

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 17th October, 2018

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

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

PRAYER

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM BUNGOMA COUNTY ASSEMBLY

The Deputy Speaker (Sen. (Prof.) Kindiki): Hon. Senators, I would like to acknowledge the presence, in the Speaker's Gallery this afternoon, of visiting Members and staff from the County Assembly of Bungoma. They are Members of the Committee on Delegated Legislation.

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

- | | | |
|----------------------------|---|--|
| (1) Hon. Stephen Wafula | - | Chairperson, Committee on Delegated Legislation |
| (2) Hon. Nathaniel Asenaka | - | Vice Chairperson, Committee on Delegated Legislation |
| (3) Hon. Metrine Nangalama | - | Member |
| (4) Hon. Sospeter Nyongesa | - | Member |
| (5) Hon. Reba N. Wabwile | - | Member |
| (6) Hon. Sophia Marumbu | - | Member |
| (7) Hon. Rose Imbega | - | Member |
| (8) Hon. Sitati Makhandia | - | Member |
| (9) Mr. Oscar N. Sifuna | - | Committee Clerk |
| (10) Mr. Nicholas Maghas | - | Research Officer |
| (11) Ms. Celestine Mosongo | - | Legal Clerk |
| (12) Mr. Elvis Werunga | - | Hansard Reporter |
| (13) Mr. Benedict Kimwei | - | Serjeant-at-Arms |

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them and on behalf of the Senate and on my own behalf, wish them a fruitful visit.

I thank you.

(Applause)

Sen. Cheruiyot: Mr. Deputy Speaker, Sir, on behalf of the Senator for Bungoma, my good friend, Sen. Wetangula, who is not here this afternoon but because we have become very good friends lately especially politically, I welcome the delegation from Bungoma.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! Sen. Cheruiyot, what do you mean by “lately?”

Sen. Cheruiyot: We were batting for different teams but it appears lately---

The Deputy Speaker (Sen. (Prof.) Kindiki): Are you now on one side of the House divide?

Sen. Cheruiyot: Most likely.

The Deputy Speaker (Sen. (Prof.) Kindiki): Which one? Yours or his?

Sen. Cheruiyot: My side, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator. Sen. Wetangula is not here but I think that is not contentious.

Sen. Cheruiyot: In the spirit of good neighbourliness, I welcome Members of the County Assembly (MCAs) of Bungoma together with their members of staff to this House. I hope in their interactions either with our staff or us, Senators, they will find that which they came to look for so that they get experience.

With those few remarks, *karibuni sana*.

Sen. Pareno: Mr. Deputy Speaker, Sir, once again, I wish to welcome the Committee on Delegated Legislation from Bungoma County. I serve in the Committee on Delegated Legislation of the Senate.

We visited Bungoma sometime back as a Committee and they also decided to visit the Senate. They have a lot to learn. It is a Committee that has very active Members from the interactions we had this morning. We had very fruitful interactions, and I am sure they are happy that they have been received at the Senate.

On behalf of the Committee on Delegated Legislation, I thank them because they also gave us a good reception when we visited Bungoma and we had fruitful deliberations with them

I welcome them and we are happy that they are here.

Sen. (Dr.) Mbito: Mr. Deputy Speaker, Sir, let me take this opportunity to welcome my neighbours to the Senate. I hope they will have fruitful discussions with our personnel and colleagues here.

I want to remind colleagues that we are partners in devolution and we should continue working very closely to ensure that we strengthen devolution so that services get to the people.

I welcome them and they should feel at home.

Sen. Were: Mr. Deputy Speaker, Sir, thank you for this opportunity. I would like to welcome Members of the Committee on Delegated Legislation from Bungoma County. I congratulate the county for having elected 10 women to the County Assembly. You can even tell from the membership of the Committee on Delegated Legislation that the majority are women. That means that Bungoma County is gender compliant.

(Applause)

The Deputy Speaker (Sen. (Prof.) Kindiki): Let us go to the next Order.

PETITIONS

REPORT ON PETITION: FIGHT AGAINST COUNTERFEIT AND CONTRABAND GOODS IN KENYA

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Wario, are you reading on behalf of the Chairman?

Sen. Wario: Yes, Mr. Deputy Speaker, Sir. The Chairman is out of the country, and I am a Member of the Committee.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. You may proceed. Order, Senator! Order! Approach the Clerk-at-the-Table.

(Sen. Wario approached the Clerk-at-the-Table)

Sen. Wario: Thank you, Mr. Deputy Speaker, Sir. This is a report by the Committee on Tourism, Trade and Industrialization on the factfinding mission on the management and operation of the National Park in Taita Taveta---

(Loud consultations)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator! Order!

(Laughter)

Sen. Wario, the Order we are discussing now is Petitions. I will, therefore, give you a few seconds to consult your Order Paper. If you like, you can also seek assistance from a fellow Senator or from the Clerk-at-the-Table so that you read the right item on the Order Paper.

Sen. Wario: Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): The Senate waits for no man. The next Petition is by Sen. Mwaura Isaac, whom I do not see.

CLEARANCES REQUIRED BY PUBLIC BODIES ON APPLICATION FOR JOBS IN KENYA

Hon. Members, since I cannot see Sen. Mwaura, I defer the Petition.

(Petition deferred)

Next Order.

PAPERS LAID

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate today, Wednesday 17th October, 2018:-

REPORT ON THE FINANCIAL STATEMENTS OF
VARIOUS COUNTY AGENCIES

Report of the Auditor-General on the Financial Statements on Vihiga County Community Empowerment Fund for the year ended 30th June, 2017.

Report of the Auditor-General on the financial statements of County Assembly of Kakamega – Car Loans and Mortgage Fund for the year ended 30th June, 2017.

Report of the Auditor-General on the financial statements of Busia County Cooperative Enterprise Development Fund for the year ended 30th June, 2017.

(Sen. Murkomen laid the documents on the Table)

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Leader of Majority. Next is the Chairperson of the Committee on Tourism, Trade and Industrialization.

(Sen. Wario stood up in his place)

Order, Sen. Wario! Approach the Chair.

(Sen. Wario resumed his seat)

Order, Sen. Wario! I did not mean you approach your chair, but the Chair of the House!

(Laughter)

(Sen. Wario approached the Chair and consulted the Deputy Speaker)

Sen. Wario, we are now transacting the Order on Papers laid, and you have a Paper to lay on the Table. Please, proceed.

Sen. Wario: Yes, Mr. Deputy Speaker, Sir. The Chairman of the Standing Committee on Tourism, Trade and Industrialization is out of the country, and I was instructed to lay Papers on his behalf. I was not prepared for this, but since I am a Member of the Committee, I beg to lay the Papers on his behalf.

Therefore, on behalf of the Chairperson of the Standing Committee on Tourism, Trade and Industrialization, I beg to lay the following Papers on the Table of the Senate, today Wednesday, 17th October, 2018-

REPORT ON THE FACT FINDING MISSION TO NATIONAL
PARKS IN TAITA-TAVETA, ISIOLO AND SAMBURU COUNTIES

Report of the Standing Committee on Tourism, Trade and Industrialization on the factfinding mission on the management and operations of national parks in Taita Taveta, Isiolo and Samburu counties from 18th to 19th May and 10th to 13th August, 2018.

REPORT ON THE INQUIRY INTO THE FALL OF
NAKUMATT AND UCHUMI SUPERMARKETS

Report of the Standing Committee on Tourism, Trade and Industrialization on the inquiry into the fall of Nakumatt and Uchumi supermarkets in Kenya.

(Sen. Wario laid the documents on the Table)

The Deputy Speaker (Sen. (Prof.) Kindiki): There is another Paper, Sen. Wario.

Sen. Wario: Thank you, Mr. Deputy Speaker, Sir. There is a Petition---

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

(Sen. Wario resumed his seat)

Next Order.

STATEMENTS

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senators!

(Sen. Pareno consulted loudly)

We have a request for a Statement by Sen. Pareno, who is busy greeting the new Senator at the expense of your time. Senator Pareno, you can continue with greetings, congratulations and welcomes to the Senator for Migori County later; not now.

(Loud consultations)

Order, Sen. Pareno! Are you ready with your request for a Statement?

Sen. Pareno: Mr. Deputy Speaker, Sir, I do not have the Statement; therefore, I am not ready.

The Deputy Speaker (Sen. (Prof.) Kindiki): Is there any other request for a Statement?

Next Order.

(The Clerk-at-the-Table consulted the Deputy Speaker)

Order, Senators! I want to rearrange a number of items on the Order Paper for today. I direct the Clerk-at-the-Table to call out the Order on Petitions to allow the Senator for Tana River County, Sen. Wario, to lay the Reports on a Petition.

PETITIONS

REPORT ON PETITION: THE FIGHT AGAINST COUNTERFEIT AND CONTRABAND GOODS IN KENYA

Sen. Wario: Thank you, Mr. Deputy Speaker, Sir. On behalf of the Chairperson of the Standing Committee on Tourism, Trade and Industrialization, I beg to lay the following Report on the Table of the Senate today, Wednesday 17th October, 2018:-

Report of the Standing Committee on Tourism, Trade and Industrialization on the Petition on the fight against counterfeit and contraband goods presented by Sen. Johnson Sakaja, MP, on behalf of members of Nairobi Importers and Traders Union.

(Sen. Wario laid the document on the Table)

The Deputy Speaker (Sen. (Prof.) Kindiki): Well done, Sen. Wario. Have you read out the Petition?

Sen. Wario: Mr. Deputy Speaker, Sir, these reports contain the findings of the Senate Standing Committee on Tourism, Trade and Industrialization from proceedings during the hearing of the public Petition from the Nairobi Importers and Traders Association---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator! Just table the report and resume your seat.

Chairpersons and Vice-Chairpersons of Committees, when you delegate your work, induct the Member. Do not treat the Senate to this kind of drama.

Sen. Wario, this is your second year in this House. We are actually in the Third Session.

(Sen. Murkomen spoke off record)

Next time, the Chair will not conduct training from where I sit; maybe elsewhere.

The Senate Majority Leader (Sen. Murkomen): On a point of order, Mr. Deputy Speaker, Sir. I thank the Member of the Committee for laying this important Report. Standing Orders allow us to make a few comments.

The Deputy Speaker (Sen. (Prof.) Kindiki): Yes, but subject to the sympathy of the Chair.

The Senate Majority Leader (Sen. Murkomen): Please, can I get the sympathy of the Deputy Speaker?

The Deputy Speaker (Sen. (Prof.) Kindiki): Are you assuming that you have the sympathy of the Speaker?

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, that is where I was going.

The Deputy Speaker (Sen. (Prof.) Kindiki): Since you are already on your feet, and in recognition of your office, we will sympathise with you.

Proceed.

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, this is an important Report that deals with such an emotive issue that is ongoing. The Report is about the fight against counterfeit and contraband goods, having been presented by importers and traders from Nairobi, through their Senator, Sen. Sakaja.

Before I say anything about the Report, I think we need to relook at the Standing Orders. I am saying this for the Rules and Procedures Committee, so that when such a report is presented, a Motion is prepared to debate it. I will comment on this Report because I had just five minutes to look at it. Even the Senator for Nairobi City County has not been furnished with a copy, so that he can read it on behalf of those who sent him to petition the Senate and appreciate whether it captures their concerns and issues.

Secondly, I want to talk about the issue of counterfeit goods. I am speaking as the founding board member of the Anti-Counterfeit Agency that was created to fight counterfeit goods in this country. There is a lot of apprehension out there and complaints from traders that their goods are being destroyed under the guise of fighting counterfeit goods. However, there is confusion about what is counterfeit, substandard and generally contraband.

Mr. Deputy Speaker, Sir, goods being counterfeit does not mean they are substandard. It is a question of intellectual property ownership. The debate is on who is the manufacturer of that good. You can have pens labeled "Bic", but the company that manufactures Bic pens complains that they never manufactured them. So, some people are passing them off using their trademark.

You can have goods that are in violation of patent or copyright. Somebody could be selling a book called "*International Law as Applied in Africa*" by Kithure Kindiki, but the reality is that, that book was written by, say, Kipchumba Murkomen.

The Deputy Speaker (Sen. (Prof.) Kindiki): That is not a bad example, Senate Majority Leader. It is actually a good example.

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, it is a good example because that is your area of expertise. The question that I am asking myself is---

Sen. Sakaja: On a point of order, Mr. Deputy Speaker, Sir. I hate to interrupt the Senate Majority Leader, but he has said that, that is your area of expertise, when he spoke about plagiarism and contraband. Can he qualify what he means by 'your area of expertise'? Is it international law or plagiarism and contraband?

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Sakaja, even before Sen. Murkomen responds, there is a rule called 'rule of double jeopardy.' You are likely to suffer double jeopardy. One, you are contradicting your Senate Majority Leader. You might want to consider the implications of political party activities outside this Chamber and not here. But you are also raising a point of order in connection with a comment made about the Chair, and which the Chair said it was good.

Sen. Sakaja: Mr. Deputy Speaker, Sir, I just want to confirm.

The Deputy Speaker (Sen. (Prof.) Kindiki): So, you are opening up something which the Chair was good---

(Laughter)

Sen. Sakaja: Mr. Deputy Speaker, Sir, I just want to confirm for the record of this House, because I would want to believe that what my leader meant was that the Chair is an expert in matters of plagiarism, especially of academic books and papers.

The Deputy Speaker (Sen. (Prof.) Kindiki): Senate Majority Leader, please, confirm at your own peril.

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, if someone says that a book out there with a topic related to international law as applied in Africa, human rights, matters of democratization as written by Prof. Kithure Kindiki, he is likely to be believed. I meant that international law, human Rights and Democracy are your areas of expertise. You have excelled and even taught in Sao Paulo, Hungary and other parts of the world. I know you taught my colleague somewhere in Central European University in Eastern Europe. I, therefore, know your expertise in that area. I just want to---

The Deputy Speaker (Sen. (Prof.) Kindiki): I hope that Sen. Sakaja has noted the details.

(Laughter)

Proceed, Sen. Murkomen.

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, the point I am trying to make is that there is a problem when it comes to fighting counterfeit, especially if that fight is done outside the precincts of the law. The Committee that is currently dealing with destruction of goods, headed by my friend, Mr. Wanyama Musiambo, has no capacity or expertise to deal with counterfeit.

The Anti-Counterfeit Act, 2008 understood that the complexity of intellectual property requires that an entity is created with an expertise to deal with counterfeit goods. That is why the Anti-counterfeit Agency was created.

(Sen. Ochillo-Ayacko nodded)

I can see my former student, the new Senator for Migori County, is nodding because he got an A in my class on this subject matter of trade and investment. He was a very sharp man.

The Deputy Speaker (Sen. (Prof.) Kindiki): Senate Majority Leader, you have now started competing with the Chair?

(Laughter)

You were doing very well until now. However, the point has been noted.

The Senate Majority Leader (Sen. Murkomen): Thank you, Mr. Deputy Speaker, Sir. The issue of Trade and Competition Law and questions of intellectual property, preservation and protection are so complex that it would be painful to see that small traders in this country are being punished in the name of protecting intellectual property of companies that are not even caring to do any enforcement. Nobody has complained.

We are picking goods from people and destroying businesses, and the people who are suffering are the hawkers in Nairobi and many other parts of this country. I request the His Excellency the President to halt the work of the Committee that has persons, who have no expertise on intellectual property. We should then let the Anti-Counterfeit Agency be given enough resources to deal with counterfeit related goods.

Let the enforcement of counterfeit or anti-counterfeit agencies related issues be banned based on proper complaints and presentation of registered trademarks, patents and copyrights being attributed to people that are known. We do not to have situations where traders in Nyamakima and other places are being punished.

Today this morning, hon. Members from the Mt. Kenya region held a press conference where they complained that goods of many traders from that region are held at the Port of Mombasa. They also argued that there is violation of intellectual property rights. We ask ourselves who the complainant is. These goods are being imported from abroad. Are there local manufactures under the Kenya Association of Manufacturers (KAM) who are complaining that their goods are being manufactured elsewhere and being brought in? Which goods are we talking about?

Mr. Deputy Speaker, Sir, we have a lot of apathy and pain experienced on a daily basis, no wonder there are many cases of suicides. There is a lot of unexplained anger in the country. Many people are not able to make their ends meet.

Mr. Deputy Speaker, Sir, I still insist that with your wisdom, I wish a proper Motion would be brought to this House to deliberate on this very important report.

I thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you for that suggestion, Senate Majority Leader. Nothing prevents an item which has been transacted in the manner as this to still come in form of a Motion. However, I hear your recommendation that if we revise the Standing Orders and have the two related by way of a Standing Order that would improve the situation.

Since this Petition was brought through Sen. Sakaja, I will give him a few more minutes. That will be the end of observation under that Order.

Sen. Sakaja: Thank you, Mr. Deputy Speaker, Sir. Allow me at the very onset to thank the Senate Committee on Tourism, Trade and Industrialization for having dealt with this matter quite efficiently and effectively. On behalf of the Nairobi traders and importers, I wish to thank the Committee. They were received very well and the Committee took time to listen to them.

