



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – SECOND SESSION

THE SENATE

VOTES AND PROCEEDINGS

WEDNESDAY, JULY 25, 2018 AT 2.30 P.M.

1. The Senate assembled at thirty minutes past Two O'clock.
2. The Proceedings were opened with prayer said by the Speaker.
3. **COMMUNICATIONS FROM THE CHAIR**

The Speaker conveyed the following Communications from the Chair -

i) Visiting students and teachers from Bungoma DEB Primary School, Bungoma County.

"Honourable Senators,

I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from Bungoma DEB Primary School, Bungoma County.

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

I thank you."

ii) Visiting students and teachers from Marell Academy, Bungoma County.

"Honourable Senators,

I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from Marell Academy, Bungoma County.

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

I thank you."

iii) Visiting students and teachers from Laish Academy School in Nakuru, County.

"Honourable Senators,

I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from Laish Academy School in Nakuru County.

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

I thank you."

4. PAPER LAID

Report of the Sixth Ordinary Session of the Fourth Pan – African Parliament.

(Sen. (Dr.) Abdullahi Ali, MP)

5. NOTICE OF MOTION – REPORT OF THE SIXTH ORDINARY SESSION OF THE FOURTH PAN – AFRICAN PARLIAMENT

(Sen. (Dr.) Abdullahi Ali, MP)

THAT, this House notes the Report of the Sixth Ordinary Session of the Fourth Pan- African Parliament held in Midrand, South Africa, from 7th to 18th May, 2018, laid on the Table of the House on Tuesday, 24th July, 2018.

6. STATEMENT PURSUANT TO STANDING ORDER NO. 46 (2)(a)

The Senate Majority Leader (Sen. Kipchumba Murkomen) made a statement regarding the mandate of the Senate as outlined in the Constitution, and that of its Committees.

The in the Statement, the Senate Majority Leader brought to the attention of the Senate, a number of issues raised by the Members of the National Assembly during its sitting held on 24th July, 2018, including–

- i. that the Senate and its Committees, while conducting inquiries, had overstepped their mandate and had been handling matters that fall within the mandate of the National Assembly; and
- ii. that there had been unnecessary duplication of efforts where both Houses of Parliament handle inquiries on the same matter, leading to wastage of public resources.

The Senate Majority Leader made reference to Article 93 of the Constitution which provides for the establishment of Parliament consisting of both the National Assembly and the Senate. He stated that the role of the National Assembly was set out at Articles 94 and 95 of the Constitution while that of the Senate was set out under Articles 94 and 96 of the Constitution. He emphasized the importance of observing the role of Parliament under Article 94 as shared between the National Assembly and the Senate.

The Senate Majority Leader stated that the Houses of Parliament worked through plenary as well as through their respective Committees, established pursuant to Article 124 of the Constitution.

He further stated that whilst the legislative mandate of the Senate was limited to Bills that affected the functions and powers of county governments as provided for in Part 2 of the Fourth Schedule or to Bills provided for under Article 110(1)(b) and (c) of the Constitution; the oversight and representative mandates of the Senate had no limit. He advanced the argument that the Senate was fully empowered under Articles 94 and 96 of the Constitution to deliberate on any matter of concern and the allegations to the effect that the Senate and its Committees had overstepped their mandate by considering various matters of concern did not find support in the Constitution.

He assured the House that the oversight and representative mandates of the Senate were not limited and consequently, the Senate and its Committees were free to deliberate on any matter of concern as robustly as they had so far, in accordance with the law.

7. **THE RETIREMENT BENEFITS (DEPUTY PRESIDENT AND DESIGNATED STATE OFFICERS) (AMENDMENT) BILL (SENATE BILLS NO. 2 OF 2018)**

(Sen. Ledama Olekina)

(Second Reading)

Order deferred.

8. **THE COUNTY STATISTICS BILL (SENATE BILLS NO. 9 OF 2018)**

(Sen. (CPA) Farhiya Ali Haji)

(Second Reading)

Order deferred.

9. **THE SALARIES AND REMUNERATION COMMISSION (AMENDMENT) BILL (SENATE BILLS NO. 12 OF 2018)**

(Chairperson, Standing Committee on Finance and Budget)

(Second Reading)

Order deferred.

