

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 14th May, 2019

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

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

PRAYER

COMMUNICATION FROM THE CHAIR

WELCOME TO HON. SENATORS FROM RECESS

The Speaker (Hon. Lusaka): Hon. Senators, it is my pleasure and privilege to welcome you back to the Senate from the recess which commenced on 12th April, 2019. I believe that you have had an opportunity to spend quality time with your families and constituents over the period and are reenergized for the upcoming business ahead of us.

Hon. Senators, during the recess, the Senators had an opportunity to attend and participate in the Fourth Annual Legislative Summit that was held in Kisumu County. The Summit afforded the Senators an opportunity to interact with various actors in devolution. I hope that from our discussions during the event, we learnt something new that would help us to enhance our work as Senators to protect counties and their governments. In addition, I want to urge the House to expedite passage of Bills that the Summit resolved to be prioritized.

Hon. Senators, during the same period, you were recalled for a Special Sitting to consider two important Bills; that is the Division of Revenue Bill and the County Allocation of Revenue Bill. It is important to note that the counties depend on the passage of these Bills for planning purposes and efficient service delivery to the people. It is my hope that the passage of these two Bills will be expedited within the next few days.

Hon. Senators, as I conclude, once again, I welcome you from the recess and urge you to redouble your efforts in ensuring that we meet and exceed the high expectations and trust that Kenyans have placed upon us.

I thank you.

MESSAGES FROM THE NATIONAL ASSEMBLY**DECISION OF THE NATIONAL ASSEMBLY ON SENATE
AMENDMENTS TO THE DIVISION OF REVENUE BILL, 2019**

Hon. Senators, I have another communication to make on the decision of the National Assembly on the Senate Amendments to the Division of Revenue Bill (National Assembly Bills No. 11 of 2019).

I wish to bring to the attention of the Senate that a Message has been received from the National Assembly, pursuant to Standing Order 41(3), regarding the decision of the National Assembly on the Senate amendments to the Division of Revenue Bill (National Assembly Bills No. 11 of 2019). Pursuant to the said Standing Order, I now report the Message-

“Pursuant to the provisions of Standing Orders 41(1) and 142 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly-

WHEREAS, on Tuesday 30th April, 2019, the Senate considered and passed the Division of Revenue Bill (National Assembly Bill No.11 of 2019) with amendments to clause 5 and the Schedule;

AND WHEREAS, on Wednesday, 8th May, 2019, the National Assembly rejected the Senate amendments to the Division of Revenue Bill (National Assembly Bill No. 11 of 2019);

NOW, THEREFORE, in accordance with the provisions of Article 112 of the Constitution and Standing Order 149 of the National Assembly Standing Orders, I hereby convey the said decision of the National Assembly to the Senate and seek the appointment of Senators to the Mediation Committee on the said Bill.”

Hon. Senators, Article 112(1) (b) of the Constitution provides that if one House passes an ordinary Bill concerning counties and the second House passes the Bill in an amended form, it shall be referred back to the originating House for reconsideration. Further, Article 112(2) (b) of the Constitution provides that after the originating House has reconsidered a Bill referred back to it under Clause (1) (b), that House rejects the Bill as amended, the Bill shall be referred to a Mediation Committee under Article 113.

Hon. Senators, in the circumstances, I concur with the Speaker of the National Assembly on the constitution of a Mediation Committee in accordance with Articles 112 (1) (a), 112(2) (b) and 113 of the Constitution.

I would also like to inform the House that the Senate has received communication that the Speaker of the National Assembly has appointed the following Members to represent the Assembly in the Mediation Committee that will attempt to develop a version of the said Bill that both Houses will pass-

- (1) The Hon. Adan Duale, EGH, M.P.;
- (2) The Hon. John Mbadi, EGH, M.P.;
- (3) The Hon. Kimani Ichung’wa, MP; and
- (4) The Hon. Cecily Mbarire, MGH, M.P.;

Hon. Senators, after consultations with the leaderships of the Majority and Minority, I also have appointed the following Senators to the Mediation Committee;

- (1) Sen. Mohamed M. Mahamud, MP

- (2) Sen. Mutula Kilonzo Jnr., MP;
- (3) Sen. Susan Kihika; and
- (4) Sen. Ledama Olekina, MP

I urge the members of the Mediation Committee to deal with this important assignment expeditiously and report back within the stipulated timelines.

I thank you.

THE DECISION OF THE NATIONAL ASSEMBLY ON THE MEDIATED
VERSION OF THE WAREHOUSE RECEIPT SYSTEM BILL, 2017

Hon. Senators, I wish to bring to the attention of the Senate that a Message has been received from the National Assembly, pursuant to Standing Order No.41 (3), regarding the decision of the National Assembly on the mediated version of the Warehouse Receipt System Bill (Senate Bill No. 10 of 2017). Pursuant to the said Standing Order, I now report the Message-

“Pursuant to the provisions of Standing Order 150 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly: -

WHEREAS, the Warehouse Receipt System Bill (Senate Bill No. 10 of 2017), was referred to a Mediation Committee in accordance with the provisions of Article 112(2) (b) of the Constitution;

AND WHEREAS, on Thursday, 9th May, 2019, the National Assembly considered and approved the Mediated Version of the said Bill as required under Article 113(2) of the Constitution;

NOW, THEREFORE, in fulfilment of the provisions of Standing Order 150(4) (b) of the National Assembly Standing Orders, I hereby convey the said decision of the National Assembly to the Senate.”

Hon. Senators, the tabling of the Report of the Mediation Committee is scheduled on today’s Order Paper and, subject to the giving of the notice of its adoption, I direct that the same be listed on the Order Paper, for consideration, by the Senate, of the Mediated version of the Bill pursuant to Article 113 of the Constitution and Standing Order 161 (3) of the Senate Standing Orders, tomorrow, 15th May, 2019.

I thank you.

COMMUNICATIONS FROM THE CHAIR

VISITING DELEGATION FROM MARA SENIOR
ACADEMY SCHOOL, BOMET COUNTY

Hon. Senators, I would like to acknowledge the presence in the Public Gallery this afternoon of visiting students and teachers Mara Senior Academy School in Bomet County.

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

I thank you.

VISITING DELEGATION FROM MUINDI MBINGU
BOYS SCHOOL, MACHAKOS COUNTY

Hon. Senators, I would like to acknowledge the presence in the Public Gallery this afternoon of visiting students and teachers from Muindi Mbingu Boys School in Machakos County.

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

I thank you.

Kindly proceed, the Senate Majority Leader.

PONT OF ORDER

ATTEMPTS TO ERODE THE CONSTITUTIONAL MANDATE
OF THE SENATE

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, I join you in welcoming my colleagues back to this Session. Thank you for the communications that you have made, particularly in relation to the various Bills that are under mediation. You have also acknowledged that we had a very successful and fruitful Legislative Summit. We thank you for your leadership in making sure the Summit was a success.

Mr. Speaker, Sir, having said that, there are things that we must correct in the public domain. I saw some colleagues from the National Assembly talking about the mandate of this House and purporting that this House has no mandate to invite certain Cabinet Secretaries (CSs). Some CSs have taken that as the gospel truth. I have heard that some of the MPs are masquerading to be legal advisors determining the standard and mandate of this House.

Let it be known to the public, CSs, and everybody in this nation that they cannot define the mandate of the Senate because it is already defined in the Constitution. Whereas our colleagues in the National Assembly were discussing the laws that this House can make, it is true that we are in a mediation process with them in more than five Bills. This is an acknowledgment of the fact that they respect the jurisdiction and mandate of this House.

Mr. Speaker, Sir, there is no single CS in the Republic of Kenya who can ignore any invitation by this House, including the summons of the Senate. I am glad that there are some CSs who understand their responsibility and take it seriously. However, those who feel that their ego is too big for this House should quit their positions so that the President can appoint other people to serve in those positions who respect the institutions of Parliament, including the Senate.

For the record of the public, this House will not bow to any pressure, concern or madness from any CS. We will summon CSs to come to the Committees of this House and to enlighten this House on various issues. I have previously spoken on the Floor of this House about the mandate of the Senate in so far as summoning any citizen of this Republic and discussing any matter. The only limited jurisdiction that we have been

given is in so far as Bills that concern counties. Anything else that is in the domain of any Committee of this House, we can summon anybody.

For the advice of the CSs, if they are summoned by the county assembly of anywhere in of this Republic, they have no choice but to appear before that county assembly because the mandate of the Senate, the National Assembly and the county assemblies is the same in summoning any citizen of this Republic to enlighten the public on matters that are within their domain.

Mr. Speaker, Sir, lastly, as a House, people must appreciate that when we are carrying out our responsibilities to push for certain legislative positions as the Senate, we do so for the benefit of the Republic. We will keep on doing so robustly without fear. We will not be intimidated. This House will continue doing its job. I am proud of the Senate and the work that we are doing.

(Sen. Mutula Kilonzo Jnr. consulted loudly)

Mr. Speaker, Sir, I hope that Sen. Mutula Kilonzo Jnr. can pay attention to what I am saying.

Sadly, yesterday the President signed a Bill into law that is purporting to amend various institutions of health in the country. I would like to inform the nation that, that is not law for purpose of our Constitution. The law that receive Presidential assent yesterday cannot be enforced anywhere in this Republic because it did not go through the required legal mechanism of passing a law.

I would also like to inform the Republic that in so far as matters of health are concerned, the national and county governments have concurrent jurisdiction. The official position under our Constitution is that, that law cannot be applied anywhere. The honest truth that must be said in this Republic is that any member of the public who is being pushed to apply that law must not obey it and if they feel that they are being pushed, they have a responsibility to go to the High Court of Kenya to declare that law null and void so that the process can begin afresh where the law will come to both Houses of Parliament.

Mr. Speaker, Sir, I am glad that I gave my personal advice and my advice as the Senate Majority Leader to the Executive; that that Law was not Law for the purpose of our Constitution. That advice was ignored and since the advice was ignored, I want to advise the public through this House that we should be able to take other remedial measures that will restore the dignity of Parliament in so far as passing laws is concerned. It is impossible to say that any health law can be passed in this great Republic without the input of the Senate and without the Senate performing its responsibility.

As legislators and as a person who is on the majority side and particularly, a person who is the Senate Majority Leader, I have a responsibility to this nation to give honest advice to the President, the Senate and the citizens of this Republic. I do not wish that many years down the line, it will be said that in the year of Sen. Kipchumba Murkomen, being the Senate Majority Leader, certain illegalities were done to undermine the jurisdiction of the Senate.

That must go on record and, since this is a House of record and I want my children, my great grandchildren to come and read and say that there was a man who was the Senate Majority Leader and who stood by the Constitution, stood by the mandate of

the Senate and stood by the desire that the institutional capacity of this House is not going to be undermined. I am ready to go to any length to ensure that, that dignity and the respect of this House is restored. That, shall be determined by this House.

Thank you and may God bless you. *Asante sana.*

Sen. (Dr.) Milgo: Thank you, Mr. Speaker, Sir. I wish to join you in welcoming the students who are in the Gallery today; students from Imara Senior Academy in Bomet County and Muindi Mbingu School. I wish to congratulate them for choosing to visit the Senate in order to observe how issues are conducted in this House.

I would like to advise them that when they go back, they should work hard and be disciplined so that in the future when we shall have retired from the Senate, they will come to replace us.

We work very hard in this House to ensure that standard education is given to them by provision of quality text books, enough teachers and other facilities. I urge them that when they go back to their school, they should encourage others who did not get the opportunity to come here today, that the Senate is a good place to be and that they can only be here through hard work.

Thank you very much.

Sen. (Dr.) Kabaka: Thank you, Mr. Speaker, Sir, for giving me this opportunity to welcome a school known as Muindi Mbingu High School, which is situated in Kathiani, Machakos County, which I represent.

Muindi Mbingu is a historical leader in this country, an independence leader. We do appreciate that he is gone into the annals of history as one of the persons who really agitated and fought the “White men”, who were suppressing this country from attaining Independence. It is on record that he is the man who marched the Kamba community to Nairobi all the way from Machakos to fight against imposed acts by the colonial governors. Eventually, to recognize Muindi Mbingu’s effort, we do have a road in Nairobi known as Mundi Mbingu Street, which really optimizes the Kamba leadership in the history of Kenya.

I want to join other Senators in congratulating the students of Muindi Mbingu High School, together with the teachers and I do say that it is one of the best schools in Machakos and also in Kenya with sterling performance. Like it has been said of us in the Senate or those in the National Assembly, we are here for a moment and after us, leadership will come from no other place than from Muindi Mbingu Secondary School and other schools in this nation.

Like it has been said, work hard, be focused, pray to God, excel in your exams and be good leaders in this country.

May God bless Muindi Mbingu.

Sen. Wetangula: Mr. Speaker, Sir, I join you in welcoming the students from Bomet and from Muindi Mbingu Secondary School. I had an opportunity to meet them at the entrance of the Senate. I took a group picture with them and they are very pleasant young men. I encourage all of them to work hard to replace us as we go to our sunset.

Mr. Speaker, Sir, I want to take up the point raised by the distinguished Senator for Elgeyo Marakwet; the Senate Majority Leader. Article 110 (3) of the Constitution is very clear, and for the avoidance of doubt, let me read it:-

“Before either House considers a Bill, the Speaker to the National Assembly and the Senate shall jointly resolve any question as to whether it is a Bill concerning counties and, if it is, whether it is a special or an ordinary Bill.”

