

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Wednesday, 7<sup>th</sup> March, 2018

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

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

PRAYER

### PAPERS LAID

**Sen. Dullo:** Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate, today, Wednesday, 7<sup>th</sup> March, 2018:-

THE TRAFFIC (AMENDMENT) (NO. 3) RULES, 2017

The Traffic (Amendment) (No. 3) Rules, 2017

REPORT ON THE FINANCIAL STATEMENT OF  
MATUNGULU - KANGUNDO WATER COMPANY

Report of the Auditor-General on the Financial Statement of Matungulu-Kangundo Water and Sewerage Company Limited for the year ended 30 June, 2016.

REPORT ON THE FINANCIAL STATEMENT OF MARSABIT  
COUNTY EXECUTIVE SOCIAL PROTECTION FUND

Report of the Auditor-General on the Financial Statement of Marsabit County Executive Social Protection fund for the year ended 30 June, 2016.

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

**The Speaker** (Hon. Lusaka): Next Order!

**NOTICE OF MOTION****ESTABLISHMENT OF AN *AD HOC* COMMITTEE TO INQUIRE  
INTO THE CHALLENGES FACING THE TEA SECTOR IN KENYA**

**Sen. Cheruiyot:** Mr. Speaker, Sir, I beg to give notice of the following Motion on the establishment of an *Ad hoc* Committee to investigate and propose solutions to the challenges faced in the tea sector in our country:-

AWARE that Kenya is the third leading producer of black tea in the world, accounting for about 10 per cent of the total world tea production;

COGNIZANT that tea contributes 4 per cent of Kenya's GDP and 26 per cent of the country's export earnings;

FURTHER AWARE that the tea industry in Kenya supports close to 600,000 small-scale farmers and provides direct or indirect employment to over two million Kenyans;

REALIZING that despite tea being Kenya's most important cash crop, the Kenyan tea farmers, who are mainly small-scale farmers spread over fourteen counties, continue to receive a disproportionate return for the resources and time they put in tea production;

FURTHER ACKNOWLEDGING that the sector continues to face numerous other challenges which require urgent intervention to ensure that this critical sector thrives for the benefit of our economy;

CONCERNED that the current situation, if left unchecked, may lead to the collapse of this critical sector of Kenya's economy and great loss to the nation, investors and the Kenyan taxpayers;

NOW, THEREFORE, the Senate resolves to establish a Select Committee to conduct an inquiry into the challenges facing the tea sector in Kenya and to submit a Report to the Senate within five months, with specific legislative and policy interventions to address the problems facing the tea sector in Kenya;

AND FURTHER; that the following Senators be appointed to the Select Committee:-

- (1) Sen. Irungu Kang'ata, MP;
- (2) Sen. (Dr.) Christopher Lang'at, MP;
- (3) Sen. Samson Cherargei, MP;
- (4) Sen. Cleophas Malalah, MP;
- (5) Sen. (Prof.) Sam Ongeru, EHG, MP;
- (6) Sen. Njeru Ndwiga, EGH, MP;
- (7) Sen. George Khaniri, MGH, MP;
- (8) Sen. Aaron Cheruiyot, MP; and,
- (9) Sen. Mercy Chebeni, MP.

**The Speaker** (Hon. Lusaka): Next Order!

## STATEMENTS

**The Speaker** (Hon. Lusaka): Where is Sen. Anwar Loitiptip? Please, proceed, Sen. Johnes Mwaruma.

STATUS OF COMMUNITY RANCHES IN  
TAITA-TAVETA COUNTY

**Sen. Mwaruma:** Mr. Speaker, Sir, I stand pursuant to Standing Order No.46(2)(b) to seek a Statement from the Chairperson of the Standing Committee on Lands, Environment and Natural Resources on the status of community ranches in Taita-Taveta. In the statement, the Chairperson should:-

(1) Explain the status of all community ranches in Taita-Taveta County in terms of size, current use and lease status, indicating the ranches whose land has been subdivided and sold and those that are under the management of private cooperatives.

(2) Outline the legal procedure for opening up membership of the community ranches to new members.

(3) Explain the process of reversing back to the community the ranches whose land has been subdivided and sold or are under use by private cooperatives.

(4) Indicate the process of acquiring title deeds for the community ranches and the number of title deeds acquired so far.

Mr. Speaker, Sir, I have another statement.

**The Speaker** (Hon. Lusaka): Hold on so that we can get a response from the Chairperson of the Standing Committee on Lands, Environment and Natural Resources.

Can we get an undertaking from the Chairperson or a Member of the Committee?

**Sen. Prengei:** Mr. Speaker, Sir, on behalf of the Chairperson of the Standing Committee on Lands, Environment and Natural Resources, I undertake to give a response to the Statement in two weeks.

**The Speaker** (Hon. Lusaka): Is that okay, Sen. Mwaruma?

**Sen. Mwaruma:** Mr. Speaker, Sir, that is okay.

**The Speaker** (Hon. Lusaka): Proceed with your second statement.

MANAGEMENT AND OPERATIONS OF  
TSAVO NATIONAL PARK

**Sen. Mwaruma:** Mr. Speaker, Sir, I stand pursuant to Standing Order No.46 (2) (b) to seek a Statement from the Chairperson of the Standing Committee on Tourism, Trade and Industrialization on the management and operations of the Tsavo National Park. In the Statement, the Chairperson should:-

(1) State the average number of tourists who visit the Tsavo National Park in a year for the last three years.

(2) Indicate the total number of hotels in the park, their total capacity and the annual revenue collected by the national and county governments, respectively, from the tourism activities in the park.

(3) Indicate the number of employees working for the hotels in the park and state the percentage of employees who are locals of Taita-Taveta County.

(4) State whether the hotels are in any way involved in Corporate Social Responsibility (CSR) and name the projects and programmes undertaken by the said hotels in Taita-Taveta so far.

(5) Explain the measures that the Government has put in place to find a lasting solution to the human wildlife conflict in and around the park.

**The Speaker** (Hon. Lusaka): Can we get an undertaking from the Chairperson or Member of the Committee on Tourism, Trade and Industrialization.

**Sen. Kibiru:** Mr. Speaker, Sir, we undertake to give an answer in two weeks' time.

**The Speaker** (Hon. Lusaka): Is that okay, Sen. Mwaruma?

**Sen. Mwaruma:** Mr. Speaker, Sir, that is okay.

I have another statement.

**The Speaker** (Hon. Lusaka): Please, proceed.

ENCROACHMENT ON PRIVATE LAND AT IKANGA,  
TAITA-TAVETA COUNTY BY KAA

**Sen. Mwaruma:** Mr. Speaker, Sir, I stand pursuant to Standing Order No.46(2)(b) to seek a Statement from the Chairperson of the Standing Committee on Lands, Environment and Natural Resources on the encroachment of private land at Ikanga, Taita Taveta County by the Kenya Airports Authority (KAA). In the Statement, the Chairperson should:

(1) Explain the circumstances under which private land at Ikanga was allegedly encroached by the KAA for expansion of the Ikanga Airstrip.

(2) Indicate whether there was consultation between the land owners and the KAA over the acquisition of the private land by the KAA and the terms that were agreed on, if any.

(3) Indicate whether the said land had title deeds and state the number of persons whose land was taken, the total acreage of the land and when the Government is planning to compensate them.

(4) Explain why the access road to other private plots beyond the airstrip has been blocked.

(5) Table a report of National Environment Management Authority (NEMA) on the Environmental Impact Assessment (EIA) that was carried out before commencing the expansion of the Ikanga Airstrip.

Thank you.

**The Speaker** (Hon. Lusaka): Can we get an undertaking from the Chairperson or a Member of the Committee?

**Sen. Prengi:** Thank you, Mr. Speaker, Sir. Once again, I stand in for my Chairperson. I undertake to respond to his statement in two weeks' time.

**The Speaker** (Hon. Lusaka): Is two weeks okay with you?

**Sen. Mwaruma:** Mr. Speaker, Sir, it is okay.

**The Speaker** (Hon. Lusaka): Sen. Loitiptip, you may take the Floor.

DELAY IN UPGRADING THE LAMU–GARSEN ROAD

**Sen. Loitiptip:** Mr. Speaker, Sir, pursuant to Standing Order No.46(2)(b), I rise to seek a statement from the Chairperson of the Standing Committee on Energy, Roads and Transportation on the delay in upgrading of the Lamu-Garsen Road. In the statement, the Chairperson should:

(1) Explain why the upgrading of Lamu-Garsen road to Bitumen standards that was launched two years ago has stagnated.

(2) State the amount of money that has been allocated to the project in the last two financial years.

(3) Explain why the contractor has not cleared bushes and thickets along the road, hence obscuring the road users and providing a fertile hideout for persons with intentions of attacking road users.

(4) Confirm if the contractor is using substandard material for construction of the road and whether the standard of material being used is what was agreed upon in the tender documentation.

(5) Explain the Government policy on treatment and remuneration of casual labourers working on road construction sites.

(6) State the contents of contracts signed between the workers and the contractor if any and explain why the contractor, H-Young, has been mistreating the workers by giving them poor remuneration, overworking them and failing to pay them risk allowance, given the security situation along the said road.

(7) Explain what action the Government will take to ensure that the road construction is resumed and completed within the set timelines; that the road is of good standard and that workers on the construction site are remunerated and treated as required by law.

**The Speaker** (Hon. Lusaka): Where is the Chairperson or Vice Chairperson of the Committee on Energy, Roads and Transport?

*(Sen. Hargura walked into the Chamber and took his seat)*

Vice Chairperson, you have just walked in and there is a question by Sen. Loitiptip.

**Sen. (Eng.) Hargura:** Sorry, Mr. Speaker, Sir. I did not get the question. I do not know how intensive it is.

**The Speaker** (Hon. Lusaka): Sen. Lelegwe, you are a Member of the Committee. Since the Vice Chairperson has just walked in, give an undertaking when the statement will be issued.

**Sen. Lelegwe:** Thank you, Mr. Speaker, Sir. On behalf of the Chairperson and the Committee, I undertake to give the response in the next two weeks.

**The Speaker** (Hon. Lusaka): Is that okay?

**Sen. Loitiptip:** Mr. Speaker, Sir, technically, I have to accept that.

DISAPPEARANCE OF PATIENT LEMELOI SHONKO  
FROM COPTIC HOSPITAL

**Sen. Mpaayei:** Mr. Speaker, Sir, pursuant to Standing Order No.46(2)(b), I rise to seek a statement from the Chairperson of the Standing Committee on Health, regarding a missing patient from Coptic Hospital, Nairobi City County. In the statement, the Chairperson should explain:

(1)The circumstances that led to the disappearance of the patient by the name, Samuel Lemeloi Shonko, from Coptic Hospital in Nairobi City County on 11<sup>th</sup> September, 2016;

(2)The policy of the Government on duty of care for the safety of patients;

(3)Whether there is a compensation policy by hospitals for the next of kin of missing patients; and,

(4)The measures that the hospital has taken in trying to trace the patient and the measures that the Government has taken against the Hospital.

**The Speaker** (Hon. Lusaka): Where is the Chairperson, Vice Chairperson or a Member of the Committee on Health?

The Senate Majority Leader, could you take that?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, I sympathise with the Senator for Kajiado County. I have heard the issues that he has raised in so far as the Government policy of protection of its citizens, whether they are in private or public hospitals. So, I will pass the message to the Chairperson. Since it is an urgent issue, hopefully, they can provide an answer within one week because it is straightforward to go to Ngong' Road and get the information from the hospital.

**The Speaker** (Hon. Lusaka): Is that okay, Senator?

**Sen. Mpaayei:** Mr. Speaker, Sir, that is okay.

**The Speaker** (Hon. Lusaka): Sen. Prengei, it is your turn now.

YOUTH UNEMPLOYMENT IN KENYA

**Sen. Prengei:** Mr. Speaker, Sir, pursuant to Standing Order No.46(2)(b), I rise to seek a statement from the Chairperson of the standing Committee on Labour and Social Welfare on the massive youth unemployment in Kenya.

In the statement, the Chairperson should:

(1)State the percentage of the youth population in Kenya and the rate of youth unemployment;

(2)State the measures that the Government has put in place to ensure that vocational, technical institutes and higher institutions of learning avail training that is competitive and relevant to the job market;

(3)Explain the factors that are contributing to high youth unemployment rate in Kenya; and,

(4)Explain the practical measures that the Government has put in place to curb the rising youth unemployment and indicate the percentage of youth that have been employed as a result of the measures in place.

**The Speaker** (Hon. Lusaka): Where is the Chairperson of the Committee on Social Welfare?

**Sen. Sakaja**: Thank you, Mr. Speaker, Sir. The questions asked are questions of fact; that is, youth population and percentage of unemployment. I can give an answer today. Could I go ahead?

*(Laughter)*

**The Speaker** (Hon. Lusaka): According to the Standing Orders the statement is being requested from the Chairperson of the Committee. What is your intervention, Sen. M. Kajwang'?

**Sen. M. Kajwang'**: Mr. Speaker, Sir, I am a bit worried. Sen. Sakaja is obviously a very well connected Senator within Government. However, he is not in the Executive, but in the Legislature. So, when a Member requests for a statement, it is really an inquisition on Government's policies towards certain matters. Is he purporting to be Government and has the capacity to respond on behalf of it on the Floor of this House?

**The Speaker** (Hon. Lusaka): He is the Chairperson and the Standing Orders allow him to do so. However, for purposes of having a record for this House, I would ask that he brings the signed response tomorrow.

**Sen. Sakaja**: Mr. Speaker, Sir, if that is the kind of response that is needed, I cannot get it tomorrow. I take your guidance very seriously. However, according to our Standing Orders, a Member can request for a statement from a Chairperson. This statement is not being requested from the Government, but from the Chairperson of the Committee on Labour and Social Welfare, who is Sen. Sakaja. These are issues that are within the public purview. I can give the response.

**Sen. Haji**: On a point of order, Mr. Speaker, Sir. I agree with Sen. Sakaja because when Chairpersons are asked questions and go to seek responses and do not get them in time, people complain. When the answer is available, people bring another problem. They should take it.

*(Laughter)*

**The Senate Majority Leader** (Sen. Murkomen): On a point of order, Mr. Speaker, Sir. The reason why Members are asking here is so that the implementing authority can bring an answer that they can take responsibility for.

Now, the issue that Sen. Sakaja has raised is right also. That, if you ask questions that are on the Government website or already existing in Government records, you can answer on the spot. For example, if someone comes here and asks the Chair to confirm whether Parliamentary elections took place last year, you do not need a report from anybody. We are here because there was an election.

I am treading very carefully because you are the one who approves these statements. Maybe, Mr. Speaker, Sir, you review your policy of approval so that the part where there is statement of fact; the Members can be assisted to do away with them. Then the questions that relate to happenings that change with time and so forth, come to the

Floor for purposes of confirmation. I say that with utmost respect to the Speaker because it is your powers.

**The Speaker** (Hon. Lusaka): Sen. Pareno, I can see you want to make an intervention. Proceed, before Sen. Mutula Kilonzo Jnr.

