative process. We are also told not to subject them to torture in any manner whether physical or

sociological. The prison conditions that we hold our prisoners in subject them to enormous mental anguish. There are no facilities provided that can allow somebody to transform and come out of prison a transformed individual. They should not be subjected to corporal punishment or treated in an inhuman or degrading manner. Therefore, the kind of treatment we sometimes subject our prisoners to will easily fall under the purview of cruel inhuman or degrading manner.

In this country when you speak about prisoners and their rights, the country is in shock. This country must start to realise that if we chose this Constitution ourselves, then we must then respect every section of it. Sen. Mutula Kilonzo Jnr, the Speaker, Sen. Elachi and I were in a forum this morning and in that forum we heard Kenyans express their dissatisfaction with the enormous number of public officials that we have; the Cabinet, Members of the National Assembly, Members of the Senate and counties. They said that the number of constituencies should be reduced.

I remember the rebuttal from the Senators that we gave these positions unto ourselves through this Constitution and even put a gag constitutionally, that we cannot review some of these constituency boundaries at least for a period of ten years. So, when you voted for it you knew that there were consequences. When we voted or aspired to have this Constitution then there are consequences in terms of ensuring that we live by the tenets and the philosophies provided in this Constitution.

Therefore, I find this Motion extremely timely. I think we as the Senate, must start to internalize, in terms of ensuring that our Constitution is adhered to in letter and spirit. We should respect persons that we want to transform.

I can tell you without contradiction that when I served in the KNCHR we found a lot of difficulties in reintegration of many of the prisoners. Some were put there for very petty offences for two months, six months or eight months. When they come back to the society to reintegrate, first and foremost, they are stigmatized. After the stigmatization, follows the process that they are unable to reintegrate with the society because they feel that there is a certain snub by the society on the basis that they have been alleged to have committed certain crimes.

Therefore, this is a transformative Motion that intends to transform a sector of our criminal justice system that is one of our important components. We are talking about police and judicial reforms. To complete that chain of the criminal justice system, then we must talk about prison or penal reforms. This is a very timely Motion.

Mr. Deputy Speaker, Sir, I have looked at the Membership of the Committee that you have proposed. These are Senators who add great value to the Senate. I have reverence for Sen. (Dr.) Kittony and Sen. (Dr.) Khalwale. There is also Sen. (Prof.) Lonyangapuo who taught me in school and I am sure he can teach us how to reform this. You forgot to tell us that Sen. Madzayo is a retired judge and so he has fully internalized issues around prison reforms.

Sen. Chelule, Sen. Sijeny, Sen. Mutula Kilonzo Jnr., Sen. Sang who are all lawyers; Sen. Gwendu and Sen. M. Kajwang. I also commend the membership that you have carefully selected. I believe this is a membership that can internalize the mandate that we set them to achieve – to review fundamentally the policy and the legislative

framework of penal reforms, so that they can bring order and transformation to the criminal justice system.

Mr. Deputy Speaker, Sir, as they set out for this mission, they must be persuaded in their hearts that prison has been one of the institutions that has led to reforms. That, I must say. When there are cases of execution and torture in prison, we have seen prison commandants and the commissioners of prisons act on it. It is not like some of the other services where these matters are hardly taken a notch higher. Therefore, we need to look at both the hardware and software.

We need to look into the welfare of the prison warders. I have visited prisons and you do not need to be in jail to see the lifestyles that they live in. They live in shacks; very deplorable conditions. Therefore, even this has a psychological impact. On one side you are dealing with prisoners in very difficult circumstances and on the other, you live in an equally imprisoned kind of environment. The only difference between you and the prisoner is the fact that you can at least go to the night club in the evening.

Mr. Deputy Speaker, Sir, these are some of the issues that we must look at and interrogate. In terms of police reforms, the people who are forgotten are prison warders. We are looking at the welfare of the administration and regular police but not that of the prison warders. In fact, who is advocating for the rights of prison warders? You might want to suggest a Prison Commission that will look into the rights and welfare of prison warders. We can then strengthen and enforce some of the reforms with respect to prison warders.

We will look at it this way. When security agents are stretched, prison warders are sometimes used in maintenance of law and order. They are officers trained in their own right. These are people who have developed such massive capacity in terms of handling some to the worst members of society like rapists, murderers and serial killers. Kenya has led through the flagship of not enforcing the death penalty. I think we have not enforced it since the hanging of Mr. Ochuka and other *coup* perpetrators. That is a positive thing but you can now imagine the number of death row convicts that prison warders have to deal with on a regular basis.

Mr. Deputy Speaker, Sir, I believe this is a progressive Motion. We need to look at how we can assist babies who are born to imprisoned mothers; how we can care for them and provide for their schooling. These are all progressive reforms that we must undertake in this country.

I laud Sen. Adan who was my colleague and the Commissioner in charge of penal reforms in the former Kenya National Commission on Human Rights (KNCHR), for having lived with that spirit and brought this Motion.

I beg to second.