10. **COMMITTEE OF THE WHOLE**

Order for Committee read;

IN THE COMMITTEE

(The Acting Chairperson of Committees (Sen. Judith Pareno) – in the Chair)

THE COUNTY BOUNDARIES BILL (SENATE BILLS NO. 6 OF 2017)

(Sen. Mutula Kilonzo Jnr., MP)

Clauses 3 – 6

Motion made and Question proposed;

THAT, Clauses 3 - 6 be part of the Bill.

Clauses 3 – 6

- vote deferred.

Clause 7

- amendment proposed

THAT the Bill be amended by deleting clause 7 and substituting therefor the following new clause-

Establishment of a county boundaries mediation committee.

7. (1)The Senate may pass a resolution for the establishment of a county boundaries mediation committee upon —

- (a) a request by the governor of any county whose boundary is disputed; or
- (b) a request by the senator of any county whose boundary is disputed;
- (c) a request by a registered voter of a county whose boundary is disputed; or
- (d) the recommendation of the Senate, made under section 21, for mediation as the means of resolving a boundary dispute.

(2) A request under subsection (1) (a) to (c) shall be made to the Senate and shall be accompanied by —

- (a) evidence that notice was given to every county government of a county whose boundary is the subject of the dispute referred to in subsection (1); and
- (b) a description in writing identifying the specific disputed county boundary under the First Schedule.

(3) The Senate shall consider a request under subsection (2) within twenty-one days.

(Sen. Mutula Kilonzo Jnr.)

Clause 7

- vote deferred.

Clause 8

- amendment proposed

THAT clause 8 of the Bill be amended by deleting the marginal note and substituting therefor the following new marginal note —

Appointment of members of a mediation committee.

(Sen. Mutula Kilonzo Jnr.)

Clause 8 - vote deferred

Clause 9 - amendment proposed

THAT clause 9 of the Bill be amended in sub-clause (1) by-

(a) deleting paragraph (b) and substituting therefor the following new paragraph-

(b) one person from each of the affected counties with at least five years' experience in conflict management, nominated by respective the governors;

(b) deleting paragraph (c) and substituting therefor the following new paragraph-

(c) a commissioner of the National Land Commission nominated by the National Land commission from amongst the commissioners;

(c) inserting the following new paragraph immediately after paragraph (c) —

(ca) a licensed surveyor nominated by the Land Surveyors' Board established under the Survey Act;

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(Sen. Mutula Kilonzo Jnr.)

Clause 9 - vote deferred

Clause 9 - amendment proposed

THAT clause 9 of the Bill be amended –

(a) by deleting the marginal note and substituting therefor the following new marginal note —

Composition of the mediation committee.

(b) in clause (2) by deleting the word "ten" appearing immediately after the words "in the last" and substituting therefor the word "five" in paragraph (a);

(Sen. Cherarkey on behalf of Chairperson, Standing Committee on Devolution and Intergovernmental Relations.)

Clause 10 - amendment proposed

THAT clause 10 of the Bill be amended in the introductory phrase to sub-clause (1), by inserting the words "by the President" immediately after the words "may be removed from office".

(Sen. Mutula Kilonzo Jnr.)

Clause 10 - vote deferred

Clause 11

Motion made and Question proposed;

THAT, Clause 11 be part of the Bill.

Clause 11 - vote deferred.

Clause 12 - amendment proposed

THAT clause 12 of the Bill be amended by inserting the following new clause immediately after sub clause (2) —

(2a) The secretariat referred to under subsection (1) shall include officers with knowledge and at least five years experience in physical planning or land survey.

(Sen. Cherarkey on behalf of Chairperson, Standing Committee on Devolution and Intergovernmental Relations.)

Clause 12 - vote deferred.

Clauses 13 & 14

Motion made and Question proposed;

THAT, Clauses 13 & 14 be part of the Bill.

Clauses 13 & 14 - vote deferred.