**Sen. Pareno:** Thank you, Mr. Speaker, Sir. I am rising on a point of order. I have noticed as we came in that several Members have been using the exit route to access this House without even bowing to your seat. Is that in order? Three of them have walked in using the exit door.

**The Speaker** (Hon. Lusaka): Sen. Pareno, you are raising a different issue, but it is noted.

Proceed, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, maybe you need to give directions on this matter. My reading of the Standing Order No.46 (2) (b) confirms that Sen. Haji and Sen. Sakaja are wrong. It reads:-

“A Senator may request for a statement from a Committee chairperson relating to matters under the mandate of the Committee.”

The statement is asked of the Chairman, but through the Committee. The second portion states that:-

“The Speaker may appoint a day for the statement to be made or direct that the statement be issued on the same day.”

So, for the statement to be issued in any other form other than the form that is specified, leave must be sought. However, Mr. Speaker, Sir, the Standing Order No.46 (3) says that:-

“A Senator who wishes to seek leave to raise a statement under (2) (a) or (b) shall, before 1:00 p.m., on the day on which the Statement is proposed to be made, hand to the Speaker a written notification of the matter.”

The answer cannot come in a different format. The Statement that is sought is in writing and therefore, the answer must also come in the same format. Your directions on this matter would be very welcome.

Thank you.

**The Speaker** (Hon. Lusaka): Proceed, Sen. Haji.

**Sen. Haji:** Mr. Speaker, Sir, we will abide by your ruling, but I disagree completely with my junior here because Standing Order No.46 (2) (b) states:-

“A Senator may request for a statement from a Committee chairperson---”

He is a Chairperson of that Committee. Therefore, it is under his purview. He is capable of answering it.

**The Speaker** (Hon. Lusaka): Hon. Senators, like I ruled, it seems Sen. Sakaja was ready because the question that was asked seemed to be a question that is in public knowledge. For purposes of the record and since he is not going to ask the Government, I still direct that you provide a written and signed answer by the Chair tomorrow.

**Sen. Sakaja:** Thank you, Mr. Speaker, Sir. That is well guided. I just want to urge that for the precedence of this House, we either clarify that Standing Order or you make it clear by your ruling that the statements that are sought are being sought from the Committee chairpersons on matters under their mandate. It could be a matter that the

Committee is already dealing with or the Committee is well aware of. The issue of getting responses from the Cabinet is just in the case that the information is not in the Committee or it is something that has just happened. However, the first place where we look for those answers must be within the Committee. This is not a parliamentary system. We are in a presidential system, so the answers are from within Parliament.

**The Speaker** (Hon. Lusaka): Agreed, Sen. Sakaja. The answers are given by the chairpersons of the various committees. That is what I was saying; that when they go to seek answers from the Cabinet Secretaries, it is just for the purposes of enriching the answer that they come to give in this House. However, they take responsibility for the answers that they give in the House.

Next order is statements to be issued. Proceed, the Senate Majority Leader.

#### DEROGATORY SONG AGAINST THE KAMBA COMMUNITY

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, yesterday you ordered that in the interim, I make a response on an issue related to a song that I do not understand. I have only heard that it spreads hate speech against anybody who is a Kamba, and it is purportedly sang by a Kikuyu speaker. It does not mean that they are Kikuyus.

I contacted the Inspector General of Police. I did not do it alone, but we did it together with the Vice Chairperson of the Committee, Sen. (Rev.) Naomi Waqo who has even more information. The Inspector General of Police has said that the police have established the identity of the singers. The said singers have run into some hiding, but they are being pursued and they are going to be arrested anytime from now.

The second part of the question was whether the information can be pulled down from wherever it is. The Inspector General of Police, himself, told me that it is impossible to pull down the information because it is all over. It is in WhatsApp for people, different blogs and places. It will be impossible to just do it without proper legal mechanisms taking place. The necessary orders will be sought for action once those people are arrested. They are going to be arrested soon.

Mr. Speaker, Sir, in his experience as a police officer for over thirty years, the Inspector General of Police told me that the more this issue is also discussed at the highest levels, the more curious people are to receive it. It is circulating in WhatsApp groups. People are asking what the song is all about and so forth. I like what the Senator for Makeni County said on his Facebook. He referred to the message without reposting it on his Facebook. He even cautioned his readers. So that we do not satisfy the bad manners of the singers, he encouraged that there was no need for them to seek it until legal action is done. So, efforts are being made to resolve this issue.

If you allow me, the Vice Chairperson can also add one word because she is the one who is going to give the comprehensive answer going forward.

Proceed, Sen. (Rev.) Waqo.

**The Speaker** (Hon. Lusaka): I had made a ruling that she will give a comprehensive report on Thursday which is tomorrow. Yours was an interim answer which we ordered that you give today as a stop-gap measure.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, in that case, I just wanted to confirm to this House that it was not my personal effort alone, but also the chairperson. Secondly, I have also seen information which is in the public domain that this morning the Governor for Nyeri County and the Governor for Machakos County had friendly engagements in Machakos and he also issued a statement on the same matter and encouraged good relations.

The Governor for Nyeri County did not have to go all the way to Machakos County because the Senators for Machakos, Kiambu, Nyeri, Murang'a counties are here. They can also do the same to take *muthokoi* and *githeri* to be prepared at the restaurant in Parliament and show their supporters that Kambas and Kikuyus can stay together.

Thank you.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, the matter is not as simple as it appears. I want to bring to the attention of this House that when our soldiers were attacked in El Adde, those fellows posted on the internet the video of how they carried out that attack. The Government caused that video to be erased immediately from the internet. Therefore, it is possible to follow the source because the minute you delete the video from there, it then informs any person who is circulating it that they are committing an offence. That is the purpose of doing so.

However, to say that it is everywhere and, therefore, you will not do it is actually not in consonance with cyber-crime and fraud which is why I am upset about the Bill that was plagiarised by the National Assembly. It is actually possible to delete a post, video or message. I am aware that the Communications Authority of Kenya (CAK) has a cyber-crime unit that can do that very easily. Therefore, the Senate Majority Leader, should make a step forward than speak to the Inspector General (IG) of police. May be this is not housed at his office at Vigilance House, but find out from the Ministry of Information, Communication and Technology (ICT) through the Cabinet Secretary (CS) Mr. Mucheru whether this is possible. It should be done as an act to demonstrate that the minute one circulates the video after the removal, the person is committing an offence.

**The Speaker** (Hon. Lusaka): Let us have Sen. Wambua.

**Sen. Wambua:** Mr. Speaker, Sir, it is appalling really to hear that all the police could say was that they are pursuing these two young men who apparently have gone into hiding. I would have expected that the Senate Majority Leader would have come here to tell us that the two offending musicians have already been arrested and appropriately charged.

Mr. Speaker, Sir, I do not intend to inflame unnecessary emotions on this matter. However, when a Member of the National Assembly recently uttered words that were interpreted to be an insult to the Head of State, the Member was arrested immediately and charged forthwith.

These are two men who have insulted an entire community but the IG is saying that they have gone into hiding. I would seek your guidance on how to progress with the matter---

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

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

**Sen. Sakaja:** Mr. Speaker, Sir, is the good Senator in order to mislead this House that there is a Member of Parliament in the Republic of Kenya who has ever been arrested, especially in this term of Parliament for insulting the President?

Can he give details on that because there is no Member who has ever been arrested for an insult on the President? He must substantiate and tell us the case. This is because the one we are aware of is a Member who was arrested for assaulting a security guard and I know because I was involved in the rescue mission.

*(Laughter)*

Can you substantiate because you are misleading the Country that if you insult the President, you get arrested immediately unlike when you create hate speech. It is not that we support hate speech. In fact, if anything, those people must be arrested but let us not mislead the country and create more animosity on this issue.

**The Speaker** (Hon. Lusaka): Sen. Wambua can you clarify on the matter---

**Sen. Wambua:** Mr. Speaker, Sir, this is exactly what I was talking about. It has nothing to do with the politics of Jubilee and the National Super Alliance (NASA) parties. It has nothing to do with---

**The Speaker** (Hon. Lusaka): Senator, we just wanted you to clarify whether it is true. Do not get into the politics---

**Sen. Wambua:** Mr. Speaker, Sir, Hon. Babu Owino was arrested, I think the same day that he uttered words that I do not want to repeat on the Floor of this House against the President.

*(Loud consultations)*

**The Senate Majority leader** (Sen. Murkomen): On a point of order, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): What is your point of order, Senate Majority leader?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, it is important also to clarify to new Members - nobody is new anymore since we are all past six months - when you say substantiate, it means that you validate the statements you made and their truthfulness either immediately or you bring the evidence at an appointed date than to now take it round.

**The Speaker** (Hon. Lusaka): Hon. Senator, could you ask for more time to---

**Sen. Wambua:** Mr. Speaker, Sir, can I substantiate on Tuesday?

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Order Members, I think it is my prerogative. Do not usurp my powers.

*(Loud consultations)*

The Standing Orders ask you to do it in 24 hours.

**Sen. Wambua:** Mr. Speaker, Sir, I oblige. It will be done tomorrow. But I am on a point of order.

Having said that, let us go back to the issue that I had raised in my Statement. Does the Senate Majority Leader have the liberty to disclose the names that he was given by the IG and tell us the progress in as far as apprehending these two offending musicians is concerned?

On the matter of the Governors of Nyeri and Machakos sitting together and talking, we do that all the time and it has not stopped the two men from doing what they did. I and the people of Kitui, Machakos and Makueni would be happy to know the progress that has been made on these two musicians.

**The Speaker** (Hon. Lusaka): The Senate Majority Leader.

**The Senate Majority leader** (Sen. Murkomen): Mr. Speaker, Sir, we have agreed that those two gentlemen - they cannot even be gentlemen - committed obscenities and uttered words that are preaching hatred and there is no doubt about that. As to whether they should be arrested, the first thing was to identify them. If the Senator heard me correctly, I said the IG has confirmed that they have been identified and only an imminent arrest is remaining.

In fact, when I asked the IG where they come from and he told me it is not necessary for now because their arrest is imminent. If we can be patient up to Thursday, perhaps by the time when the Chair is coming with the substantive information tomorrow, maybe things will have changed.

On the question of pulling down the offending material, while I agree with Sen. Mutula Kilonzo Jnr., there is too much information on social media against the Senator, myself and others which we have been wishing would be pulled down.

Mr. Speaker, Sir, you can control some of the information on social media sites but not all. For example, if you look at those videos that we are talking about; the ones that are in the phones through WhatsApp, it is not easy. It is agreeable that the Senator can bring the exact website he wants me to take to the necessary Government enforcement agencies to bring down. However, even if we bring down one today, Sen. Wambua who has been in the media will tell you that you remove one blog today, another useless blogger posts the same and so forth. I think we should focus on dealing with the perpetrators who must be apprehended and punished for their crimes.

**The Speaker** (Hon. Lusaka): We expect a comprehensive answer on Thursday from the Chair of that Committee. Let us now get a response from the Chairperson of the Standing Committee on Finance and Budget on a Statement requested by Sen. Mutula Kilonzo Jnr.

#### STATUS OF THE UWEZO FUND

**Sen. (Eng.) Mahamud:** Mr. Speaker, Sir, it is true that he is a Member of the Committee. I was telling him that he should not request for statements from his Committee Chair. As we go forward we should plan. By the way, we had an understanding in the National Assembly that Members of a Committee should not raise a question to the same Committee they sit in. Having said that, I beg to reply.

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Mr. Speaker, Sir, the request was for a Statement on the Uwezo Fund. The first question was on how much money has been disbursed through the Uwezo Fund since Financial Year 2013/2014. Since inception in the Financial Year 2013/2014, the fund has disbursed to all the 290 constituencies an accumulative amount of Ksh5,854,400,004 as loan capital to groups of target beneficiaries in the constituencies. These funds have been disbursed in two phases as indicated below. In the Financial Year 2013/2014, Kshs5,354,400,004 was disbursed, while Kshs500,000,000 was disbursed in the Financial Year 2015/2016. This totalled to Kshs5,854,400,004.

Mr. Speaker, Sir, the second question required us to state how much money has been disbursed to Makueni County, with details on disbursement per constituency. Makueni County received an accumulative allocation of Ksh137,210,278, out of which Ksh136,132,980 has already been allocated to groups across the constituencies in the county. The six constituencies in the county were allocated the money as follows. Mbooni Constituency was allocated Ksh23,576,138 and out of that, Ksh21,420,000 was loaned out to groups. In Kilome Constituency, an allocation of Ksh18,397,381 was made, out of which Ksh16,615,000 was loaned out to groups. In Kaiti Constituency, an allocation of Ksh20,131,179 was made, out of which Kshs21,517,980 was loaned out to groups. Makueni constituency received an allocation of---

I am hesitating because I see a disparity of the loan amount and the amount allocated. Makueni constituency received an allocation Ksh26,983,741, but the amount loaned is Ksh32,610,000. There could be something wrong with the figures for both Kaiti and Makueni constituencies. I am sorry about that. Kibwezi Constituency received and allocation of Kshs24,362,557 and Kshs22,260,000 were loaned out to various groups. Kibwezi East Constituency received an allocation of Ksh23,759,282, out of which Ksh21,710,000 was allocated to various groups. So, a total of Ksh137,210,278 was allocated to the county, out of which Ksh136,132,980 was loaned to various groups.

The third question sought to find out how much of the amount in (b), that is the allocation to Makueni, has been repaid. As at 31<sup>st</sup> December, 2017, Ksh46,247,317 had been repaid out of the amount due of Ksh115,297,772. This represent 40.1 per cent repayment rate. The summary of the repayment per constituency is as follows.

Constituency	Amount due for repayment(Kshs)	Amount Repaid	Repayment (%) rate
Mbooni	21,307,500	4,867,914	22.85
Kilome	12,917,917	3,697,360	28.62
Kaiti	16,151,105	6,095,292	37.74
Makueni	24,660,000	16,281,191	66.02
Kibwezi West	21,302,917	6,648,448	31.18
Kibwezi East	18,938,333	8,657,412	45.71
<b>Total</b>	<b>115,297,772</b>	<b>46,247,317</b>	<b>40.1</b>

Mr. Speaker, Sir, the fourth question sought to find out whether the National Government is considering waiving the grants or giving a moratorium to pay the loans on

account of the high default rate by the residents. The main objective of the fund is to provide access to affordable credit for groups of women, youth and persons with disabilities geared toward promoting their enterprises. The beneficiary groups are supposed to repay the loans within 24 months after the expiry of a sixth month grace period. The fund is a constituency-based revolving fund where the repaid amounts are loaned to other deserving groups to enhance access to as many groups in the constituencies as possible.

In addition, the repaid amounts are loaned as additional funds to groups that have successfully completed their previous loans, progressively to a maximum amount of Ksh500,000, as stipulated by the Fund's regulations. Thereafter the groups are linked to financial institutions for further loaning as may be required. Consequently, it is not prudent for the government to waive the outstanding loans as this will negate the very objective of the Fund and deny other deserving groups in the constituencies.

