

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

Wednesday, 5<sup>th</sup> April, 2017

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

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

#### PRAYER

#### COMMUNICATIONS FROM THE CHAIR

##### VISITING DELEGATION OF YOUTH LEADERS FROM KAKAMEGA COUNTY

**The Temporary Speaker** (Sen. (Dr.) Machage): Hon. Senators, I would like to acknowledge the presence in the Speaker's Gallery this afternoon of visiting youth leaders from Kakamega County. I request each member of the delegation to stand when called out so that they may be acknowledged in the Senate tradition.

- (1) Mr. Reuben Makokha
- (2) Mr. Geoffrey Sheti
- (3) Mr. Rodgers Wakhisi
- (4) Mr. Alex Olale
- (5) Mr. Defra Ambako
- (6) Mr. Shaaban Akida
- (7) Mr. Musa Alajoni
- (8) Mr. Allan Ngeresa
- (9) Ms. Caroline Njunge.

On behalf of the Senate and on my own behalf, I welcome all of you to the Senate and wish you well for the remainder of your stay.

I thank you.

**Sen. Khaniri:** Mr. Temporary Speaker, Sir, Kakamega County happens to be my neighbouring county. My birth certificate reads that I was born in Kakamega before Vihiga was hived off from Kakamega. Therefore, the youth in the Speaker's Gallery are from home. On my own behalf and on behalf of the Senator for Kakamega County, who is not in, I join you in welcoming the youth from Kakamega County and wish them a fruitful stay in Nairobi and the Senate Chamber. We are glad that they take interest in what is happening in this House which has a heavy and enormous responsibility of ensuring that devolution works in this country.

In the forthcoming and subsequent elections, I encourage the youth to go for positions including the position of Senator which many people believe is a reserve of the old and seasoned politicians. This is a House for all Kenyans. I encourage them to run for senatorial position in the various counties.

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, I join you in recognising the presence of the nine youths from Kakamega County who have come to learn and see what we do here on their behalf. Their Senator, Sen. (Dr.) Khalwale, who also calls himself a bullfighter is one of the most brilliant Senators around - although they buy those cows from West Pokot. I encourage them to become more vigilant now that we are devolved. Kakamega County is the only county that has a distinction of refusing to appear before the Senate to answer to their audit queries on how they have spent public funds. Since they come from a county of people who do not take accountability seriously, I challenge them to offer themselves to redeem that county through various positions particularly the Office of the Governor.

Kakamega County is just like any other county in Kenya. Therefore, responsibility and accountability is the top most agenda. I therefore encourage the youths to take this message to heart. Kenyans are concerned, including some of us from West Pokot County.

**Sen. Kanainza:** Mr. Temporary Speaker, Sir, I join my colleagues in welcoming the youth leaders from Kakamega County. They are chairmen who hold different positions in their respective constituencies, more so political positions. Majority of them are from the biggest party in East and Central Sub-Saharan Africa, ODM. This is a good experience for them because they are learning. I can also see other people seated in the gallery. They have a lot to learn and prepare for the future.

The young people of this country are the leaders of today. This can only be achieved if we allow them an opportunity to benchmark in the right place, Senate being one of them. I see the Senate Minority Leader making noise because---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Kanainza! Senators do not make noise. They consult loudly.

**Sen. Kanainza:** Thank you, Mr. Temporary Speaker, Sir, for the correction. I am proud of the youth leaders from Kakamega County. As a Senator representing the youth in this Republic, it is my role to mentor you. I will mentor you into various positions. As we go into elections this year, it is my hope that we shall have more young people going for elective seats as Members of the County Assembly (MCA), Members of Parliament (MP), Senators, governors, and president. They will win, in Jesus name.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, I join you as well as the colleagues who have spoken before me to welcome the youth from Kakamega County, the second largest county in the country after Nairobi. It is a county with so much promise yet it has achieved so little in the last four years of devolution. I encourage the young people to be keen and involved in the day to day activities in our counties, particularly their county of Kakamega, which is the capital of the Mulembe nation. We are very proud of that county and so when they are here, they are not just representing Kakamega County. They are representing the aspirations of the youth of the region and the community.

On behalf of your Senator, Sen.(Dr.) Khalwale, who is not here because he is attending the NASA Coordinating Committee meeting that is tasked with, among other

things, arriving at the flag bearer for our Coalition. He is therefore doing a great national job out there. If he was here, he would have joined everybody in saying ‘welcome’ or ‘*karibu sana*’. Enjoy your stay, learn what you can and if you have any issues, my office is at the same level to where you are seated. You can come and see me.

VISITING DELEGATION OF STUDENTS AND LECTURERS  
FROM UNIVERSITY OF KABIANGA

**The Temporary Speaker** (Sen. (Dr.) Machage): I wish to recognise the presence of visiting students and lecturers from University of Kabianga from Kericho County. They are seated in the Public Gallery.

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

I thank you.

**Sen. Sijeny:** Mr. Temporary Speaker, Sir, I join you in welcoming the Kenyan intellectuals who have come to benchmark at the right place. I wish them well and ask them to lead well together with the youth leaders who are here. The sky is actually the bottom and not the limit. They can do so much for this country and we need everybody on board.

**Sen. Karaba:** Mr. Temporary Speaker, Sir, I thank you for allowing me the opportunity to acknowledge the presence of the University students from the University of Kabianga. We have some young Senators who have served as leaders in various universities. Their coming here could be that they are scouting on how to also win the elections and come here. If that should happen, I congratulate and welcome them to the Senate and wish them the best of luck. I am the Chairperson of the Committee on Education.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, on behalf of the leadership of the House, I want to note that since we started, this is the second visit by students from any university apart from the nuns who visited us from Catholic University of Eastern Africa (CUEA).

I welcome the students and lecturers from Kabianga University. They should feel welcome to the Senate. I believe they are here to see and learn. As they do so, I remind them that universities have gone through very difficult times because of the corrupt and uncaring Jubilee Government. When we go to elections, they should exercise their power to vote them out and bring in a pro-people and pro-development government; one that will make sure the intelligentsia of this country which comprise of the teachers, doctors, lecturers and all other public servants are not ensnared in cycles of strikes upon strikes and the Government does not simply care. So, they should exercise their civic rights and change this country through their vote.

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, I join you and my colleagues who have spoken before me to recognise students from Kabianga University. This morning I had the privilege of seeing them at the gate and I was told they are pursuing a degree in Public Administration. We used to work with some of their lecturers in Moi University and some students come from my county.

Mr. Temporary Speaker, Sir, when Kabianga University was started in 2006, little did we know that it was going to be a big university. Before then, it used to be a campus of Moi University right in the middle of tea bushes in Kericho County. Prof. Kipng'eno who is their Vice Chancellor taught me Statistics in 1988. He and other staff have done tremendous work to build the University to what it is today.

Mr. Temporary Speaker, Sir, I request the students to take their studies seriously. People say that they are the leaders of the tomorrow but I want to tell them that there is no tomorrow. They have to start their leadership now and they should do things better than everybody.

We commend the students because recently when lecturers went on strike for almost two months, we did not see what used to happen many years before. Whenever lecturers went on strike, students would always jump on the streets. This time round they were very cooperative and obedient. That is a sign of maturity.

I urge them to continue that way by putting Kenya at number one. They should also work hard in the field they are because we want to see first class honours from Kabianga like any other university. That should not just be the domain of the University of Nairobi. They should not stop at that degree because one degree is just like Class Eight certificate. They can go higher than wherever they have reached.

Mr. Temporary Speaker, Sir, I thank you.

**Sen. Okong'o:** Mr. Temporary Speaker, Sir, when I was at the Lounge, I saw youth leaders from Kakamega being welcomed. Students from Kabianga University are welcome and they should pick the best from this House.

As we move to the august elections, they need to interrogate both the failing Jubilee Regime and the Opposition which in many cases has also failed in many years. There is a new order and new dispensation.

Mr. Temporary Speaker, Sir, I speak as a leader and I will be going to their domains to tell them that I am the best thing for Kenya. I thank you.

**Sen. (Prof.) Lesan:** Mr. Temporary Speaker, Sir, thank you for giving me this opportunity to welcome students and teachers from Kabianga University in Kericho County which neighbours Bomet. More so, Kabianga University has a campus in Sotik which is in Bomet County.

Mr. Temporary Speaker, Sir, I wish to take this opportunity to congratulate these students for visiting the Senate. I would like to mention that the role of the Senate is not well understood in the villages and small towns within our counties. It is upon the elites in universities who are leaders to take up the role of educating the public on the functions of each of the leaders whom they have elected.

I congratulate the university which is managed by Prof. Kipng'eno who was a classmate of mine. We went to school together and we have also done a lot. Having been a lecturer in the university and a Dean of the Faculty of Medicine, I worked very closely with the professor and I am aware of his capacities and capabilities of running a university.

I therefore ask for the support of the students and the staff to support their Vice Chancellor to build their university. There are a lot of developments being done by the Jubilee Government. Very soon, there will be a tarmacked road to the university.

I take this opportunity to rubbish what the Senate Minority Leader has said about the Jubilee Government. This is a Government that is performing. It is doing tarmacked roads some of which are in Kakamega and Machakos.

**The Temporary Speaker** (Sen. (Dr.) Machage): As the Speaker today, I do not like the use of the term “rubbish.” Maybe a better word could have been used. Could you withdraw “rubbish” and use a better parliamentary word?

**Sen. (Prof.) Lesan:** Mr. Temporary Speaker, Sir, the word I used was applicable to spoken language and it was not directed to my colleague Senators. I rubbished the statement made and that is good English.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well, you have escaped.

**Sen. Kanainza:** On a point of order, Mr. Temporary Speaker, Sir. Could Sen. (Prof.) Lesan tell us what the Jubilee Government has done in Kakamega County?

**The Temporary Speaker** (Sen. (Dr.) Machage): I will not entertain that as a point of order unless it is properly executed. Could you attempt to execute your point of order properly?

**Sen. Kanainza:** Mr. Temporary Speaker, Sir, I would wish my colleague Senator to substantiate---

**The Temporary Speaker** (Sen. (Dr.) Machage): No. Start by saying “Is it in order---”

**Sen. Kanainza:** Mr. Temporary Speaker, Sir, is it in order for Sen. (Prof.) Lesan to mislead this House and the country at large that the Jubilee Government that we will send packing on 8<sup>th</sup> August has constructed roads in Kakamega County or anywhere in western Kenya?

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well executed. Sen. (Prof.) Lesan, you have been challenged.

**Sen. (Prof.) Lesan:** Mr. Temporary Speaker, Sir, Senators represent various counties in this country and we exactly know which roads have been done.

Mr. Temporary Speaker, Sir, I represent Bomet County. Currently, we have 78 kilometres of tarmacked roads which were not there three months ago. I hope that---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order Sen. (Prof.) Lesan! I believe I have a very good hearing capacity as your Speaker and I heard you refer to Kakamega County. If you have no facts about new roads in Kakamega County, it is just safe to withdraw.

**Sen. (Prof.) Lesan:** Mr. Temporary Speaker, Sir, I withdraw if I mentioned Kakamega. I said we represent various counties. There is one county I know very well and I used it as an example and that is Bomet County.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well. Thank God for being privileged.

**The Temporary Speaker** (Sen. (Dr.) Machage): What is it Sen. Mutula Kilonzo Jnr.?

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, I just wanted to read Standing Order No.94 to Sen. (Prof.) Lesan but he has withdrawn his statement regarding Kakamega and Machakos because he cannot substantiate. Therefore, we are happy that he has used his privilege well.

**The Temporary Speaker** (Sen. (Dr.) Machage): Next Order!

**PETITIONS****REPORT ON PETITION: ESTABLISHMENT OF  
BREASTFEEDING AND CHILD CARE CENTRES**

**Sen. Madzayo:** Mr. Temporary Speaker, Sir, I beg to lay the following Petition reports on the Table of the Senate today, Wednesday, 5<sup>th</sup> April, 2017.