(Question proposed)

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I commend former commissioner and distinguished Senator, Sen. Adan, for not only moving this Motion, but also giving me an opportunity to serve in this Committee. I believe I am going to add value for two reasons.

One, I have dedicated my intellectual property to what we call in Kiswahili, *kutetea wanyonge*. Secondly, it will give me an opportunity to share practical experiences that I had when I was an MOH in the old Kakamega District. I was expected to examine and recommend prisoners to be fit or otherwise for whipping.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale, when you use abbreviations like MOH, you assume that everybody knows. However, in drafting, normally you should say, Medical Officer of Health (MOH) and that goes correctly in reporting.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, you have put it perfectly correct. I believe the experiences I had were crazy experiences on one incident, I could not believe what happened to me and I used to examine them at the dispensary at Shikusa in Kakamega. I drove into the dispensary and I found as usual a queue and there was no separation between patients from the village and the prisoners. They used to sit on the same queue.

So, there is this old woman, obviously poor, who was seated next to a prisoner, a teenager of around 19 years. That boy was coming to be declared fit by myself. At that time, the Kshs10 coin had just come out. They had replaced the green bill of Kshs10 that we used to have. So, this *mama* came, greeted me and when I received the greetings, I felt something cold, and it was the Kshs10 coin she had given me. Because I usually have a lot of time for people in the lower social class, I asked her what the problem was. She told me not to allow her child to be whipped. I realized she was greasing my hand so that I help her.

When I went to examine the boy, even before I examined, the general impression was that the boy was long overdue for whipping. The boy was fit and he would run after any bull anytime and overpower it. I looked at the old woman and told her I was giving her Kshs100 and ensure the child respected the law. There were many other experiences that we had there.

I, therefore, want to thank Sen. Adan, and promise that, unless the County Public Accounts and Investments Committee makes it otherwise, I will attend each sitting of this Committee.

Mr. Deputy Speaker, Sir, it is my conviction that in their present form, Kenyan prisons are more of punishment centres than correctional or rehabilitative centres as one would expect. The only thing or experience a prisoner gets after they have been in prison for having drunk *changaa* or sold *busaa*, is the punishment. There is no rehabilitation whatsoever of a man who is serving six months because he was found drinking *changaa*. When he comes back from prison, the only thing he remembers is how he was punished.

Sen. Hassan might think that there is a lot of progress in terms of corporal punishment, but the so called corporal punishment where people are whipped by the warders might have gone down. That punishment has been converted to manual labour. If you go to the homes of Provincial Police Officers (PPOs), homes of Prison Officers and even some former District Commissioners (DCs), you find that there are prisoners there giving free service. As they clean the compounds, they feed the zero grazing units of cows belonging to the DC; nobody gives them even a glass of water. They are not paid anything whereas the same officer earns a salary and can hire somebody who can do those manual jobs in their homes.

Mr. Deputy Speaker, Sir, as I told you, because these places have remained places of punishment rather than correction, we then have a situation whereby a prisoner who then comes out has not learnt anything because there was no time to train him on how to change, and this is why even some of the prisoners end up being caught up in the problem of rewraps because nobody has taught them that having been punished for this crime, they can be punished for a similar crime again. Some of them end up thinking that because they served three years, even if they make a mistake, they have already been punished, and they think they are free.

Mr. Deputy Speaker, Sir, because of this and many other reasons which we shall go into later, there is, therefore, urgent need for us to align the Prison's Act and the Borstal Institution's Act to the rich positions within Chapter Four of the Constitution of Kenya in its present form.

This gives me an opportunity because I have one of Kenya's biggest prisons in Shikusa. We, the people of Kakamega, are saying we cannot be the ones who are expected to host one of the highest number of prisoners in Kenya. Kakamega as a county was not meant to host people who are unable to live with their societies from across the Republic.

Therefore, we say each county government must build its own prison so that prisons across the country are shared. Where do we lose? Shikusa Prison has got tracts of thousands of acres of land where we have vast maize plantations. The produce of these plantations is partly what is used to feed the prisoners across the Republic. What is worse is that prison officers will die to serve as officers in Shikusa, the reason being that they allocate themselves hundreds of acres of land within the Shikusa plantations, where they plant free maize seeds, where labour is free from prisoners including the harvesting. The only thing that the prison waders do is to sell. Some of the richest prison officers in Kenya or may be in East Africa are the ones serving in Shikusa.

We are saying that, let every county have its prison, we want to reduce the number of prisoners who live in Kakamega. We want to put to good use the tracts of thousands of acres of land in Shikusa. For example, we have decided as leadership of the county to move the Kakamega Approved Primary School from where it is, next to the Masinde Muliro University of Science and Technology (MMUST), to Shikusa because the land is there. We want the University to take up this land for purposes of developing a medical teaching and training hospital.

I want to thank former President Mwai Kibaki for giving an okay to this, and because members of the former Provincial Administration who are still in service and in higher offices in Nairobi are beneficiaries of the grabbed land from the Approved school, to Bukhungu Stadium, they have refused to give way, they have kept us in court and we are unable to receive the land that President Kibaki decreed through an executive order, that the University takes over the land.