This is in line with Section 21 of the Public Finance Management Act, Uwezo Fund Regulations 2014, which provide for full repayment of the funds by all recipient groups. The Fund's secretariat, in liaison with the patrons in the National Government and administrative officers, are involved in intensive loan repayment campaigns in constituencies with very low loan repayment to boost the repayment rates and the response is encouraging.

Mr. Speaker, Sir, that is the response I have. I am sorry there is a bit of a mix up in Kibwezi East and Makueni constituencies. But together with the Senator, we will try to get the actual figures so as to rectify this.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Proceed, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr:** Mr. Speaker, Sir, I must first thank my Chairman for seeking and getting these answers in the time that he did. I have two comments. Other than the fact that Kaiti and Makueni appear to have different figures of what has been allocated *vis-a-vis* what has been loaned out, there are two significant things. During the run up to the 2013 election, Uhuru Kenyatta promised that the money that was set aside for the run off would be given out to women and youth for purposes of their enterprise. It was not meant to be a revolving fund and that is the reason, if you look at the answer in part A, the disbursements have only been made for 2013/2014 and 2015/2016 financial years amounting to Ksh5.8 billion only. There is no other figure that has been put in the budget since 2016.

Secondly, it is obvious, again, from the repayment rate of 40 per cent for the last three years that this fund has failed.

Thirdly, what these officers are now doing is not part of the mandate of the Uwezo Fund. I participated in the drafting of these rules. They go to homes and tell them that they will send their names to the Credit Reference Bureau, remove the iron sheets from their roofs and confiscate their cattle. Could the Chairperson seek a clarification on the repayment portion because we did not envisage that ordinary Kenyans – and they are just women and youth because that is what the Fund is meant for – were supposed to be auctioned for loans of Kshs50,000 and a maximum of Kshs500,000.

We also know that in the run-up to the last general elections, loans worth billions of shillings were waived for tea and coffee farmers. Why would the Government refuse to waive loans of Kshs50,000 to women and youth? We know very well that due to the drought and problems that we have had, it is impossible to get these loans. My concern is not the repayment because they will not pay, but that officers of the national Government are using force and threats and people are already worried. Could the Chairperson, please, clarify that position?

Thank you.

**The Speaker** (Hon. Lusaka): Before you clarify, I can see an intervention from Senator Olekina.

**Sen Olekina:** Thank you, Mr. Speaker, Sir. Even though I support what Sen. Mutula Kilonzo Jnr. has said, I also want us to be careful that unless we teach responsibility--- Maybe the Chairperson has to clarify whether once this money is loaned to these people, they are taught how to repay. I do not think that we can be giving money and when people default in repayment, we just waive. We want to have a proper culture where people can be taught accountability. If we give money and do not teach people how to account for it then, of course, everyone else will know that when they go to Government they can just be given money. So, the Chairperson should clarify whether there was training on how to account for the money and basic accounting skills.

Thank you.

**The Speaker** (Hon. Lusaka): Let us have Sen. Mohamed Yusuf Haji.

**Sen. Haji:** Thank you, Mr. Speaker Sir. I also want to add my voice to the concern of Sen. Mutula Kilonzo Jnr. He has talked about *mabatis* being removed. They have not been removed. But in our case, people bought livestock. Last year there was a drought and they were wiped out. Whatever remained is now finished. As I am talking to you, out of my only investment in this world of 400 cows, I lost 200 cows. You can imagine what became of the people who had only two or three cows. So, we want to know whether the Government will waive the loans. If they waived the Agricultural Finance Corporation (AFC) loans and other loans, these loans should also be waived.

Thank you.

**The Speaker** (Hon. Lusaka): Sen. Moses Wetangula.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, could the Chairperson also tell this House and country the following:-

(1) Was the disbursement of this money insured? If it was, why is the Government not resorting to insurance where there is absolute failure to pay?

(2) Which banks were used to disburse this money, because we know that some politically correct banks, namely, Equity Bank and Family Bank were used to disburse this money? We want to know how much they made as profit out of this money.

**The Senate Majority Leader** (Sen. Murkomen): On a point of Order Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): What is your point of order the Leader of Majority?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, many businesses are brought down because of the recklessness of leaders and individuals, who are in higher offices or have opportunities to bring down private or public companies that

people have worked so hard to build. Is it in order for the Senate Minority Leader to characterize companies, like Equity Bank and Family Bank, that are operating in the East African Community as “politically correct” companies? What does he mean? Can he substantiate?

**The Speaker** (Hon. Lusaka): Sen. Kang’ata, what is your point of order?

**Sen. Kang’ata:** Mr. Speaker, Sir, I honestly urge you to demand that the Senate Minority Leader withdraws that statement. I say this because last year there was a bank that collapsed because of some funny information that circulated on Twitter. Therefore, that statement has a lot of impact, particularly when it is made in this honourable House, the Senate. If you do not handle such kind of utterances, we may set off a chain of major reactions that may torpedo very crucial private institutions. I believe that his allegation is not true and he has no evidence to substantiate it. I urge you to order that he substantiates or withdraws, failure to which, you should kick him out of this House.

**The Speaker** (Hon. Lusaka): Order, Members. Sen. Moses Wetangula, I think you just need to talk about banks in the country and not politically correct banks. That is what Members are raising.

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

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

**Sen. Orengo:** My point of order is to emphasise the point made by the Senate Majority Leader and the Senator for Murang’a County. In being careful about asking questions about banks, may they also ask about governments that borrow and they do not want us to know where they are spending the money that they borrow, which finally puts them in a situation where they cannot give money to counties? Which is worse; the banks or the Government which cannot give money to counties?

*(Laughter)*

**The Speaker** (Hon. Lusaka): Sen. Orengo, you are out of order. The point of order was on the use of the words “banks that are politically correct.”

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker Sir, I am very careful in what I say; I do not speak without facts. I have been in this House long enough to know what to say and when to say it. The Government of the Republic of Kenya, through *wananchi* and the National Social Security Fund (NSSF), controls the Cooperative Bank. The Government is a critical shareholder in the Kenya Commercial Bank (KCB) and there are other banks in this country which are owned by taxpayers’ money; you and I, and even the complaining Senators. Why would the Government take public funds and channel them through favoured banks? We know this; it has happened many times over. I want to state here and now that Equity Bank and Family Bank are politically correct banks.

**The Senate Majority Leader** (Sen. Murkomen): On a point of Order Mr. Speaker, Sir.

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

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, earlier, while discussing in house matters, you spoke about respect, decorum, good manners and behaviour that befits a Senator that serves in the Senate of the Republic of Kenya.

I do not know a citizen or a region that is not represented in this Republic where Equity Bank and Family Bank operate. They employ people and improve our economy. In any case, there are principles that govern how business is done. It is about competitiveness, whether it is in bidding or procurement. Can the Senate Minority Leader, therefore, substantiate what he means by singling out two banks, without complaints of the other banks? Is he in order to single out the two banks and call them 'politically correct'? Can he declare his interest? Is he holding brief on behalf of any bank and what are those interests? Is it monetary?

**Sen. Haji:** Mr. Speaker, Sir, as we all know, Equity Bank and Family Bank are widespread in the country. The initial amount required to open a bank account in the two banks is cheaper than most banks. Secondly, we know what Equity Bank is doing. They are paying fees for poor orphans. So, they are playing a role and we do not need to complain about them.

**Sen. Sakaja:** On a point of order, Mr. Speaker, Sir. I thought that at this point we are seeking clarification on the statement that has been brought. Is it in order for us to go into sideshows?

I do not know why my colleagues from Jubilee are concerned about Sen. Wetangula mentioning Equity Bank and Family Bank, knowing full well that the Minority side has no capacity for economic sabotage. They told us to boycott those banks and Safaricom but Safaricom is still standing. There is no capacity for economic sabotage.

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Order Members! Let us stick to the issues that have been raised, so that the Chair can respond. Sen. Wetangula, you have to finish and desist from labeling some banks as being "politically correct."

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I want to inform my brother Yusuf Haji, the Senator for Garissa in case he does not know that the money that Equity Bank uses on a programme called Wings to Fly is money from the United Nations (UN) and not from Equity Bank. Not a single shilling of that money is from Equity Bank. In fact, Equity Bank makes a profit out of that programme.

**Sen. Dullo:** On a point of order, Mr. Speaker, Sir. It is becoming a tradition in this House that Members are raising points of order and with all due respect you are not ruling on them. It is important for the Senate Minority Leader to substantiate or apologise and withdraw.

**Sen. Mwaura:** Point of order!

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

**Sen. Mwaura:** Mr. Speaker, Sir, is the respectable Senate Minority Leader in order to mislead this House that Equity Bank is a "politically correct" bank? I do not

know what he means by that. He needs to substantiate so that we can understand his otherwise good English.

Secondly, is he in order to make very wild and false allegations about an entity that cannot defend itself? He said that Equity Bank is being funded by the UN yet this very bank is on record having said that they support students under the Wings to Fly Programme together with MasterCard Foundation. Is the Senate Minority Leader in order to confuse the UN with the MasterCard Foundation yet he is a very distinguished Member of this House?

**Sen. (Eng.) Maina:** On a point of order, Mr. Speaker, Sir. I would like to appeal to you because it is not in order for us to deviate from the main role of this House. Equity Bank is listed on the Nairobi Securities Exchange (NSE) and I believe some of his voters are shareholders in Equity Bank. Is he in order to use this House to sabotage the progress that Kenya has made and the interest of his voters while in this House?

**The Speaker** (Hon. Lusaka): Honourable Members, we must make progress.

Sen. Wetangula, you are out of order to label some banks as being “politically correct”. That is not right and I ask you to withdraw and apologise.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, the first point of call should be to require me to substantiate. If I fail, then I can go the route of withdrawing and apologising.

I want to promise the Chair that tomorrow at 2.30 p.m., I will be here ahead of even the Speaker and I will put a dossier on this table to show how “politically correct” these two banks are. I will also explain how Minister Amos Kimunya as he then was in Finance, used state money to prop the growth of Equity Bank to where it is. Tomorrow at 2.30 p.m. prompt, I will be here with the documents to substantiate.

**The Senate Majority Leader** (Sen. Murkomen): On a point of order, Mr. Speaker, Sir. I know you will make a ruling because the Standing Orders allow you to give a Member 24 hours to substantiate and there is no problem with that. As the Senate Minority Leader will be coming to substantiate, could he also come with clear information to this House on which side of the political divide he was with Hon. Kimunya and the role he played in making those banks “politically correct”?

*(Laughter)*

**The Speaker** (Hon. Lusaka): Order Members! Let us come back to the House. According to Standing Order No.34, I direct that Sen. Wetangula tomorrow substantiates the allegations, failure to which I will apply Standing Orders and you will live with the consequences. Let us proceed.

**The Senate Minority Leader** (Sen. Wetangula): Thank you so much Mr. Speaker, Sir. By all means, I will do so with gusto.

Let me finish seeking clarification from the distinguished Senator for Mandera, who is the Chair of my committee and works very hard. Could he also, either today or later, bring to this House a complete detail of all Social Safety Net Funds and how they have been disbursed across counties, from county 001 to county 047?

*(Sen. Mwaura spoke off record)*

Mr. Speaker, Sir, people like the distinguished Senator for--- I think he is for nowhere.

*(Laughter)*

**The Speaker** (Hon. Lusaka): Sen. Wetangula, Sen. Mwaura is a nominated Senator representing people living with disability.

**Sen. Mwaura:** Point of order!

**The Speaker** (Hon. Lusaka): Let him conclude.

*(Loud consultations)*

Order Members! Sen. Mwaura, what is your point order? I hope you are raising a different matter because I have already ruled on that matter.

**Sen. Mwaura:** Mr. Speaker, Sir, you gave us a very good precedent today in our informal setup. This is a House of decorum and every Member must be given the dignity that they so deserve. Is it in order for the Senate Minority Leader ---

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Order, Members! Sen. Mwaura, I had made a ruling on that matter. I said that you are a Senator who is representing People Living with Disability (PLWD).

Sen. Wetangula, withdraw that statement.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I have the greatest respect for the distinguished Sen. Mwaura who has been nominated to represent PLWD---

**The Speaker** (Hon. Lusaka): Order! Sen. Wetangula, please, withdraw and apologise.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, some colleagues do not seem to appreciate the rules of debate in this House. I have finished by asking the distinguished Senator either now or later to bring us a list of disbursement of Social Safety Net Funds (SSNF).

**Sen. Mwaura:** I have already done so.

**The Speaker** (Hon. Lusaka): Order, Sen. Mwaura! I have directed that Sen. Wetangula withdraws and apologise to the House.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, HANSARD will bear me out tomorrow that I already did it. However, I can do it again.

**The Speaker** (Hon. Lusaka): Do it again, Sen. Wetangula.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I withdrew and apologised. I repeated it. I want to assure hon. Senators that this House is not for the faint-hearted. This House is for men and women made of steel.

*(Laughter)*

**The Speaker** (Hon. Lusaka): Order, Members! Let us maintain our decorum. Let us allow the Chairperson of the Standing Committee on Finance and Budget to issue statement.

*(Sen. Wamatangi stood up in his place)*

Sen. Wamatangi, please, take your seat? Let us get a response first and I will give you an opportunity.

**Sen. Poghio**: On a point of order, Mr. Speaker, Sir. I get a bit disturbed that we have prosecuted our business with points of order. If one point of order leads to another point of order and we are perpetually on points of order, we cannot move. This is basically directed to my own colleagues. Can we, please, find a standard way of getting attention on the point of order? I have seen people raise hands, stand up and raise legs. What are they doing? What is the standard way to get your attention so that we transact business in this House?

**The Speaker** (Hon. Lusaka): Order! There is a button that a Member can press and their name will reflect here.

Hon. Members, earlier on in the day I said that the rest of the world is watching what we are doing and the children up here are also watching. We are going to be judged by how we debate and how we conduct ourselves in this House.

The Chairperson of the Committee on Budget and Finance, you can proceed.

**Sen. (Eng.) Hargura**: Mr. Speaker, Sir, I will respond quickly. The first question was from Sen. Mutula Kilonzo Jnr. I am not aware of the promise made by His Excellency the President after 2013 elections.

As far as I know, this Fund is a revolving fund and I do not know the contrary.

I am not aware whether it has failed although from the beginning there were challenges. I cannot say that it has failed, but the challenges need to be addressed.

Sen. Mutula Kilonzo Jnr. also talked about harassment of the loanees. We can check with the Ministry that is concerned if people were actually harassed. If the people are told to repay, they must repay in an orderly manner.

Mr. Speaker, Sir, Sen. Olekina asked whether there was a training for people. I was a Member of Parliament then when people were trained. There were quite a number of applicants at that time. In my constituency, for example, there were only a few who benefited. So, it is only fair that those who benefitted repay.

The issue of livestock which Sen. Haji mentioned is true. When you do it as a business venture, it will always be a profit or loss. We have not reached a stage where we have talked about the waving. Going forward, we can discuss about the waving.