This House will be interested to know from the Chair whether any such meeting was constituted to consider whether this Bill falls under this ambit. More important, under Schedule 4 of the Constitution, health is 95 per cent devolved. The national Government has only policy and referral hospitals, which are only five in number. To imagine that the National Assembly can pass a Bill relating to health and take it to the President for assent is a very serious assault on the Constitution in general and this House in particular.

I believe that somebody somewhere is not advising the President according to the Constitution and this House must voice this very strongly. If you want to follow the precedence of your predecessor; Hon. Speaker Ekwere Ekwere, when confronted with such a situation, led this entire House to the Supreme Court for an advisory opinion and the Supreme Court ruled in our favor. I want to urge that you also do not allow the books of history to be distorted against you to the extent that you are the Speaker who presided over the Senate when it was degenerating to its weakest level in the legislation of this country.

We must act in unison, collectively with resolve and, above all, with the strength that this House enjoys from the Constitution. That Bill as assented to, does not enjoy the force of law envisaged under the Constitution and is not capable of obedience.

Thank you.

Sen. (Dr.) Langat: Thank you very much, Mr. Speaker, Sir, for giving me this opportunity to join you in welcoming the students from Syongiroi Senior Academy and the students from the Muindi Mbingu High School.

I want to congratulate them for coming to this particular Senate; a House of reason. I want to say that Imara Secondary School from Chepalungu Sub-County and Constituency is a good school, one of the private schools endowed with a lot of discipline, very hard-working students and it is a school that has made us so proud in Bomet County.

I congratulate each student here and also encourage them that leadership is no longer the talk of tomorrow; it starts from today. Leadership begins in school when you are hardworking and disciplined. Therefore, I congratulate you. As you go back to your schools, work hard, support your school and the Government of Republic of Kenya. You should also become good citizens.

Mr. Speaker, Sir, as the Chairperson of the Committee on Education, I welcome the students and urge them to visit in the near future. I congratulate them and may God bless them.

Thank you, Mr. Speaker, Sir.

Sen. Outa: Thank you, Mr. Speaker, Sir. I also join you in welcoming the students from Muindi Bingu Secondary School and Mara Siongiroi Senior Academy Secondary school from Bomet.

We want to allow the students to learn from the best House of Parliament; the Senate. It is my prayer that at the end, they will acquaint themselves with the proceedings of the House and, in future, make the right choice to be Senators in the Republic of Kenya.

I thank the students of Mara Siongiroi in Bomet County who are my neighbours. As they go back, I send them my regards to my sister-in-law who is the current governor of Bomet County.

Mr. Speaker, Sir, I also take a cue from the Senate Majority Leader who has tried to advise the Cabinet Secretary (CS) and people who do not want to obey summons by this House. This is also extended to the Council of Governors (CoGs) who have made a declaration on the roadside that governors should not appear before the Senate.

The Chairperson of the CoGs is an experienced person who has been a Member of Parliament (MP) and a Minister. Therefore, he understands the Standing Orders and the Constitution. He cannot tell the governors not to appear before the County Public Accounts and Investments Committee.

We want the governors to know that this House is given a mandate to oversight them. For example, we know how money is mismanaged in some of those counties. That is why we are giving them a warning that any governor who will fail to appear before this House, the rules and the Constitution are clear that this House stands equivalent to the High Court. We demand that if they fail to appear, they be locked in chains and brought before this House.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Speaker, Sir. First, I join you in welcoming the school from Bomet and the one from Machakos. Secondly, I agree with Sen. Murkomen. I do not know whether the picture taken when the President was signing this Bill into law is correct because I saw him there. However, may be, it is an old picture. He was there, staring. He should have protested.

(Laughter)

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

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

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, if you look at that picture critically, I was sad. If you compare that picture with previous ones, you will realise that I was concerned. However, most importantly, for the record of the House, the Speaker, the Clerk and myself were there for the signing of the Assumption of the Office of the County Governor Bill which is sponsored by Sen. Wamatangi. We thought that the National Assembly was there for other Bills only for us to see during the signing that it was The Health Bill. In fact, it was clarified later that the Bill was signed despite our firm advice. For the record of this House, I was firmly against it.

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

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Speaker, Sir. I just wanted to confirm that it was a real picture. Sen. Murkomen has denied pictures before which looked like a photoshop.

Mr. Speaker, Sir, although I agree with The Assumption of Office of the County Governor Bill, I am not sure whether you and my good friend, the Senate Majority Leader were summoned without communication. This is because he says that you were called to sign something that you were not aware of and you were, therefore, ambushed.

We should find a method where you can raise a point of order, possibly, at that point. I do not know how that sort of thing arises.

Mr. Speaker, Sir, the Senate is under attack. For example, there is an attack from the CoGs where they say they will not come to the Senate. There is an attack from the Executive where they call the Senate Majority Leader for a photo opportunity, and yourself, Mr. Speaker, sir, where they are signing Bills that concern counties. The National Assembly is throwing bricks and bats at us every time we amend a law as if we are not supposed to amend it.

Mr. Speaker, Sir, Sen. Wetangula is right. We must stand up for something or something. Otherwise, there is no business of being in this Senate. I hope that we can precipitate a small crisis.

Mr. Speaker, Sir, the Mining Bill came to the Senate as a result of a serious protest by this House. It was such a serious protest. I believe and maybe, Sen. Murkomen can confirm that the Mining Bill returned on its way to the hill. It was on its way to assent. Is there a way you can find out when some of these things are taken to the House on the Hill so that we can deal with them? However, more importantly, from the seat you occupy, we should know how the Health Bill went through the First Reading, Second Reading, public participation, Third Reading and on to State House where you accompanied it and all of you were ambushed.

(Applause)

I am a little bewildered. Therefore, we call upon the Leadership to help.

(Sen. Murkomen interjected)

You did not invite me to State House. I would have protested. I am aware that the Senate Business Committee (SBC) has made a decision about the medical leasing equipment. May be, that is the entry point. Since the Committee on Health has not done what it is supposed to do, we call upon this House to stand up to be counted on the medical leasing equipment scandal. That is where the rubber will meet the road. That is how we will prove that we truly protect counties. This is because if we are under attack, nobody believes that we are truly protecting counties. We look like we are escorting counties to their downfall.

Sen. Cherargei: Thank you, Mr. Speaker, Sir. I join you in welcoming the two schools from Bomet and Muindi Bingu Secondary School.

I agree with the Senate Majority Leader. It is sad that way back in 2013, the Senate sought an advisory opinion and it was agreed that there should be concurrence.

Mr. Speaker, Sir, in Article 109 of the Constitution on exercise of legislative powers, legislative powers have been bestowed on Parliament. For the purposes of those people who advise the President, Parliament means the Senate and the National Assembly. May be, they did not pay attention to that.

Mr. Speaker, Sir, further, Article 116(1) states that:-

“A Bill passed by Parliament and assented to by the President shall be published in the gazette as an Act of Parliament within seven days after assent”.

I agree with my colleagues that the word is ‘Parliament’. It does not say the National Assembly. Therefore, it was unfair to advise the President to sign into law a Bill that the Senate did not have an input in. This must come to a stop.

Mr. Speaker, Sir, we expect that through the guidance of the House and yourself, the Senate must take a position because it is not a page boy or a flower girl in the process of legislative or of its powers. The powers of the Senate and the role that the Senate has in this country has been captured well in Article 96 of the Constitution of Kenya.

Mr. Speaker, Sir, I emphasize and request that, upon your guidance and that of the Committee of Justice, Legal Affairs and Human Rights--- we must give direction because there are many laws that have been assented to without the input of this House. We also have some regulations such as Election Regulations that we discussed today in the morning.

We must take a position and I hope that this House will allow Members of the Committee on Justice, Legal Affairs and Human Rights to do an audit of all the laws that have been passed without the concurrence, consent and participation of the Senate, and to ensure that the Constitution is followed before these laws are implemented.

Mr. Speaker, Sir, we look forward to rectifying all that in order to ensure that things work for the benefit and good of this country. I thank you.

The Speaker (Hon. Lusaka): There is a lot of interest but we have to move to the next Order. So, I will limit the time for those that I will allow to speak to two minutes each.

Sen. Wambua: Thank you, Mr. Speaker, Sir, for this opportunity. First, I join you and my colleagues to welcome students from Bomet and Machakos counties. Having said that, because I have only two minutes, it is not enough for the Senate Majority Leader to say that he was sad as the Bill was being signed into law. He needs to do more than just being sad.

As my colleague from Bungoma County has said, this is the time that the Leadership of this House must provide leadership from the front. They should lead this Senate to the courts for interpretation.

The law and the Constitution are clear. I will read part of Part 2 of the Fourth Schedule of the Constitution which states as follows-

“The functions and powers of the county are—

1. Agriculture, including—

- (a) crop and animal husbandry;
- (b) livestock sale yards;
- (c) county abattoirs;
- (d) plant and animal disease control; and
- (e) fisheries.

2. County health services, including, in particular—

- (a) county health facilities and pharmacies;
- (b) ambulance services;
- (c) promotion of primary health care;
- (d) licensing and control of undertakings that sell food to the public;
- (e) veterinary services (excluding regulation of the profession);
- (f) cemeteries, funeral parlours and crematoria; and
- (g) refuse removal, refuse dumps and solid waste disposal.”

The only function under the Fourth Schedule that is assigned to the national Government is the national referral health facilities. It is actually a slap in the face of the Senate for the President to assent to the Health Bill without the input of the Senate.

We also have issues when it comes to the procedure of processing Bills. It is also very clear that the Speaker of the Senate and the Speaker of the National Assembly must concur and decide whether a matter under legislation affects counties or not. Since health affects counties, the Bill must come to the Senate for input before being assented into law.

I rest my case.

Sen. Olekina: Mr. Speaker, Sir, I take this opportunity to join my colleagues to welcome the students who were here. I encourage them to take this opportunity to plant trees because this is a rainy season. The rivers in Bomet County are drying up and I am sure my sister, the nominated Senator from Bomet, will talk to the students and encourage them to plant more trees, so that we conserve our environment.

I would also like to condemn the acts of Members of the National Assembly for disregarding this House. There are 40 legislations which were amended through an omnibus Miscellaneous Amendment Bill and sent to the President for assent. Among them is the Health Bill which became an Act. The reason why some of us have vowed never to take the *Huduma Namba* is because the Registration of Persons Act was amendment through a Miscellaneous Amendment Bill and made into law where Section 9(a) was inserted forcing us to do something. These are things that we must talk about as a Senate.

I just want to let the public know that currently, there is a matter in court before a bench of three judges. They are Justice Nyamweya, Justice Mumbi Ngugi and Justice Weldon Korir. The matter was taken to court by Mr. Okiya Omtatah and the hearing will be on 21st May, 2019. He is seeking a hearing to squash all these legislations. The law is very clear.

Mr. Speaker, Sir, in the history of this nation, we must be counted as the House that defended the Constitution. You cannot tell me that we are operating under the rule of the jungle. If we have a Constitution, just like Christians have the Bible and the Muslims have the Quran, as citizens of this country and as leaders who are elected to defend the Constitution, then we must do so.

I rest my case.

Sen. Linturi: Mr. Speaker, Sir, personally I am happy that, whether by design or by default, the Bill was signed into law. That gives us an opportunity as the Senate to raise our antennas and look at the kind of impunity that takes place in this country.

The Constitution and the law are very clear. We have the Chief Executive Officer (CEO) of the country with serious legal minds that are supposed to advise him. Even without taking the advice, having served as a Member of Parliament (MP) and understanding that it is subject to the Constitution and the law, he should have known that health is a devolved function and being a devolved function, the Senate input is mandatory. Since the input of the Senate is mandatory, this is a clear show of the contempt in which the Executive holds this House. A time has come when we must tell the President that if he took the advice of whoever advised him, he should know that he is being advised by incompetent people.

I call upon the Senate to seize the opportunity and work with the other like-minded people in this country because we swore to protect and defend this Constitution. Therefore, it is upon us to ensure we live up to that spirit. Let us challenge the

constitutionality of this particular law. This is the only way we can tell them that indeed the people that advise the President are either misleading or are purely incompetent.

It is also important for them to know that one of the grounds for removal of people from offices according to the Constitution is incompetence. If there is an aspect of incompetence, then the agencies and institutions that are supposed to take up such matters of incompetence must move with speed and deal with such characters.

I thank you, Mr. Speaker, Sir, and rest my case.

Sen. M. Kajwang': Mr. Speaker, Sir, the students have left the Chamber but I would have wished them well. I wish to welcome Senators back from the long recess. Quite a number of Senators were engaged in various types of mischief because the Evaluation Fund that they were supposed to use to keep them busy was not forthcoming.

There has been a complaint that there are people signing this House into oblivion. My submission is that we are the ones signing ourselves into oblivion. We are giving away our sovereignty as a House.

Not too long ago, we brought in Cabinet Secretaries into this hallowed precinct of Parliament. In future, we should make this place hallowed, that if you are not elected or a Member of the Senate, you cannot sit here. We had Cabinet Secretaries coming here under the leadership of Dr. Matiang'i. Basically they came to set and sell their own agenda. We witness a higher level of absenteeism when we invite Cabinet Secretaries before our committee meetings. In fact, they sent Chief Administrative Secretaries (CASs) and they are embolden by the decisions that we made here.

