

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 19th February, 2015

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

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

PRAYERS

COMMUNICATION FROM THE CHAIR

FORMATION OF JOINT COMMITTEE TO VET THE NOMINEE FOR THE POSITION OF INSPECTOR- GENERAL OF THE NATIONAL POLICE SERVICE

The Speaker (Hon. Ethuro): Hon. Senators, I have the following Communication to make. You recall at the sitting of Wednesday, 18th February, 2015, the Senate Minority Leader, Sen. Wetangula, rose on a point of order seeking the guidance of the Speaker on the matter of the formation of the Joint Committee of the Senate and the National Assembly to vet the nominee for the position of Inspector-General of the National Police Service.

In particular, Sen. Wetangula sought clarification on whether the Senate had passed a resolution for the establishment of the Joint Committee. The Senator further raised concerns on the procedure to be followed by the Joint Committee and whether the Fourth Schedule to the Standing Orders which sets out the rules for Joint Committees of Parliament would apply to the proceedings of the Joint Committee.

Sen. Wetangula took the view that each House, through its respective Committee, ought to have vetted the nominee and the procedure for mediation should thereafter have been applied if the House were to arrive at a different conclusion on the suitability or otherwise of the nominee.

Sen. Murkomen and Sen. Orengo also rose on points of order and made contributions on the matter. In supporting Sen. Wetangula, Sen. Orengo observed that as a matter of constitutional design, the perspectives of the two Houses while vetting the nominee would be different and it would therefore be important that each House separately vets the nominee.

Hon. Senators, as you will recall on Tuesday, 17th February, 2015, I conveyed to the Senate a Message from His Excellency the President on the nomination of Mr. Joseph

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Kipchichir Boinet for appointment to the position of Inspector-General of the National Police Service. While conveying the Message, I indicated that having consulted with my brother, the Hon. Speaker of the National Assembly, and taking into account the strict 14 day timeline stipulated in the Public Appointments (Parliamentary Approval Act), No. 33 of 2011 and also the prolonged vacancy in the office of the Inspector-General, an important constitutional office holder and a host of activities that required to be undertaken within that short period of time, we agreed that the vetting of the nominee be jointly conducted by the Senate Standing Committee on National Security and Foreign Relations and the National Assembly Departmental Committee on Administration and National Security.

In arriving at this decision, it was observed that Section 9 of the Public Appointments (Parliamentary Approval Act) states that if after the expiry of the 14 day period for consideration of the nomination, Parliament has neither approved nor rejected the nomination of the candidate, the candidate would be deemed to have been approved for appointment.

However, In light of these timelines and the requirement for approval of the nomination by both Houses of Parliament, Parliament runs the real risk of failing to meet the stipulated timelines thereby abdicating its important constitutional function of vetting the Inspector-General of the National Police Service. This would be a great disservice to the people of Kenya who are anxiously waiting the vetting of the nominee and the eventual appointment of a new Inspector-General.

I must, however, hasten to add that, the establishment of a Joint Committee of the two Houses for vetting of a nominee for appointment should not be an exceptional measure to be taken out of necessity such as the case in this situation. This should not and was not intended to be the general rule or the precedent to be applied for the future processes.

As such, it is of utmost importance that the timelines in the Public Appointment (Parliamentary Approval Act) which are replicated in Section 12 of the National Police Service Act, No.11A of 2011, be scrutinized with a view to ensuring the practicality of the timelines in the context of a bicameral Parliament. It is evident that the timelines set out in these provisions of the law did not take into account the dual vetting processes to be undertaken by the approval of both Houses of Parliament is required.

In this regard, I hereby direct the Standing Committee on Legal Affairs and Human Rights to interrogate this matter further and to Table its Report within 21 days of this Communication.

I thank you.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. I am sorry that we were listening to you at the Bar. I remember yesterday Sen. Wetangula raised the important issue of the need for there to be a resolution of this House to support your decision that there be a joint committee. You have not talked about it and I think it would be nice and procedural if such a resolution, indeed, were to support the decision that the two Speakers have made.

The last thing that I would like you to clarify is: You have given the Wako Committee 21 days and the law speaks to 14 days. If you can clarify to me, I will be happy.

Sen. Elachi: Mr. Speaker, Sir, I support that Communication. When we look at our Constitution, indeed, the word “Parliament” appears 358 times. Therefore, we need to fast-track some of these processes. It would benefit this House if we could continue having joint meetings. That is how we can harmonize this Parliament.

I support you.

The Speaker (Hon. Ethuro): Sen. Elachi, a Communication from the Chair does not require support or opposition.

(Laughter)

Let me respond to Sen. (Dr.) Khalwale. First, on the issue of a joint resolution, as I said, this matter is about 14 days. It is a matter where Parliament – both Houses – need to be involved. I have given the urgency in terms of the limited 14 days period so that our Committee which was responsible and the Committee of the National Assembly, which was responsible, could actually meet. I felt that it did not require a resolution, because it was already going to the respective Committees of the Houses. We are not constituting new Committees.

Secondly, on the 21 days, that is the period that I am giving the Committee in terms of taking the matter forward for further interrogation. It is not affecting the 14 days period of vetting the existing nominee. It is an admission that given the need for Parliament to work within 14 days in the bicameral system, this was a one-off thing given the circumstances. I have stated that it is not a precedent. We could have gone even the other way, if we had the time.

(Sen. Khaniri consulted loudly)

Sen. Khaniri, why are you protesting when I have not rejected your point of order?

Sen. Khaniri: I am not protesting, Mr. Speaker, Sir. I am just getting worried because we do not want this House or the House of Parliament to act in futility. In this era where Kenyans are very enlightened, we risk that a Kenyan somewhere will rush to court; that we have acted against our own Standing Orders and the Constitution.

In my opinion, this House coming up with a resolution to form a Joint Committee is a matter of one day. We can do this one afternoon and resolve to have a Joint Committee. This is because the two Committees on security from the two Houses, sitting together, constitute what we call a Joint Committee. We do not want to act in futility. What will be wrong if we took one afternoon – even today or tomorrow morning – and come up with a resolution?

Thank you.

The Speaker (Hon. Ethuro): The last one, Sen. Wetangula.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I neither stand to challenge your ruling, which I did not hear in full, nor to support it. But I want to point out, first by joining my distinguished kid brother, Sen. Khaniri, in what he has said. Under our Standing Orders there are only two Joint Committees. Any other Joint Committees can only be established by a resolution of the House.

Sen. Kembi-Gitura: On a point of order, Mr. Speaker, Sir.

The Senate Minority Leader (Sen. Wetangula): I am on a point of order.

Sen. Kembi-Gitura: Mr. Speaker, Sir, with a lot of respect to my learned colleague and friend, Sen. Wetangula, my view – I said this having given it due consideration – is that you are now *functus officio* in this matter. You have made a final ruling and said what you have to say about this matter. I think reopening it is just going to prolong this issue unnecessarily. This is because the points of order being raised now can only be with a view to making you rescind or change your decision. You have made a decision and even if we continue here until 4.00 p.m., I take the view that you, being *functus officio*, it does not help us. I do not believe that you are going to rescind your decision.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, first of all, you are not *functus officio* on this matter. You never at any one time said that you were making a ruling with finality. We know you as a Speaker with a clear but flexible mind. You are capable of giving way to new issues as they arise.

Mr. Speaker, Sir, it is steps and processes like this that killed the first Senate in this country; by slowly but surely making it look like a second Chamber. It became irrelevant until it was done away with. It is the small bits and pieces that nibble away the stone. I want to encourage you to be a precedent making Speaker; that even after we have all gone, either by old age, attrition or *wananchi* telling us to go out of this Chamber, you will be remembered as a precedent setting Speaker.

That the Inspector-General (IG) must be vetted within 14 days is neither here nor there. In fact, the gentleman was nominated about two months ago. If the two Speakers desired to have resolutions to have a Joint Committee, we would have done so. We can be recalled. We were recalled when we were on recess. We are just demonstrating our fidelity to our Standing Orders, law and Constitution.

Mr. Speaker, Sir, listening to some of the divergent opinions which my colleagues are entitled to, you can see some feat of impatience and irritation; that we are wasting time or standing in the way of an appointment. Nobody here has any personal interest in the nominees to this position. If he is vetted and found fit to hold office, we will say that we have an IG who will serve the whole country. This country has serious challenges that need very careful steps in arriving at who is going to be our next IG. I would not want to encourage this House to start wishing away, even the little that the Constitution has given us, and subordinate ourselves to the National Assembly. It will not be right.

Mr. Speaker, Sir, let me finish by pointing out that we as a House and the Committee chaired by the distinguished Senator for Garissa, who is now resting his eyes, reserve to observe the Constitution, law and Standing Orders and say: If it has been given to the National Assembly to vet, let them vet. Then, the challenges will follow in the

judicial process. It will embarrass the country, you as the Speaker, the Speaker of the National Assembly and everybody. This is avoidable.

The Speaker (Hon. Ethuro): Sen. Wetangula, I made a Communication on Tuesday which was final. When you sought another Statement yesterday, I indulged you in appreciation of your minority leadership status. I listen and allow positions, but for you to come and tell me that the 14 days is neither here nor there, and you are still committed to the fidelity of the law, is a contradiction. Section 8(1) of the Public Appointments, Parliamentary Approval Act 2011, states:-

“Unless otherwise provided in any law, a Committee shall consider a nomination and table its report in the relevant House for debate and decision within 14 days from the date on which the notification of nomination was given in accordance with Section 5”

Our understanding of the notification is the day when we read the Message from the President to the House. That is when those days started rolling. Secondly, I do not think that we are subjecting ourselves to another House. The National Assembly could as well just feel the same way you are feeling. I do not see why all of a sudden you think that way. Since, we are in a joint session with them, just as we do in some joint *Kamukunjis* and Committees that are already established, one House is ceding to another House. I take the view that; one, these things were not provided for, we thought that this is the best way to do it and I have admitted that it can go either way. It is because of the circumstances which I have elaborated.

Two, we have taken sufficient safeguards in terms of one House maybe lording over the other. So, we said that as contemplated under Rule 9(6) of the Joint Rules:-

“Unless a decision is reached by consensus, any vote to be taken in the joint sitting of the Committee shall be by separate Houses”

So, we have already ensured that each House can actually transact its own business. It just looks ridiculous that one nominee comes to this House’s Committee and then goes to the other one, and may be you ask same questions; given the time we are talking about.

Finally, you will be pleased to know that your distinguished Chairman, the Senator for Garissa, who is not resting his eyes, has actually been accepted by the Joint Committee to be the substantive Chairperson. So, Our House is well covered. For avoidance of doubt in future, for any opportunities that we will create, I have now directed the Committee on Legal Affairs and Human Rights, chaired by the eminent, Sen. Wako, to see what you can do in terms of the future.

I really seek your understanding.

Next Order!

STATEMENTS

CHOLERA OUTBREAK IN KENYA

Sen. (Dr.) Machage: Mr. Speaker, Sir, I rise to seek a Statement under Standing Order No. 45 from the Chairperson of the Committee on Health about the current cholera outbreak in Kenya. In the Statement, I would like to know:-

- (1) Whether he is aware that Migori County has been hit by a cholera epidemic.
- (2) How many other counties, by name, have been hit by the same?
- (3) The number of patients that have been affected so far, hospitalized and from which areas.
- (4) Could he also tell us the number of fatalities of the scourge?
- (5) The level and magnitude of interventions taken so far by the National and county governments in terms of money and resources; and,
- (6) What measures the Government is taking to prevent the recurrence of the epidemic.

Sen. (Dr.) Kuti: Thank you, Mr. Speaker, Sir. This is a very important question because the outbreak is ongoing and even in the daily newspapers we read that even yesterday, four people died. I would like to give this response on Tuesday afternoon if possible.

The Speaker (Hon. Ethuro): Is that Tuesday next week?

Sen. (Dr.) Kuti: Yes, Tuesday next week.

The Speaker (Hon. Ethuro): Good. It is so ordered.

PROPOSED ALLOCATION OF LAND AT KANYONYONI
IN KITUI COUNTY TO THE NIS

Sen. Musila: Mr. Speaker, Sir, I want to raise two issues; one is the same one I raised on Tuesday. Mr. Speaker promised to take action in relation to the land in Kanyonyoni in Kitui County, which as I said, was being taken by the Government, National Security Intelligence (NIS). You promised to take action to ensure that nothing happens, in view of the report that was produced by the Committee on Land and Natural Resources. So, I will be seeking your position on this matter and if you have any progress report to make to the House as promised.

STATUS OF CASH TRANSFER PROGRAMME

Secondly, I would like to request for a Statement from the Chairperson of the Standing Committee on Labour and Social Welfare. In this Statement, I would like to ask the Chairperson to give this House:-

- (1) The number of senior citizens who are receiving cash transfers in Kenya.
- (2) To give a breakdown of the number of recipients of the cash transfer for each county with the corresponding populations.

(3) Finally, the Statement should also give the names of the recipients of the cash transfers for each of the eight constituencies of Kitui County.

The Speaker (Hon. Ethuro): On the first one, Sen. Musila, it is not the responsibility of the Chairperson to bring Statements. So, try to leave the Chairperson out of it. The Speaker was only willing to assist the Chairperson of the Committee in order to get a Statement that is acceptable to you. So, the first instance should be the Chairperson; when he fails or when he is unable, then you can come to me for assistance. I am yet to be approached.

The second one, Chairperson!

Sen. Wangari: Mr. Speaker, Sir, I want to commit on behalf of my Chairperson that we will give that information in two weeks time, if it is agreeable with the Senator.

The Speaker (Hon. Ethuro): Two weeks time is fairly the standard practice.
Sen. Musila!

Sen. Musila: Mr. Speaker, Sir, I appreciate that and I am willing to wait until then. But with your indulgence, I want to emphasize the importance of this Statement, not only to the County of Kitui, but to the Republic. Today, I have heard of demonstrations in Kericho on the same issue and, therefore, the Chairperson may wish to take this matter very seriously.

On the other issue of the land, the HANSARD will bear me out that on the 3rd of December, 2014, when we gave you the gravity of the matter, you undertook to ensure that within that period of December until the time Parliament came back, no action was taken. I told you that I had information that the Ministry or the Commission on Lands was in the process of issuing a title. In which case, if that happened, then we will have no recourse. Then on Tuesday, I raised the same issue and I recollect you said that you will take action to prevent the Commission from taking action on the issue of the title as this House deliberates on this matter. This is a very grave matter, as I said earlier; we have ranchers on the ground and they are probably being evicted because the Government is grabbing the land.