Mr. Speaker, Sir, a question was raised by the Senate Minority Leader on whether these funds were insured. I am not aware whether they were insured or not. We use the banks that are there in Mandera, including Equity Bank and Kenya Commercial Bank. Therefore, we do not use only Equity Bank.

The other question that was raised by Sen. Wetangula was about Social Safety Net Funds. I am not in a position to answer this question. Let him raise the question in a structured manner and we will send it to the department concerned and respond accordingly.

**The Speaker** (Hon. Lusaka): Sen. Mutula Kilonzo Jnr., can follow up with the Chairperson on other areas that need clarification.

We can now hear from the Chairperson of the Standing Committee on National Security, Defence and Foreign Affairs.

ARREST AND DEPORTATION OF  
MR. MIGUNA MIGUNA

**Sen. Haji:** Thank you, Mr. Speaker, Sir. To save on time, I will skip what the Hon. Senators had asked and go straight to the answer.

I wish to state as follows:

Following the 30<sup>th</sup> January, 2018, administration of oath - to commit a capital offence, namely; treason, contrary to Section 59(a) of the Penal Code at Uhuru Park Nairobi, a search warrant was obtained at Milimani Law Courts, Nairobi on 1<sup>st</sup> February, 2018.

On 2<sup>nd</sup> February, 2018, the warrant was executed and Miguna Miguna was arrested from his Runda residence for commission of the above offence.

On the 6<sup>th</sup> day of February, 2018, he was arraigned before the Resident Magistrate Kajiado Court and charged with the following offences:-

- (1) Count 1: Being present and consenting to the administration of an oath - to commit a capital offence namely treason contrary to Section 59 (a) of the Penal Code;
- (2) Count 2: Taking part in an unlawful assembly, contrary to Section 5 (11) of the Public Order Act, Cap 56 Laws of Kenya;
- (3) Count 3: Engaging in organized criminal activity, contrary to Section 4 (1) of the Prevention of Organised Crime Act No.6 of 2010.

The accused objected to a plea to the above charges and the Kajiado Court ordered that he be produced before Justice Kimaru or he be released on the same day. The police were unable to produce him before the said Judge due to the traffic between Kajiado and Nairobi. However, he was released from police custody.

Mr. Speaker, Sir, Mr. Joshua Miguna Miguna was transferred from the initial police station due to his concerns on his own security and the tension the arrest was generating.

Mr. Miguna Miguna was extradited from Kenya to Canada on 6<sup>th</sup> February, 2018 under the following circumstances and reasons:-

(1) According to Government records, Joshua Miguna Miguna was born on 31<sup>st</sup> December, 1962 in Nyando, present day Kisumu County.

(2) Mr. Joshua Miguna Miguna is a Canadian citizen. It is evident from his travel records that he acquired Canadian citizenship between the year 1986 when he fled the country to 2009 when he applied for a Kenyan passport;

(3) The repealed Constitution did not permit dual citizenship. Consequently, Mr. Joshua Miguna Miguna lost his Kenyan citizenship and right to a Kenyan passport during the pendency of the former Constitution;

(4) Section 97 of the 1963 Constitution provided that a citizen of Kenya who was also a citizen of some other country ceased to be a citizen of Kenya unless he renounced his citizenship of the other country and took an oath of allegiance.

(5) On 3<sup>rd</sup> March, 2008, Joshua Miguna Miguna made an application at Kisumu Passport Control Office. Upon receipt of the request, the then Minister in charge of Immigration and Registration of Persons, the late Hon. Gerald Otieno Kajwang', approved that a duplicate file be opened at the Headquarters in Nyayo House and further directed that Joshua Miguna Miguna who was at the time advisor to the Prime Minister, hon. Raila Odinga, be issued with a Kenyan Passport.

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

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

(6) Mr. Joshua Miguna Miguna never renounced his Canadian citizenship prior to being issued with a Kenyan Passport.

(7) It is apparent that the Kenyan passport was issued illegally, contrary to the supreme law of the land.

(8) The provisions of Section 10 of the Kenya Citizenship and Immigration Act provide how a person who was a citizen by birth, who had lost his citizenship by virtue of attaining the citizenship of another country should apply and regain Kenyan citizenship.

(9) Mr. Joshua Miguna Miguna never made any application to regain citizenship pursuant to the provision of Section 10 of the Kenya Citizenship and Immigration Act and has always preferred and travelled as a Canadian citizen using Canadian Passport No. MJ393885 issued on 27<sup>th</sup> January, 2003.

(10) Mr. Joshua Miguna Miguna of Runda Meadows Nairobi, was informed by the Director of Immigration Services vide a letter dated 5<sup>th</sup> February, 2018, that pursuant to the provisions of section 31(1)(2) of the Kenya Citizenship and Immigration Act, 2011 his passport No.A116842 which was in his possession remained suspended and that he was required to surrender the same to the Office of the Director of Immigration Services at Nyayo House, on 9<sup>th</sup> Floor within 21 days of receipt of the notice and that failure to comply would render the same null and void.

(11) The Cabinet Secretary (CS) in charge of Immigration matters was informed by the Director of Immigration Services on citizenship status of Mr. Joshua Miguna Miguna and his presence in the country. The said advice was based on the material facts as contained in his Immigration file.

(12) The CS in charge of Immigration matters acting on the same advice, on the 6<sup>th</sup> day of February 2018, issued a declaration under Section 33(1) and 43 of the Kenya Citizenship and Immigration Act, 2011 declaring the applicant a prohibited immigrant and issued deportation orders.

(13) Mr. Joshua Miguna Miguna was arrested within the precincts of inland Container Depot-Embakasi and taken to Jomo Kenyatta International Airport for purposes of deportation and boarded KLM Airline Flight No.KLO566 to Toronto Canada via Amsterdam.

(14) The Government action was guided by the Constitution of Kenya 2010, the Kenya Citizenship and Immigration Act, 2011 particularly Sections 33 and 43 and the Judicial interpretation of the same including High Court decision in:- Jisvin Chandra Narottam Hemraj Premji Pattni - I have just come from India - vs Director of Immigration and another (2015) eKLR, Bashir Mohamed Jama Abdi vs Minister for Immigration and Registration of Persons and two others (2014) eKLR.

The statement is signed by the CS.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order Senators. I can see two, three, four requests for intervention. You should make them extremely brief. I will start with the Senate Majority Leader.

*(A Senator spoke off record)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): It is a point of order. Is it so, Senate Majority Leader?

**The Senate Majority Leader** (Sen. Murkomen): Yes, Mr. Deputy Speaker Sir. Having listened to the answer given by the Chairperson, is it in order for us to proceed to discuss this matter considering Standing Order No.92 and the rule of *sub judice*? This is also in consideration of the fact that this case is still alive in court. Two key decisions of the court were made by Justice Kimaru and Justice Mwita. I am also aware that notices of appeal were filed on the same. This is a very substantive issue. I am not sure, but I think that Sen. Mutula Kilonzo Jnr. and Sen. Orenge are on record on this matter in court.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I think that is a valid concern from the Senate Majority Leader.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker Sir, I was fully aware at the time when I requested for this Statement, and even now, I am fully aware that this matter is in court. As a matter of fact, most of the issues read by the distinguished Senator for Garissa County and Chairperson of the Committee are under contestation in court. To that extent, the Senate Majority Leader is right.

However, I want to ask the Chairperson to tell this House whether the Government has suspended the operation of Article 16 of the Constitution. I say so because---

*(Members spoke off record)*

I just have two points. I will avoid all matters that are being contested in court. I will only touch on one. Point No. 1 is a very straightforward and harmless statement from the Chairperson. According to the Government records, Joshua Miguna Miguna was born on 31<sup>st</sup> December, 1962 in Nyando, present day Kisumu County, thus he becomes a citizen by birth. Article 16 is very clear.

“A citizen by birth does not lose citizenship by acquiring a citizenship

of another country.”

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senate Minority Leader. Resume your seat for a minute. I do take notice of the huge public interest in the matter in question. My own personal view is that any matter that touches on fundamental rights and freedom is a matter that is critical and weighty to warrant the attention of Parliament. However, the matter raised by the Senate Majority Leader cannot be wished away. The very issues on which the Senate Majority Leader is addressing us are the very issues which, to my mind, the appeal by the Ministry of Interior and Coordination of National Government is canvassing.

We should not be seen as people who do not take the law seriously in such circumstances. Irrespective of the weighty and the urgent nature of this matter, but also considering that this matter is getting attention in a court of law which has the final and more binding powers when it comes to interpretation of the law, I direct that we respect the Standing Orders of this House, in particular, Standing Order No. 92. Therefore, this matter is put in abeyance until such a time that the rule on *sub judice* shall not apply. So, ordered.

Next Statement!

*(Sen. Wetangula spoke off-record)*

Order, the Senate Minority Leader!

Proceed, Chairperson of the Standing Committee on Finance and Budget. You are supposed to issue a Statement on alleged delay in release of funds to county governments for the Financial Year 2017/2018. Do you have the Statement?

DELAY IN RELEASE OF FUNDS TO COUNTY  
GOVERNMENTS FOR THE FY 2017/2018

**Sen. (Eng.) Mahamud:** Mr. Deputy Speaker, Sir, after your guidance yesterday, we will answer this question tomorrow.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): No. Order, Senator! Sen. (Eng.) Mahamud, please sit down. My direction yesterday was as follows: That you should first give the House the progress or the status of that Statement. You should update this House on what efforts you have made and whether you have succeeded or not. So, that is a condition *sine qua non*.

**Sen. (Eng.) Mahamud:** Mr. Deputy Speaker, Sir, I do not know what ‘*sine qua non*’ is. Trust me.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): That is a conditional precedent. You must first tell us where this matter lies before declaring that you will issue the Statement tomorrow.

**Sen. (Eng.) Mahamud:** Mr. Deputy Speaker, Sir, my Committee had a meeting with the Cabinet Secretary (CS) and his team this morning on the matter in question and we have agreed that we will answer this question tomorrow.

In fact, we have directed them to go and give us a comprehensive answer and sign it out. Our Clerks are now busy following them to have the answers and I hope to answer the question tomorrow.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Well done, Chairman. That is how chairpersons of committees should address us, going forward.

Sen. Khaniri, are you okay with tomorrow?

**Sen. Khaniri:** Mr. Deputy Speaker, Sir, I want to thank you for your firmness. I am okay with tomorrow as long as he comes with an answer that is addressing all the four issues I raised which are very important. I hope he will do that.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I direct that the Chairperson of the Standing Committee on Finance and Budget issues the Statement which appears as Statement (c) in today's Order Paper, tomorrow.

The next Statement is by the Chairperson, Standing Committee on Energy regarding coal exploration at Mui Basin, Kitui County. Proceed, Chairperson. Where is Sen. Maina of Nyeri County? Is the Vice-Chairperson or any Member of that Committee in the House?

Yes, Sen. Seneta.

#### COAL EXPLORATION AT MUI BASIN IN KITUI COUNTY

**Sen. Seneta:** Mr. Deputy Speaker, Sir, the Chairman was around and we shall follow up on the Statement with him. If the Statement will be ready we shall---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator! You are the Vice-Chairperson of the Committee. Is the statement ready?

**Sen. Seneta:** No, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Let us hear from Sen. Wambua.

**Sen. Wambua:** Thank you, Mr. Deputy Speaker, Sir. You gave a direction on that matter yesterday and the direction was that the Chairman would at the very least provide an interim report on the decision to take a new contractor on site. The direction from the Chairperson yesterday was that we would get a brief today and a comprehensive answer tomorrow. I will be guided by you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): That is correct.

The Vice-Chairperson, where is the Statement?

**Sen. Seneta:** Mr. Deputy Speaker, Sir, the Chairman is not here.

*(Sen. (Eng.) Maina entered the Chamber)*

The Chairman is actually walking in. So, let us give him time to settle down and check on the Statement.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. (Eng.) Maina, we are on Statement (d) regarding coal exploration at Mui Basin, Kitui County. Do you have the statement with you?

**Sen. (Eng.) Maina:** Mr. Deputy Speaker, Sir, I actually handed over the Statement. Going by your ruling yesterday, you said that I handle this matter

administratively and consult with the Speaker's Office. That is why I gave an undertaking when the Statement would be ready. You have the Statement on your table there which I actually managed to get from the Principal Secretary (PS), Ministry of Energy this morning. I have stressed to them the seriousness of the delay on this matter.

Consequently, I had the courtesy and respect to inform the questioner on the same and he said that all was well. Right now, I was with the Speaker consulting on some matter because I had left this matter sorted out. He told me that the Speaker in the Chair was looking for me and that maybe you have forgotten what he told you. The Statement is on your table.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well, fellow Senator.

Sen. Wambua, has the Chairperson of the Standing Committee Energy shared with you the Statement?

**Sen. Wambua:** Mr. Deputy Speaker, Sir, I have seen a one-page response from the PS, Ministry of Energy asking for more time. Remember the matter in contention was on Monday 12<sup>th</sup>, where a new contractor would be moved to the ground to undertake this project without a settlement on the benefit sharing agreement and the establishment of a coal processing plant at source.

The undertaking by the CS and the PS is that the answer will come to the Floor of the House on 13<sup>th</sup> March, 2018, a day after the matter that I raised yesterday. So, I need direction from you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): The Chairperson, Standing Committee on Energy, the information according Sen. Wambua is that he needs more time to respond to the Statement. Is that the position?

**Sen. (Eng.) Maina:** Mr. Deputy Speaker, Sir, that is partly correct. Sen. Wambua knows that I took the time to walk to where he is.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator! Please resume your seat.

Sen. Wambua, how much time did the Permanent Secretary (PS) request on this matter?

**Sen. Wambua:** Mr. Deputy Speaker, Sir, according to the letter that I was shown by the Senator for Kirinyaga, the PS says that the Ministry will respond to this matter on 13<sup>th</sup> March, 2018.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I direct as follows; one, that the interim Statement that has already been signed by the PS be issued tomorrow. Two, that a final Statement on this issue be issued on Thursday, next week.

It is so ordered.

*(Statement deferred)*

Order, Senators! We have very little time. As you can see, it is already past 4 p.m., and we have some voting to do today; which we will do shortly. This is because I am advised by the Whips that we have the numbers and we have Bills to vote for. Before we do that, if you allow me, I would rather we dispense with the remaining four statements which are very direct and brief. We should be mindful of our time here

because we have very limited time and a lot of work to do. Let us not introduce side issues; let us go straight to the point.

Chairpersons of Committees, you do not need to read the Statements word for word, because it is assumed that you have shared it with the Senator who requested for the Statement. Just summarize the responses, tell us the conclusion and we move on. So, in the next ten minutes at most, if not five, we should be through with the remaining Statements.

STATE OF TOURISM IN MALINDI, KILIFI COUNTY

**The Deputy Speaker** (Sen. (Prof.) Kindiki): On that note, Chairperson of the Committee on Tourism, Trade and Industrialization, do you have the Statement concerning the state of tourism in Malindi?

**Sen. Kibiru:** Yes, Mr. Deputy Speaker, Sir. I have it.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): How long is it?