I also believe the Committee was able to listen to other agencies interested in this issue. The only little blight on that is the fact that the Committee was not able to get back to me on this matter as would be. In as much as it is not provided for in the Standing Orders, it makes sense and is courteous as you wind up your hearings on a petition to call back, especially if the petitioner(s) have been represented by a colleague in the House. I have also seen this report for the first time.

I would like to agree with the Senate Majority Leader that we need to look at our rules and find a way through which we give life to the responses to petitions, so that they do not go and find themselves in a certain shelf. There should be an implementation mechanism. There should also be a manner maybe through a Motion that we can debate it.

Mr. Deputy Speaker, Sir, very quickly, I would like to bring to the Committee's attention that in as much as they dealt with this in less than 60 days, the traders and importers in Nairobi are still going through a lot of hard times. This market has, first of all, been infiltrated by Chinese. I will say it, although I am not supposed to mention adversely a friendly country without a substantive Motion. However, they are even competing with our hawkers. They have godowns, which open at 3.00 a.m. They have front people to provide goods at lower prices.

Mr. Deputy Speaker, Sir, the fight against counterfeit goods is not a fight against our people, but a fight against goods that can harm the environment and health of our people. However, we find these anti-counterfeit officers confiscating goods and selling them in shops just down the road from these traders. This has to stop.

I am glad that even yesterday, the President noted and was even too embarrassed to read his speech because the Small and Medium Enterprises (SMEs) sector or the small traders and business people just because they may not be wearing suits and ties and do not come to the table like KEPSA and Kenya Association of Manufacturers, are ignored despite the fact that they produce close to 80 per cent of the GDP.

We need to treat them better, provide better subsidies for what they produce and make sure that we implement a buy Kenya policy to ensure that even these people who are manufacturing in their own rights benefits. Manufacturers are not just the big people in Industrial Area. Some of the best furniture we can get is along Gikomba or Ngong Road. We need to find a way in which to build these people.

Mr. Deputy Speaker, Sir, when we look at some of the things they proposed; I am glad that the Kenya Revenue Authority (KRA) together with the Deputy Head of Public Service, Mr. Wanyama Musiambo accompanied me to Nyamakima where we sat down with these traders. I am glad that we have shown that Government can come down to them. We need to see more work done and I will be bringing a substantive Motion as Senator of Nairobi to deal with this issue.

Many are affected down the line throughout the supply chain; from the importers, people working in Port of Mombasa and the entire chain of this business. We need to make sure that we put our money where our mouth is. Since the Government is not in business, it should stop auctioning goods not collected at the port because of issues of demurrage cost and selling them to the same cartels who are frustrating small traders at the Port of Mombasa and in Nairobi.

Mr. Deputy Speaker, Sir, with those many remarks, I am grateful. I will look through these recommendations. With the leave of the House, I will seek to bring a Motion and even maybe a substantive legislative proposal to be considered by this august House.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Thank you, Sen. Sakaja.

COMMUNICATION FROM THE CHAIRREORGANISATION OF THE BUSINESS
ON THE ORDER PAPER

Hon. Senators, pursuant to Standing Order No.40 (2), I direct that we reorganise some of the orders appearing in today's Order Paper as follows: -Order Nos. 8 and 9 are deferred.

BILLS*Second Readings*THE CARE AND PROTECTION OF OLDER MEMBERS OF
SOCIETY BILL (SENATE BILLS NO.17 OF 2018)THE PREVENTION OF TERRORISM (AMENDMENT) BILL
(SENATE BILLS NO.20 OF 2018)*(Bills deferred)*

The Deputy Speaker (Sen. (Prof.) Kindiki): Items under Order No.10, 11, 12, 13, 14 and 15 may be revisited in the course of the afternoon, time and circumstances allowing.

COMMITTEE OF THE WHOLETHE OFFICE OF THE COUNTY PRINTER BILL
(SENATE BILLS NO.7 OF 2018)THE SALARIES AND REMUNERATION COMMISSION
(AMENDMENT) BILL (SENATE BILLS NO.12 OF 2018)THE COUNTY GOVERNMENTS RETIREMENT SCHEME BILL
(SENATE BILLS NO.6 OF 2018)THE FOOD SECURITY BILL
(SENATE BILLS NO.12 OF 2017)THE DISASTER RISK MANAGEMENT BILL
(SENATE BILLS NO.8 OF 2018)THE COUNTY STATISTICS BILL
(SENATE BILLS NO.9 OF 2018)*(Committee of the whole deferred)*

BILL*Second Reading*THE PETITION TO COUNTY ASSEMBLIES (PROCEDURE) BILL
(SENATE BILLS NO.22 OF 2018)*(Sen. Pareno on 16.10.2018)**(Resumption of Debate interrupted on 16.10. 2018)*

The Deputy Speaker (Sen. (Prof.) Kindiki): Hon. Senators, this is resumption of debate. When this matter ended, Sen. (Rev.) Waqo had the Floor and she has a remainder of 15 minutes. According to Standing Order No.33, the Senator who last spoke and had a balance of time has a priority to exhaust her time. In the event the Senator is not present when the Order is called, they lose that chance.

I cannot see Sen. (Rev.) Waqo, so the Floor is open for Order No.16 which is the Second Reading of The Petition to Country Assemblies (Procedure) Bill (Senate Bills No. 22 of 2018). Since I do not see any request, let us have the Mover to reply.

The Deputy Speaker (Sen. (Prof.) Kindiki): I do not see any requests. Who is the Mover of that Bill?

(Sen. Murkomen consulted with the Deputy Speaker)

Proceed, Senate Majority Leader.

The Senate Majority Leader (Sen. Murkomen): Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): You are not the Mover. However, you have rescinded my direction that the Mover should reply. Now I can see several requests.

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, many people were still on the initial business on the Order Paper. This is a very important subject matter.

The right to petition county assembly institutions is a constitutional right. If you read Article 37 of the Constitution, it is clear that such rights must be accorded. It states that:-

“Every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities”.

The Constitution expressly provides that members of public can petition Parliament. Therefore, we have provided in our Standing Orders, how that will be done. Consequently, there is a lacuna in so far as petition to county assemblies is concerned. Therefore, nothing prevents members of public from generating a petition to county assemblies. It was a good idea that the Mover of this Bill came up with the principles that govern and guide that kind of petition and what county assemblies need to do when a petition is presented to them from the members of the public.

Mr. Deputy Speaker, Sir, our experience in this Parliament has shown that members of public are slowly understanding and appreciating their role in so far as using their institutions such as the Senate. If I am not wrong, statistics would show that Senators entertain the highest number of petitions from members of the public. These petitions have had very positive impact.

I am happy today that one of the dailies positively reported the Petition by Sen. Mwaura concerning the making of coins, notes and currency that will make it easy for those who cannot see to recognize the different amounts of currency.

Mr. Deputy Speaker, Sir, some of the petitions that have come to this House have led to solutions to problems. This includes issues to do with dams, for example, the issue of Solai Dam. The Committee did a fantastic job and the recommendations are now being implemented by the enforcement agencies. It has also raised the necessary awareness to ensure that the menace that relates to construction of substandard dams is addressed. Therefore, what Sen. Judith Pareno has said is---

In my first reading of this Bill, I concluded that it may not have been necessary to have a Bill. However, we have no capacity at the national level to force every county assembly to come up with a procedure in their Standing Orders on Petitions. Since the Constitution says that we enact laws that will be applied across the country, I have changed my mind and support the position that we must provide the principles and the framework that will make it mandatory for every county assembly to provide for a procedure in their Standing Orders of how citizens of this Republic will present their petitions.

Mr. Deputy Speaker, Sir, I like the fact that first, the petition must be simple. Government and governance were meant to be simple. The intention under this Constitution and the language used in drafting it was so simplified to make it possible for a common mwananchi to be able to read, appreciate and understand. In fact, our older Constitution was clear that interpretation of the Constitution was the job of the Judiciary. However, in the current Constitution of Kenya 2010, it is the duty of every citizen of this Republic to interpret the Constitution as it applies. It is only that the last institution of interpretation is the Judiciary.

However, every one of us has a responsibility to read, appreciate, understand and apply the Constitution based on their understanding of what it stands for. I am happy that, to start with, the Mover of this Bill has provided in Clause 3 which states:-

“A petition to a county assembly shall be in the form set out in the Schedule and shall:-

- (a) be handwritten, printed or typed;
- (b) be in English or Kiswahili;

Mr. Deputy Speaker, Sir, we should go further and state that they can bring a petition in the language that is understood in that county. What is the problem? For example, in South Africa (SA), they opened doors for all the vernacular languages.

If our duty in the Constitution is to preserve and protect language and culture, there is nothing wrong with the petition being brought in a language that the person understands and then be translated in the House for purpose of debate or the HANSARD. There is nothing wrong with a petitioner sitting in Kitui to use Kikamba in writing their petition to the House because they know that their Member of County Assembly (MCA)

speaks Kikamba and they can provide translation services in the House so that they make it more interesting and acceptable.

Mr. Deputy Speaker, Sir, we were here with Sen. (Dr.) Khalwale in the last Parliament and he advocated for county assemblies to use their local languages in the debate in the chambers. It is not a farfetched argument because 50 years down the line, a language like Kitharaka might be so rare because of globalization.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senate Majority Leader! Why is that?

(Laughter)

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, the people of Tharaka-Nithi are among the minority groups in Kenya. I do not know whether the Bible has been translated to Kitharaka? We had that conversation with you.

The Deputy Speaker (Sen. (Prof.) Kindiki): The Chair does not know. You should look for the Senator of Tharaka-Nithi, he might know. However, it is noted.

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, that might be one way of preserving language. Our county assemblies are localized, so they should be allowed to debate in their mother-tongue as long as it is understood by everybody in the House and where it is not understood, there are proper translation services for people to follow the debate.

Mr. Deputy Speaker, Sir, the point I am trying to make is that, let us make the petitions as simple as possible.

(c) be written in respective, decorous and template language;
I do not know when language becomes respectful or disrespectful but it should be left to the assembly, the Clerk and the Speaker at any given time to determine as the case may be.

(d) be free of alterations and interlineations in its text;
(e) be addressed to the county assembly;
(f) have its subject matter indicated on every sheet if it consists of more than one sheet;

(g) indicate whether any efforts have been made to have the matter addressed by a relevant body and whether there has been any response from that body or whether the response has been satisfactory;

Mr. Deputy Speaker, Sir, these are some of the provisions that are necessary and are borrowed from procedure of petitioning by this House;

(k) contain only signatures or thumb impressions, as the case may be, and addresses and identification numbers written directly onto the petition and not pasted thereon or otherwise transferred to it;

(i) not have letters, affidavits or other documents annexed to it;

Mr. Deputy Speaker, Sir, it must be a straightforward petition.

Clause 4 (1) states that:-

“A petition to a county assembly shall be-

(a) submitted to the respective Clerk by the petitioner; or
(b) presented by a member of the county assembly on behalf of a petitioner, with the consent of the Speaker”.

This is important because a petitioner from Tot can wait for their MCA of Endo Ward to take a petition to the assembly.

In fact, one of the things that I talked about and it is something that counties must think about is establishment of county radios. I wish that the licencing procedures would be relaxed for purposes of establishing county radios, which will help the citizens of every county to follow what is happening in their assemblies. I am not even worried about what the executive does.

The debates of the county assemblies are quality debates. If I know that Elgeyo-Marakwet is going to debate on something today and they have Elgeyo-Marakwet radio, I will listen to the debate. They can even start with online radio and there is no reason as to why they should not be given license to start their online radio. As a Senator, if I know that it is a subject that is important, I can sit down, listen and follow the debates together with citizens from all over the world.

In fact, some of the things being done by county assemblies would enrich our debates in this House, especially those issues of public concern. However, where can we get them? How do you access the Hansard of Elgeyo Marakwet County Assembly unless you physically go there and ask for a specific debate that took place in the chamber? Suppose you wanted to follow the debate live, how would you follow that debate?

County assemblies must be facilitated, and one way of doing so is by making sure that those debates can be followed. The citizens can oversight their leaders by following the petition when it is brought to the House. The leaders and the citizens want to know what happened. As a matter of fact, it should be made mandatory for every county assembly in Kenya, and they can afford it, to make sure that they upload all their Hansard reports to a website. That is the least we can do to ensure that it is mandatory for counties to have the reports in a particular website.

I have been telling my County Assembly that there is nothing wrong with the Speaker employing one or two people who will ensure that they broadcast the proceedings of the County Assembly of Elgeyo-Marakwet on Facebook live or Twitter. Why should we struggle? That is how you start making that assembly attractive to the members of the public. People can then see the quality of the debates in those county assemblies.

The business of the assembly and the petitions that will be sent there will go to waste if we do not create an opportunity for the public to access and follow what their county assemblies are doing. In fact, one way of ensuring that MCAs research before they debate and that they prepare for their Motions and Bills is to provide mechanisms for public scrutiny.

I know of a county assembly in North Rift where one MCA used complicated English or an accent and that forced one MCA to ask the Speaker to request the member to go slow.

(Sen. Mutula Kilonzo Jnr. spoke off record)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Mutula Kilonzo Jnr. Proceed, the Senate Majority Leader.

(Laughter)

The Senate Majority Leader (Sen. Murkomen): If we are to push the citizens to elect MCAs who can draft, move Bills and Motions, then there must be a mechanism of putting pressure on those elected leaders to perform well which can be done by making their debates public.

When we first came here, we struggled. We were good debaters out there but when we came here and had to stand in this very important podium for the first time to debate on a Bill, one can shake, sweat, but over time, you get to improve. You have to prepare when you know that what you are doing is being watched across the country.

The Deputy Speaker (Sen. (Prof.) Kindiki): Are you confirming that you used to sweat?

The Senate Majority Leader (Sen. Murkomen): It is possible, Mr. Deputy Speaker, Sir. You see how difficult it is for a Member of this House to Table a report for the first time but when they do it the next day and the next day, they get used to it. It is the expectation that is out there that makes people to work hard and perform better. Sen. Cheruiyot, who is also a Commissioner, sits in the Committee on Information, Communication and Technology and Vice Chairperson is here. They need to explore ways, in that Committee, of making it mandatory for county assemblies to broadcast their debates.

They should also look at how to make it affordable and cheap. One way of making the Kenya Broadcasting Corporation (KBC), as a public parastatal, relevant is to prepare, and that Committee can do that, and engage KBC to see how they can extrapolate their existing licences to create 47 broadcasting channels for every county. For the time being, they can make the broadcasting go online. Almost everybody is on Facebook and if this is online, one can go to the site of their county and listen to the debates of county 'x'.

We are told that there is a debate in a particular assembly and we sometimes hear that they want to remove the speaker of county 'x'. They even chase the media as it was reported in one of the media houses that all the media houses were locked out in a particular county assembly for them to chase out the speaker. That is criminal, if I may borrow the word of an MCA of Nairobi City County. We must allow the public to follow conversation and debates that are taking place in our counties.

I hope the Vice Chairperson is listening to me. Let us invite KBC and see the kind of proposals that they can make together with the small honoraria that could perhaps be paid by every county to facilitate that broadcast so as to make our national broadcast national but also viable. It is only the KBC that can reach all over the country. It is clear in Turkana and many other parts of the country where some of the media houses, popular as they may be, cannot reach. This is because they are more popular in these other areas and not in the marginalised areas.

It is important that we do so. If we do so, the petitions that are going to be brought by members of public on issues that are related to our counties will double or even triple. This is because they will see their issues being addressed. The law says that an MCA is not eligible to present a petition on his or her own behalf because the standing orders have mechanisms that take care of an MCA. The MCA can bring a statement to the House, make a statement in the House, come with a Motion, Bill or even ask questions in the House. That is important because it makes petitions an exclusive purview of members of the public.

However, a senator and a governor can present a petition to the county assembly because they are not MCAs. There is nothing that blocks the President from making a petition to a county assembly that, 'I want you to consider this and that'. For a very long time, we have made people in this country who hold positions look like they must appear to be a rare breed, scarce commodity and look mysterious for them to look powerful. Leadership is not about looking mysterious or rare, you can be simple the way Jesus was and be a good leader.

I am not so sure about this but I hope that it is true for I hear that the Governor for Makueni County spends more time with old people and young children. I have said that I am being careful because pictures can sometimes mislead. When members of the public see Sen. Mutula Kilonzo Jnr. doing something, they make a decision based on that.

I saw a Member of Parliament who was helping build a house for a widow in his constituency, which is a good thing, but people picked that and said that this is the humble one and the other one is useless. They do not even know how many people are building many things for other people but they do not broadcast. That is why I was careful although I have seen my teacher, hon. (Prof.) Kibwana, who is the Governor of Makueni County, in the pictures setting a good example by sitting somewhere in the village with the people and listening to their conversations.

Mr. Deputy Speaker, Sir, you will remember that when we joined Parliament, everyone was fighting to be the "big man". There was a big man syndrome in the country. Nobody wanted to be the last one to speak because everyone wanted to be the first one to speak in a function.

I remember we went with you to Baringo and at that time you were the Senate Majority Leader. Many Members of the National Assembly were saying that Senate is a small and useless House with a small group whose work is to bury dogs and the only legislation that Senators should do are things that deal with burial of animals.