In the past, we have allowed the President to sign Bills into law. Last year, the President signed into law the Appropriation Bill before we sorted out the Division of Revenue Bill. It is not enough for the Senate Majority Leader to come and use the privilege of Parliament to tell us that he protested by body language. He needs to protest in language that can be heard, described and written down.

Mr. Speaker, Sir, we have allowed Governors to defy summons of this House. The Committee on Land, Environment and Natural Resources summoned the Governor for Murang'a County, but he did not appear. The Inspector General refused to arrest him and then that Governor sneaked into this Parliament to take tea. We have Governors who say they will not appear before oversight Committees of this House. Then, they have the guts to call this House to a meeting in Naivasha and propose to the Speaker to convene a meeting to discuss a matter before a Committee. These Standing Orders say that a matter before a Committee shall not be referred to.

The same way the Chief Justice cannot direct a judge or a magistrate on a matter, is the same way the Senate Business Committee or the Speaker cannot direct the Committee on Justice, Legal Affairs and Human Rights or the Committee on County Public Accounts and Investments on a matter. We are the ones signing away our sovereignty and it is high time we stood up. One of the perfect opportunities we have is on The Division of Revenue Bill. Let us not allow counties to get less than Kshs335billion that this House has already recommended upon the recommendation of the Commission on Revenue Allocation, which is a constitutional body funded by taxpayers.

Thank you, Mr. Speaker, Sir.

(Applause)

Sen. Halake: Thank you, Mr. Speaker, Sir, for the opportunity to contribute. The students are gone, but I wish them well. I hope they picked one or two things. Let me also join you in welcoming back our colleagues. It was very nice to see them after a long time.

With regards to Bills and the mandate of this House, I agree that we have let ourselves down. It is not the first time that Bills have been assented to by the President without the input of this House. I can think of a dozen of them that have passed through that process. Not once have we done something about it and even when we have, we have not followed up with the implementation. I do not know if it is about time for us to look establish a Committee that will be looking at implementation matters or things of that nature, but clearly, there is gap. I have said before that wherever there is a crisis that persists, the crisis is of leadership, with all due respect, and the leadership is not just the leadership of the Senate but all of us in our respective committees.

Mr. Speaker, Sir, in the last few weeks of recess, the Committee on ICT has done nothing but mediate for the Data Protection Bill to continue to be executed in this House. The Executive had come up with another Bill that was going to go through the National Assembly and had stated clearly that data protection does not concern counties. We did nothing but went into mediation, basically sitting every day in taskforces that consumed the entire period. Eventually, I thank the Cabinet Secretary (CS) who saw the light and agreed that we kill the other Bill and continue with the Senate Bill. This is just an example. Every single CS prefers to work with the National Assembly. We should ask ourselves what role we have played and what it is that we have done or not done that is making them prefer the “lower House” over the “upper House.”

I think it is about time - and we have asked for this before and continue to ask - that we have a Committee or the leadership to look into the issue of the existence of this House. The House and devolution are under attack, but what are we doing? Is what we are doing enough? I know that this is a House of debate, but we cannot just be talking over the same thing and expect any different results. This House had better look at itself in the mirror and decide what we want to do and how differently we must do it for us to get different results.

Mr. Speaker, Sir, I thank you and welcome my colleagues back.

The Speaker (Hon. Lusaka): I will only allow three Members.

Sen. (Prof.) Ongeru.

Sen. (Prof.) Ongeru: Thank you, Mr. Speaker, Sir. I also rise to welcome Members back to this august House and remind ourselves of our constitutional mandate. Article 96(1) of the Constitution is quite clear that we shall defend the interests of the county governments vigorously and loudly. In defence of those interests of county governments, it also requires us to defend the resource allocation.

Subsection 2 of that Article clearly states that our function will be legislation. One such legislation is the Health Bill which was signed into an Act yesterday. Procedurally, it is obviously wrong because health is a fully devolved function. Those who are taking those Bills to the President for signing should also guide him. The only misgiving I have – and forgive me for saying this – is that both the Senate Majority Leader and the Speaker were present when that Bill was being signed. Even if we went to court

tomorrow, your presence there may render this position nugatory. So, we are left not realising what we should do.

However, Mr. Speaker, Sir, you might have gone there for other businesses and found this Bill there. The best way out is to refuse because we do not know what is captured in that new Act, and yet, we represent the interest of the counties. I propose to you that this is one case where we must raise objection. I do not know which method we shall use to refuse a Bill that has now been signed into an Act of Parliament. It could be either through a court process or another method of amending what did not come through this House. Maybe the Directorate of Legal Services can advise us on the best way to rectify this process, so that it does not cause more damage and we are left eroding our own mandate through our actions.

Thank you, Mr. Speaker, Sir.

Sen. Farhiya: Thank you, Mr. Speaker, Sir. I agree with my colleagues that unless this issue is tackled by the Senate in an appropriate manner, then we will remain irrelevant.

Last year, the National Assembly did an amendment to the Statutory Instruments Act of 2013, literally taking away all the responsibility for delegated legislation. The Committee brought a Motion here that we debated and brought an amendment which I am not sure whether it will pass in the other House. I think they will continue doing that until we become irrelevant. In the process, they want to kill devolution. If the parliamentarians had the interest of devolution at heart they would not have allowed that to happen. It means that they are a bunch of people who want to kill devolution. If this Senate allows that, we are doing injustice to Kenyans who overwhelmingly voted for the Constitution that brought devolution.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Finally, Sen. (Dr.) Zani.

Sen. (Dr.) Zani: Thank you, Mr. Speaker, Sir. Let me also join other Senators in wishing well the two delegations from Machakos and Bomet counties who were here earlier.

Articles in the Constitution are clear and well spelt out. So, there is no need for confusion. If you followed most of the articles in the Constitution - and I know there is a Bill that is trying to address this - we would not have these problems. Sen. Cherargei has alluded to Articles 93 and 116 for avoidance of any doubt.

Article 93(1) says:-

“There is established a Parliament of Kenya, which shall consist of the National Assembly and the Senate.”

Article 116(1) says:

“A Bill passed by Parliament and assented to by the President shall be published in the *Gazette* as an Act of Parliament within seven days after assent.”

This gives us a very good basis because we cannot be part of Parliament and have a Bill being assented to without provisions that are very clearly laid out. I think many problems have come about in the two Houses because Article 110(3), again, is never taken into consideration, where the two Speakers will sit and determine whether a Bill concerns counties or not, right from the word go.

If we continue doing this, we are spending a lot of time as legislators. A lot of work goes into legislation. We go through legislation, and then, at the end, find that we

are caught up in a quagmire. Even getting consensus between the Houses should not be a problem. Right now, we are looking at the Division of Revenue Bill which has gone to mediation. I wish our Members from the Senate who will discuss this well.

We should also make this a political issue. Why would Members of the National Assembly not consider it important for enough money to go to the counties where their constituents are? That becomes a great speaking point even from us as the Senate because we are looking for development in the counties. This is not about politics. It is about the various Kenyans who are in these counties and how they can be taken care of.

As we look at the Bill that has been assented to without the input of the Senate, it is important for us to ensure – this whole issue is so historical; the process we are going through now just reminds us of the Eleventh Parliament. We went through exactly this and sought the advisory opinion that took us to where it did, but then again, these issues come up over and over again. We even formed a Committee at that time, that was headed by Sen. Murkomen and a team that was meant to look at these issue and give us a way forward and recommendation. That Committee only met once at the Hilton Hotel and we never met again.

Therefore, we seem to have a mood in this Senate where there comes a time when we consider certain issues hot and need to be addressed and then, we begin to address then and something happens in between, and then, we just cool off and wait until another time comes and then we speak up.

Mr. Speaker, Sir, finally, allow me to congratulate Sen. Wamatangi as his Bill has been assented to into law. It will help create a lot of order in the counties.

(Applause)

The Speaker (Hon. Lusaka): I can see that the Senate Minority Leader has made a request. So, I will allow the Senate Minority Leader to proceed and Sen. Cheruiyot, the Commissioner, will conclude.

The Senate Minority Leader (Sen. Orenge): Mr. Speaker, Sir, I am sorry to get this chance after you had almost closed debate but I am grateful.

This is a very serious matter. The starting point is that Members of the Senate, each one of us, was voted in by voters from the constituencies and the counties. Those votes count and they matter. Therefore, in issues of legislation, while being conscious of Articles 94, 95 and 96 of the Constitution, the place of Senators and the Senate cannot be undermined. For this, I would urge us, to be as clear as possible. We should not only be clear but say everything that needs to be said about this matter.

We went to the Supreme Court, as a Senate, and the Supreme Court was very clear in its advisory opinion. It is not just an opinion. It is an opinion that must be respected by institutions of Government. Kenya is a country of laws. It is not a country that is ruled whimsically. There is a power granted to an institution and an office in this Republic, which is not conferred on any other institution. That is the institution of the Presidency.

Whenever I have spoken on this point, I have not minced by words because more than any other public or state officer and the authority that is placed upon the Presidency is quite distinct, different and unique, compared to other state officers, including, that of Mr. Speaker as the presiding officer in the Senate. The President is the Head of State,

which means he is not just the Head of the Executive; he is the Head of State. This means he safeguards all institutions of Government, including, the Senate.

Secondly, there is a power conferred on the Presidency, which is so critical. That is found in Article 131(2); that the President shall respect, uphold and safeguard this institution. If a Bill is to be assented to, the President should ask, because he has this unique responsibility under the Constitution – whether Article 110 of the Constitution has been respected in terms of legislation.

Mr. Speaker, Sir, there is no law in the country that can be passed without the input of the Senate; even if it is a simple concurrence by the Speaker that signifies participation of the Senate. So, there is authority of the Senate being undermined and the authority of the Speaker of the Senate is being undermined too.

Therefore, I use this opportunity to again urge His Excellency the President, because infraction of authority starts in small ways like this – even when this Parliament was being emasculated during the one party days, it started in very small ways. Even when Parliament became an institution under the Office of the President, it started in a very small way. The way it has started in a very small way now, we may take it for granted but there will be a time that it will be assumed that even on account of the Division of Revenue Bill, our role is merely to pass or approve without amendment, whatever comes from the National Assembly.

Since Article 10 requires us to comply with the Constitution, all of us, I think even going to court by proxy is not good enough. We must take the bull by the horns; where we can go directly to the Supreme Court.

(Applause)

In fact, we are so important that we cannot go to a Magistrates Court to determine issue to do with the Senate. We cannot go to the High Court. We have to go to the Supreme Court for advisory opinion. I urge every lawyer in this Chamber, in the Senate, including the Senate Majority Leader – when we go to the Supreme Court, the first speech will be made by the Senate Majority Leader while fully robed. The Speaker will be sitting there, even with these robes to show that in the Senate we also have our President. In the Supreme Court, the Chief Justice is known as the President, other than being the Chief Justice. In other jurisdictions, we should, be calling you the President in contradistinction with the Speaker of the National Assembly.

Those who have read history of antiquity about the old Rome and the position conferred on the Senate, the Senate is a very important institution historically. It is not like an assembly. The Senate had executive authority in the old Rome. So, Mr. Speaker, Sir, I want you to be courageous and brave like all of us. All roads should lead to the Supreme Court. We cannot go through Mr. Omtatah. That, the Leader of Majority can go to Mr. Omtatah to tell him we have a small problem here and you are the Leader of Majority is not proper. Equally, I as a Senior Counsel to take my problems to Mr. Omtatah is not right, although I respect him very much.

The only way is by resolution; we should have a *Kamukunji*, sit down, and agree on how to do it. My Chair of the Committee on Legal Affairs and Human Rights is doing very well. I see how he interrogates people whenever we have institutions of Government coming before us. Sometimes we have had judges and institutions coming

before you, and now this time, we want you, because you are also a practicing lawyer, we go to the Supreme Court of the Republic of Kenya and determine this thing once and for all.

We should take an inventory of all the laws that have been passed without our participation and have them declared unconstitutional, null and void.

The Speaker (Hon. Lusaka): What is your point of information, Senator. Sen. Orenge, do you want to be informed.

The Senate Minority Leader (Sen. Orenge): Mr. Speaker, Sir, I accept.

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, I would like to inform Sen. Orenge and the House that the Senate Business Committee agreed that the Committee on Justice, Legal Affairs and Human Rights will lead the process of auditing all the legislations. The Senior Counsel has gone ahead of us and provided the necessary action and I concur with him. I only have 13 years of legal practice but I will attend the court, robed. I will join the Senior Counsel, who has been practicing for over 40 years.

Sen. Cheruiyot: Thank you, Mr. Speaker, Sir, for giving me this chance. This matter is sacrosanct and I would want my view to be reflected on it. Article 2(4) of our Constitution states that:-

‘Any law, including customary law, that is inconsistent with this Constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid.’

Regarding the matter that you are discussing, it is clear that Article 110 was violated and a pupil in a law firm can convince a court of law to strike out the Act of Parliament that was assented to.

Sen. Orenge has said the things that I would have wanted to say. We need to be decisive and agree on how we want to proceed. Do we want to be a House of lamentation or can we decide on something and pursue it?

I have heard the communication from the Senate Majority Leader but I beg to disagree with him respectfully. If a Government does not want to resolve an issue, it introduces huge layers of bureaucracy. If we ask the Committee on Justice, Legal Affairs and Human Rights to carry out an audit of all the laws that are inconsistent, we will be introducing new layers of bureaucracy which will not help this House. We have this golden opportunity. This is an issue that is dear to us and we understand the struggle that many of our hospitals are going through due to bad laws. Therefore, we should consider this particular law and ignore the laws that were passed before. We should stop lamenting. Instead, we should match our words with our action.