The first report is on the petition made to the Senate by Mr. Chrispinus Simiyu Wekesa and Ms. Grace Kerongo for the establishment of breastfeeding and child care in major towns and urban centres in Kenya.

**REPORT ON PETITION BY SACKED EMPLOYEES  
OF KENYA RAILWAYS**

The second one is a report on the petition made to the Senate by the sacked employees--- We should have used dismissed but it is stated the sacked employees of Kenya Railways.

**The Temporary Speaker** (Sen. (Dr.) Machage): Sen. Madzayo, what are you trying to communicate? Can you read that properly because it is being recorded?

**Sen. Madzayo:** Mr. Temporary Speaker, Sir, I will read as guided because I wanted to use “dismissed” instead of “sacked.” The second one is the report on the petition made to the Senate by the sacked employees of the Kenya Railways. I thank you.

*(Sen. Madzayo laid the documents on the Table)*

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well. Next Order!

**REPORT ON PETITION: ALLEGATIONS OF CORRUPTION AND BREACH  
OF PFM REGULATIONS BY BUNGOMA COUNTY GOVERNMENT**

**Sen. Billow:** Mr. Temporary Speaker, Sir, I beg to lay the following petition reports on the Table of the Senate today, Wednesday, 5<sup>th</sup> April, 2017.

This is the report of the petition concerning various matters including and not limited to allegations of corruption and the breach of law affecting the County Government of Bungoma. I thank you.

*(Sen. Billow laid the document on the Table)*

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Temporary Speaker, Sir. It is not the tradition of the House to make any comments on petition outcomes when they are tabled but I would like to implore you that the Committee on Implementation of this House must be obligated to follow up the outcomes of petitions whose results are brought to this House, tabled and kept away even where the petitions have established massive looting of public resources like in the case of the one that has just been tabled. I urge you to direct the Committee on Implementation to do an

appropriate follow up with appropriate governance and institutions in the country to bring the looters to book.

**The Temporary Speaker** (Sen. (Dr.) Machage): Whereas I appreciate the concerns of the Minority Leader, I would like to refer you to an opportunity that there is now, in reviewing our Standing Orders, particularly the Standing Order governing the management of petitions. The Standing Orders says that the report is simply tabled and a copy of the report given to the Petitioner. Use your office and individual capability to make sure that Standing Order on implementation is added. So, there is nothing I can do. That is what the rule of the House is as at now.

What is it, Sen. Billow?

**Sen. Billow:** On a point of order, Mr. Temporary Speaker, Sir. I do not want to challenge your ruling but I think there is a Committee on Implementation in this House which carries out the resolutions of the House. We seek your indulgence because there are many petitions that have been concluded and we do not know how far the implementation of the recommendations has gone. Could I, therefore, ask you to ask the Chairperson or whoever is in charge of that Committee, to share with the House the status or the follow up regarding the petitions? Dozens of them have been tabled in this House.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well. What is it, Sen. Wetangula?

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Temporary Speaker, Sir. It can never have been the intention of the drafters of the Standing Orders and the law, including the Constitution, where the foundation on petitions is grounded, that petitions are brought to the Houses, worked upon, tabled and that is the end of the matter. The omission in the Standing Orders is cured by Standing Order No.1, where, as the Chair you have a responsibility and duty to direct that he Committee on Implementation picks up all the outcomes of petitions and does a follow up. Some of these petition outcomes have recommended prosecutions, criminal investigations, surcharges, restitutions, suspensions and dismissal.

The petitioners could not have been expected by the Constitution and the law to implement the outcomes of the resolutions of this House, either through plenary or committees. so, it is only fair and just, not to the House alone but to the petitioners that a follow up mechanism, if unavailable, you use the powers bestowed upon you under Standing Order No.1 and look at precedence and usages in other comparable jurisdictions on how they handled outcome of petitions so that we are not engaged in a futile exercise of spending time and public money, and at the end of the day, you send the outcome to a villager who petitioner this House; an outcome they cannot use to do anything in furtherance of the course of justice that they were looking for.

**The Temporary Speaker** (Sen. (Dr.) Machage): What is it, Sen. (Prof.) Lonyangapuo?

**Sen. (Prof.) Lonyangapuo:** On a point of order, Mr. Temporary Speaker, Sir. I note that the request by Sen. Wetangula would have been appropriately handled by the leadership of this House. I do not remember when I last saw some of the leaders of this House seated here, to the extent that we are talking about work that should have been conducted by the leadership. Where is the Senate Majority Leader? They should be looked for. These are the people who should see to it that this work is done.

**The Temporary Speaker** (Sen. (Dr.) Machage): The Senate Minority Leader has referred me to Standing Order No.1 on the issue of petitions. Unfortunately, I may not apply it. Standing Order No.1 (1) states:-

“In all cases where matters are not expressly provided for by these Standing Orders or by other Orders of the Senate, any procedural question shall be decided by the Speaker.”

This is a matter that has been provided for by Standing Order No.227 (2). It states:-

“Whenever a Petition is committed to a Standing Committee, the Committee shall, in not more than sixty calendar days from the time of reading the prayer, respond to the petitioner by way of a report addressed to the petitioner or petitioners and laid on the Table of the Senate and no debate on or in relation to the report shall be allowed, but the Speaker may, in exceptional circumstances, allow comments or observations in relation to the Petition for not more than twenty Minutes.”

I refer you to Standing Order No.213. See whether you can get a solution. I will not labour to read through Standing Order No.213 because it is a long one. That is the solution to your prayer. Anything that is omitted there can therefore, be submitted for amendments of the Standing Orders that is going on now. It is so ordered.

What is it, Sen. Billow?

**Sen. Billow:** Mr. Temporary Speaker, Sir, your ruling is in order regarding committal of petitions under Standing Order No.227. There is also Standing Order No.228 and 229. Standing Order No.229 is on the register of petitions. We are not aware that the Clerk of the Senate actually keeps a register, open to the public for all petitions and the reports on the decisions of the Senate.

However, the main issue on which we need your guidance is not on committal or on this, it is on the report.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Billow!

**Sen. Billow:** Mr. Temporary Speaker, Sir, recommendations have been made under Standing Order No.228.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! The office of the Clerk is under my office. Do you doubt my work?

**Sen. Billow:** No, Mr. Temporary Speaker, Sir but look at Standing Order No.228. It states:-

“The Clerk shall forward copies of responses received under Standing Order 227 (*Committal of Petitions*) to the petitioner or petitioners.”

Now, in these copies ---

**The Temporary Speaker** (Sen. (Dr.) Machage): Do you have any reason to doubt that the copies are forwarded to the Clerk

**Sen. Billow:** No, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Machage): So, have a seat.

**Sen. Billow:** Mr. Temporary Speaker, Sir, our concern is that there are recommendations made by this august House that need to be implemented by various institutions and there is need for the Committee on Implementation to implement and give the House a report on the progress. That is all we are seeking. Under Standing Order No.213 we need to know what the status is.

In the last report I just tabled, we had a situation where cash was being taken out of a county government account into a personal account with all the evidence yet there is



no response at all from the county government. Counties are bleeding. We need a report from the Committee on Implementation. We cannot just let things be the way they are.

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, the Senate has been accused. Even this morning, while seated in the Mediation Committee, the Senators were accused of watching helplessly as governors pilfer public funds. My Chair has pointed out that there is a lady who withdrew over Kshs300 million and evidence is contained in these documents. That lady should be sanctioned.

This is the same county where carcinogenic wheelbarrows were procured and another Kshs1.5 million was spent to investigate the purchase.

**The Temporary Speaker** (Sen. (Dr.) Machage): I thought they were anti-carcinogenic.

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, whatever they were, the point is that there must be a way that our decisions can be discussed. First, this is one petition that we have spent more than 60 days. Secondly, the petition has got outright pilferage of public funds. We should have provided a way to debate this. We can make Bungoma an example of what governors should not do. We can even go round our Standing Orders, because they are only standing orders for purposes of standing, but we must make sure that the Constitution is implemented.

Thank you, Mr. Temporary Speaker, Sir.

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Temporary Speaker, Sir. You cited Standing Order 227 and were absolutely right. In committing the petition to a Committee, the Standing Order is very clear. You may allow some comments, which you normally do, or commit the petition right away. That is provided for.

Standing Order 228 must be read very carefully. It says:

“The Clerk shall forward copies of responses received under Standing Order 227 (Committal of Petitions) to the petitioner or petitioners.”

That Standing Order does not exclude comments, debates or passing on that petition to the Committee on Implementation or agencies of governance like the Criminal Investigations Department (CID), Ethics and Anti-Corruption Commission (EACC) and others. Where then do you get the answer? You go back to Standing Order No.1 (2) which says:-

“The decisions made in paragraph (1) shall be based on the Constitution of Kenya, statute law and the usages, forms, precedents, customs, procedures, traditions of Parliament of Kenya and other jurisdictions to the extent that these are applicable to Kenya.”

When you read Chapter Six of the Constitution, you will find the answer. We must have borrowed the issue of petitioning and management of petition outcomes from some comparable jurisdictions. The Office of the Clerk and those who research for you have a duty to tell you--- This Petition from Bungoma, which Sen. Mutula Kilonzo Jnr. has pointed out, carries outrageous and most blatant thefts of public funds that have ever been witnessed in this country. A young officer has an account that is used to pilfer money – Kshs314 million in two months. The girl’s account has a constant credit balance of Kshs5,000. This account has just been used to steal money.

How do you countenance a situation where a governor buys what he described as anti-carcinogenic wheelbarrows at Kshs109,000 when they cost Kshs3,000, and when it

is found out, he spends another Kshs1.3 million to investigate whether he was right or wrong in buying them in the first place? We must have a situation, like Sen. Billow has said, where the decisions of this House and its Committees must be seen to their logical conclusion.

Now we are throwing this on the Table. The Clerk will forward to villagers, who are sufficiently vigilant, to bring the matter to the attention of the House, but where do they go? They will receive the report and that is the end of the matter, yet this institution, with our unlimited powers of oversight, can do a follow up and make sure that those found culpable are brought to book. This is not the only case. We recommended for prosecutions in Machakos and several other counties, but nothing has happened.

Finally, I want to thank my Chairman, Sen. Billow, because as at today the Committee on Finance, Commerce and Budget, has finalized each and every petition presented to us. Every report has been tabled. At the end of the day we will be told: "Forward the results to the petitioner." That is not the intention, spirit and letter of the law.

**The Temporary Speaker** (Sen. (Dr.) Machage): The Chair presiding today is also a Member of the Committee on Finance, Commerce and Budget that has been so praised. So, I also take credit. However, I want to communicate the following. There is a register in the Clerk's office for all petitions and reports on petitions. There is also a register on all the responses that are sent to the petitioners. Also, the reports are sent to the relevant Government agencies for further investigations. The reports are also sent to the Committee on Implementation.

However, this House also has the opportunity for any Member to move a Motion on any issue on a petition as an individual Motion for discussion, deliberation and proper conclusion, in a manner that the House may decide. This House also has an opportunity to seek for statements. Look at the last page of today's Order Paper. May I refer to Statement (a) that was sought by Sen. Stephen Sang. It reads:

"The Chairperson, Sessional Committee on Implementation to issue a Statement on the plight and welfare of former councilors under Kenya's defunct local authorities."

You will remember that this was a petition that was brought to this House. In my own analysis and conclusion of your concerns, first, there is a complaint that the Committee on Implementation is not doing its work. Secondly, there is a complaint that the Constitution did not give enough space to the Senate on the management of important and serious complaints by Kenyans through petitions to this House. Thirdly, there is a complaint that our own Standing Orders need to be revised, to be a little bit stronger on the time given for deliberations on petitions and such important matters so laid on the Floor of this House.

Hon. Senators, having made that analysis I need to say nothing more. It is your duty as legislators to legislate.

Thank you.

Next Order!

