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REPUBLIC OF KENYA



*Paper Laid by the
Chairperson of the Committee
(Hon. Wako) on 28/03/2017*

*Rt. Hon. Speaker
You may approve for
tabling.
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02/03/17*

PARLIAMENT

THE SENATE

ELEVENTH PARLIAMENT

THE STANDING COMMITTEE

ON

LEGAL AFFAIRS AND HUMAN RIGHTS

*Approved
7.3.17*

**A REPORT TO HON. JEREMIAH KIONI ON THE PETITION ON THE
BOUNDARY DISPUTE BETWEEN LAIKIPIA AND NYANDARUA COUNTIES**

Clerk's Chambers,
First Floor,
Parliament Buildings,
NAIROBI.

March, 2017

TABLE OF CONTENTS

PREFACE	2
Establishment of the Committee.....	2
Membership of the Committee	2
CHAPTER ONE	4
INTRODUCTION	4
1.0 Background.....	4
1.1. Petition on the Boundary Dispute between Laikipia and Nyandarua Counties	5
CHAPTER TWO	6
COMMITTEE OBSERVATIONS	6
2.0 Committee Observations.....	6
CHAPTER THREE	7
COMMITTEE RECOMMENDATIONS	7
3.0 Committee recommendations	7
Annex Notice of Motion on the Establishment of an Independent Commission on County Boundaries	

PREFACE

Establishment of the Committee

The Standing Committee on Legal Affairs and Human Rights is established pursuant to the Senate Standing Order 208 and mandated to consider all matters related to constitutional affairs, the organization and administration of law and justice, elections, promotion of principles of leadership, ethics and integrity; and implementation of the provisions of the Constitution on human rights.

Membership of the Committee

The Committee is comprised of the following members;

1. Sen. Amos Wako - Chairperson
2. Sen. Stephen Sang' - Vice Chairperson
3. Sen. Kembi Gitura
4. Sen. Kiraitu Murungi
5. Sen. Fatuma Dullo
6. Sen. Kipchumba Murkomen
7. Sen. Hassan Omar Hassan
8. Sen. Mutula Kilonzo Junior
9. Sen. Judith Sijeny

Acknowledgement

The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to it in the execution of its mandate.

Mr. Speaker Sir,

It is my pleasant duty, pursuant to Standing Order 227(2), to present a Report of the Standing Committee on Legal Affairs and Human Rights, on the Petition by Hon. Jeremiah Kioni, on the boundary dispute between Laikipia and Nyandarua Counties.

Signed.......... Date.....2/2/2017.....

SEN. AMOS WAKO, EGH, MP

CHAIRPERSON

Sen. Stephen Sang'	-Vice-Chairperson	
Sen. Kembi Gitura	-Member	
Sen. Kiraitu Murungi	-Member	
Sen. Kipchumba Murkomen	-Member	
Sen. Hassan Omar Hassan	-Member	
Sen. Fatuma Dullo	-Member	
Sen. Mutula Kilonzo Junior	-Member	
Sen. Judith Sijeny	-Member	

CHAPTER ONE

INTRODUCTION

1.0 Background

The right to petition Parliament is provided for under Article 119 of the Constitution, which provides as follows:-

- (1) "Every person has a right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation.*
- (2) Parliament shall make provision for the procedure for the exercise of this right."*

The Constitution is also clear on the on the Petitioner's Constitutional right to fair administrative action in Article 47 which states:-

- (1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.*
- (2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.*

The petition therefore falls under the Committees mandate under Senate Standing Order 208 to consider all matters related to the organization and administration of law and justice and implementation of the provisions of the Constitution on human rights. Article 47 on fair administrative action is under the right and fundamental freedoms under the Bill of Rights. Further, Standing orders 227 and 228 of the Senate Standing Order outline the procedure for committal of a petition to a Committee and transmission of its decision to the Petitioner.

Further, the Petition to Parliament (Procedure) Act, 2012 and the Standing Orders of the Senate provide for the procedure to be followed in the submission, processing and consideration of a Petition.

On consideration of a Petition, The Petition to Parliament (Procedure) Act provides:-

5. Consideration of petition

- (1) The Clerk shall, if satisfied that the petition meets the requirements of this Act, forward the petition to the Speaker of the relevant House for tabling in the House.*
- (2) A petition that is tabled in Parliament under this Act shall be considered in accordance with the Standing Orders of the relevant House.*
- (3) The Clerk of the relevant House of Parliament shall, within fifteen days of the decision of the relevant House, in writing, notify the petitioner of the decision of the House.*

1.1. Petition on the Boundary Dispute between Laikipia and Nyandarua Counties

This Petition was conveyed to the Senate on 20th November, 2014 and subsequently referred to the Committee on Legal Affairs and Human Rights for its consideration. The Committee considered the Petition during its meeting held on 3rd December, 2014.

