

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 25th January, 2022

Special Sitting

*[Convened via Kenya Gazette Notice No.429
of 20th January 2022]*

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

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

PRAYER

COMMUNICATION FROM THE CHAIR

CONVENING OF SPECIAL SITTINGS OF THE SENATE TO CONSIDER VARIOUS BILLS

The Speaker (Hon. Lusaka): Hon. Senators, I once again, during this long recess period, take this opportunity to welcome you to the Special Sittings of the Senate running from today, Tuesday, 25th January, 2022 until Thursday, 27th January, 2022.

The Special Sittings are convened pursuant to Standing Order No. 30, on the request of the Senate Majority Leader and with the support of the requisite number of Senators, via letter Ref. No. SEN/SML/CORR, dated 18th January, 2022. Consequently, vide Gazette Notice No. 429 of 21st January, 2022, I appointed today, Tuesday, 25th January, 2022 (afternoon), Wednesday, 26th January, 2022 (afternoon) and Thursday, 27th January, 2022 (morning and afternoon) for the Special Sittings of the Senate.

In the Gazette Notice, I indicated that the business to be transacted at the Special Sittings shall be consideration of-

(1) The Political Parties (Amendment) Bill (National Assembly Bill No. 56 of 2021);

(2) The County Oversight and Accountability Bill (Senate Bills No. 17 of 2021);

(3) The Heritage and Museums Bill (Senate Bills No. 22 of 2021);

(4) The County Governments (Amendment) Bill, (Senate Bills No. 38 of 2021);

and

(5) The Intergovernmental Relations (Amendment) Bill, (Senate Bills No. 37 of 2021).

Hon. Senators, in accordance with Standing Order 30(5), I wish to remind you all that the business specified in the Gazette Notice, and as outlined in the Order Paper and the Weekly Programme, shall be the only business before the Senate during the Special Sitings, following which the Senate shall stand adjourned until Tuesday, 8th February, 2022 at 2.30 p.m.

I thank you.

Next Order.

PAPER LAID

REPORT ON THE POLITICAL PARTIES (AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO. 56 OF 2021)

Sen. Omogeni: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, 25th of January, 2022: -

Report of the Standing Committee on Justice, Legal Affairs and Human Rights on the Political Parties (Amendment) Bill (National Assembly Bills No.56 of 2021)

Thank you, Mr. Speaker, Sir.

(Sen. Omogeni laid the document on the Table)

The Speaker (Hon. Lusaka): What is your point of order, Sen. Murkomen?

Sen. Murkomen: Mr. Speaker, Sir, I have skimmed through the tabled Report and I have realized that at the end of the Report, the Committee is proposing no amendments to the Bill as submitted from the National Assembly.

In that regard, there were strong issues that were raised by the Registrar of Political Parties and the Independent and Electoral Boundaries Commission (IEBC) that are also captured in the report, and when they appeared before the Committee, that I would have wished and thought to persuade the Committee to come with amendments.

Now that the Committee did not consider amendments and a number of us have amendments to the Bill, I would like to request you to give us the period of time within which we should file the amendments with your office to enable us to prepare ourselves for the Third Reading.

The last thing if you may allow me with your permission, I tabled a Bill which has even more urgency than the Political Parties Amendment Bill, which is about qualifications of candidates to run for office. That Bill was removing requirements for academic qualifications for Members county assembly and Parliament for those who are seeking office. Particularly, we had a similar amendment with Sen. Olekina, which also captures Members of Parliament who do not have a degree at the moment and who are now being told after being in Parliament for 10 to 20 years; that they do not qualify to run for office by virtue of not having a degree.

Mr. Speaker, Sir, I do not know how long your office and the Office of the Speaker of the National Assembly is going to take for this Bill to be debated. It may pass

or not but the people of Kenya deserve a consideration of this House on this important issue before the nominations which are two months away.

Sen. Olekina is here.

The Speaker (Hon. Lusaka): Your fears are captured in a communication I will be making in a short while.

Sen. Wambua, proceed.

Sen. Wambua: Mr. Speaker, Sir, I have heard my colleague, Sen. Murkomen, saying that he has gone through the report. I request you to give a direction that copies of that report be made available physically so that we can also appraise ourselves. If there are no amendments proposed by the Committee, those of us who have amendments to propose can be guided by you.

The Speaker (Hon. Lusaka): That is also captured in what I am about to communicate. Let me communicate.

COMMUNICATION FROM THE CHAIR

PROCESSING OF AMENDMENTS TO THE POLITICAL PARTIES (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 56 OF 2021)

Hon. Senators, the Chairperson of the Standing Committee on Justice, Legal Affairs and Human Rights has just tabled the report of the Committee on the Political Parties (Amendment) Bill (National Assembly Bills No. 56 of 2021). A copy of the report will be availed to all Senators immediately for their advance reading in readiness for the Second Reading of the Bill which is scheduled for tomorrow, Wednesday, 26th January, 2022, at 2.30 pm.