**The Clerk-at-the-Table:** Notice of Motion.

**The Temporary Speaker** (Sen. (Dr.) Machage): There is none. Let us move on. There is one from Sen. (Prof.) Lesan.

**Sen. (Prof.) Lesan:** Thank you Mr. Temporary Speaker, Sir. Pursuant to Standing Order No. 18, I move a Motion on the election of a Senator to preside over---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order. We are on Notices of Motions. Have you given the notice?

**Sen. (Prof.) Lesan:** Mr. Temporary Speaker, Sir, I am giving the notice.

**The Temporary Speaker** (Sen. (Dr.) Machage): Just hold on. Maybe, this is not the right opportunity. Is there any other Notice of Motion?

Let us move to the next Order. Do we have requests for Statements? Sen. Mbura.

## STATEMENTS

### VIOLATION OF RIGHTS OF EPZ WORKERS IN MAZERAS, RABAI CONSTITUENCY

**Sen. Mbura:** Thank you Mr. Temporary Speaker, Sir, for this opportunity. I rise pursuant to Standing Order No. 45(2)(b) to seek a Statement from the Chairperson of the Standing Committee on Labour and Social Welfare regarding the violation of rights of the EPZ workers in Mazeras, Rabai Constituency.

In the Statement, the Chairperson should:

(1) State whether the Government is aware that the rights of workers at the EPZ in Mazeras, Rabai Constituency are violated contrary to Article 41(1)(2) of the Constitution.

(2) State the minimum wage for a Kenyan worker and the measures that the Government has put in place to enforce the minimum wage for all workers.

(3) Investigate and table a report on claims of:

(a) Poorly monthly pay of Kshs5,600 from which further deduction for social security and hospital insurance are made.

(b) Sexual harassment of female workers by their supervisors and bosses.

(c) Poor working conditions such as poorly ventilated buildings, long working hours of between 7a.m. to 10p.m. without pay for extra time and being forced to either sit or stand for long hours of up to 15 hours daily with very short breaks in between.

(d) Being subjected to summary dismissal without pay, contrary to the Employment Act.

(4) Explain why the workers have been denied their constitutional right to form or join trade unions.

(5) Explain the measures that the Government will take against the companies that have violated the rights of these workers.

(6) State the measures that the Government will take to remedy the situation.

**The Temporary Speaker** (Sen. (Dr.) Machage): Could we hear from the Chairperson of the Standing Committee on Labour and Social Welfare?

**Sen. Madzayo:** Thank you Mr. Temporary Speaker, Sir. I request for two weeks to be able to come up with substantive reply to this.

**The Temporary Speaker** (Sen. (Dr.) Machage): It is so ordered.

**Sen. (Prof.) Lesan:** On a point of order Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Machage): What is your point of order Sen. (Prof.) Lesan?

**PROCEDURAL MOTION**

ELECTION OF SENATOR TO PRESIDE OVER  
THE HOUSE PURSUANT TO ARTICLE 107(1)(C)  
OF THE CONSTITUTION AND STANDING ORDER NO.18

**Sen. (Prof) Lesan:** Thank you Mr. Temporary Speaker, Sir. I beg to move:  
THAT, pursuant to Standing Order No.18, the Senate elects a Senator to preside over the proceedings of the House for the rest of the sitting today, Wednesday 5<sup>th</sup> April, 2017.

NOTING that there is no Member of the Speaker's Panel in the House this afternoon and that the Temporary Speaker, who is on the Chair, is going to see a doctor - the Temporary Speaker has made that appeal - I move:

That this House elects a Speaker to preside over the proceedings of the House this afternoon.

THEREFORE, I rise Pursuant to Article 107(1)(c) of the Constitution and Standing Order No. 18, that the House elects Sen. (Prof.) Lonyangapuo to preside over the sitting of the Senate for the remainder of the sitting today.

I want to ask my colleague Sen. Billow to second.

**Sen. Billow:** Mr. Temporary Speaker, Sir, I second the Motion that Sen. (Prof.) Lonyangapuo is capable of managing the House as suggested. I second.

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

**The Temporary Speaker** (Sen. (Dr.) Machage): What is your point of order Sen. Khaniri?

**Sen. Khaniri:** Mr. Temporary Speaker, Sir, I have no doubt in my mind whatsoever, that the good Sen. (Prof.) Lonyangapuo can preside over the affairs of this House. However, electing somebody who presides over the affairs of the House is a bipartisan issue. If Sen. (Prof.) Lesan moved the Motion, courtesy demands that the Motion is seconded from this other side of the House. That shows concurrence. Subsequently, the other Members can support.

Is he in order to make it a Jubilee affair?

**The Temporary Speaker** (Sen. (Dr.) Machage): Whereas I see no Standing Order that gives that kind of practice but the practice and tradition of this House and previous Houses before demands that the courtesy is granted. With all the due respect, I will overrule Sen. Billow and appoint the Bench on my left to second.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, this is the problem with people giving themselves responsibilities that are not theirs. This is a matter that is bipartisan, as you have rightly ruled. It is not about Sen. (Prof.) Lesan stretching his head across the aisle to whisper to somebody to second a Motion.

We can have a Presiding Officer who can do things that---

**The Temporary Speaker** (Sen. (Dr.) Machage): Sen. Wetangula, if you may stop there. you have been in Parliament for 25 years.

**The Senate Minority Leader** (Sen. Wetangula): Yes.

**The Temporary Speaker** (Sen. (Dr.) Machage): Do not push that weight to Senators who have hardly finished five years. It is unfair.

**The Senate Minority Leader** (Sen. Wetangula): Thank you Mr. Temporary Speaker, Sir. I have absolute confidence and trust in the abilities of Sen. (Prof.) Lonyangapuo. He is level headed, lacks obvious bias and has the ability to preside over the proceedings of this House.

In fact, he is a stranger in the palace where he sits. I want to second that he can sit on the Chair and execute his responsibilities in addition to those of being the king of the Pokot people of this country.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well. I will strike off the last phrase from the records of this House.

*(Question proposed)*

**The Temporary Speaker** (Sen. (Dr.) Machage): Tradition demands that I give you that latitude of comment. However, since I see no interest of comments, I now put the question.

*(Question put and agreed to)*

*(Resumption of Statements)*

We were on Statements. The order had already been read. We are now on Statement (a).

Where is the Chairperson Sessional Committee on Implementation? Remember you were accused. Do you have the Statement?

**Sen. Kanainza**: Mr. Temporary Speaker, Sir, I do.

**The Temporary Speaker** (Sen. (Dr.) Machage): Unfortunately, the questioner is not here. Is there any delegation?

**Sen. (Prof.) Lonyangapuo**: On a point of order, Mr. Temporary Speaker, Sir. The questioner requested me to sit and prosecute it on his behalf.

**The Temporary Speaker** (Sen. (Dr.) Machage): Is there a copy of the communication to my office with those instructions? Anyway, we will give the benefit of doubt that Sen. (Prof.) Lonyangapuo who has been declared the quasi-king of Pokot actually got those instructions.

**Sen. Kanainza**: It is so ordered, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Machage): I do not know who you are ordering.

*(Laughter)*

Just read the Statement.

**Sen. Kanainza**: Mr. Temporary Speaker, Sir, I thought we were to wait for the owner of the Statement, Sen. Sang. However, I will go ahead and read it.

THE PLIGHT AND WELFARE OF FORMER COUNCILLORS  
UNDER THE DEFUNCT LOCAL AUTHORITIES

I will not read the whole of it because it has some introductions and the background information. I will go straight to the specific matter that was sought with regard to payment of one-off honorarium of Kshs1.5million to all former councillors having served a minimum of one term since Independence.

(1) This was based on the fact that they did not receive fixed emoluments and experienced disparities in their accessibility in terms and conditions of pension schemes over the years which will make it difficult to fairly and equitably determine each councillor's rightful benefits.

(2) A monthly pension of at least Ksh30, 000. This was based on the fact that they did not receive fixed emoluments.

Further, the standing Committee on Labour and Social Welfare is considering the County Pension Scheme Bill 2016 for the establishment of a legal framework for the county pension. We are all aware that there is a Bill that will handle that issue.

(3) State-sponsored health insurance cannot be provided for former councillors as public service schemes do not typically, include universal cover which requires separate contribution at different rates.

(4) With regard to access to premises and facilities of county assemblies, including canteens and the Speaker's Gallery: The former councillors requested to access premises and facilities of the county assemblies, including canteens and Speakers Gallery which will be taken up with respective county governments pursuant to the Second Schedule of the County Governments Act 2012.

(5) Exemption from paying parking fees and other rates within the areas they served.

The former councillors' request for exemptions from paying parking fees including other rates and fees within the areas they served was directed to the county governments pursuant to the Fourth Schedule of the Constitution of Kenya 2010 and Section 120 of the County Governments Act 2012.

The implementation status of these issues at the National Treasury vide a letter dated 26<sup>th</sup> March 2016, declined the recommendation of the Committee. (See the attachment).

We, as a Committee, have requested the Cabinet Secretary (CS) for Devolution and Planning to have a meeting with us on Monday 10<sup>th</sup> April 2017 at 10.00 a.m. to discuss the way forward.

Thank you, Mr. Temporary Speaker, Sir.

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, I thank the Vice Chairperson and the Committee Chairperson for giving the response to this statement, however brief it is.

Sen. Sang, just as many of us here, listened to the plight of the former councillors and their requests. This House, in its wisdom, unanimously supported it and the petition which I tabled here then. The Committee has interrogated it and they have told us what happened. However, we wanted to hear more about the County Pension Scheme Bill; the stage in which it is and whether the former councillors have been considered in it. We want to hear this pronounced clearly so that the governors, the Members of County

Assemblies (MCAs) and the employees of the counties know that this Bill will benefit them. That is my query which has to be answered now.

Secondly, last week, the National Treasury tabled the Budget Statement before the National Assembly. Did it provide some money to cater for the welfare of the former councillors?

Who does not know that these are people who made Kenya the way it is? Without them, our country could not be stable the way it is. What a pity that there is no clear road map on how they will be compensated during this financial year. Can she tell us whether this was captured in the Budget and the state of the County Pension Scheme Bill?

**Sen. M Kajwang:** Mr. Temporary Speaker, Sir, the statement read by the Vice Chairperson of the Committee says a lot, but what is important has not been mentioned.

We are told that the National Treasury wrote a report or a letter to the Committee and declined to implement the Committee's recommendations. I thought that the essence of the request of a statement by Sen. Sang was what the National Government has done in terms of implementation of the recommendations of the Committee of Labour and Social Welfare.

Could you direct that we get the specific reasons the National Treasury feels that the recommendations made by Senate could not be implemented?

As I speak now, I know many former councillors, for example, one man called Aketch who superintended over a region almost the size of Migori and Homa Bay counties sitting at home today with a tube in his body attached to a polythene bag because he cannot afford quality healthcare, yet he served the nation for more than 29 years.

We know of former councillors who served for 30 years yet in all those years what they accumulated and the levels of comfort they have, is nothing compared to MCAs who have been in office for barely four years. There are lot of expectations by the former councillors from this House. Therefore, it is important that this House pronounces itself on this matter, whether we will sort them out or not.

I beg the Chairperson to give us the specific reasons the National Treasury declined to implement the recommendations of a Committee of this House.

**Sen. Adan:** Thank you, Mr. Temporary Speaker, Sir. I thank the Chair of the Committee on Labour and Social Services who issued the Statement. We are taking the former councillors for granted because this matter was discussed here at length and this House has made a decision. However, it looks like we do not care about our heroes because these former councilors are our heroes. I hope the meeting which has been scheduled for Monday with the CS, National Treasury is going to take place. I am requesting if the representatives of these councilors can attend that meeting on Monday.

Secondly, I remember the last time we discussed this matter, Sen.M. Kajwang said that some of the counties have set money aside for this particular purpose. What is going to happen to that budget? What will happen to the counties that have not set aside money for this purpose?