Before the Chief Whip got married, she was our own daughter. Daughter of my own daughter, I want to remind you in your high office and closeness to President Uhuru, tell him that that University should be named after Kibaki---

The Deputy Speaker (Sen. Kembi-Gitura): Order! Address the Chair. I do not know even who you are addressing but it appears like you are addressing an individual Senator.

Sen. (Dr.) Khalwale: Thank you, Mr. Deputy Speaker, Sir. This is a University where retired President Kibaki holds very dear. Every time I remind him that there is a graduation day as I will remind him this year, he asks why they are not speeding up. Tell the National Lands Commission and President Uhuru to speed up, we want to grow.

We also want to expand the Kakamega Airstrip. We want to lengthen the runway, and because it is adjacent to Shikusa, we want to move villagers around the Airstrip so that we convert our Airstrip into an Airport.

Less than 10 per cent of the people on Kenya Airways and Fly 540 who land in Kisumu, even those who will land today, will spend the night in Kisumu. The rest of the people who land at the airport in Kisumu are forced to drive all the way to Busia, Mumias, Bungoma and other areas because we lack our own airport.

Mr. Deputy Speaker, Sir, my time is up but I would like to conclude by speaking to something that is very dear to me. At the moment, the Constitution of Kenya provides for death penalty. The last president to effect that law was President Moi. President Kibaki left office without ever effecting that law. President Uhuru took oath to uphold the Constitution of Kenya. Knowing very well that law exists, our judges and magistrates pronounce death penalty from time to time and it is unfortunate that it is only President Moi who, unfortunately, for political considerations allowed death penalty to take effect.

I ask President Uhuru to relieve the congestion in prisons. All the people on death penalty should pay as the judges found them guilty. What are they still doing there? These are the same people who break out of prison and go to rape our women and children. I support that this be done because it requires a strong man to be a president. When one swears to be the president and you cannot uphold the provision of death penalty in our Constitution--- The other considerations should only be in church. However, when it comes to the hot seat, you must ensure that the prisoners who are on death penalty, serve as an example to those who are thinking of committing similar crimes.

Mr. Deputy Speaker, Sir, as law makers, we made a very big mistake when we provided that hardcore criminals can be released on bond. It is now so common to find that a person has committed murder in Kakamega and when he is released on bond, he goes back to the village and because the people he had targeted were two and he had succeeded in knocking out one, the person comes to Kawangware in Nairobi where Luhya's like living and then takes a night bus, arrives at Kakamega at 3.00a.m., kills somebody and then comes back to Nairobi.

This is all because of the so called bail. I have an ongoing case where a Form Four boy, the son of Ignatius Likolokoli Mabilia, a student at Lirhembe Academy, was last week hacked by a hardcore from Kawangware, called Martin. This was---

The Deputy Speaker (Sen. Kembi-Gitura): Your time is up but I give you one minute to conclude that sentence.

Sen. (Dr.) Khalwale: Thank you, Mr. Deputy Speaker, Sir. I want it to go on record that this was a mistake. We were misled by the lawyers.

The Deputy Speaker (Sen. Kembi-Gitura): What is your point of order Sen. Hassan?

I will hold your minute Sen. (Dr.) Khalwale.

Sen. Hassan: On a point of order, Mr. Deputy Speaker, Sir. Is Sen. (Dr.) Khalwale in order to say that the President needs to uphold the Constitution and on the other side say that the Constitution being upheld by the court is a travesty? Is he in order to speak from both sides of his mouth?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I meant that particular Article and not the whole Constitution.

The Form Four student was cut right in the middle of the head and the criminal, Martin Kashindi is just in Kawangware. What is more painful is that, these are people who come from my family. It is very frustrating. We must not mislead the country. Lawyers who agree with me should create a majority and abolish bail for capital offences.

I beg to support.

Sen. Elachi: Mr. Deputy Speaker, Sir, I thank Sen. Adan, who is also a former Commissioner of the Kenya Human Rights Commission (KHRC). During her time at the KHRC, she advocated for women who had been raped. I thank Sen. (Dr.) Khalwale and Sen. Hassan for the contributions they have made. I also thank our former Vice-President, Hon. Moody Awori who made sure that the plight of prisoners in our country was understood. It was during his tenure that people started having more outreach programmes to prisons.

Looking at prisons today, there is need to restructure the whole sector. We are currently doing police reforms but we have never thought of the inmates, the prison warders, and how to deal with petty offenders and hardcore criminals. When you visit prisons today, you will find that the petty offenders are put together with the hardcore criminals and that is why many Kenyans have ended up conned by inmates through the phone. Our mothers and grandmothers have sent Mpesa to those inmates unknowingly.

Mr. Deputy Speaker, Sir, the fundamental issue that has been brought out by Sen. Adan is that we need to look at the issue of sanitation, nutrition and overcrowding in prisons. However, I think that until we look into the welfare of the warders, the issue of corruption will not end. Prison wardens are corrupt because their pay is low and their welfare is pathetic thus the need for them to look for alternative sources to make money. Article 10 of the Constitution is about national values and principles of governance. We should, therefore, treat the inmates with dignity while they serve their time in correctional facilities.