You did something and that was good. You stood and said that we accepted as the Senate to become the "small people" and we could speak even before the MCAs. You concluded by saying that the Bible says that those who shall be humble like small children shall be exalted. After that, every MP said that they are not "big" but humble servants of the people.

There is a disease where people think that being a big person is by virtue of what you own, how you wear, what you drive and so on, but that is not the case. It is the humility to serve. So, public service should make it possible for each one of us to serve.

For sure, I know that it is not for the Senate but for county assemblies. Somebody could be having something but maybe they have no other process of making the information formal to the county assembly but through the Senate and addressed to the county assembly. They can still do a petition to the county assembly to inform MCAs about it insofar as, for example, building a youth polytechnic in a particular area is concerned and they want them to consider.

That is humility of service and we are on record about that. We are even setting an example to MCAs, that when they deal with locals in their areas, they should not show them that they are big people. Every time we have told MCAs that they are strong, important, useful and they have a constitutional job to do. They are the ones who budget for counties and oversight them. We tell them that development of the counties is dependent on them but they do not listen. One way of making them

understand that they are such an important entity is to get a petition from their Senator. That is when they will know they have a role to play and the Senator has certain expectations from them.

It was expected that MCAs should be an avenue to be used by retired public servants like professors. We need to create a culture that where a retired professor in Chwele or Kapsokwony in Bungoma County with great knowledge should prepare a petition and send to the county assembly in Bungoma. When they come to sit in the Gallery here, we will recognise them as having petitioned the county assembly and being invited to appear before a committee.

I wish county assemblies appreciated that they have such wonderful opportunity to tap into the great knowledge from different people. I have told my county assembly and insisted that through petitions, they can get citizens of this Republic--- Through public participation, they should encourage retired teachers and public servants in counties who have wealth of knowledge and experience which should be utilised via petitions on behalf of the ordinary people at the local level.

I like the fact that there is a qualification---

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it, Sen. Ochilo Ayacko?

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, would you want him to use his maiden time to ask me a question?

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Ayacko, are you on an intervention?

The Senator for Migori County (Sen. Ochilo-Ayacko): No. Sorry, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Okay. Proceed, Senate Majority Leader.

The Senate Majority Leader (Sen. Murkomen): I knew it was not intentional because being a former legislator, he is aware that his maiden speech time might be well utilised.

The Deputy Speaker (Sen. (Prof.) Kindiki): I think he was orienting himself with the gadgets of this side of Government.

Senate Majority Leader, you may conclude because I can see the interest is high but we have limited time this afternoon.

The Senate Majority Leader (Sen. Murkomen): I was volunteering to download as much knowledge as possible because, initially, there was no one willing to make that--

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The Deputy Speaker (Sen. (Prof.) Kindiki): How did you know?

The Senate Majority Leader (Sen. Murkomen): Initially, you even announced that the Mover should reply.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very true.

The Senate Majority Leader (Sen. Murkomen): If now we have many persons interested, I will move to conclude, notwithstanding that I suspect that I still have more than 30 minutes.

The Deputy Speaker (Sen. (Prof.) Kindiki): You do.

The Senate Majority Leader (Sen. Murkomen): For the interest of the House and the convenience of everyone else, it is important that I conclude.

Mr. Deputy Speaker, Sir, when a petition is presented to the county assembly, I like the fact that it will be committed to the relevant committee just like it is done in this House. The committee will go ahead to invite members of the public and conduct public hearings.

I have a suggestion here, and I hope county assemblies or we can even put it as a principle. If a petition comes from a particular corner of the county, for example, Elgeyo-Marakwet County concerning Embobut Forest with issues related to squatters, non-compensation, encroachment of the forest and insecurity among other issues, I suggest, as a matter of practice, that the relevant committee should conduct a visit to that area. This will make petitions of the county assemblies different from ours because the jurisdiction we serve is bigger. If we make it mandatory to visit everywhere, it might be difficult.

A county assembly being a local agency within a smaller locality in this Republic, which is one out of 47 counties in this country, where a petition concerns a group of people or a particular event in a particular area, it should be mandatory for the committee to go there. I do not know how that will be drafted. We can look at it so that it becomes mandatory for the committee looking into issues raised in the petition to acquaint itself. They should go and listen to the people in that particular corner of the world. It must not be applied unreasonably to become a basis for pushing for sitting allowances and benefits for individuals but when there is need for the best interest of the assembly and the people of that county.

This is a fantastic Bill and I congratulate Sen. Pareno. It is just laughable that after going through the Bill, you will hear someone in the other House making an announcement that we cannot proceed with it because it is a money Bill.

We passed The County Boundaries Bill, a very important Bill, but I was shocked to hear someone say in the “lower House” that it is a money Bill. For how long shall we continue stomaching this issue and how does that question arise after this House has debated this Bill? This Bill has been declared here that it concerns counties. Once it has been declared that it concerns counties, the rest remains to consider the merits of the Bill. The concern should be whether the procedure was followed.

I have sung this song and we have written letters to the Head of State about it. We have done all the things that we need to do. What is important is to arrest the situation in the “lower House” insofar as the pretext of killing Bills in the name of money Bills is concerned.

It is unfortunate that many of the Private Members Bills in this Parliament, and even the Eleventh Parliament, were from this House. However, they all died at the Speaker who knew that they ought to have passed the provisions of Article 110 by the time we had them on the Floor of this House.

We then go and say, “I do not mind if the Bill collapses on the Floor of the House on its merit.” However, for officers – who are not legislators themselves – to use procedural technicalities to kill a process of such an important Bill is a disservice. That is the reason I came up with the Bill that deals with the Deputy Speakers when I saw people protesting in Nairobi about appointment of Deputy Speakers. This is something that should have gone a long time ago.

Why is someone sitting on the Bill in the National Assembly? It is frustrating! I have said it before and I want to repeat it today. Today, you will be in the National Assembly and tomorrow you might even be a Member of a County Assembly (MCA).

I can tell you for a fact that there are former Members of Parliament (MPs) who are MCAs today. Is the Speaker for Kitui County Assembly a former MP? Yes, I know that the Speaker of Kiambu, Murang'a and even Garissa county assemblies are former MPs. All these people are now MCAs because you cannot know about tomorrow. I used to tease the Majority Whip, together with the Senator for Samburu, Sen. Malala and many others, that they were MCAs. Being a speaker does not mean that you are not an MCA, because you first have to be an MCA for you to qualify to be a Speaker.

Therefore, you can be in the Senate or in the National Assembly today, but tomorrow, you can be an MCA or a Speaker of a county assembly somewhere. A good example is that of some colleagues who lost in the elections last year – like the ones for Garissa and Tana River – who were rescued by in their county assemblies to become speakers.

Therefore, I hope that common sense can prevail so that these people can stop posturing, being unsure about themselves and looking for validation. They just need to believe that they are already elected as MPs and they should become leaders.

Mr. Deputy Speaker, Sir, I beg to support.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Leader of Majority. Proceed, Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Deputy Speaker, Sir. I want to disclose from the beginning that I seconded this Bill during the last Session. I want to support Sen. Murkomen by asserting that sometimes it feels as if some of the work we do is not appreciated. In fact, when we passed this Bill, county assemblies like Makueni, for example, had no framework for petitions and methods of how people could approach county assemblies. This is because Makueni, at the time, had a problem. Therefore, this was a platform for ordinary citizens everywhere in the country to find a method to petition county assemblies.

Mr. Deputy Speaker, Sir, part of the reason why the Committee on Justice, Legal Affairs and Human Rights – where I and Sen. Murkomen were members – drafted this Bill at the time was because we were receiving so many petitions from MCAs. They told us that their voters and the people who were elected were all complaining. We had become a cry House where everybody seemed to be complaining. We were, therefore, providing a platform for them to approach the assemblies and make it possible for them to articulate their issues.

Mr. Deputy Speaker, Sir, these petitions are also a method of making sure that there is oversight. I do not know whether Sen. Cherargei is here today, but many of you might not be aware that when Sen. Cherargei was in the Nandi County Assembly, he filed a petition together with Governor Sang. I do not know why they do not agree today. They came to the Committee on Justice, Legal Affairs and Human Rights with a very good petition on accountability in terms of finance for the Nandi county Government. The result is that Sen. Sang is now the Governor and Sen. Cherargei is now a Senator. All this because of finding a platform to challenge governors.

I said this yesterday; that it is amazing that a governor is alleged to be having Ksh2.5 billion in his account. That county, for the last six or seven years, has been in existence, has never filed a petition even on paper; nothing! Something is wrong. I am sure that if we gave the opportunity to Members of Migori County and other counties to

challenge their governors through this platform the way we have drafted it, they would have a method of making sure that they have answers.

Alongside this Bill, Mr. Deputy Speaker, Sir, we did the Fair Administrative Action Act to ensure that when petitions and matters like this come to the assemblies, they get responses. Just like what Sen. Murkomen said, we have made it easy so that ordinary Kenyans like *mama mboga* can find a method to file petitions without so much technical objections; and even in a language that is understood in those regions, whether it is in Tana River or Isiolo.

That is the method we wanted to adopt so that those Kenyans could find ways of challenging their county governments. Isiolo is on the radar because it is attempting to have a Public-Private Partnership (PPP) with a company which does not provide health services, yet there is no framework. Senator for Samburu, if there was a method for filing petitions in law, the gazettement of Maralal Town will not have been done before there was public participation.

Therefore, Mr. Deputy Speaker, Sir, this Bill is pretty straight forward and I do not know why the National Assembly did not find it fit to pursue this matter.

(Sen. Murkomen consulted loudly)

I would like the Majority Leader to lend me his ear.

This morning, I was just following up on the National Flag, Emblems and Names Act, where I proposed to remove the caveat that was brought in by hon. Mbiyu Koinange and hon. Tom Mboya on 26th November, 1963, to prohibit Kenyans from flying flags. I saw Sen. Murkomen, Hon. Kalonzo Musyoka and the Deputy President at the Kasarani National Stadium the other day. How nice would it have been to have flags flying everywhere after sending the antelopes to go where they belong?

(Laughter)

Mr. Deputy Speaker, Sir, I followed up the communication from your office which says that, that Bill was forwarded to the National Assembly in March. It is now October and nothing has ever happened. This is a tragedy! Part of the reason why colleagues here are having problems is because after drafting a Bill, putting in so much work, and haggling with the Legal Department of the Senate and the good lawyers we have here, that Bill ends up on the shelves of the National Assembly.

A good example is the Bill by Sen. (Dr.) Zani and the one Sen Murkomen is talking about, of Deputy Speakers. While I am speaking about that, Senate Majority Leader, there is a coup against speakers in this country. Can you, please, intervene? Right now, Nyandarua County Assembly is closed because they want to impeach the Speaker, and there is no press. The same is true for Kisumu, Nairobi and Kakamega.

In fact, now, we have new methods of impeachment. They are impeaching speakers and nailing the door shut. Yesterday, I saw the Serjeant-at-Arms of that Assembly being escorted, in a violent manner, to put the mace in the Assembly so that they could impeach the Speaker.

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

Sen. Mutula Kilonzo Jnr.: Yes, I would like to be informed.

(Laughter)

The Senate Majority Leader (Sen. Murkomen): Thank you, Mr. Deputy Speaker, Sir---

The Deputy Speaker (Sen. (Prof.) Kindiki: Order, Leader of Majority!

The Senate Majority Leader (Sen. Murkomen): You know---

The Deputy Speaker (Sen. (Prof.) Kindiki: What happened?

(Laughter)

Incidentally, the topic that I heard the Senator for Makueni dwell on was about a coup being done on speakers. In the process, a coup was almost being done on me!

(Laughter)

This is because I never allowed the Senate Majority Leader to access the Floor. Is it a point of information?

Sen. Mutula Kilonzo Jnr.: Yes, and I accepted.

The Deputy Speaker (Sen. (Prof.) Kindiki: So you accepted?

Sen. Mutula Kilonzo Jnr.: I have no objection.

The Deputy Speaker (Sen. (Prof.) Kindiki: Very well; proceed, Senate Majority Leader.

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, I just wanted to inform the Minority Whip that as we speak, the mace of Homa Bay County Assembly is missing and the police have launched investigations. The reason being the same wrangles in county assemblies, where people are fighting about whether to remove the speaker or not. Therefore, to make the sitting impossible, someone must have gone and hidden the mace somewhere.

(Laughter)

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

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

The Temporary Speaker (Sen. (Prof.) Kamar): Proceed, Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Thank you, Madam Temporary Speaker. For some strange reason, I suspect that we have a problem in all our assemblies. I have just met the Chief Executive officer (CEO) of the County Assemblies Forum, and Sen. Cherargei has agreed, as the Chairperson of the Committee on Justice, Legal Affairs and Human Rights, to meet County Assemblies Forum. It appears that all the speakers in this country are on the verge of being dislodged by their Members.

The tragedy is that Sen. Murkomen proposed a Bill to have deputy speakers anchored in law and the court has said that there is no position of deputy speaker in the country. Like in Nairobi City County, if you impeach the Speaker, there is no deputy speaker, but there is an acting speaker. In the absence of the governor, in case of incapacity, then you have a crisis in the county. This Senate must intervene in this matter.

To conclude on this Petition to County Assemblies Procedure Bill, as you said, for a long time, we have been looking at methods of improving county assemblies. I have said this about the Devolution Support Programme (DSP). I am not sure up to what extent the Council of Governors (CoG) negotiated with the Intergovernmental Budget and Economic Council (IBEC) and the national Treasury to capacitate county executives on financial reporting, but left out our Members of County Assemblies (MCAs).

We must continue to say that the future of devolution lies in our county assemblies. We must build the capacity of our county assemblies.

Gone are the days when MCAs were called councillors, who used to throw all sorts of things in an attempt to communicate. I am proud to say – and Sen. Sakaja can confirm – that the number of youthful legislators in county assemblies today is testimony that, that position very attractive. The turnover of MCAs is 95 per cent.

I must tell them that they have to serve with diligence or they will be replaced by another young person. It will happen because it has become very attractive. We must capacitate them. This is one method of ensuring that, first, we capacitate the public to petition county assemblies and, two, tame rogue governors; and lastly, ensure that the public we serve can find access to county assemblies and get their petitions heard. This is in particular to where MCAs in so many county assemblies have confused their role as oversight of counties and gone into bed with governors.

I support.

The Temporary Speaker (Sen. (Prof.) Kamar): Thank you, Senator.

Sen. Cheruiyot, proceed.

Sen. Cheruiyot: Thank you, Madam Temporary Speaker. I support the thought and idea to provide a legal framework for the petition process to our 47 county assemblies in this Republic.

From the outset, I appreciate our colleague, Sen. Pareno, for a brilliant thought; polishing and making improvements to what had previously been brought before this House. However, for reasons that we well know of, and later on in my closing remarks, I will join my colleagues who have made remarks about it--- I am talking about the issue of our Bills gathering dust in the National Assembly.

I will address myself to it in my concluding remarks.

Before I get there, let me limit myself and quickly speak to the content and material matter of the Bill. Clause 3 of the Bill provides for the schedules or what would be considered the prerequisites that need to be met before we can determine whether or not a petition is properly before a county assembly.

Very good proposals have been made by this Bill, but unfortunately, there are some that I hold a totally different view about. Some of them were touched on by Sen. Murkomen and Sen. Mutula Kilonzo Jnr. when they made their contribution to this Bill.

Of course, language interests me a lot because, first of all, it is what I studied at the university. It is also because it is God's gift to us as the human race. It is the only thing that distinguishes the human race from animals. This is the ability to converse in a

distinct language only understood by a certain group of people who either share a cultural or geographical heritage.

Therefore, for us to seek to limit the presentation of petitions before county assemblies to only English and Kiswahili, I think we are falling into the already laid trap of believing that a good command of English or Swahili is a measure of intelligence. I disagree strongly and say that it is not.

Madam Temporary Speaker, one of the strongest petitions that I have heard of before was presented by an old lady who went before the County Assembly of Kericho and presented her pleas in the local Kipsigis dialect. This is because she had been moved out of her ancestral land and a tea multinational company had taken ownership of her farm. However, the petition was informal and did not actually get to be properly debated before the County Assembly.

Because of lack of proper procedure, the First County Assembly of Kericho quickly organised for a fundraiser to buy the old lady a small piece of land and put up a structure for her. I think she now lives there happily.

If we limit the presentation of petitions to county assemblies to either English and Kiswahili, what will happen to such members of society who do not understand either of these two languages, but have issues that will ordinarily be addressed and properly settled by our county assemblies? I, therefore, propose that when we later get to amending this Bill, this is one of my proposals for your consideration, Sen. Pareno.

Under Clause 3(f), the Bill speaks of having the subject matter indicated on every sheet if consists of more than one sheet. I have a bit of a challenge. I understand what you are trying to cure here, but we do not want would be considered to be material evidence to be introduced to the petition outside of the prayers of the petitioners. Sometimes when we make law to be too descriptive, we end up curing more than what we intended to. In doing so, we introduce barriers to access of justice by the public.