The Speaker (Hon. Ethuro): Where is the Chairperson for the Committee on Land and Natural Resources?

Sen. Khaniri: Mr. Speaker, Sir, maybe just to refresh your mind on this issue and give you the chronology of events, because I think as the Chairperson, we have disposed of this matter. We have done what was given to us to be done and we tabled a Report, which is now the property of the House. So, as the Chairperson, I do not think we have any other thing to do on this matter because we, first of all brought a Statement which the hon. Member said was unsatisfactory. You then ordered us to look deeper into the matter, which we did and, as I said on Tuesday, we invited all the stakeholders involved in this matter and, thereafter, we made a very comprehensive report, which we tabled here. So, now, the issue of the implementation of our report is beyond the mandate of my Committee. We have done our bit.

The Speaker (Hon. Ethuro): That is correct.
Sen. ole Ndiema!

SUPPLY OF DI-AMMONIUM PHOSPHATE (DAP) FERTILIZER
BY THE GOVERNMENT

Sen. Ndiema: Thank you, Mr. Speaker, Sir. I rise to seek a Statement from the Chairperson of the Committee on Agriculture, Livestock and Fisheries regarding supply of Di-ammonium Phosphate (DAP) fertilizer by the Government. The Statement should:-

(1) Specify how much DAP fertilizer the Government has supplied this year for sale to farmers at subsidized prices.

(2) State the amount of fertilizer that has been allocated to each county and indicate how much has been supplied to each National Cereals and Produce Board (NCPB) depot.

(3) State if the Ministry is aware that no DAP fertilizer has been supplied to the Kitale NCPB depot in Trans Nzoia County and that any further delay will adversely affect crop production since the planting season commences this month; and,

(4) Explain what the Government is doing to address the situation and ensure that adequate DAP fertilizer is made available to farmers in Trans Nzoia.

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Speaker, Sir. Allow me to ride on that important request for a Statement by the distinguished Senator for Trans Nzoia. In addition to the information sought, I want the Committee Chairperson to tell the House why the Ministry of Agriculture, Livestock and Fisheries always waits until the planting season is over before they avail the fertilizer to the farmers.

Secondly, why does the same Ministry take that fertilizer to the NCPB and allow unscrupulous middlemen to go and buy the same fertilizer as if they are farmers, stock it and sell it to farmers at a price that the Government is trying to run away from? This has been done year after year. If we are really intending to help the farmers, the fertilizer must be made available to them a month before planting season.

Sen. Karaba: Mr. Speaker, Sir, it is also important to note that Trans Nzoia is not the only leading maize growing county; we have quite a number of counties in Kenya which grow maize. We need to be told by the Chairperson whether fertilizer will be supplied on time to other counties. Similarly, we should be told about the quantity because the last time, we faced the issue of underweight bags.

The Speaker (Hon. Ethuro): Where is the Chairperson of the Committee on Agriculture, Livestock and Fisheries?

An hon. Senator: *Ni yeye mwenyewe!* He is the one!

(Laughter)

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I am being told that, that Statement is being sought by the Vice-Chairperson, who is the Acting Chairperson in the absence of the Chairperson. But by default, I will request that given the nature and the urgency of that matter and the importance to the farmers of this country, including Trans Nzoia – I am sure also in other parts of this country – I want to undertake, on behalf of the Chairperson, that the Statement be answered within one week.

The Speaker (Hon. Ethuro): It is so ordered.

Sen. Kisasa: Thank you, Mr. Speaker, Sir. I rise to seek two Statements from two Chairpersons on issues relating to tourism in Kenya.

DECLINING NUMBER OF TOURISTS IN KENYA

The first Statement is to the Chairperson of the Standing Committee on Finance, Commerce and Budget on the declining tourism in Kenya. In the Statement, the Chairperson should:-

(1) State the total approximate revenue that was lost in the year 2013 and 2014 due to decline in tourism.

(2) Explain the interventions that the national Government has taken to mitigate unemployment challenges occasioned by the decline of tourism.

(3) Explain the steps that the national Government has taken to restore tourism to where it was three years ago.

EXPLOITATION OF YOUNG GIRLS BY FOREIGNERS

The second Statement is to the Chairperson of the Standing Committee on Labour and Social Welfare on the exploitation of young girls by foreigners. In the Statement the Chairperson should:-

(1) State whether the Government is aware that young girls, especially in the coastal region, are exploited by foreign sex predators, and;

(2) Explain the measures that the Government is taking to protect the young girls from exploitation by the predators.

The Speaker (Hon. Ethuro): Where are the Chairpersons?

Sen. Elachi.

Sen. Elachi: Thank you, Mr. Speaker, Sir. On behalf of the Senate Majority Leader, I hereby give a Statement---

(Laughter)

Hon. Senators: Respond!

The Speaker (Hon. Ethuro): Order!

Sen. Elachi: Mr. Speaker, Sir, I undertake that on behalf of the Chairperson of the Committee on Finance, Commerce and Budget, we will ensure that we bring the Report in the next two weeks.

Sen. Wangari: Mr. Speaker, Sir, I also undertake, on behalf of the Chairperson of the Committee on Labour and Social Welfare that in two weeks we shall respond to the second part of the Statement.

DROP IN FUEL PUMP PRICES AND THE IMPACT
ON THE *MATATU* INDUSTRY

Sen. Okong'o: Mr. Speaker, Sir, I also rise to seek a Statement from the Chairperson of the Standing Committee on Energy on the drop in fuel prices and the significant fall in pump prices in the country and the impact on the *matatu* industry. In the Statement, I need an explanation on:-

(1) The rationale used by the transport industry to set fare charges and how the Government regulates falls.

(2) What fuel price drop in Kenya Shillings will be significant enough to guarantee a drop in the fare charges; and,

(3) What the national Government is doing or is planning to do to regulate the transport industry so that Kenyans enjoy the benefits accrued from the drop in the fuel prices.

Mr. Speaker, Sir, with your indulgence, may I give a brief sample survey on how the drop in fuel pump prices has, in fact, increased the fare prices especially in the Central Business District (CBD). From Ngong to Nairobi town, the previous price of diesel was Kshs109, now the fare has gone up to Kshs100 when the pump price is Kshs75; from Ongata Rongai, when the pump price was Kshs109, the fare was Kshs60, now it is Kshs75 the fare has gone up to Kshs100; when the pump price was Kshs109, the fare charge from Banana to Nairobi used to be Kshs80, now that the pump price is Kshs75 the fare has gone up to Kshs100. I need the Chairperson to explain what they are doing so that all Kenyans can benefit from the drop in global fuel prices.

Sen. Obure: Mr. Speaker, Sir, in addition to the question raised by my colleague, if the Chairperson of the Committee on Energy will also explain how the reduction in fuel prices will impact on the cost of doing business generally and, in particular, on the cost of electricity.

Sen. Mwakulegwa: Mr. Speaker, Sir, the first request is by the Senator for Nyamira who is asking us to regulate the transportation industry. However, my Committee is not in charge of regulating the transport industry; we are in charge of regulating electricity. Therefore, I undertake to answer Sen. Obure's question in ten days' time. But, maybe, for the transport industry, it should have been taken to the Committee on Roads and Transportation.

Sen. Okong'o: Mr. Speaker, Sir, there was oversight on my side. With your indulgence, you can redirect the question to the Chairperson of the Committee on Roads and Transportation.

Mr. Speaker, Sir, I ----

The Speaker (Hon. Ethuro): That is not my business.

(Laughter)

Sen. Okong'o: Mr. Speaker, Sir I will redirect the Statement. I wanted your indulgence because this was approved by the able Secretariat which you Chair. But I am most obliged and will redirect my question another time.

Thank you.

DISAPPEARANCE OF TWIN BABIES AT PUMWANI
MATERNITY HOSPITAL

Sen. Mugo: Mr. Speaker, Sir, I rise to seek a Statement from the Chairperson of the Standing Committee on Health regarding the disappearance of twin babies, who were delivered by Ms. Jacinta Wanjiku at Pumwani Maternity Hospital on 6th January, 2015. Specifically the Statement should:-

(1) Shed light on the circumstances surrounding the hospital's allegation that the babies were still born upon delivery or the mother had a normal delivery and heard her children cry.

(2) Explain why the hospital gave wrong information that the babies were born dead while the DNA results have since established that the alleged dead babies do not match with those of the parents; Mr. Dedan Kimathi and Mrs. Jacinta Wanjiku, and, neither do the two babies match; they are of different parents.

(3) Confirm if this case is an isolated incident or whether such incidents are prevalent in Pumwani Hospital.

Mr. Speaker, Sir, there have been a lot of claims elsewhere that babies do disappear at Pumwani Maternity Hospital and an allegation that there is a cartel that does away with the babies. It is a very serious matter.

Thank you.

Sen. (Dr.) Kuti: Thank you Mr. Speaker, Sir. This is a very serious matter which is also very technical. I would like to be given two weeks to interrogate and get an adequate response.

The Speaker (Hon. Ethuro): Did you say two weeks?

Sen. (Dr.) Kuti: Yes, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): It is so ordered.

Next Order!

BUSINESS FOR THE WEEK COMMENCING
TUESDAY, 24TH FEBRUARY, 2015

Sen. Elachi: Mr. Speaker, Sir, on behalf of the Senate Majority Leader, I would like to present the business of the Senate for the coming week.

Pursuant to the provisions of Standing Order No.45, hon. Senators, I would like to present the Senate business for the coming week, Tuesday, 24th February, 2015. The Rules and Business Committee will---

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. Did you hear Sen. Beatrice Elachi say that she is rising under Standing Order No.45 to read to the House the business for the coming week?

Is she in order to do so contrary to the provisions of Standing Order No.45 (2) (c) which says that such a Statement shall be made by the Leader of the Majority or in his absence—

If you look around, you will notice that the Senate Majority Leader is present. Is it in order for the Government side to take this House for granted?

The Speaker (Hon. Ethuro); Order, I will make a ruling on that. Sen. Sang, proceed with your statement.

STATUS OF THE COUNTY GOVERNMENT STAFF PENSION SCHEME

Sen. Sang: On a point of order, Mr. Speaker, Sir. I rise to seek a Statement from the Chairperson of the Standing Committee on Labour and Social Welfare on the County Government Staff Pension Scheme. In the Statement, the Chairperson should state:-

(1) Whether he is aware that county governments, through the Council of Governors, the County Public Service Boards, the County Assemblies through the County Assemblies Speakers Forum (CASF) have endorsed the County Pension Fund (CPF) previously known as the Local Authority Pension Fund, Local Authorities Pension Trust (LAPTRUST) as their umbrella pension scheme for their workers?

(2) State whether he is aware that Section 132 of the County Governments Act stipulates that county workers must join existing pension schemes.

(3) Confirm which one of these two schemes LAPTRUST and Local Authorities Provident Fund (LAPFUND) conform to the provisions of Section 132 of the County Governments Act.

(4) State whether he is aware that LAPFUND has been collecting contributions from Members in excess of the amounts permitted by the law and that counties have already complained about this blatant disregard for the law.

(5) State whether the Committee has delegated the responsibility of processing the County Retirement Scheme Bill of 2014 referred to the Committee on 6th August, 2014 to the National Treasury.

(6) Tell us the steps being taken by the national Government to ensure that the law is respected and that the right of county workers to identify and subscribe to a retirement scheme of their choice without hindrance is respected.

Sen. Wangari: Mr. Speaker, Sir, I also undertake, again, on behalf of my Committee, considering that this is a matter of great public interest, to give a report in two weeks time.

(Sen. (Dr.) Khalwale stood up in his place)

The Speaker (Hon. Ethuro): Order, Sen. Khalwale. I am making reference to you because he raised the matter I want to address. He decided to walk and talk at the same time when I was already on my feet.

Sen. (Dr.) Khalwale has brought to our attention Standing Order No.45 (2) (c). I would like to read it and I hope that the Senate Majority Leader and his deputy are listening. They are the cause of this and we now want to give them a remedy. The Standing Order states:-

“The Senate Majority Leader or, in his or her absence the Senate Minority Leader or, in the absence of both the Senate Majority and the Senate Minority

Leader, a Member of the Rules and Business Committee designated by the Senate Majority Leader for that purpose shall, every Thursday or on the last sitting day of the week, present and lay on the Table, a statement informing the Senate of the business coming in the following week.”

There is nothing more to add. This is so obvious and most emphasized and straightforward matter. He is talking about absence and there is some pecking order on who comes at what stage in the absence of the other. All of us who are privileged to have sight can confirm that the Senate Majority Leader is not absent and neither the Senate Minority Leader. They are both present. Therefore, the only time that Senator Elachi would have purported to act is if she took away the two leaders and hid them so that we do not see them. Unfortunately, I am sure you do neither have the intention nor the capacity to do so. So, Senate Majority Leader, the Floor is yours.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you Mr. Speaker, Sir. I had intended to be absent. However, I did not succeed to be absent in good time. I would like to apologize for that mix up and thank Sen. (Dr.) Khalwale for being faithful to the rule of law and our Standing Orders.

I am guided.

Sen. Obure: On a point of order, Mr. Speaker, Sir. Before the Senate Majority Leader proceeds to make his Statement, could he also respond to Standing Order No.110 (e) and state whether he has abused his privilege in the House?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I am also rising on the issue of disorderly conduct. Under Section 110(1)(e) the Senate Majority Leader enjoys extensive privileges in his position but he has actually abused those privileges. I request the Chair to find that he has been grossly disorderly and sanctions be considered. He has gone further and committed a serious breach of these Standing Orders.

(Laughter)

Under No. 110(1)(i), the Senate Majority Leader has acted in a way of serious detriment to the dignity and orderly procedure of the Senate.

(Laughter)

Mr. Speaker, Sir, I request the Chair to issue sanctions against him and also to remember the Senate Majority Leader did this in connivance with the Chief Whip on the Government side. I request the Chair that those sanctions be visited on Sen. Elachi, for the same reasons.

(Laughter)

(Sen. Murkomen consulted loudly)

The Speaker (Hon. Ethuro): Order, Sen. Murkomen! Just because you assist the Chair does not give you powers to usher Members to contribute. You have to come to this seat in order to do so.