**Sen. Kibiru:** It is two pages long.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Just summarize the findings, Chairperson. Have you shared it with Sen. Zawadi?

*(Sen. Kibiru consulted Sen. Zawadi Gona)*

*(Laughter)*

Order, Senator; please sit down.

Sen. Zawadi, have you seen that Statement? Has the Chairperson of the Committee on Tourism, Trade and Industrialization shared that Statement with you?

**Sen. Gona:** No, Mr. Deputy Speaker, Sir, he has not.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): The custom here, to avoid too much to and fro, is that you share the Statement with the Senator who requested it ahead of time so that we make use of the limited time that we have. So, if you have not seen the Statement, I direct that, that Statement be issued tomorrow. In the meantime, it should be shared with Sen. Zawadi in advance.

It is so ordered.

*(Statement deferred)*

The next is Statement 'f,' on raid by armed bandits in Suyian Area, Samburu North Constituency to be issued by the Chairperson of the Committee on National Security, Defence and Foreign Relations. Do you have that Statement, Sen. Yusuf Haji?

RAID BY ARMED BANDITS IN SUYIAN AREA,  
SAMBURU NORTH CONSTITUENCY

**Sen. Haji:** Yes, I have it, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): How long is it? If it is long, I would rather we issue it tomorrow.

**Sen. Haji:** Mr. Deputy Speaker, Sir, I do not mind.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Lelegwe, are you okay with the statement being issued tomorrow?

**Sen. Lelegwe:** Thank you, Mr. Deputy Speaker, Sir. I rise on a point of order. You are requesting Chairpersons of Committees to give a summary of the responses to the statements. But I think that Statements are very important to this House and they should go on record in the HANSARD. I request that if we do not have time, we should even postpone the Statements so that we can---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Lelegwe! Order! Sen. Yusuf Haji, have you shared this Statement with Sen. Lelegwe?

**Sen. Haji:** Yes, Mr. Deputy Speaker, Sir, I have shared it with him. It was ready yesterday, but he requested that it be issued today. So, it is nobody's mistake but his own.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Can you issue it in three minutes or do we do this tomorrow?

For your information, hon. Senators, we should not be spending more than one hour on Statements. Sen. Lelegwe, the Senate does not have all the time in the world; we have limited time. The reason why the Statement is shared is because the primary consumer of the Statement is the Senator who asked for it. That is why we ensure that it is in writing and, so, it should be available. But we cannot have the Chairperson come to read to us a 50-page Statement. If we have ten statements to issue, those would be 500 pages of reading. That way, we will not dispense with any business here.

Sen. Haji, I request that you issue that Statement tomorrow.

**Sen. Haji:** That is fine, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you.

It is so ordered.

*(Statement deferred)*

The next Statement is to be issued by Sen. Yusuf Haji on the alleged excessive use of force and police brutality during demonstrations. Do you have that Statement, Sen. Haji?

USE OF EXCESSIVE FORCE/POLICE BRUTALITY  
DURING RAID AT UON

**Sen. Haji:** Mr. Deputy Speaker, Sir, the Statement is not ready.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Olekina?

**Sen. Olekina:** Thank you, Mr. Deputy Speaker, Sir. We discussed that issue with the distinguished Senator and I was advised that the Statement is not ready. So, I will wait until it is ready.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): When will it be ready, Sen. Haji?

**Sen. Haji:** Mr. Deputy Speaker, Sir, we will endeavour to get it on Thursday.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Do you mean tomorrow?

**Sen. Haji:** No, Mr. Deputy Speaker, Sir; I mean on Tuesday, next week.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): It is so ordered.

*(Statement deferred)*

The second last Statement is to be issued by the Chairperson of the Committee on National Cohesion, Equal Opportunity and Regional Integration regarding the song.

DEROGATORY SONG AGAINST  
THE KAMBA COMMUNITY

**Sen. (Rev.) Waqo:** Mr. Deputy Speaker, Sir, the Statement is not ready, but we will give a response tomorrow.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Wambua, Sen. (Rev.) Waqo says the Statement on the song will be ready tomorrow. Is that okay with you?

**Sen. Wambua:** That is okay, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): It is so ordered.

*(Statement deferred)*

Finally, there is a Statement to be issued by the Chairperson of the Committee on Lands, Environment and Natural Resources regarding the use and management of riparian areas in Kenya. Where is the Chairperson of the Committee?

Proceed, Sen. Mwangi.

USE AND MANAGEMENT OF RIPARIAN  
AREAS IN KENYA

**Sen. Mwangi:** Mr. Deputy Speaker, Sir, this Statement is not ready. However, my Vice Chairperson has talked to Sen. Seneta about it and they have agreed that she can give us more time.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Is that true, Sen. Seneta?

**Sen. Seneta:** It is, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): How much more time are you giving the Committee?

**Sen. Seneta:** One more week, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): It is so ordered.

*(Statement deferred)*

Thank you, hon. Senators. That brings us to the end of Statements. As I have ruled, in future, we should dispense with Statements in about one hour. We are all leaders and we have a way of capturing all these issues without taking too much time.

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What is it Sen. Njeru Ndwiga?

**Sen. Ndwiga:** Mr. Deputy Speaker, Sir, you have just removed words from my mouth. My worry is that we spend so much time on Statements. I am wondering what the Business of this House is. It is important that Members bring Statements on issues and matters that affect their constituents. However, the Business of this House is not only Statements. Is there a way we can allocate time for Statements so that we can deal with the other Business of the House?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Ndwiga, that point is noted. That ought to be the practice; it will be acted upon.

*(Sen. Orengo and Sen. Malalah consulted loudly)*

Order, Senators! Order, Sen. Orengo and Sen. Malalah.  
I have a Communication to make.

### COMMUNICATION FROM THE CHAIR

VISITING DELEGATION OF STUDENTS AND PROFESSORS  
FROM GEORGETOWN UNIVERSITY, WASHINGTON, D.C.

Hon. Senators, I would like to acknowledge the presence, in the Speaker's Gallery this afternoon, of visiting Students and Professors from Georgetown University, Washington D.C.

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

They are:

1. Sylvia Akosua Amegashie
2. Bemnet Assefa
3. Caitlin RoseBentley
4. Thomas Connelly
5. Isaac Kim
6. Marco Antonio Martinez
7. Matthew Raymond Mullman
8. Andreas Paraskevopoulos
9. Etana Bethany Solomon
10. Rayne Sullivan
11. Bianca Uribe
12. Prof. Scott D. Taylor
13. Prof. John David Kraemer

*(Applause)*

On behalf of the Senate and on my own behalf, I welcome them to the Senate. I wish them well for the remainder of their stay here in Kenya.

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I thank you.  
Next Order!

## BILL

### *Second Reading*

#### THE WAREHOUSE RECEIPTS SYSTEM BILL (SENATE BILLS NO.10 OF 2017)

*(Sen. Dullo on 21.2.2018)*

*(Resumption of Debate interrupted on 22.02.2018)*

**The Deputy Speaker (Sen. (Prof.) Kindiki):** Order, hon. Senators! It is now voting time. Order, Sen. Mugo, Sen. Olekina and Sen. M. Kajwang'. Those who are receding should know that you cannot recede when we are voting. We will vote shortly. You can recede during the duration of the Division Bell.

I now direct that the Bell be rang for three minutes.

*(The Division Bell was rung)*

Order Senators! Resume your seats.

Senate Majority Leader and the whips, do we have the numbers?

**The Senate Majority Leader (Sen. Murkomen):** Yes we do.

**The Deputy Speaker (Sen. (Prof.) Kindiki):** I now direct that the doors be locked and the Bar drawn.

*(The doors were closed and the Bar drawn)*

*(Loud consultations)*

Order, hon. Senators! What is the excitement about? I did not know that Division can be exciting.

I now put the question, which is: That, The Warehouse Receipts system Bill (Senate Bills No.10 of 2017) be now read a Second Time.

Is everybody logged in and ready? Please, confirm that you are logged in. Are you ready Clerk?

*(There was a technical hitch)*

*(The Deputy Speaker (Sen. (Prof.) Kindiki)*

*consulted the Clerk-at-the-Table)*

The Clerk-at-the-Table has asked for more time.

*(Sen. Mutula Kilonzo Jnr. spoke off record)*

Order, Sen. Mutula Kilonzo Jnr.! Avoid extraneous issues, tempting as they could be.

Clerk-at-the-Table, are we ready now?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Pareno! The Standing Orders do not allow you to move during Division. You should remain at your seat permanently and quietly.

*(Voting in progress)*

*(Loud consultations)*

Order, Senators! There is system failure. I now direct that we do manual voting by calling out on the Roll of Senators.

*(Hon. Senators proceeded to vote manually)*

*(Loud consultations)*

Order, Senators! I rescind my decision. The technology has behaved. We can now proceed with it.

*(Loud consultations)*

Order, Senators! Switch off those machines. They are either on or off. Now that they are on, let us vote for one minute.

*(Loud consultations)*

Clerk-at-the Table, I direct that you switch off that system and call out the Roll of Senators.

*(Senators proceeded to vote manually)*

*(Sen. Wako spoke off record)*

Order, Sen. Amos Wako!

## DIVISION

### ROLL CALL VOTING

*(Question, that the Warehouse Receipts System Bill (Senate Bill No.10 of 2017) be now read a Second Time, put and the Senate proceeded to vote by County Delegations)*

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**The Deputy Speaker** (Sen. (Prof.) Kindiki): Let the Clerks do the tallying.

*(The Clerks-at –the –Table proceeded to tally the Votes)*

**AYES:** Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo; Isiolo County; Sen. (Prof.) Ekal, Turkana County; Sen. Faki, Mombasa County; Sen. Farhiya, Nairobi City County; Sen. Hargura, Marsabit County; Sen. Iman, Garissa County; Sen. M. Kajwang', Homa Bay County; Sen. Kang'ata, Murang'a County; Sen. Kibiru, Kirinyaga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County; Sen. Lelegwe, Samburu County; Sen. Loitiptip, Lamu County; Sen. Madzayo, Kilifi County; Sen.(Eng.) Mahamud, Mandera County; Sen. Malalah, Kakamega County; Sen. Mpaayei, Kajiado County; Sen. Murkomen, Elgeyo Marakwet County; Sen. Mutula Kilonzo Jnr., Makeni County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita-Taveta County; Sen. Ndwiga, Embu County; Sen. Olekina, Narok County; Sen. (Prof.) Onger, Kisii County; Sen. Poghisi, West Pokot County; Sen. Prengi, Nakuru County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; Sen. Wambua, Kitui County; Sen. Wetangula, Bungoma County.

**NOES:** Nil.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order Members. The results of the voting are as follows:

**Ayes:** 35

**Noes:** 0

**Abstentions:** 0

*(Question carried by 35 votes to nil)*

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Next Order.

### MOTION

ADOPTION OF SESSIONAL PAPER NO.2 OF 2016 ON THE NATIONAL SLUM UPGRADING AND PREVENTION POLICY.

THAT, this House adopts Sessional Paper No. 2 of 2016 on the National Slum Upgrading and Prevention Policy, laid on the Table of the House on Tuesday, 10th October, 2017.

*(Sen. Dullo on 27.2.2018)*

*(Resumption of Debate interrupted on 1.3.2018)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order Senators. That Order also requires us to vote. I direct that we ring the Division Bell for a minute.

*(An Hon. Senator spoke off record)*

Yes, the doors must be opened. Open the doors and draw the bars while the bell rings for one minute.

*(The doors were opened, the bars drawn for more Members to come in)*

*(The Division Bell was rung)*

Order, Senators. You should be resuming your seats now. I now direct that the doors be closed and the bars drawn.

*(The doors were closed and the bars drawn)*

Order, Senators. Let us try technology this time. Log in.

### **ELECTRONIC VOTING**

*(Sen. Cheruiyot remained standing while consulting with other senators)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Senator for Kericho, Standing Orders do not allow you to chit chat during division and to move about the corridors and alleys of the Chamber. Remain seated, glued on your seat until the process is over.

I think we are good to go now. You have one minute to vote. Vote now.

*(Senators logged in and proceeded to vote)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): That is the end of voting, hon. Senators. Those senators who were unable to vote electronically may now approach the clerks-at-the-table and record their votes. Let us have assisted voters and do it quickly.

*(Several Senators approached the Clerks-at-the-table and proceeded to record their votes)*

Indeed, they are many. Order. We are still doing Division. Order, Sen. Olekina. I can see you are excited that the Majority side still has the majority assisted voters.

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*(Laughter)*

## DIVISION

### ELECTRONIC VOTING

*(Question that the House adopts Sessional Paper No.2 of 2016 on  
The National Slum Upgrading and Prevention Policy, put  
and the Senate proceeded to vote)*

**AYES:** Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. (Prof.) Ekal, Turkana County; Sen. Sen. Faki, Mombasa County; Sen. Farhiya, Nairobi County; Sen. Iman, Garissa County; Sen. Kang'ata, Murang'a County; Sen. Kibiru, Kirinyaga County; Sen.(Prof.) Kindiki, Tharaka Nithi County; Sen. Kinyua, Laikipia County; Sen.(Dr.) Langat, Bomet County; Sen. Lelegwe, Samburu County; Sen. Loitiptip, Lamu County; Sen. M. Kajwang', Homa Bay County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Maina, Nyeri County; Sen.(Eng.) Mahamud, Mandera County; Sen. Malalah, Kakamega County; Sen. Mpaayei, Kajiado County; Sen. Murkomen, Elgeyo Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaura, Kiambu County; Sen. Mwaruma, Taita Taveta County; Sen. Ndwiga, Embu County; Sen. Olekina, Narok County; Sen. (Prof.) Ongeru, Kisii County; Sen. Poghisi, West Pokot County; Sen. Prengei, Nakuru County; Sen. Wako, Busia County; Sen. Wambua, Kitui County; Sen. (Rev.) Waqo, Marsabit County.

**NOES:** Nil.

**ABSTENTION:** Sen. Wetangula, Bungoma County.

**The Deputy Speaker** (Sen. (Prof.) Kindiki: Order, Senators! Hon. Senators, the results of the Division are as follows:

**AYES:** 35

**NOES:** 0

**ABSTENTIONS:** 1

*(Question carried by 35 votes to nil)*

Order senators! I direct now that the doors be locked and the Bar be drawn. Next Order!

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Yes, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr:** Mr. Deputy Speaker, Sir, the record shows that this Bill had been moved, it had been seconded and we proceeded to the debate. It is important you amend the direction you gave yesterday since this Bill has actually been moved.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. Any other Member except the mover and those who spoke? Yes, Senate Leader of Majority.

**The Senate Leader of Majority** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I rise to support this Motion with the necessary amendments I am going to suggest. This is a very important Bill which is resolving a problem bedeviling the counties. I have consulted the mover, Sen. Mutula Kilonzo jnr. and there are certain thoughts I want to put forth.

From the onset, it is one of those areas in the Constitution that when it was drafted they overlooked the review or resolution of conflicts that are related to boundaries of counties.

