

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 5th March, 2024

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

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

PRAYER

DETERMINATION OF QUORUM AT COMMENCEMENT OF SITTING

The Speaker (Hon. Kingi): Clerk, do we have quorum? Serjeant-at-Arms, kindly, ring the Quorum Bell for 10 minutes.

(The Quorum Bell was rung)

The Speaker (Hon. Kingi): Serjeant-at-Arms, kindly stop the Bell. I am informed we do have quorum now. Clerk, proceed to call the first Order.

Hon. Senators, please, take your seats. I need to make a Communication. Sen. Beth Syengo, stop the greetings and take your seat. You are holding us.

COMMUNICATIONS FROM THE CHAIR

VISITING DELEGATION FROM BUNGOMA COUNTY ASSEMBLY

Hon. Senators, I would like to acknowledge the presence in the Speaker's Gallery this afternoon of a visiting delegation from the County Assembly of Bungoma comprising Members of the County Public Accounts Committee and its Secretariat. The delegation is undertaking a benchmarking visit in the Senate.

I request each Member of the delegation to stand when called out so that they may be acknowledged in the Senate tradition.

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|--------------------------|---|------------------|
| (1) Hon. Everton Nganga | - | Chairperson |
| (2) Hon. Timothy Chikati | - | Vice Chairperson |
| (3) Hon. Alfred Mukhanya | - | Member |
| (4) Hon. Jerusa Aleu | - | Member |

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(5) Hon. Stephene Kaiser	-	Member
(6) Hon. Kennedy Wanyama	-	Member
(7) Hon. Metrine Nangalama	-	Member
(8) Hon. Moureen Wafula	-	Member
(9) Hon. Everlyne Mutiambu	-	Member
(10) Hon. Everlyne Anyango	-	Member
(11) Mr. Oscar Sifuma	-	Committee Clerk
(12) Ms. Carolyn Wamalwa	-	Deputy Hansard Officer
(13) Mr. Ramadhan Fwamba	-	Committee Clerk
(14) Mr. Aggrey Makokha	-	Legal Clerk
(15) Mr. Kellum Chandai	-	Serjeant-At-Arms
(16) Mr. Mash Misiko	-	Public Communication Officer

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

I will allow the Senator for Bungoma County, Sen. Wafula, in under one minute, to extend a word of welcome to the delegation.

Sen. Wafula: Asante, Bw. Spika, kwa fursa hii ili niweze kuwakaribisha wandani wangu na rafiki zangu wa kisiasa na vilevile wapiga kura wangu wa Kaunti ya Bungoma.

Seneti lina wanaume na wanawake wa tajriba na heshima kuu. Kule Kaunti ya Bungoma, unapowatazama, kuna mabinti ambao walipambana kisiasa kuwabwaga wanaume na wanawake kwa njia ya kidemokrasia.

Bungoma ni Kaunti ambayo inajulikana kwa kutoa viongozi wanawake ambao wanajua kazi wanayopaswa kufanya na kwamba kura wanayopata sio kwa sababu ya urafiki wa mahaba ama wa kidini au wa kibiashara.

Langu ni kuwakaribisha wanawake ninyi shupavu na wanaume wenzangu kwamba hapa ndimo Seneta wenu huchapa kazi. Hili ndilo Bunge ambalo tunawatia msasa magavana na serikali zao. Najua wamekuwa hapa kuelezwa jinsi ya kutia msasa na kubukua vitabu vya hesabu vya kaunti ili kila shilingi iwajibikiwe na ifanye kazi kwa mujibu wa sheria.

Mimi Seneta wenu nawakaribisha. Jihisi mko nyumbani na wapenzi wa Seneti. Sisi ndio watetezi wa ugatuzi katika Kenya hii. Miswada yote inayohusu ugatuzi lazima tuwatete.

Yale masuala ya pesa zenu zile ambazo mnataka msimamie, tuko na ninyi sako kwa bako. Zile fedha mnazotaka za magari na mjivinjari kama viongozi wengine pia tuko na ninyi. Msikate tamaa. Tutete ugatuzi, tufanye maendeleo na Wakenya watatukumbuka kwamba sisi ndio watetezi wa ugatuzi.

Kwa niaba ya Seneti, nawakaribisha wote msikize na mjionee wenyewe jinsi mlinitunuku nafasi na nitawafanyia kazi hii kwa uadhilifu na upendo.

Nawatakia kila la heri katika majukumu yenu ya kutetea watu wa Kaunti ya Bungoma na ugatuzi katika nchi ya Kenya.

The Speaker (Hon. Kingi): Sen. Wafula, under one-minute means less than a minute. Next time you have the Floor, please do not defy the directive of the Speaker. Have your seat.

Sen. Chute, kindly take your seat. I have further communication to make.

STRATEGY FOR ACTUALIZATION OF THE
RECOMMENDATIONS OF THE NADCO REPORT

Hon. Senators, as you are aware, the National Dialogue Committee (NADCO) was established by the National Assembly and the Senate vide a resolution passed on 16th August, 2023 and 29th August, 2023, respectively.

The Committee was required to facilitate dialogue and consensus building and recommend appropriate constitutional, legal and policy reforms on issues of concern to the people of Kenya, in line with the Constitution and the laws of the Republic of Kenya and respecting the functional and institutional integrity of state organs.

The NADCO was required to submit its Report to Parliament and the leadership of the Kenya Kwanza and Azimio la Umoja-One Kenya Coalition on constitutional, legal and policy reforms on issues of concern to the people of Kenya.

Upon conclusion of the national dialogue process, the Committee tabled its report to Parliament for consideration.

Hon. Senators, you may have your seats because it is a long communication.

(A number of Senators walked into the Chamber)

On 21st February, 2024, the Senate adopted the Report of the Committee. Likewise, the National Assembly adopted the Report on 22nd February, 2024. The Report contains various recommendations, including recommendations proposing amendments of the Constitution and various statutes regarding several issues.

At its meetings held on Tuesday, 27th and Thursday, 29th February, 2024, the Speakers of the Houses of Parliament and the leadership of both the Senate and the National Assembly deliberated on modalities for implementation of the recommendations contained in the Report of the NADCO. The meeting agreed as follows –

(1) Proposals for amendment of the Constitution to implement the recommendations of the NADCO be referred to the Senate Standing Committee on Justice, Legal Affairs and Human Rights and the Departmental Committee on Justice and Legal Affairs of the National Assembly for their joint consideration.

(2) That the following legislative proposals recommended in the Report of the Committee be introduced in the National Assembly. These are –

- (i) The IEBC (Amendment) Bill, 2024;
- (ii) The Ethics and Anti-Corruption Commission (Amendment) Bill, 2024;
- (iii) The Leader of Opposition Bill, 2024; and,
- (iv) The National Government Coordination (Amendment) Bill, 2024.

(3) The following legislative proposals recommended in the Report of the Committee be introduced in the Senate -

- (i) The Elections Offences (Amendment) Bill, 2024;
- (ii) The Elections (Amendment) Bill, 2024;
- (iii) The Statutory Instruments (Amendment) Bill, 2024; and

(iv) The Political Parties (Amendment) Bill, 2024.

(4) The Clerks of the Houses of Parliament to communicate to other entities the recommendations that require action by the said entities.

Hon. Senators, I take this opportunity to thank the Speaker of the National Assembly, the leadership of the Senate, and the National Assembly, for providing a clear strategy for the actualization of the recommendations of the Report of the NADCO.

Article 256 of the Constitution of Kenya 2010 requires that any proposed amendments to the Constitution shall be considered by both Houses of Parliament. In this regard and following consultation with the leadership of the two Houses of Parliament, the proposed amendments to the Constitution and to various statutes as contained in the Report of the NADCO now stand referred to the Standing Committee on Justice, Legal Affairs and Human Rights.

The Standing Committee working jointly with the Departmental Committee on Justice and Legal Affairs of the National Assembly in accordance with Standing Order 230 of the Senate and Standing Order 202(a) of the National Assembly shall consider the proposed amendments to the Constitution and recommend to the Houses of Parliament the manner of actualizing the recommendations of the NADCO relating to the proposed amendments to the Constitution.

It is also notable that the proposed amendments to the Constitution may necessitate further amendments to or enactment of new statutes. In this regard, any proposed amendments to new statute that is consequential to the proposed amendments to the Constitution also stand referred to the two Committees for consideration.

The need to ensure that due process in the enactment of legislation and as provided in the Standing Orders of both Houses of Parliament cannot be gainsaid. Therefore, the two Committees are directed to ensure that due process in the enactment of laws is adhered to in considering the proposed amendments during the joint sittings. This matter being one of immense importance and public interest, the Committees are directed to undertake this assignment expeditiously and to submit a report within 45 days from the date hereof.

I thank you.

Next Order.

PAPERS LAID

The Senate Majority Leader (Sen. Cheruiyot): Thank you, Mr. Speaker, Sir. I beg to lay the following Papers on the Table of the Senate today, Tuesday, 05th March, 2024 -

REPORT OF THE CONTROLLER OF BUDGET ON COUNTY GOVERNMENTS' BUDGET IMPLEMENTATION REVIEW

Report of the Controller of Budget (CoB) on the County Governments' Budget Implementation Review for the first half of the Financial Year 2023/2024.

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REPORTS OF THE AUDITOR-GENERAL ON FINANCIAL
STATEMENTS OF VARIOUS ENTITIES

Report of the Auditor-General on Financial Statements of Elgeyo/Marakwet County Executive Car and Mortgage Revolving Fund for the year ended 30th June, 2023.

Report of the Auditor-General on the Financial Statements of the County Executive of Kakamega for the year ended 30th June, 2023.

Report of the Auditor-General on the Financial Statements of the County Government of Kakamega for the year ended 30th June, 2023.

Report of the Auditor-General on the Financial Statements of the County Government of Kakamega – Receiver of Revenue for the year ended 30th June, 2023.

Report of the Auditor-General on the Financial Statements of Kakamega County Dairy Development Corporation for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of the County Assembly of Kakamega Loans and Mortgages Fund for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of Kakamega County Emergency Fund for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of Kakamega County Microfinance Corporation for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of Kakamega County Climate Change Fund for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of the County Executive of Uasin Gishu for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of the County Assembly of Uasin Gishu for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of Uasin Gishu County Assembly Mortgage and Car Loan Scheme Fund for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of the County Revenue Fund - Uasin Gishu County Government for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of Uasin Gishu County Bursary and Skills Development Support Fund for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of Uasin Gishu County Alcoholic Drinks Control Fund for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of County Government of Uasin Gishu - Receiver of Revenue for the year ended 30th June, 2023.

Report of the Auditor-General on the Financial Statements of Uasin Gishu County Staff Mortgage and Card Loans Scheme Fund for the year ended 30th June, 2023.

Report of the Auditor-General on the Financial Statements of Uasin Gishu County Inua Biashara Fund for the year ended 30th June, 2023.

Report of the Auditor-General on the Financial Statements of Uasin Gishu County Emergency Fund for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of the County Executive of Nandi for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of Nandi County Executive Committee Car Loan and Mortgage Scheme Fund for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of the County Government – Receiver of Revenue for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of the County Assembly of Nandi for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of Nandi County Assembly Scheme Fund for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of the County Government of Nandi – County Revenue Fund for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of Nandi County Facilities Improvement Fund for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of Nandi County Alcoholic Drinks Control Fund for the year ended 30th June, 2023.

Report of the Auditor-General on the Financial Statements of Nandi County Emergency Fund for the year ended 30th June, 2023.

Report of the Auditor-General on the Financial Statements of Nandi County Education Fund for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of Bungoma County Assembly Car Loan and Mortgage Scheme Fund for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of County Government of Kwale - County Revenue Fund for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of Busia County (Public Officers) Revolving Fund for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of Busia County Agricultural Development Fund for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of Busia County Co-operative Enterprise Fund for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of the County Revenue Fund – County Government of Busia for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of the County Executive of Mombasa for the year ended 30th June, 2023.

Report of the Auditor-General on Financial Statements of the County Assembly of Mombasa for the year ended 30th June, 2023.

(Sen. Cheruiyot laid the documents on the Table)

The Speaker (Hon. King): The Chairperson of the County Public Accounts Committee (CPAC), did you have a Paper to lay?

Please, proceed.

REPORT ON CONSIDERATION OF FINANCIAL STATEMENTS
OF VARIOUS COUNTY EXECUTIVES

Sen. M. Kajwang': Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today, Tuesday, 5th March, 2024 -

Report of the Select Committee on County Public Accounts on its consideration of the Reports of the Auditor General on the financial statements of Tharaka Nithi, Homa Bay, Kakamega, Kirinyaga, Makueni, Meru, Bomet, Murang'a, Nandi, Nyamira, Nyeri, Siaya, Vihiga, Wajir and Samburu County Executives for the Financial Year 2019/2020.

(Sen. M. Kajwang' laid the document on the Table)

REPORT ON THE 9TH IPU CONFERENCE OF
YOUNG PARLIAMENTARIANS HELD IN HANOI

Sen. Methu: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Tuesday, 5th March, 2024 -

Report of the 9th Inter-Parliamentary Union (IPU) Global Conference of Young Parliamentarians Held in Hanoi, Vietnam from 15th to 17th September, 2023.

(Sen. Methu laid the document on the Table)

The Speaker (Hon. Kingi): Next Order.

NOTICES OF MOTIONS

NOTING OF REPORT ON THE 13TH ASSEMBLY OF
FP-ICGLR HELD IN JUBA

Sen. Ali Roba: Thank you, Mr. Speaker, Sir. I beg to give Notice of the following Motion -

THAT, the Senate notes the Report of the Parliament of Kenya Delegation to the 13th Plenary Assembly of the Forum of Parliaments of the Member States of the International Conference on the Great Lakes Region (FP-ICGLR), held in Juba, South Sudan, laid on the table of Senate on Thursday, 7th December, 2023.

ADOPTION OF REPORT ON CONSIDERATION OF FINANCIAL
STATEMENTS OF VARIOUS COUNTY EXECUTIVES

Sen. M. Kajwang’: Thank you, Mr. Speaker, Sir. I beg to give Notice of the following Motion -

THAT, the Senate adopts the Report of the Select Committee on County Public Accounts on its consideration of the Reports of the Auditor-General on the Financial Statements of Tharaka Nithi, Homa Bay, Kakamega, Kirinyaga, Makueni, Meru, Bomet, Murang’a, Nandi, Nyamira, Nyeri, Siaya, Vihiga, Wajir and Samburu County Executives for the Financial Year 2019/2020 laid on the table of the Senate on Tuesday, 5th March, 2024.

NOTING OF REPORT ON THE 9TH IPU CONFERENCE OF
YOUNG PARLIAMENTARIANS HELD IN HANOI

Sen. Methu: Thank you, Mr. Speaker Sir. I beg to give Notice of the following Motion -

THAT, the Senate notes the Report of the 9th Inter-Parliamentary Union (IPU) Global Conference of Young Parliamentarians held in Hanoi, Vietnam from 15th to 17th September, 2023, laid on the table of the Senate on Tuesday, 5th March, 2024.

The Speaker (Hon. King): Next Order.

QUESTIONS AND STATEMENTS

STATEMENTS

The Speaker (Hon. Kingi): Sen. Wafula, please proceed.

RESERVATION OF PROCUREMENT OPPORTUNITIES
FOR DISADVANTAGED GROUPS

Sen. Wakoli: Mr. Speaker, Sir, I rise pursuant to Standing Order No. 53 (1) to seek a Statement from the Standing Committee on Finance and Budget regarding the reservation by the County Government of Bungoma on procurement opportunities for the youth, women and Persons with Disabilities (PWDs).

In the Statement the Committee should-

(1) Provide a list of all tenders awarded by the county government to the youth, women and PWDs in the financial years 2022/2023, 2023/2024 stating their respective areas of specialty and address.

(2) Provide a breakdown of the total procurement expenditure at the county government for Financial Year 2017/2018 to date indicating the proportion paid to the youth, women and PWDs.

(3) Clarify whether the county government has met the 30 per cent threshold for the award of procurement tenders to the youth, women and PWDs as mandated by the Public Procurement and Asset Disposal Act.

(4) Explain any measures put in place by the national and county governments to ensure compliance with the said provisions of the Act.

Mr. Speaker, Sir, may I proceed with the second Statement?

The Speaker (Hon. Kingi): Proceed, hon. Senator.