This is a mundane matter and I do not think the Senate Majority Leader has abused his office. He has actually apologised and even congratulated Sen. (Dr.) Khalwale for raising the point. Can Sen. (Dr.) Khalwale not be satisfied that he has been recognised? This House appreciates that. So, why do you want to go beyond that?

I am also sure the Senate Majority Leader said he had planned to be absent and that it is just that he happened to be present.

(Laughter)

He was enthusiastically trying to do a bit of delegation, but you have pointed it out to him that there are some core functions that you do not delegate. If he had intended to do so, he should have delegated to the Senate Minority Leader and not just somebody from his side.

Proceed, Sen. (Prof.) Kindiki.

BUSINESS OF THE WEEK COMMENCING
TUESDAY 24TH FEBRUARY, 2015

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you Mr. Speaker, Sir. Hon. Senators, for the business of next week, on Tuesday 24th February, 2015 at 12 O'clock, we shall have the Rules and Business Committee (RBC) as is the custom. In this meeting, the RBC will schedule the business for next week. It is expected that the Senate will continue with business that will not be concluded in today's Order Paper, focusing on the various Bills that are going through Second Reading.

The Senate will also consider any other business scheduled by the RBC as well as debate and vote on the report of The Standing Committee on Finance Commerce and Budget on the Second Generation Criteria for Resource Allocation.

On Wednesday 25th February, 2015 the Senate will continue with Business not concluded during the Tuesday sitting, including Bills that will have concluded a Second Reading. It will further consider The National Police Service (Amendment) Bill, 2014 at the Committee of the Whole. Any other Business that may be scheduled by the RBC will be considered.

On Thursday 26th February, 2015 the Senate will consider Bills at Second Reading, deliberate on Motions and any other Business scheduled by the RBC.

Mr. Speaker, Sir, at this juncture, I take this opportunity to thank Hon. Senators, because attendance to the business of the Senate this week has increased and improved significantly. I take this opportunity to just remind us that we have over 43 Bills which have been published and if we work hard this year we will process most those Bills. I appeal once more that we attend.

Mr. Speaker, Sir, with your indulgence, I want to remind us that after we had our *Kamukunji*, we resolved that Wednesdays be reserved for Bills and voting. Therefore,

please let us remind ourselves that on Wednesday next week we expect continuous presence of at least two hours between 2:30 p.m. and 4:30 p.m. at the minimum. Of course, we are not saying Members should go away after that. We are saying at the very minimum we need you for two hours on Wednesday so that we can constitute the necessary threshold for processing legislations especially ones that require voting by delegation.

With those many remarks, I hereby lay the Statement on the Table of the Senate.

(Sen. (Prof.) Kindiki laid the document on the Table)

The Speaker (Hon. Ethuro): Order! Order, Members! I think the unwritten part of the speech by the Senate Majority Leader is very important and you should all congratulate yourselves for that performance in the first two weeks of our business. I just want to vary the issue for Wednesday 25th February, 2015. That any Bill that should have been resolved on Wednesday and it failed to, will move to the next day. It cannot wait for another seven days. That is the outstanding one.

(Loud consultations as Sen. Melly entered the Chamber)

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. Did you notice that when the distinguished Senator for Uasin Gishu County, Sen. Melly, walked into the Chamber in a normal unlawful way, a number of Senators on the Opposition Side, led by none other than the Senate Majority Leader, were shouting and chanting that the new war lord has arrived? Can he explain and substantiate what he means that Sen. Melly is the new war lord?

The Speaker (Hon. Ethuro): Order! Order, Senators! The only business that gets to the attention of the Chair is the business that you bring to my attention in the manner in which you have done. Unfortunately, you are sharing privileged information which I am not party to, and you cannot invite the House to participate in a matter that is not before us. So, I rest that matter there.

Senators, before the next order, we have a *Kamukunji* on Tuesday 24th February, 2015 at 11:00 a.m. to discuss the way forward on the Commission on Revenue Allocation (CRA) Report. It is very important that we all come so that we give it some direction as a House.

Next Order.

COMMITTEE OF THE WHOLE

(Order for Committee read)

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

IN THE COMMITTEE

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*[The Temporary Chairperson
(Sen. (Dr.) Machage) took the Chair]*

THE NATIONAL YOUTH SERVICE (AMENDMENT) BILL
(SENATE BILL NO. 26 OF 2014)

The Temporary Chairperson (Sen. (Dr.) Khalwale): Order, Members. We are now looking at the National Youth Service (Amendment) Bill (Senate Bill No.26 of 2014). It is the last on the Order Paper. It is a very short Bill and we should not take time on it because we have only one amendment. I beseech and request that Members stay so that we can finish this Bill.

Clause 2

Sen. Elachi: Mr. Temporary Chairperson, Sir, I beg to move:-

THAT Clause 2 of the Bill be deleted and substituted with the following New Clause-

2. Section 7 of the National Youth Service Act, in this Act referred to as the “principal Act” is amended by inserting the following new sub-section immediately after sub-section (1)-

(1A) for the purposes of appointment of officers under subsection (1), recruitment of persons for appointment shall be undertaken in each county.

Mr. Temporary Chairperson, Sir, looking at what we had proposed earlier, I felt that we shall have a threat and maybe people might take advantage. Therefore, I decided to re-amend that Clause 2 of the Bill. It be deleted and substituted with the following New Clause. Section 7 of the National Youth Service Act, referred to as the “principle Act” is amended by inserting the following new sub-section immediately after sub-section (1)-

(1A) For the purposes of appointment of offices under sub-section 1:- recruitment of persons for appointment shall be undertaken in each county.”

That is my amendment.

The Temporary Chairperson (Sen. (Dr.) Machage): What reasons do you have?

Sen. Elachi: Mr. Temporary Chairperson, Sir, if you want to recruit within the police force or the disciplinary forces, it takes care of all counties. No county will come out and complain that members of that county were not recruited. That is why I proposed that new amendment.

(Question of the amendment proposed)

Sen. (Dr.) Khalwale: Mr. Temporary Chairperson, Sir, I would like to thank the Senator for this amendment and wish to put it on record that before the late Sen. Gerald Otieno Kajwang passed on, he had been extremely concerned about this amendment. He

actually pointed out to me before Sen. Elachi moved the Bill. He told me that should the Bill come to the Floor, we should join hands to ensure that the amendment is made. That she has risen to that request, I think it is honourable and a lot of respect to the late Sen. Kajwang. I want to thank you. Long live the late Sen. Kajwang and welcome Sen. Moses Kajwang; that is what your brother was made of.

The Temporary Chairperson (Sen. (Dr.) Machage): Very well. I will not put the Question because there is another Clause; that is Clause 3.

(Clause 3, Title and Clause 1 proposed)

(The Division Bell was rung)

(Question put and the Senate proceeded to vote by County Delegations)

Clause 2

DIVISION

ELECTRONIC VOTING

(Question put and the Senate proceeded to vote by County Delegations)

(Question, that Clause 2 as amended be part of the Bill put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Chelule, Nakuru County; Sen. Elachi, Nairobi County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. M. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. (Dr.) Kuti, Isiolo County; Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangupuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Melly, Uasin Gishu County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wetangula, Bungoma County and, Sen. (Dr.) Zani, Kwale County.

The Temporary Chairperson (Sen. (Dr.) Machage): Order, Senators. I now announce the results of the amendment. The results are as follows:-

AYES: 27

NOES: Nil

ABSENTIONS: Nil

The Ayes have it.

(Question carried by 27 votes to nil)

*(Question, that the words to be left out be left out,
put and agreed to)*

*(Question, that the words to be inserted in place thereof
be inserted, put and agreed to)*

(Clause 2 as amended agreed to)

*(Question, that Clause 3, Title and Clause 1
be part of the Bill proposed)*

The Temporary Chairperson (Sen. (Dr.) Machage): Order, Sen. Wako! Could you, please, listen to the results?

Clause 3, Title and Clause 1

DIVISION

ELECTRONIC VOTING

*(Question that Clause 3, Title and Clause 1 be part of the Bill
put and the Senate proceeded to vote by county delegations)*

AYES: Sen. Chelule, Nakuru County; Sen. Elachi, Nairobi County; Sen. Hargura, Marsabit County; Sen. Karaba, Kirinyaga County; Sen. Keter, Kericho County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. (Dr.) Kuti, Isiolo County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. Leshore, Samburu County; Sen. (Dr.) Machage, Migori County; Sen. Melly, Uasin-Gishu County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. M. Kajwang, Homa Bay County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wetangula, Bungoma County; and Sen. (Dr.) Zani, Kwale County.

The Temporary Chairperson (Sen. (Dr.) Machage): Hon. Senators, the results for the un-amended Clauses are as follows:-

AYES: 24

NOES: 0

ABSTENTIONS: 0

The "Ayes" have it.

(Question carried by 24 votes to nil)

(Clause 3, Title and Clause 1 agreed to)

Sen. Elachi: Mr. Temporary Chairperson, Sir, I beg to move that the Committee doth report to the Senate its consideration of The National Youth Service (Amendment) Bill (Senate Bill No. 26 of 2014) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT AND THIRD READING

THE NATIONAL YOUTH SERVICE (AMENDMENT) BILL (SENATE BILL NO. 26 OF 2014)

Sen. (Dr.) Machage: Mr. Temporary Speaker, Sir, I beg to report that the Committee of the Whole has considered The National Youth Service (Amendment) Bill (Senate Bill No. 26 of 2014) and approved the same with amendments.

Sen. Elachi: Mr. Temporary Speaker, Sir, I beg to move that House doth agree with the Committee in the said Report.

The Temporary Speaker (Sen. Murkomen): Who is the seconder?

Sen. Keter: Mr. Temporary Speaker, Sir, I second.

(Question proposed)

(Question put and agreed to)

Sen. Elachi: Mr. Temporary Speaker, Sir, I beg to move that the National Youth Service (Amendment) Bill (Senate Bill No.26 of 2014) be now read a Third Time.

Sen. Haji seconded.

(Question proposed)

The Temporary Speaker (Sen. Murkomen): Hon. Senators, this is a Bill concerning counties and so, it is time to go for a Division. I now order that the Bell be rung for 30 seconds.

(The Division Bell was rung)

(The door was closed and Bar drawn)

Hon. Senators, you can now prepare and proceed to vote for 30 seconds.

DIVISION

ELECTRONIC VOTING

*(Question, that the National Youth Service (Amendment)
Bill (Senate Bill No.26 of 2014) be now read a Third Time,
put and the Senate proceeded to vote by County Delegations)*

AYES: Sen. Chelule, Nakuru County; Sen. Elachi, Nairobi County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen. M. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Dr.) Kuti, Isiolo County, Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Melly, Uasin Gishu County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Musila, Kitui County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Muthama, Machakos County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Ndiema, Trans-Nzoia County; Sen. Obure, Kisii County; Sen. Sang, Nandi County; Sen. Wako, Busia County, Sen. Wetangula, Bungoma County and Sen. (Dr.) Zani, Kwale County.

The Temporary Speaker (Sen. Murkomen): Hon. Senators, the results are as follows:-

AYES: 27

NOES: 0

ABSTENTIONS: 0

The "Ayes" have it.

(Question carried by 27 votes to nil)

*(The Bill was accordingly read
the Third Time and passed)*

[The Temporary Speaker (Sen. Murkomen) left the Chair]

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

MOTION**ESTABLISHMENT OF INDEPENDENT COMMISSION
ON COUNTY BOUNDARIES**

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

THAT, noting the constitutional role of the Senate in the protection of the interests of counties and their governments and in the implementation of the devolved system of Government pursuant to Article 96 of the Constitution; aware that the 47 counties are based on the delineation of administrative districts as created under the Provinces and Districts Act of 1992; further aware that there existed deep-rooted and historical boundary disputes between the districts which were inherited by the resultant counties; aware that there are existing boundary disputes between various counties, which raise questions on the exact boundaries between the counties; recognizing the provisions of Article 188 of the Constitution of Kenya that mandates Parliament to approve alteration of county boundaries on the recommendation of an independent commission set up for that purpose; the Senate urges the Legal Affairs and Human Rights Committee to initiate and prioritize the drafting of legislation within ninety days to provide for the establishment of an independent commission to inquire into, examine and identify the boundaries of counties, taking into account the criteria set out in Article 188 (2) of the Constitution and to recommend appropriate changes to Parliament so as to comprehensively deal and resolve the inter-county boundary disputes to enhance national cohesion and stability.

Mr. Temporary Speaker, Sir, I have sought the leave of the Speaker to move this Motion in amended form. Where it reads “Sessional Committee on Devolved Government,” the Speaker has approved that I move this Motion in the amended form to read, “Committee on Legal Affairs and Human Rights.” The basis of this Motion is several reports appearing in the newspapers. However, I would like to start with a Petition that is already at the Senate, by Hon. Jeremiah Kioni on a dispute between Nyandarua---

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Mutula Kilonzo Jnr.! Please, read the Motion as it is, because you have inadvertently replaced the Sessional Committee with a Standing Committee. That completely changes the meaning of your Motion. I order that you start again.

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Speaker, Sir, I will start again, but I had sought leave to read it in an amended form and the Speaker had given me authority to do so.

The Temporary Speaker (Sen. (Dr.) Machage): Very well, continue.

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Speaker, Sir, before the Committee on Legal Affairs and Human Rights, is a Petition by Hon. Jeremiah Kioni on a boundary

dispute between Nyandarua and Laikipia counties. If you recall, and the record shows, I have also sought for resolution over a dispute that appears to be there between Machakos and Makueni counties on the location of Konza City. On 25th October, 2014, the *Daily Nation* highlighted disputes between several counties and I will highlight them. The disputes are between:-

- a) West Pokot and Turkana;
- b) Uasin-Gishu and Elgeyo-Marakwet;
- c) Nyandarua and Laikipia;
- d) Meru and Isiolo;
- e) Makueni and Machakos;
- f) Taita-Taveta and Kwale; and,
- g) Taita-Taveta and Makueni.

Mr. Temporary Speaker, Sir, there is also a dispute between Samburu and Baringo Counties and one which is not highlighted in this report between Kitui and Tana River counties. My reading of the disputes goes up to 19 or 20 counties. I have highlighted that because in the Bill proposed by Sen. (Dr.) Zani on Resource and Benefit Sharing, she has sought for what we call benefit sharing between counties. If this issue is not resolved, the question of benefit sharing arrangement between counties in the Bill of Sen. (Dr.) Zani, will not come to pass.