The current counties are part of the districts that existed in 1992. Next to this Bill is what we call the boundaries including coordinates of various parts of our counties. This is important because at the moment, we have problems related to conflict and I am sure the mover was inspired by the conflict between Machakos and Makeni County as to whether Konza City was in Machakos or Makeni.

Mr. Deputy Speaker, Sir, when the Constitution was being made according to the report from Naivasha, the decision to having 47 counties was arrived at after a lot of discussion as to what were viable entities to become regions.

The initial proposal was to have eight regions and then it moved to 14 regions. Then people would not agree whether Nakuru should be in the Central Rift, North Rift or South Rift. There were some discussions as to whether the Ukambani region which was the Eastern region that time in the provinces was going to be divided into two or part of it should go with your county, Tharaka Nithi, Meru, Isiolo and Embu.

In fact, when I was moving the Urban Areas and Cities (Amendment) Bill (Senate Bills No.4 of 2017) I dared say that it was a mistake to make Nairobi a County. All over the world, Washington DC, where the students who were here and their professors came from, was delimited as a District of Columbia for the purpose of creating the headquarters of the United States of America which, although has 50 states, created a headquarters for the purpose of running the State.

Consequently, if you go to Washington DC, although they complain that they are being taxed without representation, the wisdom behind the creation of the District of

Columbia in Washington was to enable the Federal Government to have a place where the headquarter of the country would be.

That same concept was in Canberra in Australia where they also created the headquarters of Australia. We made a mistake to make Nairobi a county because it was meant to be the headquarters of the Republic of Kenya. That responsibility which makes Nairobi a headquarter of the Republic of Kenya should have created an opportunity for how Nairobi would be managed differently.

I also still believe that it was a mistake to have 47 counties, although it was a political compromise as a result of political expedience and odd economics. To make sense of what counties are, see what our counties are doing at the moment. A county like Elgeyo Marakwet cannot even collect Ksh60,000,000 in revenue because there is such a small area that the entity itself cannot create the economies of scale required for a county to run sustainably by collecting taxes.

Even the compromise in drafting Article 209 of the Constitution to ensure that counties were only collecting licence fees and the parking fees was arrived at because it was impossible to allow another 47 entities to come up with a taxation regime that would raise local revenue. Had we agreed to have seven, eight or ten at most, those regions would have been economically viable and politically strong.

If you look at the pressure that people have, by saying devolution was meant to remove the pressure from the presidency and the centre. That has not succeeded because it ended up that the county government became so small that it cannot answer and properly check as an entity by itself. I sat in the taskforce on devolved government, we drafted the County Government Act, the Intergovernmental Relations Act, I played a key role in creation of what is called the Summit, the Council of Governors, and all those entities together with my colleagues who served in the taskforce.

Since, we were looking for a way of bringing together the counties to create that political ability to engage the centre so that you have checks and balances. If you had a governor of Nyanza region, whether the lower or upper Nyanza or a governor of Rift Valley or South Rift or North Rift. There should have been a governor of eastern Kenya, Makueni County combined with Machakos and maybe up to Taita Taveta, depending on how you agree in the delimitation of boundaries.

Eight to ten governors would have lessened that desire for the presidency. Since when you are a governor many of these individuals or citizens clamoring for the presidency and getting 20,000 votes, 40,000 votes would have extended that energy to a more useful position of a governor; a real Governor, so to speak.

So, the problem that Sen. Mutula Kilonzo Jnr. is trying to solve here – even as we deal with the boundary problem – is because initially, you just had a district. There was, therefore, no reason to have proper coordinates of a district because it was in one centralised system of government. We took administrative agents of a centralised system of government, put them as they were without doing clear boundaries and then said they were going to be independent.

I argued in the task force on devolved government and soon after we finished that exercise that the issue of boundaries is the problem of the future; and this is how. It may be that, today that you come from a county that has no boundary problem with another

county. But that is so just because that problem is being postponed. However, wait until oil is discovered, for example, at the border of Tharaka Nithi and Garissa counties. That is when you will start hearing people say that “No, no, no; our grandfathers used to live in Marimanti and they moved up to Isiolo.” So, issues arise especially when there is an attachment to resources. This is because we are sitting here and we pass laws; for example, we passed the Mining Act which creates a structure of how resources will be shared out and what percentage a community will get.

In fact, I had a discussion with a Member of the National Assembly who comes from Narok. The discussion was about the Geothermal Development Corporation (GDC) project that is taking place between Nakuru and Narok counties. The local MP was arguing that when we passed the legislation that captures the sharing of resources for local communities, who is the local community? When that ‘local communities’ debate began, some people suggested that the local community are the people within the Ward where that resource has been established.

However, what happens when the local community spills over a county in terms of family and ethnic relations? For example, a place like Keiyo south, where I come from, the Keiyo people live in Keiyo South up to Eldoret Town. As a matter of fact, I represent the grandparents and relatives of Sen. (Prof.) Kamar, who is a Senator of another county. It is the same way the people of Nandi live both in Nandi County but they spill over to Uasin Gishu County. In fact, Sen. Cherargei will tell you here that a quarter of Nandi politics is done within Eldoret Town. When someone wants a more ‘exciting’ crowd and they come from Nandi County, they bring their politics to Eldoret town. That is what happens in that situation.

Mr. Deputy Speaker, Sir, you also have a situation where the counties are clamouring for their share. You have a local community and a county government getting a particular share. You will have fights within counties and within communities because of the benefits that will come. That is why I totally support this Bill in terms of creating a structure for resolving disputes that occur among or between counties. We are talking about Makueni and Machakos counties, but we also know about the issue of Maseno, which is between Kisumu and Vihiga counties.

We have seen the passions sometimes in this House when such issues are raised. Because there are no beacons, you cannot be sure whether if you go to a town called Moi’s Bridge--- You are aware of the North Rift and I will not say why, but it is for good reasons. It is either you schooled there or for other reasons that are positive. In your earlier life as an evangelist, you must have gone to Moi’s Bridge Town. But because there are no beacons, there is always a debate whether the town is in Kakamega, Trans Nzoia or Uasin Gishu counties.

Even when the local taxes and licensing is done, you will hear things like: “From here up to this petrol station, taxes belong to Uasin Gishu County; and up to that other corner, taxes belong to Kakamega County.” So, sometimes when the Member of Parliament (MP) for Lugari is campaigning – actually, I think it was hived off from Lugari and it is now in Likuyani – he will come up to Moi’s Bridge Town to campaign. The MP of Soi will also go to the town to campaign as well as the MP of Cherangani Constituency, because that is a town that brings together the three constituencies.

Therefore, Mr. Deputy Speaker, Sir, the future in terms of conflict resolution--- I know of a situation in the last Parliament where my Governor and the MP of Ainabkoi Constituency were always fighting over whether Elgeyo Marakwet County should be collecting cess around Kaptagat area. This is because Kaptagat is both in Uasin Gishu and Elgeyo Marakwet counties. So, we have all these challenges in terms of boundaries.

Therefore, the efforts of the Senator must be recognized, despite the fact that he was part and parcel of those who unknowingly defeated a Bill in this House and annoyed me. I am a reasonable man and I know that this is a good Bill. This is because it is about creating mechanisms for solving those disputes peacefully so that we can avoid situations where there are fights, for example, between Kitui and Garissa or Tana River counties because of grazing rights and boundaries.

There is also the question of Elgeyo Marakwet and West Pokot or Baringo Counties. Luckily for the Baringo side, we enjoy having the Kerio River, and already this Bill says that it is up to the east and the west side of the river to determine those boundaries. But, where there are no natural features, many people struggle to know exactly where the boundaries are and how they will deal with those situations.

Mr. Deputy Speaker, Sir, I am agreeable to the fact that Sen. Mutula Kilonzo Jnr. has proposed that the resolution of these boundary problems, in the first instance, be subjected to a mediation Committee. That is important because alternative dispute resolution must be encouraged. Mediation captures the spirit of the African culture on how Africans resolved their problems. This is something that we must think through.

Yesterday, I saw the Cabinet Secretary (CS) in charge of the Ministry of Devolution and Planning, Hon. Eugene Wamalwa, who is also an Advocate, adding his voice to this issue. He argued that one of the biggest problems bedeviling counties is dealing with legal fees and, therefore, mediation and conciliation should be applied so that we can solve some of those problems. This is of benefit not only to the enforcement of rights but also in the expansion of the constitution with regards to the maxim of *locus standi*.

This applies to any person who can go to court on behalf of a county and anybody who thinks that their rights have or will be infringed, which will lead to counties being in serious problems dealing with legal fees. In agreeing with the CS, we have to develop mechanisms of dealing with this problem. We have to develop mechanisms between us and the Judiciary, where the courts will consciously realize that public resources will be expended in defending all the cases brought to court.

Where it is possible, particularly where you are not dealing directly with the enforcement of rights, we must sit down and see to it that mediation, reconciliation and arbitration are applied as alternative dispute resolution mechanisms so that we can save our resources in this country.

Yesterday, as we spoke about the insurance situation in Murang'a, we know that unscrupulous and corrupt individuals operating in counties are misusing the service sector, including the legal sector, to instruct individuals with an intention of paying them exorbitant legal fees that are sometimes immoral. Even we, as lawyers, must take a stand that we will not participate in a process of inflating legal fees just for the sake of fleecing our counties of their resources. It is laughable that some lawyers cannot even pay their

taxes and they have to be assisted to do so because the money that they received is not theirs. A lawyer can get Kshs10 million or Kshs20 million but they may end up stating that they got Kshs2 million, Kshs3 million or Kshs1 million and the rest goes to political activities and rallies and so on and so forth.

I agree with Sen. Mutula Kilonzo Jnr., that we should form a mediation committee if any disputes arise. That committee should not just be a mediation committee for the sake of it but it should be structured in a manner, with the involvement of the Senate, to perform its oversight responsibility. The Senate should approve members of a mediation committee. Members of the committee will work within the prescribed timeline and their report will come here and it will be approved in this House. I encourage that this should be the way to go.

Sadly, in this nation, we play to the gallery. If you are keen, you will realise that most governors who are serving a second term are a bit relaxed. There is no much noise or fighting with their neighbours. There are very little activities in terms of incitements because during the first term, everybody tries to demonstrate that they want to be loved by the constituents. Sometimes we go the other route. We must take the higher standards of engaging our citizens.

Regarding the situations of incitement, I can say it here without fear of contradiction that what is happening in Kitui is politics of populism. Even the governor of Kiambu has to respond through the politics of populism because everybody must be seen to be standing with his people. We as political leaders must expand the theory and the application of “my people”. Although you look at the immediate constituents where you have votes, the easiest thing to do is to tell them to insult others but you can tell them that you have chosen not to because you want to travel with them in the path of reconciliation and unity and keeping this country together.

Since you may be governing a small jurisdiction, you can incite people in Nairobi against another community thinking that the same community does not live in Elgeyo Marakwet or Mombasa. Because of short-term interests, five, ten or twenty years down the line, you will be ashamed to stand anywhere in the Republic of Kenya and say that you are a Kenyan because you reduced yourself to become a villager.

When citizens realise that you are an impediment, by misusing the community for purposes of populism, they will always deal with you seriously. Therefore, we must know what to tell our people even when we are dealing with boundary issues because we are Senators. We must apply the maturity demonstrated by Sen. Mutula Kilonzo Jnr. and Mr. Muthama who was the Senate Minority Whip. They never boxed each other here.

*(Sen. Mutula Kilonzo Jnr. spoke off record)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order Sen. Mutula Kilonzo Jnr.! You know what to do when you want to talk in the Chamber.

**The Senate Majority Leader** (Sen. Murkomen): He wanted to inform me.

Mr. Deputy Speaker, Sir, the former Senator for Machakos, Mr. Muthama and Sen. Mutula Kilonzo Jnr. never demonstrated here that kind of populism and that was a mature way of dealing with the situation. Even if they recognised that their governors had

disagreed back home, they still came here in a very sober way. Sen. Mutula Kilonzo Jnr. has demonstrated maturity by drafting this Bill instead of playing politics of populism. If this Bill does not pass, Sen. Mutula Kilonzo Jnr. will have washed his hands. He has acquitted himself and demonstrated that as legislators, we must use legislative mechanisms to solve problems that we have and problems must be solved in a peaceful manner.

I have not been seeing Sen. Mutula Kilonzo Jnr. so much in politics of resisting this and that, which is a positive thing. I know once in a while he has yielded to pressure but generally he passes the mark of a sober and reasonable man. That is why he brought this Bill to this House. You will allow me to be a bit generous in praising him because he will want me to support him to pass this Bill. As leaders, we must stand for what is true and right.

I support formation of mediation committee because the Senate has a role which emanates from the Constitution. Sen. Mutula Kilonzo Jnr. has recognised the role of the Senate and captured it accordingly. The mediation committee as captured in Clause 13 of this Bill will deal with facilitating communication and negotiations between mediation parties. Although the composition of the mediation committee will include people from counties that might be in conflict, there is a recognition that their work will be impartial and in the best interest of counties in conflict. Although it will be an *ad hoc* committee, all the information from the committee will be deposited to the relevant ministry and archived for purposes of keeping records for the future.

I also recognise the fact that there will be two alternatives to the report of the mediation committee. First, the boundary dispute will be referred to the mediation committee and there is also the establishment of an *ad hoc* commission.

I have an issue with Clause 24 of this Bill. I have consulted the drafter of the Bill and he told me that he looked at the Constitution. I have also looked at the Constitution and there is silence regarding the role of the Independent Electoral and Boundaries Commission (IEBC) in so far as the boundaries of counties are concerned. Cumulatively, they have a role when it comes to boundaries of wards and constituencies. When they delimit wards and constituencies, it should follow that when you deal with the boundary of the last ward in a county, you will be dealing with counties.

I am sorry I did not even ask whether there was a committee report on this Bill. This is something that we need to interrogate before the Committee stage. We still need to consult other experts in this area including the IEBC itself. Although they said that they do not want to deal with disputes related to counties, it is important because you cannot divorce that.

*[The Deputy Speaker (Sen. (Prof.) Kindiki left the Chair]*

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

Sen. Mutula Kilonzo Jnr. proposes formation of an *ad hoc* commission that will have representatives from the National Land Commission (NLC) and the IEBC. It is proper that such a commission is not an *ad hoc*. It should be a department in a permanent

commission like the IEBC. We can have that as a responsibility of the IEBC. Let someone go to court because of the silence of the Constitution. In my opinion, a purposive interpretation of the Constitution will lead to the ultimate conclusion that the right body to deal with boundaries of counties is the IEBC. We should put it that the IEBC should establish a department within the commission that will be dealing with boundaries because conflicts may arise.

Mr. Temporary Speaker, Sir, in resolving the dispute itself, you can remove it from the Independent Electoral and Boundaries Commission (IEBC). But in reviewing the boundary, the IEBC should determine the boundary after reviewing it. If there will be a dispute as to whether what the IEBC has done is right or wrong, the mediation process will follow. It should end at the Mediation Committee.