There was time when we had good juvenile facilities while today, we do not even know where the juvenile courts are or where to take juveniles who have been sentenced. It is very unfortunate that our youth are facing critical challenges today. They end up in hardcore gangs because when they are arrested and remanded at Industrial Area Remand Prison, they meet hardcore criminals who have committed serious crimes and they end up worse people than when they went in.

When we talk about a correctional institution, how do we ensure that a young person who was imprisoned comes out reformed and ready to work with the community?

In the past, we used to see prisoners being taken around cleaning the City. However, I no longer see that. Somebody would be sentenced because they were found drunk. There were funny cases where a police officer could ask somebody: “*Unatoka wapi na unaenda wapi?*” Before you could even answer, they took you to prison. The following day, you were accused of loitering yet you were on your way home. The person would become more a hardcore criminal after being released from remand.

For some of us who used to do outreach programmes, it was very interesting when we met prisoners. Some of them would tell you what other prisoners had told them. The moment they were released from prison, they would perform duties for the hardcore criminals because they would send them to do certain things. That is how they kept in touch with other criminals, understood other types of criminal activities and ended up joining gangs.

Mr. Deputy Speaker, Sir, the Committee should give a report on the number of prisoners we have in this country. I even doubt whether the Government can give the data on our prisoners. As much as we claim to be “digital”, we are still “analogue” because we still have Occurrence Books (OBs) being used by the police. If we want to help Kenyans who have gone through all this, it is important to have data that will help us understand why a certain prison has certain criminals and what they did. We should know that the courts are unable to fast-track and clear petty crimes that are there. This is something that should go beyond not just prisons but also the courts.

Mr. Deputy Speaker, Sir, there is a case that has been going on for three years. It is about a driver who knocked down a lady and she died. The case is being handled at the Makadara Law Courts. The most interesting thing is that the lawyers have framed issues because they know that if three years elapse, the case will be terminated. Since the husband to the deceased is not a Kenyan citizen, he decided to put the property under his wife’s name because she was a Kenyan. By bad luck, the wife died. He has been going to court for the past three years and the case has never ended. They will tell him that three years are about to elapse and according to law, he cannot claim anything.

That is very interesting and the driver is also in prison. He has been remanded for all that time. Looking at what is happening, you may wonder whether we are still in the old days. It is something that I hope that the Chief Justice (CJ) will look into because, of late, he has been very active. He knows that there are issues in the Judiciary. He should ensure that such cases are dealt with.

As the Senate, we hope that the Committee will bring out the revelations that people have never heard about. I am sure that stories that Kenyans do not know or understand will come up. They will be very surprised by what happens in prisons, since they think that prisoners are being corrected in prisons. The problem in our country is that people will want to create business in everything. As much as my Senator says that we need to build the 47 prisons, it is scary because businessmen will be happy. However, in some counties, that might be a curse.

I remember one time going to Pokot. The Senator is here to attest to that. If you talked of prisons in Pokot, they would ask you if you want their children to be criminals. To them, prisons are a curse. Therefore, some communities are not happy about the issue of prisons being established. However, other communities will be okay with that because

there are hardcore criminals and they have no choice but have prisons. The best we can do is to ensure that prison facilities are taken care of.

Mr. Deputy Speaker, Sir, prisons were well taken care of during the former President Moi's regime. They were established on huge chunks of land. However, most of that land has been grabbed by the same officers serving in the prisons. We have always ignored certain issues coming up in this country and people who serve in certain institutions prefer when we ignore or do not talk about them.

I thank Sen. Adan for bringing this Motion. This is one of the most prestigious sectors we have in this country, as much as it has many challenges. This is a sector businessmen prefer because they will supply maize, boots, uniforms and other things without caring about how they look.

If we have to talk about correcting what is rotten, the Inspector-General of Police (IGP) should know that we must start with the police station that somebody is taken to before being taken to prison. When you walk into any police station in our country, you may wonder why it is very dirty. How will you correct somebody who sees that the environment they are entering is filthy and, therefore, they will remain filthy? The prisons are even filthier yet there are people, including prisoners, who could clean or paint them. Let the prisons or police stations be clean so that when a person walks in, they will see that they are sparkling.

When you walk into a police station in Europe, you will know that you are entering a centre where you must check your integrity, because the cleanliness will click in your mind. You will realise that you have wronged and need to change your behaviour. For our case, it is the most outrageous thing we have done to ourselves and to the dignity of our people because it is our brothers that we take to the correctional institutions. Therefore, we must start with police stations and people who welcome prisoners to prison.

When you look at the house of a prison warder, you may think that it is pig sty. I am sorry to say that. You will wonder why a prison warder in Langata should live in a hut yet we construct houses for them in even 10 days. To prison warders, the issue of better houses is strange. That means that the prisoner is much better because he or she is locked up in a house made of stone. That is unfortunate for prison warders who take care of prisoners yet nobody sees that.