Clause 15 - amendment proposed

THAT clause 15 of the Bill be amended by deleting the introductory phrase and substituting therefor the following new introductory phrase —

The mediation committee shall, within three months of the resolution of the Senate to establish a mediation committee under section 7, report to the Senate on —

(Sen. Cherarkey on behalf of Chairperson, Standing Committee on Devolution and Intergovernmental Relations.)

Clause 15 - vote deferred

Clauses 16 and 17

Motion made and Question proposed;

THAT, Clauses 16 and 17 be part of the Bill.

Clauses 16 and 17 - vote deferred.

Clause 18 - amendment proposed

THAT clause 18(1) of the Bill be amended by inserting the following new paragraph immediately after paragraph (b) —

(ba) The Senator of a county whose boundary is proposed to be altered or a Member of the National Assembly representing a constituency within the county whose boundary is proposed to be altered;

(Sen. Mutula Kilonzo Jnr.)

Clause 18 - vote deferred

Clause 19

Motion made and Question proposed;

THAT, Clause 19 be part of the Bill.

Clause 19 - vote deferred.

Clause 20 - amendment proposed

THAT clause 20 of the Bill be amended in the introductory phrase by deleting the word "twenty-one" appearing immediately after the words "the Senate shall within" and substituting therefor the word "thirty".

(Sen. Mutula Kilonzo Jnr.)

Clause 20 - vote deferred

Clauses 21 and 22

Motion made and Question proposed;

THAT, Clauses 21 & 22 be part of the Bill.

Clauses 21 and 22 - vote deferred.

Clause 23 - amendment proposed

THAT the Bill be amended by deleting clause 23 and substituting therefor the following new clause-

Consideration **23.** (1) The National Assembly shall consider a of report of resolution received under section 22(b) within thirty special days of receipt of the resolution. committee by

the National (2) If the National Assembly — Assembly.

(a) concurs with the resolution of the

Senate for the establishment of a commission, a commission shall be established in accordance with section 24 of this Act; or

- (b) does not concur with the resolution of the Senate for the establishment of a commission, the petition shall be referred to a parliamentary mediation committee comprising an equal number of members from each House.

(3) If the National Assembly fails to consider the resolution of the Senate within the specified time, the National Assembly is deemed to have approved the resolution of the Senate.

(4) Where the National Assembly approves the resolution of the Senate, the Speaker of the Senate shall, within seven days of the approval by the National Assembly, forward the resolution to the President for the establishment of a commission in accordance with section 24.

(5) (a) The parliamentary mediation committee under sub-section (2) shall, within twenty-one days of referral of the petition, consider the petition and agree on a recommendation in terms of section 21 (1).

(b) If the parliamentary mediation committee arrives at a common recommendation, each House shall vote to approve or reject the resolution of the parliamentary mediation committee.

(c) If the parliamentary mediation committee recommends the establishment of a county boundaries parliamentary mediation committee, section 22(a) shall apply with necessary modifications.

(d) If the parliamentary mediation committee recommends the establishment of a commission, subsection (4) shall apply with necessary modifications.

(e) If the mediation committee fails to agree on a recommendation, no further proceedings shall take place in respect of the Petition.

(Sen. Mutula Kilonzo Jnr.)

Clause 23 - vote deferred

Clause 24

Motion made and Question proposed;

THAT, Clause 24 be part of the Bill.

Clause 24 - vote deferred.

Clause 25 - amendment proposed

THAT clause 25 of the Bill be amended in sub clause (1) by —

(a) deleting the word “President” appearing at the end of paragraph(b) and substituting therefor the words “Independent Electoral and Boundaries Commission”;

(b) deleting the word “President” appearing at the end of the paragraph (c) and substituting therefor the words “National Land Commission”;

(c) by inserting the following new paragraph immediately after paragraph (c)
—

(ca) the Principal Secretary for the time being responsible for matters related to land and physical planning or a representative of the Principal Secretary designated in writing;

(Sen. Cherarkey on behalf of Chairperson, Standing Committee on Devolution and Intergovernmental Relations.)

Clause 25 - vote deferred

Clauses 26 to 30

Motion made and Question proposed;

THAT, Clauses 26 to 30 be part of the Bill.

Clauses 26 to 30 - vote deferred.