I listened to Sen. Mutula Kilonzo Jnr. who runs a serious law firm in this town. He should have told us that his office is open if we want to file those pleadings. We can sign somewhere, if that is what he needs, and accompany him to court. I have the serenity prayer on my desk. I do ask God to grant me the serenity to accept the things that I cannot change, the courage to change the things I can and the wisdom to know the difference. It is clear that you cannot change the leadership of the Senate Majority group, the Speaker and the people in State House. Therefore, he should know the difference and prepare the summons. We cannot lament all the time.

This is a serious affront on the institution of the Senate. I heard Sen. M. Kajwang’ talk about the cabinet secretaries. After the meeting that the National Assembly had in Mombasa, a cabinet secretary confided in me that the National Assembly has resolved

that the cabinet secretaries do not have to go to the Senate. Therefore, they will not be coming. If we continue playing, we will not be able to oversight and legislate on issues that are affecting counties yet the governors continue stealing like juvenile delinquents in a candy shop. At the end of the day, we will close this House and go back to the village because we have forgotten our work.

The Speaker (Hon. Lusaka): Thank you, Members.

Next Order.

PAPERS LAID

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, I have many Papers to lay. I beg to lay the following Papers on the Table of the Senate, today, Tuesday, 14th May, 2019.

REPORTS ON ANNUAL PUBLIC DEBT MANAGEMENT

The National Treasury Annual Public Debt Management report for 2015/2016.

The National Treasury Annual Public Debt Management report for 2016/2017.

REPORTS ON THE FINANCIAL STATEMENTS OF VARIOUS COUNTY AGENCIES/FUNDS

Report of the Auditor-General on the Financial Statements of Busia County Assembly Car Loan and Mortgage Scheme (Revolving Fund) for the Year ended 30th June, 2018.

Report of the Auditor-General on the Financial Statements of Ruiru-Juja Water and Sewerage Company Limited for the Year ended 30th June, 2018.

Report of the Auditor-General on the Financial Statements of the County Assembly of Taita Taveta for the Year ended 30th June, 2017.

Report of the Auditor-General on the Financial Statements of Nakuru Rural Water and Sanitation Company Ltd. for the Year ended 30th June, 2018.

Report of the Auditor General on the Financial Statements of Nakuru Water and Sanitation Services Company Limited for the Year ended 30th June, 2018.

Report of the Auditor General on the Financial Statements of Eldama Ravine Water and Sewerage Company Limited for the Year ended 30th June, 2018.

Report of the Auditor General on the Financial Statements of Mombasa County Elimu Fund for the Year ended 30th June, 2018.

Report of the Auditor General on the Financial Statements of Mombasa County Alcoholic Drinks Control Fund for the Year ended 30th June, 2018.

Report of the Auditor General on the Financial Statements of Mombasa County Consolidated Revolving Fund for the Year ended 30th June, 2018.

Report of the Auditor General on the Financial Statements of Gusii Water and Sanitation Company Limited for the Year ended 30th June, 2018.

Report of the Auditor General on the Financial Statements of Nyamira County Assembly Car and Mortgage Loan Scheme Fund for the Year ended 30th June, 2018.

Report of the Auditor General on the Financial Statements of Murang'a South Water and Sanitation Company Limited for the Year ended 30th June, 2018.

Report of the Auditor General on the Financial Statements of Kahuti Water and Sanitation Company Limited for the Year ended 30th June, 2018.

Report of the Auditor General on the Financial Statements of Kirinyaga County Executive Alcoholic Drinks Control Fund for the Year ended 30th June, 2018.

(Sen. Murkomen laid the documents on the Table)

REPORT OF THE MEDIATION COMMITTEE ON THE
WAREHOUSE RECEIPT SYSTEM BILL, 2017

Sen. Ndwiga: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today, Tuesday, 14th May, 2019.

Report of the Mediation Committee on the Warehouse Receipt System Bill (Senate Bills No. 10 of 2017).

(Sen. Ndwiga laid the document on the Table)

NOTICES OF MOTIONS

ADOPTION OF REPORT OF THE MEDIATION COMMITTEE
ON THE WAREHOUSE RECEIPT BILL, 2017

Sen. Ndwiga: Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, the Senate adopts the Report of the Mediation Committee on the Warehouse Receipt System Bill (Senate Bills No. 10 of 2017) laid on the Table of the Senate on Tuesday, 14th May, 2019 and pursuant to Article 113 of the Constitution and Standing Order No. 161(3) of the Senate Standing Orders, approves the mediated version of the Bill.

The Speaker (Hon. Lusaka): Next Order.

STATEMENTS

THE 4TH ANNUAL LEGISLATIVE SUMMIT HELD
IN KISUMU CITY COUNTY

Sen. Outa: Thank you, Mr. Speaker, Sir. Pursuant to Standing Order No. 47(1), I rise to express my sincere gratitude to all the Senators for attending and participating in the just concluded 4th Annual Legislative Summit in Kisumu County.

My special thanks go to you and your office for honouring us, County No. 42 to host this prestigious Summit that brought together the county assemblies and the Senate of the Republic of Kenya.

Mr. Speaker, Sir, I also extend my sincere appreciation to the Chairman and the CEO of the County Assemblies Forum (CAF) for their professionalism and support.

I will not forget the Steering Committee which you Chair, but gave the mandate to none other than the Senator for Makeni, Sen. Mutula Kilonzo Jnr. I want to report to you that they did very good work to make sure the Summit was held without hitches and it was successful.

Mr. Speaker, Sir, it is my prayer that as we continue to host the legislative summit in other counties, what we learnt in Kisumu is something that we need to support. It is something that brings us together with the CAF so that the world will know that we are there to protect the counties. People have learnt a lot about the Senate and the county assemblies.

Mr. Speaker, Sir, Kisumu is ripe and ready to host the next summit, that is the 5th Legislative Summit. We are proud to report that all the 5,000 people who attended the Summit were accommodated. That is an indication that Kisumu is ready to host any summit or big conference in the future.

The business community told me that I need to pass their gratitude to the CAF and the Senate for hosting the Summit in Kisumu. They experienced an economic growth which they had not anticipated and they are therefore, indebted to you and CAF for that opportunity.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): I will ask Hon. Members to remain within the Chambers because there will be voting after this, but I will allow two Statements.

Proceed Sen. M. Kajwang'.

Sen. M. Kajwang': Mr. Speaker, Sir, I wish to join Sen. Outa from Kisumu County in thanking the Senate for descending on the City of Kisumu. From what we hear, there are businesses that had suffered for a while and when the Senators and members of the county assemblies came to Kisumu, business was spurred.

I also wish to congratulate the team that put together the arrangements for that event. It went on almost flawlessly without any disturbance.

Mr. Speaker, Sir, as the team does its post-mortem, we probably might need to ask ourselves whether we need to do the Legislative Summit and the Devolution Conference every year. Having come from Kirinyaga County where Governors were showing off their fuel guzzlers and their trappings of power, we then went immediately to Kisumu. An honest assessment of Kisumu was that the Senate was very committed to

that particular event. There were Senators present from the first day, the pre-conference events, all the way to the last day.

The reality is that our brothers and sisters from the county assemblies did not turn up in the numbers or percentages we had expected. As we do the post-mortem assessment, let us find ways of ensuring that we engage all Members of the county assemblies and the Senate and ensure that attendance is enforced and observed. However, let us ask ourselves whether it is important to separate these jamborees and say that one year we have the Devolution Conference and another year we have the Legislative Summit.

Mr. Speaker, Sir, I hope that one day the Legislative Summit will be hosted in Homa Bay because Homa Bay is ripe and ready for the Senate to descend upon it.

Thank you, Mr. Speaker, Sir.

Sen. Cherargei: Thank you, Mr. Speaker, Sir. I want to thank Kisumu County and all Senators who made it to the Legislative Summit. We are proud of Kisumu County since it is my neighbouring county. I want to assure you that Kapsabet is also ready to host the next Legislative Summit. We might be having problems here and there, but I can assure you we will be ready.

Secondly, I look into a future where the Legislative Summit will include the Members of the National Assembly because the reason we are having claw-back Clauses in this country is because Members of the National Assembly do not appreciate the role, principle and the function of devolution. If this is done, they will assist us in fast-tracking the passage of some legislations that we propose at the Senate, that are made and geared to facilitate and fast track the implementation of devolution in this country. We need a joint Legislative Summit between the Senate, Members of the National Assembly and members of the county assemblies.

Finally, arising from a meeting that we had between the Legal Affairs Committee of the Council of Governors (CoGs) and the Senate Committee on Justice, Legal Affairs and Human Rights, there was a proposal that we need to standardize Standing Orders especially in our county assemblies across the country.

Mr. Speaker, Sir, some resolutions regarding national legislation were made at the CAF and I hope that Members of the Senate and the National Assembly will come to an agreement regarding these resolutions. I assure you that if we include Members of the National Assembly in this Legislative Summit, this will ensure efficiency in the passage and implementation of the Bills that involve implementation of devolution in this country.

Thank you, Mr. Speaker, Sir.

Sen. (Dr.) Musuruve: Thank you, Mr. Speaker, Sir for giving me an opportunity to support Sen. Outa's Statement on the 4th Annual Legislative Summit.

The Annual Legislative Summit was a success and I commend the team that organised it. The interaction we had with the CAF was very good and healthy. For example, on the Persons Living with Disabilities (PWDS) Day, we were able to see the gaps that are there. We had a very candid encounter. Arising from our interaction with the MCAs at the county level, we were able to see the areas that need intervention.

Even after the Legislative Summit, we were able to organise a meeting with the Salaries and Remuneration Committee (SRC) concerning Members who are PWDs and

the challenges that they experience. The SRC promised us that they would work on some of these areas, for instance, the issue of having aides for MCAs at the county level.

Mr. Speaker, Sir, it was very clear that the MCAs who are PWDs really suffer because they do not have office space and aides. It was very clear that the SRC should find ways to intervene.

It is good to always have this Legislative Summit because it is a time when we interact and are able to hear what the MCAs have to say. It becomes a healthy environment and engagement for us to ensure that devolution works.

Mr. Speaker, Sir, I, thank you for this. I support Sen. Outa and thank the leadership of the County Government of Kisumu that allowed us to be there and for providing accommodation. Everything was perfect.

The Speaker (Hon. Lusaka): We need to take a vote. Therefore, in the interest of time, I will allow Sen. Malalah and Sen. Kibiru to read their Statements. After that, we will vote.

RECENT ATTACKS AND KILLINGS OF RESIDENTS OF
MATUNGU CONSTITUENCY, KAKAMEGA COUNTY

Sen. Malalah: Thank you, Mr. Speaker, Sir. I stand to request for a Statement on the recent attacks and killings of residents of Matungu Constituency in Kakamega County.

Mr. Speaker, Sir, pursuant to Standing Order No. 48(1), I rise to seek a Statement from the Standing Committee on National Security and Foreign Relations on the recent attacks and killings of residents of Matungu Constituency in Kakamega County.

In the Statement, the Committee should-

(1) state the exact number of families and persons attacked, injured, and, or killed by the gangsters;

(2) enumerate the number of police officers serving in Matungu Subcounty and by extension Kakamega County, indicating the police officer-civilian ratio within Matungu Subcounty and Kakamega County as a whole, averring whether this ratio is ideal for combating petty and organized crimes in Kakamega County;

(3) state the number of police patrol vehicles allocated to Matungu Subcounty and Kakamega County indicating how many of these vehicles are functional and how many are dysfunctional;

(4) state the action being taken by the relevant authorities to bring the perpetrators of these attacks and killings to book; and lastly,

(5) explain why there has been a rise in insecurity in Matungu Subcounty and the strategies being employed by the Government and its security agencies to restore adequate security and guarantee the residents of Matungu Subcounty, and Kakamega County in general peace and tranquility.

The Speaker (Hon. Lusaka): Sen. Wetangula, keep it brief because we want to vote.

Sen. Wetangula: Mr. Speaker, Sir, I thank Sen. Malalah for bringing this request for a Statement from a Committee in which I sit.

Mr. Speaker, Sir, the ongoing in western region at large and Kakamega in particular are extremely disturbing. Marauding gangs are butchering people with absolute brutality and getting away with it. We have seen no arrest and prosecution.

Mr. Speaker, Sir, we may recall that two months ago, a gang I am told calling itself the 42 brothers attacked Kilingili Market and murdered six watchmen in cold blood with crude weapons, 50 meters from the police station. Nobody came to the rescue of the watchmen and nobody has given a credible explanation.

These killings have moved to Matungu where if you saw the television the previous night, citizens were giving harrowing stories on how people behaving like wild west gangsters in Charles Bronson's "Death Wish" movies are murdering *wananchi* with total impunity.

I urge the Chairperson of the Committee, Sen. Yusuf Haji, who is not here, to move quickly and visit the affected areas.

When we were in Kilingili, we were informed that the Cabinet Secretary for Interior and Coordination of National Government was to tour the regions to see that these things are brought to an end. However, instead of coming to an end, they are escalating. Urgent measures must be taken to protect the sanctity of life in this country.

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

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

The Temporary Speaker (Sen. (Prof.) Kamar): Sen. (Dr.) Musuruve, I give you 30 seconds.

Sen. (Dr.) Musuruve: Thank you, Madam Temporary Speaker, for giving me this opportunity. I thank Sen. Malalah for coming up with this Statement.