If there is anyone who is unhappy with the decision of the Mediation Committee, then the decision that will be adopted by the Senate can apply for judicial review at the High Court to review that decision. The day-to-day work of reviewing the boundaries and so forth should be domesticated within the IEBC. But it should be explored despite the fact that there is silence on the part of the Commission.

Having said that, such Bills cannot be lost since it is a very important piece of legislation. Therefore, I request the Senator not to hurry the Third Reading of this Bill. Let us give time to the Committee; the matter is before it. Also, let us also interrogate the possibilities of IEBC taking over that responsibility and ensure that we have a Bill that will receive wide acceptance when it goes to the National Assembly.

Mr. Temporary Speaker, Sir, I thank you for giving me the opportunity to contribute to this Bill. As a House, let us continue working together in a manner that is in conformity with our responsibility as protectors and defenders of devolution. We need to engage more counties and county governments to generate more of such business. Next week, I will be coming to the Floor of the House with a Bill to deal with the lacuna on the question of Deputy Governor and a few issues related to deputy speakers and county public service boards. This will be in terms of their independence and strength, so that we can ensure that our counties continue moving forward.

I have seen the impatience of the Senator for Narok County. Although I still have another 30 minutes to contribute, I will stop there.

I beg to support.

**Sen. Olekina:** Thank you, Mr. Temporary Speaker, Sir. The Senate Majority Leader is right that I value this Bill so much. I rise to support it. Our country is made up of ethnically divided boundaries. The reason I support this Bill is that it seeks to set up a legal framework to define boundaries and settle boundary disputes.

I was looking at all the existing disputes and they are quite a lot. I noted Uasin Gishu County and Elgeyo-Marakwet County, where the Senate Majority Leader comes from; Kajiado County and Makueni County; Kisumu County and Vihiga County, who are fighting over Maseno University; Narok County and Nakuru County, where we fight quite often; and, Narok County and Migori County. There are quite a lot of these issues which this Bill will seek to settle.

The issue of land is very emotive. Therefore, I support the idea of having a Commission different from the IEBC that is not permanent and constituted by an Act of

Parliament. This is something which will go very far in helping heal the wounds because we have a lot of problems. For example, we have boundaries which are defined between Narok County and Nakuru County. There are parts of Nakuru County which extend to Narok County. On one side of the road is Narok County and as you cross a small 'V,' there is a big piece of land owned by the Nyachae family. The boundaries are in the former Nakuru District, but that is actually in Narok County.

This Bill will also set up the legal framework because, currently, most counties are defined based on old districts' boundaries and this has a tendency of creating a lot of tension. I agree with the Senate Majority Leader when he talked about people fighting for resources when they are discovered in a neighbouring county.

Mr. Temporary Speaker, Sir, the main aim of this Bill is to ensure peaceful coexistence between the communities living in this country. We are so divided politically along our cultures and tribes. Once we have this legal framework it will help us to coexist with other people.

This Bill will also help us resolve land court cases. The Alternative Dispute Resolution (ADR) is something that will help this country. This is because there are very many land related court cases in Narok, Nakuru and Kajiado counties. For example, there is a piece of land in Suswa, which we do not know whether it is in Narok, Kajiado or Nakuru counties. Once we have this legal framework, it will help us to settle this issue.

I will now go straight to the key points which I had noted down, since I do not believe in deliberating so much on issues. Once everyone in this country knows where the boundary of County 'X' is, they will respect it. This Bill seeks to empower the Cabinet Secretary to keep up to date electronic records on county boundaries. I would like to urge the sponsor of this Bill to ensure that enough time is given to public participation. People in this country ought to know that there are legislations which have been set out and a framework to define the boundaries.

I also like the fact it gives a registered voter or a county executive an opportunity to petition Parliament to alter boundaries. This is because sometimes one may end up having a title deed of a piece of land that they bought many years ago, but the land cuts across two or three counties. Therefore, with such a petition, which I believe will come to the Senate, it will help us show the relevance of this House. There are so many issues about what this House can or cannot do, but if this Bill is given an opportunity to resolve these issues, it is more like giving it original jurisdiction. In this regard, I hope we can fight hard in this Senate.

I do not support the arguments of the Senate Majority Leader, but respect them, in trying to amend the Constitution through the backdoor and making Nairobi City as the headquarters of this country. The Constitution is very clear that Nairobi City is a County. Many years ago Nairobi was not even a region, but that has changed. We can give effect to Article 188 of the Constitution in terms of the alteration of county boundaries by setting up the temporary commission. This must be understood that it is not the IEBC. I do not support the position of IEBC dealing with it, since these issues are so emotive. Having a temporary commission that will also take into consideration the views of the land owners will help solve this problem.

Mr. Speaker, Sir, I will reiterate the issue of the ADR by stating that we have many land cases in this country. There are cases that were filed in the early 1970s in Narok County. For example, we have a case which was filed by a group ranch in Ntulele over boundary dispute which has never been resolved to date. I would like to urge the sponsor of this Bill to ensure constituency boundaries are clear because we now have a different system of government.

We do not have regions and I do not support them. This is because when we support eight regions, then the chances of a Maasai ever becoming a President in this country or a governor will be nil. The Maasai people are very generous. They sold all their land and are now scattered all the way from Marsabit to Rombo. If you say that, then we will go back to the issues of historical injustices.

I would have loved to see the National Land Commission (NLC) play a key role in this Bill. This is because there is a lot of work that has been done by them and we cannot ignore it. I saw an advertisement in the newspaper about the completion of the issuance of title deeds in Narok Town. In my view, that will be a misguided exercise because most plots in that town have more than three or four allotment letters. I would request the sponsor of this Bill to find a way to incorporate the findings of the NLC on historical land injustices. I would support the issue of regions if there was a way that we could bring all the Maasais who are scattered all the way from Marsabit to Rombo together.

The other key thing that is important in this Bill is that it is trying to address the issue of boundaries. We know many communities continue being at loggerheads over boundaries. In Narok County, for example, the Maasai and the Kipsigis communities are constantly having boundary issues. There is a provision in this Bill that encourages small local commissions to bring people from both communities to sit together and discuss these issues. We value our elders so much. Therefore, we should not ignore their input in terms of our boundaries. If we do so, we will be completely misguided.

There is a provision in this Bill that spells out a high threshold to be met before any alteration of a boundary can be carried out. This Bill gives a voter or a member of County Executive Committee (CEC) the right to petition for an alteration of boundaries. This Bill must be subjected to public participation. I urge the sponsor of this Bill to take it down to the grassroots level because land matters are very emotive. I know that the Senate Majority Leader had earlier stated that most counties are not able to raise Ksh60 million in revenue. I disagree with him. The issue here is understanding the revenue streams and putting in place proper revenue collection mechanisms.

With those few remarks, I support this Bill. We must ensure Kenyans from Marsabit to Lamu understand the contents of this Bill because the impact it will have in their lives is enormous.

Now that we are talking of Senate *mashinani* where we will have our sittings outside Nairobi, I urge the sponsor of this Bill to talk about these boundary issues and demystify them so that people at grassroots level will understand them. This is because many people might feel threatened when they hear their boundaries will be altered.

I would encourage that we follow through the defunct county governments. There are issues of assets and liabilities such as public land that was stolen by individuals. If we

are able to bring it back and know what assets each county has, then we would be able to fully defend devolution and also defend the boundaries. If I know that my land or the land of the people of Narok is being claimed by the people of Migori or Nakuru and we settle the issue of boundaries, that will help us resolve the dispute.

**Sen. Dullo:** Thank you, Mr. Temporary Speaker, Sir. I was looking at Sen. Mutula Kilonzo Jnr. who was waiting for me to state whether I support this Bill or not. We have had a very lengthy discussion on this Bill. At some point, I told him that I was not going to support it if it will not resolve the issues of Isiolo County.

Nevertheless, let me congratulate him for coming up with this Bill. I know that it has taken a long journey because it would have been dealt with in the last Senate. However, politics played a role in it and it never saw the light of day. I hope that the enemies of development will not derail the process of ensuring that it sees the light of day this time round.

Some of us have a lot of boundary disputes due to historical injustices that need to be resolved. I sat in the Committee on Devolved Government and Intergovernmental Relations today where they were carrying out a public hearing. It was very emotional for some people from my county who appeared before the Committee. Some of the elders were literally in tears because of the injustice meted on Isiolo County.

I hope that this Bill will address some of the concerns. The concern that we have as a county, and I think that the Bill has not addressed it, is on the 1992 District and Boundaries Act that amended the 1963 boundary. I believe that this does not only affect Isiolo County, but it also affects several counties that were affected by that particular legislation. This particular Bill has limited itself to the provision of that particular Act. I hope and pray that at some stage, we will be looking back at what happened after 1992 which requires the amendment of the Constitution and various legislations to deal with those injustices. One of the things which should be done is to make sure that we look at the functions of those commissions, for it to address certain concerns.

Having said that, we have a lot of issues, especially boundary disputes that affect various communities. Insecurity is a big factor or a big issue that comes with disputes between counties. Isiolo County neighbours Marsabit, Samburu, Wajir, Garissa and Meru counties. We have boundary disputes between my county and all those counties where people are basically being killed every day. That is why last week, I was pushing the Chairperson of the Standing Committee on National Security, Defence and Foreign Relation to answer those questions. Therefore, insecurity is one of the concerns that are brought about by the disputes of boundaries. Once we resolve this issue of boundaries, then we can deal with the issues of insecurity.

Development is another factor because we are being boxed as Isiolo County into a corner. We can neither move to the left nor to the right. In Garissa and Isiolo counties, we are having a development project where there is a road being constructed between Garbatulla and Modogashe. However, simply because of a boundary dispute between my county and Garissa County, that road is stuck; they cannot continue with the construction. It is a dispute that is very clear; that the people of Garissa are pushing themselves inside Isiolo County by almost two kilometres.

We have had leaders' meetings to request the Ministry of Interior and Coordination of National Government and other relevant Ministries to push back the people to the rightful boundary that has been there, but this has never happened. We are being told every day that they are going to do it after the rains because during dry season, people have many challenges. So, for the last three years, we have been requesting the Ministry of Interior and Coordination of National Government to make sure that they have demarcated those boundaries. However, up to now, that has not happened. Once we have this Commission, we can resolve those issues.

This boundary dispute has already affected revenue collection in the affected counties. For example, in the area where we have a dispute between my county and Meru County, they have already put barriers to collect cess from the people of Isiolo County. Our people are very poor and cannot pay Kshs100 for cess. This is within Isiolo County where there is a dispute. We are losing a lot of revenue. They are pushing the boundary so that they can increase their revenue base yet the Government is just watching.

There is a location within Isiolo County that is already claimed as a location of Meru County. It is only two kilometres from Isiolo County where police have erected barriers. There are 25 police posts in the areas where we have disputes. I do not know whether those police posts are even gazetted. If the police posts are in place, they should be gazetted. That is injustice. I hope this Commission will take care of that.

We discussed this issue with Sen. Mutula Kilonzo Jnr. We went to court and a ruling was given to that effect. Various Government agencies including Parliament and the National Land Commission were told to resolve this issue, but up to now, it has not been resolved. So, where do we turn to? That is why I am saying maybe this Commission could be a saviour, and I hope it will be.

There was a parcel of land allocated by the Ministry of Lands and Physical Planning without consulting the County Government. Recently, I went to the Ministry of Lands and Physical Planning offices and I was told that there are so many people hawking around their offices to be allocated land in Isiolo County because of the Lamu Port-South Sudan-Ethiopia Transport Corridor Project (LAPSSET) and Vision 2030. This is happening on a daily basis while we are just watching and people are helpless. So, we have many issues that need to be dealt with. Once this Commission is in place, they can then resolve those issues.

Education is also affected. We have Garbatulla National School that most of the leaders in this country have gone to. Today, that school has been reduced to a district school because of insecurity. This matter has affected even the education of our children and that has to be dealt with.

Another issue is on mining of the minerals that are within the county. Licenses are issued by the national Government without the consent of the County Government and the community in those areas which is an illegality. So, I believe that something will be done. To date, most of the people who own land in Isiolo County have not been issued with title deeds. Title deeds are important documents that one can use as collateral to get a loan. It is a security for your family. You will find that five to ten people are allocated one piece of land. It is really challenging.

We also have issues between crop farmers and pastoralists. The land use is different. Some are using the land for crop farming and others for pastoral purposes. If these issues are not resolved, then it is also a source of conflict.

Looking back at the Bill, I have a concern with Clause 17; the winding up of the mediation committee. I heard Sen. Murkomen say that we must have a standby or maybe a permanent body that will deal with these disputes. This is because if we do not have institutional memory, whereby you just handover and take off, then it means things will be stuck. So, I am requesting Sen. Mutula Kilonzo Jnr. who is the sponsor of this Bill that we must have mechanisms in place so that once the Committee has finalised its report and handed over, there should be a take-over mechanism.

The other concern that I wanted to raise is on Clause 18 (2) where you are talking of “at least 15 per cent of the registered voters.” We need to increase that threshold because if we leave it at 15 per cent, every Tom, Dick and Harry will run up with a petition to the Senate or the National Assembly. So, can we increase the threshold from 15 per cent?

Another concern is that we should have mechanisms whereby before a decision on a boundary dispute is taken; we, first, need to build the capacity of those affected counties. Let people know that there are boundary disputes and that demarcation is going to take place. If we do not do that, then it is going to be very difficult for the people who are affected within those counties that the boundaries are going to be amended.

Finally, I would like to say that the Truth, Justice and Reconciliation Commission (TJRC) came up with a lot of information on historical injustices on land disputes and land boundary issues. I would request Sen. Mutula Kilonzo Jnr. to look at the TJRC Report and pick a few issues that can enrich this Bill before we pass it.

I know there are going to be issues between the Senate and the National Assembly once we pass this Bill. My brother, you need to prepare yourself so that it is not taken by the National Assembly. We have a notion that a petition submitted to the National Assembly and the Senate brings conflicts between the two Houses. Can we have one of the Houses; either the Senate or the National Assembly to deal with the issues of boundary disputes? If that does not happen, then we will still have the same issues coming up, whether it is a money Bill, a county issue or a national Government issue.

Article 188 talks about Parliament. However, we need to do something because issues of boundaries affect counties. So, it should be the Senate that should deal with the boundary disputes.

**Sen. Wako:** Thank you, Mr. Temporary Speaker, Sir, for giving this opportunity to contribute to this important Bill. I want to commend Sen. Mutula Kilonzo Jnr. for having come up with this Bill.

My Committee, of which he was a Member, had noticed in the last Senate, that there was a lacuna in the Constitution when it came to dealing with county boundaries. The Independent Electoral and Boundaries Commission (IEBC) had been given a mandate to only look into the boundaries of wards and constituencies but not counties. To that extent, the Constitution specifically provides that the IEBC can only look into the boundaries of wards and constituency which means it cannot look into the boundaries of counties.

Consequently, it will be impossible to give that mandate to some Independent County Boundaries Commission through an Act of Parliament. It will not be possible to form a Commission that will be under IEBC. To me, that would be *ultra vires* of the Constitution which has stated that IEBC should only look into boundaries of wards and constituencies.