Article 188(1) of the Constitution reads as follows:

“The boundaries of a county may be altered only by a resolution -

- (a) recommended by an independent commission set up for that purpose by Parliament; and
 - (b) passed by –
 - (i) the National Assembly, with the support of at least two-thirds of all the members of the Assembly; and
 - (ii) the Senate, with the support of at least two-thirds of all of the county delegations.
- (2) The boundaries of a county may be altered to take into account -
- (a) population density and demographic trends;
 - (b) physical and human infrastructure;
 - (c) historical and cultural ties;
 - (d) the cost of administration;
 - (e) the views of the communities affected;
 - (f) the objects of devolution of government; and
 - (g) geographical features.”

Mr. Temporary Speaker, Sir, I have seen from the reports that are appearing in the dailies, that counties have attempted informal methods of resolving these disputes. Some of them have, in fact, proposed to have a council of elders to determine these disputes. This is the time to put in a legal framework that will put to an end the methods that can be used to determine boundary disputes. When we had the Konza City issue before the Senate Committee on Lands and Natural Resources, the Director of Survey, Independent Electoral and Boundaries Commission (IEBC), Director of Physical Planning and the Cabinet Secretary had different maps. The county had a different view of where the

boundary should be. We are living in one country where organizations and bodies that are supposed to have clear records as to boundaries have different records. How do we resolve this? We want to commend the drafters of this Constitution because they saw this problem.

The third problem is that whilst we set up the county boundaries under the 1992 Act in the case of Konza/Makueni/Machakos, the Ministry of Land, Housing and Urban Development came up with at least five legal notices that are not recognized by law. The boundaries have been altered so many times that, in fact, it is shocking that people are not quarrelling, because there is no confirmed document that can tell you that the boundary is at “x” point.

I ask Senators to support this Motion. Under Article 96(3), we must take leadership to protect our counties. If we do not do so, and counties start quarrelling, like they are as suggested in the newspaper reports, our work as the Senate will not make any sense. For example, let me read here. It says:-

“Nyamira and Kisii counties are entangle in a dispute over the Mwambusi Scheme which hosts the business institutions worth millions of shillings. Taita-Taveta and Kwale counties are laying claim to Mackinnon Road Township. Elgeyo-Marakwet and Uasin Gishu counties are battling over Chirchir Trading Centre.”

The list continues. Kitutu Masaba constituency in Nyamira County is also having disputes. Recently, you saw the one of Kapedo, where there is a dispute about the location and even a water resource.

Mr. Temporary Speaker, Sir, there is no better time, five years after the promulgation of this Constitution, to set up the framework in a properly drafted legal document, so that we can have a situation like we have now in the boundaries in Konza. If you are looking for a certain piece of land in any part of the country, just click the GPS map on your phone and you will get that specific parcel of land on your phone. That is what we ought to do to our counties. This technology is available at the University of Nairobi.

This is the only way that we will stop the disputes that we are having. In fact, in the revenue sharing formula, one of the parameters is land size, which we have given eight per cent. Now, if we do not know where our boundaries are, then we might end up in the situation between Bungoma and Busia which happened in the last financial year, where we discovered that there was an anomaly in the revenue sharing formula because of the population density. The answer lies in setting up of this commission once and for all. I would suggest that as the Committee on Legal Affairs and Human Rights drafts this legislation, which will be a game changer for this country.

This will be one of those commissions that is not political. We must have our professionals. In the Survey of Kenya, we have a large institute; professionals in terms of lawyers who understand the legal framework so that we can comb all those maps that we have from 1963. For example, the map of the boundary between Taita-Taveta and Makueni counties should be in digitalized form, so that as we resolve the disputes between these counties, we can walk step by step into the history of these disputes.

Mr. Temporary Speaker, Sir, long gone are the days where we would be planting sisal plants along boundaries. Gone are the days when would ask ourselves or somebody else to hold a sisal rope so that we determine the boundary. The technology has moved to GPS mapping where even when seated somewhere very far away, you can zero in on that map, county or that place in your county in digitalized form.

Mr. Temporary Speaker, Sir, the essence of this Motion is informed by the fact that we should not let these boundary disputes go into the next general election, which is roughly two years from now. We have an opportunity, and that is why we, in the Committee for Legal Affairs and Humans Rights, have sought 90 days to have this particular Bill brought before the Senate and passed by more than two-thirds of the county delegations so that we can resolve these disputes.

Mr. Temporary Speaker, Sir, on record we have reports which now read, for example, that on 25th October, counties were having a vicious fight to control billions of shillings. For example, we have Meru versus Isiolo. We now have the Nyambane Conservancy which is inhabited by Merus, Turkanas, Somalis, Samburus and Boranas. We have Tharaka-Nithi and Meru where they are fighting over what they call Ndurumuru in Igembe North. In Kwale, Salim Mvurya and Taita-Taveta's Mruttu are quarrelling about Mackinnon Road. Kitui and Tana River counties are fighting over the South Kitui Game Reserve where three primary schools built in Kitui by Tana River leaders four years ago. These are the main cause of the border quarrels. The Kitui leaders are accusing the Tana River County Government of encouraging their people to encroach their boundaries. The list of disputes goes on and on. We also have the Turkana/West Pokot flash point. This is River Turkwel. In fact, Sen. Munyes is quoted in this report to have made a recommendation that this must be stopped. Nyandarua versus Laikipia are quarrelling about the location of the centre of the Nyahururu Municipal Council headquarters.

Mr. Temporary Speaker, Sir, to avoid divisions, we need to set precedence in this Senate to protect our counties under Article 96(3). Therefore, I beg this Senate to support this Motion so that we promote cohesion among counties. I urge that the Committee on Legal Affairs and Humans Rights move with speed, draft legislation in the period specified or even less, bring it to the Senate, conduct public participation sessions and ask everybody to send in their memorandum on this. There are interest groups who would like to give their input on this so that we can comply with the Constitution in terms of public participation. This will help us to move it quickly so that in the second quarter of this year, the Independent Commission on Boundaries of Counties, Senate Bill number something can be on this Floor; we can then discuss and pass it so that the records can always reflect and history will show that this Senate stood up, not only to amend the law, but also to implement this Constitution as passed by Kenyans in August, 2010.

Mr. Temporary Speaker, Sir, I would like to ask the Vice Chairperson of the Committee for Legal Affairs and Humans Rights to second this Motion.

Thank you, Mr. Temporary Speaker, Sir.

Sen. Sang: Thank you, Mr. Temporary Speaker, Sir. I take this opportunity to second this Motion. First, I would like to appreciate, recognize and congratulate Sen. Mutula Kilonzo Jnr. for moving this Motion. We have a lot of challenges in this country

with regard to boundaries. Boundaries in this country mean a lot in terms of resource allocation; it means a lot in terms of the geography, where you find resources.

Mr. Temporary Speaker, Sir, I come from a county where we have had challenges in terms of determining the accurate boundaries between ourselves and about two counties. Nandi County has had challenges in establishing the boundary between Nandi and Kakamega counties and this has sometimes led to some of the conflict around one of the border areas between these two counties. When you sit down and meet with these communities on both sides, all of them always have an issue with the boundary; that they are unable to ascertain the boundary between two communities or two counties. The boundaries of the counties in this country have some sort of ethnic dimension; it is a fact that you will go to Nandi County and you will almost know that the predominant community in that county is the Nandi Community. If you go to Kakamega County or to Kisumu County, it is the same thing. This is to mean that county boundaries have an ethnic dimension. The element of certainty is a very important component. If you look at the Constitution, Article 188(1) of the Constitution clearly gives the procedure on how the boundaries of counties can be altered in this country.

Mr. Temporary Speaker, Sir, whereas this responsibility of setting up the Commission has been given to Parliament, that it originates from the Senate because our responsibility as a Senate is to protect and serve the interest of counties, there cannot be a better way of protecting the interest of counties if you do not even know the physical boundaries of the counties. We need to be certain with boundaries. This is so as we engage and resolve some of the border conflicts. We should have that certainty on the boundary.

Mr. Temporary Speaker, Sir, within the boundary between Nandi and Kisumu counties – this is something that I have discussed with the Senator for Kisumu County, Sen. (Prof.) Anyang'-Nyong'o – is that if you do not have an agreed boundary between your counties, you will hear conflict of Members from one county crossing over to the other county maybe for grazing. At the end of the day, you have challenges and conflict. It is important that you ascertain the boundary.

Mr. Temporary Speaker, Sir, in terms of administration of counties, we have some parts of this country where we have communities living in one county identifying themselves with--- For example, in Nandi County, we have communities while actually in terms of administration and the real boundary as it is right now, are in Kisumu County. This situation is so bad so that you have situations where people have to migrate to another county to go and vote. They have to migrate to another county to go and register as voters. We should relook at the boundary in such a case.

Mr. Temporary Speaker, Sir, the Constitution has clearly spelt out the parameters to put into account as you alter the county boundaries; one of them, which is under Article 183(2)(a) is the population density and the demographic trends. The second one is the physical and human infrastructure; the third one is historical and cultural ties. We have certain communities and certain pockets of communities who find themselves in one county, while if you look at the historical and cultural ties, they find themselves identifying themselves more with communities in another county. Whereas we do not want to balkanize our counties, but the choice of communities to agree and find

themselves in one county and feeling comfortable in one county needs to be looked at. For that reason, this Commission that we intend to set up through the legislation that will result from this Motion is important to look at.

Mr. Temporary Speaker, Sir, this is one of the bold Motions being undertaken by the Senate with the intention of the asking the Committee for Legal Affairs and Humans Rights to work jointly with the Committee on Devolved Government to come up with a draft legislation that will carry the concerns of everybody. When I came to the Senate, one of the issues that I raised in this House was the issue of boundaries. By then I thought that the issue was limited to only Nandi and Kisumu counties or Nandi and Kakamega counties. We have since read in newspapers that we have a lot of county boundary problems in this country. From the defunct North Eastern, Nyanza and Rift Valley provinces, all the way to the former Coast Province, there were problems. It is important that five or three years down the line after the establishment and entrenchment of devolution, we do not need to see governors trading accusations as to where the boundary is.

Mr. Temporary Speaker, Sir, it is important to note that where you have a county boundary dispute, county governments from either side have always ignored communities living around that area. You find a governor saying that they are not going to facilitate a particular dispensary because he thinks the dispensary is in the other county. The governor in the other county also says that they are not going to post a nurse or a medical professional, for example, because that dispensary is in the other county. You find that you have a buffer zone around some of the areas that we have disputed boundaries and citizens living within those areas are unable to enjoy the services of county and national governments because of that challenge of the boundary. Therefore, it is important, as a Senate, to fast-track this process and establish appropriate legislation.

Mr. Temporary Speaker, Sir, since the establishment of that Commission is by way of a decision by Parliament, that is why we are going through the process of urging the Committee of the Senate to come up with legislation. Therefore, it would be important to look at the process of appointing commissioners or members of that Commission. If you look at the constitutional process of appointing commissioners to the constitutional commissions, most of that responsibility is given to the National Assembly. However, it will be a very important element in the proposed legislation to anchor the position of the Senate in vetting and identifying members that will serve in this Commission because this is a county problem.

I know that we have to defend the Constitution, but even looking at the process, the Senate, as the House mandated to represent counties, should even have an upper hand. I want to interest my brothers, Sen. (Dr.) Khalwale and the team driving the referendum move, that some of the other areas that we need to see is that in areas where we think that counties have greater interest, some of those areas should be under lock and key by the Senate. I would personally see no role by Members of the National Assembly on a county boundary issue. This should be a matter reserved for the Senate just like we have some matters reserved for the Members of the National Assembly like appointment of Cabinet Secretaries (CS). We have never disputed that but on such a matter, we are the representatives of counties.

This afternoon we had a discussion about the vetting of the nominee to the position of the Inspector-General (IG) of Police and one of the crucial issues that was raised yesterday by Sen. Orenge is that even in the vetting process, the Senate has a particular lense with which to see certain things. We know that those lenses may not be the same for the Members of the National Assembly. Therefore, in terms of moving forward, we should look at some of the critical areas and issues for county governments which should be a preserve of the Senate, to be dispensed with by the Senate. Those are issues that should find their way to the referendum push by Sen. Hassan Omar and Sen. (Dr.) Khalwale. They should capture some of those things in that draft Bill and that may persuade some of us to look at that initiative in a more favourable manner.

(Applause)

Mr. Temporary Speaker, Sir, to wind up, I want to congratulate the Senate. On issues of critical importance to the Senate and to our counties, we have always walked together in one accord. Issues of county boundaries affect all our counties; whether it is represented by Members from the CORD Coalition or Members from the Jubilee Coalition. I am sure that even as we process this Motion and as we urge Members to pass it, and even as we urge the Committee on Legal Affairs and Human Rights to fast-track the process of coming up with a draft legislation, once we are done with it, we can work together in a bipartisan manner. It is in the interest of Sen. (Dr.) Khalwale and Sen. Sang that we can ascertain the boundary between Nandi and Kakamega counties so that we no longer have some of the border conflicts that we have witnessed in this country. I am sure it is the same between Meru and Isiolo counties, Kajiado and Machakos counties, Kitui and Tana River counties *et cetera*.

Mr. Temporary Speaker, Sir, with those remarks, I second this Motion and ask hon. Senators to support it. We need to up with a legislation that will give us a commission or a committee to review boundaries in our country.

With those many remarks, I beg to second.

(Question proposed)

Sen. Mwakulegwa: Asante, Bw. Spika wa Muda kwa kunipa nafasi hii. Hoja hii ni ya maana sana. Ningependa kumshukuru Seneta wa Makueni, jirani yangu, kwa kuleta Hoja hii mbele ya Seneti hii.

Bw. Spika wa Muda, miaka mitano baada ya kupata Katiba na miaka miwili yetu kuwa hapa katika Seneti, imekuwa vyema Hoja hii kuletwa hapa ili tuizungumzie. Serikali za ugatuzi zimekuwa na shida kubwa. Shida hizo zimekuwa kwa sababu pesa zinazopewa sehemu za ugatuzi zimegawanyishwa kutumia vigezo kulingana na idadi ya watu, maeneo na mambo mengine. Kwa hivyo, shida ambayo tumekuwa nayo ni kwamba zaidi ya nusu ya maeneo ya kaunti yanazozana kuhusu mipaka. Mipaka hiyo imekuwepo tangu siku za ukoloni lakini ilianza kubadilishwa mwaka wa 1962.