The Petitioner, Hon. Jeremiah Kioni submitted the Petition to the Senate, seeking its intervention to:-

- a) expeditiously form an independent commission for the purpose of investigating the boundary dispute between Laikipia and Nyandarua Counties aimed at considering the probable scenario of altering the said boundary and placing Nyahururu Town in Nyandarua County and, in any case, returning the boundaries to their position as before the year 1992; and
- b) develop a timely mechanism for involvement of relevant stakeholders in arriving at the decision, including the residents of Nyahururu town, Nyandarua and Laikipia Counties and their leaders, and the concerned constitutional bodies such as the Independent Electoral and Boundaries Commission (IEBC).

CHAPTER TWO

COMMITTEE OBSERVATIONS

2.0 Committee Observations

The Committee on Legal Affairs and Human Rights observed that:-

(1) County Boundary Disputes

The Committee observed apart from the boundary dispute raised by the Petitioner, Hon. Jeremiah Kioni on a boundary dispute between Laikipia and Nyandarua Counties, the Committee has received several other Petitions touching on county boundary disputes including Kirinyaga and Embu counties, Makueni and Kajiado counties, Vihiga and Kisumu counties among others.

(2) The County Boundaries Bill, 2016 sponsored by Sen. Mutula Kilonzo Jr.

While IEBC has the role of delimitation of boundaries of constituencies and wards under article 82 and 88, only Parliament can alter the boundaries of counties under article 188 of the Constitution. Pursuant to, Sen. Mutula Kilonzo, Jnr. moved a Motion in the Senate on 12th February, 2015 to provide for the establishment of an independent commission to inquire into, examine and identify boundaries of counties and recommend the appropriate changes to Parliament (See attached at *Annex I*).

Sen. Mutula Kilonzo Jnr introduced the County Boundaries Bill (Senate Bills No. 17 of 2015) was published pursuant to the Senate resolution vide Kenya Gazette Supplement No. 144 dated 21st August, 2015 to deal comprehensively with boundary disputes in the country. However, the Bill was withdrawn for republication to include Siaya and Bungoma Counties in the Schedule.

The County Boundaries Bill (Senate Bills No.16 of 2016) was published on 8th November, 2016. The Bill provides for a mechanism for the resolution of county boundary disputes and will give effect to Article 188 of the Constitution by providing the procedure for alteration of county boundaries. The Bill will also provide for the establishment of an independent Commission.

The County Boundaries Bill, 2016 was read a First Time in the Senate on 15th February, 2015 and will proceed for public participation to be held by the Committee on Legal Affairs and Human Rights.

CHAPTER THREE

COMMITTEE RECOMMENDATIONS

3.0 Committee recommendations

The Committee resolved as follows-

1. That the Petitioner, Hon. Jeremiah Kioni be invited to give his views on the County Boundaries Bill, 2016 during the public participation hearing on the Bill;
2. That the Senate adopts this report.

ANNEX 1

**PARLIAMENT OF KENYA
THE SENATE
THE HANSARD**

Thursday, 12th February, 2015

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

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

**PRAYERS
NOTICE OF MOTION**

**ESTABLISHMENT OF INDEPENDENT COMMISSION ON COUNTY
BOUNDARIES**

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I beg to give notice of 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 Sessional Committee on Devolved

Government 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.

Thank you.

MINUTES OF THE 1ST SITTING OF THE STANDING COMMITTEE ON LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON THURSDAY, 2ND MARCH, 2017 IN SENATE SPEAKERS BOARDROOM, FIRST FLOOR, MAIN PARLIAMENT BUILDINGS AT 10.37 AM.

PRESENT

1. Sen. Amos Wako - Chairperson
2. Sen. Stephen Sang - Vice-Chairperson
3. Sen. Fatuma Dullo
4. Sen. Judith Sijeny
5. Sen. Mutula Kilonzo Junior

ABSENT

1. Sen. Kembi Gitura
2. Sen. Kiraitu Murungi
3. Sen. Kipchumba Murkomen
4. Sen. Hassan Omar Hassan

IN ATTENDANCE

1. Ms. Kavata Musyoka - Clerk Assistant
2. Ms. Judy Ndegwa - Legal Counsel
3. Ms. Clare Jerotich - Research Officer
4. Mr. Alex Rithi - Media Officer
5. Ms. Sara Rukwaro - Serjeant-At-Arms

MIN/2017 PRELIMINARIES

The Chairperson called the meeting to order at 12.27 p.m. followed by a word of prayer.