**The Temporary Speaker** (Sen. (Dr.) Machage: Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo (Jnr.):** Mr. Temporary Speaker, Sir, this matter has raised serious concern particularly on leaders who have served in various capacities. We are aware that several leaders are being paid their pension but my query is, just like the

previous query we have been raising, that it appears the decisions arising out of debates from the Senate do not find their way or are not implemented or there is no follow-up.

While we seek for further clarification, it would be in the best interest of this House at some point, whether now or later, to find a method to amend our Standing Orders to ensure that the Motions we pass and decisions we make on behalf of Kenyans can be implemented. It does not feel nice to be ignored while we make decisions here and while we use our privileged positions to deliberate on issues that concern this country.

Thank you.

**Sen. Karaba:** Mr. Temporary Speaker, Sir, it is very frustrating to imagine that as a Senate once we pass Bills here, deliberate and come up with recommendations, that an institution can block what we discussed here. We need to be assured that this House will not be taken for granted. We should be seen like we are a serious House; serious to the letter so that when we say that this should be done by a certain department it should be done, otherwise what are we doing here?

It is like we are wasting time and public money because this issue should have been sorted out. Councillors are suffering and this may be a reflection of what might happen even to us when we leave this House. The moment we leave this House, since we are about to, some of us will continue to suffer and we have not come up with what is likely to benefit these people.

If this can happen to the councillors, worse is ahead for us. Why do we not solve this issue so that at least we can say we have done something for our former councillors who did a lot for this country, both at independence and post-independence. Also, we need to think about the plight of former Members of Parliament (MPs) even if it is not included. Some of them who served a long time ago are languishing in poverty and nobody seems to care about them. There should be a way of looking at their plight the same way we have welfare programmes in Europe and United States of America (USA). A senior citizen is accorded some respect and it is spelt out---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Karaba.

**Sen. Karaba:** Mr. Temporary Speaker, Sir, I sympathise with this House for having not done anything.

**The Temporary Speaker** (Sen. (Dr.) Machage): The seriousness with which this House does business and the Constitutional mandate so provided for this Senate is not in doubt, not at all. You can even order and reprimand whoever you want in this country, maybe except the President, to come and give information on whatever subject you want. May I refer you to your own Constitution; Article 125 (4) and (5). I do not have to read it.

You are just powerful. You are as powerful as a court. So, do not doubt your powers. You have powers of the High Court on trying to transact some of these issues. I will get only one because they are two. However, what I have realised is that there are few requests for you to answer, Madam Chair. What I am receiving are complaints. You may react to the complaints if you so wish or stick to the facts that the Cabinet Secretary for National Treasury will be in the House on Monday at 10 O'clock and Members should avail themselves to ask all those important questions. However, let me hear more from Sen. Lesuuda.



**Sen. Lesuuda:** Thank you, Mr. Temporary Speaker, Sir, I want to join in the complaints. As you have said it is more about complaining. Given the long time that this answer has taken and then it comes in the negative; that is actually wanting. We discussed this issue at length a long time ago. We are being pressurized by the people whom we represent; the former councilors. They have been asking us as Senators who take care of them in the counties what we are doing to address this matter.

From your directive that the meeting be on Monday, I am requesting whether we could do it on Tuesday. We know most of our colleagues have other commitments over the weekend and probably they will be back on Tuesday. If we are going on recess, I am not so sure whether everybody will get the information. This is something that we would all like to interrogate and be assured that our former councilors will be taken care of.

**Sen. Adan:** On a point of order, Mr. Temporary Speaker, Sir. There is a small request that has been made; if the officials of the former councillors could attend the meeting. I hope the Chair will respond to that.

**The Temporary Speaker** (Sen. (Dr.) Machage): Would it be in order that the Chair responds to the request that a representative of the councillors is present also?

**Sen. Kanainza:** Thank you, Mr. Temporary Speaker, Sir. I agree with the complaints that have been raised by my colleagues. In today's Order Paper, just so that the Members are aware of it, is that the County Pension Scheme Bill (Senate Bill No.20) is on our Order Paper. Therefore, this House can handle the issues of the former councillors and not only for the Members of County Assembly (MCAs).

To respond on the specific issues that have been raised, it is true the Labour and Social Services Committee brought forth the recommendations which were directed to us as a Committee for implementation. We did as it was supposed to be done and the direct response we got from the National Treasury was negative; that they had no budget for the former councillors. I am aware Sen. (Prof.) Lonyangapuo was advised to take the political route to solve these issues. As much as we are here, a lot of political goodwill is required from the leadership since he sits on the Government's side. I believe he can be able to seek that political goodwill which is not there at the moment.

We have written a letter to the National Treasury and to the Cabinet Secretary in charge and we have invited him for a meeting on Monday. We have also extended our invitation to the representative of the former councillors. I also want to extend the invitation to my colleagues, Senators, to come to the meeting. If there are any concerns you would wish to be addressed, I believe the Cabinet Secretary will be available to respond to the issues.

**The Temporary Speaker** (Sen. (Dr.) Machage): What is it, Sen. (Prof.) Lonyangapuo?

**Sen. (Prof.) Lonyangapuo:** On a point of order, Mr. Temporary Speaker, Sir. Did I hear the Member of the Committee on Labour and Social Welfare indicating that I should follow the political route? Could he elaborate what she meant by "political route"?

**The Temporary Speaker** (Sen. (Dr.) Machage): Sen. (Prof.) Lonyangapuo; that was not a direct quotation. I think she was referring to a response that was given and a request or an order to you. It was an indirect quotation. So, I do not think you are in order to seek substantiation from the Member of the Committee on an indirect quotation, unless you otherwise express yourself.

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, Kenyans, particularly those affected - the councilors - could easily think that the solution to this problem lies and has been suppressed by Sen. (Prof.) Lonyangapuo. Why? The Chairperson has said I was advised to do it and I have not come back to give a response. That is why I wanted that clarified. What does it mean?

**The Temporary Speaker** (Sen. (Dr.) Machage): Sen. (Prof.) Lonyangapuo, I share your concern and frustrations on hearing those words. As the Speaker, I do not think that was the implication. It was an added advantage to you that you are concerned. So, it was a compliment that you are even more concerned than other Members of this House. She went further to quote a Bill that is on the Floor of this House that will not only address pension schemes for the previous councillors but also previous Members of Parliament (MPs). Unless the Chairperson has anything to add, I will close the chapter there.

**Sen. Kanainza:** Mr. Temporary Speaker, Sir, as much as we are meeting the Cabinet Secretary, it should also be clear to the Members that the National Treasury advised that this matter should be referred to the Salaries and Remuneration Commission (SRC) for further guidance.

**The Temporary Speaker** (Sen. (Dr.) Machage): You should have commented on Sen. Lesuuda's request on the change of day. As the Speaker, it is not possible. We are mandated to give at least, seven days' notice to anybody we invite for particular sessions with the Members. So, it will be totally impossible to make that kind of communication and expect to be actualized on Tuesday. So, Monday sticks.

**Sen. Lesuuda:** Mr. Temporary Speaker, Sir, I am concerned about the rider that the Chairperson has just given, that we should be aware and channel some of the concerns to the SRC. Is it in order for the Cabinet Secretary to preempt the meeting about what we will discuss? It is important that the Chairperson communicates to the Cabinet Secretary to come here with an open mind and listen to the concerns of the Senators.

**The Temporary Speaker** (Sen. (Dr.) Machage): I saw every Senator scratching the head silently, in their minds over that. It is as if an answer had already been given. I believe that was not the intention of the Chairperson. Chairperson, what do you have to say?

**Sen. Kanainza:** Mr. Temporary Speaker, Sir, these are not my words. This is the response we got from the Principal Secretary in charge of the National Treasury. For these reasons, because we are not in agreement with what he gave us, we have decided to call the Cabinet Secretary so that we can deliberate on this matter once and for all, for us to give a response to this House.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well. Proceed, Chairperson of the Standing Committee on Labour and Social Welfare. Are you ready to issue this statement?

I am aware I had ordered that this statement be brought tomorrow in yesterday's ruling. However, there are chances that you could be ready. I saw Sen. (Dr.) Khalwale around. If you are ready, it would be to the advantage of the House if you can execute it. If you are not ready, you are permitted to state your position.

**Sen. Madzayo:** Mr. Temporary Speaker, Sir, with your kind indulgence I suggest that ---

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

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

I congratulate you on your assumption of the interim speakership of this House. Congratulations, Sen. (Prof.) Lonyangapuo, the distinguished Senator for West Pokot. I request an adjournment of this matter to tomorrow so that I would be in a position to respond to all these questions. My colleague, Sen. (Dr.) Khalwale was here. We have discussed. There are other pertinent issues he wanted me to cover, which I will do so. I will be in a better position to substantively answer these questions tomorrow.

**The Temporary Speaker** (Sen. (Prof.) Lonyangapuo): It is in order. You will do it tomorrow afternoon.

**Sen. Madzayo:** Mr. Temporary Speaker, Sir, I stand guided.

**The Temporary Speaker** (Sen. (Prof.) Lonyangapuo): Let us move to statement (c).

COUNTY LEGISLATION ON RETIREMENT PACKAGE  
FOR CECs AND MCAS

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

**The Temporary Speaker** (Sen. (Prof.) Lonyangapuo): I am advised that statement (c) will be handled and dealt with in the Bill which you have prepared as a Committee.

*(Statement deferred)*

So, let us move to statement (d).

LOUD MUSIC IN LIONS EYE HOSPITAL AND CONSTRUCTION  
OF TEMPLE AND AUDITORIUM IN LORESHO

**The Temporary Speaker** (Sen. (Prof.) Lonyangapuo): Where is the Chairperson of the Standing Committee on Land and Natural Resources? Again, the Chairman, Sen. Kivuti, consulted me when I was a Member on the Floor that they would do it tomorrow.

*(Statement deferred)*

Let us move to statement (e). Where is the Chairperson of the Standing Committee on National Security and Foreign Relations?

KILLING OF LIVESTOCK IN LAIKIPIA COUNTY  
BY SECURITY PERSONNEL

**Sen. Adan:** Mr. Temporary Speaker, Sir, this Statement is not ready. I was in the Office of the President this morning and they have started working on it. Hopefully, you will have it tomorrow, as I requested yesterday.

**The Temporary Speaker** (Sen. (Prof.) Lonyangapuo): Sen. Dullo, you were told yesterday by the Speaker that this Statement on the killing of livestock in Laikipia County by the security personnel is urgent. The statement was requested by Sen. Lesuuda who is here.

**Sen. Lesuuda:** Mr. Temporary Speaker, Sir, my only concern, which I raised when I was requesting for this Statement, is that we should get it by tomorrow since we will be going on recess. I am convinced that the Office of the President is not aware that we will be going on recess tomorrow. We need to have an assurance that the Statement will be ready.

**Sen. Adan:** Mr. Temporary Speaker, Sir, the ruling was given by the Speaker, but I remember promising that I will try to get the Statement. I went there personally and told them that the Statement is required on Thursday and the House will be going on recess. That is the position we agreed on with them. I hope that we will have the Statement by tomorrow.

**The Temporary Speaker** (Sen. (Prof.) Lonyangapuo): Because of the urgency of the matter, I will give you further leeway this afternoon, if you so wish, to go and camp in the Office of the President until the Statement is produced. As you know, the House will possibly go on recess.

I order that the Statement be issued tomorrow afternoon.

*(Statement deferred)*

THE KMTC CAMPUSES IN THE COUNTRY

**Sen. (Prof.) Lesan:** Mr. Temporary Speaker, Sir, I have the Statement which was requested, but I understand that the Senator who requested for it does not have a copy. I seek your guidance as to whether I should read the Statement as we prepare a copy for the Senator or we defer the Statement until the Senator gets a copy.

**The Temporary Speaker** (Sen. (Prof.) Lonyangapuo): Since both of you are here, and we have deferred some Statements, you can present the Statement this afternoon.

Sen. Karaba.