COLLAPSE OF MALAKISI COTTON GINNERY

Sen. Wakoli: Mr. Speaker, Sir, I rise pursuant to Standing Order No. 53 (1) to seek a Statement from the Standing Committee on Trade, Industrialization and Tourism regarding the collapse of Malakisi Cotton Ginnery in Sirisia Constituency, Bungoma County.

In the Statement, the Committee should-

(1) Explain the circumstances that led to the collapse of Malakisi Cotton Ginnery in Sirisia Constituency, Bungoma County.

(2) Outline any steps taken by the Government to revive the said ginnery clarifying whether any budgetary allocation for the same has been made in the current financial year.

(3) State any other initiatives implemented by the Government to revitalize and sustain the cotton industry in Kenya, particularly in Bungoma, Busia and Kisumu counties where the industry has faced significant challenges.

I thank you

The Speaker (Hon. Kingi): Proceed, Sen. Munyi Mundigi.

THE FATE OF P1 AND ECDE TEACHERS FOLLOWING MINISTRY OF EDUCATION GUIDELINES

Sen. Munyi Mundigi: Mr. Speaker, Sir, I rise pursuant to Standing Order No. 53 (1) to seek a Statement from the Standing Committee on Education concerning the status and prospects of teachers possessing a Primary Teachers Education Certificate (P1) and Early Childhood Development Education (ECDE) Certificate only, following the Ministry of Education's guidelines policy mandating a minimum qualification of a Diploma for both ECDE and primary education teachers.

In the Statement, the Committee should-

(1) State the number of teachers holding P1 and ECDE certificates currently in service and employed by the Teachers Service Commission (TSC) and county governments.

(2) Provide the timelines for the proposed upgrading programme for the underqualified teachers to attain the required diploma qualifications in alignment with the Ministry of Education's guidelines.

(3) Shed light on the fate of the Blended Upgrading Programme as initially outlined in circular NO.MOE HQS/3/1/ (50) by the Ministry, which was to resume post-

normalization of the school calendar following disruptions caused by the Covid-19 Pandemic; and,

(4) State interventions to address the situation of teachers within the TSC who have not had the opportunity to upgrade their qualifications to a diploma level in light of the failure to resume the Blended Upgrading Programme, explaining how this aligns with the policy requiring all primary school teachers to possess a diploma in primary teacher education.

I thank you

The Speaker (Hon. Kingi): Proceed, Sen. Betty Montet.

COLLECTION AND DISTRIBUTION OF ROYALTIES TO ARTISTS

Sen. Betty Montet: Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No. 53(1) to seek a Statement from the Standing Committee on Labour and Social Welfare regarding the collection and distribution of royalties to artists in Kenya.

In the Statement, the Committee should-

(1) Provide a list of all Collective Management Organizations (CMOs) currently licensed and operating in Kenya specifying their physical addresses.

(2) Explain why the Kenya Copyright Board continues to issue licenses to CMOs despite artists lodging numerous complaints about the performance of the CMOs and non-remittance of their hard earned dues.

(3) Explain why CMOs have continued to distribute minimal amounts as royalties despite enhanced collections.

(4) Provide a breakdown of all monies collected and distributed by the CMOs in the last one year stating whether the distribution adheres to the guidelines that stipulate that a minimum of 70 per cent of the collections be distributed as royalties to artists.

(5) Furnish the Senate with the register of artists currently used in the distribution of royalties indicating whether there are plans to update the register to weed off ghost artists.

I thank you.

The Speaker (Hon. Kingi): Proceed, Sen. Mariam Omar.

DELAY IN PROCESSING OF PASSPORTS APPLICATIONS

Sen. Mariam Omar: Mr. Speaker, Sir, I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on National Security Defense and Foreign Relations regarding the delay in processing of passports application in Kenya.

In the Statement the Committee should-

(1) State the number of passports application pending at Directorate of Immigration explaining any steps taken by the Ministry of Interior and National

Administration to clear the backlog, which has hindered many youths from pursuing employment opportunity abroad.

The Speaker (Hon. Kingi): Order, Hon. Senators! Those who are standing kindly sit down.

(Several Senators took their seats)

Sen. Mariam Omar: (2) Clarify whether Muslims intended to perform pilgrimage *Hajj* in Mecca, Saudi Arabia in three months' time can be assured of prompt and timely issuance of passports.

I thank you.

The Speaker (Hon. Kingi): Who is holding brief for Sen. (Prof.) Tom Odhiambo Ojienda, SC?

(The Clerk-at the-Table approached the Chair)

Sen. Lemaletian, proceed.

PAYMENT OF HARDSHIP ALLOWANCE TO
TEACHERS IN NYANDO SUB-COUNTY

Sen. Lemaletian: Thank you, Mr. Speaker Sir. I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Education regarding the payment of hardship allowance to teachers in the flood prone Nyando Sub-County, in Kisumu County.

In the Statement, the Committee should-

(i) Provide the budgetary allocation for hardship allowances for teachers serving in flood-prone areas, if any, in the Financial Years 2020/2021 to 2022/2023.

(ii) Explain why the Ministry of Education is yet to categorize Nyando Sub-County in Kisumu County, which is flood-prone as a hardship area for teachers in the area to benefit from hardship allowances.

(iii) Outline the immediate and long-term measures put in place by the Government to ease working conditions for teachers in the flood-prone areas of Kisumu County.

I have sought the Statement on behalf of Sen. (Prof.) Tom Ojienda, SC, Senator for Kisumu County.

The Speaker (Hon. Kingi): Sen. Ali Roba, proceed.

STATUS OF IMPLEMENTATION OF HORN OF AFRICA
GATEWAY DEVELOPMENT PROJECT

Sen. Ali Roba: Mr. Speaker, Sir, I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Roads, Transportation and Housing on

the status of implementation of the Horn of Africa Gateway Development Project (HOAGDP) and in particular the upgrading of Isiolo-Mandera Regional Road Corridor.

In the Statement, the committee should-

(i) Provide the implementation status of the upgrading of the Isiolo-Mandera Regional Road Corridor, and in particular, whether works have commenced with respect to the Elwak-Rhamu Road (A13) Road Section.

(ii) Outline the financing framework for the upgrading of the Isiolo-Mandera Regional Road Corridor with reference to specific development partners who have committed to financing the said project, giving the total amount of funding or loans received or expected to be received and the particular component of the project to which the loans apply.

(iii) Provide comprehensive details of the contents of the financing agreement and whether or not the proceeds of any loans will be applied towards making payments for projects outside the HOAGDP.

(iv) Investigate claims that the Kenya National Highways Authority (KeNHA), the project's implementing agency, intends to apply or has applied part of the proceeds from a loan from the African Development Bank (ADB) for financing the Elwak-Rhamu Road (A13) Upgrading Project towards payments under the contract for consultancy services for feasibility study, environmental and social impact assessment, resettlement action plan and detailed engineering designs of Umoja-Kangundo-Mwala-Kithimani (B63/B106) Road, Kisian-Busia (A12) and Ahero-Nyamasaria (A1) road sections as indicated in an advertisement placed by the KeNHA in *The Star* newspaper on 13th February, 2024.

(v) State the impact that the above claim will have upon completion of upgrading of the Elwak-Rhamu Road and implementation of the HOAGDP, and whether this is in line with the financing agreement between the Government of Kenya and ADB.

(vi) Explain the status of road segments under the HOAGDP that were to be funded through the annuity programme of the Government of Kenya, namely Elwak-Rhamu Road and Modogashe-Samatar Road.

The Speaker (Hon. Kingi): Sen. Chute, proceed.

REPATRIATION OF KENYAN REFUGEES FROM ETHIOPIA

Sen. Chute: Mr. Speaker, Sir, I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on National Security, Defence and Foreign Relations on repatriation of Kenyan refugees from Ethiopia.

In the Statement, the Committee should-

(1) State the exact number of Kenyans who previously lived in Bada Hurri and Dukana in North Horr Constituency of Marsabit County, but fled to Dilo and Magado in Ethiopia due to ethnic conflict in 2013.

(2) Indicate whether there are plans by the Government to repatriate the said refugees, and if so, indicate the projected timelines for the same.

(3) Outline measures put in place by the Government to facilitate their reintegration into the community to ensure there is uninhibited access to national and county government services.

The Speaker (Hon. Kingi): Sen. Chute, you had another Statement that was reinstated. Are you ready to proceed with it?

Sen. Chute: No, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Fair enough. Sen. Olekina, proceed.

OPERATIONS OF EWASO NGIRO TANNERY AND
LEATHER FACTORY, NAROK COUNTY

Sen. Olekina: Mr. Speaker, Sir, I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on Trade, Industrialization and Tourism regarding the operations of Ewaso Ngiro Tannery and Leather Factory in Narok County.

In the Statement, the Committee should-

(1) Report on the operations of the Ewaso Ngiro Tannery and Leather Factory in Narok County, stating its annual budget, yearly production capacity and volume, as well as the market demand for its products.

(2) Explain how the tannery actively involves the local communities in its operations, highlighting the tannery recruitment process and the percentage of the workforce drawn from the Maasai Community.

(3) Provide details of the availability and origin of the equipment and raw materials utilised in the tannery, indicating the proportion that is sourced from the locality; and,

(4) Inform the Senate of the environmental implications of the tanning and waste disposal process, clearly outlining measures put in place to mitigate any environmental risks and hazards.

The Speaker (Hon. Kingi): Let us go to the next Order.

(The Clerk-at-the-Table consulted with the Speaker)

Sen. Mbugua, your Statement was reinstated. Kindly proceed if you are ready.

DELAYED ISSUANCE OF PASSPORTS

Sen. Mbugua: Mr. Speaker, Sir, I rise pursuant to Standing Order No.53(1) to seek a Statement from the Standing Committee on National Security, Defence and Foreign Relations regarding the delay in processing of passports.

In the Statement, the Committee should-

(1) Report on the efficiency of processing of passport applications by the Directorate of Immigration Services, stating any measures put in place by the Ministry of Interior and National Administration to expedite the renewal and issuance of passports, particularly for Kenyans living in the diaspora.

(2) State whether the Government is planning to review and streamline passport processing procedures for newborns in the diaspora who are yet to be issued with birth certificates in light of the challenges currently faced in this regard.

(3) Explain any steps taken by the Government to step up processing of passport applications to match the growing demand resulting from increased labour migrations.

(4) Outline any actions taken by the Government to root out systematic corruption at the Directorate of Immigration Services which has continually undermined fair and efficient processing of passport applications for every Kenyan.

(5) Clarify whether there are plans to set up passport processing centres in all the 47 counties to enhance access to Government service and reduce congestion in the few available centres.

The Speaker (Hon. Kingi): Hon. Senators, before we move to the next Order, allow me to make the following Communication.

COMMUNICATION FROM THE CHAIR

MISCONDUCT EXHIBITED BY SEN. ORWOBA ON 15TH FEBRUARY, 2024
AND THE SENATE MINORITY LEADER ON 20TH FEBRUARY, 2024

The Speaker (Hon. Kingi): Hon. Senators, this Communication has been necessitated by recent developments in the Chamber relating to disorderly conduct that required the intervention of the Speaker.

(Sen. Okiya Omtatah stood at the Dispatch Box)

You may proceed, Sen. Okiya Omtatah, to take your seat.

(Sen. Okiya Omtatah took his seat)

Firstly, on 16th February, 2024, I received a letter from Sen. Gloria Orwoba, MP, questioning the decision of the then Temporary Speaker, Sen. Catherine Mumma, at the sitting of the Senate held on 15th February, 2024, not to allow her to raise a point of order on utterances made by the Senator for Homa Bay County.

Secondly, on 21st February, 2024, I received a letter from the Senate Minority Leader, Hon. Sen. Stewart Madzayo, questioning and appealing the ruling of the then Temporary Speaker, Sen. Veronica Maina, MP, at the sitting of the Senate held on 20th February, 2024, requiring the Senate Minority Leader, Sen. Stewart Madzayo, MP, to withdraw from the Chamber pursuant to Standing Order No.122 (2) (a).

Hon. Senators, following receipt of the two letters, I undertook to study the HANSARD and the live broadcasting video of the Senate proceedings of Thursday, 15th February, 2024 and on Tuesday, 20th February, 2023, to ascertain the claims made by Sen. Gloria Orwoba and the Senate Minority Leader, Sen. Stewart Madzayo, MP.

On the claim by Sen. Gloria Orwoba, MP, the brief facts are as follows -

At the sitting of the Senate held on Tuesday, 15th February, 2024, the Senator for Homa Bay County, Sen. Moses Kajwang', MP, while contributing to the debate on the Water (Amendment) Bill (National Assembly Bills No. 33 of 2023) made the following remarks and I quote:

“Madam Temporary Speaker, the caucus Members include the County Executive Committee Member (CECM) in charge of water from Bomet and he has asked us to oppose this Bill. The CECM in charge of water from Mombasa, where Sen. Miraj allegedly comes from, has asked us to oppose it. That includes the one for Kisii where Sen. Orwoba allegedly comes from. They have also asked us to oppose it.”

The comments by Sen. Moses Kajwang', MP, prompted Sen. Gloria Orwoba, MP, to rise on a point of order seeking the intervention of the Chair to require the Senator for Homa Bay County to withdraw the comment that Sen. Gloria Orwoba, MP, “allegedly comes from” Kisii County.

The Temporary Speaker ruled Sen. Gloria Orwoba, MP, to be out of order and allowed Sen. M. Kajwang', MP, to resume his contribution on the Bill.

Following the directions by the Chair, Sen. Gloria Orwoba, MP, continued to consult in a disruptive manner, prompting the Senator for Nairobi City County, Sen. Edwin Sifuna, MP, to raise on a point of order pursuant to Standing Order No.121 (1)(a) and (c). Thereafter, the Temporary Speaker cautioned Sen. Gloria Orwoba, MP, to maintain order.

Hon. Senators, from the foregoing, the allegations by Sen. Gloria Orwoba, MP, against the Chair for “unjustly dismissed my rightfully demands which clearly exhibited bias by politicising the issue”, I find that the allegations to be unfounded and hereby dismissed, as the then Chair rightfully dispensed with the matter.

Hon. Senators, it is worth noting that the decision of the Chair was final and thus, the letter by Sen. Gloria Orwoba, MP, was not necessary, as the Standing Orders do not provide for a mechanism to challenge or appeal the ruling of the Speaker, save for a decision on suspension of a Senator.

In the event that Sen. Gloria Orwoba, MP, was dissatisfied with the directive of the Chair, there were other avenues to set her record straight, including filing a personal statement pursuant to Standing Order No.58 of the Senate Standing Orders.

Hon. Senators, concerning the appeal by the Senate Minority Leader, Sen. Stewart Madzayo, MP, as you may recall, at the sitting of the Senate held on Tuesday, 20th February, 2024, the Senate Minority Leader, Sen. Justice (Rtd) Stewart Madzayo, MP, rose on a point of order, seeking the intervention of the Speaker on the remarks made by the Senator for Nandi County, Sen. Samson Cherarkey, MP, while contributing to the Motion on the Report of the National Dialogue Committee (NADCO).

In the point of order, the Senate Minority Leader, Sen. Stewart Madzayo, MP, stated as follows-

“Bi. Spika wa Muda, Bunge la Seneti ni Bunge linalo heshimiwa sana na hivi sasa taifa nzima, macho yote yameelekezwa hapa. Itakuwa siyo heshima, mtu kuwataja viongozi, Maseneta waseme atangulishe vile anavyoongea kisha wewe useme, hiyo ni sawa na anaweza kwenda kuketi na kuenda zake nyumbani.

Bi Spika wa Muda, hayo ni makosa kabisa kwa sababu hairuhusiwi katika Kanuni za Kudumu za Seneti mtu kutajwa hapa asiyekuwa ndani ya Bunge, asiyeweza kujitetea.”

The point of order sought the intervention of the Speaker as in the opinion of the Senate Minority Leader, Sen. Stewart Madzayo, MP, Sen. Samson Cherarkey, MP, had not adequately substantiated an earlier point of order raised by the Senator for Kitui County, Sen. Enoch Wambua, CBS, MP.

The Senate Minority Leader further argued that it was inappropriate and out of order for Sen. Samson Cherarkey, MP, to adversely mention persons who were not in the Senate and, therefore, unable to respond to allegations being made against them.

Hon. Senators, following the withdrawal from the Chamber, the Senate Minority Leader, Sen. Stewart Madzayo, MP, wrote to the Speaker vide letter dated 21st February, 2024, making an appeal to the decision of the Temporary Speaker to require the Senate Minority Leader, Sen. Stewart Madzayo, MP, to exit the Chamber for the remainder of the day’s sitting. Such an appeal is provided under Standing Order No. 127 which states as follows –

“A Senator in respect of whom a suspension under this Part is imposed may appeal in writing to the Speaker, and the Speaker may –

(1) uphold the suspension as pronounced; or vary the decision and communicate the matter to the Senate.”