Mipaka ilipobadilishwa mwaka wa 1962, viongozi waliokuwa mamlakani, walianza kuongeza sehemu zao. Hiyo ndiyo sababu unasikia watu wakilalamika kuhusu

mipaka ya kaunti za Isiolo, Meru, Taita- Taveta, Kwale na Makueni. Zaidi ya nusu wanagombana kwa sababu waliokuwa katika mamlaka wakati huo na waliokuwa na nafasi walianza kujiongeza nafasi za utawala. Walianza kuwasukuma wale waliokuwa wanyonge.

Kamati ya kuangalia maeneo ya Bunge hayakuzingatia ugatuzi bali wilaya katika nchi hii. Wananchi walitaka mipaka ya maeneo mbalimbali ibadilishwe, lakini haingeweza kubadilishwa. Kufikia mwaka wa 1992, mipaka ya wilaya yalibadilishwa. Mipaka hiyo ndio tunayoitumia kugawa maeneo ya ugatuzi. Baada ya miaka 51 ya Uhuru na miaka minne tangu kupata Katiba mpya, wakati umefika kwa Bunge la Seneti kupewa nafasi yake.

Bunge la Seneti ndilo lenye uwezo wa kuiangalia mipaka ya kaunti na wala si Bunge la Kitaifa. Kwa kuangalia mambo haya hatutaki kutumia vyombo vya kisasa lakini hekima kubwa. Tumesikia kwamba jamii mbalimbali wamegawanywa na mipaka. Wale ambao ni wachache katika kaunti fulani wanasema wanaonewa kimaendeleo. Utaona ya kwamba watu fulani katika kaunti wananyimwa fedha za maendeleo kwa sababu ni wachache.

Bw. Spika wa Muda, tunaomba pia ndugu zetu wa Bunge la Kitaifa watupe nafasi hii vile tumewapa nafasi yao. Wao ndio wanaofanya mgao wa pesa za nchi hii. Tunawaomba pia Wabunge wa Bunge la Kitaifa watupe nafasi kama vile tumewapa nafasi. Wao ndio wanafanya mgao wa pesa za nchi hii na sisi ndio tumepewa nafasi na Katiba ya kugawanya maeneo ya ugatuzi. Wakati wa kubadilisha sheria umefika.

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

[The Temporary Speaker (Sen. Ongoro) took the Chair]

Bi. Spika wa Muda, tunafaa tuwe na kamati mpya itakayosimamia mipaka na shughuli zote za uchaguzi. Tunataka kuwa na kamati ambayo tutaipiga msasa kama Seneti. Tunawahimiza watu ambao watasimamia kamati hiyo watumie vyombo fulani ili kutoa uamuzi ambao utaponya vidonda ambavyo vimekuwa kwa miaka 51. Tunafaa kuangalia ni kwa nini mambo haya yamezidi. Hii ni kwa sababu tunatumia mbinu za kisasa kama idadi ya watu, maeneo na kadhalika. Hii ndiyo sababu mambo yamezidi. Mambo hayo ndio yanayotumika kugawa pesa. Kama mambo hayo ndio yanayotumika kugawa pesa, utapata Kaunti ya Taita Taveta inazozana na ndugu wao wa Kaunti za Makueni, Kwale na Kajiado. Tumesukumwa pande zote na tunataka mambo haya yaeleweke. Shida si kwa sababu ya madini, kodi, na kadhalika.

Kuna mambo mengi ambayo watu wa kaunti wanataka yasuluhishwe. Kwa mfano, katika kaunti yangu, kuna jamii ya Wataita kule Mackinnon. Wameishi hapo lakini wanatawaliwa na Kwale. Katika ugavi wa pesa za maendeleo, kunaweza kuwa na uonevu. Kuna watu ambao wanabaguliwa na watoto wao hawapati pesa za basari. Mada hii imekuja wakati mzuri kuponyesha vidonda sugu ambavyo vimekuwa katika nchi ya Kenya. Kuponyesha vidonda hivyo, hatutaviangalia vyombo vya digitali.

Bi. Spika wa Muda, tukiangalia historia yetu, tutajua watu walikuwa wapi na nini kilichokuwa wapi. Mambo haya yatakuwa na uchungu lakini tunafaa kukubali

kuyarekebisha mara moja. Kumekuwa na maeneo ambayo yamekuwa na maonevu ya Serikali kwa upande wa maendeleo. Katika maeneo hayo, si pesa tu za maendeleo ambazo hazikupatikana. Mipaka ya maeneo hayo iliwekwa kiholela. Hawakuwa na viongozi wakati huo. Sasa wana viongozi katika Seneti hili ili haki itendeke. Wakati umefika kwa sheria hiyo kubadilishwa ili tuyatatue matatizo tuliyo nayo sasa. Tukichelewa, matatizo yataendelea kuzidi.

Ningependa kama Seneta wa Taita Taveta katika Katiba hii mpya, niyatatie mambo ya mipaka. Ningependa kuyatatua mambo ya maendeleo na mambo ya ugawaji wa pesa kulingana na idadi ya watu na maeneo ili ukweli na haki utendeke. Kumekuwa na tetezi vile tunavyosoma katika magazeti. Naomba pia waandishi wa magazeti wasije wakaanza kusema kwamba watu hawa wataondolewa hapa na kupelekwa mahali pale. Haya yote yataongeza uhasama na kuleta vita. Kile tunaomba kama Bunge la Seneti ni kwamba sheria iwekwe. Tunafaa kuwa na nafasi yetu ya kuweka kamati ambayo itabuni mbinu na sheria za kuyatatua matatizo haya.

Bi. Spika wa Muda, bila kuyatatua matatizo katika kaunti zetu, magavana watazidi kuzozana. Wakizidi kuzozana, mambo ya maendeleo katika nchi yetu yataharibika kwa sababu watakuwa wakiangalia ni nani atakayeichukua sehemu hii ama ile. Watu wengi hapa huwa wakiyaangalia maeneo Bunge. Tunafaa kuyatatua mambo haya tukiwa na hekima kubwa na kwa kutumia vyombo vya kisasa na maarifa. Tunafaa kuangalia historia ya Kenya ili watu wa Kisumu na Maseno wasije wakagawanywa na mipaka na kuanza kupigana. Tunafaa kutumia wakati huu ili tutatie matatizo hayo. Tunafaa kuleta mapenzi zaidi, uelewano na maendeleo.

Bi. Spika wa Muda, ninahakika Hoja hii itaungwa mkono na wengi wetu. Tunafaa kuiweka kamati kwa sababu wengi wameonewa kwa sababu hawawezi kujitetea mahali walipo. Pengine ni wachache ama haki zao za kisiasa zimeonewa maana wao ni wachache. Ninahakika tutaunda kamati ambayo itatatua matatizo mengi na kuleta usawa, ukweli na ugatuzi utaendelea.

Kwa hayo machache, ninaunga mkono kwa dhati Hoja hii kwa sababu imekuja kwa wakati unaofaa. Tukiwa hapa, kama maseneta wa kwanza, tuwe na hekima, maarifa na nia ili tuyatatue matatizo haya kwa sasa na kwa vizazi vijavyo.

Sen. Murkomen: Thank you, Madam Temporary Speaker. First, I would like to congratulate my colleague and friend in the Committee on Legal Affairs and Human Rights, Sen. Mutula Kilonzo Jnr. for such an important Motion. This is a very serious issue. Even before we started the elections, as soon as the new Constitution was passed, friction began in various counties. I was in the Task Force for Devolved Government. When we went round, one of the most emotive issues I witnessed was the boundary problem of Pokot and Turkana counties, particularly Turkwel area. As a result, I began to realize that it was not just Turkana and Pokot counties, but also my very own county where we have an institution called Chepororwo Training Institute at the boundary between Uasin Gishu and Elgeyo-Marakwet counties.

The question I asked myself at that time was why people were fighting over boundaries. If you go down to it, you realize that it has something to do with resources. It is either over grazing land or taxation powers of counties. For any of you who comes from counties where there is no conflict between you and your neighbours, the conflict is

just postponed to the future. Wait until minerals such as gold, oil or coal is discovered around the boundary. Immediately, it becomes a basis of conflict because the incentive here is the sharing of resources. The Mover said that you should wait until you have the benefit sharing agreement based on The Natural Resources (*Benefit Sharing*) Bill, 2014 that Sen. (Dr.) Zani is leading us in – I also sit in that Committee. As soon as there is a percentage given for every natural resource provided for in the county, that is the time that you will see the fight between the counties on which county should collect this or that.

Madam Temporary Speaker, that is the very reason why at Chepororwo in Elgeyo-Marakwet and Uasin Gishu counties, the fight is not just because we want boundaries, but who controls and who will be in charge of the Agricultural Training Institute. Is it Uasin Gishu or Elgeyo-Marakwet County? The same issue affects various places in this county.

I also learned the reason we have a boundary problem today is historical. Initially, nobody attached the question of districts to collection of taxes; it was purely administrative entities that were initially put in place by colonial governments for purposes of controlling various communities and tribes. I believe over 90 per cent of the counties are almost ethnically homogeneous. If you say you are in Nandi County, you are definitely going to find a county where over 80 per cent of the people are Nandis. If you say you are in Murang'a County, you will find that over 80 per cent or 90 per cent are Kikuyus. If you say you are in Turkana County, they will tell you that it is Turkana for Turkana. It is the same whether you go to Makueni, Kitui or Kisii. Kisii County is for the Kisii, except that there are a smaller percentage of people from other communities. That challenge is magnified when we talk about the boundary of Kisii-Migori counties, which is largely either Kuria, which is a minority. I remember very well, Sen. (Dr.) Machage was locked up in the cells for opposing the Constitution because he felt that the minorities would continue finding themselves in a situation where they were going to be marginalized. I am very happy with the people of Migori because they found a formula of ensuring that the Kurias and the Luos are all represented in one way or another in Government, either in the Senate or whatever. Not all counties have benefited from that kind of arrangement. That is democracy with equity so that everybody is playing a role in the management of the county.

Madam Temporary Speaker, this issue of boundaries is emotive. Already, there is an accusation which I watched on television while in a function in Meru County when the Governor of Meru County was responding to allegations from another leader from Isiolo who was accusing him that he had a private militia; apparently some county trained police officers of some sort that are meant to take over the boundary of Isiolo and Meru counties because of the Meru National Park, the resources that will come from it and who will control it. In the Meru-Isiolo issue, for example, it was even more emotive. They were fighting over where to put a toll station. Today you will find a sign indicating that it is a toll station being manned by Isiolo County Government so you pay cess to them. The following day it has been moved by some people from Meru and they say that you pay the cess to Meru County Government. We must find a lasting solution to this issue. Thankfully, the Constitution already provides for it in Article 188(1) (a):-

“The boundaries of a county may be altered only by a resolution recommended by an independent commission set up for that purpose by Parliament.”

At least the Constitution is clear that Parliament is going to set up this commission and then the approval will be by two thirds of the National Assembly and the Senate. I agree with the Mover that we need a legal framework that will give flesh to the skeleton that has been provided for in Article 188 of the Constitution so that we have a comprehensive framework that gives people hope.

Madam Temporary Speaker, initially, as I said, and Sen. Musila will confirm this because he served in the provincial administration with distinction, that those boundaries at that time had nothing to do with collection of taxes or resources. Although it had a little bit of something in distribution of resources using the District Focus for Rural Development, it had less interest like it is now when you talk about devolution. It is important for us to now provide the legal framework, give these people an opportunity to know for sure, using modern technology, where the boundaries of our counties are passing and the objective here is just to avert situations where you are going to have a conflict. Who would have imagined that counties like Machakos and Makueni would have had a conflict? On the face of it, they are largely led and occupied by people from the Kamba community. For example, in the Uasin Gishu/Elgeyo-Marakwet counties situation, incidentally, the people who live on both sides are Keiyos. There are Keiyos in Uasin Gishu and in Elgeyo-Marakwet counties as well. However, there are two different governments. The counties are still fighting over the boundary because everybody wants the benefits that come from those institutions to be ploughed back to their counties.

You can imagine that the Makueni/Machakos, Elgeyo- Marakwet/Uasin Gishu situations are going to become a derailment for those county governments to partner, have good economic relations and be able to work together as a team because they will be fighting. You know, in politics, no politician would like to be seen as the weaker one who has let go off their boundaries. The best way is to employ the modern technology. I know we have experts here like Sen. Kivuti of geospatial technology; modern technology of surveying land. It is better for us to do this so that we can be sure to put in place the boundaries of our counties and allow our people to proceed to do other things instead of bickering all the time.

Madam Temporary Speaker, let me add that this is also the best way of demonstrating that the Senate has powers. There has been a lot of propaganda, mischief and lies, left, right and centre that the Senate does not have any powers to do this or that. Such responsibility like dealing with the boundaries of a county is an immense responsibility. It even includes reviewing those boundaries. If you talk about dissolving a county or not – like now my Committee will be vetting names of men and women who are going to determine the situation in Makueni – that is not a small responsibility, but a serious one. I want to tell Sen. M. Kajwang, that he should not be lied to by characters who are sitting on their computers or digital phones typing information on social media that this House is lacking business and is less important. Those are absolute lies which are peddled by men and women who have never read the Constitution.

This House can be busy from January to December dealing with only inter-governmental relations between counties, dealing with matters of ensuring that boundaries are okay or with matters of accountability in the counties. Even as we fight here to ensure that the boundaries are correct for proper collection of resources, on the other side, we are hearing stories of individuals wiring county money to their accounts, enriching themselves and so on. What happened to the servant spirit where we thought that persons who are going to run our counties are servants? We are now dealing with situations where, because time is running out, county assemblies have decided that we are going to compromise with our governor to share this thing instead of a lose, lose situation. They think they should eat together because they do not know who might be elected back. This House has an immense responsibility and particularly towards the end of the term. Greater sins are committed towards transition because somebody who realizes that he has lost hope, he might decide to pocket everything and go home.