The issue of gangs coming up and attacking people in rural Kenya are common especially in the western region. There are times when the gangs attack and take their sweet time. Sometimes, they can even decide to cook food in the house, eat and then do the heinous acts.

Mr. Speaker, Sir, there is need for intervention so that these acts are stopped. For example, in a place like Mwamba in Lugari where there is no electricity or street lights which affects---

The Temporary Speaker (Sen. (Prof.) Kamar): Time is up.

Sen. (Dr.) Musuruve: Madam Temporary Speaker, could I kindly finish the sentence?

The Temporary Speaker (Sen. (Prof.) Kamar): Yes.

Sen. (Dr.) Musuruve: Thank you, Madam Temporary Speaker, I am giving a case of Mwamba in Lugari where there are no streetlights. So, there are instances where people are attacked in shops and their items are stolen yet there is a police station nearby.

Madam Temporary Speaker, there is need for the Committee to interrogate and ensure that people get security.

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

I give you 30 seconds, Sen. Shiyonga.

Sen. Shiyonga: Thank you, Madam Temporary Speaker, for giving me this opportunity to contribute to the Statement.

Madam Temporary Speaker, people who are dying in Kakamega County are people like any other. We are in this House to defend our people. I add my voice that people in Kakamega need to be protected. We have the Criminal Investigative Department (CID) and the police department. They need to arm-up and not cooperate with the people who are hiding these people and protect the citizens of Kakamega County as it is in law.

Madam Temporary Speaker, we stand as the people of Kakamega County to defend our people. The police should defend our people and let them live because they have a right to life.

The Temporary Speaker (Sen. (Prof.) Kamar): Hon. Senators, we are going to vote. So, please, you need to come forward while we take a one-minute Statement from “Sen. Kibiru”.

Sen. Kibiru: Thank you, Madam Temporary Speaker. For the record, my name is Sen. Kibiru and not “Kabiru”.

STATE OF KERUGOYA COUNTY REFERRAL HOSPITAL

Sen. Kibiru: Madam Temporary Speaker, pursuant to Standing Order No. 47(1), I rise to seek a Statement from the Standing Committee on Health on the reported poor status of Kerugoya Level 4 Hospital in Kirinyaga where service delivery has deteriorated to worrying levels with the Level 4 Hospital becoming a medical facility with dirty linens, clogged water systems, unserviceable toilets and blocked drainage, thereby exposing patients to possible outbreak of epidemics that may further compound the already bad situation.

In the Statement, the Committee should-

(1) state the circumstances surrounding the near total collapse of the hospital, which is currently experiencing a total failure of service provision, poor hygiene, poor patient recovery, low staff morale and malfunctioning equipment;

(2) explain the circumstances that have led to complaints from staff, sacking of casual workers, mistreatment of medical personnel as well as general lack of communication and synergy between the hospital and Kirinyaga County Executive Committee;

(3) indicate the reasons that have caused the county administration to appear to work at cross purposes, unable to discharge the devolved function of health;

(4) state the steps being taken by the national Government to address the devastating state of the hospital, in particular, as well as other health facilities in Kirinyaga County namely, Kimbimbi in Mwea Subcounty and Gathambi and Sagana in Ndia Subcounty, which are also facing challenges of staff flight occasioned by hardships at the workplace such as upsurge in snake bites and the sacking of 346 casual workers which has affected the capacity and efficiency in service delivery.

I thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. (Prof.) Kamar): Hon. Senators, the Statement requested by Sen. Malalah rests with the Committee on Security, Defence and Foreign Relations and answers should be brought within two weeks. For the Statement that has been requested by Sen. Kibiru, I direct it to the Committee on Health and we should get a report within two weeks.

Let us go to the next Order.

Sen. Ndwiga: On a point of order, Madam Temporary Speaker. I wish you had allowed at least two interjections on the Statement by Sen. Kibiru because it affects my county. There is a mess in that hospital in Kirinyaga. The people of Kirinyaga cannot get treatment at their hospital and now they flood Embu Level 5 Hospital. Now we have a problem.

Madam Temporary Speaker, I wish to add my voice---

The Temporary Speaker (Sen. (Prof.) Kamar): Hon. Senator, you are taking us back! I thought you stood on a point of order!

Sen. Ndwiga: I stood to request you to allow me to add my voice to the Statement by Sen. Kibiru because that is something affecting my people.

The Temporary Speaker (Sen. (Prof.) Kamar): The Chair had not given you an opportunity to do that but you have gone ahead to do it. I will give you a half-a-minute.

Sen. Ndwiga: I thank you, Madam Temporary Speaker. It is true that the issues in Kirinyaga Level 4 Hospital are so grave. Health being a devolved function, this Senate should take these matters seriously. Even as we ask for money to be given to our counties, the health docket in some counties like Kirinyaga, is mismanaged. Today, the mess affects the neighbouring counties and especially Embu, which is my county.

When you go to Embu Level 5 Hospital, you will find that 60 per cent of the patients there are from Kirinyaga County. We allocated money to the people of Embu County but the people of Kirinyaga cannot handle the health docket the way they should.

Therefore, Madam Temporary Speaker, I urge Members of the Committee on Health – like you have ruled and I support your ruling – to act diligently and urgently and sort out the mess, so that other Kenyans do not get affected by the mess in Kirinyaga County.

I thank you.

The Temporary Speaker (Sen. (Prof.) Kamar): Thank you, Senator. Let us go to the next Order.

BILL

Second Reading

THE NATURAL RESOURCES (BENEFIT SHARING) BILL (SENATE BILLS NO.31 OF 2018)

(Sen. (Dr.) Zani on 26.3.2019)

(Resumption of debate interrupted on 27.3.2019)

The Temporary Speaker (Sen. (Prof.) Kamar): Hon. Senators, we will deal with Order Nos. 8, 9 and 10 at the same time. So, Order Nos.9 and 10 should also be read out. I order that the Division Bell be rung for five minutes.

(The Division Bell was rung)

The Temporary Speaker (Sen. (Prof.) Kamar): Hon. Senators, I now order the door be closed and the Bars be drawn.

(The Door was closed and the Bars drawn)

DIVISION

ELECTRONIC VOTING

*(Question that the Natural Resources (Benefit Sharing) Bill
(Senate Bills No.31 of 2018) be read a Second Time,
put and the Senate proceeded to vote by County Delegations)*

AYES: Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. (Prof.) Ekal, Turkana County; Sen. Faki, Mombasa County; Sen. Farhiya, Nairobi County; Sen. Iman, Garissa County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kang'ata, Murang'a County; Sen. Kibiru, Kirinyaga County; Sen. Kihika, Nakuru County; Sen. (Dr.) Langat, Bomet County; Sen. (Dr.) Lelegwe, Samburu County; Sen. (Eng.) Mahamud, Mandera County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Ndwiga, Embu County; Sen. Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. (Prof.) Onger, Kisii County; Sen. Orengo, Siaya County; Sen. Shiyonga, Kakamega County; Sen. Wamatangi, Kiambu County; Sen. Wetangula, Bungoma County and Sen. (Dr.) Zani, Kwale County.

NOES: Nil

The Temporary Speaker (Sen. (Prof.) Kamar): Hon. Senators, please, take your seats. I would like to announce the results of The Natural Resources (Benefit Sharing) Bill (Senate Bills No.31 of 2018)

AYES: 26

NOES: Nil.

ABSTENTIONS: Nil.

The "Ayes" have it.

(Question carried by 26 votes to nil)

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

BILL

Second Reading

THE COUNTY OVERSIGHT AND ACCOUNTABILITY BILL
(SENATE BILLS NO.28 OF 2018)

(Sen. Olekina on 27.3.2019)

(Resumption of Debate interrupted on 3.4.2019)

DIVISION

ELECTRONIC VOTING

(Question, that the County Oversight and Accountability Bill (Senate Bills No.28 of 2018) be now read a Second Time put, and the Senate proceeded to vote by County Delegations)

AYES: Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. (Prof.) Ekal, Turkana County; Sen. Faki, Mombasa County; Sen. Farhiya, Nairobi County; Sen. Iman, Garissa County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kang'ata, Murang'a County; Sen. Kibiru, Kirinyaga County; Sen. Kihika, Nakuru County; Sen. (Dr.) Langat, Bomet County; Sen. (Dr.) Lelegwe, Samburu County; Sen. (Eng.) Mahamud, Mandera County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Ndwiga, Embu County; Sen. Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orengo, Siaya County; Sen. Outa, Kisumu County; Sen. Shiyonga, Kakamega County; Sen. Wamatangi, Kiambu County; Sen. Wetangula, Bungoma County and Sen. (Dr.) Zani, Kwale County.

NOES: Nil

ABSTENSIONS: Nil

The Temporary Speaker (Sen. (Prof.) Kamar): Hon. Senators, the results of the voting are as follows:-

AYES: 26

NOES: Nil.

ABSTENTIONS: Nil

The "Ayes" have it.

(Question carried by 26 votes to Nil)

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

The Temporary Speaker (Sen. (Prof.) Kamar): The Senator for Mombasa County did not vote. It is possible that you voted but your vote did not come through. You will be assisted by the Clerks-at-the Table.

(Sen. Faki walked to the Clerks-at-the Table and registered his vote)

MOTION**ADOPTION OF REPORT ON THE COUNTY GOVERNMENTS'
INFRASTRUCTURE PROJECTS**

THAT, this House adopts the Report of the Standing Committee on Finance and Budget on the County Governments' infrastructure projects comprising County Executive Headquarter offices, Assembly Chambers and offices and County State officers' residences, laid on the Table of the Senate on Thursday, 29th November, 2018.

(Sen. (Eng.) Mahamud on 28.03.2019)

(Resumption of Debate Interrupted on 28.03.2019)

DIVISION**ELECTRONIC VOTING**

(Question, that this House adopts the Report of the Standing Committee on Finance and Budget on the County Governments' infrastructure projects comprising County Executive Headquarter offices, Assembly Chambers and offices and County State officers' residences, laid on the Table of the Senate on Thursday, 29th November, 2018 put and, the Senate proceeded to vote by County Delegations)

AYES: Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. (Prof.) Ekal, Turkana County; Sen. Faki, Mombasa County; Sen. Farhiya, Nairobi County; Sen. Iman, Garissa County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kang'ata, Murang'a County; Sen. Kibiru, Kirinyaga County; Sen. Kihika, Nakuru County; Sen. (Dr.) Lelegwe, Samburu County; Sen. (Eng.) Mahamud, Mandera County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Ndwiga, Embu County; Sen. Ochillo-Ayacko, Migori County; Sen. Olekina, Narok County ; Sen. (Prof.) Ongeru, Kisii County; Sen. Orengo, Siaya County; Sen. Outa, Kisumu County; Sen. Shiyonga, Kakamega County; Sen. Wamatangi, Kiambu County; Sen. Wetangula, Bungoma County and Sen. (Dr.) Zani, Kwale County.

NOES: Sen. (Dr.) Langat, Bomet County

ABSTENSIONS: Nil

The Temporary Speaker (Sen. (Prof.) Kamar): Hon. Senators, the results of the voting are as follows:-

AYES: 25

NOES: 1

ABSTENTIONS: Nil

The "Ayes" have it.

(Question carried by 25 votes to 1)

The Temporary Speaker (Sen. (Prof.) Kamar): I direct that the Bars be undrawn and the doors opened.

(The Bars were undrawn and the doors opened)

Next Order.

BILL

Second Reading

THE DETERMINATION OF THE NATURE OF BILLS
(PROCEDURE) BILL (SENATE BILLS NO. 30 OF 2018)

(Sen. Sakaja on 03.04.2019)

(Resumption of debate interrupted on 03.04.2019)

The Temporary Speaker (Sen. (Prof.) Kamar): That Bill had been initiated by Sen. Sakaja who is not here. He had only spent two minutes. We will defer it to tomorrow.

(Bill deferred)

Next Order.

BILL

Second Reading

THE ELECTION LAWS (AMENDMENT) BILL
(SENATE BILLS NO. 33 OF 2018)

Sen. Olekina: Madam Temporary Speaker, I beg to move that the Election Laws (Amendment) Bill (Senate Bills No. 33 of 2018) be now read a Second Time.

The principal objective of this Bill is to amend the Elections Act and the Elections Offences Act with a view of enhancing transparency in the electoral system. The Election Act No. 24 of 2011 was enacted to provide for the conduct of elections to the various political offices in the country and for the conduct of referendum. The Bill comes against the backdrop of the 2017 General Elections and the several by-elections conducted thereafter.

A central feature of an electoral system is a functioning democracy and the right to free and fair election which are characterised *inter alia* by a process that is transparent and administered in an impartial, neutral, efficient, accurate and accountable manner.

Accountability and transparency are obligations that are only placed upon the Independent Electoral and Boundaries Commission (IEBC) and all actors in the electoral process including candidates and their agents or representatives.

Clause 2 of the Bill proposes to amend Section 2 of the Act by inserting the definition of the word ‘declaration form’ to mean a form containing the tallied results of an election. Currently, the word declaration, which is extensively used in the Act and which has been the subject of misinterpretation in the election world in Kenya is not defined.

Section 39 of the Elections Act, 2011 makes provision for the determination and declaration of results by the Independent Electoral and Boundaries Commission (IEBC). These provisions outline the procedure of the initial tallying, announcement and declarations of elections by the constituency returning officers to the final declaration of the results of the elections of the President in case of a presidential election. Clause 3 of the Bill proposes to amend Section 39 of the Elections Act by having the presiding officer and the candidates or agents sign the prescribed declaration form for the election.