Later on, when somebody challenges the procedure of how a petition ended up before the Assembly, you will find that even these small details like whether this particular regulation was adhered to in the format in which it was presented would come into play. If it was not, somebody may challenge in court and say that the petition was not properly before the House of Parliament. I do not know whether you wish to continue with Clause 3(f), but it is subject to your own thinking and consideration.

In Clause 3(g), I agree with her that it is important to note before a petition is considered and presented to the County Assembly, whether other forms of redress have been sought.

Madam Temporary Speaker, we, as a House, have been trying of late to promote the alternative dispute resolution formula. This is one of the ways in which we continue to push on that dream of ensuring and telling Kenyans that it is not always before a court of law, that they can find justice. Some of the fairest resolved disputes in this country were not sorted before courts of laws. They were sorted out using our traditional African mechanisms of sorting out disputes.

Elders from the warring factions were called, people would sit down and agree. At the end of the day, justice would be served both to the aggrieved and the complainant. Thereafter, everyone went home a happy person. He was sure that no money exchanged hands and there were no other issues that influenced justice.

I find Clause 3(h) extremely debatable. It is on the issue of separation of powers. As we continue with other discussion before the House, we should indulge our minds about this doctrine of separation of powers between Legislature and the Judiciary. To the best of my knowledge and constitutionality, judicial authority is drawn from the people. Legislative authority is also drawn from the same people. So, at what point do you determine that judicial authority supersedes legislative authority in certain aspects? The two authorities have been drawn from the same people. This is a constitutional flaw, because if a matter is squarely before a court of law, you cannot deliberate on it.

Parliament is the gathering of all the people. Every afternoon, all 47 million Kenyans meet in this House. Since all of them cannot fit here, they have sent a representative in the name of their Senator. Therefore, as a Senator, when I take a public stand about certain issues, I do it consciously knowing that I am voting on behalf of the two million Kenyans who live in the county that I represent in this House.

Therefore, to be told that I cannot take a certain decision because it is before a particular judge, I find it to be an insult to my intelligence. I wish all those who are good students of jurisprudence and such matters to give us a better understanding of this theory now when we are having all these discussions about referendum and so on. What it is that we need to improve in our laws? This is one area that we need to properly address ourselves to, so that we make a fair decision.

We want to know whether it is proper for us, as Members of Parliament, and Members County Assemblies, to be denied the chance to take certain decisions because a matter is before a court of law.

Madam Temporary Speaker, Article 159(4) of our Constitution speaks about access to justice. It reminds us that access to justice shall always be without undue regard to procedure and technicalities. We cannot be told why justice cannot be served upon us, as Kenyans, because certain regulations were not followed, or we are supposed to have filled the petition in this or that format.

I urge Sen. Pareno to add a clause that says minor technicalities that are not in accordance with what you have proposed here, should not be used as a basis for determining whether a petition is properly before a county assembly or not. I foresee a situation where an aggrieved party presents a petition before a county assembly and the MCAs investigate and agree with them and issue sanctions to the aggressors. This is Kenya, and we know how things happen.

For example, somebody may say that the petitioner did not meet one of these requirements that have been put here, and use it as a basis to go to court and seek redress on the basis that this petition was flawed on arrival. Justice will have been aborted in such a scenario. It is important Sen. Pareno to consider introducing an amendment to make the Bill be properly be within the confines of Article 159 (4) of the Constitution.

Madam Temporary Speaker, Clause 4(b) speaks about a petition being presented by a Member of a County Assembly on behalf of a petitioner with the consent of the Speaker. This is extremely important. One of the things I have learnt, as a legislator, is that sometimes when we make laws in this House, we make them with ourselves in mind.

There is absolutely nothing difficult for me, moving from my home in Kabianga – that is the village that I come from – to Kericho Town and presenting a petition, before the County Assembly of Kericho. However, the people that I make laws for might not

have bus fare of Kshs200 to go before the County Assembly of Kericho to present their petitions.

As law makers, it is good that we do not lose touch with the people we represent here. We, as legislators, complain that members of the public gauge us by our presence in different functions within our counties. We attend funerals, weddings, *barazas*, *et cetera*. Sometimes we feel as if it is too much of a demand. However, that face of the legislator's life is also important, so that we do not lose touch with basic realities. This has been addressed by this particular clause.

There can be a situation where members of the public cannot afford bus fare or for one reason or the other cannot present themselves physically before a county assembly and, therefore, can send their MCA to present the petition on their behalf.

Madam Temporary Speaker, there are two issues that continue to bother me. First of all, as a Senator, and also as a citizen of this country, a time has come for us to either suspend the business of this House, and say that until we have a proper determination of the process --- How difficult is it to interpret this issue of money Bills and the power to originate Bills before the National Assembly and the Senate? It is a pity that the life of this particular House, not a single Bill that has been forwarded from all the Bills that we have passed in this House and sent them to the National Assembly. It bothers me.

It is a matter of great concern that many of us, Senators, need to decide whether we can go to the Supreme Court for an advisory opinion like we did in 2013, when we found the going difficult. Of what use is it, for us to pass this well thought out piece of legislation, if we know that for the next two years, it will be gathering dust before the National Assembly?

Madam Temporary Speaker, we have been receiving calls and being informed that Government business has stagnated in the Senate. We are told two, three or four Bills that are before us that we are properly applying our minds to. It is not even for any other reason that, for instance, the Roads Bill or any other Bill has not been considered by this House. It is because Senators have got genuine concerns, that we feel some of the provisions in those Bills are undermining devolution.

If we do not apply our minds properly to it, we shall not be doing our work properly as Senators. You receive calls that you are not doing your work, yet before that very House that is raising all these complaints before us, we have ten to 15 to 32 legislations that have been passed. This is one of the legislations that we completed in the last Parliament. However, it is back before us. We will pass it, but I am not certain that justice will be done to it.

It is important for those who sit in the Senate Business Committee (SBC) to properly think through this issue and give us a way forward, as Senators. Otherwise, what is the motivation of creating legislation if we know that; one, it cannot become law before it is passed by the National Assembly, who have purposely said that they are not passing Bills that have been drafted here in the Senate?

With those many remarks, Madam Temporary Speaker, I beg to support.

Sen. Sakaja: Thank you, Madam Temporary Speaker. The Bill by Sen. Pareno, as brief as it may be, is good because it addresses one of the most cardinal principles of our Constitution. The framework of the constitutional order that we have now is one that, first of all, affirms in Article 1 that all sovereign power rests with the people. It further qualifies that, and says that the power can only be exercised through the Constitution. It

goes further to say that the people can exercise their power directly or through their elected representatives. That then gives us the theory of representation.

Madam Temporary Speaker, there is need to have representativeness and the voice of all shades of the society in a democratic society. The people are then divided into geographical areas of representativeness. This is so that they can then produce one person like them, who they think can represent them in a House where there is equality of vote. The only two houses with equality of vote are the National Assembly and county assemblies. Those are representative houses which represent individuals; they represent, as equal as possible, a number of people.

That is why we had to undergo a re-districting process of delimitation. During the Kenya African National Union (KANU) era, President Moi undertook what we call “gerrymandering.” Through this, he ensured that the areas where he had support had more Members of Parliament (MPs) and the areas he did not have support had fewer MPs. This resulted in some imbalance in representation.

In fact, one of the biggest points of the Kriegler Report was that for us to have electoral justice and equity, we must make sure that we have equality of the vote and one man, one vote. Of course, Article 89 of the Constitution then provides parameters through which we can balance that. Therefore, that is what a county assembly and the National Assembly are.

Madam Temporary Speaker, the Senate is an equalising House. It is not a representative house in the strict legal term of “representativeness.” This is because it is not about the number of people you represent, but the fact that we have divided our country into counties which deserve equal representation. It then becomes a House of balancing the excesses of the tyranny of democracy.

Just as every Member of the National Assembly has an equal number of votes and those who are many can then determine how decisions are made, in the Senate, the Senator of Nairobi City County, with 4.9 million people, has exactly the same vote as the Senator for Lamu with about 100,000 people. That is how it should be.

Madam Temporary Speaker, the constitutional order we have places a lot of premium on the principles of inclusivity and public participation, as enshrined in Article 10 of the Constitution. It is then important for us to ensure that we always remember that we are not just exercising donated sovereignty by the people. We need to ensure that the people are able to access institutions of representation and governance such as the National Assembly, the Senate and the county assemblies; and that their voices are heard.

It is not the situation as it was before; that once you have elected someone, they can go, do whatever they want to do with the power you have given them, and then come back after five years to seek an additional mandate. That is why this Bill is important; for us to set standards for all the county assemblies through which an ordinary citizen of a county can present their prayers. These will be prayers on the issues affecting them as individuals, communities or whatever shade of interest they might be representing, to the house that represents them, called the county assembly.

It is in the same breath, Madam Temporary Speaker, that we were looking at the County Enforcement Officers Bill, as proposed by Sen. Khaniri earlier this morning. In as much as every county has the power to do that for themselves, it is important to establish uniform standards across the country of how democracy is expressed and even how enforcement of the law is done.

Madam Temporary Speaker, this Bill comes at a time when, the world over, there has emerged the need to redefine democracy. There is a lot of apathy in this world to institutions of governance by the normal citizens. Some of this apathy has been expressed through the BREXIT vote and the elections in the United States of America (USA) before. The people are not feeling as connected to institutions of leadership. Remember that even where we are today, we are implementing a system of governance that was designed in the 19th century.

The world over, the holy triad of the judiciary, legislature and executive, was designed to run along the information technology of the 15th century, which is the printing press. That is why we put an advertisement in a newspaper and tell the people to come on a Tuesday afternoon to participate. However, they can never feel that they are engaged to deal with the immediate and present needs of the 21st century, where it is a world driven by technology and powered by data.

Therefore, Madam Temporary Speaker, this calls for creativity as we re-imagine democracy. How can an average person in a county assembly in Kenya feel that they connect, that they are being represented and that they have not been left behind? Every other facet of society, economy or industry has evolved with time; but legislatures, parliaments and assemblies across the world find themselves stuck in the past.

I will give an example where we had put out an advertisement, as the Committee on National Security, Defence and Foreign Relations, where we invited public views on a very important Bill about county enforcement officers. This was right in the middle of a county where *Kanjo* are harassing hawkers, young men and *boda boda* riders day in, day out; but only one person came for that public hearing. Why is it that only one person came? Why is it that, many times, when we call people for public participation, we get the same old crowd of activists and civil society composed of the same 10 or 15 people? The truth is that some of these people just come because of what comes along with it, yet Kenyans still feel that some things need to be done.

Madam Temporary Speaker, when we call for a meeting on a Tuesday or a Wednesday morning, yet one half of the people you want to come are in their offices somewhere, very few will come. Even those who come feel that in as much as they will give their views, they do not think these views will be taken into consideration. That is why it calls for us to use more of technology so that some of these things should be appearing online on Twitter, Facebook and on WhatsApp.

I am sure that if you get some of the young people in my county of Nairobi – whom I am very proud of – many of them are right now in iLab, NaiLab and various other incubation centres. We, therefore, need to create a space for them think and innovate how we can use technology to make proceedings of legislatures – both in the Senate and in the county assemblies – more relevant and immediate to them. Only then will we have quality engagement that is true with the people of this country.

Madam Temporary Speaker, even as we move along, I am glad to know that the Bill talks about English and Swahili being used, although my good friend, Senator Cheruiyot, has refuted that. However, it needs to remain as it is. It is not by chance that the Constitution recognizes English and Swahili as the official languages of this country. I challenge him to show us any county that has the geographical compactness of only one community or vernacular language, such that we can then say that in that county, if we

present things officially in one language, apart from English or Swahili, nobody from any other part of this country will be inconvenienced or feel excluded.

This is very deliberate, because we are living in a country where people speak vernacular in government offices. That does not bring us together, as a people; it divides us. Madam Temporary Speaker, I am on record saying that if there is that old woman from the village who can only express herself in that vernacular language, let us provide translation services for the person. That is encouraged. We are even moving to Swahili as the language for Africa; how can we then regress, as a country, to say that, “Oh, let us use Kikuyu in Murang’a;” or, “let us use Maasai in Kajiado” when it is already cosmopolitan?

Madam Temporary Speaker, the County Governments Act of 2012 talks about not having more than 70 per cent of people employed in a county coming from the same dominant community. Devolution was never supposed to create ethnic balkanization in this country; that this one is for Nandi or Kipsigis or Luhya. Even within the Luhya Community, we say: “This one is the Samia or Isukha.” Devolution was supposed to, in recognizing our diversity, bring us closer together as a country by making sure that every part of this country gets a bite of the pie or taste of the cake. Therefore, I would refute any such amendment. Let us stick to our official languages.

The former President, Daniel arap Moi, said that multi-partism and vernacular stations would divide us further. I do not agree on the part of multi-partism, although it has, and which is why building bridges is very important. We should remember to see each other not just Kikuyu or Kamba or Luhya, but as Kenyans. In as much as we have different shades and cultures; that a Maasai dreams in much the same way as a Kamba does. The hopes of the Kikuyu are not against the aspirations of the Luo. We have more that unites us, as a people, than what divides us.

When you are riding in a *matatu* and it is tuned into *Inooro* F.M., *Ramogi* FM, *Vuuka* FM or *Wimwaro* FM, yet you do not understand it, do you feel more united with the people? Do you feel more or less Kenyan? Even if you are Sen. Wambua and listening to *Mbaitu* FM all the way from your county to Parliament, when you get out of the car, do you feel more of a Kamba or a Kenyan? These are hard questions that we must ask ourselves and answer. Therefore, I do not support this matter. We need to insist on English and Kiswahili. Let us speak our vernacular at home.

In Tanzania, there are more than 100 languages, but it is offensive to see somebody speaking in vernacular even if that person is in the remotest part of the rural area. That is why that country has been held together. The fabric that holds us together in this country is eroded because we think that somebody is greater or better because they come from where one comes from.

Madam Temporary Speaker, I have heard Members say that we have had challenges with many of our county assemblies. I do not agree when we address county assemblies in a patronizing manner; that we have gone there to build their capacity. Who are we? Many times, we also need our capacity built---

Madam Temporary Speaker (Sen. (Prof.) Kamar): Order, Senator! There is a point of information. Do you accept?

Sen. Sakaja: I accept, Madam Temporary Speaker.

Sen. Wambua: Madam Temporary Speaker, I wish to inform the Senator for Nairobi City County that when I listen to *Mbaitu FM*, *Athiani FM* and *Syokimau FM*, it does not make me any less of a Kenyan.

Madam Temporary Speaker, language is a carrier of a people's culture. We celebrate our diversity and appreciate that we come from different communities and speak different languages. I want to inform him that I am not less of a Kenyan when I listen to vernacular stations.

Sen. Sakaja: Madam Temporary Speaker, evidently, the good Senator was not listening to what I said. I did not say whether it makes you less of a Kenyan. I asked what it makes you feel, especially if you are in a situation where you are the only who does not understand that language. Does it make you feel more or less of a Kenyan?

Madam Temporary Speaker, in fact, to inform him further, I put advertisements in Kamba vernacular stations saying: "*Nye nitawa Sakaja, na iniyumbanitye kumuthukumia ta Seneta wenyu vaa Ilovi Kaunti.*" I can speak six languages fluently, but know that my ability to do that on its people--- I also put advertisements on *Ramogi FM*, *Mulembe FM* and the Maasai station, where I was telling them: "*Entasupa pokin. Mesisu yesu nanu eji ole Sakaja.*" I was telling them why I wanted to be their Senator.

(Loud Consultations)

The Temporary Speaker (Sen. (Prof.) Kamar): Order, Senator! Order, Members! In this House we only speak two languages; now you seem to be speaking Greek. Go back to the Bill.

Sen. Sakaja: Madam Temporary Speaker, let me go back to the Bill. It is not that we do not know how we speak these languages. Our country has come so many times to the brink of the precipice because of tribalism. Whatever it takes for us to do, even if it means insisting that when you are in a public space we should speak national languages, let us do it. I know that many people will resist it because it might be unpopular in their different areas.

I am fortunate that, as the Senator for Nairobi City County with 43 communities, I can say that. But let us ask ourselves what is it that creates the feeling of exclusion and division; that if we do not have our person in position of influence, we will be left behind.

Madam Temporary Speaker, back to the issue of petitions, I am excited that once this is passed the ordinary Nairobiian will be able to go and present their petition on an issue that affects them. I said earlier that we should not be looking at county assemblies in a condescending manner, thinking that we will give them capacity. Sometimes we learn from them.

Madam Temporary Speaker, people have vilified my County City Assembly of Nairobi, but I am very proud of those individuals. I know that they are honourable men and women, but in one incident they slipped a bit, just because of the behaviour of a few of them. However, they are honourable men and women. In fact, many of the Members of the County Assembly (MCAs) in Nairobi were elected with more votes than most of the Members of the National Assembly, and they must be respected. Let us see how we can increase, work better together and share experiences on how to serve our people better.

Madam Temporary Speaker, I am glad that one of the petitions that have been dealt with in the Senate is from Nairobi small business owners and traders, and I will bring more. I will encourage them to go out more and listen to what those issues are. Sometimes it is you, as a leader, Senator or MCA, who would advise people when they come to you on how to come up with a petition. A petition, as opposed to a statement or any other form of expression or as even a Bill, has a specified timeline. If any Kenyan brings a petition to the Senate, it must be dealt with without fail in 60 days. This is a gem that many citizens have never understood or realized that they have that capacity and provision within the law.

