



REPUBLIC OF KENYA

THE SENATE

ELEVENTH PARLIAMENT – THIRD SESSION

VOTES AND PROCEEDINGS

THURSDAY, FEBRUARY 19, 2015 AT 2.30 P.M

1. The Senate assembled at thirty minutes past Two O'clock.
2. The Proceedings were opened with Prayer.
3. COMMUNICATION FROM THE CHAIR – JOINT VETTING OF THE NOMINEE FOR THE POSITION OF INSPECTOR-GENERAL OF THE NATIONAL POLICE SERVICE BY THE SENATE AND NATIONAL ASSEMBLY

The Speaker issued the following communication from the Chair-

"Honourable Senators,

I have the following Communication to make-

As Honourable Senators will recall, at the sitting of Wednesday, 18th February, 2015, the Senate Minority Leader, Senator Moses Wetang'ula, 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, Senator Wetang'ula 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.

Senator Wetang'ula took the view that each House, through its respective Committee, ought to have vetted the nominee and that the procedure for

mediation should thereafter have been applied if the Houses were to arrive at a different conclusion on the suitability or otherwise of the nominee.

Senator Kipchumba Murkomen and Senator James Orengo also rose on Points of Order and made contributions on the matter. In supporting Senator Wetang'ula, Senator Orengo observed that as a matter of constitutional design, the perspectives of the two Houses while the vetting the nominee would be different and it would therefore be important that each House separately vets the nominee.

Honourable 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 Kipchirchir Boinett 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 Honourable Speaker of the National Assembly, and taking into account the strict fourteen-day timeline stipulated in the Public Appointments (Parliamentary Approval) Act, No. 33 of 2011, and the host of activities that require 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 also observed that section 9 of the Public Appointments (Parliamentary Approval) Act states that if after the expiry of the fourteen-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.

Honourable Senators,

In light of these timelines, and the requirement for approval of the nomination by both Houses of Parliament, Parliament ran the 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 awaiting 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 be an exceptional measure to be taken out of necessity such as was the case in this situation. This should not and was intended to form the general rule or the precedent to be applied to future vetting processes.

As such, it is of utmost importance that the timelines in the Public Appointments (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 the 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 and to table its report within twenty-one days of this Communication.

I thank you."

4. **PAPER LAID**

The following Paper was laid on the Table of the Senate-

Statement regarding the Business of the Senate for the week commencing Tuesday, February 24, 2015.

(The Senate Majority Leader)

5. **STATEMENTS**

i) Statements pursuant to Standing Order 45 (2) (b)

- a) The Senator for Migori County (Sen. (Dr.) Wilfred Machage) sought a statement from the Chairperson of the Standing Committee on Health regarding Cholera outbreak in Migori County.
- b) The Senator for Kitui County (Sen. David Musila) sought a statement from the Chairperson of the Standing Committee on Labour and Social Welfare regarding the number of senior citizens receiving Government cash transfers under the Social Protection Cash Transfer Scheme.
- c) The Senator for Trans Nzoia County (Sen. Henry Ndiema) sought a statement from the Chairperson of the Standing Committee on Agriculture, Livestock and Fisheries regarding supply of Di-Ammonium Phosphate (DAP) fertilizer to farmers by the National Government.
- d) The Nominated Senator (Sen. Kisasa Mshenga) sought a statement from the Chairperson of the Standing Committee on Finance, Commerce and Budget on the decline of the tourism Sector in the Country.

- e) The Nominated Senator (Sen. Kisasa Mshenga) sought a statement from the Chairperson of the Standing Committee on Labour and Social Welfare on sexual exploitation of young girls at the Coastal Region by foreigners.
- f) The Senator for Kisii County (Sen. Chris Obure) sought a statement from the Chairperson of the Standing Committee on Energy regarding the impact of the drop in fuel prices on the cost of electricity and doing business in the country.
- g) The Nominated Senator (Sen. Beth Mugo) sought a statement from the Chairperson of the Standing Committee on Health on the disappearance of 2 twin babies from Pumwani Maternity Hospital on the 6th, January 2015.
- h) The Senator for Nandi County (Sen. Stephen Sang) sought a statement from the Chairperson of the Standing Committee on Labour and Social Welfare regarding the renaming of the former Local Authorities Pensions Trust (LAPTRUST) to the County Pension Fund (CPF), and measures being taken to ensure its operations were in compliance with the law.

ii) Statement pursuant to Standing Order 45 (2) (c)

The Senate Majority Leader issued a Statement on the Business of the Senate for the week commencing Tuesday, February 24th, 2015.