**Sen. Karaba:** Mr. Temporary Speaker, Sir, I have now received a copy. He can proceed to issue the Statement.

In the meantime, I wish to congratulate you for being in the Chair.

**The Temporary Speaker** (Sen. (Prof.) Lonyangapuo): Thank you.

Proceed, Chairperson.

**Sen. (Prof.) Lesan:** Mr. Temporary Speaker, Sir, I congratulate you for sitting on that lofty Chair.

I wish to give a Statement on the Kenya Medical Training Colleges in the country. The information sought was:

- (1) List of the KMTC campuses in the country and the respective counties where they are located.
- (2) Explanation as to why there is no KMTC campus in Kirinyaga County and an indication as to when the Government intends to establish one.

I wish to respond as follows:

(1) The Kenya Medical Training College (KMTC) is a national institution in the Ministry of Health, enacted under CAP 261 of 1990 of the Laws of Kenya. The college has 65 campuses spread across 42 of the 47 counties in Kenya. The counties without a campus are Marsabit, Narok, Mandera, Kirinyaga and Samburu. A list of KMTC campuses in the country is attached and the respective counties where they are located.

(2) Among the counties without a KMTC campus is Kirinyaga County. According to the KMTC Strategic Plan 2012/2017, the college intends to establish campuses in all the counties. This is intended to be achieved before the end of the strategic plan period. To achieve the goal, the board of management has scheduled to visit the County Government of Kirinyaga on 11<sup>th</sup> and 12<sup>th</sup> April, 2017, to hold a discussion with the Governor's office on the modalities of achieving the same and subsequently organize to visit all other counties without a KMTC campus.

Looking through the list of counties and the names of the campuses, there are some counties that have up to three KMTC campuses. As has been pointed out, Kirinyaga County does not have one.

Thank you, Mr. Temporary Speaker, Sir.

**Sen. Karaba:** Mr. Temporary Speaker, Sir, while I thank the Chairperson for the Statement, it is imperative that there was bias from the beginning. Even the meeting on 11<sup>th</sup> and 12<sup>th</sup> April, 2017 is doubtful. We have a total of 65 KMTC campuses, which surpasses even the number of counties. That means that some counties have more than one campus, when others do not have even one. What criteria was used to omit Kirinyaga County from the list of campuses? Kirinyaga County has a high population and we pay more money in form of taxes than some counties that have KMTC campuses. We need to be told the truth. Will we have a campus in Kirinyaga County after the meeting on 11<sup>th</sup> and 12<sup>th</sup> April?

**Sen. (Prof.) Lesan:** Mr. Temporary Speaker, Sir, the number of KMTC campuses that have been established stands at 65. As we are aware, through public participation, there has been a push by citizens in some of the counties to have some of these institutions. This has driven counties to be in communication with the national Government to establish these institutions. I am sure that this is a priority in Kirinyaga County and it will be established as per the KMTC Strategic Plan. I would request the Senator to participate in the process, particularly when the Committee will be visiting the county, so that he can add some impetus on the drive towards establishing KMTC campuses not only in Kirinyaga, but in the other four counties that do not have.

**The Temporary Speaker** (Sen. (Prof.) Lonyangapuo): Sen. Karaba, we wish you well as you wait. You also need to note that it is about the pro-activeness of the county leadership, especially your governor. Tell him that there is collaboration between counties and the directorate of Kenya Medical Training College (KMTC).

**Sen. Karaba.** Mr. Temporary Speaker, Sir, is it the business of the governor or the Senator to indicate the need of KMTC or there is a policy to be considered before a campus is established? Based on the geography that I know, I doubt if there are campuses in some of those areas in those counties he has mentioned. They are not necessarily where the county headquarters are. I would like to know what went wrong if we have 65 campuses in 47 counties and there is none in Kerugoya or Kutus. Kerugoya is the headquarters of Kirinyaga County where we have our county hospital. Something was done to deny us the campus. I think it was corruption.

**The Temporary Speaker** (Sen. (Prof.) Lonyangapuo): Order. You have been advised. The leadership of Kirinyaga County should go and sit down with the KMTC board. That is what some of us did in our counties. You are lucky that you have been given a date next week. Let us wait and see what will happen. You can brief us after that.

Let us move on to the Statement (g). Could we hear from the Chairperson or a Member of the Committee on Roads and Transport?

The Chairperson is there. Are you ready?

#### CHANGE OF LAPSSET CORRIDOR ROUTE AND RELOCATION OF THE PROPOSED ISIOLO RESORT CITY

**Sen. Chiaba:** Mr. "Acting" Speaker, Sir, it is not ready. We will inform the House tomorrow.

**The Temporary Speaker** (Sen. (Prof.) Lonyangapuo): What did you say?

**Sen. Chiaba:** I said, Mr. "Acting" Speaker, Sir.

**The Temporary Speaker** (Sen. (Prof.) Lonyangapuo): You are one of the oldest Members in the House.

**Sen. Chiaba:** Yes, that is what I am saying.

**The Temporary Speaker** (Sen. (Prof.) Lonyangapuo): Is it Acting or Temporary Speaker?

**Sen. Chiaba:** It is Temporary Speaker, which is good for you.

**The Temporary Speaker** (Sen. (Prof.) Lonyangapuo): Proceed.

**Sen. Chiaba:** Thank you. I said that we will bring a comprehensive Statement tomorrow.

**The Temporary Speaker** (Sen. (Prof.) Lonyangapuo): Where is, Sen. Dullo? Has she walked out?

I rule that you bring it tomorrow afternoon.

Let us proceed to Statement (h). Where is the Chairperson of the Committee on Labour and Social Welfare? I direct that we defer this statement until tomorrow afternoon when I will have an opportunity to interrogate it. We cannot transact it when I am seated here because I am the one who asked for it.

#### THE PLIGHT OF SUPERMARKET WORKERS IN KENYA

**Sen. Madzayo:** Thank you, Mr. Temporary Speaker, Sir. I may not be in a position to answer this question tomorrow in view of the fact that we wrote to the Ministry of Labour and they have not replied up to date.

It is in that regard that I am making the application, with your approval, that this matter be brought forth after two weeks. That is when I will be able to substantively answer the question.

**The Temporary Speaker** (Sen. (Prof.) Lonyangapuo): Order, Mr. Chairperson!

Unfortunately for you, I am the one who sought this Statement and I am seated on the Chair. This is a serious matter for it concerns the plight of supermarket workers in the whole Republic. You have several hours between now and tomorrow 2.30 p.m. to prepare and bring the Statement to the House.

**Sen. Madzayo:** Mr. Temporary Speaker, Sir, I am not in any way challenging your ruling that the matter be brought forth tomorrow afternoon. However, I am speaking from a point of knowledge. I know that the questioner of this Statement incidentally happens to be the Temporary Speaker of the moment thus a lot of interest. However, I would ask for the indulgence of the House. This is because I will give the same reply that I am giving today. Instead of wasting time of the House---

**The Temporary Speaker** (Sen. (Prof.) Lonyangapuo): Order, Chairperson! You cannot preempt what you are going to respond tomorrow. The Speaker has ruled. Do not anticipate debate. It is so ordered that you respond to it tomorrow afternoon.

*(Statement deferred)*

Orders No. 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 either require Division or Committee of the Whole. We will bring them when we have the requisite numbers.

### COMMITTEE OF THE WHOLE

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

THE NATIONAL CEREALS AND PRODUCE BOARD  
(AMENDMENT) BILL (SENATE BILL NO. 15 OF 2015)

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

THE PRESERVATION OF HUMAN DIGNITY AND  
ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL  
(SENATE BILL NO. 8 OF 2015)

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

THE BASIC EDUCATION (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILL NO. 35 OF 2014)

THE PARLIAMENTARY POWERS AND PRIVILEGES BILL  
(NATIONAL ASSEMBLY BILL NO. 35 OF 2014)

THE ASSUMPTION OF OFFICE OF GOVERNOR BILL  
(SENATE BILL NO.10 OF 2016)

THE MEDICAL PRACTITIONERS AND DENTISTS  
(AMENDMENT) BILL (SENATE BILL NO.2 OF 2016)

THE COUNTY GOVERNMENTS (AMENDMENT) (NO.2)  
BILL (SENATE BILL NO.7 OF 2016)

THE TREATY MAKING AND RATIFICATION (AMENDMENT)  
BILL (SENATE BILL NO. 5 OF 2016)

*(Committee of the Whole deferred)*

**The Temporary Speaker** (Sen. (Prof.) Lonyangapuo): The next is Order No. 19. Sen. (Prof.) Anyang'-Nyong'o is not in today and he was to give a reply. I am his Vice-Chairperson and I am currently on the Chair. I could have done so, but because we all cannot do so, I defer Order No.19.

## MOTION

ADOPTION OF REPORT OF CPAIC ON FINANCIAL  
OPERATIONS OF VARIOUS COUNTIES FOR FY 2013/2014

THAT, the Senate adopts the Report of the Sessional Committee on County Public Accounts and Investments on the inquiry into the financial operations of Kiambu, Busia, Tana River, Trans Nzoia, Nyandarua, Migori, Kwale, Kisumu, Samburu and Kericho County Executives for the Financial year 2013/2014 (1st July, 2013 to 30th June, 2014) laid on the Table of the Senate on Thursday, 23rd February, 2017.

*(Sen. (Prof.) Anyang'-Nyong'o on 29.3.2017)*

*(Resumption of debate interrupted on 4.4. 2017)*

*(Motion deferred)*

## BILLS

*Second Readings*

THE COUNTY PENSION SCHEME BILL  
(SENATE BILL NO.20 OF 2016)



**The Temporary Speaker** (Sen. (Prof.) Lonyangapuo): Is the Chairperson of the Standing Committee on Labour and Social Welfare ready to move this Bill?

**Sen. Madzayo:** Mr. Temporary Speaker, Sir, I am not ready to move the Bill right now. In view of the fact that we are on the final phase of compiling the Public Participation Report, I will move it tomorrow.

**The Temporary Speaker** (Sen. (Prof.) Lonyangapuo): That is approved. You had earlier contacted the Temporary Speaker. I order that you handle it tomorrow afternoon.

*(Bill deferred)*

**The Temporary Speaker** (Sen. (Prof.) Lonyangapuo): Proceed, Sen. Mutula Kilonzo Jnr.

*Second Reading*

THE COUNTY BOUNDARIES BILL  
(SENATE BILL NO. 16 OF 2016)

**Sen. Mutula Kilonzo jnr.:** Mr. Temporary Speaker, Sir, I rise to move the County Boundaries Bill (Senate Bill No. 16 of 2016).

I will begin with the problem as it addresses the reason we require this Bill. The Constitution under Article 6 divides the territory of Kenya in to counties specified in the First Schedule which are 47 counties.

It is now apparent from our research that we do not have any single legislation that defines the boundaries of counties. Article 188 of the Constitution---

**The Temporary Speaker** (Sen. (Prof.) Lonyangapuo): Order, Sen. Mutula Kilonzo Jnr.! Please, move the Bill properly.

**Sen. Mutula Kilonzo Jnr.** Mr. Temporary Speaker, Sir, I beg to move :-

THAT, the County Boundaries Bill (Senate Bill No. 16 of 2016) be now read a Second Time.

**The Temporary Speaker** Sen. (Prof.) Lonyangapuo): Very well. Proceed.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Temporary, Speaker, Sir. It has been a while since I moved a Bill.

Under the Constitution, Article 6(1) divides this country into 47 counties. After the promulgation of the Constitution we do not have any piece of legislation that defines what those counties and their boundaries are. In the event that a person or persons seeks to amend or alter a boundary; they shall follow the procedure stated under Article 188. I successfully moved a Motion for the Committee of Legal Affairs to draft legislation that would anchor the 47 counties into law. This is because for any person to then get the right to alter the boundaries as proposed under Article 188, there must be a process of how those boundaries will be altered.