The Committee will have to tell us about the challenges and welfare of the prison warders. The moment we address that, we will realise that those who are taken to prisons for being corrected need dignity. We need to change their mindset and attitude for them to go back and work with the communities. If we continue the same way, we will continue having gangs and terrorists. We should avoid conflict between arms of Government and consider the interests of the country. How do you expect the community to feel when you grant bail to a terrorist?

Sen. Mutula Kilonzo Jnr.: Thank you Mr. Deputy Speaker, Sir. I support this Motion. It is important that we enforce Article 51 and comply with Article 2(5) to conform to international law and conventions which we have ratified on human rights, detention and imprisonment of persons. Since you have practiced criminal law like me, you know what I mean. If you have not been to a Government of Kenya (GK) remand or

Lang'ata Women's Prison, you do not know what you are talking about. If you have never heard of block D and E in GK Remand Prison, Industrial Area, you do not know what sort of violations we have.

Mr. Deputy Speaker, Sir, I do not know whether I should say this. Something curious happens at the GK Remand Prison that borders on violation of human rights beyond what I should say in public. It is something that we should investigate.

As a lawyer, one of the things I used to fear the most is for a client to be taken to a GK remand prison. That fear has now turned out into corruption because if you do not want your client to be remanded in block D, you pay for them to go to block E where they will get a blanket and some food. I do not know whether Sen. Adan has looked at the Prisons Act as it is.

It has a menu of the food that they should offer prisoners. It is well detailed but do they do it? No, they do not do it. If you go to the remand section at the Lang'ata Womens' Prison and look at the young girls in remand, it will break your heart beyond belief. I had the experience and I remember asking you to join the rotary because maybe you would have had the experience like I did. When I was the president of my Rotary Club, we went and painted one of the rooms at the Lang'ata Women's' Prison.

In 2008, there were 64 infants in that condition and, you ask yourself how they ended up with 64 infants to begin with. The infants are subjected to such conditions as persons who are being punished for crimes.

The right of innocence in this Republic is violated by our prisons because the minute you enter a prison facility, you are condemned. If you do not come out of the prison, Sen. (Dr.) Khalwale you must attest to this, with communicable diseases like tuberculosis or sexually transmitted diseases and others, you are lucky. Our people are being violated. In my view, there should be provision for non-custodial sentences where people who commit petty crimes, instead of waiting for His Excellency the President to issue a general amnesty for them to be released to clean compounds and offices of fat cats. These are the people who should be cleaning the City of Nairobi, courts, prisons and collecting garbage under non-custodial sentences. In fact, we would save money that the Ministry of Devolution and Planning is paying to clear drainages because we have people who are spending public funds for petty crimes in our remands waiting for their cases to be heard and they will never be heard.

We must congratulate the Chief Justice, Willy Mutunga. He has wisely thought that we can translocate some prisons so that matters are heard expeditiously but it is also not helping. When the remandees are brought to court and you look at them wearing different shoes, you do not want your relative in any prison in Kenya.

This Motion is timely because we must treat all Kenyans in conformity with the conventions on Human Rights. More so, the persons who are convicted and sentenced must come out as better people. These are the people - I stand corrected - who made these seats and the number plates. What happens when they come out? They become hardcore criminals.

When young people are in custody, they pick all the bad habits because they would rather go back and stay in prisons because it has also become a business. Crime is

now conducted remotely through prisons. There are instances where criminals have escaped, committed crimes and gone back to prison.

Mr. Deputy Speaker, Sir, if we are going to deal with the criminal justice system properly from the time a complaint is launched to the time there is a conviction or an acquittal, we must deal with the way people are treated and as Sen. Elachi said, the way they are treated in police cells. Sen. (Prof.) Anyang'-Nyong'o you may not be aware that there are people who live in our police cells. It is like a residence. There is a place in Kilimani Police Station referred to as either Kileleshwa or Kasarani, depending on which side you sleep.

I am happy that I have been put in this Committee because I have the experience of how these people are treated. What comes out after this is that, they become worse human beings than before imprisonment. I suggest that we go a little deeper in this. I agree with Sen. (Dr.) Khalwale that we have enough land to have prisons in counties. The proposal to have high courts and other courts in all counties should similarly be followed by prisons. It does not make sense to jail someone in Makindu and take him to Kakamega. What is the point of jailing him in Nairobi and taking him to Shimo la Tewa? What exactly is achieved by that transportation of prisoners? When these people are being transported to courts, the men and women are confined together in the motor vehicles. It is a tragedy.

Mr. Deputy Speaker, Sir, a lot has been said but more needs to be done. Importantly, the persons who take care of these prisoners also have rights. Those rights have not been taken care of. The police who guard us all live in squalor. Sen. Adan, as we propose that we deal with prisoners, we are going to propose that we deal with the security sector so that the reforms on how the prison warders are treated should apply uniformly because they are trained in a similar fashion.