As we deal with the present challenges that we have, in fact there is one petition that was brought to me and I have been discussing. Once this Bill is passed, I will propose that the petition goes to the County Assembly of Nairobi. The petition is on the issue of extrajudicial killings. Yesterday, there were riots in Kawangware because of a young person who was shot and killed by the police. He was picked up from a recreational facility. I have dealt with a few more cases in Dandora and Kayole. I know some boys who were picked out of a garbage truck and shot pointblank. I think we are sliding into anarchy.

In as much as we have crime in this city, we need to make sure that we solve it. But we cannot be the same ones creating the problem and then killing our young boys. Killing the youth is not a solution to crime or unemployment. The bigger problem is that we are causing unemployment. We do not want them to steal, yet we are the ones chasing them when they ride *boda bodas*, demolishing their *vibandas* when they decide to go into trade and arresting them in *matatus* when they decide to go into that industry.

We are not providing, implementing the laws, creating the national employment authority and making sure that we have 30 per cent procurement opportunities for youth and women. We think that the solution is killing young people. It is most unfortunate. Through the Committee on National Security, Defence and Foreign Relations that I am a part of, we will look into the issue of extrajudicial killings. There is a reason we have the rule of law. If we allow the police to continue doing this, in the name of dealing with thugs, tomorrow it will be your nephew or son.

In fact, yesterday, there was a case of a boy in the United States International University (USIU), a university where many Senators might have their children. A young boy was picked up from there and killed. We must address these issues and hold true fidelity to the reason we are here; to serve the people of the counties and the counties of this country.

Thank you, Madam Temporary Speaker.

Sen. Cherargei: Thank you, Madam Temporary Speaker. From the outset, I want to congratulate Sen. Pareno for this Bill. There was a petition that we brought here when I was the chairman of Nandi Team Transparency Group. I remember the first encounter when we wanted to present a petition to the County Assembly of Nandi in 2014; it did not end well. This is because, apparently, there was no standardized procedure. I ended up being injured.

Apparently, there was no standardized procedure. That is when I was injured. In fact, the reason I suffered injuries is because we were taking a Petition to the County Assembly of Nandi on Tuesday, 26th March, 2014. We were injured because there was no clear procedure. Fast forward to a few months later. Because it was no longer safe to take

Petitions to the county assembly, together with the current governor of Nandi County, we appeared before the Senate of the Republic of Kenya and presented a very strong Petition.

I know that there were many recommendations that were made. However, I am happy because the struggle has started from far. Sen. Pareno should appreciate that no one will undergo the torture and treachery that I went through when presenting a Petition because it will now not be pick or choose. Therefore, this is important.

Madam Temporary Speaker, secondly, when you look at Article 10 of the Constitution of Kenya, on national values and principles of good governance, public participation is one of the key aspects of any open democratic society. Therefore, these ones are assisting in “oiling” and ensuring access to information as provided by The Access to Information Act that is already a law in this country. This freshens up and ensures that public participation is achieved. Most counties are in the formative process. Therefore, we still have a long way to go in terms of public participation.

Article 34 and 35 of the Constitution on media freedom and access to information are basic. We need to appreciate that Kenya is one of the third world countries where there is access and flow of information because Petition presentation is part of it. If you go to some neighbouring countries, to question, challenge or petition an authority is not as easy as it has been made to appear in this country. Therefore, I support this Bill.

The other day, we were working on the Impeachment Procedure Bill, 2018 and checking the process that we need to follow. This is beneficial to Members of County Assembly (MCAs) and how counties will be run, their capacity and to all stakeholders that will ensure the success. It is also beneficial to the agencies that we have in the country.

Madam Temporary Speaker, I do not want to delve so much into the details of the Bill. However, I must appreciate that this is a simple, straightforward Bill. I hope we will dispose it off as fast as possible. Clause 3(g) of the Bill states that:-

“A Petition to a county assembly shall be in the form set out in the Schedule and shall:-

(g) indicate whether any efforts have been made to have the matter addressed by a relevant body and whether there has been any response from that body or whether the response has been satisfactory;

(h) Indicate whether the issue in respect of which petition is made is pending before any court of law or other constitutional or legal body.

Madam Temporary Speaker, there is no need for Clause 3(g). However, it will help to curb the habit of many agencies, for example, Government agencies, which do not care to open some of these Petitions that we present. Therefore, we should relook at this part and try to merge it with Clause 3(h) which is important.

You are a legal mind of long standing and part 3(h) is critical and important. If you say that we indicate efforts, you may need a letter and may be a particular agency or body has not responded. You might also need evidence to show that they have not responded in case they say that they have responded but you did not get the letter. Therefore, you need to restructure that aspect.

Clause 4 (3) states that:-

“The Clerk shall, within seven days from the date of receipt of the petition, review the petition to ascertain whether the petition meets the requirement specified under Section 3”.

The issue is whether the Clerk of the county assembly is beyond suspicion like Caesar’s wife. We are now giving them the power to determine the Petition. This is the question we were arguing in the Impeachment Procedure Bill, 2018. Why are we giving all powers to the clerk to determine whether a Petition meets the specified requirements? It is like a butchery where they measure the weight of meat *vis a vis* what is being balanced.

I am looking at the politics of the Bill. The Speaker, the Clerk and part of the MCAs Leadership Committee can conspire. If it is a Petition against the county government and the governor does not want it to be heard, it is easy for the Clerk to say that the Petition does not meet the minimum threshold. I know that the issue of threshold has been sorted out. However, we need to relook at these powers.

Clause 4 (4) states that-

“Where the Clerk considers a petition does not comply with Section 3, the Clerk may give such directions as are necessary to ensure that the petition is amended to comply with that section”.

Could we also re-modify this so that it does not become the work of the Clerk yet we know the politics that surrounds the running of counties. For example, the *ad hoc* Committee on Solai Dam Tragedy went through hook and crook to ensure that it was successful. However, there were so many blackmails and intimidations. These are the same people whom we told to petition the county assembly and agencies that are powerful. Therefore, we need to check this.

Clause 5 (1) states that-

“The Clerk shall, if satisfied that the petition meets the requirements specified under this Act, forward the petition to the Speaker for reporting in the county”.

These are immense powers for a Clerk who is a human being and is prone to errors. Could we have a modified process? The Clerk in this case should only be a messenger. He or she should only indicate in writing and not determine a Petition. Therefore, Sen. Pareno, you need to re-look at how to modify this. This is a good thing. However, how do we ensure that the process of rejection or acceptance of a Petition meets a particular minimum threshold when we are giving immense powers to only one person?

Clause 6 (1) states that-

“The Clerk shall keep and maintain a register in which shall be recorded all petitions and supporting documents, and the decisions of the county assembly on the petitions”.

This is in the principle of natural justice. We need an audit.

I heard someone allege that the Governor of Migori County has Kshs2.5 billion in his account. I wonder where the auditors are. Sen. Mutula Kilonzo Jnr. has questioned this because there has been no specific Petition to the Senate or any other agency. Therefore, for auditing purposes and in the spirit of fighting corruption and ensuring transparency, equity and fairness, I applaud you for this part. It will now be easy to visit a

county assembly to counter-check any malicious rejection of Petitions to the county assembly.

Madam Temporary Speaker, Section 91 of the County Governments (Amendment) Act, provides how communication should be done within the structure of the county. Therefore, I agree totally with Sen. Pareno on this aspect. In this process, we need audits to ensure that any Petition that is received by the county assembly is well recorded, captured and indicated.

Clause 5 (2) states:-

“The Clerk shall, if satisfied that the petition meets the requirements specified under this Act, forward the petition to the Speaker for reporting in the county assembly”.

That is why there should be reasons why the Petition has been rejected so that it is not challenged in any aspect; for example, if a Petition is not written in a respectful, decorous and temperament language. However, I have never seen a Petition that is not respectful. I believe that it can be put in a lighter way. When making strong demands and prayers, you may sound hard, but polite in your submissions. If you have to reject some decision, there must be good reasons to do so.

For example, if there is a particular petition from Kajiado or Narok County maybe on the Mau issue or any other issue affecting the people of Maasai land; you must take a decision either to support or reject it. Even as a director of Orange Democratic Movement (ODM) serving in national elections board - I hope you are still serving there – you have to take a decision. If the board made some decisions, you must give reasons for supporting or rejecting, for purposes of audit, especially now parties are being funded by the Exchequer.

Clause 6 is clear. In my opinion, the time should not be limited to 14 days. Later on, I know I will have an opportunity to propose my amendment. To me, seven days are sufficient. We all know this country has a lot of monkey business and anything can happen. If you give some people one day to do something mischievous, they can change everything by the time that decision is communicated. I suggest that instead of 14 days given to the clerk to communicate to the petitioner, we allow him to do so within seven days.

Some of the petitions being raised are of an urgent nature and they require action immediately. Those are some of the issues we need to consider seriously as we discuss this Bill. When you look at part (m) in the case of petition presented by a MCA on behalf of the petitioner, be countersigned by members presenting it. This is a procedure accepted worldwide. However, this might be counterproductive because of the sensitivity of the matter contained in the petition.

Some people may not want to be associated with the petition despite the fact that they are the ones petitioning the Senate or county assemblies. This could be because they are working in the county government, agency or a public body. They would not want to be seen. Maybe they want to use an MCA to petition the county assembly on their behalf. By asking them to counter sign the petition, we might be exposing them and disciplinary actions may be taken against them. Therefore, Sen. Pareno needs to re-look at this clause and amend it accordingly.

Madam Temporary Speaker, I know Sen. Sakaja has raised the issue of capacity building for MCAs. I agree with him that this is part of enriching devolution when we

bring such laws so that transition, growth and the influence of devolution will be easy. We do not want to hear MCAs saying these are criminal matters. If so, they should be reported to the police. As I speak, there is so a lot of restlessness in the county assemblies.

As Sen. Mutula Kilonzo Jnr. indicated, the speakers of the county assemblies are under siege. It is very unfortunate. We, as a legal Committee, have talked in county assembly fora to try and understand what is happening. It is a pity that nowadays a speaker of a county assembly wakes up in the morning and in afternoon he is no longer a speaker of the county assembly. He is rendered jobless by MCAs. These are issues that we need to address.

I am not casting aspersions to our colleagues in the National Assembly. However, there are some Bills we passed here and they have not deliberated on them. I urge them to fast track them. You heard the other day people were demanding for a Deputy Governor and specifically to be a woman in Nairobi City County. The other day, we saw Nairobi County Assembly MCAs ejecting their speaker. There is chaos in our county assemblies. Yesterday, we saw what happened to Kakamega County Assembly. Their Serjeant-at-Arms was being forced to bring the Mace so that they could have a sitting and elect another speaker.

We need to do something so that even as we introduce the position of deputy speaker, it will allow a seamless running of the affairs of our county assemblies. There are allegations of fights between clerks of various county assemblies and the speakers. I want to urge Members of the National Assembly to fast track the Bills we have sent to them so that we enrich devolution in this country. For example, they should prioritize the Petition to County Assembly (Procedure) Bill, 2018.

Some of these laws are very important because if we had the position of deputy speaker in place, we would not be having chaos and a mess in our county assemblies. We need to come up with laws that will ensure that the speakers of county assemblies are not removed from office on flimsy grounds. I do not know why MCAs are busy fighting county assembly leadership instead of them addressing their core mandate of oversight of the County Executive. They should avoid having backlog of serious issues they are supposed to handle.

I hope the Members of the National Assembly will fast track our Bills so that we have serious laws in place. Our Speaker is aware that we can have resolution of some of these issues if we enact these Bills. I hope my colleagues will fast track this Bill and transmit it for the necessary actions to be implemented.

We will be proposing some amendments to various clauses in this Bill to fine-tune it and make it the best piece of legislation. Anything that will aid and facilitate public participation, is welcome. I am always a champion of public participation because we want to give *wanjiku, olekenta, kamau, or kiprop* an opportunity to air their views in the spirit of our Constitution. I hope that even as we go for the referendum, which we are not aware when it will happen - maybe in 2022 and beyond - we will not remove the role of public participation in this Constitution. Probably we will be proposing a position of Prime Ministers, two Deputy Prime Ministers and so on. There will be many aspects of *punguza mzigo, ongeza mzigo*, or many other issues. I hope that public participation will be retained so that our people continue playing their role in the running of the affairs of our Government.

The Temporary Speaker (Sen. (Prof.) Kamar): Thank you, Sen. Cherargei.

Sen. Faki: Asante, Bi. Spika wa Muda kwa kunipa fursa hii kuchangia Mswada wa kutoa mwongozo wa kutoa malalamiko katika mabaraza ya kaunti zetu. Mswada huu umekuja katika wakati mwafaka kwa sababu tunaona kwamba Bunge za Kaunti zinaendelea kukua na kutatua matatizo ya wananchi katika Jamhuri ya Kenya. Kwa hivyo tukitoa mwongozo wa kupeleka malalamiko katika Bunge hizi, itawapa wananchi fursa ya kuweza kupeleka malalamiko yao bila ya kuwa na matatizo ya pesa ama ya kisheria ambayo mwananchi anaweza kushindwa kuyatatua kabla ya kufikisha malalamiko yale katika sehemu ambayo yanatakikana kutatuliwa.

Mswada huu utaboresha uwezo wa mabaraza ya kaunti kuweza kutatua matatizo ya wananchi katika maeneo yao. Tumeona kwamba, taasisi zinazo amua matatizo kama vile mahakama na mabaraza ya chifu, zimekwama kwa ajili ya mlumbiko wa matatizo. Kwa mfano, ukiangalia mahakama zetu hivi sasa zinalalamika kwamba majaji ni wachache na kesi zinazopelekwa ni nyingi. Kwa hivyo, fursa kama hii ikipewa mabaraza ya kaunti yataweza kurahisisha matatizo ya wananchi kwa sababu matatizo yao yatakuwa yanatatuliwa kwa haraka zaidi.

Muda uliowekwa wa siku 60 ni mwafaka. Mwananchi ataweza kujua matatizo yake yameamuliwa vipi katika muda huol Mwongozo lazima uwe ni rahisi kwa mananchi kuuielewa. Kuna taasisi nyingi ambazo mwongozo wao si rahisi kuuielewa. Kwa mfano, mahakama; mwongozo wake si rahisi kwa mwananchi kuuielewa. Kwa hivyo, kama hii ni sheria ya kusaidia mwananchi, lazima iwe na njia rahisi ya kuwezesha mwananchi kufikisha malalamiko yake mahali ambapo yatatatuliwa.

Ningependekeza kwamba mwongozo utowe fursa ya mwananchi kueleza matatizo yake kwa njia ya maneno; yaani, *oral presentation of the petition*. Tugesema pia waruhusiwe kueleza katika lugha ya mama na iwe ni jukumu la karani wa kaunti ama bunge la kaunti kutafsiri kwa lugha ya kiingereza ama lugha ya Kiswahili ili wabunge wa kaunti waweze kulitatua tatizo lile.

Japokuwa tunasema kwamba muongozo uwe rahisi, tukiangalia kifungu namba 3(k), kinasema kwamba ile sahihi ya mwenye kuleta malalamiko isiwe imebandikwa. Kwa hakika, hilo ni jambo ambalo litapinga hilo swala ambalo linasema kwamba muongozo uwe rahisi. Katika kifungu namba 3(l), mwenye kuleta malalamiko haruhusiwi kuweka barua, viapo ama stakabadhi zingine kwenye hiyo *Petition*. Hii pia itatatiza wananchi. Wananchi wanafaa kuruhusiwa kuweka stakabadhi zozote ambazo wanaona kwamba zitasaidia kurahisisha kueleweka kwa malalamiko yao na pia kutatuliwa kwa malalamiko yao kwa sababu wanaleta malalamiko na dukuduku yao katika bunge la kaunti.

Lazima hiki kifungu namba (l) kiweze kubadilishwa ili mwananchi aambatanishe stakabadhi zozote ambazo anataka kuleta katika bunge la kaunti ili matatizo yake yaweze kutatuliwa.

Jukumu walilopewa karani wa kaunti kuamua kama malalamiko yana ambatana na sheria ama la, ni jukumu kubwa sana. Ninaona kwamba jukumu lile liondelewe kwa karani wa kaunti na liletwe kwa bunge la kaunti. Malalamiko ikipelekwa kwa karani wa kaunti, jukumu lake ni kuyapokea na kuyawasilisha kwa spika naye spika, atawasilisha hayo malalamiko kwa bunge la kaunti. Hilo bunge la kaunti ndilo litaamua kamati ambazo zitashughulikiwa malalamiko hayo. Kama yatakuwa hayana msingi, basi

yatazungumziwa katika ile kamati na kuweza kutupiliwa mbali kulingana na vile ambavyo ameomba kufanya.