Pursuant to Standing Order 145, upon conclusion of the Second Reading, the Bill will stand committed to the Committee of the Whole. At the Committee of the Whole, Senators may submit amendments to the Bill for consideration.

The process to guide the Committee of the Whole is as outlined at Standing Order 147. In particular Standing Order 147 (2) provides that-

“No amendment shall be moved to any part of a Bill by any Senator, other than the Senator in charge of the Bill, unless written notification of the amendment shall have been given to the Clerk at least twenty-four hours before the commencement of the sitting at which that part of the Bill is considered in Committee of the Whole”.

In this regard, I direct that all amendments to the Political Parties (Amendment) Bill (National Assembly Bills No. 56 of 2021) must be submitted to the Office of the Clerk by Wednesday, 26th January, 2022, at 2.30 p.m, with no exception. Any amendment received after this time will not be accepted.

As we debate the Political Parties (Amendment) Bill (National Assembly Bills No. 56 of 2021), I urge that we exercise restraint, maintain decorum that is expected of a functioning legislature, and adhere to the Standing Orders. The Senate stands guided.

Sen. Orengo, proceed.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, I thank you for that direction. It is important to put on record that the Senate Business Committee in its

consideration of this matter emphasised the fact that you cannot table the report and discuss it the same day. You will notice that we insisted that the report be tabled and members have a full day and overnight to read the report carefully so that we can have an informed debate. I appreciate the direction by the Speaker.

Secondly, you must also remove the notion from the mind of anybody that a Bill whether there are amendments by the Committee or not, can stop a Member from moving an amendment so long as they comply with the Standing Order that you have enumerated. I believe that we should have an informed debate on this matter. Let us debate it robustly but in an informed way so that we can show the difference between here and the 'lower' House.

The Speaker (Hon. Lusaka): Sen. Cheruiyot, you have the Floor.

Sen. Cheruiyot: Mr. Speaker, Sir, this is on a different note. Allow me to say something about what you have mentioned. I respect your communication but I found the latter part of it to be of concern to me. I know it is necessary to give caution because of what happened in the National Assembly, but this is the "upper" House. In my two terms in the Senate, I have never seen us disagree and dissent to the levels that you witnessed in the other House. Next time when such a communication is done, it is proper that it does not go to our records. I can assure you that Members of this House do not get to those levels.

The Speaker (Hon. Lusaka): We take insurance not because we are going to have an accident but just to protect. I am not saying we will get there but I am giving caution just in case somebody may want to get there,

Sen. Cheruiyot: Is it preemptive?

The Speaker (Hon. Lusaka): Yes.

POINT OF ORDER

ALLEGED IMPOSITION OF BAN ON FOREIGN TRAVEL FOR SENATORS AND STAFF

Sen. Cheruiyot: I am properly guided. Can I now raise the substantive issue that made me rise and seek your attention? In the course of my duties, the other responsibilities that I have in this House, there is a matter that has caught my attention and I would wish to hear your comment about it and perhaps you give further direction.

On two or three occasions I have received news that Senators in the course of going about their duties; sometimes part of their duties involves travelling out of the country have been stopped at the various border points and told that there is a directive from the Executive that no Senator should travel outside the country until we finish consideration of this Bill that is before this House.

I do not know whether this matter has come to your attention and what is your comment about it. If it is true, then it is rather a grave matter. If we are descending to levels where Members are being stopped from going about their duties, some official or with family because of business that is before the House, then this country is descending to levels lower than has ever been since Independence. I would appreciate that you give a firm commitment to the Members of this House that they are as free as the Constitution

allows them to be and can move at anytime as they wish to, so long as we follow whatever other regulations are there. Nonetheless, what I find rather disturbing is that this instruction is actually from the Executive and not from your office.

The Speaker (Hon. Lusaka): Sen. Wetangula, proceed.

Sen. Wetangula: Mr. Speaker, Sir, I associate myself with what the distinguished Senator for Siaya said to the extent of amending whatever the content of the Bill is. It is not limited to the recommendations of the Committee. Allow me to pick up from where the distinguished Senator for Kericho has left. Over the weekend or last week, I received a frantic phone call from members of staff of the Senate who were on their way to South Africa with their colleagues from the National Assembly for training. Upon reaching the airport and checking in, when they reached the immigration as the last point to go and board their flights, they were told that Members of the Senate including members of staff have been enjoined from travelling out of the country because of a pending business in the House.

Mr. Speaker, Sir, assuming that there is a desire for Senators to be in this House to debate any matter, no law obligates every Senator to sit in the House. They may sit in the House and now that we even debate through different medium via Zoom and others. A Member sitting in a Committee in United Arab Emirates (UAE) or the United States of America (USA) can participate in the proceedings of this House. We have had Members voting from Washington to Bills in this House. If the intention was to have quorum for the debate, why extend it to innocent staff of the House who are going on training with their colleagues? In this particular incident, the staff of the Senate offloaded their luggage from the plane which had been put in the cargo hold and they were turned away from the airport and did not travel. While their counterparts from the National Assembly travelled.