When we have problems like the post-election violence in Naivasha, who do you think came out of the prisons to assist in quelling the violence? It was the prison warders. Does anybody remember them? Nobody remembers that if the Naivasha prison warders did not take quick action, the Luos and Luhya in Naivasha would have lost their lives in a manner that I do not want to say in public. Therefore, we must recognise them. When we recognise police officers, we do not recognise this cadre of prison warders who are also dealing with the people who you do not want to deal with. For instance, the criminals that Sen. G.G. Kariuki once jailed; there is a human being who is dealing with them and the things they do day and night. That person should be given an element of recognition because it is possible that even prison warders are suffering from frustration of having to deal with people who we consider outcast yet in my criminal practice I know that there are many people who are in crime, not because they wanted to but because of poverty.

They want to make a coin here and there, drive a car like their leader, buy a phone like they have seen so that they go into crime without the intention of going into it. We must provide an avenue of rehabilitating this human being who is in prison for circumstances beyond their control. Some of them who I was representing have confessed to me that they cannot do without crime because this was an avenue for them to make one or two shillings. In fact, they were happy to be in prison because they did not

have to look for food, be haunted, work and they had safety. They were happy to be in prison.

The policies which we will adopt and methods that we will come up with must also be internationally recognized. For instance, Barack Obama was the first President to visit a federal prison. You should get President Uhuru to go to Kamiti Maximum Prison and Lang'ata Women's Prison and spend some time with those fellows so that they can feel like Kenyans and want to get out of those institutions.

You remember the lady of Kenya Airways; when I went to visit Langata Women's Prisons – I am happy the way they treat the women in this prison, particularly the ones who have been convicted live very well. This lady who had been convicted for drug trafficking had a DVD player; she used to watch movies and write books. If we transpose what happens at the Lang'ata Women's Prison to all our prison facilities, it is possible to get an author or a lawyer like John Grisham in the book, *The Brethren*. I know that G.G. has not read it. You should read *The Brethren* because it talks about prison facilities where professionals went and gave professional services to their counterparts.

The Deputy Speaker (Sen. Kembi-Gitura): You are challenging, Sen. G.G. Kariuki?

Sen. Mutula Kilonzo Jnr.: Yes, Mr. Deputy Speaker, Sir, I am challenging him to read *The Brethren* by Grisham.

The Deputy Speaker (Sen. Kembi-Gitura): Then refer to him by his correct title.

Sen. Mutula Kilonzo Jnr.: Yes, Mr. Deputy Speaker, Sir, Sen. G.G. Kariuki. I apologise; no ill will.

I support this Motion and hope that we can do this before we go on recess although we are overwhelmed by these select committees but we will do our level best.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Prof.) Lonyangapuo.

Sen. (Prof.) Lonyangapuo: Mr. Deputy Speaker, Sir, I join my colleagues in lauding and congratulating Sen. Adan for ably bringing this Motion to the Senate. The people who are in the prisons today are none other than the people who are in our counties. These are people who need correction because of the evil mistakes that they have done.

This Motion proposes something to be done to correct some of the deplorable state of conditions in Kenya's prisons. In 1911, the British introduced correctional centres in Kenya. At that time, they managed to gather 331 warders to look after the criminals who were over 6,000. As late as 2010, when the new Constitution came into effect, we had almost 100 correctional centres and over 50,000 inmates. We had a substantial number of staff who were working in these centres. A number of us have visited relatives or friends who have been taken to these correctional centres.

I have visited Kapenguria Prison and I am surprised at the way these centres have remained from 1911. I visited Kapenguria when it was being built in the 1940s during the Second World War. The houses that the first prisoners slept in are the same ones that the current, the present and the future will be in. Another amazing thing that we found is that the warders are being paid a salary which is very miserable because it starts from Kshs18,000. They work to become constables which is after 20 years and they end up getting around Kshs30,000.

The only decent thing about the officers is the uniform and the shoes. They have no houses. The houses are similar to the ones that the criminals sleep in. The only distinction is the way they dress. They wear different clothes.

As the Senator listed here, we have international instruments; one of them is the Universal Declaration of Human Rights, the International Covenant of Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. There are almost seven of them. Kenya has had the privilege of having these documents but we have not attempted to reform the correctional services and centres to the extent that we can feel properly at peace so that if an offender is taken through these centres, they will come out changed.

Mr. Deputy Speaker, Sir, we are still using the same old technique that was found in the Bible where Apostle Paul was taken to a very remote island called Patmos. The people who came to Kenya in 1911 think that we created our island to deposit these people like Syberia, where Mandela went for 27 years.

Prisons like Kamiti Maximum Security Prison and the Lang'ata Women's Prison are some of those that we have here. We have not changed the model. If those people who started them rose from the grave today, they would be surprised that the centres are the exact ones that we had at that time.

Mr. Deputy Speaker, Sir, I have keen interest to know because in 1952 when the late Mzee Jomo Kenyatta was arrested and tried in Kapenguria, he was taken to a prison where some criminals wanted to kill him one night. Just before that time, a young man called Saiwa Chemonges from Pokot quickly ran and told the old man: "Change the position of your bed because we have heard the *wazungus* are planning to kill you." Indeed, they tried to kill him. Sure enough in the late 1960s, Mzee Jomo Kenyatta appointed Saiwa the first African Commissioner in charge of prisons.