I was speaking with another Senator here - I do not want to mention a name so that I do not jeopardize county relations - who told us that sometimes you find that the resources that have been devolved by this House are being used every day to move people from one corner to another using lorries and buses. When they reach the meeting and you are sitting there as a Senator, everybody who speaks in the meeting says: "We will re-elect the governor" as if there was an election tomorrow. This misuse of public resources for purposes of running campaigns instead of using it to serve the people is not useful. It is actually counter-productive to the initial objective of ensuring that devolution works.

Madam Temporary Speaker, I have more energy this year as the Chair of the Committee on Devolution and as a Member of this House, and I think we must do more. This is a House of record and posterity. We must do things for the future. As I said here, there is no need for any one of us to feel like you need anybody to praise you so that you can feel like you are a Senator. You can be praised 100 years down the line. They will read and say there lived a Senator who spoke in the Senate about this, who passed a certain Motion like Sen. Mutula Kilonzo Jnr. or who wrote a particular law. That posterity is what should drive all of us as we serve in this House. We should not necessarily be looking for the momentary praises that sometimes cannot come because some of the people we are dealing with do not have a long-term view on these matters of devolution.

Madam Temporary Speaker, I support strongly and as a Member of the Committee on Legal Affairs and Human Rights, we will not let you down, but ensure that the Bill and the process is provided for in good time.

Sen. Musila: Madam Temporary Speaker, first and foremost, I want to congratulate my younger - I do not know whether to call him brother or son - for this well thought-out Motion. In fact, in a way he has done the job that I wanted to do because when I was campaigning I assured the people of Kitui County that the first duty I will do is to ensure that the boundary between Kitui and Tana River counties is properly defined. I am glad that my friend, Sen. Bule is here because he is aware of the problems that have existed. We do not fight simply because we talk and agree, but whatever we agree on is

just a temporary truce. Therefore, I believe that if this Motion is implemented to the full, it will provide a lot of peace and tranquility in this Republic.

Madam Temporary Speaker, Sen. Murkomen referred to me as a person who had served in the defunct provincial administration. I thank him because he added that I did so with precision and he is very right. He can confirm that from my former Minister, Sen. G.G. Kariuki. The boundaries that we have today for counties are just imaginary. These boundaries were drawn by the colonial government. We obeyed them not because we liked them or agreed with them, but because of the fear of colonial power. The colonial administration did not entertain any questions about those boundaries. When Independence came in 1963, again through a very strong provincial administration of which I served, the people did not have the guts to question the boundaries. They had to live with them the way they were. We inherited boundaries from the colonial Government which had been set for colonial reasons, some even dividing communities, but that is neither here nor there. The most important thing is that no survey was carried out to identify the boundaries properly as to where county “a” and county “b” meet as far as boundaries are concerned.

Madam Temporary Speaker, we must, in the first place commend the Kenyan people because they have co-existed for many years on imaginary boundaries, but with the new set up in the Constitution, with new awareness of issues of resources and enhanced development, there is need for us to ensure that we define these boundaries clearly if we have to sustain our nationhood. We have conflicts all over this country. Examples have been given and I have given my own example of Kitui and Tana River counties. We do not fight because we the *wazees* call meetings and agree. Every now and then we are finding situations that we cannot sustain. I can tell you and the Senator from Tana River would bear me witness that we just exist on a daily basis. We do not know when it is going to explode. As far as Kitui County is concerned, we may be right or we might be wrong, but the people of Tana River led by their Member of Parliament have encroached into our county, they have built schools there to claim the land, they have done boreholes, they graze freely and even displace our own people. We say that we are going to ask the Government to intervene. Occasionally, the Government has sent the General Service Unit (GSU) to chase people away and that has brought very bad blood between the communities.

We know of the recent issue of Makueni and Machakos counties. They are one people, but because of issues like resources, everyone wants to get what is his right. We have heard of the case of Meru and Isiolo counties which almost created a serious fight between the two communities. Even now as I speak, people are fighting because of boundaries in Kapedo. Nyamira and Kisii are one people, but they have boundary conflicts.

This Motion is going to assist in defining these boundaries. This Commission will comprise of professionals, surveyors and the local communities in deciding where the boundaries are and ensure that as soon as they define these boundaries they are properly surveyed and even go further and clear using graders, grade the boundaries so that when I enter Tana River, I know that I am in another county. When the people of Nyamira County go to Kisii County, they should know they have crossed to Kisii County.

Madam Temporary Speaker, while we were consulting here, I heard some Senators expressing fears that this Motion may create problems because people will want more counties. This is not the case because the way I understand this Motion, it is not asking for additional counties, it is asking for a definition of the existing boundaries. The boundaries are there and some may not need to be adjusted. However, instead of having imaginary boundaries, we want to have properly surveyed boundaries.

Madam Temporary Speaker, the Constitution guarantees that Kenyans can live and work anywhere in the Republic. This Motion does not provide for restriction of movement of persons from county to county after the boundaries are defined. Therefore, fears of restricted movement are misplaced. All we are asking for - I have read this Motion carefully - is to have boundaries defined.

When I was a District Commissioner (DC) in Laikipia - this is very serious - the DC for Laikipia used to - even to date - resides in Nyahururu Town. However, the town is in Rift Valley. Nyandarua is in the former Central Province. People have lived with it because of the colonial systems and the provincial administration that made them believe that they had to say where they were otherwise their heads would be knocked down. We have to correct this. As I speak now, and my former Minister is looking at me, I have read in the newspapers that the people of Nyahururu are demanding a definition of where they belong. They want to know whether they are in Laikipia or Nyandarua.

These are issues that have existed for a long time. It is now high time we bit the bullet. I know there will be some repercussions. There will be resistance here and there but this is the best time to resolve these issues. The more we wait for resources to be discovered, the more you will find people having an appetite for land which did not even belong to them. Therefore, this is the right time to follow through this Motion and ensure that a Commission is set up. The Commission should ensure that boundaries are set up and surveyed. It should also ensure that those boundaries then form the devolved systems of governments in terms of counties as we know them.

With these remarks, I beg to support.

Sen. Elachi: Madam Temporary Speaker, I also beg to support this Motion and thank the Senator for Makueni County for bringing it forth. By the time we were discussing the Constitution before it was promulgated, the most disadvantageous thing that we did to Kenyans was to decide that we shall have 47 counties. These represent the old districts that were there. We made this decision without looking critically at the administrative boundaries that were there at that time. That is why today we face a challenge. You find that each county, and mostly the counties that were subdivided on political grounds where one would want to play within a political area, is faced with challenges today.

Now that we have moved on, we have come to a level where the economic viability of each county is growing. Therefore, every county is monitoring where there is economic viability. Each county has interest in areas with natural resources and that is where the whole conflict arises. We need to ask ourselves why counties are facing many challenges.

I welcome Sen. M. Kajwang. I know that he also has a lot of challenges within the islands that are within his county. That is Rusinga Island and others. This Senate has the

opportunity to look at many of the challenges that we have faced and find solutions before five years end. Therefore, we have a lot to give to Kenyans in the next two years.

Madam Temporary Speaker, at one point, the Senator for Vihiga County wanted to know what happened to Maseno University and the boundaries around Luanda. It was not clear how that area ended up again for Maseno University to be part of Kisumu County. There are many issues which Kenyans want to know. However, they are afraid to ask because they feel things might get out of proportion. Therefore, it is upon the Senate to come out boldly and confront the situation and see how it can be rectified. We appreciate the districts that are there because the youth go for recruitment within their respective districts, mostly, Government recruitments for the disciplinary forces. However, we need to ask ourselves whether this is good. We can advise the national Government to look at that because if we create more districts, we shall affect some and there will be conflict again.

To cite some instances, look at Tharaka-Nithi and Meru counties. For many years, there has been conflict in more than one area. Mwingi has also been involved. There has been conflict within that region. The Senator for Meru County had to give out his land just to cool down temperatures. These are issues that are really affecting Kenya.

It is important to mention that the national Government for many years has not given Kenyans good service. That is why we are facing this challenge. We overlooked many things because we always believed in the political winning process. You divide and rule when you realize that you are dealing with a constituency where there is conflict. You also end up creating a constituency within a constituency so that you are elected to represent it.

Madam Temporary Speaker, back then, the KANU regime made us go through a lot. Today, as much as we are talking about 290 constituencies, we find ourselves with the wrath of ethnicity. That is why you find in some counties, for example, Kakamega County, we say that we are all Luhyas and we are proud of that as much as Kakamega town is cosmopolitan. This is because of how the boundaries were done. You cannot understand how Rift Valley and Kisumu ended up being part of Nyang'ori. Look at where Kitale is today. Those days, Kitale used to be in Western Province. Today, where is it? It is in Rift Valley? These are issues that many people query but no action has been taken.

I thank Sen. Mutula Kilonzo Jnr. Indeed, because of Konza City we need to face this. The way they divided Konza Metropolitan City is also another issue. They spread the metropolitan city and now people who are living in the rural surroundings pay rates as if they are living within an urban area. This is challenging for those Kenyans who are poor and are living within those boundaries.

I know that governors will also want to start looking at the cities differently. Recently there are some negotiations that were going on but nobody is talking about what happens when you create cities. Are Kenyans ready? Are our counties ready? If that is the case, then we will be happy to have cities. We need to know whether they are ready economically to maintain the city and pay the rates. I know that governors want cities to ensure that the rates go higher and local revenue is increased. These are some of the

things we need to ask ourselves before we create the cities that we are talking about. We need to handle this first.

Parliament can ensure that we have an independent commission that will relook at this and give clear recommendations on how to manage conflicts within different boundaries. I know that at one point there will be issues raised by the minority who feel that because of their culture, they are not supposed to be joined to certain counties. We should, however, agree not to add counties as Sen. Musila said. In fact, it would be better to reduce the number of counties. However, I know that right now, since everybody has benefited, it will be difficult to reduce them. It is important to manage the 47 counties that we have. In managing them, the Senate must also sit down with the leaders within the different warring counties and look at how best they can agree. At one point, it would be very difficult to say that we apply give and take or a win-win situation. It is a matter of asking ourselves where this boundary was and return it. The other county should appreciate when that happens. If it was not within your jurisdiction at that time, then you do not need to come and claim it because it is economically viable.

I know the issue of natural resources is very critical. We know the counties that have natural resources. There are others that are quiet, but still have more natural resources. These are counties that we need to map and understand that when we are starting, we shall have an issue of push and pull because of the natural resources within those counties. We have to do it in a manner in which we need to understand what the national Government is thinking in terms of ensuring that we do not have conflicts. Right now, we are losing in tourism. At the moment there are conflicts in Narok. Although everyone felt that Mombasa was insecure but right now even the Maasai Mara is insecure. This is something that the national Government and the county government should look at it in terms of the revenue that is lost and what we are portraying. We are about to start the Easter holidays and I do not know what my own Government is thinking about the issue of Narok. It is important to face that issue. The Senate must also face the issue because we have to ensure that it is brought to an end.

The Temporary Speaker (Sen. Ongoro): Order! Sen. Janet Ong'era has an intervention.

Sen. Ongera: On a point of order, Madam Temporary Speaker. Did you hear Sen. Elachi refer to "her Government"? I wonder what Government this is, could she highlight?

Sen. Elachi: Madam Temporary Speaker, it is our Government and it is the Jubilee Government, which when being bashed we are told that it is our Government. So, it is my Government.

The Temporary Speaker (Sen. Ongoro): She is in order because in making reference to "our Government" that is not an exclusion. It might refer to all of us.

Sen. (Dr.) Khalwale: On a point of order, Madam Temporary Speaker. This is a House of record and students up to university level might read some of the speeches that we make today. The only situation under which somebody would say "my Government" is, for example, when the President is speaking, he would say "my Government" or when the Deputy President is speaking on behalf of the President he will say "my

Government”, or a Cabinet Secretary an Ambassador or a High Commissioner, in the absence of the big people then they can say “my Government but---

The Temporary Speaker (Sen. Ongoro): What was out of order for her to respond?

Sen. (Dr.) Khalwale: Madam Temporary Speaker, can the Member justify under what circumstances she thinks she is entitled to speak in this House by telling us “my Government” and in what capacity?

The Temporary Speaker (Sen. Ongoro): Senator, can you make that clarification? In case you made a reference and used the word “my Government” you are completely out of order and you have to withdraw that and make that correction.

Sen. Elachi: Madam Temporary Speaker, I do not think there is impunity as my Senator is saying. Indeed, when the Senator stands up on the Floor, we sometimes differ. He always reminds us that it is “our Government”.

The Temporary Speaker (Sen. Ongoro): Sen. Elachi, there is an intervention, Please take your seat.

Sen. (Dr.) Kuti: On a point of order, Madam Temporary Speaker. I understand that in English you can say “my President” or “my Government” it is a feeling of a citizen being proud of her Government. It is not about her being the head or anything. It is about ownership and being a proud Member of the Government.

The Temporary Speaker (Sen. Ongoro): Before I give my ruling, there is another intervention.

Sen. (Dr.) Machage: On a point of order, Madam Temporary Speaker. Humility sometimes is noble and accepting a mistake is even more noble. There is only one person who can say “my Government” in this country and that is His Excellency the President of the Republic of Kenya, Hon. Uhuru Muigai Kenyatta. For somebody to impersonate and take that title is insubordination and actually treason. Would I be in order to humbly request that Sen. Elachi withdraws and continues?

The Temporary Speaker (Sen. Ongoro): Sen. Elachi, it is my considered opinion that those issues raised by Senators are valid. So, in case you used the word “my Government” can you simply withdraw and use the right word?

Sen. Elachi: Madam Temporary Speaker, I withdraw. We are in a country with a presidential system of governance and when we talk of boundaries, I think it is the President of this country who can guide this Senate to ensure that we move on---

The Temporary Speaker (Sen. Ongoro): Sen. Elachi, are you contributing on that specific statement?

Sen. Elachi: No.

The Temporary Speaker (Sen. Ongoro): I want it to go on record. Did you withdraw officially?

Sen. Elachi: Yes, I did.

The Temporary Speaker (Sen. Ongoro): It escaped my attention. At what point did you withdraw? If that is the case then proceed.

Sen. Elachi: Madam Temporary Speaker, I was saying, for this country to move on, it is His Excellency the President of this country who will guide us in this process;

one, because of the conflicts within our tribal lines and that as much as we would wish as the Senate to see things move on, he would be the best person to guide us.