Mr. Temporary Speaker, Sir, the IEBC is overwhelmed by the work that it already has. It has to look at referenda and all the many elections under the Constitution. The other day, they were assisting the Law Society of Kenya (LSK) in the elections. I think they are overburdened. We should not overburden them with this sensitive mandate of looking into the boundaries of counties.

It is sensitive because we have heard a very able submission by the Senator for Isiolo County on what is going on in her county. In my area, there is a lot of sensitivity in as far as the boundary of Vihiga, Siaya and Kisumu counties is concerned. It would have been dealt with earlier but it could not because under the old Constitution, that boundary was provincial. Therefore, it could not have been dealt with without amending the Constitution which is a difficult thing to do.

I, therefore, commend Sen. Mutula Kilonzo Jnr. for filling this lacuna that we have in the Constitution and in our laws. I would like to assure Sen. Fatuma that all that she is complaining about lies within the mandate of the Mediation Committee. Amongst the principles to be taken into account are historical and cultural ties which she has complained about. What is important is people must be consulted in all decision-making processes.

Public participation is strengthened in this Bill by saying that the view of the communities affected must be taken into account. Therefore, I will not go into the issue of explaining the Mediation Committee and the Commission that will be formed because it has been said by the Senate Majority Leader and the Mover of the Bill and I do not have to repeat that. I support them in saying that in a dispute of this nature, the mediation principle is very important. This is where experts mediate the community, listen to the views and can come up with a decision on the issue.

Mr. Temporary Speaker, Sir, I noticed the other day that there was some land dispute in Nandi County involving the Cabinet Secretary (CS) of Lands and Physical Planning. When I read that history, it appeared that there had been a committee of elders which looked into the history and mediated that dispute. That is the way it should go. That is the type of way that boundary disputes must be dealt with. Traditionally, we meet, discuss, conciliate and reach a decision. That is the way it should go.

In supporting this Bill, I have a bit of emotions attached to it. The Districts and Provinces Act, 1992 which I drafted and moved in Parliament way back in 1992 will be repealed. I drafted and moved it in Parliament and made sure that it was enacted. At that time, it was to fill a void.

At Independence, we had 16 or 20 districts. In the course of time, more districts were formed yet they did not have basis in law. Therefore, I commissioned a cartographer and a team which went around the districts which existed at that time. They produced a report which formed the basis of the Schedule to that Act with regard to the boundaries. I am glad that although it is being repealed, the substantive part of it has been preserved.

The First Schedule of this Bill which delineates the boundaries of the various districts is lifted from the Bill that I piloted through Parliament and commissioned a cartographer to set out the boundaries.

Subsequently – and that is why I said that the issue of boundaries is very emotive – more districts were administratively created. We wanted to make an amendment to this very Act to now incorporate the new districts. However, it became almost impossible because of the disputes relating to where boundaries of the new districts which had been created since 1992 will be. This is because we were cutting off clans, communities and tribes with the borders. Consequently, we were unable to come up with an amendment to delineate the districts which were there at the time the new Constitution was promulgated.

Mr. Temporary Speaker, Sir, you may recall that there was a very long debate, and here I refer to what the Senate Majority Leader stated. He said; “Should we have the former provinces, 12 or 18 provinces as set out in the First Draft of the Yash Pal Ghai’s Commission? What should we do? Should we just have the districts?” However, the districts as at the time the new Constitution came into being were almost 200. In fact, almost all constituencies were districts.

Therefore, I am glad that the Committee of Experts (CoE) then accepted my proposal to have the districts as they were in 1992, when we passed this Act. This is because at least at the time, the boundaries were already set. However, what we did not include as the CoE is how the boundaries would be altered. I am, therefore, glad that Sen. Mutula Kilonzo Jnr. has come in with his youthfulness to try and provide a solution. I think that this is the right solution and I support this Bill.

Mr. Temporary Speaker, Sir, it is not possible to reduce the number of counties. The Senate Majority Leader said something that I support; that the small counties are not very viable and, therefore, they should have been bigger. However, at that time, it was felt that if we took the provinces or divided one or two big provinces; we would be going back to the *Majimbo* of 1963, and no one wanted to mention the word *Majimbo*. That is why we settled for this. However, if it felt that the number of counties should be reduced, then it cannot be through the alteration of boundaries in this Act.

I would like to remove the impression that may have been created that through this Bill, one can reduce boundaries. The boundaries must remain as they are. Article 6(1) of the Constitution defines territory as:-

“The territory of Kenya is divided into the counties specified in the First Schedule.”

The First Schedule specifies those counties.

Mr. Temporary Speaker, Sir, when we come to the issue of amendment of the Constitution, which is in Article 255(1), there are certain amendments which are proposed there. One of them is that if we are going to have an amendment touching on the territory of Kenya, which has been defined as the 47 counties or even the objects, principles and the structure of the devolved government, then we must have a referendum. That is the only way that we can reduce the number of counties in this country. We cannot reduce them through this Bill, which only deals with the disputes relating to boundaries of the 47 counties. The 47 counties will remain as they are.

However, I agree with Sen. Mutula Kilonzo Jnr., and the Majority Leader that, maybe, Nairobi should have been counted separately. Now that he is of that view and he was a Chairperson of a Committee that made some proposals to amend the Constitution in the last Senate, I hope that now as the Senate Majority Leader, he will take up that Report, and together with the enrichment of more amendments, like the one we are now discussing, we should be able to at least make some amendments to the Constitution.

I hope that we can do it within two-and-a-half years of our term. We will not carry out proper amendments to the Constitution because of the politics of after two or three years. Therefore, now is the time to address all the constitutional issues that should be addressed. If possible, we should have amendments and a referendum within two years. That way, we can leave three years for those who want to politic.

Mr. Temporary Speaker, Sir, thank you very much for giving me this opportunity. I support.

**The Temporary Speaker** (Sen. Lelegwe): Thank you, Sen. Wako.

Sen. Cherargei, it is your turn. Is the Senator not in the Chamber?

Sen. (Dr.) Musuruve.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Temporary Speaker, Sir, for giving me an opportunity to add my voice to this Bill. I commend Sen. Mutula Kilonzo Jnr. for this Bill, which I support strongly.

Article 6 of the Constitution provides that Kenya is divided into counties, but it does not define how the counties will be divided. The fact that it does not define the counties is already a problem in this country. Why is it so? It is because of the disputes that are likely to arise as a result of land issues.

Just to cite a few examples, we have had quite a number of disputes concerning land issues. Meru and Isiolo counties have had land disputes. Meru and Tharaka-Nithi counties have also had land issues. Even Kisii and Nyamira counties had a wrangle over who owns Keroka. Vihiga and Kisumu counties have both laid claim on Maseno. These disputes are not good for this country.

Mr. Temporary Speaker, Sir, there is a story that my mother told me about a dispute that was there among the Maragolis and Luos. These people used to fight over land until they had to devise a mechanism of surviving. You would find the Maragolis learning the Luo language and Luos learning the Maragoli language for them to survive. In such issues people make use of linguistic convergence. They use language to survive. It has been like that in the past.

These disputes have dire consequences. For instance, where there is dispute over land and then it happens that by the grace of God, it has some oil, gold and other mineral deposits. People might end up fighting for those resources because everyone wants to have a stake on them.

There are consequences of boundaries not being defined clearly. When you look at the Constitution, defining boundaries has no constitutional basis. This Bill has come at an opportune time when we can define county boundaries.

We have areas where violence erupts all the time. When there is violence, people lose their lives. We all know what happened in Kapedo some time back. Policemen were taken there to resolve the dispute, but they were all murdered. They were serving the

nation, but ended up dying while trying to resolve a dispute. When there is loss of life, children will remain orphans, wives will remain widows and husbands will remain widowers. However, the husbands can marry and remarry.

These disputes also have dire consequences for the unity of a family. Sometimes families are displaced. When there is displacement, children and women suffer most. Men can at least survive. When there is violence, bad things happen to women. Some are raped and subjected to all manner of injustice. We need to define our boundaries, but let us avoid violence when we are doing so.

Mr. Temporary Speaker, Sir, another consequence of this is hatred. When someone or a community feels that a particular land belongs to them or the land was theirs and another group took it, there is a possibility of having ethnic hatred. Constitutionally, this is very wrong for this country. National unity is very important. Therefore, we need to define our boundaries and live in peace.

I support this Bill in the strongest terms possible. Even though I support it, I feel it should be subjected to public participation. Public participation will help people know that there is already an existing problem. This problem is not starting now. It is a problem that was there even during the colonial times. Therefore, this Bill by Sen. Mutula Kilonzo Jnr. wants to resolve those issues that were there and were not resolved during the colonial era.

When there is public participation, people will know there is already a problem, and the Government wants to resolve the problem. Psychologically, that makes people know that whatever is happening is for the good of the people of this country.

Mr. Temporary Speaker, Sir, ownership of something is very important. When people own a Bill, it will be very easy for them to accept it and be part of whatever is going on.

Even as we talk about public participation, there is also need for this Bill to put into consideration that probably there are people who already have title deeds in the disputed land. What will happen to those people because there are also consequences? If there are consequences, I want to suggest that Article 188 (a) can be used to resolve such issues. The article says that in the event of a dispute, Parliament needs to come in, then a Committee is formed and its resolutions are adopted and implemented to solve the problem.

There are times when committees are formed in this House, they come up with very good recommendations but they are not implemented. I want to suggest that if a Parliamentary taskforce is formed for this Bill, and then there is need for that taskforce to be empowered. That can only happen if their resolutions are implemented.

Mr. Temporary Speaker, Sir, Article 188(2) emphasises on resolving such alterations. I strongly support the fact that counties should have boundaries defined because that is very important. If they are defined, then it means that if there are any disputes that will arise, then we can constitutionally resolve them by making use of Article 188. We can also give effect to Article 188 that seeks to resolve a land dispute.

With those few remarks, I support this Bill.

**The Temporary Speaker** (Sen. Lelegwe): Let us have Sen. Were.

**Sen. Were:** Thank you Mr. Temporary Speaker, Sir. I would like to also add my voice and support this Bill that clearly defines the boundaries. This is going to be helpful in areas where there is conflict.

Mr. Temporary Speaker, Sir, there is a dispute between Kisumu and Vihiga counties over the location of Maseno. Is it in Bunyore land which is Vihiga County or in Luoland which is Kisumu County? This issue has spilled over to the location of Maseno University to the effect that it even affects how the administration of that university is done. This is the more reason why I support the passing of this Bill.

We have more people from Kisumu employed at the university and those from Vihiga who are the Wanyore feel marginalised. They then ask why they are being marginalised in their own university. It is very important that the issue of Maseno is dealt with. The creation of the Independent County Boundaries Commission (IBCC) - which is a recommendation that is in this Bill - will help deal with that matter once and for all.

That issue of Maseno has even become a campaign tool. If you are looking for votes from Luanda Constituency and say that you will sort out the Maseno issue, you are guaranteed to be voted for. It has become a campaign tool but no solution has been reached. Therefore, this Bill will give us a solution to that dispute over the location of Maseno.

I will not even talk about the violence that happens from time to time in that area as they try to lay claim to that Maseno. That area is also very fertile. Other than the university, it has very good public primary schools that do very well in the Kenya Certificate of Primary Education (KCPE), so everyone wants to lay claim to it.

If this Bill is going to bring a solution to the issue of Maseno, I support.

**The Temporary Speaker** (Sen. Lelegwe): Thank you Senator. Let us have Senator (Eng.) Hargura Godhana.

**Sen. (Eng.) Hargura:** Mr. Temporary Speaker, Sir, I support this Bill from the onset because it addresses an area of concern. We already have disputes with boundaries of counties and there has been no mechanism of sorting it out. As it has been said, Article 6 sets out that the 47 counties are what is recognized as being the divisions into which the territory of Kenya is made. I have been looking at that Districts and Provinces Act and I used to wonder how it was established.

I am surprised and happy to know that it was Sen. Wako who did it. I was telling him that there were a lot of injustices in the boundaries Act itself. Since, the colonialists used to tell people where the boundaries were and everybody knew it.

Nevertheless, this is somebody who went with cartographers and came up with beacons where you cannot imagine; what we used to know as riverbeds and all that. Now we have boundaries going over mountains. We need to go back and correct from the colonial boundaries of 1963. That is the starting point and we have to go in after establishing this Bill into an Act.

I thank Sen. Mutula Kilonzo Jnr. for coming up with this process. If you check Clause 18; 'A Petition to Parliament', that should be "to the Senate". We have to be very clear on where the Petition starts. It should come to the Senate, then the Senate should come up with a special Committee. This committee will then come up with a report which will either say it goes to mediation or alteration. That is where the National

Assembly comes in and it is very clear that if they do not agree with us, the report will die. If they agree, then we go to mediation which the Senators have the precedent to form, which is a clear process at least.

The other issue is; if we agree that there should be an Independent County Boundaries Commission then Clause 24 which says 'whenever parliament - does it mean that for every dispute you will have an Independent Counties Boundaries Commission? Since, it says 'whenever parliament under Section 23 resolves that an Independent Counties Boundaries Commission be established.' It means then every time with every dispute, we will be having a new Commission.

It will be costly and if you look at the membership of that commission, they do not have bearing on the counties in dispute unlike the mediation Committee which has persons from the disputing counties. This one has composition which is straight forward: A Commissioner of the Independent Elections and Boundaries Commission, the National Lands Commission, two persons nominated by the Council of Governors then two persons from the professional body of surveyors. These are people who are not affected by where the dispute is. Subsequently, this could be a Standing Commission because it does not need to be formed for every dispute.

We also have to check if we have to deal with the National Assembly and where they will come in. We have had cases where Bills go to coolers in the National Assembly and then they resurrect as a National Assembly Bill so that they will be the ones running the process, not the Senate. We also have to see how this one can go through the process and be an Act which will be useful. I will not like to dwell on this Bill a lot because I fully support it and my issues are with the 1992 boundaries and not the Bill. I will allow us to go back into those boundaries. I hope it does not say that those boundaries are cast in stone and that you cannot review them. What we are reviewing is actually those boundaries of 1992.

I support the Bill.

**The Temporary Speaker** (Sen. Lelegwe): Thank you, Sen. (Eng.) Hargura. Yes, Sen. (Prof.) Ekal.

**Sen. (Prof.) Ekal:** Mr. Speaker, Sir, thank you for giving me a chance to say a few words over this Bill. I support the Bill. The Bill is timely. It is going to come with a lot of problems because you have heard that it may not pass. Some people will shoot it down or there are just going to be problems in trying to correct the injustices that have been carried out in various places in the country. Standing here today on behalf of Turkana County, we have this situation that we hope---

### ADJOURNMENT

**The Temporary Speaker** (Sen. Lelegwe): Order, Sen. (Prof.) Ekal! You will have a balance of 19 minutes when the Bill appears on the Order Paper next.

Hon. Senators, it is now time to adjourn the House. Therefore, the Senate stands adjourned until tomorrow, Thursday, 8<sup>th</sup> March, 2018 at 2. 30p.m.

The Senate rose at 6.30 p.m.