Hon. Senators, in addressing the appeal by the Senate Minority Leader, Sen. Stewart Madzayo, MP, my review of the proceedings of the Senate on 20th February, 2024, indicates that the Senator for Kitui County, Sen. Enoch Wambua, rose a point of order pursuant to Standing Order No.105, requesting the intervention of the Speaker to the Senator for Nandi County, Sen. Samson Cherarkey, to substantiate a statement made when he was contributing to the Motion on the Report of the NADCO.

A request for substantiation pursuant to Standing Order 105 may be dealt with in two ways –

Pursuant to Standing Order No.105 (1), by the Speaker requiring a Senator to substantiate allegations instantly; or Pursuant to Standing Order No.105, by the Speaker requiring a Senator to substantiate allegations not later than the next sitting day.

Now, hon. Senators, my review of the proceedings of 20th February, 2024, indicate that the Senator for Nandi County was directed to substantiate his statement instantly, following a rejection of his request pursuant to Standing Order No. 105(2), to substantiate his statement at the next sitting day.

Consequently, the Senator for Nandi County substantiated his claims, and the matter was thereafter closed by the Temporary Speaker, Sen. Veronica Maina, MP, to allow debate on the substantive Motion to resume.

A reading of the HANSARD indicates that it is at this point that the Senate Minority Leader, Sen. Stewart Madzayo, MP, rose on a point of order to which the Temporary Speaker ruled that the matter had been closed.

The Temporary Speaker thereafter, on several occasions, directed the Senate Minority Leader, Sen. Stewart Madzayo, MP, to resume his seat, but he continued to

interrupt debate and consult in a disruptive manner. This prompted his microphone to be switched off under the directions of the Temporary Speaker.

Having repeatedly defied the instructions of the Temporary Speaker, the Temporary Speaker, thereafter directed the Senate Minority Leader, Sen. Stewart Madzayo, MP, to withdraw from the Chamber for the remainder of the day's sitting pursuant to Standing Order No.122 (2) (a).

Hon. Senators, from the foregoing, I find that the actions of the Senate Minority Leader on 20th February, 2024, to have exhibited an act of disorderly conduct. I, therefore, make a determination to uphold the decision to suspend the Senate Minority Leader, Sen. Stewart Madzayo MP, as pronounced by the then Temporary Speaker.

Hon. Senators, I wish to remind you of the role of the Speaker within a legislative body. As a Presiding Officer, the Speaker is tasked with maintaining order, interpreting rules and ensuring the smooth conduct of parliamentary proceedings.

The authority of the Speaker is fundamental to the proper functioning of Parliament and plays a crucial role in upholding parliamentary procedures. The Speaker has authority to enforce parliamentary rules, decide on points of order and also has the power to suspend Members for disorderly conduct and regulate debates.

Article 107 of the Constitution states as follows -

“At any sitting of a House of Parliament -

(a) the Speaker presides;

(b) in the absence of the Speaker, the Deputy Speaker presides;

and,

(c) in the absence of the Speaker and the Deputy Speaker, another member of the House elected by the House presides.”

Further, Standing Order 20 (1) states as follows -

“There shall be a panel to be known as the Speaker's Panel, which shall comprise four Senators to be known, respectively, as the First, Second, Third and Fourth Panelist, who shall be entitled to exercise all the powers vested in the Chairperson of Committees of the Whole.”

The Presidium, composed of the Speaker, the Deputy Speaker and other Senators elected pursuant to Article 107 (1) (c) of the Constitution share the authority and responsibilities of the Speaker in the context of Article 107 (1) (a) and (b) of the Constitution.

While the Speaker holds the primary role, the other Members of the Presidium ensures continuity and support in the absence of the Speaker and Deputy Speaker by upholding the dignity and integrity of parliamentary proceedings.

Hon. Senators, that being said, it is crucial that we reflect on the significance of upholding the directives issued by the Speaker. The directives by the Speaker are not arbitrary. They are designed to facilitate productive debates, ensure fairness, and uphold the rules and procedures of the Senate.

Disregarding the directives of the Speaker undermines the authority of the Speaker and has far-reaching consequences beyond the integrity and functionality of the institution of Parliament. Such actions contribute to the erosion of parliamentary

decorum, disrupt the orderly conduct of proceedings and create a climate of chaos within the chamber.

For avoidance of doubt, no Senator is above these rules, whether you are a leader or just a Senator. The Standing Orders of the Senate applies equally to all Senators.

It is paramount, therefore, that all hon. Senators adhere to the Speaker's guidance and directives as disregarding them has the potential to disrupt the proceedings of the Senate and make a mockery out of them.

Further, I take this opportunity to implore hon. Senators to engage in debates in a constructive manner, focusing on the issues at hand, steering clear of any tendency towards controversy without reasonable cause.

As I say this, I remind the Senator for Nandi County who is not in the Chamber. It is so directed.

Thank you.

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

The Speaker (Hon. Kingi): Proceed, Senator for Kakamega County.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I would like to thank you for that Communication, which has been necessitated by nothing other than the conduct of ourselves. I note that, that conduct has swung full pendulum from a new Member to a ranking Member; a new Member in the name of Sen. Orwoba and a ranking Member in the name of Sen. Madzayo, who is not only just a ranking Member, but the Senate Minority Leader. If we were applying your guidance---

The Speaker (Hon. Kingi): Sen. (Dr.) Khalwale, what is your clarification? You are not debating this ruling.

Sen. (Dr.) Khalwale: The clarification I would have liked you to emphasise on, is that ranking Members of this House, just like is the practice everywhere in the Commonwealth, we have an unwritten responsibility to also carry along new Members in showing them how to become better leaders in the House.

I would have liked you to make that distinction so that it occurs on the Senate Minority Leader, that he made a grievous mistake.

The Speaker (Hon. Kingi): Sen. (Dr.) Khalwale, that is not a clarification you are seeking.

(The Clerk-at-the-Table consulted the Speaker)

Before we move to the next Order, the Chairperson, Finance and Budget, wishes to table a report. I will allow him to do so then we proceed to the next.

PAPER LAID

REPORT ON THE BUDGET POLICY STATEMENT, 2024

Sen. Ali Roba: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Tuesday, 5th of March, 2024 -

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The Report on the Standing Committee on Finance and Budget, on its Consideration of Budget Policy Statement, 2024.

I beg to lay.

(Sen. Ali Roba laid the document on the Table)

The Speaker (Hon. Kingi): Call the next Order, Clerk.

BILL

Second Reading

THE WATER (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILLS NO.33 OF 2023)

(Sen. Cheruiyot on 30.11.2023)

(Resumption of debate interrupted on 21.02.24 - Afternoon Sitting)

(Division)

The Speaker (Hon. Kingi): Serjeant-at-Arms, kindly ring the Division Bell for five minutes.

(The Division Bell was rung)

The Speaker (Hon. Kingi): Serjeant-at-Arms, kindly, proceed to close the doors and draw the bar.

(Sen. Cherarkey and Sen. Nyamu walked into the Chamber)

(The doors were closed and the Bar drawn)

Senator for Nandi County and Sen. Nyamu, take your seats. Hon. Senators, kindly take your seats so that we proceed with business.

Hon. Senators, I will now proceed to put the Question on the Water (Amendment) Bill, National Assembly Bills No. 33 of 2023.

(Question put)

Hon. Senators, voting shall be done electronically. At this juncture, all of you kindly log out. Just pull out your cards. Serjeant-at-Arms, go around and pick any card that still remains in the delegates unit.

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Now, hon. Senators, kindly log back into the delegates unit. Sen. Wakili Sigei, kindly proceed to take your seat.

Once you have logged in, you may now proceed to vote by pressing- yes, no, or abstain.

(Voting in progress)

(Loud consultations)

Order, Senators! The Standing Orders have not been suspended. So, you shall vote in silence. The Senate Majority Leader, canvassing is not allowed at this juncture.

(Sen. (Dr.) Khalwale consulted loudly)

Order, Sen. (Dr.) Khalwale, kindly take your seat.

Order, hon. Senators. You may proceed with that kind of behaviour outside the Chamber and not inside the Chamber.

Sen. Joe Nyutu and Sen. Ogola, kindly approach the Dispatch Table.

(Sen. Joe Nyutu and Sen. Ogola approached the Dispatch Box)

(Sen. (Dr.) Khalwale consulted loudly)

Order, Sen. (Dr.) Khalwale.

Hon. Senators, for clarity and avoidance of doubt on how to behave during Division, I will read Standing Orders No. 91(4) which states as follows:

“During Division, Senators shall maintain order in the Senate and shall be in their designated seats and shall remain seated until the result is announced.”

There has never been simple English than this. So, let us abide.

Senator for Nandi, the Bar is drawn. However, I may order you to fly over it, if you proceed the way you are doing.

(Laughter)

(Sen. Cherarkey walked back to his seat)

DIVISION

ELECTRONIC VOTING

(Question, that the Water (Amendment) Bill (National Assembly Bills No. 33 of 2023) be now read a Second Time put, and the Senate proceeded to vote by County Delegations)

AYES: Sen. Ali Roba, Mandera County; Sen. Cherarkey, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Chesang, Trans Nzoia County; Sen. Chute, Marsabit County; Sen. Dullo, Isiolo County; Sen. Gataya Mo Fire, Tharaka Nithi County; Sen. Githuku, Lamu County; Sen. Joe Nyutu, Murang'a County; Sen. Kathuri, Meru County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kinyua, Laikipia County; Sen. Kisang', Elgeyo Marakwet County; Sen. (Dr.) Lelegwe Ltumbesi, Samburu County; Sen. Mandago, Uasin Gishu County; Sen. Methu, Nyandarua County; Sen. Mungatana, Tana River County; Sen. Munyi Mundigi, Embu County; Sen. Murgor, West Pokot County; Sen. Seki, Kajiado County; Sen. Tabitha Keroche, Nakuru County; Sen. Thang'wa, Kiambu County; Sen. Wafula, Bungoma County; Sen. Wakili Sigei, Bomet County; Sen. Wamatinga, Nyeri County.

NOES: Sen. Boy, Kwale County; Sen. Omogeni, Nyamira County; Sen. Kavindu Muthama, Machakos County; Sen. Madzayo, Kilifi County; Sen. Mwaruma, Taita Taveta County; Sen. Oketch Gicheru, Migori County; Sen. Okiya Omtatah, Busia County; Sen. Olekina, Narok County; Sen. Onyonka, Kisii County; Sen. Osotsi, Vihiga County; Sen. Sifuna, Nairobi City County; Sen. Wambua, Kitui County; Sen. Ogola, Homa Bay County.

The Speaker (Hon. Kingi): Hon. Senators, the Water (Amendment) Bill (National Assembly Bills No. 33 of 2023) Division results are in and are as follows:

AYES: 25

NOES: 13

ABSENTIONS: Nil

The "Ayes" have it.

(Question carried by 25 votes to 13)

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

The Speaker (Hon. Kingi): Serjeant-at-Arms, kindly withdraw the Bar and open the Doors.

(The Bars were drawn and the Doors opened)

Next order.

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BILL*Second Reading*

THE PARLIAMENTARY POWERS AND PRIVILEGES
(AMENDMENT) BILL (SENATE BILLS NO.37 OF 2023)

(Sen. Osotsi on 14.02.2024)

(Resumption of debate interrupted on 22.02.2024)

(Division)

Ring the Bell for five minutes.

(The Division Bell was rung)

The Speaker (Hon. Kingi): Serjeant-at-Arms, kindly draw the Bars and close the doors.

(The Bars were drawn and the Doors closed)

Hon. Senators, voting will be done electronically. At this juncture, kindly pull out your cards from the delegate units.

Serjeant-at-Arms, kindly go round and pick any card that has been left in the delegate unit. Once you are done with that exercise, kindly let me know.

Hon. Senators, you may now log back in your delegate unit. Once you have logged back in, proceed to vote by pressing yes, no or abstain. Kindly proceed.

DIVISION**ELECTRONIC VOTING**

(Question, that the Parliamentary Powers and Privileges (Amendment) Bill (Senate Bills No.37 of 2023) be now read a Second Time, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Ali Roba, Mandera County; Sen. Boy, Kwale County; Sen. Cherarkey, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Chesang, Trans Nzoia County; Sen. Chute, Marsabit County; Sen. Dullo, Isiolo County; Sen. Gataya Mo Fire, Tharaka Nithi County; Sen. Githuku, Lamu County; Sen. Joe Nyutu, Murang'a County; Sen. Kavindu Muthama, Machakos County; Sen. Kathuri, Meru County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kinyua, Laikipia County; Sen. Kisang, Elgeyo Marakwet; Sen. (Dr.) Lelegwe Ltumbesi, Samburu County; Sen. M. Kajwang', Homa

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Bay; Sen. Madzayo, Kilifi County; Sen. Mandago, Uasin Gishu County; Sen. Methu, Nyandarua County; Sen. Mungatana, MGH, Tana River County; Sen. Munyi Mundigi, Embu County; Sen. Murgor, West Pokot County; Sen. Mwaruma, Taita Taveta County; Sen. Oketch Gicheru, Migori County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. Onyonka, Kisii County; Sen. Osotsi, Vihiga; Sen. Tabitha Keroche, Nakuru County; Sen. Seki, Kajiado County; Sen. Sifuna, Nairobi County; Sen. Thang'wa, Kiambu County; Sen. Wafula, Bungoma County; Sen. Wakili Sigei, Bomet County; Sen. Wamatinga, Nyeri County, and Sen. Wambua, Kitui County.

NOES: Nil

The Speaker (Hon. Kingi): Order Hon. Senators. The results of the Division are as follows-

AYES: 37

NOES: Nil

ABSENTIONS: Nil

The 'Ayes' have it.

(Question carried by 37 votes to Nil)

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

Serjeant-at-Arms, you may draw the Bar and open the Door.

(The Bar was drawn and the Door opened)

Next Order.

MOTION

ADOPTION OF REPORT ON NON-REMITTANCE OF PENSION DEDUCTIONS TO PENSION SCHEMES BY COUNTY GOVERNMENTS

THAT, the Senate adopts the Report of the Select Committee on County Public Investments and Special Funds on non-remittance of pension deductions to the pension schemes by county government entities laid on the Table of the Senate on Wednesday, 14th February, 2024.

(Sen. Osotsi on 28.02.2024)

(Resumption of debate interrupted on 29.02.2024)

(Division)

The Speaker (Hon. Kingi): Ring the Division Bell for one minute.

(The Division Bell was rung)

(Sen. Sifuna walked across the Chamber without bowing to the Chair)

Sen. Sifuna, go to the Bar and bow before crossing over.

(Sen. Sifuna walked to the Bar and bowed to the Chair)

Serjeant-at-Arms, proceed to draw the Bar and close the Door.

(The Bar was drawn and Door closed)

Hon. Senators, I will now proceed to put the question.

Voting will be done electronically. Therefore, kindly log out by pulling out your cards from the delegate unit.

Serjeant-at-Arms, kindly go around and see if there is any card that still remains in any delegate unit and carry it with you. For the avoidance of doubt, voting is by delegates. This is a matter that concerns counties.

Serjeant-at-Arms, are we ready?

Hon. Senators, kindly proceed to log in. Once you have logged in, you may proceed to vote by pressing 'yes', 'no' or you may abstain.

Proceed.

DIVISION

ELECTRONIC VOTING

(Question, that the Senate adopts the Report of the Select Committee on County Public Investments and Special Funds on non-remittance of pension deductions to the Pension Schemes by County Government entities laid on the Table of the Senate on Wednesday, 14th February, 2024, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Ali Roba, Mandera County; Sen. Boy, Kwale County; Sen. Cherarkey, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Chesang, Trans Nzoia County; Sen. Chute, Marsabit County; Sen. Dullo, Isiolo County; Sen. Gataya Mo Fire, Tharaka Nithi County; Sen. Githuku, Lamu County; Sen. Joe Nyutu, Murang'a County; Sen. Kavindu Muthama, Machakos County; Sen. Kathuri, Meru County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kinyua, Laikipia County; Sen. Kisang, Elgeyo Marakwet; Sen. (Dr.) Lelegwe Ltumbesi, Samburu County; Sen. Lomenen, Turkana County; Sen. M. Kajwang', Homa Bay; Sen. Madzayo, Kilifi County; Sen. Mandago, Uasin Gishu County; Sen. Methu, Nyandarua County; Sen. Mungatana, MGH, Tana

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River County; Sen. Munyi Mundigi, Embu County; Sen. Murgor, West Pokot County; Sen. Mwaruma, Taita Taveta County; Sen. Oketch Gicheru, Migori County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. Onyonka, Kisii County; Sen. Osotsi, Vihiga County; Sen. Seki, Kajiado County; Sen. Sifuna, Nairobi City County; Sen. Tabitha Keroche, Nakuru County; Sen. Thang'wa, Kiambu County; Sen. Wafula, Bungoma County; Sen. Wakili Sigei, Bomet County; Sen. Wamatinga, Nyeri County, and Sen. Wambua, Kitui County.