The Bill also makes provision for the presiding officer to immediately announce the results at the polling station before communicating it to the returning officer.

The amendments proposed in this Bill are intended to shield the winners of the election from mischievous losers who intentionally decline to sign the forms during the counting and tallying of the votes with the intention of challenging the results in a court of law. The Bill, therefore, seeks to not only ensure the validity of the electoral system but to cushion the justice system from abuse. Therefore, the presiding officer shall request the candidates present to append their signatures and shall provide them with a copy of the declarations of the results.

A copy of the declaration of the results shall also be affixed at the public entrance of the polling station or any place that is convenient and accessible to the public at the polling station.

Clause 3 of the Bill provides for instances where a candidate or agent has an objection to the tally of the results. In that case, the presiding officer is expected to note down the objections.

The Elections Offences Act provides for elections. I propose to amend the Act in Clause 4 to read as follows: -

‘Elections Offences Act is amended by inserting the following new paragraph immediately after paragraph q—

(r) being a candidate refuses or fails to sign an election return form as required by law,’

The penalties are already provided for in the Act. The fine should not exceed Kshs2 million or they can be imprisoned for not more than five years or both.

I urge all Senators to enrich the debate on the content of the Bill and the amendment that I will move during the Committee stage. We spend millions of shillings campaigning just for the forms to be altered. We are all victims of this and many election petitions are as a result of the one form being altered. We experience these things and it is good that we learn from our experiences. Some of us spend millions of shillings fighting

for our positions in the courts. At times, I feel that Kenyans are in the business of abusing the court process. You have got a form 38A or 36A that tallies with B. However, when it comes to Form 38C, those results change all of a sudden.

Madam Temporary Speaker, you find that a candidate refuses to sign and then goes to court to challenge the results of that election. In this Bill, I am looking at a situation whereby, if the law says that you must sign the declaration of the results, then you must sign. If you refuse to sign and proceed to court, which is your right, you should not be allowed to rely on those forms because you refused to sign the form with declaration of results.

The amendments sought here are to ensure that whether or not you agree with the results, you must sign them, go to court and tell the judge that you do not agree with them. What are you proceeding to argue in court if you refuse to sign the forms?

Madam Temporary Speaker, this Bill will save a lot of taxpayers' money for this country in order to ensure that the Independent Electoral and Boundaries Commission (IEBC) sends a lawyer to represent it. The candidate who wins pays a lot of money so that he can at the end of the day be still declared the winner. In most of those cases, many people who lose do not end up paying the award given to the winner.

I hope that many Senators will take time to look at the amendments that I am proposing because it is something that can help them individually.

Since these are just one or two amendments, I do not intend to take more time on it. I request the Senate Minority Leader, Sen. Orengo, to second.

The Senate Minority Leader (Sen. Orengo): Madam Temporary Speaker, I stand to second the Bill.

I plead with the Mover that we make a few amendments to the wording of the Bill during the Committee of the Whole or Third Reading. The intention is to have election results which are accepted at the time of the announcement.

Madam Temporary Speaker, one of the things about Kenyan elections is that problems begin at the end of the elections. We want a situation in this country where after an election, people can accept the results and live with it. This will largely depend on the integrity of the IEBC. As the Senate Committee on Justice, Legal Affairs and Human Rights, we had a session with the IEBC and since it is an independent Commission, the law puts the burden on the IEBC and not any other agency to deliver to the Kenyan people an election that is free and fair.

The words of the Constitution go beyond just rendering a free and fair election. They are also required to ensure that the results of any election are credible, accountable and transparent. Many words are used there requiring compliance. These are provisions which normally should not even find a place in the Constitution. However, because of our experiences with elections, the results at the end of the day must be credible, accurate and transparent.

Madam Temporary Speaker, I think one of the reasons my brother, the Senator for Narok, is motivated to bring this law is that, there should be certainty at the end of the elections.

In terms of elections, Brazil is one of the most complicated countries one could ever find. The same case applies to Indonesia and the Philippines where religion and ethnicity compound the problem of elections. With the elections that take months in India, it is possible if we have a commission that is prepared to render elections that

would bring stability to our country. That cannot only be by legislating, but having men and women of integrity presiding over these elections that would provide integrity.

Madam Temporary Speaker, one of the areas where it was felt necessary that these elections be reformed was the use of technology, especially in the transmission of results.

In the last Presidential elections, one of the most opaque and shadowy areas that arose was in the transmission of results. Although the process was supposed to be technology driven, at the end of the day, there was so much opaqueness.

The intention of this Bill requires first of all the defining of declaration which has been a point of controversy. There was an election in Kisii where the question of declaration became a major point of controversy. It was whether it is when the results were announced or gazetted. This is one of the areas we should look at during the amendments.

What is a declaration? Is it a declaration when the results are announced or when they are gazetted in the *Kenya Gazette*? You can either determine in that definition, whether the declaration of results is the numbers announced at the time of tallying or what is declared by a publication of notice in the *Kenya Gazette*. This is an area where you still need some amendments because it has brought controversy in court.

I think there was a case involving Hon. Tongi from Nyaribari Chache, Kisii County. It revolved around the issue of declaration of results; whether it was results in the *Kenya Gazette* or what was announced by the Returning Officer after tallying, or the results announced at the polling station.

Madam Temporary Speaker, there is an area that needs total re-evaluation in terms of this Bill that can be cleared by way of amendments during the Committee stage. I think we should not look at criminalising refusal to sign a result form. If you are criminalising an electoral process, we have a substantive law relating to elections. There was a decision to have a stand-alone law in terms of the electoral process and a stand-alone in terms of election offences.

The reason why criminalising refusal to sign results may be complicated is because the starting point should have been the election officials. Many a times, you find that the forms which are supposed to be signed by Presiding officers or Returning Officers are not signed. In fact, in the first Presidential election during the 2017 elections, the Supreme Court of Kenya found fault with forms that were not signed by election officials. On that basis, the elections validity and transparency were called into question.

When it comes to an individual candidate, I see that there is no distinction between candidate and an agent of the candidate. What if the candidate was not there and the agent refuse to sign? The criminality will fall on the agent or by the extension the candidate. It does not matter which, it may raise some controversy.

I ask my friend, the distinguished Senator from Narok, that we need to look at Clause 4 appropriately so that we do not criminalize the electoral process too much because it is done in the heat of the moment.

I fully support the body of the Bill as a whole safe for the question of definition of results. For example, what are results when they are declared?

I remember that in the case that I have referred to from Kisii County, there was a question as to what were the declared results. Were they the results declared by the returning officer or the ones that were subsequently declared in the Kenya gazette? This

is because time was supposed to run when the results were declared. If they were computed from the time they were declared by the returning officer against gazettelement, it brought a lot of controversy as to when the filing of the petition should have been due. Therefore, this is a matter which may just require a little amendment.

I commend my colleague from Narok, Sen. Ole kina, for his industry. This is because perpetually, almost every week, there is a Bill for a rightful discussion from the distinguished Senator. However, I finish by saying that 50 years after Independence and running many elections, I hope that Kenya will not have another election where the results are in doubt.

Madam Temporary Speaker, in South Africa, if you look at the room where the votes were tallied, there was order. In fact, all the leaders of the political parties would sit there quietly, receiving, monitoring and observing the results as they came. In fact, in the previous elections when President Zuma was the President, he sat at the tallying centre and the only thing that happened was that a little girl was carrying a placard which was not very interesting to him at the time.

We should learn from the experiences of countries like Ghana and South Africa and examples from more complicated democracies like India where the number of registered voters is more than the population of Africa, however, they are able to undertake elections that run across the country. For example, federal and state elections are completed and presided over by one commissioner who has a large secretariat and people working for him. Therefore, we should mature as a country. Right from the time we enacted constitutional amendment to make Kenya a multiparty State, only the election of 2002 were inversely accepted in terms of the results. Before and subsequently, all the elections have had some controversy.

Therefore, I plead that Kenya must come of age in the democracy project. We need to have free and fair elections. The Independent Electoral and Boundaries Commission (IEBC) should not push the responsibility to anybody else. This is because that responsibility as an independent commission squarely falls with the Commission.

Madam Temporary Speaker, with those remarks, I support.

(Question Proposed)

Sen. Wetangula: Thank you, Madam Temporary Speaker. I also wish to congratulate the Senator for Narok County for his endless effort to bring Bills to this House.

This is a short Bill but with far-reaching amendments to the electoral process. I listened carefully to the distinguished Senator for Narok. I got the impression that he is trying to reduce the weight of the election petition after elections. I also got the impression that he wants to instill a little more responsibility to those who man our elections.

Like Sen. Orengo has said, over 50 years since Independence, going to elections in this country remains a fierce battle akin to almost a civil way. It is not just recently, although the intensity of the battle, losses of lives and destructions of property have increased with time.

Madam Temporary Speaker, you remember in the old days when the late Paul Ngei hijacked his opponent and tied him with ropes on a tree in a bush so that he could

not beat the deadline of submitting his papers at noon as it was then. The submission of papers was only one single day.

Madam Temporary Speaker, we also have had other situations. I remember when I stood for elections and because of the uncertainty of system, I had to send an agent to sneak and secretly carry my documents so that when I arrive in the reception area marauding goons do not pounce on me, capture me or take my documents and destroy them. It has happened to others when the deadline is looming and they end up not standing.

We have an electoral commission that is charged with a responsibility to conduct free, fair, verifiable, accurate and accountable elections. I doubt if this amendment will enhance this process. I encourage Sen. Ole kina that if I were him, I would have pulled back this amendment and subjected it to some internal mechanisms of picking views from colleagues so that we bring a Bill that involves the situation.

The sole responsibility of conducting elections lies with an electoral commission. You can never transfer criminal liability to a candidate on account that they refused to sign a form after the election. There are very many situations where it is difficult, impossible or sometimes undesirable for a candidate to sign on a form. There are elections that are held and conducted in an opaque manner; a manner that is totally inconsistent with the tenets of democracy and does not provide a free and fair environment.

Which candidate will be obligated by law to sign a death warrant for their politics? It is because if you sign that form, you acknowledge that the process was free, fair, transparent and credible. You cannot be penalised for not signing a form whose contents you do not agree with because thereafter you have got an avenue to go to court. It could be the High Court, the Court of Appeal and even the Supreme Court.

So, Sen. Olekina needs to put a little more thought in this because we cannot shift the onus of transparency and accountability of elections from the referee to the player because the player is a candidate.

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

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

Mr. Temporary Speaker, Sir, there is a proposed amendment to Clause 3 which provides that the presiding officer shall request each of the candidates present to append his or her signature on the result declaration form. This follows 1FB(a) which states that the presiding officer shall immediately announce the results of the voting at the polling station before communicating the results to the returning officer. Take the example of the Senator's own county. There could be polling stations in Kilgoris, Oloolua, the Mau and Sekenani. How could he as a candidate be available to sign those forms as an individual? It is not possible.

So, it is important that we design a better way of executing this process. In fact, you will find that in certain hostile areas or polling stations, you could dutifully and lawfully recruit agents and send them to the polling stations but your opponents chase them away and they are excluded from the polling station completely. They could also encounter immense hostility that they feel that their lives are in danger or get

compromised by being given little money and they walk away and disappear. So, as a candidate, you cannot be penalised because of the wrongdoing of your agent although in law, sometimes, the acts of the agent can bind the principal but not in terms of criminality. So, I would like us to look at this very carefully.

For example, if you have 800 polling stations in your county, like I suspect Sen. (Prof.) Ongeru has, how can you be held responsible for the absence of a signature from one polling station? In fact, in comparable jurisdictions, elections are held flawlessly and candidates are not even obligated to have agents. That is the situation we are looking for. The criminal responsibility must be assigned to the presiding officers and the Independent Electoral and Boundaries Commission (IEBC) should bear the greatest responsibility in mismanagement of elections. In fact, they should not just be fined but some of them should go to jail if they bungle elections.

The Constitution is very clear in the Bill of Rights. I encourage Sen. Olekina that we should not pass any legislation that limits the right of an individual to pursue a just course.

In Clause 3 (IFG), it is stated that; where an election petition has been filed, a candidate who refused or failed to sign the declaration forms shall be barred from relying on that fact in evidence and the court shall take judicial notice of such refusal or failure to sign.

If you are a lawyer who has practiced at the criminal bar, you know that even confessions are recanted depending on the circumstances under which they were taken. The police or goons hired by your opponent can be there with a gun and force your agent to sign a form to accept that the process was acceptable, free and fair and they were satisfied. Such a person could go away but swear an affidavit that they were forced to sign at gunpoint or *rungu*-point. That automatically raises an electoral dispute. You cannot water down the evidence of such a person simply because of a signature on a document because we have many injustices in our electoral system that the only last resort remains the courts.

You will remember in the Presidential Petition, the Supreme Court said that the elections were not held in accordance with the law and that there were serious irregularities and criminalities conducted. So, if you limit the access to courts by this kind of legislation, it takes away people's rights under the Bill of Rights. They have the right to go to court, the right to be heard and the right to get justice.

Equally important, I would like the Senator for Narok County to know that the Constitution, 2010, says that access to justice shall not be hampered or hindered by undue technicalities. You can walk to court and say you have suffered an injustice and the court cannot deny you opportunity from being heard simply because your signature is not found on a form. They must hear you and the evidence you give is what will determine the ultimate decision of the court.