Clause 31 - Amendment Proposed

THAT the Bill be amended by deleting clause 31 and substituting therefor the following new clause -

Tenure of 31. A commission shall stand dissolved within the one month - Commission. (a) after the submission of its final report to Parliament; or (b) after the conclusion of any legal proceedings, to which the commission is enjoined as a party, arising from the work of the commission.

(Sen. Mutula Kilonzo Jnr.)

Clause 31 - vote deferred

Clauses 32 to 39

Motion made and Question proposed;

THAT, Clauses 32 to 39 be part of the Bill.

Clauses 32 to 39 - vote deferred.

Clause 40 - amendment proposed

THAT clause 40 of the Bill be amended in sub clause (2a) by deleting the words "the county gazette" appearing at the beginning of the paragraph and substituting therefor the words "the Kenya Gazette and the county Gazette," in subparagraph (ii);

(Sen. Cherarkey on behalf of Chairperson, Standing Committee on Devolution and Intergovernmental Relations.)

Clause 40 - vote deferred

Clauses 41 to 44

Motion made and Question proposed;

THAT, Clauses 41 - 44 be part of the Bill.

Clauses 41 to 44 - vote deferred.

Clause 45 - amendment proposed

THAT the Bill be amended by deleting clause 45 and substituting therefor the following new clause-

Coming into effect of a resolution
45. (1) A resolution for the alteration of the boundaries of a county under section 42(3) shall take effect upon the next delimitation of the constituency and ward boundaries following a boundaries review process under Article 89 of the Constitution and section 36 of the Independent Electoral and Boundaries Commission Act.

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(2) The Independent Electoral and Boundaries Commission shall, in its report under section 36 (5) of the Independent Electoral and Boundaries Commission Act, state how a resolution under section 42(3) of this Act has been taken into account in the constituency and ward boundaries review process.

(3) The report referred to under subsection (2) shall be submitted to the Senate and the National Assembly for consideration.

(4) The Independent Electoral and Boundaries Commission, in preparing its final report under section 36(8), shall take into account the views of the Senate and the National

Assembly.

(Sen. Cherarkey on behalf of Chairperson, Standing Committee on Devolution and Intergovernmental Relations.)

Clause 45 - vote deferred

Clauses 46 to 49

Motion made and Question proposed;

THAT, Clauses 46 to 49 be part of the Bill.

Clauses 46 to 49 - vote deferred.

New Clause 42A

THAT the Bill be amended by deleting clause 42 and substituting therefor the following new clause —

Concurrence
by
Parliament
on alteration
of a
boundary.

(2) The parliamentary mediation committee under subsection (1) shall, within twenty-one days of the referral of the resolution, consider the resolution and agree on a recommendation in terms of section 42(3).

(3) If the parliamentary mediation committee arrives at a common recommendation, each House shall vote to approve or reject the resolution of the parliamentary mediation committee.

(4) If the parliamentary mediation committee recommends the alteration of the boundaries of a county, section 42(3) shall apply with the necessary modifications.

(5) If the parliamentary mediation committee fails to agree on a recommendation, no further proceedings shall take place in respect of the resolution to alter the boundaries of a county.

Motion made and Question proposed;

THAT, the New Clause 42A be now read a Second Time;

(Sen. Cherarkey on behalf of Chairperson, Standing Committee on Devolution and Intergovernmental Relations.)

New Clause 42A - vote deferred

New Clause 47A

THAT the Bill be amended by inserting the following new clause immediately after clause 47-

Petition to **47A.** (1) A petition challenging the alteration of the High a county boundary under this Act shall be filed in Court on the High Court.

alteration of (2) A petition under subsection (1) shall boundaries. be-

(a) filed within twenty-one days of the publication of the boundaries in the *Gazette* under section 42(3); and

(b) determined within sixty days of the filing of the petition.

(3) Any appeal from a decision arising from a petition filed under subsection (2) shall be heard and determined within sixty days of the filing of the appeal.

Motion made and Question proposed;

THAT, the New Clause 47A be now read a Second Time;

(Sen. Mutula Kilonzo Jnr.)