The Deputy Speaker (Sen. Kembi-Gitura): Is it Saiwa or Saikwa? We must not distort history.

Sen. (Prof.) Lonyangapuo: Mr. Deputy Speaker, Sir, it is Saikwa Chemonges. Since then, West Pokot County has had the privilege and honour to hold the post of Prison Commissioner. The late Saikwa was the first, then Mzee Lopokoity followed by Mr. Kamakil and now Mr. Osugo.

When I asked the retired officers, Mr. Lopokoity and Mr. Kamakil, why there were no reforms, they said that they tried to propose the reforms but it looked like no Kenyan ever imagines that you can put money and reform a prisoner. So, the proposals that they laid on the table were not followed and are now in the archives of the parent Ministry. May be we would have seen a change in this department if there was what has just taken place in the Ministry of Education where we have public schools. About 15 years ago, we introduced private schools where nobody wanted to take their children.

What does it cost if Kenya also allows some entrepreneur to come up with a private prison or correctional centre? When retired President Mwai Kibaki came into power, he introduced free primary education. It was because the ones in private schools had an upper hand and so the Government had to introduce an amount of money to get more facilities and equipment into schools as opposed to before. This is the way that we can trigger some of the changes there.

Mr. Deputy Speaker, Sir, I have gone through the list of the team of 11 Senators who have been suggested here. Six of them are lawyers, one is a medical doctor, I am a mathematician and the remaining three are social scientists. We hope that in the three months that have been suggested, this mixture of professionals will sample and visit some of the correctional centres where strange things normally happen as we have heard.

We even hear that strange text messages sometimes emanate from prisons threatening people. The Cyber Crime Unit (CCU) of the Criminal Investigation Department (CID) has tried to investigate such issues. Some prisoners recently threatened a friend of mine and the messages were traced all the way to Kisumu County's Kodiaga Prison. They are the ones who know how to threaten and blackmail people. In the year 2010 when the new Constitution was promulgated, the Ministry of Education came up with a commission to align the education sector to the new Constitution. The commission was led by Prof. Douglas Odhiambo and in 2012, Prof. Ongeru who was the Minister for Education then, launched a document that was written by that commission.

Mr. Deputy Speaker, Sir, as the Mover of this Motion said, I am yet to see existing legislations on correctional services aligned to the new Constitution of Kenya, 2010. We have officers at Jogoo House and at the Prisons Headquarters yet this has not been done. This is the right time for the Senate and Parliament in general to generate a law that will be compliant to the international standards on the rights of detained persons.

Deputy Speaker, Sir, it is a pity that inmates are trained on carpentry and masonry in the correctional facilities but they are not allowed to practice in building better prison facilities for themselves and housing for the warders. The inmates should also be taken to the remote counties to construct schools and in the process earn some little for money for doing the work. I know some inmates from counties which experience food shortage, are in prison because of food, and even when they are released, they commit crime so that they are taken back to prison. Now that we have counties, we can also bring change by utilizing the skills of the inmates.

The proposed prison reforms are similar to those of the National Youth Service (NYS). Rather than have inmates in Gilgil eating for free in the prison, we should utilize their manpower by making them work. It is unfortunate to hear that some of them are taken to go herd cows at the Agricultural Development Corporation (ADC) farms. The inmates should be taught how to farm and not look after cows. They should be taken to Turkana, Mandera and other dry counties to work. The other day when we went to Mandera, we saw a river that runs throughout the year, the inmates can be used there to do farming activities.

Mr. Deputy Speaker, Sir, why do we vote Government money to feed people who are not giving any returns? We need to make the correction of inmates meaningful by getting maximum output out of them rather than let them enjoy the luxury of sleep, protected environment, free clothes, free soap and many other things. This Motion is timely because the Senate is the right House to deal with these proposed reforms. We heard that Kakamega County taxes chicken and eggs and so the people who steal chicken should not be taken to Shikusa Prison, they should be made to work with the chiefs, sub county and ward administrators.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Sen. (Prof.) Lonyangapuo.

Please proceed Sen. (Prof.) Anyang'-Nyong'o.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, I stand to support this Motion. I also congratulate my dear friend, Sen. Adan, for bringing it to the Senate and choosing a very competent list of hon. Members to be in the Select Committee. I want to speak specifically about police cells. I will only speak of my experience in one prison, because I was once imprisoned at Luzira Maximum Security Prison in Uganda in 1969.

I have been put in police cells in the following police stations in Kenya: The Criminal Investigation Department (CID) Police Station near the Integrity Centre, Kabete Police Station, Kileleshwa Police Station, the Central Police Station, the Police Station near the “Machakos Airport” on the way to Shauri Moyo, which I cannot quite remember its name, the Muthaiga Police Station, the Kisumu Police Station, the Traffic Headquarters Police Station near Kenyatta National Hospital (KNH) and finally, Nyayo House where I spent about 30 days.