Where then do you find legislation? In my research, I bothered to check the history as to how we arrived at 47 counties. From my research, the 47 counties were put together from what is now called The District and Provinces Act of 1992. That was the compromise. That is what I was told by the people who negotiated for our current

Constitution. Therefore, the existing legislation as it is today, talks about districts and provinces. It does not refer to counties. We have no process. It is a pity that our counties are not anchored into law. They exist only in a name. This piece of legislation will provide us with that process of anchoring them into the law.

The 1992 Act commonly referred to as The District and Provinces Act has 47 schedules which are now the 47 counties. Any person who wants to know where the boundaries are, will have to refer to the Schedules in that Act.

The purpose of this legislation that I have proposed through the Legal Affairs Committee is to, first of all, anchor those boundaries as stated in that law into this legislation.

First, if there are any issues on those boundaries, then the process will then be found in this very elaborate legislation. This matter has raised concern in 19 counties, so far, and we are still counting. We have similar concern between Meru-Isiolo, Makueni-Machakos, Makueni-Taita counties, among others counties.

There are two petitions, one by Sen. Karaba on boundaries in Kirinyaga, another one from Emali between Makueni and Kajiado. There is a common notion in Emali in Makueni County that the boundary is the railway line. At the time I was drafting this Bill, many people in those two counties knew their boundary was the railway line. However, with the coming of the Standard Gauge Railway (SGR), I asked them whether their boundaries had shifted because the SGR line moved further to the left.

Mr. Temporary Speaker, Sir, we are living in dangerous times dangerously. This is because while we continue discussing this issue in these fora, Sen. Murungi moved a Motion which sought to request the Office of the President to appoint a taskforce to determine the dispute between Meru and Isiolo. What was the result? First of all, we advised him not to do so, because it was unconstitutional. However, power is power. They used power. When they went to the ground, it resulted in deaths of people. Why? Because when I challenged that Motion, the initial intention, they said then, was that there was no dispute between Meru and Isiolo and that all they were going to do was to place beacons. That is already a dispute. The minute you place the beacons, that is where the dispute begins.

This legislation provides a very nice method of doing these things where we will involve both Houses. I am hoping that it can find itself into law so that by the time we come into the next Senate, we can have county boundaries clearly defined.

Part two of the Bill is on County Boundaries. Clause 3 states Article 6(1) of the Constitution provides for 47 counties and their boundaries are set out in the First Schedule to this Act. It is fairly straight forward.

Clause 4 says as follows:

“The Cabinet Secretary shall keep and shall upon request by any person make available an up to date electronic record of the boundaries of counties.”

Mr. Temporary Speaker, Sir, in portions of some counties, if you read you will find that the beacons are the Global Positioning System (GPS) coding. For example, Kisumu County on page 353, of this Bill, you see beacons in GPS coding.

We anticipate that in an attempt to be a digital nation, our boundaries will be electronically retrievable as opposed to what we do in Makueni when we want to determine boundary disputes where we buy sisal, tell a person to stand on the other side, another on the opposite side and then draw a straight line on the ground.

We want to walk away from those archaic methods of doing boundaries by planting sisal or doing walls. We want boundaries to be imaginary lines on the ground. As the Senator for West Pokot County, you ought to be able to retrieve its map by GPS coding while seated where you are is. In Konza City, for example, you can now retrieve a parcel of land while seated right here on your phone by just getting the GPS coding.

The anticipation is that at some point this country is going to digitize mapping and the boundaries so that we do not use a river as a boundary because it can change its course. Roads and railway lines can change. Let us avoid using them to determine our county boundaries.

I spoke about the railway line between Makueni and Kajiado. There is now the SGR so you wonder whether the boundary has changed. Others have used streams which have changed course. Others have used posts which have been removed. Others have used many other methods and those things have changed.

I hope that this nation can get to that level where even your own title or your own *shamba* can have a digital map where you can draw it digitally from whatever location without necessarily having to do it physically. If you attempt to move it physically, then it is easy to determine that you have encroached and trespassed on somebody's land.

Mr. Temporary Speaker, Sir, on Clause (5), we have proposed that disputes on county boundaries will, first of all, anchor the county boundaries in law. Then we anticipated West Pokot will have a dispute. So, we proposed mediation first. The mediation is captured in Clause (5) of this Bill. We anticipate that the first thing the Senate will do if a dispute arises like the ones that came to the Senate, and I hope that the second Senate of this Republic can determine some of the boundaries disputes we have. We propose that there would be mediation in Part 3, beginning with Clause (7).

At the end of Clause (6) is the parameter of how boundaries would be altered and are there. The Constitution talks about population density and demographic trends; physical and human infrastructure; and historical and cultural ties. I am told there are certain wards where you find one community in some places in Trans-Nzoia. So, this would take care of that.

Let me turn to the cost of Administration: Do we have counties that are so big that you need to alter them? Do we have wards that are much better off in one county and not another one? The cost of administration will take care of that.

Views of the Community: We have marginalized communities who live in wards and they might have their views about where they think their boundaries should be. It is taken care of in the Constitution and in this Bill.

Objects of Devolution: Since the idea of devolution is to get services, is there a need for Lamu County where you have so many islands? Will the objects of devolution be covered by adding or reducing?

Geographical features: You have counties separated by hills and rivers. Would it be necessary to change or alter the boundaries?

Mr. Temporary Speaker, Sir, the Constitution has left those parameters and we have adopted them with all force.

#### Part 3 – Resolution

Mr. Temporary Speaker, Sir, I have stated that under Clause 7, we have proposed a resolution of county boundaries through a Mediation Committee upon a request either by a governor or recommendations of a committee of the Senate. The process of how it

will be considered is in Clause (8). Who will sit in the Mediation Committee is in Clause (9). The Chairperson would be a person who is an advocate of the High Court of Kenya with at least five years experience. The members are there.

We have proposed something very unusual that in these mediation committees, we need two persons; one man and one woman who are experts in conflict management. Clause (10), (11) and (12) is on their removal. Their salaries are taken care of and I do not need to highlight that.

Clause (13) is the role of the Mediation Committee to facilitate negotiation, inquire into the disputes, obtain the necessary information, offer mediation options and new perspectives, record the agreement and ensure that mediation does not violate the Constitution. It is a very clear process.

Mr. Temporary Speaker, Sir, Clause (14) is the role of the Mediation Committee and how they work. Also, we have given the Mediation Committee powers similar to that of the High Court; calling of witnesses and records. Again, this is fairly straight forward; it is what is contained in many Bills.

Clause (16) is the extension of the period. In Clause (15) we have proposed that the Mediation Committee shall give a report within 90 days. Clause (16); the President with the approval of the Senate may extend the period for not more than 30 days. That period can only be extended once. We do not want a dispute on boundaries to exist for eternity and hence the limitations of time but where it is necessary, an extension can be given.

#### Part 4 – Alteration of County Boundaries

Mr. Temporary Speaker, Sir, how do you go about it? Clause (18) gives a process, a petition by a registered voter and a County Executive member. How do you comply with the petition? There is a schedule which has a form and which sets out the conditions that must be met.

Since this is a matter concerning counties, we have proposed under Clause (19) that that petition shall be submitted to the Senate. Under Clause (19), once the Speaker receives the request in the normal manner, the Speaker shall report and refer that petition to a Special Committee under the Standing Orders. The Special Committee under Clause (20) shall conduct its proceedings taking into account the parameters set out in Article 188, consider the dispute and report under Clause (21) whether it finds that there is a dispute worth the recommendation of alteration.

Once it finds that the petition has no merit, no further proceedings shall be considered. However, under Clause (22), if the committee finds that there is a matter worth resolving or there is a dispute on a boundary, it shall recommend for the establishment of a commission. That establishment of the commission shall be by resolution of the Senate and referred to the National Assembly for concurrence.

Mr. Temporary Speaker, Sir, again, in line with Article 188 both Houses have a role. Therefore, the petition emanates from the Senate and goes to the National Assembly for concurrence. The National Assembly has 21 days to concur, agree or not agree. However, where it fails to approve the resolution of the Senate within seven days or within the specified time, the resolution of the Senate shall carry the day. That is under Clause 23(4).

#### Part 5 – The Boundaries Commission

Mr. Temporary Speaker, Sir, I borrowed this particular chapter from a 1952 Boundaries Commission. I got materials that showed that the provinces as demarcated prior to the establishment of this Constitution. The boundaries at independence, the 41 regions as they were then and how they came about, was the work of a Commission, hence the establishment of Part 5 of that Commission. For those who are interested in the information, at independence, we had 41 regions. Six regions were cut out of the 41 to make the 47 counties. Therefore, there are some counties that have remained as they were since Independence. As I said, there were 41 regions and six were added to make 47 counties. For example, a county like Makueni was hived off from Machakos County. So, the history and the records are available, and I have given that.

It outlines the functions of this Commission, how it will sit and who will nominate. Under Clause 24, when Parliament agrees, both the National Assembly and the Senate, to the resolution of that special committee set up by the Speaker, we shall forward the recommendations to the President who will shall within 14 days form a Commission to alter the boundaries as proposed in that petition.

Mr. Temporary Speaker, Sir, the membership is under Clause 25. The members will be the Independent Electoral and Boundaries Commission (IEBC), the National Land Commission (NLC), the Council of Governors (COG), a person from the Survey Act because we want experts, Land Surveyors Board and the Secretariat. The clause is pretty straight forward. We have not reinvented the wheel on this one.

Under Clause 27, the Commission will then sit and listen to the persons. It shall have the same powers as the High Court under Article 125. It shall listen to the public and conduct its proceedings. The most important part is their return. Their tenure is under Clause 31 - Rules of Natural Justice in Clause 30 and Clause 35 on the Secretariat.

Mr. Temporary Speaker, Sir, their work is under Part 6 - The Commission. That is where the rubber meets the road. The Commission established under this Act shall conduct its work as stated in Clause 39. They shall conduct proceedings, invite residents or the public to give their views. In Clause 40, they shall consider in a preliminary report to be issued upon the expiry of the period the proposed alteration, specific geographical or demographical details, the assessment of the impact of the proposed alterations and any other information.

How will the report get to the public? The work of the Commission will not be final. Under Article 10, we have provided for what is public participation in this report. The Commission upon considering those factors in Article 188 will publish their recommendations in the newspaper and in the county gazette. They will publicize that report in their website, radio stations and any other public platform upon the expiry of the period provided for in Section 40, 14 days. The preliminary report taking account of the views of the public shall be submitted to the Speaker of the Senate with two recommendations; one, recommending the alteration or two, making any other further recommendation. That report shall be very clear.

Mr. Temporary Speaker, Sir, I have stated that if "County No.17", Makueni County, which commences at the intersection of the Western boundary of Nairobi-Mombasa Railway line reserve with Mukaa location boundary, generally north easterly by allocation - if those descriptions change, upon the report under Clause 41, the Commission shall be required to make specific details of the changes. When the report of the Commission does not recommend the alteration, no further action will be taken.

Where it recommends the alteration of boundaries, the Senate shall within 14 days resolve to approve or reject.

The Speaker of the Senate shall within three days of that decision communicate the matter to the National Assembly. You will need concurrence under Article 188. If both Houses approve the recommendation to change any boundary, the Speaker of the Senate shall gazette that resolution and the boundary shall be altered as set out in the resolution of Parliament.

Mr. Temporary Speaker, Sir, the long and short is that this Bill has provided an elaborate mechanism for alteration of boundaries. Just in case somebody thought that this is going to be a walk in the park, they had better read this Bill. It is not going to be a walk in the park to change any single boundary. The process will have to be extremely lengthy for the purposes that boundaries are sensitive issues. Boundaries can cause wars and deaths. Therefore, nobody should take it lightly, hence the process.

I am satisfied that before any boundary is altered, the public will be involved. There will be at least three or four processes. The National Assembly will be involved and, therefore, it will not be a preserve of one person or one political affiliation or persuasion that will change boundaries of any county. This is to take care of the fears that were pronounced by several Senators.