As the head of this House together with your Clerk, you need to look into this. The Senators can protect themselves, but the members of staff need your protection. If they are to enhance their skills through learning, then we should not allow anybody to subject them to this.

Lastly, the Houses of Parliament are independent of the Executive. So, on what basis would anybody in the Executive enjoin a member of a different arm of Government from travelling out of the country? Probably they can do so for security or other matters.

The Speaker (Hon. Lusaka): Proceed, Sen. (Eng.) Mahamud.

Sen. (Eng.) Mahamud: Mr. Speaker, Sir, I got a call from a relative of mine who works at the airport and she told me that she saw a list with the names of all the 67 Senators and they were asked not to clear them to travel. In fact, I was warned not to try to travel because my name was on the list of those were not supposed to travel. I was shocked. That was last week.

The letter came from the Executive. I wonder why the Executive wants to control how this Senate manages its business. There is a pending issue in the Senate and I think the Executive is desperate and that is why it sent the list to the immigration department.

Mr. Speaker, Sir, that person told me that “two people have already been turned back so do not attempt to travel out of the country.” I asked for the names of the people who were in the list. I was told that all the 67 Senators were in the list, including my

name. What Sen. Wetangula and Sen. Cheruiyot have said is right. It is high time that we respected and maintained the dignity of this House.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Proceed, Sen. Orengo.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, we should not talk about this thing in the abstract. If there is a case, it should be properly brought before the House.

I know that there were provisions in the old Constitution which determined whether a Member of Parliament can leave the country or not. We suffered many times. One could not leave the country unless they have a letter from the Head of Public Service. I had that experience. There was an attempt to stop me from going to Zimbabwe. I argued my case the whole morning and insisted until I got to the plane. I went to Zimbabwe and came back.

If you are indolent with some of these things to a point where *unasema ya kwamba 'nimekatazwa, siwezi kupatiwa nafasi ya kwenda nje'*, then that will be so. There is no basis for someone to stop you from traveling. If you insist on travelling as a Member of Parliament, nobody can stop you because there is no legal basis for stopping you from travelling. I was once removed from the plane under the old Constitution.

I would rather we bring the case properly before the House. With that, we can then say that on such a day, Sen. Poghisio was not allowed to travel. That will help us to pursue the officers at the airport and ask them where they got those instructions. If that happened, then it is wrong. We should also have a proper case of the staff. However, the staff are managed in a different way because the instructions can come from the Executive or from the Speaker's office though I do not think that the Executive can direct the staff of Parliament.

If a member of staff was stopped by the Executive from travelling, then it is our responsibility to defend him because we are an independent arm of the Government. We should do so instead of talking about this in the abstract. I encourage Sen. Cheruiyot to come with that specific case for it to be properly placed before the relevant Committee then we can discuss it.

Sen. Wetangula: On a point of information, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): What is your point of information?

Sen. Wetangula: Mr. Speaker, Sir, I am happy that Sen. Orengo wants to put the matter in its proper perspective. It behoves upon you to investigate the matter and give this House a reasoned direction.

The Senator for Kwale County was travelling out of the country with his family, but he was stopped and sent back home. The other incident that I was talking about involved a senior member of staff called Mr. Adika and a group he was travelling with. They were stopped from travelling, their luggage was offloaded from the cargo hold of the plane and they were sent away as their counterparts from the National Assembly went to South Africa for training. This is not right.

Staff of the Assembly and the Senate work in an independent arm of Government and they only report to their employer - the Parliamentary Service Commission (PSC). You can go further and find out whether there was communication from the PSC countermanding the permission and the clearance for those officers to go for training.

Worse still, we have the case of the distinguished Senator for Kwale County. He was embarrassed together with his family. This is something that you need to inquire into and protect your Members.

The Speaker (Hon. Lusaka): Order, Senators! The issue has been brought and I know what---

Sen. Murkomen: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): What is it, Sen. Murkomen?

Sen. Murkomen: Mr. Speaker, Sir, I am glad that Sen. Orengo and Sen. Wetangula have spoken to this matter in a bipartisan manner. This issue is bigger than our staff and the Members. It is about independence of institutions, freedoms and rights.

This thing started with the Deputy President when he was told that he cannot travel to Uganda. He was held at the airport for three hours. It has now come to Members of Parliament, especially the Senators. They are now dictating whether they can travel or not. It has even moved to the staff. Those of us who are here at this point in time are trustees on behalf of the people of Kenya. We have to protect and defend the Constitution and the rights of those who are serving right now and those who will come.

Mr. Speaker, Sir, you should take this matter seriously. The Powers and Privileges Committee can be asked to investigate this matter if it is the right Committee to do so. If not, the Committee on National Security, Defence and Foreign Relations can deal with this issue and report to the House. This matter must be dealt with formally.