6. COMMITTEE OF THE WHOLE

Order for Committee read;

IN THE COMMITTEE

(The Chairperson of Committees (Sen (Dr.) Wilfred Machage – in the Chair)

The National Youth Service (Amendment) Bill (Senate Bill No. 26 of 2014)

Clause 2

Motion made and question proposed;

That Clause 2 be part of the Bill.

Amendment proposed

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 subsection immediately after subsection (1)-

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

(Sen. Beatrice Elachi)

Debate arising;

The House proceeded to a Division on the proposed amendment.

The Chairperson directed that electronic voting be taken pursuant to Standing Order 74 (1) and that the Division Bell be rung for five minutes;

After the expiry of five minutes, the Chairperson directed that the bar be drawn and the doors be locked and requested Senators to log-in using their cards;

The Chairperson put the Question and directed Senators to cast their votes by pressing either the **"Yes"**, **"No"** or **"Abstain"** button;

Before the results of the Division were announced and pursuant to the provisions of Standing Order 74 (5), the Chairperson allowed seven Senators to record their votes verbally.

Thereupon, the following Senators recorded their votes as **"Yes"**-

1. Sen. Beatrice Elachi
2. Sen. Liza Chelule
3. Sen. Moses Kajwang
4. Sen. (Dr.) Wilfred Machage
5. Sen. Amos Wako
6. Sen. (Dr.) Agnes Zani
7. Sen. Daniel Karaba

Upon a majority of delegations voting in favour of the amendment, Question agreed to.

The results of the Division were as follows-

AYES - 27

NOES - 0

ABSTENTIONS - 0

AYES

1. Sen. Yusuf Haji
2. Sen. Hargura Godana
3. Sen. Charles Keter
4. Sen. (Dr.) Boni Khalwale
5. Sen. George Khaniri

6. Sen. Mutula Kilonzo Junior
7. Sen. (Prof.) Kindiki Kithure
8. Sen. Mohamed Kutu
9. Sen. (Prof.) Wilfred Lesan
10. Sen. Sammy Leshore
11. Sen. (Prof.) John Lonyangapuo
12. Sen. Isaac Melly
13. Sen. Kipchumba Murkomen
14. Sen. David Musila
15. Sen. Johnson Muthama
16. Sen. Danson Mwazo
17. Sen. Henry Ndiema
18. Sen. Christopher Obure
19. Sen. Stephen Sang
20. Sen. Moses Wetangula
21. Sen. Beatrice Elachi On Behalf of Delegation
22. Sen. Liza Chelule On Behalf of Delegation
23. Sen. Moses Kajwang
24. Sen. (Dr.) Wilfred Machage
25. Sen. Amos Wako
26. Sen. (Dr.) Agnes Zani On Behalf of Delegation
27. Sen. Daniel Karaba

Clause 3, Title and Clause 1

Question proposed;

Motion made and Question Proposed;

THAT, Clause 3, the Title and Clause 1 be part of the Bill.

Debate arising;

The House proceeded to a Division.

The Chairperson directed that electronic voting be taken pursuant to Standing Order 74 (1) and that the Division Bell be rung for five minutes;

After the expiry of five minutes, the Chairperson directed that the bar be drawn and the doors be locked and requested Senators to log-in using their cards;

The Chairperson put the Question and directed Senators to cast their votes by pressing either the **"Yes"**, **"No"** or **"Abstain"** button;

Before the results of the Division were announced and pursuant to provisions of Standing Order 74 (5), the Chairperson allowed eight Senators to record their votes verbally.

Thereupon, the following Senators recorded their votes as **"Yes"**-

1. Sen. Beatrice Elachi
2. Sen. Amos Wako
3. Sen. Liza Chelule
4. Sen. Moses Kajwang
5. Sen. (Dr.) Wilfred Machage
6. Sen. Daniel Karaba
7. Sen. (Dr.) Agnes Zani
8. Sen. Johnson Muthama

Upon a majority of delegations voting in favour of the amendment, Question agreed to.