Mr. Temporary Speaker, Sir, I ask this question, since we have agreed under Article 6 that the territory of Kenya is divided into counties, should we just live and exist as if those counties do not have boundaries. One way or the other, we must bite the bullet. I decided that I will help those who think and feel that it is time to bite the bullet and provide a formula to anchor these counties in law.

There are caveats under Clause 44. A Petition to alter the boundary of any county shall not be admissible within 12 months of a general election. Clause 45 states that if Parliament agrees to the proposal and the commission's recommendation to alter any boundary less than 12 months before a general election, that boundary change would be effected after the general elections. That is because we are avoiding gerrymandering. We know what tyranny of numbers can do. Therefore, we do not want gerrymandering.

As I said earlier, this is a fairly sensitive issue. Where there is more than one petition, for example, the ones that we received from Kirinyaga County, we have the liberty to amalgamate them; what we call in law consolidation. If there are two matters of the same issue, you consolidate.

Mr. Temporary Speaker, Sir, lastly, it is the intention of this Bill to repeal the Districts and Provinces Act, 1992 to have the County Boundaries Act to take care of and define the boundaries of the counties. I am aware that boundaries of counties, particularly the ones that border our neighbours affect international boundaries. I am aware of fears that we might interfere with international boundaries. However, I have said this before, who will bell the cat? At some point, somebody will have to do something about this.

The starting point is not to deal with the international boundaries; it is to start inwards, going outwards. We should deal with our counties boundaries, then the international boundaries will be taken care of by another legislation which is in the Constitution. It is contemplated under Article 5 of the Constitution that there shall be international boundaries and territorial waters. That Act of Parliament will take care of county boundaries. The starting point, and I humbly submit, we can only start with the 47 counties.

With those many remarks, I beg to move and request my brother, Sen. Moses Otieno Kajwang, to second the Bill.

**Sen. M. Kajwang:** Mr. Temporary Speaker, Sir, I wish to second this Bill. I would also like to congratulate you, Chair, for sitting on that Chair---

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Temporary Speaker, Sir. I am sorry to interrupt Sen. M. Kajwang. In parliamentary practice, whenever a Bill is being moved, the Leader of Business in Government, these days, the Senate Majority Leader, his deputy or any other senior leader on the Government side would be in the House.

Mr. Temporary Speaker, Sir, you will notice that the entire leadership of the Government side is not in the House today. What is even worse is that there is no single Senator of Jubilee in the House.

Mr. Temporary Speaker, Sir, Senators of Jubilee are overpaid. They earn Kshs1 million every four weeks. Kenyans who work very hard are underpaid yet colleagues of ours are not here to represent them. What sanctions do you think should be considered against the Government that shortchanges the taxpayers and receives remuneration for work not done?

**The Temporary Speaker** (Sen. (Prof.) Lonyangapuo): Order Sen. (Dr.) Khalwale! I order that Sen. M. Kajwang continues from where he left.

**Sen. M. Kajwang:** Mr. Temporary Speaker, Sir, thank you for allowing me to continue. I was congratulating you for assuming that Chair. It is obvious that you are a man full of wisdom, considering the manner in which you have covered up for the Jubilee Senators that are not here.

Mr. Temporary Speaker, Sir, I also wish to congratulate Sen. Mutula Kilonzo Jnr. who is the sponsor of this Bill. He is showing this nation the true work of a Senator. It is not about the theatrics at The Hague or out there but about looking at the Constitution and finding out where there are gaps like in Article 188 of the Constitution where there is a gap that can explode into civil war when people fight about boundaries.

It is just that you do not have power over political parties. If you had powers over political parties, then one basic criterion for one to be nominated or re-elected back into this House as a Senator would not just be attendance but participation and legislation. That would mean that the entire Jubilee side would not get a ticket to come back to this House because they are absent when we are discussion such an important matter.

Mr. Temporary Speaker, Sir, allow me to get into the content of this Bill. It gives effect to Article 188 of the Constitution. One of the first Motions that I interacted with when I came to this House was a Motion that was brought by Sen. Mutula Kilonzo Jnr. He was concerned about the increasing cases of conflict within county boundaries. As we speak right now, almost half of the counties in this country are engaged in some dispute or the other. We have Machakos and Makueni over Konza.

We are just lucky that the Jubilee Government failed in its promise of establishing Konza Technopolis. If Jubilee would have used the proceeds for the Eurobond well and used some of that money to set up Konza Technopolis, right now the residents of Machakos and Makueni would be killing each other because they would be seeing some tangible development there.

Mr. Temporary Speaker, Sir, if you go to Konza, you will find ostriches, giraffes and other wild animals like warthogs roaming around. That is the only reason why the residents of these two counties have not fought. So, for a reason, one of the

Government's failures has helped to postpone conflict but there is a real case where the two counties are fighting about the positioning of a boundary.

There is a conflict between Kisumu and Vihiga over the ownership of Maseno Township. We know that a great university and academic institutions are found in Maseno. That is a source of great pride leave alone the revenues that would come were it to be determined that Maseno should fall in one county or the other.

Mr. Temporary Speaker, Sir, in my neighbouring counties of Kisii and Nyamira, there is a dispute over the position of Keroka Township which is one of the most enterprising towns in this country. It is densely populated, has a dense population of shops and small businesses and farms and farm produce.

There is also a dispute between Kisumu and Nandi counties over the boundary. In one of the areas, the issue is that one part feels that the railway line should be used as a boundary. Unfortunately, the railway line is three kilometres into Kisumu County.

Concerning Isiolo and Meru, a question has been raised here over the issues to do with The Lamu Port-South Sudan-Ethiopia Transport (LAPSSET) Corridor and change of priorities on the Isiolo Resort City. Just like Konza, this country has been saved bloodshed by the failures of the Government of the day. If the Government of the day had implemented the master plan that was the LAPSSET and the Resort City that was supposed to be in Isiolo, people would be killing each other in Isiolo and Meru.

Sometimes you thank God that beyond every failure there could be some silver lining and beyond the failures of the Government to implement Konza Technopolis and Isiolo Resort City, the only silver lining is that there is no conflict because people are not seeing the tangible signs of development. But when a new government that is action oriented takes over, like the new government that we want to bring in which will implement all the big projects, people will fight because of the locations of the borders.

Due to conflicts around county boundaries, we have seen loss of lives. In June, 2016, two people were killed because of the Kisumu-Nandi border dispute and we got the usual explanation that it was cattle rustling and traditional practices. However, when we went there as Members of the Joint Committee on National Cohesion and Equal Opportunity, we realised that there are deeper issues and it is not just cattle rustling. There are issues around resource distribution.

Mr. Temporary Speaker, Sir, there are also cases of double taxation. There are certain centres that fall at the confluence of Homa Bay, Nandi and Kisumu. Sometimes residents of my county feel that taxes are collected from them by revenue officers from counties that they do not owe allegiance to.

There is also perpetuation of historical injustices. Some of the boundaries were established many years ago. Due to their establishment, there are certain areas that felt that they were given a raw deal. If the area is hilly, some people feel that they were given the leeward side and others feel they were given the windward side. So, it perpetuated some of the injustices and this brewed a lot of conflict and mistrust between people of different communities living in those areas.

There is also the issue of political marginalisation where county boundaries have fallen in areas that divide members of a small community. You will find that there is a little bit of them on one side and a little bit of them on the other side. So, they can never be actively, properly and fully represented at the top levels within the county.



Mr. Temporary Speaker, Sir, when you read this Bill, you will realise that alteration of county boundaries is not the first option. It is for that reason that I strongly support this Bill. We are not saying that we should set up structures to change county boundaries. There could be a need to change them but when you read this Bill, you will clearly see that the first option is not alteration but mediation because it is the mediation committee that gives rise to county boundaries.

The Ombudsman, in an advisory note, had talked about this particular matter. He advised that one of the things that the national Government can do even before Parliament legislates on these issues because this falls within the responsibilities of the President is to undertake a marking exercise so that we set up beacons to clearly delineate boundaries of counties so that we move away from reliance on things that are movable. We thought the railway line will never move but now it is moving away from Kisumu to other places and people feel unhappy about that.

Mr. Temporary Speaker, Sir, we must find a way of setting up beacons based on the Global Positioning System (GPS) and technology but not based on anthills, rivers or lakes because lakes can dry up. Lake Kenyatta is drying up and you wonder whether that is a message about certain dynasties that might also be drying. We must base the county boundaries not just on natural features but clear geographical and technological position as recommended in the First Schedule of this Bill.

Mr. Temporary Speaker, Sir, I support this Bill because the first option will be that a Mediation Committee is established. It will make recommendations to the National Assembly, the Senate and the President. That Mediation Committee can make a recommendation or Parliament can decide that we establish a boundaries commission which will do its work and bring its report to the National Assembly and the Senate.

One interesting observation is that once the County Boundaries Commission makes its recommendations to the National Assembly and the Senate, and if both Houses concur with the opinion of the Commission, I did not see a place where the President will then decide whether to do it or not. That is important because you have seen cases where Parliament has taken certain positions and recommendations and the President has declined to act. The issue of Makueni County was an example.

Also the issue of usurping the role of the Legislature by legislating through memorandums from State House is not proper. Parliament sits and comes up with legislation and that legislation is altered by a recommendation from the President from State House. That is the way to go. The final word on this, having gone through the process, will be Parliament and then after that, the recommendations of Parliament will be implemented.

Mr. Temporary Speaker, Sir, the First Schedule of this Bill provides a detailed description of boundaries. I went in and looked at the description of County No.043 which is the great county where Mr. Moses Otieno Kajwang comes from. The description of the boundaries of Homa Bay County is just about one page long. When I look at the description of Kisumu County where Sen. (Prof.) Anyang'-Nyong'o comes from, it is about six pages long. There is some additional data. I see degrees and GPS coordinates describing certain county boundaries but I do not see that great detail describing other county boundaries. As we proceed, we should ensure that there is a consistent approach to describing the boundaries of all counties.

The boundary of Kisii and Nyamira County, the two counties that are fighting over Keroka, it is fairly brief. It is a total of just about two pages. It does not have to be 10 pages but we just need to define the basic minimum for every county. If it is GPS coordinates or if we are talking about beacon to beacon bearings and distances, that should apply to all counties.

Mr. Temporary Speaker, Sir, public participation is one of the things that we insist all these Bills must go through. I hope that during the public participation and consultation process, this will not stoke the embers of further conflict.

Mr. Temporary Speaker, Sir, as I conclude and support this Bill, it should be clear that we are not talking about alteration of constituency boundaries. That is the role of the Independent Electoral and Boundaries Commission (IEBC). The Constitution gave it that job. It is sad that on the day we sat in this Chamber up to midnight to consider the Election Amendment Laws, this Senate decided to first of all usurp the Constitution by allowing the National Assembly to have a responsibility in the delimitation of constituency boundaries and then shut itself out of the process. We shot ourselves in the foot. Our brothers from Jubilee did not even attempt to convince us because they said we can speak as much English and cat walk but they will vote. I hope they will wake up from their slumber before we go to the next elections so that we can tidy up those pieces of legislation.

*(Sen. M. Kajwang's microphone went off)*

**The Temporary Speaker** (Sen. (Prof.) Lonyangapuo): Give him two minutes.

**Sen. M. Kajwang:** Thank you, Mr. Temporary Speaker, Sir. We need to tidy up those pieces of legislation because constituencies are part of a county. When you delimit the boundaries of constituencies, there is some linkage with the boundaries of counties. Sometimes you want a constituency to start from one point to the other, which then might end up interfering with the boundaries of a county. We are clear that Article 188 talks about boundaries of counties but in the same light, we cannot, if we want to involve Parliament in the process of delimitation of boundaries of constituencies, then, let it be Parliament. Let it not be the National Assembly.

This Bill is very clear on the role and concurrence of both Houses when it comes to delimitation of county boundaries. We either go back and respect the Constitution and get Parliament away from delimitation of constituencies or we then say that let that process be guided by Parliament which we know is bicameral.