MIN/2017 ADOPTION OF THE AGENDA

Members adopted the Agenda of the Meeting after it was proposed by Sen. Fatuma Dullo and seconded by Sen. Stephen Sang.

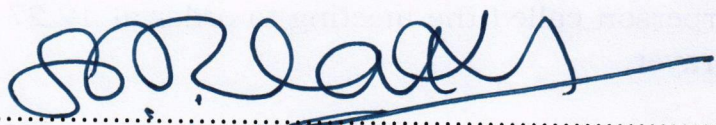
MIN/2017 CONSIDERATION OF THE REPORTS OF THE PETITIONS PENDING BEFORE THE COMMITTEE

The Committee was took note of the reports of the pending Petitions before the Committee and adopted them by consensus as follows-

- i. Petition by Mr. Wachira Kariuki Musa on unfair and unconstitutional treatment by the Institute of Certified Public Accountants of Kenya (ICPAK)
- ii. Petition by Jeremiah Kioni on the boundary between Nyandarua and Laikipia Counties
- iii. Petition by The Institute for Social Accountability (TISA) on public participation on matters before the Senate
- iv. Petition by Maj. (Rtd.) Joel Kiprono Rop concerning implementation of the one third gender rule pursuant to Article 81 (b) of the Constitution
- v. Petition by Hon. Margaret W. Kiiru, MCA and resident of Nakuru County on the unlawful establishment and operation of a Municipal Court by Nakuru County Government
- vi. Petition on the management and operations of the Nandi County Executive and County Assembly.
- vii. Petition by Dr. Evans Kidero, Governor of Nairobi City County, concerning payment due to the Nairobi City County on account of a parcel of land in Embakasi allocated to the Department of Defense.

MIN/2017 ADJOURNMENT

There being no other business, the meeting was adjourned at 11.56 am.

Signature: 

Chairperson- Sen. Amos Wako, MP

Date: 2/3/2017

REPUBLIC OF KENYA



PARLIAMENT

THE SENATE

THE SENATE STANDING COMMITTEE ON LEGAL AFFAIRS & HUMAN RIGHTS

MEETING ATTENDANCE REGISTER

AGENDA:

DATE:

NO.	NAMES	SIGNATURE
1.	Sen. Amos Wako - Chairperson	
2.	Sen. Stephen Sang - Vice-Chairperson	
3.	Sen. Kembi Gitura	
4.	Sen. Kiraitu Murungi	
5.	Sen. Fatuma Dullo	
6.	Sen. Kipchumba Murkomen	
7.	Sen. Hassan Omar Hassan	
8.	Sen. Judith Sijeny	
9.	Sen. Mutula Kilonzo Junior	

COMMITTEE CLERK: Kwaka Misyaka

SIGNATURE: Kwaka DATE: 21/3/2017



INTERNAL MEMO

TO: The Senior Deputy Clerk (MA)

THRO': The Director, L & P Services

FROM: Third Clerk Assistant

DATE: 30th March, 2017

RE: LETTERS FORWARDING REPORTS ON PETITIONS LAID ON THE
TABLE OF THE SENATE ON TUESDAY, 28TH MARCH, 2017

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During the Sitting of the Senate held on Tuesday, 29th March 2017, the Chairperson of the Standing Committee on Legal Affairs and Human Rights laid Reports on the following Petitions on Table of the Senate, pursuant to Standing Order 227(2) -

- 1) Report on a Petition by Mr. Wachira Kariuki Musa regarding unfair and unconstitutional treatment by the Institute of Certified Public Accountants of Kenya (ICPAK);
- 2) Report on a Petition by Jeremiah Kioni regarding the boundary between Nyandarua and Laikipia Counties;
- 3) Report on a Petition by the Institute for Social Accountability (TISA) regarding public participation on matters before the Senate;
- 4) Report on a Petition by Maj. (Rtd.) Joel Kiprono Rop regarding implementation of the one third gender rule pursuant to Article 81 (b) of the Constitution;
- 5) Report on a Petition by Hon. Margaret W. Kiiru, MCA, regarding the alleged unlawful establishment of a Municipal Court (Court No. 6) by the Nakuru County Government;
- 6) Report on a Petition two civil society groups regarding alleged corruption and wastage of public funds by the Nandi County Government; and
- 7) Report on a Petition by Dr. Evans Kidero, Governor of Nairobi City County, concerning payment due to the Nairobi City County on account of a parcel of land in Embakasi allocated to the Department of Defence;

Pursuant to Standing Order 227(3), the Clerk is required, within fifteen days of the report being tabled, to notify the petitioner of the decision of the Senate.

Enclosed in this regard, for your approval and signature, are letters forwarding the said Reports to the respective petitioners.



Angela Macharia
Third Clerk Assistant