Sen. Olekina should invite some of us, who are lawyers, to sit with him and look through this Bill. The intention is good but its execution is not equally good and it can easily create a situation where we will have more injustice on candidates. In every election, the candidate is always the weaker person because the decision is not theirs but the Independent Electoral and Boundaries Commission.

Mr. Temporary Speaker, Sir, you may be too young to remember the discredited *Mlolongo* elections of 1988. In Nandi, Henry Kosgei got the longest queues ever seen in

the area but the man with the shortest queues called K.K. Sego was declared the winner. We also had a similar case of Gidraph Mwangi Mweru and the legendary Matiba in Murang'a where Matiba won by a landslide. At the end of the day, they announced the winner as the loser and the loser as the winner.

We also had a case in Kitale, and I think Sen. (Prof.) Ongeru can remember this; Mr. Masinde Muliro got 24,000 votes and Mr. Fred Gumo, a debutant in politics, got 6,000 votes. However, they announced that Masinde Muliro had got 6,000 votes while Fred Gumo got 24,000 votes. That was the end of the matter. Mr. Masinde Muliro tried to go to court but nothing happened. Assuming in that situation, at gunpoint or through whatever intimidation and arm-twisting, Mr. Masinde Muliro signed the form that he got 6,000 when he got 24,000 votes, could you have barred him from going to court?

The circumstances under which I signed this form are not conducive for me to accept that I have lost this election. I come back to you as a court to look at the process – the tallying, voting, declaration and everything – and give me my justice. You cannot, therefore, be barred simply because you appended a signature on a document. This is the hallmark of electoral justice, and that is why we go to court; we go to court because injustices have been occasioned.

I want this Bill, since it wants to improve the situation of elections, to be looked at in a more careful manner than in a manner that goes to put more weight, frustration and embarrassment on the candidate, especially when we have an electoral Commission whose record is not too good.

We have had elections in South Africa, as Sen. Orengo has said. South Africa is a fairly violent society. In fact, their politics in the run-down to elections have been very tumultuous. However, nobody fights or complains because everybody accepts the verdict after elections. India, with 1.3 billion people, conducts their elections over a period of 60 days. When they finish, you will be lucky to find more than 10 election petitions because the system is seamless, flawless and just.

In trying to improve this situation, Sen. Olekina will be encouraged to look at the totality of the structure of elections, right from the time candidates present their papers. We have seen the embarrassing decision in the Supreme Court, where everybody can tell that a Governor is not a university graduate, but he is given a new lease of life. We need to have a situation where elections in this country are not just about the electoral commission, the candidate or the voter; but even the judicial system is now part of our electoral system, because that is where we end up squaring it out.

Mr. Temporary Speaker, Sir, let us not limit rights. I support the need to improve our electoral system and have a mechanism of limiting electoral disputes, particularly through the judicial system. However, we should not take away the aggrieved candidate's right to protest, complain and access justice.

I beg to conditionally support this Bill on the basis that we will relook and recast many of the clauses that I have spoken to.

Sen. (Prof.) Ongeru: Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to add my voice on The Election Laws (Amendment) Bill, 2018, by Sen. Olekina. I thank him for bringing this Bill.

For those of us who have had the opportunity and occasion to go through several elections, one thing that stands out quite clearly is the level of injustices that is done at polling stations. This is where the hallmark of confusion starts from, when you start

seeing people fighting one another. They do this because either the results or elections are not being carried out properly and in accordance with the set rules and regulations; or there is an opportunity for somebody to manipulate whatever results are out.

What Sen. Olekina is trying to do in this Bill is to limit and minimise the number of complaints that come forward through petitions. I can remember in one of the occasions when we had finished the elections and done our own tally, we were winners by 6,000 clear votes. The person who was contesting had already lined up his goons with the purpose of creating a scene in the hall, where the returning officers were just about to announce the results. In that melee of confusion, they hoped to announce the winner by changing the results. These are the injustices that we must correct in our electoral process.

I agree with Sen. Olekina that, for instance, we process Form A at the polling station, Form C at the sub-county tallying station – whatever it is you want to call it whatever that county is – and Form C at the county headquarters tallying centre. If you notice the agony and pain that candidates go through in this process, one would wish to know how we can change these laws to make it seamless and easily flowing, without the kind of tensions that it has created in this level.

Mr. Temporary Speaker, Sir, I agree that one of the ways of verifying results before they are doctored by anybody else in between the polling station and the sub-county tallying stations is to be able to sign them at the polling station and the results announced there.

However, what we have seen through experience is that when they announce the results at the polling station, some engineers have already been set up, in between the polling station and the sub-county tallying centre, and miracles happen. You will find that the results that were reported at the polling station have been changed. The forms are not signed or maybe signed, and this creates avenues for recourse to court processes.

My understating of this Bill is that, at least, at the polling station level, we should append our signatures all through the delegated agents at that level. That is the kind of amendment that we will need to do so that whoever is your designated agent should be able to sign that form at that level.

Mr. Temporary Speaker, Sir, I am persuaded by the argument by Sen. Wetangula that, indeed, in some polling stations they may be extremely--- Every one of us knows that there are areas that are completely hostile, and you are at the mercy of the goons in that polling station. They would decide to do anything to those results. I have vivid experiences in some of the polling stations.

There is one polling station that I walked into and witnessed the voting pattern. My agent called me and sent an SMS saying: “Congratulations, Senator. You have 400 votes in this polling station and your second opponent has 75 votes.” However, when they arrived at the tallying centre, I was the one with the 75 votes and my opponent had 400 votes. Unfortunately, in between, some of the agents get bought out. Therefore, you have a total switch-over of the results which do not make any meaning or an expression of what people expect in their voting when they came to the voting station. We need to tighten this area. How do we reduce hooliganism?

Sen. Wetangula will remember that the whole business of sitting in Serena Hotel was about electoral malpractices.

Sen. Wetangula: Exactly!

Sen. (Prof.) Onger: That is why we sat in Serena Hotel. The whole business of Constitution of 2010 is about elections. If you look at the history of this country even after the 2010 constitutional change, we still had problems in 2013/2014 and 2017/2018. The only thing that this points out to me, when I look at it in retrospect, is that it simply means that our laws are not perfect. Therefore, we must do something about it. What is it that we can do? It should be anything that will help us to refine and fine-tune our laws so that they become both progressive and accommodating to all the candidates. There is an element of equity and equality in the electoral process.

I have not said much about the presiding officers. More often than not, they are “hijacked” the night preceding the elections and given ballot papers to mark, and they then start stuffing them in the ballot boxes in the polling stations. They will particularly observe and ensure that if your agents arrive 10 or 15 minutes later, they will not know what has happened in the ballot box. Bizarre things happen; we have seen them. How do we stop these bizarre things from happening so that we have a flawless election and results?

One way is for signing at the polling station that yes, you witnessed the ballot boxes being opened, that they were empty and sealed. You, therefore, acknowledge that you were there to witness that process. I would like to see a form signed by my agent stating that when they went to the polling station, the ballot box was opened, they witnessed that it was sealed and the voting started correctly at the right time.

There is the issue of the mix-up of the ballot papers. How do we handle that situation in a polling station? It is left to the presiding officer or the returning officer. That is where we call upon the integrity of these presiding and returning officers to ensure that those papers are done correctly. Apart from the last element at the county headquarter tallying centre--- Sen. Olekina, you will have to agree to make certain amendments and changes so that we can accommodate the feelings which are beginning to filter through now. One such feeling is that, indeed, we know and it is a matter of fact that people get intimidated. People snatch ballot papers. We must preserve every element of those election papers so that at every given polling station, we know that what has happened is a true reflection of the will of the people.

That is why we must safeguard the will of the people, which has been expressed through the ballot. That is our concern. It should be our interest. Any law that we make must reflect that will of the people that has been expressed. We should not have elections being interfered with because of certain people who are good at maneuvering the electoral machines. We have seen many interesting things in the Integrated Financial Management Information Systems (IFMIS) these days. All sorts of peculiar things happen in the servers. We have seen them before and we put blame on anybody at that stage. What has happened has happened. We are living for the future generations and, therefore, what happens today should never happen tomorrow.

Therefore, I support this Bill. It is good intentioned, particularly, in Section 39 of the Elections to be amended as already prescribed in (a), (b), (f) and (i), except for the proviso where Sen. Wetangula said that let us not make it as a condition for not going to court. That you cannot use the material because you did not sign for them. That would be a mistake we would be making at this stage. We should leave it open or do some innovations to that Clause of the Bill so that we have something that we can stand for, and which gives free will of the people to be expressed at all times.

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

Sen. Were: Mr. Temporary Speaker, Sir, I thank you for giving me the opportunity to contribute to this Bill by Sen. Ledama. I know that he had good intentions to bring some order to our election process, especially on the voting day. Issues in elections start all the way from party primaries. A Bill that will help us deal with party primaries is coming up. This Bill looks at issues on the Election Day to ensure a free, fair, credible, accurate, transparent and predictable election.

It is possible that in Africa, we can have such an election. South Africa has shown that it is possible to have a free, fair, credible, accurate, transparent and predictable election. Ghana has also shown us that it is possible. Kenya can do it. It is just one of the four countries in the world that nullified a presidential election. Therefore, we are on the right path. I commend Sen. Olekina for coming up with an amendment to the law that tries to fix our issues during elections.

However, I would like the Senator to consider further amendments to the law so that Section 1(f)(g), where a candidate cannot use the declaration form to go to court, is done away with. This is because our elections are very emotional and violent. As much as we do not want to validate or encourage hooliganism during elections, we have to consider that it is a process. It will take time before we reach where South Africa and Ghana have reached. At that time of emotions, the candidate may not be in a position to sign that declaration form. Therefore, that should not be used to deny them justice.

I would also like to indicate that having candidates sign the declaration form in itself does not make the election credible; it requires that the IEBC ensures that we have a credible election. This is so because even if, as a candidate, I signed that form but the process all the way from the time the election started was not properly done, it is null and void. We should encourage the IEBC to ensure that we have a process from the time the election start all the way to the end, so that people can believe in it.

We also have agents and as the law is now, it is the agents of the candidates who sign the declaration form. As it is now, there are some agents who also either abandon the polling station when they see that their candidate is losing; and that has never stopped candidates from going to court, even when agents do not sign those forms. It does not also stop the declaration of results. Therefore, I would like to encourage the Senator to look at these amendments further, and as practitioners in the election cycle, we will be willing to sit with him and look through it.

With those few remarks, I beg to support this Bill with the amendments as mentioned.

Sen. (Dr.) Zani: Mr. Temporary Speaker, Sir, I rise to support this Bill. I thank Sen. Olekina for coming up with this Bill. I congratulate him generally for the interest that he takes on matters legislation, improving the society and making things work better for us. After all, that is what development is all about. To have that sort of energy in this Senate is a tick for this House.

In that same spirit, this amendment to the specific Election Act, No.29 of 2012, has been brought about by his and our observation about the level of chaos that surrounds any election. When I look at it – and I am reading from it in terms of democracy – elections should be conducted in such a way that the person who wins is very confident of their win, because it is a statement from the people. The person who loses can later on proceed with their agenda.

Mr. Temporary Speaker, Sir, it is unfortunate that Ghana, South Africa and India, who have higher populations, are able to conduct elections and release the results within a short time, yet we are unable to do the same. They do so because of technology and the people who work with that technology. The last elections in America were contentious because it was suspected that their technology was infiltrated. The era of fake news and fake data is also with us, which creates concern.

This Bill intends to bring order in our electoral process, and that is what we have yearned for, for a very long time. The 2010 Constitution tried to address the issue of elections and how to better them. The Kriegler Report gave recommendations on what we could do so as to have well conducted elections that will ensure that the right people are declared winners. It is in that spirit that the Mover of this Bill has made the following amendments.

The key amendment in this Bill is to ensure that there is an election return form that is filled by candidates or their representative in order to ensure that they have been given opportunity to oversight the tallying of results. Most of the candidates or agents who fail to sign the forms use the lack of their signature as a basis of petitioning the results.

Having listened to my colleagues, I do agree that it is possible for one not to sign the form because of violence. As we amend this Bill, we should keep its spirit, which is to reduce petitions, create agreement between the winner and the loser, reduce the number of complaints that come out of an election; create a free, transparent, fair and credible process. However, as we do that, we should be careful not to transfer criminal liability to the person who does not sign the form.

Mr. Temporary Speaker, Sir, Clause 3(b)(1FB) of the Bill states that;-

“The presiding officer shall—

(a) Immediately announce the results of the voting at the polling station before communicating the results to the returning officer;

(b) Request each of the candidates present to append his or her signature;

(c) Provide each political party, candidate, or their agent with a copy of the declaration of the results.”

This amendment can only work if that signature is put in place and the environment must be created for that signature to be appended.

Clause 3(d) (1FC) states that;-

“Where any candidate or agent has an objection to the tally of results as represented in the declaration form, the presiding officer shall note down the objections.”

Provisions have been made for objections, but I think that it contradicts itself. If somebody appends a signature on the form, it might be assumed that they have agreed with the result. To solve this problem, we should come up with a provision for laying ground for a petition if one does not agree with the results, even if they are to append their signature on the form. That is because the candidate or agent could be pushed out of the polling station or there could be chaos, which would make it difficult for one to progress in that way. At the end of the day, we are looking for progressive and accountable elections.