NOES: Nil

The Speaker (Hon. Kingi): Hon. Senators, the results of that Division are as follows:

AYES: 38

NOES: 0

ABSENTIONS: 0

The 'Ayes' have it.

(Question carried by 38 votes to Nil)

Serjeant-at-Arms, you may now draw the Bar and open the Doors.

(The Bar was drawn and the Doors opened)

The Speaker (Hon. Kingi): Before the Clerk calls the next Order, Hon. Senators, allow me to invoke Standing Order No.45(2), for the convenience of the House, to rearrange the sequence of today's Order Paper. Instead of proceeding with Order No.11, we will proceed with Order No.12.

Clerk, kindly proceed to call that Order.

BILL

Second Reading

THE PUBLIC SERVICE (VALUES AND PRINCIPLES)
(AMENDMENT) BILL (NATIONAL ASSEMBLY
BILLS No.46 OF 2022)

(Sen. Cherarkey on 22.2.24)

(Resumption of debate interrupted on 29.2.24)

The Speaker (Hon. Kingi): Hon. Senators, at interruption of the debate, Sen. Peris Tobiko was on the Floor and she had a balance of 19 minutes. Is Sen. Peris Tobiko present?

An hon. Member: No.

The Speaker (Hon. Kingi): I will now proceed to pick from the dashboard. Let us listen to Sen. Richard Onyonka.

(Sen. Onyonka's microphone had a technical hitch)

It is on now.

Sen. Onyonka: Mr. Speaker, Sir, I would like to make an apology because Sen. Ogola and I were consulting on what I need to contribute on.

The Speaker (Hon. Kingi): Gather your thoughts. If time allows and you catch the Speaker's eye, you may have another opportunity.

Proceed, Sen. Nyutu.

Sen. Joe Nyutu: Mr. Speaker, Sir, I beg for some time. I need to get prepared on this.

The Speaker (Hon. Kingi): Sen. Cherarkey, being the Mover of this particular Bill, you may now proceed to reply because on my dashboard, there is no Senator wishing to contribute.

Sen. Cherarkey: Mr. Speaker, Sir, I thank all my colleagues who contributed to this Bill. Quite a number of them did and I realised that there was a lot of interest on it. Sen. Olekina, Sen. Crystal Asige and Sen. Tobiko, among other Senators, contributed. I thank them for finding time to share their thoughts.

The public service is one of the key components in the development of any country. I hope that when we pass this Bill, it will be reflective of what happens in the County Public Service Boards (CPSBs).

In quick succession, the upshot of this Bill is Article 10 on National Values and Principles of Good Governance and Article 232 on Values and Principles of Public Service. They include integrity, transparency, hard work and commitment. These are virtues and values that should be engrained in any public servant. Members of Parliament (MPs) and those in leadership positions should also uphold those values and principles.

Public servants should behave like professionals. We encourage meritocracy, especially in the public sector. We have seen situations where as people get closer to corporate governance and become decision makers such as Chief Executive Officers (CEOs) or managing directors, meritocracy is not considered.

I challenge the Public Service Commission (PSC) on the need to look at meritocracy and professionalizing our public service. That also includes CPSBs. When you go to most counties, CPSBs are politicized. Several governors, like the one for Kisii, did an audit of the workers, but they have never given us a report.

We have had this misnomer. Most governors say there are ghost workers. However, there is no report on audit of human resources in the counties.

The other day, the Ethics and Anti-Corruption Commission (EACC) and the Directorate of Criminal Investigations (DCI) found that many public servants presented fake academic documents. Let us ensure professionalism and maintain integrity in the public service.

Going into the future, I pray that no matter who a governor is, no county will be worried about the change. Let us professionalize the public service which includes the CPSB.

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

[The Deputy Speaker (Sen. Kathuri) in the Chair]

Mr. Deputy Speaker, Sir, when I say this, I know Sen. Onyonka gets fired up because of the challenges in Kisii County. However, in the fullness of time, as we inculcate and indoctrinate these principles into people, we would want to see professional public service in Meru County where you come from.

I would also like to challenge workers in the counties. When you serve in the office of the county governor, you are not serving an individual. I have seen situations where when governors are not re-elected or complete their term, some workers become sick and lose hope because they were serving an individual and not the county. I challenge county workers to serve county governments and not governors. That is how we will professionalize our public service and the public sector in general.

Our courts should also be considerate before making rulings, especially on labour disputes. We have seen courts making determinations like the one about the Kenya Revenue Authority (KRA) staff who were hired. Such a matter should be reviewed since it has been overtaken by events because most of those young people have reported on duty.

We need to collect more taxes to ensure that the Kenya Kwanza Government has sufficient revenue to transform this country. I urge courts to be sensitive when making decisions, especially concerning issues of labour disputes.

Mr. Deputy Speaker, Sir, I thank your Office and other stakeholders, including the Member of the National Assembly, Hon. Rahim Dawood, who coincidentally comes from your county, with whom we co-sponsored this Bill. I challenge my colleagues from both majority and minority sides. Let us use the strategy of co-sponsoring.

When you have a Bill here, look for a co-sponsor in the National Assembly. When a Bill comes from the National Assembly, work with our colleagues. In any way, we must work together for the betterment of Kenyans. We have worked on this Bill together with Hon. Dawood. Going into the future, let us embrace the idea of co-sponsoring Bills.

Mr. Deputy Speaker, Sir, with those many remarks, I beg to reply and request that the putting of the question be deferred until a later date as per the Standing Orders.

I thank you.

The Deputy Speaker: Thank you, Sen. Cherarkey.

(Putting of the Question on the Bill deferred)

Let us go to the next Order.

BILL*Second Reading*THE COUNTY BOUNDARIES BILL
(SENATE BILLS NO.6 OF 2023)

Sen. M. Kajwang’: Mr. Deputy Speaker, Sir, I beg to move that the County Boundaries Bill (Senate Bills No.6 of 2023) be read a Second Time.

This Bill is not foreign to the Senate and Senators. This is the fourth attempt by Parliament to have a legislative framework that gives effect to Article 188 of the Constitution which talks about alteration of county boundaries.

This Bill had previously been brought to this House under the sponsorship of Sen. Mutula Kilonzo Jnr. There were about three attempts.

There have been all sorts of arguments against the approach that we had taken in the past. At some point, the National Assembly vetoed it saying that it was a Money Bill; that it was proposing a charge on the consolidated fund. This Bill died due to lack of concurrence between the Speakers of both Houses. However, this is an important legislation.

The team that was in Bomas of Kenya, the National Dialogue Committee (NADCO) flagged the issue of county boundaries as one of the key issues around cohesion that needed to be dealt with. I took note that whereas the NADCO made certain legislative proposals for the other pieces that they felt should be enacted, when it came to the County Boundaries Bill, the NADCO proposed that the Bill that is currently before Parliament should be fast tracked.

I do hope that this time, this Bill will get bi-partisan and bi-cameral support. The objective of this Bill is to give effect to Article 188 of the Constitution. The territory of Kenya is defined in Article 6 as comprising of the 47 counties that have been listed in the First Schedule of the Constitution. The question has been, why do we have 47 counties and not 13 or fewer like Sen. (Dr.) Khalwale has been reported saying that we need fewer counties?

Mr. Deputy Speaker, Sir, the team that was drafting the new Constitution retreated in Naivasha. There was a rush to have a Constitution that will be acceptable to all Kenyans. Initially, there was a formation that was in favour of counties along the lines of the existing provinces. There was a middle ground that was considering 13 counties. However, the team that carried the day is the one that convinced the committee meeting in Naivasha that we adopt the 46 districts plus Nairobi City as captured in the Districts and Provinces Act of 1992.

If you ask me what the logic was, I believe some of the people who were in Naivasha are here. Sen. Mungatana was in the House around that time. I hope we will benefit from their wisdom so that they can tell us what science there was. Sen. (Dr.) Khalwale was also around and was very much involved in that process. There was no magic. We just said let us take the District and Provinces Act of 1992.

In 1992, Kitui County had just been split. It had gotten a new district. However, that new district had not been gazetted as at the time people were in Naivasha. That is why the Senator for Kitui County still feels that we should have a 48th county along the lines of the districts that were there then. That is the reason why we have 47 counties. Whether they are economically viable or not is a completely different question. Are the boundaries natural, man-made or have been gerrymandered to take into account certain clan or tribal issues? I guess that is still up for discussion.

Another vexing question is where do counties begin and end? Last week, in Nyamira and Kisii counties, otherwise, very good neighbours; they speak the same language and have the same history, people are fighting over a market in Keroka. You ask yourself what this market has to do to challenge age old cultural ties, people who speak the same language from the same clans. If you are not careful, you will lose lives.

Between Vihiga and Kisumu counties, there is a big fight about Maseno. There is no Session that we have held and we have not had a petitioner from Vihiga County. In fact, it keeps the committees on Devolution and Intergovernmental Relations and that of Lands, Environment and Natural Resources very busy on issues to do with Vihiga County.

Makueni and Taita Taveta counties are fighting over a centre called Mtito Andei. It is driven by concerns around revenue. The governor of Makueni County wants to collect revenue in Mtito Andei and the people of Taita Taveta are saying that is historically their town.

Sometimes I fail to understand why we neighbours have to fight over issues of boundary, yet these are communities that have known each other even before they knew the white man. The people who live in Kisumu County and those in Kericho County are mostly Luos and members of the Kalenjin community. We knew each other before we knew the colonialists. However, issues of boundaries separate us.

There have been issues in Isiolo and Meru counties. It is on record that there are about 40 Petitions with regard to county boundaries. Some of those Petitions have come before the Senate others have gone to the National Lands Commission (NLC) and others have found their way in court.

Where counties end and begin is not captured in the Constitution. The Constitution only lists the 47 counties. However, that description of where counties start and end is captured in the District and Provinces Act of 1992. Sen. Mungatana will tell you that the language used in the District and Provinces Act leaves a lot to be desired. This is because some language is not very accurate. Some of it is descriptive, some of it refers to natural features which because of climate change might not be there anymore and some of it refers to rivers and streams. It is important we ensure that we concretise these issues to avoid the conflicts that we have seen around the counties.

It might also be useful for Senators to note that whereas in 1992 we had 46 plus one district, plus one, meaning Nairobi. Between 1992 and 2002, President Moi had created 30 additional districts. By the time people were going to Naivasha to consider the new Constitution, there were close to 77 districts. So, people had to go back to 1992 as a better benchmark.

How do you resolve these disputes across boundaries? We have tried. When I chaired the Committee on Devolution and Intergovernmental Relations, the matter of Vihiga and Kisumu counties came before us. Unfortunately, we responded to the petitioners that the Senate shall enact legislation to give effect to Article 188.

Senate sounded fairly helpless because we were not giving the petitioners a solution. We were giving them a promise. The only other alternative would have been for them to go to court. The courts would still bring them back to the Senate because they cannot enact laws.

This Bill, in attempting to provide a framework for dealing with boundary disputes, establishes the County Boundaries Mediation Committee as the first instance for dealing with boundary disputes. The County Boundaries Mediation Committee is an *ad hoc* Committee. It is not going to be a permanent thing. It acts upon resolutions of the Senate. So, it has to be moved by the Senate. It is appointed by the President and it comprises of officers of the national Government and those from county governments.

During public participation, I saw there was need to include the National Cohesion and Integration Commission (NCIC) as part of the County Boundaries Mediation Committee. That is an amendment I find reasonable. We probably need to have the NCIC being part of this. Other members are from the NLC, a representative from surveyors, one from the Council of Governors (CoG) and I believe we can include the NCIC.

Clause 5 of this Bill is clear on how our request to Senate should be shaped and submitted for the establishment of a County Boundaries Mediation Committee. That Committee can have various proposals. It can propose that the boundaries be altered. If the County Boundaries Mediation Committee proposes that the boundaries be altered, then we go to Article 188 of the Constitution. It talks of reasons that could lead to alteration of county boundaries.

An interesting reading of Article 188 is that it sounds like once those conditions have been fulfilled, a commission has been established by the President and it reports that a boundary should be altered, then that alteration takes effect. I have been looking at Article 188 and comparing with Article 255 that says that anything that affects the structure of devolved Governments is subject to a referendum. Article 188 sounds very final.

Mr. Deputy Speaker, Sir, these are some of the areas that we need to look into. This is because Article 188 of the Constitution, from a plain reading, means that you can alter county boundaries without necessarily going into a referendum, and yet, it alters the structure of devolved governments.

This Bill has proposed a very high threshold. For you to propose the alteration of the boundary of a county, you must be supported by at least 50 percent of registered voters in that county.

Once you have satisfied that threshold, there will be a commission established by the President that will still have to be subjected to the Senate. Once you get 15 per cent of registered voters, you submit it to the Senate. The Senate will establish a special committee.

If the Senate agrees with you, it forwards the request to the National Assembly. If the National Assembly agrees with the Senate, then the President establishes a commission within 90 days.

If there was to be a decision on alteration, it must be supported by two-thirds of Members of both Houses. Two-thirds of Members of both Houses is a threshold in the Constitution. However, the question would remain, even with two-thirds of Members proposing the alteration of county boundaries, should it go to a referendum.

We will be relying on bright lights like Sen. Cherarkey to put together Article 188 and Article 255 of the Constitution and advise whether we should amend this legislation further to make it mandatory for a referendum. Otherwise, Article 188 ends with approval by two-thirds and then the boundaries are altered.

There is the other question of creating new counties. How do you create new counties? This Bill does not address that subject because, for you to create new counties, you must go into a referendum to alter Article 16 which defines Kenya as comprising the 47 counties in the First Schedule. For you to amend the First Schedule, you must go into a referendum. So, this Bill only deals with boundary disputes and cases where there is a need to alter the boundaries of existing counties.

The challenge with the Districts and Provinces Act, which this Bill seeks to repeal, is that the boundaries are described in a very narrative form in many cases. There are very few counties where the boundaries are expressed in forms of Global Positioning System (GPS) coordinates.

This Bill makes it mandatory for the Cabinet Secretary to maintain an electronic register using the latest advanced technologies to ensure that county boundaries are mapped and captured using Geographic Information System (GIS) or GPS; the relevant technology. It makes it an offense for anyone to alter those records. That is captured in Clause 3 of the Bill.

The Schedule that we have attached to this Bill has been captured as is from the Districts and Provinces Act. Many colleagues here have expressed their concern that, that Schedule, sometimes the way it has described those boundaries, is a bit tricky.

Unfortunately, we do not have any other point of preference because when people went to Naivasha, they referred to the Districts and Provinces Act, and that then became part of the Supreme Law. Therefore, if you go back and try to rewrite the Districts and Provinces Act, you will end up in a lot of problems because no Kenyan will accept that you move the existing boundaries, even by a single inch. The alteration of boundaries and even issues of mediation must be subjected to serious public engagement.

Mr. Deputy Speaker, Sir, even as I move, I am still asking myself, that if you have got a petition from county X, for example, Vihiga County, has moved Parliament to alter the boundary. How do you capture the voice of the people of Kisumu; assuming the boundary would be moving and carving Maseno to be part of the Vihiga County? Just as an example. I know Sen. Osotsi is firmly convinced that Maseno is part of Vihiga County, and we are entitled to our own opinions, but not to our facts. The facts might look a bit different. However, if the people of Vihiga County initiate that Motion and they can convince Parliament that, that boundary should be altered, how do you capture

the voice of the people of Kisumu who feel like something is being taken away from them?

I will be relying on my colleagues for advice on how some of these things can be done so that by altering a boundary, you do not kill one county just to strengthen another county.

Mr Deputy Speaker, Sir, our greatest battle is to defend the territory of the Republic of Kenya; these county boundaries are superficial. I want to implore Kenyans that we do not need to be killing each other over issues of boundaries around counties. The boundaries are not natural; the boundaries are not entirely cultural; the boundaries are not entirely historical. They were constructs of a government that perhaps sought to gerrymander to ensure that it had more administrative units that it could control.