I spoke to a few colleagues who attended a meeting at State House the other day and I was told that a senior executive officer berated a Member of this House for being part of a delegation that was to go out of the country yet this Bill is supposed to be debated. There are witnesses here. You and I were not there. However, colleagues who were there told us that the President was hard on a Member of this House because of travelling. If we continue like this, the Executive and the Presidency will be dictating how we operate as a Parliament and that is terrible.

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Senators! This is a very important---

Sen. Dullo: On a point of Order, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Yes, Sen. Dullo. I want to give direction and read the document that we have. Let us first hear from the Senate Majority Leader.

The Senate Majority Leader (Sen. Poghisio): Mr. Speaker, Sir, I want to pick up from what my colleagues have talked about. There is a clear definition on what our privileges are. Hon. Members are not supposed to face unnecessary hindrances as they travel from one point to another when on duty or from duty. We all know that.

There is only one thing that I would like to say and it is particularly directed to Sen. Murkomen. Why does he have to keep on bringing up the President's name in everything even in situations where he was not present? He referred to the President as an executive officer.

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Senators! That is why I wanted to give direction.

The Sen. Majority Leader (Sen. Poghio): Mr. Speaker, Sir, this is how people lose their control over nothing. I am requesting us to have some respect. If someone wants to refer to His Excellency the President, then they should call him by his title. The business of losing respect for him just because one differs with him should not be brought to the House.

Sen. Dullo: Mr. Speaker Sir, the issues raised are important. Secondly, what we are being told here is just hearsay. Therefore, it is important that the evidence is brought before this House to enable you to investigate the matter.

Finally, there is no problem for any political party to stop their Members from travelling if they have an interest in the matter on the Floor of the House. So, whoever wants to go, can go and whoever does not want to go can stay. The Executive does not obstruct any Member from traveling anywhere.

Let the Members who are claiming that the Executive is stopping people from traveling produce evidence here. We do not want to listen to hearsay.

I thank you.

(Several Senators spoke-off record)

The Speaker (Hon. Lusaka): Order Senators! I am the Speaker and the issue was directed to me. There is only one Speaker here. The matters raised are very serious and they affect us as an independent institution. I am seized of the matter. Therefore, I want you to give me two weeks to get all the information and bring a report here regarding what happened.

(Applause)

(Loud consultations)

Order, Senators! We are transacting business. We are still on. Hon. Senators, take your seats please.

Next order.

COMMITTEE OF THE WHOLE

(Orders for the Committee read)

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

IN THE COMMITTEE

[The Temporary Chairperson (Sen. Nyamunga) in the Chair]

THE HERITAGE AND MUSEUM BILL (SENATE BILLS NO. 22 OF 2021)

The Temporary Chairperson (Sen. Nyamunga): Hon. Senators, kindly take your seats. We want to commence the Business of the House. Can you take your seats please?

(Loud consultations)

Order, Senators! I do not want to mention names. Please take your seats. I would like to give you the guidelines on how to do the amendments on the first Bill that we are dealing with, that is the Heritage and Museum Bill (Senate Bills No. 22 of 2021).

Hon. Senators, as you may recall, this Bill was canvassed at the special sittings held on Tuesday 21st December 2021, and Wednesday 22nd December 2021. What was left from the special sittings was the Division at the Committee of the Whole and subsequently at the Third Reading Stage. At the Committee of the Whole stage, the Bill was canvassed without any amendments proposed and, therefore, would have been passed by the Senate without amendments had the Division been taken.

However, on Monday, 10th January, 2022, the Chairperson of the Standing Committee on Labour and Social Welfare filed a notice of amendment with the office of the Clerk, pursuant to Standing Order No.147(2), noting that no decision on the Bill at Committee of the Whole had been made other than a resolution by the Senate for the Committee of the Whole to sit again another day. It has therefore become necessary for the Committee of the Whole to consider the amendments by the Standing Committee.

In this regard, I, therefore, direct that the Committee of the Whole considers the said amendments and the requisite processes follow as contained in Standing Order No.47 to No.149.

I thank you Senators.

THE HERITAGE AND MUSEUM BILL
(SENATE BILLS NO.22 OF 2021)

Clause 3

(Question, that Clause 3 be part of the Bill, proposed)

The Temporary Chairperson (Sen. Nyamunga): Division will be at the end.

Clause 4

The Temporary Chairperson (Sen. Nyamunga): We have an amendment by the Chairperson of the Standing Committee on Labour and Social Welfare.

Sen. Mwaruma will do it on behalf of the Chairperson.

Sen. Mwaruma: Thank you, Madam Temporary Chairperson. I beg to move-
THAT the Bill be amended by deleting Clause 4.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Nyamunga): Division will be at the end.

Clause 5

The Temporary Chairperson (Sen. Nyamunga): Sen. Mwaruma, move the amendment on behalf of the Chairperson, Standing Committee on Labour and Social Welfare.

Sen. Mwaruma: Madam Temporary Chairperson, I beg to move—
THAT Clause 5 of the Bill be amended by —
(a) inserting the following new paragraph immediately after paragraph (b) —
(a) identify and manage grade I heritage resources in accordance with this Act,
and;
(b) deleting paragraphs (d) and (e).