Mr. Temporary Speaker, Sir, with those remarks, I beg to support.

*(Question proposed)*

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I rise to support that the County Boundaries Bill (Senate Bill No.16 of 2016) be now read a Second Time. Before I go into the details, allow me to congratulate Sen. Mutula Kilonzo Jnr. for this very innovative industry that he has demonstrated. Every time I listen to the Senator for Makeni, I quickly realise he is a very good student.

It is true that young legislators like Sen. Moses Kajwang, Sen. Omar Hassan and Sen. Mutula Kilonzo Jnr. have been admiring the older politicians. Therefore, I am not

surprised that he has quickly followed up on a similar Bill but which is not related to the one that I moved in this House and which is now law. It was in respect of the headquarters of our counties. Just like that Bill which abated a lot of disputes, I look forward to the wisdom of this Bill once it becomes an Act to solve quite a number of sticking issues.

Mr. Temporary Speaker, Sir, it is now over six years into devolution. We can now speak authoritatively with the benefit of hindsight. One of them is that the issue of boundaries as clearly expounded by Sen. Mutula Kilonzo Jnr. is imperative and needs to be streamlined as captured in this Bill. What is more is the issue of the number of counties. Today, we have 47 counties which were arbitrarily settled upon without any reference to reasons that would inform the formation of those 47 counties other than as clearly elucidated in this presentation by Sen. Mutula Kilonzo Jnr. – the fact that they were trying to adopt the districts that existed in 1992. Since we want devolution to work and have economic returns, it is important that we look beyond the current 47 counties and ask ourselves, do we need these 47 counties? The answer is no. We need to amalgamate some of these counties so that we form counties that can make economic sense.

Mr. Temporary Speaker, Sir, if you were to amalgamate these counties, then you would be doing nothing new. It is what governors have already realised. That is why you have heard of many governors forming economic blocs. Those blocks are informed by the fact that were you to put the counties of the former coast province together, they would form one huge county that would open up the economic potential of the coastal region, create jobs and improve the lifestyles of our people. The same applies to the Lake Basin area where Sen. Kajwang's governor, my governor and others have come together and formed a similar bloc. Therefore, I look forward to the next Senate to be the one that will begin this conversation; that we need to amalgamate counties.

Secondly, now that we have seen the work of county assemblies, we need to reduce the number of county wards. We need to merge some of the wards, so that we have bigger wards with fewer Members of the County Assemblies (MCAs) who will be affordable and with higher standards of education put on their heads before they join the county assemblies. This will ensure that they practice actual oversight over the governors.

Mr. Temporary Speaker, Sir, it is not just in Kakamega County, but even in West P, Makueni, Homa Bay and other counties that our MCAs have been held captive by the governors.

**The Temporary Speaker** (Sen. (Prof.) Lonyangapuo): Sen. (Dr.) Khalwale, which county is called "West P?"

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I meant West Pokot County.

**The Temporary Speaker** (Sen. (Prof.) Lonyangapuo): Proceed.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, during that exercise we need to also overhaul our constituencies, so that we reduce the number. It is a fact that if you go to the National Assembly, on any day of debate, or go through the HANSARD, you will find that most of the oversight work in the committees has not been done by more than 50 to 70 Members of Parliament. The others simply wait to take instructions from State House on how to exercise tyranny of numbers.

I will not go to the cases that are bound, where dispute resolution is required, because Sen. Mutula Kilonzo Jnr. and Sen. M. Kajwang have mentioned them.

Before I go to specific clauses in the Bill, I want to ask Sen. Mutula Kilonzo Jnr. a question. You will be in the next Senate; I will not be there. The other question we would want to answer through this House is: Do we still need the units that were created under the former provincial administration? If you go to Kakamega, for example, you can forgive all the children in Class Eight because they are confused. When they fill out documents they do not know whether they should say that they come from Kakamega County, Kakamega South Sub-County, Kakamega South District or Ikolomani Sub-County. They all refer to the same place. We need to align the nomenclature of administrative units of this country along the devolved structure, so that the standard will be that we move from the state to the county, sub-county, ward and village.

Sen. Mutula Kilonzo Jnr., I would like you to take a look at Clause 7, which is on the establishment of a county boundaries mediation committee. I want to propose that the request for this establishment should include, over and above the two that you have provided, also a request by the Senator of a county. If the governor can request, I do not see why the Senator should not request. You should also include that if the Members of Parliament from that county are in agreement that such a request should be made, they should be allowed, and so should the county assembly be allowed to make this request.

Clause 9 speaks to the composition of the committee. I have no problem with it, but do you not think that when you are appointing the mediation committee, in (b), you should signify who is nominating and appointing that person? If you look at (d), the Bill talks about the public officer nominated by the Cabinet Secretary. That is okay but there are a maximum of 22 Cabinet Secretaries. Therefore, it should specify which Cabinet Secretary.

Clause 9 (2) (a), says that a person shall not be qualified for appointment under subsection (1) (a) and (b) if that person has stood for an elective office in any of the affected counties in the last ten years. I beg that this be deleted, because it is tantamount to criminalizing the profession of politics. Who says that after Sen. (Prof.) Lonyangapuo quits serving the people of West Pokot as the Senator, he does not have the intelligence to serve in such a mediation committee? In anything, a former Senator, Member of the National Assembly or MCA is more knowledgeable on matters of that county and, therefore, stands to be a resource person in this very critical committee.

Mr. Temporary Speaker, Sir, I now want to take the distinguished Senator to the Schedule. I have gone through the schedule and I am very pleased. Since I do not understand other counties as well as Kakamega County, allow me to make a few remarks on Kakamega County. A bird's eye view on the statement made in this schedule on Kakamega County tells me that the few errors that I have noted require that before it becomes part of this Bill, a deliberate effort be made painstakingly by either the Ministry of Lands or whichever responsible Ministry to describe the official county boundaries of all counties that will be on record in detail. It is lack of that detail that opens up room for disputes. It is the presence of that detail that will abate disputes.

Kakamega County borders Busia County, Bungoma County, Trans Nzoia County, Uasin Gishu County, Nandi County, Vihiga County and Siaya County. When you go through the narrative here on pages 336 to 340, the detail to capture that particular span is not clear. We need to clarify at every point. When you start at point "X," for example, where it commences at the confluence of Namayakalo River with Nang'eni River, you need to state that now you have started describing the boundary of Kakamega County as

it borders Busia County. If we do not do that, somebody trying to understand this narrative will not know whether you are describing Namayiakano River and Nang'eni River which may not be in Busia, but in some other Luhya bordering county. Some names in the Luhya nation are shared because they were named by our people when they were migrating. You will find that a name of a river might repeat itself in Busia when it is in Kakamega. It is important to know this.

It is glaring because when you go to the bottom of page 37, they say hence the westerly upstream to its intersection with Yala River. When you are in Kakamega, there is no river called Yala. The river they are referring to as Yala is called Yala when it is in Siaya. This river is called River Lukose.

**Mr. Temporary Speaker** (Sen. (Prof.) Lonyangapuo): You have three minutes.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Temporary Speaker, Sir. I was actually concluding.

This is important for our history.

*(A Senator spoke off record)*

It is on page 339 at the very bottom. This is important to us. We refer to this river in two stages. When upstream, it is called Lukose River. It flows all the way from Tiriki, goes to Idakho, Kisa and just before it exits Kisa East, the river ceases to be called River Lukose, it is then called Iyala. When you now call it River Yala at this point, you are referring to Yala River in Siaya.

We want our children to be taught the proper names of our rivers. The old men who answered to that question at the time of independence might have been Luos, thus the white man recorded it as Yala. However, when I was growing up, I knew that River Yala was somewhere in Siaya. Our river is called River Lukose. It has got hippopotamus that are unique.

Kakamega is a wonderful place. We have two rivers which are 20 kilometres apart running parallel. One is called Isiukhu and the other one is called Lukose. All of them drain into River Nzoia. The beauty of Kakamega is that when you go to River Lukose, you will get hippopotamus, but when you move 20 kilometres from there to River Isiukhu that also drains into River Nzoia, you do not get a single hippopotamus. Instead, you will get crocodiles. It is so beautiful.

That is why, when I become the Governor of Kakamega County, I will market it as a tourists destination. These things will attract tourists to Kakamega County. Our governors are sleeping on the job. I pray every day that the people of Kakamega County will choose to elect me as the Governor of Kakamega County. If they do so, I will deliver.

I support this important Bill.

**Mr. Temporary Speaker** (Sen. (Prof.) Lonyangapuo): Since there is no more interest on the Bill, I now call upon the Mover of the Bill to reply.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Temporary Speaker, Sir. I would like to thank Sen. M. Kajwang and Sen. (Dr.) Khalwale for elucidating their proposals in such a manner. I have no other option other than to agree.

On Clause 7, I will propose and will make in the third reading---

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

**Mr. Temporary Speaker** (Sen. (Prof.) Lonyangapuo): What is it, Sen. (Dr.) Khalwale?

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, this is such an important Bill and you can see that from its size. The amount of thought that has gone through this Bill is such that if through you, you could stand it down and allow debate to continue. This will allow other Senators, who did not know that it will move so fast, to get the chance to speak. I can confirm for a fact that the Senate Minority Leader, Sen. Wetangula, who is a President in waiting, would have loved to make a contribution to this important Bill.

I beg you.

*(Loud Consultations)*

**Mr. Temporary Speaker** (Sen. (Prof.) Lonyangapuo): Continue, Sen. Mutula Kilonzo Jnr.

### PROCEDURAL MOTION

#### ADJOURNMENT OF DEBATE UNDER S.O.99(1)

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, I beg to move:

THAT, the debate on this Bill be adjourned under Standing Order No. 99(1).

I have listened to Sen. (Dr.) Khalwale on the First Schedule on Kakamega County alone and realized that it will be of great benefit to this Senate to listen to the other Senators on such details about the First Schedule and the importance. We would know what to do as we move to the Third Reading.

Therefore, I agree and beg that you agree to the proposal to defer debate for the other Senators to have an opportunity.

**Mr. Temporary Speaker** (Sen. (Prof.) Lonyangapuo): With the request from the Mover under Standing Order No. 99(1) that we adjourn debate and noting the interest and gravity of the matter that it touches on our country, my county and the neighboring counties such as Turkana and others, we will grant that request.

I note what Sen. (Dr.) Khalwale said earlier that we need to take our work in the House seriously for us to be able to justify why we are here, particularly those Senators who sit to the right hand of the Speaker.

*(Question proposed)*

*(Question put and agreed to)*

*(Debate on the Bill was adjourned)*

Next Order.

**MOTIONS**

## ADOPTION OF EALA REPORTS AND RESOLUTIONS

THAT, the Senate notes the Report of the Standing Committee on National Security and Foreign Relations on the EALA Reports and Resolutions pursuant to Standing Order No.235 laid on the Table of the House on Tuesday, 19<sup>th</sup> April, 2016.

**The Temporary Speaker** (Sen. (Prof.) Lonyangapuo): The Mover is not around; that is, the Committee on National Security and Foreign Relations, the order is deferred.

*(Motion deferred)*

## ADOPTION OF REPORT ON STUDY VISIT TO RUSSIA

THAT, this House adopts the Report of the Standing Committee on National Security and Foreign Relations on the study visit to Russia laid on the Table of the House on Tuesday, 15th March, 2016.

**The Temporary Speaker** (Sen. (Prof.) Lonyangapuo): It is touching on the same Committee on National Security and Foreign Relations. The Motion is deferred.

*(Motion deferred)*

**ADJOURNEMENT**

**The Temporary Speaker** (Sen. (Prof.) Lonyangapuo): Hon. Senators, there being no other business, the Senate stands adjourned until tomorrow, Thursday, 6<sup>th</sup> April, 2017 at 2.30 p.m.

The Senate rose at 5.35 p.m.