Even though today we are talking about alteration of boundaries and mediation where there are boundary disputes, this House must take judicial notice. On this, the leader of Government business in this House must tell us the direction we are taking as a county *vis-a-vis* the structures of devolution.

This is because just the other day, I had in my county the establishment of about six or seven sub-counties. The problem with these six or seven sub-counties is that they then operate in competition with the structures of devolved counties. You have people wearing colonial-era uniforms, walking around, trying to police and shepherd politicians who have been elected by the people.

When people went to Naivasha, there was an agreement that the National Government Coordination Act would be aligned with the new Constitution. However, we are not seeing that happening. We are seeing the proliferation of sub-counties. We are seeing the proliferation of national Government administrative units at the expense of the structures of the old governments.

We should be clear in our minds that we have two levels of government, the national Government and county governments. Whereas the national Government has a right to establish whatever units they deem appropriate along the principle of subsidiarity, but it should not compete with devolution, and should not be a replication of existing devolved structures. It should not be a waste of funds because money is being spent on all these people.

Mr. Deputy Speaker, Sir, I have heard some of my colleagues argue that when you establish a sub-county, you will have a sub-county administration unit. If you establish a new location, you will have a chief, a sub-chief, and all those, and that is the attraction of all these things.

Mr. Deputy Speaker, Sir, let us argue from the position of principle that we should have only two structures of government, the devolved governments and the national Government.

I wish to conclude by thanking the Standing Committee on Devolution led by Sen. Abbas. We had agreed that Sen. Abbas was going to Second this Bill, but the Committee did an excellent job. They have reported back to the House; the House is seized of the report and will take the proposed amendments that came from public participation to ensure that we make this Bill better.

Ultimately, the debate must be heard whether we need 47 counties or less. For those of us who look at books of accounts on almost a daily basis, the 47 county governments are beginning to look like 47 payroll offices, because the bulk of what they do is to pay salaries and to chase for the exchequer to be released.

We must ask ourselves and have a candid conversation on the kind of economies of scale that we need to ensure that we have fewer counties that can synergize better. Before we get there, perhaps it is within our powers to come up with a law on regional economic blocs. We have regional economic blocs covering. For example, in Northern Kenya, the Senator for Mandera spearheaded the formation of regional economic blocs.

The problem with regional economic blocs is that they have no legal form. Therefore, they cannot engage with an investor. They cannot even receive money from county governments because the Public Accounts Committee cannot accept subscriptions or contributions to a regional economic bloc that has no legal form.

It is a very small amendment that we need to make to the law to allow the regional economic blocs to have some legal form, to allow them to be body corporates; to allow them to be entities or corporations of the country government so that they can be audited and they can receive resources from the respective counties. If we did so, it would be a half way situation between the 47 counties and the desired number of counties. I still believe the desired number of counties in Kenya should not exceed 13.

I still believe that Nairobi City County should never be managed in the manner it is by politicians. It is not just the capital city of Kenya, but of the United Nations (UN), hosting United Nations Environmental Programme (UNEP) and United Nations Habitat Programme (UNHP). We cannot be running Nairobi City County the way we run Homa Bay town.

I did not want to say Kakamega Town. However, we cannot run Nairobi City County the way we are running Kakamega. We cannot be running our cities; Nairobi, Mombasa, Kisumu, Nakuru and now Eldoret using the same template; rules and laws that we are using to manage Migori on the border of Kenya and Tanzania.

I still believe that is a hard conversation that we must push. Senate Majority Leader, I hope you are going to revise your legislative proposal. Once, you came to this House and convinced us that Nairobi City County should be managed differently. I still admire your courage then until the then Governor of Nairobi City County accused you of doing somethings with him, toilets and then you disappeared.

Mr. Deputy Speaker, Sir, with those remarks, I beg to move. Sen. Abas was to second, but he is absent. Sen. Sifuna was also to second me, but he claims he has left his notes in his car.

Senate Majority Leader, I pray you will be kind enough to second this Bill because it is bipartisan. Sen. Osotsi is also keen on seconding as long as he does not claim Maseno on the Floor of this House.

(Laughter)

Thank you. I beg to Move.

The Deputy Speaker (Sen. Kathuri): Proceed, Senate Majority Leader to second the Bill.

The Senate Majority Leader (Sen. Cheruiyot): Thank you, Mr. Deputy Speaker, Sir. I rise to second this Bill by Sen. M. Kajwang' a man who likes to keep his options as many as possible in most affairs of his life. That is why you can see the number of people he has led up to in seconding the Bill.

This is an extremely important Bill that has been in the corridors of this House for quite a long time. It is an extremely important duty which we must carry out as a House of Parliament, specifically the Senate.

Boundary disputes are not new in this House. We have spent many afternoons here listening to petitioners pleading to the Senate to manage certain disputes between county x and y.

Sen. M. Kajwang' mentioned the intercounty disputes, but he forgot that previously we have also received intra-county disputes as well. Disputes between particular regions of a county.

As if that is not enough, recently when we had the NADCO and part of what engaged our precious time was many such disputes. In fact, if you read the NADCO report, Senate has been asked to expedite this Bill to try to reduce and ease the tensions simmering between many counties within and without of their boundaries for many reasons, but at the heart of it all, about resources.

The Bill provides a legislative platform for us to set up county boundaries and mechanisms for resolving disputes by setting in place the primary level of ----

(Technical hitch)

We are proposing a mediation Committee. We always speak of Alternative Dispute Resolution (ADR) as a method of resolving disputes. However, this is the first time in an Act of Parliament where we are proposing to establish in law mediation committees within our counties to look into issues that arise.

Perhaps maybe later with the success of this, we shall learn useful lessons on how to craft devolution centred laws that will provide opportunity for people who disagree in our various counties to seek mediation within rather than outside of it.

That is an important element of all conversations we have had over the last few years with the judiciary. Many are the times we are told that there are a lot of cases before our judges that ought not to be there. If people had simply sat down over a cup of coffee or tea, they would have reached an amicable resolution.

I am particularly impressed by Clause 6 of the Bill where we set up this mediation committee and the people chairing it. The Chairperson needs to be an advocate of the High Court of Kenya.

I have raised times without number complaints on this appetite by our friends from the legal fraternity in reducing everything to legal disputes. If it was always about legal issues, Sen. Mumma, then we would not have the divisions we do in our courts and the failure to disagree.

I am yet to meet two lawyers who agree on the same topic. They are the most opinionated people. However, many times when there are disputes, we suggest having a person who has experience.

What is wrong in proposing a senior Accountant with 15 years' experience in Public Affairs to sit down and resolve that dispute; a prowess in conflict resolution or even an elder in society?

Nonetheless, I agree with this proposal because you do recognise that I am seconding the Bill. When you second a Bill, you move the Bill as it is. That is a practice that many people are yet to learn. The Mover and seconder in their comments are restricted to the Bill as it is. Subsequently, Members who are contributing, such as those who shall rise to speak to this Bill, may choose to disagree with one or two provisions of the Bill in regard to what they think.

Mr. Deputy Speaker, Sir, there is also a proposal to have a person from the affected counties, a Commissioner from NLC. There is also a surveyor - this is person who is rightfully in place because boundaries are matters of survey, a public officer - who shall be nominated by the Cabinet Secretary and shall be secretary to the Committee. Remember they are ex-officio and they do not vote.

A person does not qualify to be appointed to this committee if they have stood for elective office in the affected counties in the last five years -just as we do with the Independent Electoral and Boundaries Commission (IEBC). Chances are they will have interest in that particular dispute. Also, it cannot be somebody who has been found guilty of professional misconduct.

There are various subsequent provisions. Therefore, you can set up a mediation committee each time when such a Petition is presented before us.

It also provides on how to pay for them. The mediation committee is not just a *baraza* for people to sit. They actually have High Court powers as per Clause 12(1) of the Bill as proposed. First, they can summon witnesses. Second, they can call for the production of books, plans and documents. They can even examine witnesses on oath. Therefore, this is not an ordinary committee.

They almost have equal powers to those that we have as Members of Parliament (MPs). Therefore, their work and going about how to resolve disputes like these particular challenges cannot be gainsaid.

Sen. M. Kajwang', it will benefit our colleagues to know that because of the mediation committee some of the very famous disputes that we have just quoted such as the Sondu Clashes that have stuck with us for so long, Maseno between Vihiga and Kisumu counties, and Mtito Andei between Makueni and Taita Taveta counties, do not even have to subsequently result in the provisions of the Bill.

Having set up the mediation committee and Parliament being moved by a petitioner - in this House - to set up something in place, this mediation committee can resolve some of these boundary disputes.

You may not even necessarily result in altering or finding ways. They are ways which can compensate as neighbouring committees. Many are the times when I have been to Sondu and listening to elders from Kisumu and Kericho counties side. What

separates them is not extremely difficult to the point that the mediation committee as set up in this Bill may not resolve.

This is a wise move and a good proposal to have a mediation committee, so that we do not have to fix everything. It would be impossible to imagine that we could get to a point where we would draw the boundaries accurately so there would be no conflict.

So long as you are neighbours, you will always disagree about boundaries. Those of us who come from densely populated communities, I do not know anybody who has a neighbour who does not quarrel over a bull that keeps on crossing the fence and invades the maize fields of their neighbours or somebody who has planted a tree on the wrong part of the field or a wall that is wrongly placed.

The same is expected of our county governments. Therefore, setting up a mediation committee that features proposals from both counties to meet, try and amicably resolve this process is a genius move. Consequently, I agree with the provisions of the Bill.

Further to it is the process of the alteration of boundaries of our counties, which is a very difficult exercise. I say difficult because of the provisions of Section 188(2). Even if we went through all the rigors of this Bill, we must remember that eventually the report to alter a county boundary must come before the floor of both Houses. Two-thirds of the Members in both Houses must pass it.

In the three terms that I have been in this House, there is no law that has raised two-thirds. Maybe only the impeachment of Deputy Speaker, Sen. Kindiki Kithure, where people were mobilized, some from hospital beds to come and execute very dirty work on the Floor of this House.

Apart from this, there has never been another occurrence. The Senate threshold is easier to achieve because two-thirds is 45 Senators out of the 67. Imagine the situation at the National Assembly, out of the 349 Members, to get two-thirds, which is about 233 Members, balancing all the interests because of all the political play that comes into it is not an easy exercise.

This provision is genius because of gerrymandering. A strong political party, not even a President, can sit down and alter the boundary of a country to feed certain political interests and have Parliament rubber stamp it. It will take a lot of negotiations.

It is akin to the magical 24 number. Many of those who have not been able to live through this House in the formula passing processes will enjoy and appreciate the genius of the magical 24 delegations next year when we begin discussing the fifth-generation formula.

As proposed in part four of the Bill, this process considers altering county boundaries that believe physical and human infrastructure, historical ties and cost of administration. It will not be as easy as people imagine.

Once a process has gone through the independent commission being set up, Parliament will have the eventual vote on how this exercise is done. Hence, the importance of the earlier point I mentioned about the need for a mediation committee.

People need to know that even as they mediate, they will be stuck with the problem if they fail the mediation exercise. It will not be easy. For a county boundary to

be altered, it must pass the test of scrutiny of both the majority and the minority sides in both Houses of Parliament or at least a significant portion of both sides.

I appreciate that provision. The Speaker of the Senate is an interesting player in this Bill:

"The Speaker of the Senate shall, within seven days of receipt of a petition under section (17 —

(a) Report the receipt of the Petition to the Senate.

(b) Refer the Petition to a special committee of the Senate established for consideration of the Petition."

Clause 17 of the Bill concerns Parliament being petitioned to alter a county boundary.

"17. (1) A petition to Parliament for the alteration of the boundary of a county may be made by -

(a) any person who is a registered voter

(b) an elected member of the county assembly of a county whose boundary is proposed to be altered

(c) the Senator of a county whose boundary is proposed to be altered_

(d) a Member of the National Assembly representing a constituency within the county whose boundary is proposed to be altered_ or

(e) a county governor on behalf of a county government that proposes the alteration of its boundary."

We will set up a committee to look into that Petition. That Petition shall be referred to the Special Committee of the Senate, which shall have 30 days.

Committees are given 60 days to deal with the normal Petitions. However, we appreciate the importance and difficulties of the boundaries to our committees. We have set in this law that within 30 days, that special committee must conclude its work and report to the House. When they report to the House, they may recommend that the boundary be referred to a mediation committee established in Clause 5, or establish a Commission in terms of Clause 23, which we shall be speaking to.

"20. (1) A special committee may recommend to the Senate—

(a) that a boundary dispute be referred to a mediation committee to be established under section (5_

(b) the establishment of a commission in terms of section 23_ or

(c) that the Senate does not recommend the establishment of the commission.

(2) If the special committee makes a recommendation under—

(a) subsection (1)(a) or (b), the Senate shall, within seven days, consider the recommendations of the special committee_ or

(b) subsection (1)(c), no further proceedings shall take place with respect to the Petition."

"21. Where after the consideration of the report of the committee under section 20(2)(a), the Senate -

(b) approves the recommendation of the special committee for the establishment of a commission, the resolution of the Senate shall be referred to the National Assembly for concurrence or

(c) does not approve the recommendation of the special committee, no further proceedings shall take place with respect to the Petition.”

Clause 23 stipulates a similar process which commences in the National Assembly, but goes all the way to the Senate. Members need to know that the Senate is the place to set up a Petition for county boundaries. Once we have dispensed off with the matter, it goes to our colleagues in the ‘Lower’ House.

The National Assembly must concur with the resolution of the Senate for establishing a commission. Therefore, the commission is established in accordance with Section 23. If it does not concur with the resolution of the Senate to establish a commission, in that case, the Petition shall be referred to a mediation committee in accordance with Article 115 of the Constitution.

The same way when Members of the National Assembly do not agree with bills originating from the Senate:

"If the National Assembly fails to the resolution of the Senate within the specified time, the National Assembly is deemed to have approved the resolution of the Senate."

I wish we could put this provision in many of the Bills we send to the National Assembly. Then, by sheer luck or whatever means, they fail to read it and it is signed into law. The Bills Members complain that they have sent to the National Assembly and have taken months without consideration to take effect and become law. This is if they choose not to consider it. When they pass the resolution –

"The Speaker of the Senate shall, within seven days of the approval by the National Assembly, submit the resolution to the President for the establishment of a commission in accordance with section 23."

Clause 23 is mentioned prominently in this Bill. This shows the lack of fluent legislative drafting. This is a conversation we can have about legislative drafting. Director Mogere is a good draftsman. However, we have challenges in doing our Bills. You refer to certain clauses before you get to them. You find Clause 23 being referred to as an eventual solution to an item in the previous clause.

We must consider how to clean up the process when making such laws. Clause 23 of this Bill states:

"Whenever Parliament, under Section 22, resolves that an independent county boundaries commission be established, the President shall, within 14 days of receipt of the petition, nominate members of a commission in accordance with this Part."

This is the setting up of the Independent County Boundaries Commission. This is an independent commission whose membership is listed:

"24. (1) A commission established under this Act shall consist of a commission membership.

(a) a chairperson appointed by the President_

(b) one commissioner of the Independent Electoral and Boundaries Commission, nominated by the Independent Electoral and Boundaries Commission_

(c) one commissioner of the National Land Commission, nominated by the National Land the County Boundaries Bill, 2023 149 Commission_

(d) the Principal Secretary responsible for matters related to land and physical planning or a representative of the Principal Secretary designated in writing_

(e) two persons of the opposite gender, who are not residents of the affected counties, nominated by the Council of County Governors_

(f) one person who is a licensed surveyor under the Survey Act and who is not resident in the affected counties, nominated by the Land Surveyors' Board_

(g) a practicing advocate of 15 years standing and who is not resident in the affected counties, nominated by the Law Society of Kenya."

Once that committee is set up, they will look into all those issues. Remember what we had raised. They have the powers to call---

Mr. Deputy Speaker, Sir, the qualifications to be a member of a commission are listed. The functions of the commissions are listed, which is to make appropriate recommendations in accordance with Article 188.

Additionally, the commission according to Clause 27, shall have all the powers that I had previously mentioned, that they feature in a Mediation Committee.

Finally, when this committee has recommended the report and the findings back to Parliament, every officer or institution on national county shall accord such assistance--

Sorry, Mr. Deputy Speaker, Sir, that is not the part that I needed.