Ningependa kuunga mkono Mswada huu kwa sababu umekuja kwa wakati mzuri. Hii ni njia moja ya kuweza kukuza ugatuzi katika jamhuri yetu ya Kenya. Kumekuwa na usiri mwingi katika uendeshaji taratibu za mabunge ya kaunti na hata hapa katika *Senate*, ilibidi twende Eldoret ndiposa wananchi waweze kuona jinsi tunavyoendesha vikao vyetu na pia wajue jinsi wanasaidika na Bunge la Seneti.

Mabunge ya kaunti yakipewa fursa kama hii ya kutatua matatizo ya wananchi, itakuwa ni rahisi kwa wananchi kupata suluhisho kwa matatizo yao. Pia, itaonyesha kwamba wananchi wanafanyiwa kazi kulingana na vile ambavyo sheria inapendekeza.

The Temporary Speaker (Sen. (Prof.) Kamar): Thank you.

Sen. Halake: Thank you, Madam Temporary Speaker for the opportunity to contribute to this Bill. Please allow me to congratulate our colleague, Sen. Pareno, for this Bill. This Bill may look simple and light but it is one of the most fundamental Bills anchored in the Constitution with regard to the fundamental freedoms, implementation of the rights and fundamental freedoms. I congratulate Sen. Pareno for bringing this Bill.

The whole issue around Petitions is not just a constitutional requirement; it is also a rights issue. We have very robust laws and our dynamic Constitution of Kenya 2010. However, it is this kind of Bill that makes this Constitution actionable. In as far as implementation of the rights and fundamental freedoms of our citizens is concerned, Article 37 of the Constitution provides that every person has the right to present petition to public authorities and Section 15 of the County Government Act, provides for the right to petition a county assembly. This Bill does one fundamental thing which is to make our laws actionable.

In this country, we have said that we have the best laws, papers, strategies but until such a time when we will translate these big, high level laws into actionable lower level bills and legislation, then we will not be achieving the objects that the Constitution and our strategies have laid out for us. Congratulations Sen. Pareno for this.

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

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

This Bill cascades what goes on at the national level in terms of access to information and giving effect to Article 37 and it also cascades down to what the Senate does to the county assemblies. One of the things that the Senate should be doing, which is helped along by this Bill, is ensuring that county assemblies and devolution is strengthened at the lowest level of service provision. I sit in the Committee on Lands, Environment and Natural Resources and we have received the highest number of petitions. We deal with close to 13 petitions every day in my Committee.

Once the capacity and the frameworks have been set for our county assemblies, I foresee a situation where we will have the Senate offload some of the petitions and the things that can be done at the lower levels and things that can be done best by our Members of the County Assemblies. This means that the people will have access to legislation, oversight, representation where they live, work and pay.

This is a very important Bill. It may look like it is not a huge Bill but it is huge in the sense that it is making our Constitution and Standing Orders actionable. It is also providing a framework within which the other branch of Government, at the local level, will have the right tools. It has created access to our citizens to petition them, not to mention that it also implements the rights and freedom as provided for in our Constitution under Article 21(3) where it states that-

‘All state organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, persons with disability, children, youth, members of minority groups or marginalised communities, and members of particular ethnic, religious or cultural communities’

Article 21(1) and (2) states that-

‘(1) It is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights.

(2) The state shall take legislative, policy and other measures, including the setting of standards, to achieve progressive realisation of the rights as guaranteed under Article 43.’

Once again, this goes beyond a framework for us facilitating petitions, to actually providing access to information and a framework for accountability to the citizens. This is because the right to picketing and petitioning is also a human right as well.

Madam Temporary Speaker, in terms of Devolution and the entrenchment of the same, this Bill cascades what is a national high level law into a local level law that is actionable. However, in terms of some of its provisions as well as meanings and principles, as pointed out by some of our colleagues, we could look at some of the clauses that can be made better. I know that in terms of national laws, we may perhaps not wish to be very prescriptive with regards to prescribing specific ways in which petitions should be conducted.

However, with that said, I know that what Sen. Pareno was trying to cure is also the fact that sometimes the reason why things are not actioned is because the knowhow may not be there. Similarly, the capacities are strengthened through making sure that some of these way forwards and frameworks are set.

In terms of the limitations and the statement of the legislative powers and limits, I am glad to note that the Bill does not delegate legislative powers and does not limit the fundamental freedoms. If anything, it expands those freedoms and provides a framework where those freedoms can be enacted and exercised by citizens.

Madam Temporary Speaker, one of the things that I find important, even in terms of Article 96 – where we are supposed to oversight, legislate and represent the people – is that this Bill provides a very important initiative for doing all the three. In terms of oversight, when people bring to us a petition, we are then able to go to the bottom of what they are complaining about. Similarly, in terms of what they bring to us, we are then able to legislate on their behalf. For that to be done at the local level is a very important path to access the legislative oversight and representation mandate by both Houses at the national and the county levels.

A lot has been said about the alternatives to legal and other aspects. What we see here at the Senate with Petitions is because those people have tried everything they can.

For example, they are perhaps not able to go to the courts because of lack of finances; or they have gone to the police, but they have not got any help. Therefore, what this provides is to make sure that our citizens have options.

If they cannot afford the legal processes or the lawyers; if they cannot get help from the other structures – such as the police or wherever else they would like to take their grievances – then the house of the representatives they elected should then provide them with options. This Bill provides them with exactly that, but at the lowest level of service provision at our county assemblies.

Madam Temporary Speaker, I do not wish to repeat what has been said by many of my colleagues. I support this Bill because it is about time that a lot of the things we do in this Senate – be they Petitions, Statements, how we legislate our Bills, how we listen and conduct public participation forums or public hearings – should be cascaded down to our county assemblies. That way, our assemblies and citizens are reached where they live and work.

Madam Temporary Speaker, this Bill will facilitate a feedback mechanism. It is not enough to just tell people to bring issues, but with Petitions, you have to investigate, write a report, and give feedback of that report to the House. In that sense then, it provides a very good feedback mechanism. This is where it differentiates itself from any other form and channel of representation, oversight and of providing options to our citizens to bring forward their grievances or whatever it is they would like us to investigate.

With those few remarks, Madam Temporary Speaker, I once again congratulate our colleague and beg to support this Bill.

Sen. Wako: Thank you, Madam Temporary Speaker, for giving me this opportunity to speak on this very important Bill. In a sense, this Bill implements Article 37 of the Constitution, because it gives any person the right to petition.

Madam Temporary Speaker, I want to pay special tribute to Sen. Pareno, the former Chairperson of the Orange Democratic Movement (ODM) Elections Board---

Madam Temporary Speaker (Sen. Nyamunga): She is still the Chairperson.

Sen. Wako: Oh! You are still the Chairperson?

Sen. Pareno: Yes, I am.

Sen. Wako: I stand corrected. That is a very serious error. Please, do not disqualify me, because I may not get my certificate for not recognising that you are still the Chairperson.

(Laughter)

It is that experience in that position which has made it possible for her to draft a very detailed and straight-forward Bill, which any person can follow.

Madam Temporary Speaker, there was debate here about Swahili and English, and I agree that it should be in English or Swahili. However, I also believe that the Bill should be as simple as possible, because we are dealing with the right of any person.

Madam Temporary Speaker, Clause 3(c) states that:-

“A petition to a county assembly shall be in the form set out in the Schedule and shall—

be written in respectful, decorous and temperate language;”

What does the word “decorous” mean? Does it mean that the language should be as decorous as possible in your language? I would have thought that the word “respectful” and “temperate” would have been enough.

Clause 3(d) states that:-

“A petition to a county assembly shall be in the form set out in the Schedule and shall—
be free of alterations and interlineations in its text;”

The word “interlineations” can be fairly complicated for a simple person who wants to petition. Therefore, we may think of some words which are simpler and which even a layman can understand.

The Petition should be addressed to the county assembly, which is alright. Of course, later on the requirement under Clause 4(I)(a) is that it should be submitted to the respective clerk by the petitioner. Therefore, it may be useful, for the purposes of clarity, not to just address it to the county assembly, but to the clerk of the county assembly.

Madam Temporary Speaker, we have Clause 3, paragraph (g) and (h), on which I should make two comments. First, I think paragraph (g) deals with relevant administrative bodies and whether they have made an unsatisfactory decision.

Clause 3(g) is about matters which have been dealt with but not satisfactorily while Clause 3(h) is concerned with matters pending before any court of law or a relevant body. We need to simplify the language on both, concerning pending issues and matters that have been concluded.

There is a point that was made by the Senator for Mombasa. The intention is to make the petition as simple and straightforward as possible. Therefore, we should not attach any letters, affidavits or other documents. To me, confidentiality ought to be given particular regard in the matters that have been concluded. If the decision was on a piece of paper and the petitioner regards that as unsatisfactory, the easiest way would be to attach a certified copy of that decision to the petition so that it is clear. Again, the petitioner could say they are not happy with the copy and give reasons.

If the matter is pending before a court of law or other constitutional body, there must be something filed in that constitutional court. The document filed in court should be attached to the petition to make it easier for MCAs who will be looking at it. It should be easier for them to determine the decision of the relevant body and the grounds that a petitioner could claim are unsatisfactory.

What I am trying to say is that the petitioners should not just say that the matters were addressed by a relevant body and are unsatisfactory. They should give reasons and in doing so, it is useful to attach a copy of that decision. It is not just enough for somebody to say they filed a matter and it is pending before a court of law. It is better to also attach the decision so that people can see for themselves what is pending before the court.

Still on the issue of a matter pending before a court of law, I think that may have warranted a separate paragraph altogether. Maybe we should say that a petition should not be about a matter pending before a court of law. The petitioner should state whether it is pending before a court of law but we are not told the consequences of that. All we are told under Clause 4 is that:-

“A petition to a county assembly shall be—
(a) submitted to the respective Clerk by the petitioner; or

(b) presented by a member of the county assembly on behalf of a petitioner, with the consent of the Speaker.”

This means that the respective Clerk should be satisfied with the provisions in Clause 3 before stating that the petition is in order. A matter could be pending in a court of law whereas we know that if a matter is pending before a court, it should not be the subject of the petition. So, to make it clear, there should be a paragraph which says that if a matter is pending before a court of law, somebody cannot petition, so that they are stopped from the beginning.

With this Clause as it is, a matter can be taken forward but since the Clerk has no discretion to say that because a matter is pending before a court, it is not in order. This is because the Clerk is supposed to look at various paragraphs under Clause 3 and if they are satisfied, then they will go ahead to okay it. So, that is a matter that should be considered again.

Clause 3(j) states that-

“subject to paragraph (n), contain the names, addresses, identification numbers, signatures or a thumb impression of the petitioner or every petitioner, where there is more than one petitioner.”

While Clause 3(k) provides that-

“contain only signatures or thumb impressions, as the case may be, and addresses and identification numbers written directly onto the petition and not pasted thereon or otherwise transferred to it.”

Identification numbers are a legal requirement in our laws. The words there should be “identification card numbers” instead of “identification numbers”. What are these numbers? Are they of a school or an institution? We should do that during the Committee Stage.

I think I have talked about Clause 3(l) and I will now move to 3(m) which states that-

“In the case of a petition presented by a member of a county assembly on behalf of a petitioner, be countersigned by the member presenting it.”

I mentioned about Clause 4 where paragraph (b) provides that a petition to a county assembly can be presented by a member of the county assembly on behalf of a petitioner, with the consent of the Speaker, which is the way to go and I agree with that. An MCA can present a petition although when the matter is being heard by the committee, that petitioner can be called to give evidence. So, something requires to be straightened up there with the consent of the Speaker.

In the form of a petition, there should be a place where the MCA who presented a petition on behalf of a petitioner should sign. I also suggest that we should have on that form a place where the Speaker should sign to show approval which is a requirement under this Act.

You may have noticed that what happens is that you may have a Motion and somebody just appends a signature and you do not know which is which to show that it has been approved. The whole document becomes messy on the first page. You could find the Speaker, the Clerk and somebody in an office somewhere having approved. The document becomes messy with different pens and different colours of ink. Since we have

a petition form, we might as well need to have a place for their signatures at the relevant times.

I think I have seen it happen in one or two laws. When you have a petition form in English--- I hope that Sen. Pareno---

(Sen. Pareno consulted loudly)

The Temporary Speaker (Sen. Nyamunga): Order, Senator. Sen. Pareno should be listening to the corrections.

Sen. Wako: I suggest that the schedule in English should also be translated to Kiswahili because we are talking about the right of the ordinary people to petition the county assembly. So we should also have a Kiswahili version which they can read and understand. I suggest that consideration be given to that.

Madam Temporary Speaker, Clause 4 (5) says-

“A petition shall not be rejected merely because it is not addressed to the clerk of a county assembly.”

I wonder why we have this clause at all, when we have made it clear in Clause 3(c) that the Petition should be addressed to the county assembly. Why this other clause which says that it shall not be rejected because it is not addressed to the clerk? That is why I was suggesting that maybe we say it should be addressed to the clerk of the county assembly, rather than having this double; whether or not it should be addressed to the clerk. It creates a bit of a contradiction there and needs to be straightened up.

My last comment is on Clause 5(1) and (2). I would like to know the difference between the two. Is there something missing? I have tried to read them again and see that they are the same. Should one go or was sub-clause 2 aimed at something different? If it was aimed at something different, then maybe some words are missing there. This is because when I read sub-clauses 1 and 2 they are the same. We better look at that.

Let me put it on record, once again, my utmost appreciation to Sen. Pareno, who is also the Chairperson of my party – let me repeat it so that I am not disqualified in 2022 – for coming up with a very good Bill. This shows that she is concerned with, in particular, the rights of the ordinary people to petition the elected assemblies, in this case, the county assemblies.

I support.

The Temporary Speaker (Sen. Nyamunga): Thank you, ‘Senator 001’ for the good contribution.

Sen. Were.

Sen. Were: Thank you, Madam Temporary Speaker, for the opportunity to contribute to this Bill. I commend Sen. Pareno for coming up with it. You allowed ‘Senator 001’ by order of precedence to speak before me, but then that makes it difficult to speak after the Attorney-General *Emeritus* has spoken.

Nevertheless, this Bill is important in strengthening the role of the county assemblies. As we strengthen the county assemblies, we are strengthening devolution. By having this Bill and a procedure for members of the public in a county to present petitions, we are making sure that they participate in the making of laws in their county assemblies. This will also make county assemblies interactive and endearing to the public, which will make their work easier. Also, capacity will stop being an issue.

Members of the public will view the county assembly as doing something for them, since they will also be participating in legislation and matters dear to them will be handled through petitions.

Madam Temporary Speaker, this Bill provides for a petitions register. This is important because we will track whatever petitions go to the county assembly. That register will be available to any member of the public in Kenya. The Bill talks about some forms which will be standard that will serve all the counties. This will create uniformity and harmony in handling petitions to county assemblies. There was nothing wrong with each county having its own procedure, but having one procedure creates unity in diversity.

There were also issues on the role of the clerk and whether he or she is being given too many powers in determining the viability of a petition. We should note that a clerk is usually like the legal and administrative advisor to the county assembly and the speaker. Therefore, this is an office with different calibre of human resource that can go through each petition. There are various conditions that a petition is supposed to meet before it is approved for presentation to the county assembly by the speaker. All these will require somebody to go through them and approve. From “a” to “n” there are over 15 conditions that are required for the petition to pass. That requires somebody to do that job and it should be the clerk. I agree with the drafter of this Bill that the choice of the clerk or the clerk’s office approving the petitions was in order.

I would recommend an amendment; that in the Bill we have a limit to the period that a committee should consider a petition. It is not indicated in the Bill how long a committee should consider a petition after it has been assigned by the speaker of a county assembly. For example, in the Senate, a Committee should consider a petition within 60 days. We should also put a period for the petitions to the county assemblies.

I commend Sen. Pareno for this Bill. I think it is a good start towards helping county assemblies to meet their mandate.

I support.

The Temporary Speaker (Sen. Nyamunga): Sen. (Dr.) Musuruve, proceed.

Sen. (Dr.) Musuruve: Thank you, Madam Temporary Speaker, for giving me the opportunity to add my voice to this important debate. Let me begin by commending Sen. Pareno for coming up with this Bill.

The Senate is mandated to represent counties and protect their interests. That is the beauty of devolution. County assemblies come in handy to ensure that this is implemented. Constitutionally, sovereign power belongs to the people of this country. Therefore, we are talking about the common man and giving them a chance to enjoy the fact that power belongs to them. This Bill will set the stage, pace, procedures, protocol and so on with regard to how issues will be dealt with in the county. There is need to have a standard way of doing it.

Procedures are very important. For instance, who actually takes the petition to the county assembly? Where does it go? Is there any register and a follow up of the petition to the end? It has come out clearly that a petition should be written or typed in English or Kiswahili languages. Both English and Kiswahili are official languages in this country. Kiswahili language is a national language and a *lingua franca*.

Sen. Pareno should take into consideration the issues of Persons Living with Disability (PLWDs), especially those with language challenges. There is need to take into

consideration the plight of the deaf or people with special needs. For example, an interpreter should be availed to interpret exactly what the petition is all about. Petitions are not only limited to normal Kenyans. They can come from PLWD. Power belongs to all Kenyans, including PLWD. This Bill must be inclusive. We do not want the PLWDs to be left out in any way. It is important to take care of them in the counties. Their needs must be met both at the county and national levels.