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Nyamunga): Division will be at the end.

Clause 6

(Question, that Clause 6 be part of the Bill proposed)

The Temporary Chairperson (Sen. Nyamunga): Division will be at the end.

Clause 7

Sen. Mwaruma: Madam Temporary Chairperson, I beg to move—
THAT Clause 7 of the Bill be amended by inserting the following new paragraph immediately after paragraph (b) —
(a) identify and manage of grade II heritage resources in accordance with this Act.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Nyamunga): Division will be at the end.

Clause 8

Sen. Mwaruma: Madam Temporary Chairperson, I beg to move—
THAT Clause 8 of the Bill be amended—
(a) in sub clause (1) by deleting paragraph (d) and substituting thereof the following new paragraph—
(d) three persons representing scientific, arts and general outstanding interest in, and contribution to the work of, the national heritage, one of whom shall be nominated by Nature Kenya.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Nyamunga): Division will be at the end.

Clauses 9-33

*Question, that Clauses 9, 10, 11, 12, 13, 14, 15, 16, 17,
18, 19, 20,21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31,
32 and 33 be part of the Bill, proposed)*

The Temporary Chairperson (Sen. Nyamunga): Division will be at the end.

Clauses 34- 39

Sen. Mwaruma: Thank you, Madam Temporary Chairperson. I beg to move-
THAT the Bill be amended by deleting Clause 34.
THAT the Bill be amended by deleting Clause 35.
THAT the Bill be amended by deleting Clause 36.
THAT the Bill be amended by deleting Clause 37.
THAT the Bill be amended by deleting Clause 38.
THAT the Bill be amended by deleting Clause 39.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Nyamunga): Division will be at the end.

Clauses 40-60

*Question, that Clauses 40, ,41,42,43,44,45,46,47,48,49,50,51,
52, 53, 54, 55, 56, 57, 58, 59 and 60 be part of the Bill, proposed)*

The Temporary Chairperson (Sen. Nyamunga): Division will be at the end.

Clauses 61-80

*(Question, that Clauses 61,62,63,64,65,66,67,68,69,70,71,
72,73,74,75, 76, 77, 78, 79 and 80 be part of the Bill, proposed)*

The Temporary Chairperson (Sen. Nyamunga): Division will be at the end.

Clauses 81-100

*(Question, that Clauses 81, 82, 83 84 85 86 87 88 89 90, 91 92 93
94 95, 96, 97 98 99 and 100be part of the Bill, proposed)*

The Temporary Chairperson (Sen. Nyamunga): Division will be at the end.

First, Second and Third Schedules

(Question, that First, Second and Third Schedules

be part of the Bill, proposed)

The Temporary Chairperson (Sen. Nyamunga): Division will be at the end.

New Clause 2A

Sen. Mwaruma: Madam Temporary Chairperson, I beg to move-
THAT the Bill be amended by inserting the following new clauses immediately after Clause 2-

General Principles

PART IA – SYSTEM FOR MANAGEMENT OF NATIONAL HERITAGE RESOURCES

2A. (1) Every person shall, in the management of heritage resources, take into account-

- (a) the lasting value of natural resources to the Kenyan society;
- (b) the valuable, finite, non-renewable and irreplaceable nature of the resources and the need to ensure their survival;
- (c) the responsibility by every generation to act as trustee of the national heritage for succeeding generations;
- (d) the need to promote the interests of all Kenyans;
- (e) the need to promote reconciliation, understanding and respect, take account of all relevant cultural values and indigenous knowledge systems;
- (h) the involvement of communities in the management of heritage resources;
 - (i) the respect of cultural values and the dignity of the communities to whom the resource is connected;
 - (j) the need ensure that the process and resources are researched, documented and recorded; and
 - (k) the need to guard against the use of heritage for sectarian purposes or political gain.

(2) To ensure that heritage resources are effectively managed-

- (a) the skills and capacities of persons and communities involved in heritage resources management shall be developed; and
- (b) provision shall be made for the ongoing education and training of existing and new heritage resources management workers.

(Question of the New Clause 2A proposed)

(New Clause 2A Read the First Time)

*(Question, that the New Clause 2A
be read a Second Time, proposed)*

*(Question, that the New Clause 2A
be part of the Bill proposed)*

New Clause 2B

Sen. Mwaruma: Madam Temporary Chairperson, I beg to move -

THAT, the Bill be amended by inserting the following new clause immediately after New Clause 2A-

Heritage assessment criteria

and grading.

2B. The National Museums of Kenya shall, in consultation with the Cabinet Secretary and the county executive committee member in each county prescribe a system of grading of places and objects which form part of the national heritage and shall distinguish between-

(a) grade I category consisting of heritage resources with qualities so exceptional that they are of special national significance;

(b) grade II consisting of heritage resources which, although forming part of the national heritage, can be considered to have special qualities which make them significant within the context of a county or a region; and

(c) such other grade assessment criteria as the National Museum of Kenya shall consider appropriate.