I wanted to mention, Clause 28 (1) which states that--

"The conduct of the Regulation of Affairs of the Commission shall be provided in the Fourth Schedule, but subject thereto, the commission may regulate its own procedure."

Mr. Deputy Speaker, Sir, the commission is expected to observe the principles of impartiality, rules of natural justice and all other subsequent provisions.

After they have presented their report, the committee shall stand dissolved within one month. The chairperson shall before assuming office, subscribe to the oath of office under the Fifth Schedule.

I just want to point out to Members, under the Fourth Schedule of the Bill, on the conduct of business by the commission, that it shall be through minutes and interest needs to be declared.

Part 9 (3) also states that-

"A person who contravenes subparagraph (1) commits an offence and upon conviction is liable to a fine not exceeding one hundred thousand shillings or

to imprisonment for a term not exceeding one year or to both such fine and imprisonment”.

The Fourth Schedule also sets out the quorum for conduct of business which shall be at least three members of the commission and the chairperson shall preside.

Mr. Deputy Speaker, Sir, part 6 also states that-

“Unless a unanimous decision is reached, a decision on any matter before the commission shall be by majority vote”

It is a well thought out commission. They have provided the procedure in the Bill on the Second Schedule of how to petition Parliament. That –

“A petition to Parliament shall —

- (a) be handwritten, printed or typed;
- (b) be in English or Swahili and be written in respectful, decorous and temperate language;
- (c) be free of alteration and interlineation in its text;
- (d) it shall be addressed to the Senate; and so on and so forth.”

Mr. Deputy Speaker, Sir, this is a very important exercise. We need to complete this issue, so that we can conclude this.

The 47 counties are listed there attaching where they commence. Members, you can read all the particulars enlisted.

Section 36 of the First Schedule is on Bomet County and 35 is on Kericho County together with the geographical location and the degrees and so on and so forth.

I want to urge Members to support this Bill. This is because it shall help in resolving one of the challenges that our devolved units continue to face. I believe after which we can embark on even more difficult issues such as what was raised by Sen. M. Kajwang’. I raised this, he may not have been in the House at that particular time.

Mr. Deputy Speaker, Sir, in this particular session, during my first speech to the House, I stated that, as a House, we must address ourselves to the rising cost of running county governments where counties are almost getting over and above 50 per cent on just salaries alone.

I have seen counties that are as high as 47 per cent, on salaries of all the devolved funds. If your governor is spending upwards of such numbers, you need to stop referring to them as governors. We need to call them paymaster generals because ideally that is what they are. They are not running a county government. They are simply Human Resource (HR) payroll masters.

This is a conversation that we need to have. The defence of many county governments when they appear before Sen. M. Kajwang’ and with regard to the Budget Policy Statement (BPS), they say; what do you want us to do? We have health workers and they demand for it.

They are justified to a greater extent, but they do not disclose how many members of staff are being paid outside of the IPPRS. It is a significant number.

Many governors are setting what you would consider as small gangs in the name of young people, *kazi kwa vijana* and all these things, yet they are not carried out through a competitive process.

Members of County Assemblies (MCAs) are being told: Get me 50 people per ward. These people are supposed to clean drainages, but they accompany governors to funerals and weddings.

If a Senator like Sen. M. Kajwang' tries to say anything or disagree with the county governor of Homa Bay, they are quickly escorted out of the function by these young men. Those are the people that are gobbling up more than 50 per cent. I am told there is one called the Green Army in Sen. Sifuna's County.

Mr. Deputy Speaker, Sir, I am told they all originate from the famous 'men in black' from Sen. Sifuna's party. That is where the inspiration came from. So, many governors have learnt this. Nonetheless, we need to have that conversation so that we go through item by item on who these people are and what is the necessity.

An institution must have an optimum establishment. This is because there are many officers that we find in our county government offices, whose duties are not properly defined.

Mr. Deputy Speaker, Sir, it is the duty of that county governor to rationalize their personnel. They should make a bold decision and discontinue to hire in a particular department. We can transfer or even encourage staffers to go back to school and learn new professions, so that they can get better employment opportunities in the county. That is a conversation that we need to have, Sen. M. Kajwang' and us entirely.

Mr. Deputy Speaker, Sir, with those very many remarks, I beg to second this Bill. I thank you.

The Deputy Speaker (Sen. Kathuri): Thank you, Senate Majority Leader.

(Question proposed)

Let us start with Sen. Mungatana.

Sen. Mungatana, MGH: Mr. Deputy Speaker, Sir, I want to first congratulate hon. Sen. M. Kajwang' for bringing this Bill to the House.

I thank the Senate Majority Leader for a very elaborate speech that he gave in seconding this Bill. I want to locate the problem and the practical question that is there in Tana River County.

Mr. Deputy Speaker, Sir, in all our boundaries - except for Tharaka Nithi - we are having issues with our neighbours. Kilifi and Garissa counties have kept on encroaching on Tana River County. When we were young, we knew that the boundaries are on this side. Now, we are old and we are told the boundaries have shifted. Our county revenue collection officers are being told to move inside Tana River County.

We have had very serious conflict with Kitui County. Houses and police stations have been burnt. People have been moved from places where voting used to take place for Tana River County. Schools on the side of Bura Constituency have been pushed away.

Mr. Deputy Speaker, Sir, ostensibly because it is the region of Kitui County. The problem has been so serious that our people were almost picking up arms. Many of us had to go there to resolve the problem and cool down tensions. Eventually, the Cabinet

Secretary, Hon. (Prof.) Kithure Kindiki, had to come, so that he could give assurance that the issues will be resolved.

The Regional Commissioners (RC) for Eastern Province, former Eastern Province, Tana River and Garissa, held a meeting together with the RC for the Coast Province. They tried to resolve the problems, but the tensions continue to date.

We are dealing with a serious matter. When you look at the provisions that have been mentioned – I do not want to go clause by clause – some of the biggest omissions in this Bill is that we have set up a mediation committee, but we have not set up its powers. What is it that they can give?

If you are a mediator, you have to be given powers. Do you have powers to compensate for loss? For example, in Tana River, lives have been lost. When conflicts occur, people use bows and arrows and people have died in the process. Does this mediation committee have the power to order for compensation? Where there is agreement that you have encroached on the original boundaries of Tana River County, are we going to be paid for the schools that were burnt down in Kalalani Area?

Mr. Deputy, Speaker, Sir, this law has a huge gap in terms of the powers of the mediation committee. These are some of the things we need to set up so clearly, so that the people we represent can feel appreciated and that we are passing a law that is going to serve them.

If you tell people that to change a boundary, you need to go to the Senate and the National Assembly and get two-thirds majority voting, you will be simply telling them that boundaries will never be changed. If that is the case, then let us say it in the Bill; that the District and Provinces Act of 1992 is not going to change. However, what we are going to change, are compensatory mechanisms.

Let us put our heads together. We have many clever people in this Senate. If we applied our minds to get ourselves here, and by the grace of God we are all here, I am sure we can crack the problem.

The problem, as has been mentioned, is revenue collection. Can we agree that boundaries are there, but the revenue for border towns should be shared in a ratio, say 50:50 or 60:40?

For those who have lost property or lives of the loved ones, compensation mechanism must be created, so that when this Bill passes, the people of Tana River will say there is a law, which will enable them to go to the mediation committee to be compensated for loss of their houses, *shambas* or schools that were built using the National Government-Constituencies Development Fund (NG-CDF) money, but got burnt. I think there is a huge gap.

The other power is to redefine the areas or make it clear. The relevant Cabinet Secretary has been given power to put electronic marks to define these boundaries. When the Mover was moving this Bill, he said that some of the boundaries have been set up using physical marks.

People are talking about River Tana and how it is flowing. If you say that the boundary between Garissa Town and Tana River is three kilometres away from the river, the river changes its course. During floods, it goes this way and when there are no floods, it goes the other way. So, where is the boundary?

There are some counties whose boundaries have been done so well. However, in some places, they casually talk about a river or hill somewhere. Hills change. We should not think like they used to do during those old days. This particular provision should have a clear scientific demarcation of boundaries using modern technology.

It will help if our own county surveyors are involved in the process of demarcation. If surveyors from Nairobi go there, they will want to follow the course of the river. However, if the river used to have a certain course earlier on, local surveyors and the local people will show them the original course of the river and ask them not to go left or right.

It will be useful to add substance where it is stated that the Cabinet Secretary will keep electronic records. We should enrich that provision by requiring that there must be a process where county surveyors are involved in the national survey to demarcate the boundaries clearly and ensure it is electronic and standardized, so that we clearly know the demarcations or points that define the counties as they are.

Mr. Deputy Speaker, Sir, attacks and suggestions have been made. People have asked why we always go for lawyers. For example, we are saying that a person to chair the mediation committee should be a lawyer.

As an advocate, I have nothing against a mathematics professor or doctor of medicine sitting on the mediation committee. However, we have to accept that the business of lawyers is wide. They deal with a wide range of disputes that arise because that is what we are trained in.

When you put a lawyer there to make a decision, you will have put a person in their space. If you take a doctor who has been running a clinic for the past 20 years and tell them to mediate on a boundary dispute---

I have a brother who is a doctor and sometimes we talk. I once asked him whether he would consider public service and he said that he would never want to deal with crowds like I do. He said he prefers dealing with someone one on one and not crowds. He prefers testing blood samples in the laboratory in order to get results that will enable him treat patients.

Many people with a medical background, perhaps with the exception of people like Sen. (Dr.) Khalwale, think in a straight line. Many scientific-oriented people think in a straight line. If you are using the base of 10, then one plus one is two, unless you change the base.

When we say an advocate of the High Court should chair the committee, I do not think we should make it a big issue. When we say members of the Law Society of Kenya (LSK) should be nominated to these boards, it is because they are helpful. I do not want us to prejudice our profession because it has seen its good and bad days.

It was not research scientists who were out in the streets during the dark days of oppression. They were lawyers who were receiving problems from everybody and went ahead to make change. This country became better because of the contribution that people did.

I want to emphasise that we must come up with powers allocated to the mediation committee. We should ask ourselves what it will mediate on, what kind of disputes it can mediate and the kind of powers it has for it to make resolutions on disputes before it. Are

we going to allocate the same powers as the powers of the High Court? What will be the effect of the ruling of a mediation committee?

Let us be honest to ourselves. Let us not tell Kenyans we will change boundaries because it is not happen. To get two-thirds of Members of the National Assembly and the Senate will be a magical thing to happen. It is almost like a constitutional change. The question is; even if we pass this Bill or if that magic happens, is it possible to change boundaries of a county without changing the structure of the definition of what the territory of Kenya should look like?

Mr. Deputy Speaker, Sir, I think it is honest of us to say that county boundaries will not change. What we need to do is agree on compensatory mechanisms. Craft a Bill that will give powers to the *ad hoc* committees that we will be set up. If it is the question of revenue, let us agree to share revenue. Counties ‘x’ and ‘y’ can agree to share revenue.

The question of trying to create artificial territories within Kenya will create a lot of tension among our people. Counties such as Kitui and Tana River know that the boundary will not change. However, they have created a common town around the boundary. Kitui County collects 50 per cent and we collect 50 per cent. Then, the people of Kitui and Tana River counties will live like brothers and sisters, the way it was intended by God.

Let us not give false hope that people are going to shift boundaries.

I beg to support.

The Deputy Speaker (Sen. Kathuri): Thank you. Next is Sen. Mwaruma.

Sen. Mwaruma: Asante, Bw. Naibu Spika, kwa kunipa fursa hii ili nichangie huu Mswada wa *County Boundaries Bill*.

Sio mara ya kwanza kwa huu Mswada kuja hapa. Ulikuwa katika Bunge lililopita lakini ulipata maafa katika Bunge la Kitaifa na haukupita ukawa sheria.

Nianze na pale Mhe. Mungatana alipomalizia ya kwamba, tusidanganyane ya kwamba haiwezekani kubadilisha mipaka. Ibara ya 188 inasema kwamba inawezekana kubadilisha mipaka ya kaunti. Kwa hivyo, yeye kama mwanasheria na nafikiri wanasheria walihusika moja kwa moja kuandika Katiba, sioni vipi kipengele hiki kilijipata katika Katiba. Kinasema ya kwamba mipaka ya kaunti inaweza kubadilishwa. Naye anasema kwamba tusidanganyane, haiwezekani. Inawezekana.

Huu Mswada ni muhimu sana kwa jimbo langu la Taita/Taveta. Hii ni kwa sababu, kama vile wasemaji wengine wamesema, tumepata changamoto za mipaka na kaunti tatu ikiwemo Kaunti ya Kwale, pale Mackinnon Road, Kaunti ya Makueni, pale Mtito Andei na Kaunti ya Kajiado, kule Rombo. Wale watu wa Taita-Taveta wanasikia wamefinyika. Hasa wale wazee ambao wanasema kwamba, wametuchagua kama viongozi lakini tunaacha mashamba yao yanachukuliwa. Hawajui watoto wetu watakuja kuishi wapi.

Bw. Naibu Spika, kwa hivyo, namshukuru Sen. M. Kajwang’, Seneta wa Homa Bay, kwa kuuleta huu Mswada kwa hii Seneti tena. Hii ni kwa sababu ukipita, utapea uhai Ibara ya 188 ambayo inaangazia mambo ya kuangalia mipaka ya *counties*.

Mipaka ya *counties* ambayo tunayajua kwa sasa iko katika sheria ya mikoa na wilaya ya mwaka wa 1992; *Districts and Provinces Act 1992*. Vile mipaka ilivyo elezwa, imeelezwa ikitumia vipengee vya kimwili ama *physical features* ambazo ni barabara,

mito na kadhalika. Na kama vile wasemaji wengine wamesema, hivi vipengee vya kimwili vinayoashiria mipaka vinabadilika. Mito inabadilisha mkondo, barabara ambazo zilikuwa zinatumika kuelezea mipaka, kwa mfano, barabara ya *maaram* iliyopita upande huu, kwa sasa, barabara za *maaram* zimekuwa nyingi na pia barabara nyingi zimekwa lami.

Bw. Naibu wa Spika, ni vyema tuunge mkono huu Mswada uliyo katika mbele ya Bunge hili. Wakati huu Mswada utapelekwa katika Bunge la Kitaifa, tutumie njia zozote kusaidia ili upite na uwe sheria ili isaidia kulainisha hii mipaka yetu.

Ukienda katika kaunti ya Taita-Taveta, maeneo kama Mackinnon Road, inasemekana kwamba Mackinnon Road iko ndani ya Kwale. Ukiangalia, walimu wa shule ya Mbele Sekondari, kwa mfano, wanatoka kaunti ya Taita Taveta na shule yenyewe imejengwa na *Constituency Development Fund (CDF)* ya Voi. Lakini inasemekana iko Mackinnon Road. Kwa hivyo, Mswada kama huu ukipita, utalainisha hizo tofauti ambazo ziko kule mashinani.

Leo niangalia taarifa ya saa nane kwenye runinga na nikaona watu wa Kaunti ya Kajiado wakiandamana. Wanasema ya kwamba kuna shida ya mipaka. Pia sisi watu wa Taita-Taveta tumelalamika kwa sababu, magavana wa Kajiado na Taita-Taveta walishirikiana na wakapeana maelfu ya ekari za shamba iliyokuwa ya Taita-Taveta kwa watu wa Kaunti ya Kajiado.

Huu Mswada unaangazia njia za kuhakikisha ya kwamba pale kuna utata wa mipaka, basi haya mambo yana sawazishwa. Shida za mipaka zimepelekea kudorora kwa usalama. Shida ya mipaka sio ya Taita-Taveta peke yake, kuna shida ya mipaka kati ya Meru na Isiolo, Kisumu na Kericho na Kadhalika. Hata, nimeona watu ambao wanaonekana kama ni watu wamoja, watu wa Kisii na Nyamira, watu ambao wanaongea lugha moja na wanaelewana wana shida ya mipaka.

Kwa hivyo, kama kutasuluhishwa kudorora kwa usalama katika nchi yetu ya Kenya, ni vyema huu Mswada uungwe mkono na upite ili tuwe na sheria isulihishe haya masuala.

Swala ambalo ni nyeti ni hii *own source revenue*. Kwa sasa hivi, kaunti zinahimizwa zikusanye ushuru. Ushuru mwingine ni huu wa *own source revenue* ambayo ni *business permits, market charges* na kadhalika. Kwa hivyo, kupigana kati ya kaunti mbili tofautitofauti inatokea kwa sababu kaunti zinaona ya kwamba zimeleta majengo na biashara zinaendelea, lakini hazitapata ushuru.