The results of the Division were as follows-

AYES -24

NOES - 0

ABSTENTIONS - 0

AYES

1. Sen. Hargura Godana
2. Sen. Charles Keter
3. Sen. (Dr.) Boni Khalwale
4. Sen. George Khaniri
5. Sen. (Prof.) Kindiki Kithure
6. Sen. Mohamed Kutu
7. Sen. Sammy Leshore
8. Sen. (Prof.) John Lonyangapuo
9. Sen. Isaac Melly
10. Sen. Kipchumba Murkomen
11. Sen. David Musila
12. Sen. Danson MWazo
13. Sen. Henry Ndiema
14. Sen. Christopher Obure
15. Sen. Stephen Sang
16. Sen. Moses Wetangula
17. Sen. Beatrice Elachi On Behalf of Delegation
18. Sen. Amos Wako
19. Sen. Liza Chelule On Behalf of Delegation
20. Sen. Moses Kajwang
21. Sen. (Dr.) Wilfred Machage
22. Sen. Daniel Karaba
23. Sen. (Dr.) Agnes Zani On Behalf of Delegation
24. Sen. Johnson Muthama

Motion made:-

That, the Bill be reported with amendments;

Before the question was put and pursuant to Standing Order 72, the Chairperson of Committees (Sen. (Dr.) Machage) ruled that the question did not affect counties;

Question put and agreed to.

7. **HOUSE RESUMED** - (Temporary Speaker (Sen. Kipchumba Murkomen) in the Chair)
8. **THE NATIONAL YOUTH SERVICE (AMENDMENT) BILL (SENATE BILL NO. 26 OF 2014)**

Bill reported with amendments;

Motion made and Question proposed:-

THAT, the House do agree with the Committee of the Whole in the said report.

(Sen. Beatrice Elachi)

Debate arising;

Before the question was put and pursuant to Standing Order 72, the Temporary Speaker (Sen. Kipchumba Murkomen) ruled that the question did not affect counties;

Question put and agreed to.

Motion made and Question proposed –

THAT, the National Youth Service (Amendment) Bill (Senate Bill No. 26 of 2014) be now read a Third Time;

(Sen. Beatrice Elachi)

Debate Arising;

The House proceeded to a Division on the Third Reading of the Bill;

The Temporary Speaker (Sen. Kipchumba Murkomen) directed that electronic voting be taken pursuant to Standing Order 74 (1) and that the division bell be rung for two minutes;

After the expiry of two minutes, the Chairperson directed that the bar be drawn and the doors be locked and requested Senators to log-in using their cards;

The Temporary Speaker (Sen. Kipchumba Murkomen) put the Question and directed Senators to cast their votes by pressing either the **“Yes”**, **“No”** or **“Abstain”** button;

Before the results of the Division were announced and pursuant to provisions of Standing Order 74 (5), the Chairperson allowed the following five Senators to record their votes verbally.

Thereupon, the following Senators recorded their votes as **"Yes"**:-

1. Sen. Beatrice Elachi
2. Sen. Amos Wako
3. Sen. Moses Kajwang
4. Sen. Liza Chelule
5. Sen. (Dr.) Agnes Zani

Upon a majority of delegations voting in favour of the amendment, Question agreed to.

The results of the Division were as follows-

AYES -27

NOES - 0

ABSTENTIONS - 0

AYES

1. Sen. Yusuf Haji
2. Sen. Hargura Godana
3. Sen. Daniel Karaba
4. Sen. Charles Keter
5. Sen (Dr.) Boni Khalwale
6. Sen. George Khaniri
7. Sen. Mutual Kilonzo Junior
8. Sen. (Prof.) Kindiki Kithure
9. Sen. Mohamed Kuti
10. Sen. (Prof.) Wilfred Lesan
11. Sen. Sammy Leshore
12. Sen. (Prof.) John Lonyangapuo
13. Sen. (Dr.) Wilfred Machage
14. Sen. Isaac Melly
15. Sen. Kipchumba Murkomen
16. Sen. David Musila
17. Sen. Johnson Muthama
18. Sen. Danson Mwazo
19. Sen. Henry Ndiema
20. Sen. Christopher Obure
21. Sen. Stephen Sang
22. Sen. Moses Wetangula
23. Sen. Beatrice Elachi
24. Sen. Amos Wako
25. Sen. Moses Kajwang
26. Sen. Liza Chelule
27. Sen. (Dr.) Agnes Zani

On Behalf of Delegation

On Behalf of Delegation

On Behalf of Delegation

Bill read a Third Time and passed.

9. **MOTION - NEED FOR ESTABLISHMENT OF AN INDEPENDENT COMMISSION TO REVIEW AND RECOMMEND ALTERATION OF BOUNDARIES OF COUNTIES**

(Department of Interior and Coordination of National Government)

Motion made and question proposed;

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 Standing Committee on Legal Affairs and Human Rights 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.

(Sen. Mutula Kilonzo Jnr.)

Debate arising;

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

10. **SENATE ROSE** - at thirty minutes past Six O'clock.

M E M O R A N D U M

The Speaker will take the Chair on