Sen. (Dr.) Zani: On a point of order, Madam Temporary Speaker. Could I ask Sen. Elachi to substantiate because looking at Article 188 of the Constitution, there is no provision given to the President's role in coming up with this Commission? That role is clearly given to the National Assembly and the Senate.

The Temporary Speaker (Sen. Ongoro): Sen. Elachi, proceed and elaborate.

Sen. Elachi: Madam Temporary Speaker, after that, I do not know where we head. Do we constitute the independent Commission? I thought we forward to the President and then he constitutes.

The Temporary Speaker (Sen. Ongoro): Sen. Elachi, a constitutional reference has been made. Sen. (Dr.) Zani made reference to the provision contained in the Constitution. Are you in order to state clearly that it is the President who has that mandate when the Constitution provides otherwise? That is the clarification that you should make and correct so that you can proceed.

Sen. Elachi: Madam Temporary Speaker, Sir, Article 188 (1) of the Constitution says:-

“The boundaries of a county may be altered only by a resolution—
(a) recommended by an independent commission set up for that purpose by Parliament; and
(b) passed by—
(i) the National Assembly, with the support of at least two thirds of all of the members of the Assembly; and
(ii) the Senate, with the support of at least two-thirds of all of the county delegations.”

I agree that as a House we have that duty. What I meant is that, indeed, the President can support that process after the Senate and the National Assembly.

The Temporary Speaker (Sen. Ongoro): Sen. Elachi, just make that clarification and proceed. We are in agreement.

Sen. Elachi: Madam Temporary Speaker, he has to come in because of the conflicts that every county is facing.

Sen. Hassan: On a point of order, Madam Temporary Speaker. My reading of that Article is that it actually mandates the Senate and the National Assembly to guide the President and not the other way round. Is Sen. Elachi in order to say that as a Senate of 67 reputable men and women, we need to be guided by the President?

The Temporary Speaker (Sen. Ongoro): Sen. Elachi, I think it is just a matter of your diction. Make that correction and proceed.

Sen. Elachi: Madam Temporary Speaker, I schooled in Kakamega, in a small school called St. Teresa's. So, English came by *meli*. How I pronounce and put---

Sen. (Dr.) Khalwale: On a point of order, Madam Temporary Speaker. I am the popularly elected Senator for Kakamega. I am aware that the schools we have in Kakamega give standard education. If Sen. Elachi had difficulties in learning, in a school that gives standard education, is she right to impute improper motives on the standards of

education in Kakamega County? Could she withdraw the statement that schools in Kakamega are small and give substandard education?

The Temporary Speaker (Sen. Ongoro): Senator, proceed and conclude your contribution. I think that is her opinion.

I want to limit the interventions and allow the Senator to conclude.

Sen. Elachi: Thank you very much, Madam Temporary Speaker. Since land is diminishing we need to think of ways of solving boundary disputes. We need to sit down and discuss with our citizens how to manage the small pieces of land that they own. For example, if a family has three acres of land within a county, how do we ensure that they do not subdivide and sell it? I know that we have challenges of poverty, but we need to address this issue as the Senate. We need to find out whether we have enough land to ensure that every Kenyan has something on the table.

Madam Temporary Speaker, we need to relook at the counties which had challenges when we were discussing the Constitution. Examples are Migori and Embu counties. We have to ensure that positions and resources are shared equitably. We also need to address the conflicts in north eastern, which are based on clans. Regarding boundaries, most counties have challenges. Mostly likely, all the 47 counties have queries regarding boundaries. This is something that we need to address.

The Temporary Speaker (Sen. Ongoro): Sen. Elachi, your time is up.

Sen. Elachi: Madam Temporary Speaker, I beg to support.

Sen. Ong'era: Thank you, Madam Temporary Speaker, for giving me this opportunity to contribute to this very important Motion. From the outset, I want to join my colleagues in congratulating Sen. Mutula Kilonzo Jnr., the "Duke" of Makueni for bringing this very important Motion that attempts to discuss and help us get the boundaries defined.

This is a very emotive subject that requires very careful thought and planning, even as we discuss it. Although it may look fairly straightforward, we are discussing a Motion that could give rise to a Bill, under Article 188 of the Constitution. However, you are aware that this is a matter that can lead to internal conflict and stress in this country.

We are aware that already a number of counties have disputes with regard to their boundaries in terms of how they were delineated although this should not really be an issue because we know that the former Independent Boundaries Review Commission actually set out the boundaries. However, there are some disagreements mainly because they are based on resources; especially natural resources. Therefore, this is a matter that must be very well thought out before we can actually come up with a Commission to set it up.

Madam Temporary Speaker, I want to speak on two points that should really be carefully thought out when the Bill is prepared. This relates to community issues. Elders who will look into this matter should be identified because they are the ones who are clearly aware of the various circumstances regarding where the boundaries actually lie. I think we should not disturb the historical boundaries that had been set because there were reasons behind them. We should not disturb bees where they are making honey. We should not disrupt situations where already assets have been determined in the counties. By coming up with delineation of boundaries some counties will lose resources while

others will gain. This issue can be very emotive, as we saw in the case of Baringo, Turkana and West Pokot counties. We should be very careful about how set up this commission.

Madam Temporary Speaker, a commission must be set because it is part of our mandate, under Article 188 of the Constitution. But in doing so we should be very careful how we set the terms and what kind of boundaries they will be setting, so that we do not have political gerrymandering. We should guard against politicians deciding that because the boundaries will help them get more assets or resources for their counties, they should intervene.

It has been alleged that there are boundary disputes between Kisii County and Nyamira County. But I want to state that we do not have a dispute with Nyamira County. We are one people and what is in the Press is merely political gerrymandering. When we have such issues within our counties we meet as elders and resolve our disputes. Therefore, we should not take the Kisii/Nyamira matter as one of the reasons for setting up a Commission to discuss boundaries. However, where there are problems in other counties, we can discuss them and set up a commission to address those issues.

Madam Temporary Speaker, finally, if we intend to set up this commission, we need to talk about fairness in how these boundaries are set about, so that we do not have issues of internal and armed conflict in this country. As you are aware, this can be serious. Let me repeat that we should be very careful if we are going to set up a commission that will be looking at boundaries, because of new resources coming in, economic build up within counties and political reasons. We should not set up a commission that can set this country into more bloodshed.

I support.

Sen. Lesuada: Thank you, Madam Temporary Speaker, for giving me this opportunity to add my voice to this very important Motion. I would like to congratulate my fellow young Senator, Sen. Mutula Kilonzo Jnr., for coming up with this Motion, which in the recent times is one that really excites me. This is because it touches on the core issue of why we represent our people and that is safeguarding their lives.

On this issue of boundaries, when you look at the reverse of what has been happening, if we are not bold enough to actually move with speed with what this Motion says, you will see that it has had very negative impact on our people, especially the loss of life. For me, as a champion of peace in this country, who has traversed various areas and actually had the privilege of going to almost all parts of this country, especially areas where communities for a very long time have been having conflict, one of the key issues has been boundaries, especially among the pastoral areas. I know, for example, between the Pokot and Turkana, Pokot and Samburu, Tana River, Ijara and Garissa, the key issue that keeps coming up when we are dealing with the communities is the issue of boundaries. When we fail to do our job, the people and the communities that we represent will do it for us.

Madam Temporary Speaker, I have seen communities taking up the role of creating the boundaries themselves. They know that if you pass there, a bullet will get--- When we run away, shy off or fear to do our job, the people will do the job for us. Loss

of life and livelihoods will continue to happen. Discrimination will continue to happen, while run away from our obligations as a people.

This is a House of reason which has people who have had so much experience in this country. It has people who have even led the people in the areas that they represent for a very long time and have lived to see this problem for a very long time. I believe that this issue is in the right House, so that once and for all we can tackle it and save lives and livelihoods of our people.

Madam Temporary Speaker, secondly, major projects which would have moved this country into another economic lifeline have stalled. They have been stopped because of the issue of boundaries. Look at Konza City, for example. We know that the issue of the boundary is one of the reasons or hindrance why it has not taken off. We also know of the Standard Gauge Railway (SGR) project as well. There was an issue about the boundary in it. We also know that it can continue to become an excuse. It is very easy to continue to use the issue of boundaries so as not to progress as a country.

I must thank Sen. Mutula Kilonzo Jnr. for coming up with this Motion, so that we can tackle this issue once and for all. We have also the influence of boundaries in terms of even service delivery. We know from the time we had the Ligale Commission and also the IEBC, that boundaries have an inclination also on issues to do with the electoral process and even where the polling stations are located in the counties. There are people who are in one county but have to get services in another county. So, you will get even some of the leaders saying that: "Why should we serve them and yet they are not in this county?" I think that they should go hand in hand, so that we are clear on issues of electoral boundaries and the boundaries of our counties, so that we can sort our these issues once and for all.

Madam Temporary Speaker, I would also like to talk about the issues of being certain once and for all. You will get community members carrying maps of 1900s telling you: "Before my grandfather was born, this is where the boundary was." I think that this is the right time, especially now that we are breathing life into this Constitution. As a Parliament we are going to breathe life and be courageous enough to live to the aspirations of Kenyans when they passed this Constitution in 2010. It is time we sorted these issues once and for all. We should not live in fear by saying that if we start, the people are going to complain. Our not doing has also not been doing us any good. We would rather be bold enough and tackle it once and for all and see how we are actually going to solve these problems that have been bedeviling us.

It is even unfortunate to see leaders discussing whether or not, for example, Nyahururu is in Nyandarua , where the President has gone to officiate a very important function. We are left bickering over where a boundary is at such an important function. I think that as a country, in this century, that is not the right thing to do.

I also agree with Sen. Ong'era that when the time comes, when we will have to cross the bridge, even in constituting the commission--- I think that it is time as Kenyans, and people who hold offices, to think of posterity and this country beyond us and the mandate that you have been given at that particular time. This is because your great grand children will still be in this country. This country belongs to all of us.

Looking at some of the commissions that we have, you are sometimes left to wonder whether we need to hire people from outside this country to come and do things that are supposed to be done by the people of this country who mean well for this country. This is something that we can look at when we get there and have to be very keen on.

As the Vice Chairperson of the Committee on Devolved Government, I see that once this Motion is passed, it will come to our Committee. I want to give the assurance to the Members of this House, because this is something that we have talked about for a very long time. This is something that is actually just passive, especially among the pastoral communities. Even now we have drought and livestock have to keep moving. Every other time you will hear that an attack has happened somewhere, because a certain community feels that the other community has come into their boundary, yet they are not even too sure where the boundary is. That is why the loss of life continues to happen.

So, I really believe that we should move with speed once this issue comes to our Committee. It is something that we should run with as a Senate, and continue to show this country that in this House, we are courageous and bold enough to tackle the issues that actually affect the lives of Kenyans. We will not shy away.

Madam Temporary Speaker, without belaboring the point why this is a very important Motion in the Senate, I would like to, once again, congratulate my fellow Senator and also Sen. Sang for eloquently and ably putting across the points in supporting this Motion.

Thank you very much.

Sen. (Dr.) Khalwale: Thank you, Madam Temporary Speaker. I have listened to all the speakers this afternoon and they have spoken in support of this Motion. Because this Motion is being moved by Sen. Mutula Kilonzo Jr., I want to beg him to understand me; that I will be the first one to oppose the Motion. I am opposing this Motion not because the resolution that we want to make is, in any way, sacrilegious; no. It is because of where a Kenyan in national leadership position wants to take Kenya. We have to build a family called Kenya. When I oppose, I do so with the benefit of hindsight. I sat in Bomas when this matter came up. I sat at the Kenya Institute of Administration (KIA) during the second round of an attempt to make the Constitution and this matter was very contentious.

It, therefore, begs that I explain to Members, as somebody who was in those areas, what gave rise to Article 188 in the Constitution. Very many submissions were received by the Chairman, Nzamba Kitonga, and people spoke to all the issues that were raised there; geographical features, objects of devolution of Government, the fact that the community had diverse views; that the people were worried about the cost of administration; there was the issue of historical injustices, cultural ties, physical and human infrastructure; and issues of population and demographic trends. All these issues were raised there and this is how it became a hot potato.

Madam Temporary Speaker, realizing that the people were not agreeing, the then Committee of Experts (CoE) then decided to introduce an Article, that having created the Senate, the Senate can later on, after promulgating the new Constitution, make that decision because it will be representing everybody. Now, when you thread through what

is at the heart of these people, go to my region, the Abaluhya people; you will not find the Luhyas of Busia fighting the ones of Bungoma yet they border each other; you will not find the Luhyas of Bungoma fighting the ones of Kakamega yet they border each other; you will not find the Luhyas of Kakamega fighting the ones of Vihiga yet they border each other; no. Instead, you will find differences on the Kakamega/Nandi border because on one side you have Luhyas and on the other side we have Kalenjins.

Madam Temporary Speaker, if we allow this to take off, we will now have started a higher level of debate on ethnic sovereignty in this country. I say this knowing that I will be outvoted; why? Take Kakamega and Siaya counties for example. The moment you start this debate for real, we have locations in Kakamega in a constituency called Khwisero, where the assistant chief is a Luo. These people will say “we want to go to Luo land.” If you go to Gem, there are Luhyas there and they have a Luhya sub chief and *Likuru*. In fact, you remember the story of Prof. Grace Ogot when she came to Parliament. She had to shift from her place in Khwisero to go deeper inside Gem for her to be accepted to be the Member of Parliament (MP).

Madam Temporary Speaker, we have to be very careful because we have other people who want to ride on this resolution. For example, if you go to Aldai, Emgwen and Mosop, Luhyas have, over the years, bought land inside Nandi County. A significant number of Luhyas have gone in; 20 per cent or 40 per cent are there. The moment you go there, these people will say “We want; the 40 per cent, to go back to Vihiga or Kakamega.” The Nandis will forget that they had actually sold that land and they will claim that land. We are opening a Pandora’s box; we are trying to fill a bottomless pit; you are opening a can of worms. The best thing to do is to say that, that is where we find ourselves, as Kenyans. Kikuyus are living in Kalenjin country, Luhyas are living in Kikuyu country; yes, they are there in Nyandarua. You know them Sen. G.G Kariuki, because you were in charge of internal administration. Somalis are living in Luhya land. We say that, that is where we are and then as a Senate, we strengthen the need for national Government---

Sen. (Dr.) Kuti: On a point of order Madam Temporary Speaker. Is my colleague, Sen. (Dr.) Khalwale in order to insinuate that the main purpose or reason for establishing this commission or for passing this Motion and allowing boundaries to be delineated clearly is to remove communities from one county to the other? While we know very well that a county like Isiolo, which has a very serious boundary problem, has quite a large number of Merus who will continue living in Isiolo even after the boundary dispute is resolved?