Kwa hivyo, katika kutengeneza hii tume ya kuangalia mambo ya mipaka, mambo kadha wa kadha yamelainishwa. Ibara ya 188 haikueleza ni vipi hii tume itatengenezwa, lakini Mswada huu wa *County Boundaries Bill*, una maelezo moja kwa moja. Kwa mfano, *qualifications* za hao watu wa tume.

Bw. Naibu wa Spika, mimi naunga mkono na ningependa kuambia wengine ambao watachangia huu Mswada wauunge mkono kwa sababu utasadia kaunti zetu kuendelea mbele.

Kwa hayo machache, ninaunga mkono. Asante.

The Deputy Speaker (Sen. Kathuri): *Asante sana.*

Next is Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Thank you, Mr. Deputy Speaker, Sir. I contribute to this Bill and in the spirit of the Mover; Sen. M. Kajwang' and the contribution of the Senator for Tana River County, Sen. Mungatana, this is a great Bill because it is thought-provoking. I heard the Mover get provoked. He started talking about 13 counties and I said this is it, he is provoked. However, he ran away quickly. He even wanted to apologise for the remarks about Kakamega County, yet he was right.

[The Deputy Speaker (Sen. Kathuri) left the Chair]

[The Temporary Speaker (Sen. Mumma) in the Chair]

I saw Sen. Mungatana get provoked when he candidly said that you have to do it from a different platform. If you expect to change boundaries using political statements from the National Assembly and the Senate in Nairobi, the Turkana will not listen to you. The people of Lwandeti Market will wonder what is wrong with Sen. (Dr.) Khalwale to imagine that he can change their boundary.

He got provoked. I will contribute on that thought-provoking journey. If that is the case, then I beg my colleagues that today we are here and tomorrow we will not be here. We will have been replaced by young people. If God will have blessed us with a long life, we will be sitting back and enjoying those young people building on our foundation.

I am convinced that this Bill should be stood down because it might pass here and flop in the National Assembly. We should stand it down and get a better fix. The better fix is that we should go back to the people with a Constitutional Amendment Bill with the following intentions.

We have all lived devolution today and know that all our 47 counties, with a few exceptions, are employment bureaus. There is nothing the governors are doing. With due respect to the Senator for Vihiga, when I look at the development budget of Vihiga County, I wonder why he blames the Governor for not doing flagship projects. Where will he get the money from?

Madam Temporary Speaker, when I look at the budget of Lamu, Isiolo, Tharaka-Nithi, Tana River, Nandi, name them all; they will never do development. They just employ people in order to massage the egos of politicians to say that they have employed many youths and that kind of nonsense. That will not fix what we wanted devolution to do.

I propose that we amend the Constitution of Kenya to reduce counties by, first, removing Nairobi from being referred to as a county. Nairobi is the common-wealth, the unifying factor and the Capital City of the Republic of Kenya. If you go to the United States of America (USA) where there are 52 States, there is Washington DC, where they have put their monuments, museums and the centre of power. The seat of power, Capitol Hill, is in Washington DC. This is what we should let Nairobi be.

Madam Temporary Speaker, I know the distinguished Senator for Nairobi will not run out of a job because he can win in many other counties in this country. I will not

point them out because I can come under attack. We remove Nairobi out of our list of counties.

Secondly, we amalgamate the regional counties that I have been speaking to it. The endeavour by governors to go into regional blocs was not kneejerk. They had reflected that if they became regional blocs, they would unlock regional economic potential. I am appealing to the people of the counties of the former Western Province to accept that we have county one – Western County, County Two – Nyanza County, County three – North Rift County, County Four - South Rift County, County Five – Central County, County Six – North Eastern County, County Seven – Upper Eastern County and County Eight – Lower Eastern County and the last one; County Nine- Coast County.

Madam Temporary Speaker, what is the benefit behind this thinking? I said that this is a thought-provoking discussion this afternoon. I just want to flow. I do not have to be right, but I would like to be heard by this House. I believe we would be moving on the trajectory of looking for the ideal county. What is this ideal county? We want a county that is economically viable.

As the father of this Bill, Sen. M. Kajwang', you can imagine the viability of Nyanza Province with its counties touching Lake Victoria, the tourism, the blue economy, the water sports and the ships that can move, not only from county to county, but from the Port in Kisumu to Entebbe or Mwanza. That will unlock that potential, instead of looking at the smaller picture.

Secondly, this economically-viable counties will generate own-source revenue. I know of a county, but I will not mention its name because the Senator will be offended – thank God he is not in the House. They raise about Kshs200 million in own-source revenue and - Sen. M. Kajwang', father of this Bill - they receive over Kshs12 billion in shareable revenue.

Even if you give this county 10 years, their focus is on shareable revenue without caring where that commonwealth is coming from. They will not be bothered to try and grow their own-source revenue because they have an easy source of Kshs12 billion. Why struggle to raise the Kshs200 million?

Madam Temporary Speaker, we learn from own-source revenue the successes of the bigger counties. Senators can look at the statistics because they are now there. We are in the 11th year of devolution. Nairobi has contributed to own-source revenue in billions, Machakos, Kakamega, Kiambu and Nakuru in billions. This is because they are big counties. There is wisdom in us amalgamating our counties.

Thirdly, when you unlock the economic potential in regions, you fix the problems in Maseno and Mtito Andei. You also fix the problems between the Pokomos and the Kambas who keep on moving their boundary as well as the people in Kilifi doing the same to the Pokomos. How do you fix it? You fix it because they are naturally in one huge county and, therefore, the ethnic friction will go down.

Additionally, ethnic chauvinism will not be there because the people in that huge county are most likely to be mono-ethnic. They will, therefore, learn to live with each other and use the human resource from the various mosaics of their tribes to grow their county.

Madam Temporary Speaker, these huge counties will also promote national cohesion. The reason you hear so much push for affirmative action is ethnic group A feels they are marginalized and the dream of a nation by the 15 heroes who spoke in this House in 1963 when hon. Jomo Kenyatta was being sworn in as the Prime Minister is now getting diluted by devolution.

Madam Temporary Speaker, this is why today there is competition for ethnic chiefs and kingpins because somebody wants to feel that he is the king of, for example, that little ethnic community because he has no national appeal at all.

I was thinking about some national leaders today when the President was addressing the House. I was wondering that if this person lording over everybody around here is taken to a market in Homa Bay; let him alight from a matatu in a clean and expensive T-shirt and walk around; many people will start asking who that fellow is, yet he is the fellow who is claiming that he wants to lord it over all of us. It is because he has no national appeal. When you have national appeal, you do not have to go fight for an ethnic fiefdom.

Madam Temporary Speaker, my last point is on dealing with corruption. If our counties are big in size and few in number, the village millionaires you are seeing these days will go down. What happens is that when you go to Kisii County, because the governor comes from this clan or this sub-tribe helps friends and relatives from his family.

These days we have many rich village millionaires back at home. Some of them are not very well educated. Thanks to the corruption in the county. He gets to fix roads and has got money, but with no respect for human resource. For God's sake, human resource is found in highly trained people. That is what we call the most productive HR.

For every job, the engineer has, it supports very many other jobs below him and that means he grows human resource capital. I am going to give it a shot after this Bill fails because fail it will. I will give it a shot and bring a Constitution amendment Bill so that we can send the country to a referendum.

You saw that we were not in agreement when the Oversight Fund came because we were being unfair. What those of us who come from huge counties were given in the first quarter, did things because the money was reasonable.

However, what you gave a smaller county is something they would, probably have done training on for the people they employed in their oversight structure. Let us think big, nationally and move the country forward to kill ethnic chauvinism and promote opportunities that will create jobs for our children.

God has blessed me with several children. I have time for each of them and I found out that they share something in common. Our youths are not in this craze that older people have for land, where they want to grow maize or cotton. They are now wired differently. Therefore, let us use sharable revenue to ensure that we grow our economy, our opportunities and fix our unemployment.

Finally, but not least. The Cabinet Secretary was here last week. He told us to go and ensure that governors have opened at least four strategic centres in each ward in your country, so that the Government can deliver and secure affordable fertilizer. You will not believe what is happening in some of the counties, Kakamega included.

They have refused to open those strategic positions. Instead, they have gone into competition with the national Government because they have found a business opportunity. What are they doing? The national fertilizer is Kshs2500 per 50 per kilogramme bag. The county government has responded by producing their own fertilizer of Kshs3,840 per 50 per kilogramme bag on the argument that they have lowered their purchasing price by 40 per cent.

The national Government should not just sit back on the assumption that agriculture is fully devolved then leave it to the governors to do what they want with agriculture. The fertilizer by the national Government of kshs2500 should now be forced upon governors so that all *wananchi* in the farming countries can access cheaper fertilizer for us to achieve food stability.

With those many reasons, I oppose this Bill.

Sen. M. Kajwang’: Madam Temporary Speaker, it is unfortunate that Sen. (Dr.) Khalwale has sat down, but when I was moving the Bill, I indicated that this House benefits from the wisdom of two Members who were there in Naivasha when we decided on 47 counties.

I thought Sen. Mungatana and Sen. (Dr) Khalwale would address that, so that those of us who were not there, can be guided. Unfortunately, he has already taken his seat.

(Sen (Dr.) Khalwale spoke of record)

The Temporary Speaker (Sen. Mumma): Order. Sen. (Dr.) Khalwale, I do not think that requires your response. You had already sat.

(Loud consultations)

Sen. (Dr.) Khalwale, you may do that behind the tent.
Proceed, Sen. Sifuna.

Sen. Sifuna: Madam Temporary Speaker, thank you for that intervention that ensures the Senators who have spoken before us can allow us to also contribute on this Bill.

I will, first, start by saying that as both a lawyer and the Senator of Nairobi City County, I feel attacked this afternoon. So, allow me to start by disabusing some of the notions that have been painted. The simplest one is the accusation that came from the Senate Majority Leader that somehow he does not see why lawyers must be part of some of these bodies that are being proposed in various pieces of legislation.

I wanted the Senate Majority Leader to note that if you look at the proposal in the Bill itself, it is a mediation committee we are talking about. I think I need to paint a picture for the Senate Majority Leader of what mediation entails. It is one of those Alternative Dispute Resolution (ADR) mechanisms that is free from the structures of litigation; a resolution of matters before our courts.

There has developed an area of practice where there are people who are now experts in ADR. If you see the provision in Subsection 7 of the Bill, Sen. M. Kajwang’

has proposed that because this is going to be a dispute resolution mechanism, a mediation committee set up to mediate a matter of dispute between counties on a matter regarding boundaries, then the person to chair it, should be a person with 15 years' experience in ADR.

I do not think that is a misplaced suggestion. In fact, that committee would benefit immensely by having somebody, not just any lawyer or one with two or three years' experience, in mediation.

Due to the complex issues that my colleagues have raised here, the Bill has provided for someone with 15 years in ADR. I have challenged my colleagues from other professions. If we can find a doctor, including a veterinary doctor or doctor of Sen. (Dr.) Khalwale's calibre who can do a better job at a mediation meeting than a person with 15 years' experience in ADR, by all means, I do not think the lawyers in this House would object.

What we are saying is that nobody should paint the picture that lawyers are somehow imposing themselves in places where they are not needed. This is one of the areas where a person with that experience would benefit most immensely from the job he has been asked to do.

Secondly, I have heard notions here expressed about whether Nairobi needs to continue as a county. Others have suggested rightly that Nairobi needs to be managed differently and that it should no longer be a county. For me, you have to go back to the process of the review of the Constitution. I was not there. Yes, I was still in university when some of my colleagues were doing Bomas and Naivasha.

However, I have had the privilege of reading the final report of the Constitution of Kenya Review Commission (CKRC). If you read that final report, you will understand the thinking that went into every specific provision of the Constitution and the architecture that we ended up with. The concept or the idea behind devolution does not change based on where the person is where they live or the circumstances in which they live.

The concept of devolution is to get services and resources to the lowest possible unit of administration. The lowest unit of administration exists just as much in Nairobi as it exists in Homa Bay where the sponsor of this Bill comes from. The people of Mukuru kwa Njenga would want direct access to resources and services just the way somebody in Kanyamwaa would insist on direct access to resources and services.

They also want to see the Government. If you read the CKRC report, you will remember Kenyans saying that Government is a far-off notion to them. If you talk to our brothers and sisters from the northern frontier districts, they will tell you even people moving from Mandera and Garissa counties coming to Nairobi used to say that now we are going to Kenya. It is because of devolution that places like Turkana, Mandera and Wajir saw the first kilometre of tarmac in their counties.

So, nobody can argue that a Kenyan living in Nairobi does not deserve devolution. If you recall the reasons that have been advanced by my colleagues, especially the Mover of this Motion, Sen. Kajwang', on why he thinks Nairobi needs to be managed differently, that matter has already been thought about.

There exists in our books a law called The Urban Areas and Cities Act. That Act is Cap 275 of the Laws of Kenya. It is still in our books. I want to refer you to the objects of this particular Bill and they are found in Section 3(b) of the Act. The Act is to provide for governance and management of urban areas and cities.

If you look at Clause 4(a) of that Act which was introduced via an amendment in 2019, it provides for a mechanism for the delineation of boundaries of urban areas and cities. If you go further to Section 6 of that Act, it provides for management in that there must be a way to deal with management and infrastructure in the capital city and that they shall be managed in the same manner as county governments.

Then 6(3) talks about-

“The capital city shall provide the infrastructure necessary to sustain the following: The seat of the national government; offices of diplomatic missions; efficient transport network connecting to rural areas, towns and other local, regional and international cities and commerce and industry.”

So, all these factors including the uniqueness of Nairobi is something that has already been anticipated and thought about. There exists a law to provide a mechanism for collaboration between the national Government and the County Government of Nairobi for us to be able to manage the unique issues that exist in Nairobi, but do not exist in Homa Bay Town.

I am sure there is no diplomatic posting in Homa Bay

Madam Temporary Speaker, the problem has been that if you look at Section 6 (5) of the Urban Areas and Cities Act, there is a requirement for national and county government to enter into an agreement regarding the performance of the functions and delivery of services by the capital city. This is where we are stuck.

This is because the national Government has repeatedly failed to come through on its responsibilities to ensure that Nairobi City County, as a capital city, in the seat of Government and the host of diplomatic missions, undertakes these particular functions. It is compounded by the fact that national Government institutions, including Parliament, have refused to pay rates to the County Government of Nairobi.

As I speak today, national Government institutions owe Nairobi City County over Kshs100 billion in unpaid rates. All these institutions that we host here, it would be easy for us to provide these services to make sure that you enjoy the sort of infrastructure you want to enjoy in the city county if the national Government did its bit.

Do you know that, as I speak today, Nairobi City County has an outstanding pending bill of electricity owed to Kenya Power (KP) equivalent to the equitable share of Lamu County; a sum of Kshs2 billion?

Sen. (Dr.) Khalwale comes from Kakamega County. When he tells his people he is going to Nairobi City County, there is a certain expectation of the sort of life he will live. He will not drive on dark roads as if he is driving to Musanda. He wants to drive from his home in Karen to here in the Senate, while the road he is driving on is properly lit. So, these unique needs of Nairobi City County should not make people start telling us that somehow, the people of Nairobi City County do not deserve devolution.

In February 2020, I was sitting somewhere at a hotel here in Nairobi City County. A breaking news item came on the news that the then Governor Sonko was at State

House signing a deed of transfer of functions from the County Government to the national Government. I was in shock. I could not believe it.

In fact, it is the one time that I have been caught flat-footed about the possibility of such things happening under sanction our Constitution. I did not know that it could be done. I was in shock. Two months later, in April 2020, Governor Sonko was saying he signed that thing under duress. It was a dark time for those of us who believe in devolution. The question is still out there. Those of us who have the opinion that Nairobi City County needs to be managed differently, has the Nairobi Metropolitan Services (NMS) done any better?

As I speak today, over Kshs20 billion is still outstanding as pending bills. They hired people the same way that the county government does. There were serious questions as to whether the NMS was following procurement procedures in some of the works that you saw being done at lightning speed.

They were not as hamstrung by the same rules of procurement as the county government. We have a problem with leadership in Nairobi City County. As I have explained to you, even in 2020, part of the problem was the then leadership.

Madam Temporary Speaker, I believe I have dwelt enough on this particular subject. Allow me to deal with the substance of this Bill. I beg my colleagues not to look at Nairobi City County as a problem, but as a county that needs to be managed by a manager.