New Clause 47A - vote deferred

The First, Second, Third, Fourth and Fifth Schedules

Motion made and Question proposed;

THAT, the First, Second, Third, Fourth and Fifth Schedules be part of the Bill.

First, Second, Third, Fourth and Fifth Schedules - vote deferred.

Clause 2 - amendment proposed

THAT clause 2 of the Bill be amended by —

(a) deleting the interpretation of the word "cabinet secretary"; and substituting therefor the following new interpretation "cabinet secretary" means the cabinet secretary for the time being responsible for matters related to land and physical planning;

(b) deleting the interpretation of the word "county executive committee member"; and substituting therefor the following new interpretation "county executive committee member" means the county executive

committee member for the time being responsible for matters related to land and physical planning in the county;

- (c) inserting the following new definition immediately after the definition of the word, "commission" —

"dispute" means disagreements between two or more neighbouring counties over the possession or control of land bordering the two or more neighbouring counties;

(Sen. Cherarkey on behalf of Chairperson, Standing Committee on Devolution and Intergovernmental Relations.)

Clause 2 - vote deferred

The Title and Clause 1

Motion made and Question proposed;

THAT, the Title and Clause 1 be part of the Bill.

The Title and Clause 1 - vote deferred.

Progress report

Motion made and Question proposed;

THAT the Committee of the Whole reports progress on its consideration of the County Boundaries Bill (Senate Bills No. 6 of 2017) and seeks leave to sit again tomorrow.

(Sen. Mutula Kilonzo Jnr.)

Question put and **agreed to**.

11. **HOUSE RESUMED** – Deputy Speaker – in the Chair

12. **THE COUNTY BOUNDARIES BILL (SENATE BILLS NO. 6 OF 2017)**

Progress Reported.

Motion made and Question proposed-

THAT the House do agree with the Committee in the said report.

(Sen. Mutula Kilonzo Jnr.)

There being no Senator wishing to contribute;

Before the question was put and pursuant to Standing Order 73, the Deputy Speaker ruled that the question did not affect counties;

Question put and agreed to.

13. COMMITTEE OF THE WHOLE
THE OFFICE OF THE COUNTY ATTORNEY BILL (SENATE BILLS NO. 3 OF 20
(Chairperson, Standing Committee on Justice, Legal Affairs and Human Rights)

Order deferred.

14. COMMITTEE OF THE WHOLE
THE FOOD SECURITY BILL (SENATE BILLS NO. 12 OF 2017)
(Senate Majority Leader)

Order deferred.

15. COMMITTEE OF THE WHOLE
THE OFFICE OF THE COUNTY PRINTER BILL (SENATE BILLS NO. 7 OF 2018)
(Sen. Petronila were Lokorio)

Order deferred.

16. THE IRRIGATION BILL (NATIONAL ASSEMBLY BILLS NO. 46 OF 2017)

Order for Second Reading read;

Motion made and Question proposed;

THAT, the Irrigation Bill (National Assembly Bills No. 46 of 2017) be now read a Second Time.

(The Senate Majority Leader – 24.07.18)

Resumption of debate interrupted on Tuesday, 24th July, 2018 resumed;

There being no other Senator wishing to contribute;

Mover replied;

Raising a point of order, pursuant to Standing Order 55 (3), the Senate Majority Leader requested the Deputy Speaker to defer putting of the question to a later date;

And the Deputy Speaker acceding to the request, nominated Thursday, 26th July, 2018, as the day when the question shall be put.

17. THE LOCAL CONTENT BILL (SENATE BILLS NO. 10 OF 2018)
(Sen. Gideon Moi)

(Second Reading)

Order deferred.

18. THE COUNTY GOVERNMENTS (AMENDMENT) BILL (SENATE BILLS NO. 13 OF 2018)

Order for Second Reading read;

Motion made and Question proposed;

THAT, the County Governments (Amendment) Bill (Senate Bills No. 13 of 2018) be now read a Second Time.

(Sen. Aaron Cheruiyot)

Debate arising;

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

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

M E M O R A N D U M

*The Speaker will take the Chair on
Thursday, July 26, 2018 at 2.30 p.m.*

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