I am sure that goes for a lot ---

The Temporary Speaker (Sen. Ongoro): Are you debating or are you on a point of order?

Sen. (Dr.) Kuti: Madam Temporary Speaker, is he in order to insinuate that people will be moved out of counties after the delineation of the county boundaries?

The Temporary Speaker (Sen. Ongoro): Senator, Sen. (Dr.) Khalwale is giving his opinion and debating the issue; he has not even concluded. I do not think he has made that specific conclusion, he is giving his opinion and when your time comes, you will give your intervention.

Sen. (Dr.) Kuti: Madam ---

The Temporary Speaker (Sen. Ongoro): Order! I have not yet given you another intervention.

Proceed, Sen. (Dr.) Khalwale.

Sen. Khalwale: Thank you, Madam Temporary Speaker; you captured my mood. I started by saying that I know I am in the minority, but I am emphasizing that I am trying to see beyond the resolution. Sen. (Dr.) Kuti is one of my best friends and we normally do a lot of things with him in Bangkok.

(Laughter)

The Temporary Speaker (Sen. Ongoro): Order, Senators!

Sen. (Dr.) Khalwale, proceed with the Motion.

Sen. (Dr.) Khalwale: Madam Temporary Speaker ---

(Several Senators stood up in their places)

The Temporary Speaker (Sen. Ongoro): I will allow that intervention from Sen. (Dr.) Kuti because you have mentioned him.

What is it that you do in Bangkok?

(Laughter)

Sen. (Dr.) Kuti: Madam Temporary Speaker, all I remember is that we went for a health conference and I would like to be very specific to know what is this that Sen. (Dr.) Khalwale is talking about. All I know is that I fell so sick but I do not know what else we did.

(Laughter)

The Temporary Speaker (Sen. Ongoro): Sen. (Dr.) Khalwale, are you trying to impute improper motives upon the person of Sen. (Dr.) Kuti?

Sen. (Dr.) Khalwale: Thank you Madam Temporary Speaker. Indeed, he knows that this was with a light touch and I would never try to impute improper motives on my younger brother, who was a kid student of medicine at the medical school when we were training.

Madam Temporary Speaker, I want to plead with the House. I am trying to see the consequences of the Report they will bring. If you think this is a joke, I want you to remember what happened when Ligale came up with constituencies. The country got polarized. The Ligale Commission would visit a ward and divide it. The people in that particular ward would be given an extra ward but where the boundary would be became a very serious problem; whether it was at the river or not.

Going to specifics, there will be the issue of institutions. For example, if you go to Vihiga and Kisumu counties, you will find a huge institution called Maseno. For those

who do not know, Maseno is a Luhya word that means a “big tree”. That is the area where you will predominantly find Luhyas. This is however in Luo land. You will find the Luo culture. If you open up this, the Luhyas will lay claim on Maseno University and such things will happen over and over again. It is time that we moved the mindsets of our children and told them that the Kenya of the future is what will move towards urbanization.

There is no single first world country which has majority of its population living in the rural areas. All the first world economies are industrialized and majority of their people live in urban areas. I see a situation where 100 years from now, when people will move to Nakuru, Mombasa, Kakamega and Nairobi and come out of the rural areas. This useless land tenure policy that we have will then be substituted so that the real farmers will go to rural areas to own between 2,000 and 5,000 acres of land. However, our boys and girls or our children will be earning a living from their intellectual property. A lawyer will just be a lawyer and a doctor a doctor. Today, you will find a highly qualified lawyer like Mutula Kilonzo Jnr. running around in a ranch after funny antelopes.

The Temporary Speaker (Sen. Ongoro): Order, hon. Senator. Is it in order for you to imply that hon. Mutula Kilonzo Jnr. runs after antelopes before coming to this House?

Sen. (Dr.) Khalwale: I am sorry Madam Temporary Speaker. I want to withdraw and give my own example. You will find that a refined doctor like Sen. (Dr.) Khalwale is wasting time doing sugarcane farming. I do not have to do that because I practice. The money I make in my medical practice in a year is Kshs5,000 or even Kshs10,000 more than what I get when I harvest my cane.

Sen. (Dr.) Zani: On a point of order, Madam Temporary Speaker. Is Sen. (Dr.) Khalwale in order to almost dishearten our farmers in this country who work very hard planting sugar cane? That is their source of living and they have no alternative unlike our lucky Senator who has an alternative. Could he substantiate and also honour our farmers who do so much to survive?

The Temporary Speaker (Sen. Ongoro): Sen. (Dr.) Khalwale, what exactly are you implying?

Sen. (Dr.) Khalwale: Madam Temporary Speaker, my speech is futuristic. I am saying that the farmer of the future will be the farmer you see in Britain.

Sen. (Prof.) Lonyangapuo: On a point of order, Madam Temporary Speaker. Is it in order for Sen. (Dr.) Khalwale to tell us that he has been getting 50 or even 100 times more in his profession which he has quit? He is now in a profession where he is equally earning a lot. I hope he gives that money to the people of Kakamega. Is it in order for him to talk big about his profession which he deserted many years ago?

The Temporary Speaker (Sen. Ongoro): I find nothing to be out of order. He is just talking about himself and he has the facts.

Sen. (Dr.) Khalwale, proceed and conclude.

Sen. (Dr.) Khalwale: Madam Temporary Speaker, once we urbanize the industries that we are talking about they are the ones that will hire our information Technology (IT) experts, engineers and so on. I am not in any way belittling the farmers.

The farmer of the future who will make Kenya food secure is the large scale farmer. It is happening today in all industrialized countries and that is where we are headed.

Madam Temporary Speaker, in conclusion, if the concern of some of the Members is the ethnic factor in counties where a particular community is found to be a minority, already the Constitution speaks to the issue of marginalized communities or the so called minority communities. There is affirmative action. So, we should go that way; harmonize Kenya and build a big family called Kenya. History is already there for us to see. Those of us who come from violence prone areas went through tribal clashes in 1992, 1997 and the big Post-Election Violence (PEV) of 2007-2008. Let us lead this country by ensuring that where we have started from is the *status quo* and move on.

If anything, the way I see it, smaller counties might find that there is economic sense in coming together. What you have seen in the coastal counties, the so called, *Jumuia ya Kaunti za Pwani*, is the future. You will find that there is need for people to come together to make economic sense so that small counties can make huge counties. In fact, to me, the Kenya of 100 years from now – because devolution is here forever – will be a country of probably a maximum of 10 States. Former provinces will amalgamate these little counties to form strong economic blocks. We have the one of former Western, Nyanza, Rift Valley, Eastern and Coast provinces. This is where I would like Kenya to move. With due respect, breaking into Kiswahili, *tuwache hivi vitu vidogo* of following our tribes.

I oppose.

Sen. (Prof.) Lonyangapuo: Thank you Madam Speaker. I thank Sen. Mutula Kilonzo Jnr. for bringing this Motion which every Senator has been keen to know. Nearly 22 of our Counties have issues to do with boundaries, not for any other reasons but for the reason that services need to be taken to the people and we need to know where your services end. That is why we have these issues.

Boundaries are as old as the world. Remember when Adam and Eve sinned, Adam was told to go and till land as a punishment and eat from his sweat. Even today in Israel, they have an issue with the Philistines, fighting over barren land; desert. If you throw a seed of maize, there is no rain and so, it will not germinate, and yet people are dying for it. In the days of Exodus, the 12 children of Israel were told to demarcate their land clearly. To date, those stories are going on and God told them that I am going to give you land belonging to this tribe and it should be there and so on.

Man has continued to talk about land. We have moved to counties which are like small countries. In Africa, we have over 50 countries and the boundaries are clearly demarcated. We have a region in Uganda which has Pokots who speak like me. That boundary should be known so that the services to those people are catered on the other side and it is also easily done for us on this side. That is why boundaries are key.

Madam Temporary Speaker, we have been quoting Article 188(1) which talks about boundaries of counties. It says that a boundary of a county may be altered only by a resolution. We are not talking about altering anything here. We are talking about aligning what is existing today which was not pointed out clearly when these counties were coming into place. When we gained Independence in 1963, beacons were known. As a result of the increase in population, some people decided to migrate to other regions and

annex land from other counties. This is what I am saying we need to clearly show. I want to challenge those opposing this Motion that we are not looking at tribes or ethnicity which led to the clashes that we saw; we are talking about aligning a boundary.

I am using the example of the Pokot and Turkana where serious and funny criminals from both sides have migrated from the interior of their counties and moved near the boundary. They reside there and attack by hit and run. These causes tension because they hide in that so-called boundary. Then they whip up emotions of their people.

Madam Temporary Speaker, the proposal in this Motion is critical. Recently, a Senate Committee went to Kapedo. While in Kapedo they were able to see from the old maps that Kapedo is Baringo County but the people from Turkana reside there. By residing there, they do not need to annex that area. I am saying that clear demarcation has to be known. In my county, we have a small village that germinated around KenGen near Turkwel that came as a labour camp in 1986. This labour camp has now become a powerful dispute where some politicians from another county are claiming the village. This little village has our relatives and our boundary used to extend up to that point. Let the people who are residing there be managed from the county where they are. We should then demarcate the area. If they want to be managed from this other side then it is okay and if they want to move it is also okay but nobody should use that as a reason.

Therefore, we are proposing here that the Government should take it upon itself to do the right thing rather than waiting. Why would a whole Government wait? When we were making this Constitution, they should have done it. Using the map of 1992 is a bit weird because the map that was used in the north Rift was the one utilized by Kerio Valley Development Authority (KVDA) which decided to demarcate lower and upper regions. They decided to put West Pokot County in the highlands because of easier management. Then we quickly ran in Nairobi and took that map and upgraded. This has brought problems up to now. It is indeed necessary that we go back and talk to the elders. We still have people who can show the boundaries. We should not run away from the reality where we are saying that boundaries are essential.

Madam Temporary Speaker, how do you explain Makueni having problems with Machakos just because they have heard of the Techno city? This has to do with the issue of resources. Between West Pokot and Turkana, we have some oil that has been found in the interior, about 50 kilometres into Turkana. We also know that it is on the other side of West Pokot. Therefore, should we allow some people from outside our systems to play with our minds so that they can benefit? The answer is no.

Madam Temporary Speaker, therefore, let us face it, pass this Motion and follow it up that the Government picks it and appoints this Commission that can move around, identify and speak to the people even if it takes long. However, we must first of all make sure that security is restored. We should uproot some of these criminals that operate and incite people. We have to do it this year before it goes to 2016/2017 because some of the fellows who have already failed in advance before 2017 elections may decide to go and hang around the border point and begin to say they are speaking louder than anybody else so that they can get credit.

I was told that today, at around the border of West Pokot and Turkana, near Turkwel, a 15 year old boy was killed at around 3.45 p.m. by bandits from Turkana County. Why are they hiding around this “mobile” and fluid boundary? It is so essential that we look at it.

Madam Temporary Speaker, Members of County Assemblies (MCAs) and governors that are on the ground must cooperate. They should not behave like warlords. I heard that there was one who was mobile and was moving around with a tax-collecting machine. He was looking for money between the two counties. In our case, it has not begun but it can easily start.

We need to arrest these situations and make sure that this issue of boundaries is looked at soberly. My submission is that we look at it soberly, make progress and build the Kenya that we know.

Thank you. I support.

Sen. (Dr.) Zani: Madam Temporary Speaker, let me start by congratulating the ever zealous, Sen. Mutula Kilonzo Jnr., for this very important Motion. It is very important in the sense that it will help us to create order in our counties. It is amazing that the role of this Senate becomes clear every single day. I respect the drafters of our Constitution and Kenyans who contributed to it. As counties evolve, we have issues of accountability within the counties. We also have the issue of conflict and conflict resolution. Indeed, we also need to ensure that issues of boundaries between counties are well addressed.

Madam Temporary Speaker, looking at the last effort that was made to actually delineate these particular districts at that time and the basis of those districts is what formed the basis for counties. That was such a long time back in 1992. We are talking about 23 years ago. Therefore, much has changed within the various counties. The population density and the demographic trends have changed drastically, yet these are the provisions that are put into place to look at how counties were formed. The physical and human infrastructure has changed drastically over time within various counties. The historical and cultural ties, which for a long time have been the basis of how identification of various counties are made, have also changed. It has become more dynamic. Members from various counties have continued to interact over time and that has created a lot of differences.

The area of natural resources that Sen. Mutula Kilonzo Jnr. also talked about is also crucial. The key thing that we will debate in the Bill and the Natural Resources Benefit Sharing Bill stipulates that, for example, if a natural resource bestrides two or more counties, then there should be sharing. However, it will be impossible, because this is where fights will erupt because people will say, this is in my county and this is in the other county. It is amazing that such an issue had not taken important prominence that it is taking now. This is a now-now issue. It is something that we need to solve almost immediately.

Madam Temporary Speaker, the proposal is to have the commission set through the Committee on Legal Affairs and Human Rights. The commission should work within 90 days. However, I think that is too long. They should do it within a shorter time so

that we can expedite this Bill and create a lot of soberness and clarity. This will solve and create a situation where we will navigate other problems in the future easily.

The whole issue of the cost of administration is also critical for county boundary allocation and now especially with revenue that is being given to counties. It is important to know because you find somebody not being aware. For example, in Mombasa and Kwale counties, many people think the boundary is the ferry. They think that once you cross the ferry, you are in Kwale County.

The Temporary Speaker (Sen. Ongoro): Order, Senator.

Sen. (Dr.) Zani, you will have 12 minutes to continue with your debate when this Motion next appears in the Order Paper.

ADJOURNMENT

The Temporary Speaker (Sen. Ongoro): Hon. Senators, it is now 6.30 p.m. It is time to interrupt the Business of the House. The Senate stands adjourned until Tuesday, the 24th day of February, 2015 at 2.30 p.m.

The Senate rose at 6.30 p.m.