The people of Nairobi City County have suffrage. They deserve services being devolved to the lowest possible level. They deserve to see Members of County Assembly (MCAs); people they can ask about the road passing outside their house. They deserve to ask the Governor why the garbage at Umoja Innercore has not been collected since September.

Sen. (Dr.) Khalwale, who will they ask when you tell us that there is this manager who is going to come? The experience of the NMS was that the manager for Nairobi City County was walled up at State House, an institution some of us in the opposition cannot be allowed to visit. I want to see the Governor; the person responsible for my resources, the MCA and so on and so forth.

I want this House to know that those problems of overemployment and spending the bulk of the money on personal emoluments and salaries are also present in Nairobi City County.

If you speak to the Finance Officer in Nairobi City County, she will tell you that the exchequer amount that comes every month is equivalent to the salary that goes out. So, very little in terms of revenue excesses is left for development, yet Nairobi City County has the potential to collect so much in terms of own source revenue.

Madam Temporary Speaker, the problem is that we have not sealed loopholes. As I speak, right now in Nairobi City County Assembly, there is a serious inquiry into the revenue streams. That is whether we are collecting and whether we are managing our revenue management system.

When my governor appeared before the committee that is ably led by the Senator for Homa Bay, he told us that the servers running the revenue collecting system are at City Hall and that he can see them. Sen. M. Kajwang' will be shocked to learn today that

nobody knows where those servers are. The MCAs have tried to ask questions, but the governor is dodgy. Nobody can show you. If we go to City Hall, which is just a walking distance from here, you will not see those servers.

Madam Temporary Speaker, allow me to say that the object of the Bill sponsored by Sen. M. Kajwang' has nothing to do with the arguments for viability of the counties. That is a discussion we had a long time ago.

I remember the final Bomas Draft had proposed 14 counties. How that was decimated and we ended up with units that everybody says are not viable is a matter for history and a matter that can be corrected through proposals such as the ones that Sen. (Dr.) Khalwale is making.

I am happy because Sen. M. Kajwang' has thought about a matter that precedes the kicking in of Article 188. Article 188 of the Constitution talks about alteration of the boundaries. What Sen. M. Kajwang' is saying is that before we get to the stage of alteration of boundaries, can we sit down and have a conversation about what the disputes are?

I would be happy if this Bill was put in place as soon as yesterday, because as you know, there is a fight going on between Nyamira and Kisii counties over Keroka Town. It is because of the pressure from everyone about counties trying to raise their own-source revenues. They see Keroka Town as a place to collect own-source revenue that every county is working hard to achieve.

The Bill is well thought-out. It has provided a mechanism for us to appoint a mediation committee that will be chaired by somebody with the expertise in alternative dispute resolution. It states that if you are an advocate who is guilty of professional misconduct, you cannot be eligible for appointment to these particular committees.

Talking about alteration of boundaries, I have sat in the committee led by Sen. M. Kajwang' and came to learn that people are passionate about their counties. Sen. (Dr.) Khalwale, if we were having a meeting during the Senate Mashinani, you would not have left that county if those sentiments were made on the Floor.

If you go to Nyamira County and tell those people that they should be governed from Kisii, they will lynch you. If you try to convince the people of Homa Bay that if they were put together with Migori, Kisumu and Siaya they can do better, you will be lynched because there was a misconception at the beginning of devolution that counties belonged to certain people. I will not shy away from saying certain tribes.

It is so bad that if you come from Bungoma, it is impossible for you to be employed in Kakamega, yet we are all Luhyas. They say; "wewe uko na kwenu." That is a quotation. Do not say that I have offended the Standing Orders by using another language. If you are from Bungoma, they will tell you that you also have a county and ask you to go and apply there. It is bad. In fact, the discussion within some counties is for an even greater disintegration.

Sen. (Dr.) Khalwale is aware of the agitation by the people from Sabaot in Mt. Elgon in Bungoma County for them to have their own county. The Teso in Busia, or in Migori where the Kuria are, also agitating that they need their own county. For as long as that county exists to pay salaries to their children, many people are content.

I have challenged Senators by asking; if you sat your county people down, told them you have Kshs2 billion and ask whether you should do a road or everybody to line up and get something to eat today, what do you think the people will say?

(An hon. Senator spoke off record)

Correct, because the appreciation of devolution was misconceived at some point to mean this is ours for as long as we are eating. If it is the Bukusu eating in Bungoma, or the people of Kakamega eating in Kakamega, then there is no problem.

Madam Temporary Speaker, all the disputes arise because people have sentimental values for these counties and nothing else. Proposing anything else will be very unpopular.

The threshold that has been set in the Bill by the Senator for Homa Bay County, Sen. M. Kajwang' states two-thirds of the National Assembly and two-thirds of the Senate. I believe there is also a provision that the concerned county assemblies must also participate in that decision-making.

Clause 17 is on the people who can bring a Petition for alteration. The Bill lists any registered voter, a MCA, a Senator, a Member of the National Assembly and Governors. I want the proposer of the Bill to tell me why there is a difference. Probably the language in Clause 17 should be replicated in Clause 5(1), which proposes who can request for a mediation committee.

Once you leave out the Members of the National Assembly under Clause 5, they might feel left out. I propose that if the Bill allows people who Petition to include Senators, MCAs and Members of the National Assembly, then it should be reflected under the qualifications of the people who can ask for a mediation committee.

It also asks that the Petition for alteration must be supported by 15 per cent of the registered voters. These thresholds are reflected in other legislation. For instance, in the dissolution of county governments whenever there is a dispute between the county assembly and the governor that is irreconcilable.

On the mediation committee. I had spoken to Sen. M. Kajwang' on the language in Part III, Clause 6 because the Bill as currently drafted states-

“Where a resolution has been made by the Senate for the establishment of a mediation committee under Section 5(1), the President shall, within 14 days of receipt of the resolution appoint a mediation committee with the approval of the Senate.”

That looks like repetition because after the resolution of the Senate has been made and when the President is appointing the Committee, you do not need to approve that appointment.

(Sen. Sifuna's microphone was switched off)

The Temporary Speaker (Sen. Mumma): Sen. Sifuna, your time is up.
Proceed Sen. Gataya Mo Fire.

Sen. Gataya Mo Fire: Madam Temporary Speaker, Sir, the Bill before us is very emotive. The father of this Bill who also happens to be my friend and Chair of my committee has brought an emotive debate to the House today. From the onset, I wish to oppose this Bill because as we always say politics is local.

The intentions of this Bill are good, but the drafter of the Bill did not do enough research. I have captured some issues that are not impressive, especially from Tharaka Nithi County, where I come from.

I have a long story to tell. Tharaka Nithi County, which is historically marginalised has for decades suffered under the hands of Meru County. Day in and out, there is a lot of encroachment from our neighbouring county. We have lost lives and chunks of land. We have seen people displaced. People have suffered historically.

I am happy that I have supplied the drafter of this Bill with sufficient evidence to show that what is contained in this Bill is not what is reflected on the ground. I remember in 1996 and 1997 clashes, through some Government systems, those in power at that time came, burnt houses and took our land. The schools were burnt and people were evicted in places such as Njuguni, Kinyungu, Turima Twa Mburi, and Kanjoro. People lost land, lives and livestock. Up to now, Tharaka-Nithi County is the only county in the entire former Eastern Province where we have Internally Displaced Persons (IDPs) who have never been resettled up to date.

Reading this Bill brings the nostalgia of things this Bill has not been able to address, such as pertinent issues that are bedeviling some of those areas in Tharaka Nithi County.

The drafter just brought in some issues to do with the formation of a mediation committee. However, boundary issues are political. People have been campaigning on this platform. Politicians promise that once elected, they will ensure the residents of affected areas get their land back. This issue is bigger than what meets the eye. Some communities use their position in Government to make sure they evict the less fortunate or communities not in power at that particular time.

I would outrightly oppose this Bill because it has not captured some of the issues we are involved in, especially in Tharaka Nithi County where we have historical issues ranging from Ntororo Location, cutting across Turima Location, Murinda, Gakurungu, and Tunyai. This is because every month - Meru County is our neighbour - They have encroached on Tharaka Nithi County. I have supplied the drafter of this Bill with the relevant information. The Kenya Gazette of 1966 stipulates the boundary between Tharaka and Meru Counties, which extends to Kinna, Kithima-kia-Mugumo.

Meru National Park was curved from a sublocation called Kanjoro in 1966. This information has not been captured. It is important that before this Bill is discussed, the drafter who happens to be my good friend, should research and put the proper records in place, so that Tharaka Nithi County is not disadvantaged.

The mechanism to solve the boundary issues does not offer solutions. I have stated that this is a political process. Most of the boundary issues are manifested through politics.

I would like to echo what Sen. Mungatana said: we do not need a lawyer, just someone who understands the basics to ensure we have a strong mediation committee that will offer permanent solutions.

It is shameful that 60 years down the line, we are discussing boundaries in this country. It is high time that we devised a permanent solution to ensure Kenyans live peacefully and coexist just like brothers and sisters.

Madam Temporary Speaker, now that my issues have not been addressed, I wish to strongly oppose this Bill until my concerns are addressed

The Temporary Speaker (Sen. Mumma): Sen. Osotsi, proceed.

Sen. Osotsi: Thank you, Madam Temporary Speaker, for giving me an opportunity to present on this important Bill – The County Boundaries Bill.

This Bill is long overdue. The past Senate has made four attempts to resolve this issue. The latest was in the 12th Parliament where this Bill died in the National Assembly after being passed by the Senate.

As I stand here, I represent a county with a long-standing dispute on the boundary with Kisumu County at Maseno, as had been alluded to by the Mover of this Bill. Every weekend when I go home, I am confronted by people who ask me when the issue of Maseno will be resolved. I have been telling them that there is a Bill before the Senate to give framework to this process.

Madam Temporary Speaker, I must commend the Senator of Homa Bay for coming up with this Bill. If you read through this Bill, it is basically giving a framework on how county boundary issues will be handled. It may not contain the nitty-gritties, as my good friend, Sen. Mo Fire, is requesting, but at least it gives a framework of how the mediation committees will be formed, disputes handled and their very important issues.

Madam Temporary Speaker, Article 188 of the Constitution talks about the process of alteration of boundaries between counties and says that Parliament shall enact legislation. That is basically what this Bill is doing.

Madam Temporary Speaker, if you remember very well, in the NADCO report, which we have discussed in this House, one of the issues that came up was county boundaries. They recommended that we have a County Boundaries Bill.

I have heard the presentation by the other Members and I have also seen that this Bill has been seconded by the Senate Majority Leader, who is on the other side. I request that in the spirit of NADCO and bi-partisanship, this Bill be handled in that manner, so that we do not have another Bill of NADCO coming again. This is because we are now in the process of implementing the NADCO report as per the Speaker's Communication this afternoon.

Subsequently, if there are any gaps in this Bill, they can be handled at the Committee of the Whole through amendment.

The issue of Maseno has been the biggest dispute in that region of Western Kenya. The people from the other side of Vihiga County are staying on the other side of Kisumu County up to a place called Chulaimbo. All those places such as Lela and villages around Maseno are occupied by people from the Banyore Community, which is Luhya. That is why the agitation that the boundary should be looked into has been occasioned.

This matter has a huge historical basis. In fact, in my office, I have several files of Petitions, which have been presented to me on that matter. Some are by elders who were there when this problem started. They know the history and all the details.

I commend my predecessor, Sen. George Khaniri, for having tried hard to pursue this matter in this Senate. I hope that this Bill will be passed by this House and the National Assembly as well, in the spirit of NADCO and bi-partisanship, so that we have this resolved, once and for all.

I want to agree with the Sen. Mungatana who said that we need to relook at Clause 16 of this Bill. The requirement for two-thirds of Members of the National Assembly and two-thirds of the Senate is too high. Perhaps, we need to lower that threshold to a simple majority. With the two-thirds requirement, from my experience, it is will be extremely difficult to have this Bill passed.

You remember the attempts that have been made to pass the two-thirds gender rule Bill. It has failed several times in the National Assembly because of the inability to get the two-thirds. I request that we have amendments so that we make it easy for this Bill to sail in these two Houses.

Madam Temporary Speaker, on the issue of the factors to be considered for boundary alteration, the Bill considers issues of population density, demographic trends, physical and human infrastructure, historical and cultural ties, cost of administration, views of the community affected, objects of devolution and government and geographical features.

Sen. Mungatana had a point. We also need to look at issues of revenue management so that in case we are unable to resolve the issues of the boundary, then we have something to take home.

That is a problem we have between Vihiga and Kisumu over Maseno. This is because the infrastructure which is in Maseno; the university, the church, the hospital and many others, people from the other side feel that they have been discriminated in matters of employment, revenue and many other issues. If we can have revenue management as one of the issues to be considered in this process, that will be very important.

There are also issues of economy. I have talked about employment, access to amenities and all that. For example, on the Maseno side, we have the Maseno School. We have about two streams for local students. The people from Vihiga County do not benefit from that because it is largely Kisumu area. Those are issues that will easily generate disputes and make this thing look the way it is looking.

Concerning compensation, how would people be compensated in case the boundary alteration becomes difficult? I fully support the provision in the Bill that Petitions that come close to the election, 12 months to the election, should not be submitted.

I am saying this because although a lot of people from the Vihiga side have felt that this matter needs to be handled peacefully and amicably, but there are politicians who always trigger division closer to the election by using the Maseno issue.

In the last election, our colleagues whom we were competing with from the other coalition, maximised on this issue to try and defeat Azimio Coalition. However, people of this area have lived peacefully and have intermarried. The Luhya community have

intermarried with the Luos. People have bought land on either side. We do not need to politicize this issue. This 12-month period will ensure that this matter is not politicized, so that it is addressed amicably.

Most importantly, this Bill provides a mechanism for dispute resolution and management by establishing *ad hoc* county boundaries mediation committees, where the governor, the Senator, or even a registered voter, can petition the Senate or Parliament to handle this matter.

Previously people were just bringing Petitions. They were taking them to the Senate or the National Assembly, but there was no mechanism of how that would be addressed. However, this provides a mechanism and how leaders or even voters can initiate the process of mediation.

Madam Temporary Speaker, this Bill addresses my concern, as a Senator for Vihiga County who is very keen to address the issue of Maseno.

I think we may need more input into this Bill where it looks at only one scenario of boundary alteration. What if it does not happen? This is because from the presentation made by some colleagues, it is not an easy issue. So, in the event it does not happen, how do we manage the issue? There needs to be a second scenario of in case of no alteration, what happens?

That is where the issue of revenue management and sharing of revenue, infrastructure and amenities comes in. That is one area I will be consulting the owner of the Bill to see how well that can be incorporated so that, the matter is addressed conclusively. This is because any attempt to try and address this matter and it fails, will in itself create a dispute.

I remember, sometime back, in the 11th Parliament, there was an *ad hoc* Committee that went around Maseno collecting views. They did quite a lot of work and delivered nothing. That triggered more trouble. We need to look at that aspect so that we do not end up creating a much bigger problem.

Madam Temporary Speaker, this Bill also proposes that the decision on boundary alteration will not be made by one institution or person. In June 2021, the then Cabinet Secretary for Lands, Hon. Karoney, made a statement before this Senate and ruled that Maseno is in Kisumu County, without adequate consultations. We do not want to have such scenario. We want all stakeholders to be involved in this process. The Senate, leadership, the respective counties and the National Cohesion Commission (NCC) as stated in the Bill should be involved. It should not be a unilateral decision by one institution or individual deciding about the matter.

All in all, this Bill is the first attempt. I hope that the National Assembly will not reject this Bill again on the basis of it being a money Bill. This is because they rejected the last one because they said it is a money Bill.

We need to resolve this matter. The NADCO has given us the basis. They recommended that we need to resolve the issue of boundaries by having a County Boundaries Bill. Let us take advantage of that.

The Mover of this Bill is ready to engage in a bi-partisan manner. I am happy that, Sen. Cheruiyot, who was a Member of NADCO, is the seconder. So, let us pick from this point and engage the National Assembly in the spirit of bi-partisanship. This is so that we

have this Bill passed by both Houses and made into law and address the framework of dealing with this matter.

I am sure the many petitioners who have been coming to me, for example, the gentleman who has been very passionate about this---

ADJOURNMENT

The Temporary Speaker (Sen. Mumma): Hon. Senators, it is now 6.30 p.m., time to adjourn the Senate. The Senate, therefore, stands adjourned until tomorrow, Wednesday 6th March, 2024, at 9.30 a.m.

Sen. Osotsi, you still have three minutes of your time.

The Senate rose at 6.30 p.m.