(Question of the New Clause 2B proposed)

(New Clause 2B Read the First Time)

*(Question, that the New Clause 2B
be read a Second Time, proposed)*

*(Question, that the New Clause 2B
be part of the Bill proposed)*

The Temporary Chairperson (Sen. Nyamunga): Division will be at the end.

New Clause 7A

Sen. Mwaruma: Madam Temporary Chairperson, I beg to move -

THAT, the Bill be amended by inserting the following new clause immediately after Clause 7-

7A. (1) A county executive committee member may establish a county museum for the management of the heritage resources within the respective county;

(2) Notwithstanding the generality of subsection (1), a county museum shall-

- (a) advise the county executive committee member on the implementation of this Act or relevant county legislation;
- (b) submit an annual report to the county executive committee member regarding its activities for each financial year;
- (c) promote the systematic identification, recording and assessment of heritage resources and heritage objects which form part of the national heritage in a county;
- (d) protect and manage heritage resources in a county which fulfil the heritage assessment criteria prescribed under this Act for grade II status;
- (e) notify the National Museums of Kenya of the presence of any heritage resource in the county which fulfils the heritage assessment criteria prescribed under this Act for grade I status;
- (f) maintain data bases on heritage resources in accordance with national standards, and at regular intervals furnish the National Museums of Kenya with such data and
- (g) establish policy, objectives and strategic plans for heritage resources management in the county.

(Question of the New Clause 7A proposed)

(New Clause 7A Read the First Time)

*(Question, that the New Clause 7A
be read a Second Time, proposed)*

*(Question, that the New Clause 7A
be part of the Bill proposed)*

The Temporary Chairperson (Sen. Nyamunga): Division will be at the end.

New Clause 33A

Sen. Mwaruma: Madam Temporary Chairperson, I beg to move-
THAT, the Bill be amended by inserting the following new clause immediately
after Clause 33-

Petition for declaration

of National and county heritage sites

33A. (1) A person may petition-

- (a) the National Museums of Kenya for a place to be declared a national heritage site; or
 - (b) the respective county museum for a place to be declared a county heritage site.
- (2) The Cabinet Secretary shall develop regulations on petitions for declaration of National and county heritage sites.

(Question of the New Clause 33A proposed)

(New Clause 33A Read the First Time)

*(Question, that the New Clause 33A
be read a Second Time, proposed)*

*(Question, that the New Clause 33A
be part of the Bill proposed)*

The Temporary Chairperson (Sen. Nyamunga): Division will be at the end.

New Clause 33B

Sen. Mwaruma: Madam Temporary Chairperson, I beg to move-
THAT, the Bill be amended by inserting the following new clause immediately
after New Clause 33A-

Inventory of national
heritage

33B. (1) The National Museums of Kenya shall keep and maintain an inventory of national heritage.

(2) The inventory of national heritage shall be in the form of a data base of information on heritage resources, including-

(a) an object, monument or protected area declared this Act to be a protected object, monument or protected area;

(b) all places and objects protected through the publication of notices in the *Gazette* or *county gazette*, whether under this Act or a county legislation; and

(c) places and objects subject to general protection under this Act or a county legislation for the management of heritage resources.

(3) The National Museums of Kenya shall list heritage resources in the inventory under the categories prescribed under this Act.

(4) The National Museums of Kenya shall from time to time, and in consultation with the relevant county museum review and update the inventory of national heritage.

(5) The National Museums of Kenya shall make the inventory of national heritage accessible to members of the public.

(6) The National Museums of Kenya shall, at regular intervals, publish a summary and analysis of the inventory of national heritage.

(Question of the New Clause 33B proposed)

(New Clause 33B Read the First Time)

(Question, that the New Clause 33B

be read a Second Time, proposed)

*(Question, that the New Clause 33B
be part of the Bill proposed)*

New Clause 33C

Sen. Mwaruma: Madam Temporary Chairperson, I beg to move-
THAT, the Bill be amended by inserting the following new clause immediately
after Clause 33-
Heritage registers

33C. (1) A county museum shall compile and maintain heritage register specifying the heritage resources in the respective county in accordance with this Act.

(2) A county museum shall, in the heritage register, set out the heritage resources in accordance with-

- (a) the sub categories prescribed under this Act;
- (b) the area of jurisdiction; and
- (c) such other categories as the Cabinet Secretary shall prescribe.

(3) The respective county executive committee member shall prescribe for the procedures and information required for-

- (a) the entry of a resource into the heritage register;
- and
- (b) the compilation of an inventory of heritage resources.

(4) A county museum may approve an application for the entry of heritage resource in the heritage register submitted to it by any person in the prescribed form.

(5) A county museum shall not enter a place in a heritage register unless the museum has consulted with the owner of such place regarding the protection of that place.

(Question of the New Clause 33C proposed)

(New Clause 33C Read the First Time)

*(Question, that the New Clause 33C
be read a Second Time, proposed)*

*(Question, that the New Clause 33C
be part of the Bill proposed)*

The Temporary Chairperson (Sen. Nyamunga): Division will be at the end.