Mr. Deputy Speaker, Sir, I was in prison at the Luzira Maximum Security Prison for a couple of days. During those days, prison conditions in Kenya and Uganda were more or less the same. I remember very well the lack of human rights and the indignity of being in a prison cell. You had a bowl for your toilet and you were responsible for looking after it. You had only a few hours in the morning to see daylight when you were cutting grass. You would spend the rest of your days in the prison cell. I was taken to prison because being a student leader – the President of the students’ guild at Makerere University – we had organised a demonstration against the British Government to protest against their sale of arms to the Apartheid Regime in South Africa. The Uganda Government did not take that kindly.

Mr. Deputy Speaker, Sir, of all the police stations where I was held for a couple of days waiting to be taken to court, I remember, in particular, the police station near the Machakos Bus Stop where I found 40 people crowded in a place not bigger than, I would say, 10 by 10 feet. Since I was a Member of Parliament (MP), the person in charge was kind enough to order those people out of that small room so that I could stay there alone. I felt very bad because I knew that those 40 people would experience an even worse situation whereas I would enjoy a room to myself.

There was a trench with *dudus* within the prison cell, along which the sewage moved. The smell was terrible. You can image the smell and the 40 people who were there. I was alone but I could not stand it. However, since I had been held the whole night without sleeping, I actually fell asleep under those circumstances. Had it not been for my lawyers – a whole team of lawyers from Parliament including Sen. Murungi who came in the afternoon with a *habeas corpus* – my experience in that place would have been horrible.

Mr. Deputy Speaker, Sir, allow me to talk about the other police stations that I have mentioned. Although they were a little bit neater than the one near the Machakos Bus Stop, nonetheless, they were equally inhuman. I was held in and my shoes were taken away from me. They also took my belt because, I think, they suspected that I could hang myself using it. You were kept in a police cell for many days without brushing your

teeth or combing your hair. They give you that food if you are lucky, but is it worth human consumption?

It is the relationship between a detainee in a police cell and the police which is most inhuman. These people should realize that while you are detained in a police cell, you have not been accused of anything. Being treated worse than a prisoner is unfair. Let me move on to my experience in Nyayo House because it is becoming history.

In 1981, my dear friend Sen. G.G. Kariuki who was then Minister for Internal Security had my papers on his desk to be detained but I escaped to Mexico and he never detained me. When I came back, as we were starting the struggle for the second Independence - by the way this is something that Sen. G.G. Kariuki and I had talked about very humorously and so, I am not casting aspersions to him because he was then a servant of the state, fulfilling the obligations of internal security, much as a displeasure---

Sen. G.G. Kariuki: Mr. Speaker, Sir, on a point of order, I wish to remind my friend Hon. (Prof.) Anyang'-Nyong'o that the Minister of State in charge of Internal Security does not detain anyone. Even today, this job is supposed to be done by another minister. Not the minister of state. If it were me, may be, the story would have been different but I did not. I need to correct you.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, I stand corrected. We shall share our jokes later with Sen. G.G. Kariuki.

I was saying that, what is most inhuman, especially, at Nyayo House which is now history, is that, it is better to be taken to Kamiti Maximum Prison where at least the laws are clear on what happens to a prisoner. It is worse to be at the Nyayo House torture chambers. Apparently, that was never safeguarded by any law. Anything can happen to you. One of the things is that you do not have any right in the dungeon there. You go there on the 1st of May fully dressed. Your shoes and belt are removed. You stay with those clothes for a whole month without changing.

Secondly, you are allowed to take a shower but without soap. You just take a cold shower and hope that you will be clean. When you leave the shower room, you go to your cell without a towel. I used to run around the cell until I am dry.

(Laughter)

However, it was good exercise. In that cell there was no mat to sleep on. You would sleep on the cold floor. Fortunately, I made friends with my guards there who brought me a sisal mat, not the papyrus one, to sleep on for the time I was there.

Still, you do not have a toothbrush or a comb so you do not brush your teeth for the long you are there. Mine time was a month. One day, I attempted brushing my teeth with some *Omo* that I found in the shower. I showered with it and said; "if this thing can clean me, it can also clean my teeth." Not realizing that after that, I would not have any taste buds, I could not even feel the taste of water. These are the kind of things that detainees go through. Sen. Adan's Committee should look into them. I am willing to be the first witness in this committee and give a much more detailed testimony.

The other thing, which is very important is, we should have a records for the history of those who were detained in the Nyayo Police cells. I understand from the

Attorney General, Mr. Githu Muigai that currently, people can go to court and claim compensation from the State. I do not know whether there are records for the 'old' Nyayo House but I hope that is one the thing that the Committee will establish.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. (Prof.) Anyang'-Nyong'o. When debate on this Motion resumes, Sen. (Prof.) Anyang'-Nyong'o will have five minutes balance to continue with his contribution.

ADJOURNMENT

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, it is now 6.30 p.m., time to interrupt the business of the Senate. Therefore, the Senate stands adjourned until Tuesday, 13th October, 2015 at 2.30 p.m.

The Senate rose at 6.30 p.m.