Madam Temporary Speaker, I also support what Sen. Pareno said about language. The language should be courteous. Whoever will be drafting the petitions must be guided by some basic rules in language. This is because there is a standard way of communicating and in a language that is acceptable in our society. They must use official language which is courteous in drafting petitions.

Madam Temporary Speaker, this Bill seeks to find out whether the petition has been taken to any relevant authority before reaching the county assembly. If so, how was it addressed? If not, then the county assembly can go ahead and address it accordingly. If it was handled by the relevant authority, the outcome must be stated and the response availed. If the petitioners were not satisfied, then it is valid to go to the next level. That is before the county assembly.

Madam Temporary Speaker, the Bill says an MCA to present the petition before the county assembly on behalf of the petitioners. However, an MCA cannot present a petition on his own behalf. This is very important because the MCAs represent their constituents. They do not represent themselves. Constituents have many issues that they want MCA to address. For example, the issues of good roads, infrastructure, water, hospitals and so on. Therefore, if constituents want to petition their county assembly, they can do so through their MCA who will do so on their behalf.

Madam Temporary Speaker, it is very clear that the petition will not just be given on the corridors of a county assembly. There is a clear procedure on how the petition should be presented to the county assembly. It must be in a written form. There should be a register indicating the date when it was presented. The subject matter must be clear and it should not be ambiguous. This is a good procedure because it will ensure that the petition is ISO compliant. Anyone seeking to find out what exactly happened with any petition, can access the records because it will be in the public domain.

Feedback is very important in this age of technology. The constituents are happy when they are given a timeframe within which they will get feedback. We owe our constituents a feedback. If they have an issue, they come to us or go to their MCAs. If they do not get a feedback, they will be demoralised. There is need for them to get the feedback because power belongs to them.

Madam Temporary Speaker, there is need for us, as the Senate, to ensure petitions presented to county assemblies will see the light at the end of the day. Our people have issues, but they do not know how to present them. If there is a clear procedure, that will be a plus to the county assemblies. The MCAs meet directly with their constituents. They know the needs of their people in their wards. For example, they know which people need employment opportunities, schools, dispensaries, factories, water and on.

I commend Sen. Pareno for bringing this Bill before this House. I support this Bill and pray that it will see the light of day.

The Temporary Speaker(Sen. Nyamunga): I thank all the Members who have contributed. I now call upon the Mover to reply.

Sen. Pareno: Thank you, Madam Temporary Speaker. I rise to reply to very good contributions that have been made in this House towards this Bill. I definitely acknowledge those who have contributed to this Bill, starting with Sen. Madzayo who seconded it, contributions by Sen.(Rev.) Waqo, Sen. Murkomen. Sen. Mutula Kilonzo Jnr., Sen. Cheruiyot, Sen. Sakaja, Sen. Cherargei, Sen. Faki, Sen. Halake, Sen. Wako, Sen. Were and, finally Sen. (Dr.) Musuruve.

I have noted their very rich contributions towards this Bill. All their suggestions will enrich this Bill. I am sure they will be considered at the time when this matter will be placed before the relevant Committee. Of course, there are suggestions that concerns petitions by groups that we should do public hearings. However, the Bill already gives room for them to be heard. It was in a modified form when Sen. Murkomen indicated that. This is because these MCAs live with the people and they can go down to see and talk to them. Those are some of the suggestions that will be considered. After all, the Bill is all about public participation. Therefore, if public participation calls for public hearings, then so be it. These are rich contributions.

Madam Temporary Speaker, there were concerns by Senators that have contributed that this is just another Bill that might go into the shelves and collect dust. We are bitter about Bills not being passed and approved by the 'Lower' House. There is this new or old term that they keep referring to as 'money Bills'. You wonder which Bill is not a money Bill. Therefore, we might have to go for that final interpretation of the court on what Bills are money Bills.

Concern has been raised that this is just another good Bill that might help the counties. We are here to represent the counties, make it easy for them and ensure that devolution is smooth and running. However, if we do Bills that will be stored in the shelves to collect dust, it will not make it easy for us to have a proper devolution. Therefore, it is time for us, the Senate, to reconsider getting proper interpretations of what we need to do to ensure that our work is smooth and running.

Madam Temporary Speaker, there was a suggestion that we think about the Kiswahili and English language and how people can submit Petitions in their languages. A lot of issues have come up on how diverse we are. However, we must appreciate our diversity but in unity. Therefore, these are some of the suggestions.

I strongly go for the argument by Sen. Sakaja that if we breakdown our Petitions into every other language, it might become difficult. May be, we might have to borrow what the courts do; they listen to every other tribe and language. However, they have interpreters who interpret everything that needs interpretation. These interpreters are paid by the court to interpret so that nobody is left out. Therefore, we might have to adapt that kind of system so that at the end of the day, we do not breakdown everything into our languages. Otherwise, it might then disintegrate us instead of bringing us together as a country.

There is also a submission that we should consider in this Bill that minor technicalities should not knock out a Petition. This is a very important aspect that we need to note. There are suggestions that we cannot just knock out a Petition because it is not addressed to the clerk of the assembly. However, we can broaden it to ensure that technicalities do not defeat a genuine Petition by the citizens. This is noted.

This Bill was meant to help and make it easy for citizens to petition, communicate and to have a linkage between the county assemblies and the people and for the people to

have a place where their grievances are heard. This Bill was meant to actualize that. Therefore, it cannot come in to consider technicalities against the interests of public good.

Madam Temporary Speaker, there is also a very strong argument of giving too much power to the clerk. For example, a clerk can knock out a Petition and it will not reach the assembly because he has a criterion that he uses to consider which one is admissible and which one is not. Therefore, we need to check whether there is too much powers to the clerk. Although, the clerk being the Chief Executive Officer (CEO) of the county assembly in some sort, could also have certain powers to thrush out a lot of things. There is already so much that is in the hands of a Speaker and all of us. It is always good to delegate some of these powers to the clerks for ease of our work. That is one aspect that we will relook at as we try to modify and have a version that is acceptable to all.

Sen. Cherargei brought about a thinking that not every other clerk is good and I might need to look at a modified version that will not allow any malice or political interference. To some extent, the clerks serve to give proper advice to the county assemblies. Therefore, we should have a provision that, if a clerk rejects a Petition, he or she must have reasons for rejection. Therefore, that will make it easier for us to know that the rejection of such a Petition was merited. It is better to have criteria through which the clerk can vet and know whether the Petition meets the threshold than not give him or her these powers.

Madam Temporary Speaker, some Senators have also requested that we amend the Bill to include time limits for purposes of when the clerk should submit the Petition to the Speaker and the period within which the Committee will handle and process the Petition. That is noted and we shall make it better for all of us.

Madam Temporary Speaker, there is also a very good aspect that has been brought forth by the submission by Senator 001, the senior Senator, Attorney-General *emeritus*. I appreciate his contributions. He was doing it with a toothcomb like the drafter he is. He went Clause by Clause and he was able to point out very good aspects. For example, where there are repetitions like in Clause 5.

He also proposed that we allow the petitioners to give additional evidence, for example, affidavits and proof of a case that exists so that somebody does not come to say that there was a case that existed and it was not handled. He also gave us insights on how we can use simpler language instead of using long English terms that are difficult to understand and inclusive corrections on National Identification Cards (ID) and how we have phrased certain phrases. We have noted that and we will take it into account.

He also suggested that the Schedule that we have done in English should be translated in Kiswahili. There is nothing wrong with that because we have already acknowledged in this Bill that we should have Petitions in Kiswahili or English. Therefore, if we have a Petition in Kiswahili, we should equally have a Schedule that is in Kiswahili. That is acceptable and it will be considered with a little bit of clean up on the Clauses.

Finally, I appreciate Sen. (Dr.) Musuruve's intervention that we need to consider and ensure that this Bill is inclusive of Persons Living with Disabilities (PWDs) so that they are not left out when it comes to putting Petitions across. That is noted.

I thank all those that have contributed. I beg to reply.

Madam Temporary Speaker, as I close, noting that this is a Bill that will definitely call for delegations to vote, I, therefore, move under Standing Order No. 61(3), that you defer the putting of the question to another date.

The Temporary Speaker (Sen. Nyamunga): The putting of the question is deferred to tomorrow.

(Putting of the question on the Bill deferred)

We move on to the next Order.

Sen. Mutula Kilonzo Jnr. and Sen. Sakaja are here. Therefore, as it was earlier stated, we will go back to Order No.14.

COMMITTEE OF THE WHOLE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE DISASTER RISK MANAGEMENT BILL (SENATE BILLS NO.8 OF 2018)

The Temporary Chairperson (Sen. Pareno): Sen. Sakaja and Sen. Mutula Kilonzo Jnr., approach the Table for consultation.

*(Sen. Sakaja and Sen. Mutula Kilonzo Jnr.
consulted the Chairperson)*

Hon. Senators, we are doing the Committee of the Whole and we will be looking at the Disaster Risk Management Bill (Senate Bill No. 8 of 2018).

Clause 3

Sen. Mutula Kilonzo Jnr.: Madam Temporary Chairperson, I hereby move:- THAT clause 3 of the Bill be amended in sub-clause (2) by deleting paragraph (c).

The amendments have been circulated to the Senators.

(Question of the amendment proposed)

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

Clause 4

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

THAT clause 4 of the Bill be amended by deleting sub-clause (2).

This is to uphold the principles of devolution and relations of national and county governments.

(Question of the amendment proposed)

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

Clause 5

Sen. Mutula Kilonzo Jnr.: Thank you, Madam Temporary Chairperson. Sorry.

The Temporary Chairperson (Sen. Pareno): Could we hear from Sen. Sakaja?

Sen. Sakaja: Madam Temporary Chairperson, I was confirming that my Committee amendments were withheld if we subsequently pass Sen. Mutula Kilonzo Jnr.'s amendment and that is the case.

I beg to move:-

THAT clause 5 of the Bill be amended-

(a) in paragraph (a) by inserting the words “and inter-ministerial” immediately after the word “inter-agency”;

(b) in paragraph (f) by inserting the words “in coordination with the Bureau of Statistics,” at the beginning of the paragraph;

This is to ensure that all data is sourced from the official depository of data in the country which is the Kenya National Bureau of Statistics (KNBS) and that there is inter-ministerial and inter-agency cooperation.

(Question of the amendment proposed)

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

There is a further amendment to Clause 5.

Sen. Mutula Kilonzo Jnr.: Thank you, Madam Temporary Chairperson. I propose to move that Clause 5 be further amended:-

THAT clause 5 of the Bill be amended—

(a) in paragraph (b) by inserting the word “national” immediately after the words “serve as the central” ;

(b) in paragraph (e) by deleting the words “and county” appearing immediately after the words “implementation of a national”;

(c) in paragraph (g) by deleting the words “and county” appearing immediately after the words “implement a national”;

(d) in paragraph (h) by inserting the words “at the national level” immediately after the words “disaster risk management”;

(e) in paragraph (m) by inserting the words “in collaboration with the relevant county committees, at” immediately after the words “at national and”;

(f) by deleting paragraph (o) and substituting therefore the following new paragraph—

(o) lead and coordinate mainstreaming of disaster risk management in national government strategies, policies and plans;

The amendments were circulated to the Senators.

(Question to the further amendment proposed)

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

Clause 6

Sen. Mutula Kilonzo Jnr.: Thank you, Madam Temporary Chairperson. I propose to move:-

THAT clause 6 of the Bill be amended by inserting the following new sub-paragraph immediately after paragraph (f) –

(g) enter premises to secure the supply of water, access a disaster area or for any other purpose related to disaster prevention or response.

The amendments were circulated to the Senators.

(Question of the amendment proposed)

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

Clause 7

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

THAT clause 7 of the Bill be amended-

(a) by deleting subclause (1) and substituting therefor the following new subclause-

(1) There shall be a Board of the Authority which shall comprise—

(a) a chairperson, who shall be appointed by the Cabinet Secretary;

(b) the Principal Secretary in the Ministry responsible for matters relating to disaster risk management;

(c) the Principal Secretary in the Ministry responsible for finance;

(d) the Principal Secretary in the Ministry responsible for internal security;

(e) a representative of the Kenya Red Cross Society;

(f) one person nominated by the Council of County Governors;

(g) one person appointed by the Cabinet Secretary from amongst three persons nominated by the Kenya Private Sector Alliance;

(h) one person appointed by the Cabinet Secretary from amongst three persons nominated by the Kenya Medical Association; and

(i) the Director-General of the Authority who shall be an ex-officio member and who shall have no vote.

(b) by deleting sub-clause (3) and substituting therefor the following new sub-clauses –

(3) A person shall qualify for appointment as the chairperson of the Board if that person —

(a) holds a degree from a university recognised in Kenya;

(b) has knowledge and experience in matters related to disaster management; and

(c) meets the requirements of Chapter Six of the Constitution.

(3A) A person shall qualify for nomination under paragraph (1) (g) and (h) if that person —

(a) holds a degree in a relevant field from a university recognised in Kenya; and

(b) meets the requirements of Chapter Six of the Constitution.

This will deal with the matter of the composition of the board as well as appointment and qualifications of the chairperson and members of the board.

(Question of the amendment proposed)

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

There is a further amendment to Clause 7.

Sen. Mutula Kilonzo Jnr.: Madam Temporary Chairperson. I propose to move a further amendment:-

THAT clause 7 of the Bill be amended by inserting the following new paragraph immediately after paragraph (c) –

(ca) the Principal Secretary in the Ministry responsible for environment.

The amendments were circulated to the Senators.

(Question of the further amendment proposed)

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

Clause 8

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

THAT clause 8 of the Bill be amended in paragraph (d) by deleting the words “that violates” appearing immediately after the words “an offence” and substituting therefor the words “that constitutes a serious violation of”.

(Question of the amendment proposed)

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

Clause 9

(Question, that Clause 9 be part of the Bill, proposed)

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

Clause 10

Sen. Mutula Kilonzo Jnr.: Madam Temporary Chairperson, I propose to move:- THAT clause 10 of the Bill be amended by inserting the words “shall serve on a part time basis and” immediately after the words “members of the Board”.

(Question of the amendment proposed)

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

Clause 11

(Question, that Clause 11 be part of the Bill, proposed)

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

Clause 12

Sen. Sakaja: Madam Temporary Chairperson, I beg to move:- THAT clause 12 of the Bill be amended by deleting subclause (2) And substituting therefor the following new sub-clauses-

(2) A person shall qualify for appointment under this section where such person —

(a) holds a relevant degree from a university recognised in Kenya;

(b) has at least five years’ managerial experience; and

(c) meets the requirements of Chapter Six of the Constitution.

(2A) The Director-General shall hold office for a term of five years which may be renewed once.

This is in respect with the appointment of the director general and his qualifications thereof.

(Question of the amendment proposed)

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

Clause 13

Sen. Sakaja: Thank you, Madam Temporary Chairperson, I beg to move:-
THAT Clause 13 of the Bill be amended by deleting the word “co-opt” appearing immediately after the word “the board may” and substituting therefor the word “engage”.

(Question of the amendment proposed)

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

Clause 14

Sen. Sakaja: Thank you, Madam Temporary Chairperson, I beg to move:-
THAT Clause 14 of the Bill be amended in subclause (1)-
(a) by inserting the words “in coordination with the Bureau of Statistics” at the beginning of the introductory phrase to paragraph (b);
(b) by inserting the word “county” immediately after the words “national and” in the introductory phrase to paragraph (d);
(c) in paragraph (d) by inserting the following new sub-paragraph immediately after sub-paragraph (vi)-
(vii) any other critical infrastructure including power stations, power distribution networks and water reservoirs.

Madam Temporary Chairperson, I confirm that the further amendments proposed by Sen. Mutula Kilonzo Jnr. are not in contradiction to these amendments, apart from the one in Paragraph (d). This means that if the amendment proposed by Sen. Mutula Kilonzo Jnr. is carried, then this might not hold. Please allow us one second for consultation.

(Sen. Sakaja consulted Sen. Mutula Kilonzo Jnr.)

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Pareno): The Division will be at the end.
There is a further amendment to Clause 14 by Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Thank you, Madam Temporary Chairperson.
I beg to propose:-

THAT Clause 14 of the Bill be amended—

- (a) in paragraph (b) of subsection (1) by deleting the word “indigenous” appearing at the beginning of sub-paragraph (viii) and substituting therefor the word “traditional”;

- (b) in paragraph (d) of subsection (1) by deleting the word “response” appearing immediately after the word “emergency” and substituting therefor the words “preparedness, response and recovery”.

(Question of the further amendment proposed)

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

Clause 15

Sen. Mutula Kilonzo Jnr.: Thank you, Madam Temporary Chairperson, I propose:-

THAT Clause 15 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (1) —

(1a) The national disaster risk management plan and strategy shall include information on —

- (a) measures to be taken for the prevention and response to disasters and the mitigation of their effects;
- (b) measures to be taken for preparedness and capacity building to effectively respond to any impending disaster;
- (c) minimum requirements for the provision of shelter, food, drinking water, medical services and sanitation in relief camps;
- (d) roles and responsibilities of different Ministries, county governments, and relief agencies in respect of measures specified in paragraph (a), (b), and (c); and
- (e) any other matter relevant to disaster risk management.