New Clause 33D

Sen. Mwaruma: Madam Temporary Chairperson, I beg to move-

THAT the Bill be amended by inserting the following New Clause immediately after New Clause 33C-

National heritage
resources assistance
programme .

33D. (1) The National Museums of Kenya may provide financial assistance in the form of a grant or a loan to an approved body or an individual for a project in line with the provisions and the principles prescribed under this Act.

(2) The Cabinet Secretary shall, in consultation with the National Museums of Kenya, prescribe the procedure for the application for approval and granting of financial assistance and the criteria for the assessment of projects.

(Question of New Clause 33D proposed)

(New Clause 33D read the First time)

*(Question that New Clause 33D
be read a Second Time proposed)*

*(Question that New Clause 33D
be part of the Bill proposed)*

The Temporary Chairperson (Sen. Nyamunga): Division will be at the end.

New Clause 33E

Sen. Mwaruma: Madam Temporary Chairperson, I beg to move-

THAT the Bill be amended by inserting the following New Clause immediately after New Clause 33D-

Heritage agreements. 33E (1) The National Museums of Kenya or a county museum may enter into an agreement with a conservation body, a person, or a community for the conservation or improvement of a heritage resource.

(2) A heritage agreement may provide for—

(a) the maintenance and management of a heritage resource;

(b) the custody of the resource;

(c) the occupation or use of the place by the owner;

(d) the facilities of access to be permitted to the public;

(e) the payment of any expenses incurred by the owner in connection with the maintenance of the heritage resource;

(f) the duration of the agreement; and

(g) the procedure for the resolution of any dispute arising out of the agreement.

(Question of New Clause 33E proposed)

(New Clause 33E read the First time)

*(Question that New Clause 33E
be read a Second Time proposed)*

*(Question that New Clause 33E
be part of the Bill proposed)*

The Temporary Chairperson (Sen. Nyamunga): Division will be at the end.

New Clause 33F

Sen. Mwaruma: Madam Temporary Chairperson, I beg to move-
THAT the Bill be amended by inserting the following New Clause immediately after
New Clause 33E-
Compulsory repair
order.

The National Museums of Kenya or a county museum may, where it appears that any place or object is in imminent danger of serious damage or destruction and requires to be protected by a declaration under this Act, make an order protecting the said place or object in the prescribed manner.

(Question of New Clause 33F proposed)

(New Clause 33F read the First time)

*(Question that New Clause 33F be
read a Second Time proposed)*

*(Question that New Clause 33F be
part of the Bill proposed)*

The Temporary Chairperson (Sen. Nyamunga): Division will be at the end.

New Clause 33G

Sen. Mwaruma: Madam Temporary Chairperson, I beg to move-
THAT the Bill be amended by inserting the following New Clause immediately after
New Clause 33F-

Heritage areas.

governments shall at the time of revision of a national or county planning laws, or the compilation or revision of a spatial plan, take into account the need for the designation of heritage areas to protect any place of environmental or cultural interest.

(2) A county government may, by notice in the county gazette designate any area or land to be a heritage area if such area or land is of environmental or cultural interest or has heritage resources.

33G (1) The
National and
county

(3) A county government shall provide for the protection of a heritage area through the provisions of its planning laws or legislation.

(Question of New Clause 33G proposed)

(New Clause 33G read the First time)

*(Question that New Clause 33G be
read a Second Time proposed)*

*(Question that New Clause 33G be
part of the Bill proposed)*

The Temporary Chairperson (Sen. Nyamunga): Division will be at the end.

New Clause 33H

Sen. Mwaruma: Madam Temporary Chairperson, I beg to move-

THAT the Bill be amended by inserting the following New Clause immediately after New Clause 33G-

Burial grounds and
graves.

33H. (1) Where it is not the responsibility of any other body, the National Museums of Kenya shall conserve and generally care for burial grounds and graves protected under this Act.

(2) The National Museums of Kenya shall identify and record the graves of victims of conflict and any other graves which it considers to be of cultural significance and may, for this purpose, erect memorials associated with the graves and maintain such memorials.

(3) A person shall not, unless such person has applied for and obtained a permit from by the National Museums of Kenya or a county museum—

(a) destroy, damage, alter, exhume or remove from its original position or otherwise disturb the grave of a victim of conflict, or any burial ground or part thereof which contains such graves;

(b) destroy, damage, alter, exhume, remove from its original position or otherwise disturb any grave or burial ground older than sixty years which is situated outside a formal cemetery administered by a county

government; or

- (c) bring onto or use at a burial ground or grave referred to in paragraph (a) or (b) any excavation equipment, or any equipment which assists in the detection or recovery of metals.

(4) The National Museums of Kenya or a county museum may not issue a permit for the destruction or damage of any burial ground or grave referred to in subsection (3) unless it is satisfied that the applicant has made satisfactory arrangements for the exhumation and re-interment of the contents of such graves, at the cost of the applicant.

(Question of New Clause 33H proposed)

(New Clause 33H read the First time)

(Question that New Clause 33H be read a Second Time proposed)

(Question that New Clause 33H be part of the Bill proposed)

The Temporary Chairperson (Sen. Nyamunga): Division will be at the end.

New Clause 33I

Sen. Mwaruma: Madam Temporary Chairperson, I beg to move-
THAT the Bill be amended by inserting the following New Clause immediately after New Clause 33H-

Establishment of research
institutions No. 28 of
2013.

33I. (1) The Cabinet Secretary may, on the recommendation of the National Museums of Kenya, by notice in the *Gazette* establish research institutes and grant a Certificate of Registration in accordance with the provisions of the Science, Technology and Innovation Act.

(2) The research institutes established under subsection (1) may research and conduct other activities of –

- (a) scientific, natural, cultural or technological importance by means of exploration and field investigations, data analysis, public programmes, exhibitions, tours or publications;
- (b) biomedical importance by use of non-human primates and other animal models;
- (c) importance to conservation of biodiversity, including identification, documentation, establishment and curation of a national biodiversity inventory;
- (d) research in fields of ancient, historical, scientific, cultural, natural,

- technological, biomedical and human interest; and
- (e) dissemination and transmission of knowledge from research on cultural heritage, natural heritage, biomedical, ancient and historical monuments and sites of national importance.
- (3) An order under this section may specify—
- (a) that the institute to which it relates shall have corporate personality;
 - (b) the duties, powers and functions of the institute;
 - (c) the manner in which the institute shall be governed; and
 - (d) such other matters with respect to the conduct and management of the institute, as the Cabinet Secretary may find it necessary or desirable to provide for.

(Question of New Clause 33I proposed)

(New Clause 33I read the First time)

(Question that New Clause 33I be read a Second Time proposed)

(Question that New Clause 33I be part of the Bill proposed)

The Temporary Chairperson (Sen. Nyamunga): Division will be at the end.

Clause 2

Sen. Mwaruma: Madam Temporary Chairperson, I beg to move-

THAT, Clause 2 of the Bill be amended by inserting the following new definition immediately after the definition of the word “heritage”- “living heritage” means the intangible aspects of inherited culture, and may include—

- (a) cultural tradition;
- (b) oral history;
- (c) performance;
- (d) ritual;
- (e) popular memory;
- (f) skills and techniques;
- (g) indigenous knowledge systems; or
- (h) the holistic approach to nature, society and social relationships;

Madam Temporary Chairperson, I beg to move that Clause 2 be read a second time.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Nyamunga): Division will be at the end.

The Title and Clause 1

*(Question, that the Title and Clause 1
be part of the Bill, proposed)*

The Temporary Chairperson (Sen. Nyamunga): Division will be at the end.
Let the Bell be rung for five minutes.

(The Division Bell was rung)

The Temporary Chairperson (Sen. Nyamunga): Hon. Senators, we do not seem to have the numbers. Kindly pay attention to the proceedings. We do not seem to have the requisite numbers to do the Division. Therefore, I would like to call the Mover to come and move.

Sen. (Dr.) Milgo: Madam Temporary Chairperson, pursuant to Standing Order No.148 I beg to move that the Committee of the Whole do report progress on the consideration of The Heritage and Museums Bill (Senate Bills No.22 of 2021) and seek leave to sit again tomorrow

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

PROGRESS REPORTED

THE HERITAGE AND MUSEUM BILL (SENATE BILLS NO. 22 OF 2021)

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, this is reporting progress and I would like to call upon the Chairperson.

Sen. Nyamunga: Madam Deputy Speaker, I beg to report progress that the Committee of the Whole has considered The Heritage and Museums Bill (Senate Bills No.22 of 2021) and seeks leave to sit again tomorrow.

Sen. (Dr.) Milgo: Hon. Speaker, I beg to move that the House do agree with the Committee on the said Report, and I ask Sen. Seneta to second.

Sen. Seneta: Madam Deputy Speaker, I second.

(Question proposed)

(Question put and agreed to)

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, as you are aware, we do not have quorum, we therefore cannot proceed to the Division. Therefore, I formally defer Order Nos. 9, 10 and 11, all of which are supposed to be subjected to Division.

COMMITTEE OF THE WHOLE

THE COUNTY OVERSIGHT AND ACCOUNTABILITY BILL
(SENATE BILLS NO. 17 OF 2021)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE COUNTY GOVERNMENTS (AMENDMENT) BILL,
(SENATE BILLS NO. 38 OF 2021)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE INTERGOVERNMENTAL RELATIONS (AMENDMENT) BILL,
(SENATE BILLS NO. 37 OF 2021)

(Committee of the Whole deferred)

ADJOURNMENT

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, there being no other business, the Senate, therefore, now stands adjourned until Tomorrow, Wednesday 26th January, 2022, at 2.30 p.m.

The Senate rose at 3.42 p.m.