(Question of the amendment proposed)

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

Clauses 16 and 17

*(Question, that Clauses 16 and 17
be part of the Bill, proposed)*

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

Clause 18

Sen. Sakaja: Thank you, Madam Temporary Chairperson, I beg to move:-

THAT Clause 18 of the Bill be amended in subclause (1) by-

- (a) deleting the word “commandant” appearing at the end of paragraph (d) and substituting therefor the word “commander”;
- (b) by deleting paragraph (g) and substituting therefor the following new paragraph-

(g) one person, with experience in disaster management, who is a resident of the county, appointed in writing by the chairperson of the most representative private sector association in the county;

(c) inserting the following new paragraph immediately paragraph (h)-

(i) one person, with experience in disaster management, nominated appointed by the governor from the faith-based organisations in the county;

(Question of the amendment proposed)

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

Clause 19

Sen. Mutula Kilonzo Jnr.: Thank you, Madam Temporary Chairperson, I beg to propose:-

THAT Clause 19 of the Bill be amended in subsection (1) by—

(a) inserting the following new paragraphs immediately after paragraph

(a)—

(aa) serve as the central agency in the implementation of disaster risk management activities in the respective county;

(ab) establish and implement a county early warning and emergency communication strategy that is in line with the national early warning and emergency communication strategy;

(b) deleting paragraph (k).

(Question of the amendment proposed)

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

Clause 20

Sen. Sakaja: Thank you, Madam Temporary Chairperson, I beg to move:-

THAT Clause 20 of the Bill be amended in the introductory clause by deleting the word “Authority” appearing immediately after the words “foregoing the” and substituting therefor the word “Committee”.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. Pareno): There is a further amendment by Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Madam Temporary Chairperson, I beg to move:-

THAT Clause 20 of the Bill be amended by inserting the following new paragraph immediately after paragraph (c) –

(d) to enter premises to secure the supply of water, access a disaster area or for any other purpose related to disaster prevention or response.

(Question of the further amendment proposed)

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

Clause 21

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

THAT Clause 21 of the Bill be amended in paragraph (d) by deleting the words “that violates” appearing immediately after the words “an offence” and substituting therefor the words “that constitutes a serious violation of”

(Question of the amendment proposed)

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

Clause 22

*(Question, that Clause 22
be part of the Bill, proposed)*

Clause 23

Sen. Mutula Kilonzo Jnr.: Madam Temporary Chairperson, I beg to move:-

THAT Clause 23 of the Bill be amended in Sub-Clause (1) by deleting the words “applicable contingency” and substituting therefor the words “county disaster risk management.”

(Question of the amendment proposed)

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

Clauses 24-29

*(Question, that Clauses 24-29
be part of the Bill, proposed)*

Clause 30

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

THAT clause 30 of the Bill be amended-

(a) in sub-clause (1) by deleting the word “Authority” appearing immediately after the words “administered by the” and substituting therefor the word “Board”;

(b) in sub-clause (4) by inserting the word “prevention” immediately after the words “used for disaster.”

(Question of the amendment proposed)

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

Clauses 31- 35

*(Question, that Clauses 31-35
be part of the Bill, proposed)*

Clause 36

Sen. Sakaja: Madam Temporary Chairperson, I beg to move:-
THAT Clause 36 of the Bill be amended in Sub-Clause (1) by inserting the following new paragraph immediately after paragraph (g)-
(ga) the administration and management of the Fund;

(Question of the amendment proposed)

Clause 37

Sen. Mutula Kilonzo Jnr.: Madam Temporary Chairperson, I beg to move:-
THAT Clause 37 of the Bill be deleted and substituted therefor with the following new clause —

37. (1) A Person who, immediately before the commencement of this Act, was an employee of the National Disaster Operations Centre or the National Disaster Management Unit shall on the commencement of this Act be deemed to be seconded to the Authority to serve for a period of not more than one year.

(2) Despite subsection (1), a person who was an employee of the National Disaster Operations Centre or the National Disaster Management Unit immediately before the commencement of this Act shall be given an option to either —

- (a) return to the institution that seconded that person to the National Disaster Operations Centre or the National Disaster Management Unit; or
- (b) apply for employment to the Authority.

(Question of the amendment proposed)

Clauses 39 and 40

*(Question, that Clauses 39 and 40 be
part of the Bill, proposed)*

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

New Clause 25A

Sen. Mutula Kilonzo Jnr.: Madam Temporary Chairperson, I beg to move:- THAT, the Bill be amended by inserting the following new clause immediately after Clause 25 –

25A. (1) Despite the provisions of this Act, each county shall establish a department responsible for firefighting and matters connected to firefighting.

(2) The relevant assembly may, for purposes of subsection (1), enact a law to provide for –

- (a) Functions of the firefighting department including response and rescue services; and
- (c) Any other matter relevant to firefighting.

(New Clause 25A was read the First Time)

Sen. Mutula Kilonzo Jr.: Madam Temporary Chairperson, I beg to move:- THAT, New Clause 25A be read a second time.

I request, Sen. Orengo, the Senate Minority Leader, to second.

The Senate Minority Leader (Sen. Orengo): Madam Temporary Chairperson, I second that the New Clause 25A be read a Second Time.

(Question, that the New Clause 25A be read a Second Time, proposed)

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

First Schedule

Sen. Sakaja: Madam Temporary Chairperson, I beg to move:- THAT the Bill be amended by deleting the First Schedule.

(Question, that the First Schedule be deleted, proposed)

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

Second and Third Schedules

(Question, that Second and Third Schedule be part of the Bill, proposed)

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

Clause 2

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

THAT, Clause 2 of the Bill be amended by —

(a) in the definition of the word “disaster” by inserting the words “and impacts” immediately after the words “environmental losses”;

(b) in the definition of the word “disaster risk management” by inserting the words “multi-sectoral” immediately after the words “capacities to implement”;

(c) in the definition of the word “hazard” by deleting the words “damaging physical event” appearing immediately after the words “means a” and substituting therefore the word “process”;

(d) in the definition of the word “preparedness” by inserting the words “imminent” immediately after the words “impacts of likely”;

(e) by deleting the definition of the word “prevention” and substituting therefore the following new definition-

“prevention” means the activities and measures taken to avoid existing and new disasters;

(f) in the definition of the word “recovery” by inserting the words “prevent or” immediately after the words “including efforts to”;

(g) by deleting the definition of the word “response” and substituting therefore the following new definition-

“response” means actions taken before, during or immediately after a disaster to save lives, reduce health impacts, ensure public safety and meet the basic subsistence needs of the affected persons;

(h) by deleting the definition of the word “vulnerability” and substituting therefore the following new definition-

“vulnerability” means the conditions determined by physical, social, economic and environmental factors or processes which increase the susceptibility of an individual, a community, assets or systems to the impacts of a hazard;

(i) by inserting the following new definition immediately after the definition of the word “hazard”-

“Bureau of Statistics” means the Kenya National Bureau of Statistics established under section 3 of the Statistics Act. No. 4 of 2006

(Question of the amendment proposed)

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

The Title and Clause 1

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

The Temporary Chairperson (Sen. Nyamunga): Division will be at the end. Hon. Senators, I now call upon the Mover to report.

Sen. Mutula Kilonzo Jr.: Madam Temporary Speaker, thank you. Pursuant to Standing Order 148, I beg to move:-

THAT, the Committee of The Whole report progress on the consideration of the Disaster Risk Management Bill (Senate Bills No. 8 of 2018) and seek leave to sit again tomorrow.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

PROGRESS REPORTED

THE DISASTER RISK MANAGEMENT BILL (SENATE BILLS NO. 8 OF 2018)

Sen. Pareno: Madam Temporary Speaker, I beg to report that a Committee of the Whole has considered The Disaster Risk Management Bill (Senate Bills No. 8 of 2018) and seeks leave to sit again tomorrow.

The Temporary Speaker (Sen. Nyamunga): Mover?

Sen. Mutula Kilonzo Jnr: Madam Temporary Speaker, I beg to move that the House does agree with the Committee on the said report. I request Sen. Orengo to second.

Sen. Orengo: I second.

(Question proposed)

(Question put and agreed to)

(Applause)

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, we shall defer Business appearing in Order No.17, as requested. We also defer the Business appearing in Orders No.18, 19, 20, 21 and 22.

BILLS

Second Readings

THE DATA PROTECTION BILL (SENATE BILLS NO. 16 OF 2018)

THE COPYRIGHT (AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO. 33 OF 2017)

THE PUBLIC PRIVATE PARTNERSHIPS (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILLS NO. 52 OF 2017)

THE LAND VALUE INDEX LAWS (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILLS NO. 3 OF 2018)

THE TREATY MAKING AND RATIFICATION (AMENDMENT) BILL
(SENATE BILLS NO. 23 OF 2018)

(Bills deferred)

MOTIONS

ENFORCEMENT OF NATIONAL TRANSPORT AND SAFETY
AUTHORITY (OPERATION OF MOTORCYCLE) REGULATIONS, 2015

AWARE that the National Transport and Safety Authority (NTSA) is mandated to plan, manage and regulate the road transport system, while ensuring the provision of safe, reliable and efficient road transport services;

FURTHER AWARE that motorcycle transport services have been rapidly embraced throughout the country, leading to several challenges including: rise in road accidents involving motorcycle riders, unlawfulness, insecurity and road congestion;

COGNIZANT that the National Transport and Safety Authority (Operation of Motorcycles) Regulations that came into force on 1st January, 2016 have not adequately addressed the challenges associated with the high numbers of motorcycles as a mode of transport;

NOW THEREFORE, the Senate resolves that the Ministry of Transport, Infrastructure, Housing and Urban Development; identifies strategies to enforce the National Transport and Safety Authority (Operation of Motorcycles) Regulations; in collaboration with County Governments, develop programs to sensitize and educate members of *bodaboda* associations and the public on the laws regulating motorcycle operations; submits a report to the Senate within ninety(90) days outlining the short and long term strategies and preventative measures that are being put in place to halt the rising cases of road carnage involving motorcycle riders.

(Motion deferred)

Next Order.

USE OF SIGNING EXACT ENGLISH (SEE) TO
INSTRUCT LEARNERS WITH HEARING IMPAIRMENT

THAT, AWARE that Article 43 (f) of the Constitution stipulates that every person has a right to education;

FURTHER AWARE that Kenya is among the State Parties that ratified the United Nations Convention on the Rights of Persons with Disabilities in which the parties undertook to ensure that Persons with disabilities are not excluded from the general education system and that the education of persons, and in particular children, who are blind, deaf or deaf-blind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development;

ACKNOWLEDGING that hearing impaired learners have linguistic challenges and perform dismally in academics, since all subjects other than Kiswahili and foreign languages are taught and examined in English;

COGNIZANT that hearing impaired learners who are educable can master the essentials of English language as they are able to sign sing the National Anthem in Signing Exact English (SEE);

NOW THEREFORE, the Senate calls upon the Ministry of Education, Science and Technology to: -

(1) Ensure that Signing Exact English (SEE) is used as a mode of instruction for persons with hearing impairment who are educable;

(2) Develop SEE instructional materials for learners with hearing impairment;

(3) Work with linguists and researchers to develop sign language resources; and,

(4) Ensure that sign language linguistics is offered as a discipline in universities and teacher training colleges.

(Sen. Musuruve on 11.10.2018)

(Resumption of Debate interrupted on 11.10.2018)

The Temporary Speaker (Sen. Nyamunga): Proceed, Sen. Halake.

Sen. Halake: Thank you, Madam Temporary Speaker, for this opportunity to contribute to this all important Motion on the use of Signing Exact English (SEE) as a mode of instruction for persons with hearing impairments.

Madam Temporary Speaker, the issues around exclusion for people with disabilities – be it in communication, instruction or in learning materials – and the gaps existing in all the structural and systemic exclusion have been highlighted this week. This Motion, therefore, seeks to ensure that our children get a chance at life and at education which would then include them and help them to pass examinations.

Madam Temporary Speaker, I would like to congratulate Sen. (Dr.) Musuruve for being a champion for People with Disabilities (PWDs), because we have learned so much, as the Senate, because she has created awareness about the issues faced by PWDs.

Madam Temporary Speaker, I was not even aware that people with hearing impairment did not even have sign language that would enable them to learn proper English. Since they are not able to learn proper English and our curriculum is in English, they do not have a chance at all to pass exams or even communicate in English. I am told that the Kenyan Sign Language falls a little short of making sure that the Standard English is taught to Persons with Disabilities (PWDs), especially those with hearing impairment.

We have also been made aware by Sen. (Dr.) Musuruve that our teachers' training colleges, universities, and middle level colleges do not even offer sign language training. What chance does a person with disability in this country have at all to learn, noting that it is a right of every child to have a decent education and a chance to communicate and be communicated to in a language they understand?

This again points to the rights of PWDs, especially children with hearing and seeing impairments. Yesterday, Sen. Mwaura told us that even our bank notes and coins exclude PWDs. As such, they are excluded from the economy and become targets for conmen, who take away money from them because they are not able to see what transactions they are making.

I support this Motion and it is about time that this House looked at every aspect of PWDs, be it sign language or access to buildings and other such requirements. Our Constitution is very clear that the dignity of a human being is not given; it is inherent. Therefore, it is for us to make sure that we do not take away from them by excluding them from communication and the economy because they cannot use the money in circulation.

We should provide the right system and processes in place for them to be educated properly and communicated to in the language they understand. They also need to have teachers who are competent in sign language and get the opportunity to transition from primary to secondary and university. At the moment when they move from one level of education to another, no curriculum exists for especially those with hearing and seeing impairments.

This points to a larger problem where about 15 per cent of the population that is disabled is actually locked out of everything. This amounts to denying of rights and fundamental freedoms. It also points to the fact that we, as society, are not mindful of our vulnerable groups. Sen. (Dr.) Musuruve has done very well to make sure that she not only creates awareness, but also moves these pieces of legislation that would ensure we put in place the right systems, processes and resources.

Madam Temporary Speaker, I am not sure if our budgeting process actually is inclusive. How much of the budget of this country - the Kshs3.1 trillion that we have as our public expenditure this Financial Year 2018/2019 - is actually allocated to PWDs? They do not even have the basics in terms of sign language, access to buildings and being able to transact and use money that is in circulation.

By every measure, we have excluded our PWDs, be it in terms of resources, systems, human resource to teach them and the curriculum that we are supposed to use to communicate with them. We need to look at this more holistically. Perhaps, we need to

harmonise all the pieces of legislation that are facing PWDs, so that we have one major plan for them. That legislation should have all the sub-components of different disabilities.

With those few remarks, I beg to support. I look forward to working with Sen. (Dr.) Musuruve and other Senators in this House like Sen. Mwaura who have been champions for the PWDs.

The Senate Minority Leader (Sen. Orenge): Madam Temporary Speaker, I also rise to support this Motion.

The Motion is predicated on Article 43 of the Constitution but before I come to that, I also join in congratulating Sen. (Dr.) Musuruve for bringing this Motion. Typically, she is hardworking on matters that relate to the PWDs of our society.

This Motion is premised under Article 43(f) which is about the right to education. I wanted to point out that there is a more fundamental pillar on which this Motion should be based. That is Chapter Two of the Constitution which is about The Republic. It talks about who we are as a Kenyan people and as a country.

Article 7 of the Constitution provides for national, official and other languages. In South Africa, other native languages are designated as official languages. In our country, there are only two official languages which are Kiswahili and English and the national language is Kiswahili.

Article 7(3)(b) states that-

“The State shall promote the development and use of indigenous languages, Kenyan Sign Language, Braille and other communication formats and technologies accessible to persons with disabilities.”

This is more of a fundamental provision because once we say that the national language is Kiswahili and the official languages are Kiswahili and English, we must make sure that Kenyans are able to use the tools that the Constitution gives, which are Kiswahili and English. It means that if you are impaired or suffer the disability of not being able to hear and therefore the only way of communication largely depends on sign languages, then you cannot fully engage as a citizen of the Republic of Kenya.

Chapter Two of the Constitution is fundamental because it is about The Republic which talks about the territory of Kenya; devolution and access to services; and national symbols and national days. Article 10 is about national values and principles of governance while Article 11 is about culture. Those are the fundamental features of our society as described in Chapter Two on The Republic.

Our people are entitled to education and I have already read out the provisions of Article 7(3)(b). The use of Kenyan Sign Language, Braille and other communication formats and technologies accessible to persons with disabilities will bring the common will of the Republic. Therefore, it is fundamental that this Motion should not only just be passed but there should be legislation requiring the state to do what the Constitution says.

Sen. (Dr.) Musuruve’s Motion is well founded in the Constitution. The right to education can be general but this is specific. In fact, something just arose as I was sitting there and I thought of going back---

The Temporary Speaker (Sen. Nyamunga): Sorry senior Senator, you have a balance of 15 minutes, which you will get next time the Motion is listed.

ADJOURNMENT

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, it is now 6.30 p.m., time to interrupt the business of the House. The Senate, therefore, stands adjourned until tomorrow, Thursday, 18th October, 2018, at 2.30 p.m.

The Senate rose at 6.30 p.m.