Therefore, I commend this Bill because it takes us to the right path. We should think through this Bill and maintain the clauses that are going to bring order during elections in order for us to have a law that will be beneficial to us. We should also be

careful not to create criminal liability on people who have not signed the forms due to situations beyond their control.

Mr. Temporary Speaker, Sir, I beg to support this Bill pending the specific amendments on the clause.

Sen. Pareno: Thank you, Mr. Temporary Speaker, Sir, for allowing me to contribute on this Bill. I also want to thank my brother, Sen. Olekina, for coming up with these amendments. This Bill talks of how we can enhance transparency so as to have free and fair elections. I wish that we can incorporate comprehensive amendments by relooking at the entire electoral system in this country.

Towards the 2017 General Elections, we tried to have good laws and good systems in place, but my experience in election matters has taught me that anything is possible even as we move towards 2022. This country is good at coming up with policies and structures, but fails to implement what we have put on paper. Unless we get to know what we want during election time, all these laws and systems will be an exercise in futility. We all saw the systems that we had put in place towards the 2017 elections.

During the last General Elections, we could only enter the data of our party candidates in the electoral system when the late Msando opened the window, and I thought that was good. Previously, we struggled to input the data of the candidates in preparation for the elections. We could not access because they had put such good systems in place; that you could only access upon being given authority by a certain authority. However, look at what happened. We lost the late Mr. Msando, who was the only person who could open those systems for us when we were inputting data. What comes to your mind? That somebody, somewhere does not want proper structures in this country; and they do not care about electoral systems in this country. Somebody somewhere, at all costs, just wants to do, what they want to do.

Mr. Temporary Speaker, Sir, we should not even do these piecemeal amendments, in as much as they are well intentioned. In fact, I think we should await the anticipated referendum. One of the things that some of us think should be carried forth in that referendum is that electoral systems be put in place.

We should probably try as much as possible not to have those servers in France again, because we were unable to open them. This is because when we asked them to provide the data, they said that it was in France, and they were still asleep. They were even unable to provide that data and to show that I voted for whoever I wanted to vote for. Since somebody somewhere did not want that data to be managed, we were told it was safer in France. It ended up being the worst nightmare we ever had in this country.

Mr. Temporary Speaker, Sir in as much as we want to do these amendments, we probably need just goodwill for the sake of this country. We need to just know that we want this country as one, to belong to all of us and I should be given the right to vote for whoever I want to vote for. It is not the systems that are lacking, but we abuse them left, right and centre.

Today I was reminded of how we were struggling here when the then Jubilee Coalition was mutilating the electoral laws, so that when we went to repeat the elections on 26th of October, the laws were completely mutilated. I was on record saying it would haunt them. It is already haunting others and they are already suffering. In fact, as we sit here, it is now another team that is “resisting.”

(Laughter)

Those who thought they were in the comfort zone because of the manipulations they did in 2017 are now feeling the heat.

(Applause)

Mr. Temporary Speaker, Sir, it is not about the laws in this country; it is about the goodwill to do the right thing. If you have lost in the elections, accept and go home. This is probably why we now need a law that ensures that there is no winner-takes-it-all. This will ensure that you do not even struggle, because at the end of the day, you will not take it all. To me, this is a good law.

Mr. Temporary Speaker, Sir, we also need to think about the people we put in that IEBC. Looking at the current Chairperson, Mr. Chebukati, today he says he is not sure he will do a good election for this country because the systems are not in place. The next day he says he is ready. The next day his security is withdrawn. The next day one officer dies. How can we operate like this as a country?

We need to put the right people in place; people who are ready to die for this country. After all, they are dying anyway, even when they have not done anything. Some of them lost their lives. At the end of the day, we ended up losing more because we do not want to do the right thing.

The system that was in place was partially manual and partially electronic. We have moved a long way from those days when we had nothing electronic to a system that is almost good. What did we do? We now came up with “computer-generated leaders” and, as a result, we are suffering up to date. You can tell which leaders are “computer-generated;” they are never there when they are supposed to be serving the people. We end up creating “computer-generated” leaders instead of looking at what we have voted for and bringing back that server that was never there anyway. We were told it was in France, when it was not even there in the first place.

The results that some of us have, of two individuals, were just manipulated right here, and the actual results were left there. At the end of the day, however much we speak of these Amendments, if we do not want to have a good country and good electoral systems, it will never be. We have the forms and the systems that are being proposed. We have the result forms, the tallying sheets, and the provision for everybody including agents to sign. What happened? Some agents were so thoroughly beaten and assaulted that they could not even append their signatures. We saw some being denied access to the venues. A candidate comes, colludes with the system and security, and they throw away agents of particular people, yet, the law has a provision for agents.

Mr. Temporary Speaker, Sir, the issue of having agents to sign is provided for, but we create an environment that does not allow us to even have these systems that we are proposing right now. There is also a provision for one to refuse to sign because it is not a correct result, and to record an objection. We also have the law that says that you fill those forms and the results are even pinned at the door, but those provisions are violated. In fact, we have had cases where they pin on the door a different result and tamper with the one that is put inside the ballot box. They give that to the agents and what is finally submitted is a different one.

We even have a problem with the transmission of results. They announce the right results at the polling station, but change them during transmission. That is why some results are still in France to date. Consequently, the will of the people is never realised. This is not because we do not have the laws in this country, but because we just decide to be crazy. One decides that they must get it by all means, including people losing their lives. In the year 2017, we almost lost this country.

Mr. Temporary Speaker, Sir, I support any amendment that improves on the systems we have, but we have a lot of homework to do. I am looking forward to a referendum that will include electoral system reforms; maybe we will just find a way to strengthen them. We already did so much, yet it was abused. We might still do so much and it still becomes abused.

Mr. Temporary Speaker, Sir, I beg to support and thank Sen. Olekina for bringing up these Amendments. Just before I forget, as we put in the amendments, we also need to check on what to do about importation of voters. I have personally seen, as I monitor elections, people crossing from Makueni and Machakos to come and register and vote in Kajiado, where they are not residents. They agree to be imported and are paid for it. They are transported on the day of elections to come and tamper, and choose for us, the people of Kajiado, a leader that we do not want.

I even know of a car that was almost burned at the time when we were doing voter registration. I have evidence of somebody who told me, "Here are two buses full of people who we do not know where they have come from, and they were here as early as 6.00 a.m." People were transported from as far as Kiambu to come and determine a vote for Kajiado, when we have residents there.

Importation of voters is another thing that we need to think about. Voters are imported to go to a particular area and determine the kind of leadership that people will have there when they are not even residents of the area. They just come to vote to determine leaders for you, and then go back to stay in their counties. That is another menace that has to be taken into account as we look forth to improving our systems. Otherwise, other people, who are minorities, might end up having others choosing leaders for them, when they have an opportunity to choose their own leaders.

As we look into these kind of amendments that we are coming up with, I wish to see a wholesome kind of overhaul of the systems that we want, and improvement of what we already have that is positive.

Thank you, Mr. Temporary Speaker, Sir.

(Applause)

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Temporary Speaker, Sir. I rise to support the proposed Bill by Sen. Olekina. Sen. Wetangula calls it 'industry;' he is an industrious Senator; and I could not agree more.

Let me just get a few things out of the way. One, we do not need a referendum under Article 255 to reform our electoral system. This is not part of what is under Article 255. We just need simple amendments.

Secondly, I sat as a member of the Special Select Committee that was led by Sen. Kiraitu Murungi and Sen. James Orenge, which came up with a very comprehensive legislation on how to make elections in Kenya akin to an election and not kangaroo

things. I have suggested to the Justice, Legal Affairs and Human Rights Committee and proposed that my Chairperson speaks to Sen. Olekina and Sen. (Dr.) Zani, who have amendments. I also agree with Sen. Pareno that we need to have comprehensive legal reforms. We need to amend the “A” to “Z” of the elections laws. There are several things that have been passed by this House which are extremely objectionable.

Mr. Temporary Speaker, Sir, the last time that we debated the controversial Election Laws (Amendment) Bill, we sat here until midnight. The Jubilee Party side voted for the Senate not to have a role on matters of boundary reviews concerning wards and constituencies. That is in the law. Our colleagues also voted to have in law and refused my particular amendment for the Justice, Legal Affairs and Human Rights Committee to oversight the IEBC. Currently, we have no role on the IEBC. It is only the National Assembly which has a role on the IEBC.

Under Section 107, the Senate has no role on the regulations on elections. We have no role on the elections and regulations that brought all of us here. When we brought the proposed amendments, there was caucusing and lobbying. People worked hard to ensure that all those amendments were defeated. At that time, it did not seem wrong; and it did not seem that some of these things were going to bite us. I have seen an amendment now by the Senate Majority Leader on part of those aspects, yet I spent quite an amount of time lecturing him and Sen. Sang, who was leading the troops on these amendments at that time.

Mr. Temporary Speaker, Sir, the Senate has no role on the issue of diaspora voting. That is why I have proposed that we need to relook at this issue. We passed a very controversial amendment under Section 44(a), on the complementary mechanism of elections. If Sen. Pareno wants to know how our presidential candidate lost the election, she should look at Section 44(a). We argued so much on this amendment. We were barricaded here. The former Speaker, hon. Ethuro, ordered the police out. We adjourned because we were intimidated. The police officers were everywhere just for us to pass a small section that was improperly worded and drafted by a person who has possibly never gone to a legal class.

Mr. Temporary Speaker, Sir, we had a contentious election and people lost their lives. I sometimes speak against the ‘Handshake,’ because it appears as if it is business as usual to have bad elections because it might result in a deal. We, as a country, cannot justify bad elections. The precedence that was set in 2007 should have been the last that it is okay to steal an election. The person that you spent so much on is sleeping in France, and yet the correct position is that the person was in Nairobi. We told Mr. Chiloba to go away, and he did not do so. Instead he sat around, walked away and resigned when he felt like. What sort of a country is this?

We sat down and thought that the pastors, priests and Imams would give us a good commission. However, we ended up with Mr. Chiloba and Mr. Chebukati. Hon. Kaluma proposes that we go back to the old system, where the political parties set up the IEBC. He forgets very quickly that the problem about the 2007 Election – the Samuel Kivuitu and Kihara Muttu debacle – was as a result of Martha Karua unilaterally uprooting several commissioners.

Politicians have failed because we have no capacity to be impartial. If Sen. Olekina proposes somebody, and he is in ODM, he expects the commissioner who is ODM to listen to him. Similarly, I am in the Wiper Party. If I propose a commissioner, I

expect to call that commissioner. If you appoint a Kikuyu as a commissioner, you expect to call him and ask him whether he is taking care of the tribe. Fortunately, Mr. Chebukati is not a Kikuyu or Kalenjin.

Imagine that you have a candidate who is Kamba, and the person who is qualified as the Chairperson of the IEBC is Kamba; do you think this country will accept the results? Of course not, because we do not trust anything. Even if we put Archbishop Njue in that position, at some point, we will look at him and think of him as a Kikuyu. I wonder why we go to church, yet we are such a mess. I have proposed that these forms are not the smallest portion of the problem in our elections. We are the problem. We want to cheat. Political parties want to cheat in nominations because they want to put the people they prefer and remove the people that they do not want.

Mr. Temporary Speaker, Sir, we proposed a law here on the independent candidate and other candidates of political parties. However, the IEBC came up with amendments that the Jubilee Party supported. The irony of it is that the Jubilee Party members were the biggest victims of election rigging in the nominations. The majority of people who became independent candidates are from the Jubilee Party, yet they had amended that law and mutilated it.

We made an amendment on the ballot papers and said that that they should be procured eight months to the elections. However, Mr. Chiloba amended the time to four months and our colleagues supported him. I sometimes wonder whether we switch off our memories. We, as leaders, are victims of our own deceit. Sen. Orenge and I spent a lot of time at the Windsor Golf Hotel & Country Club, and worked on the Electronic Management Law System. The intention was that if the results are announced, the form should be scanned and transmitted as a PDF document. However, Mr. Chiloba and his team did not do so. Instead, they started transmitting numbers. As a result, the server was invaded severally.

Mr. Temporary Speaker, Sir, people do not know why the Supreme Court annulled the presidential election. They looked at the number of times that people logged into the server and it was impossible to comprehend why people logged in so many times. The minute you key in 10, you discover it is 100. You find that Mr. Chebukati has logged in severally. Even Mr. Msando had logged in, yet he was already dead at the time. There was no other option apart from nullifying that election. The NASA Coalition boycotted the repeat election, but we never solved the problem. We just postponed this problem to 2022. I am afraid that this will not solve it.

Sen. (Prof.) Ongeru is right. Unfortunately, we have participated in election petitions since 2003. In a proper system, you do not require a candidate to sign any form. Article 86 of the Constitution states that there should be a simple, verifiable and accountable system of voting. The machine that you use to register and vote should be used to transmit the numbers for tallying. If 86 people walked to a polling station and you transmit 87, the machine is supposed to say no.

This becomes secondary evidence; the paper. The primary evidence is the transmission. Come the second Presidential election in October, what do our colleagues on the majority side do? They amended the law to say that this form – the one that Sen. Olekina is proposing to amend – is not the primary data. The document that you have scanned is not the primary data. The primary data is this one, which you can amend. What sort of people are we, that you can even doubt a system? You can even say in this

technological time, that between a document that you have scanned and transmitted, that the primary document is the one that you are left holding. Then you say that the returning officer from Marsabit should drive to Nairobi and bring the primary document. Sometimes I think we are primitive. It is not just possible. We are a sick country!

In fact in my view, if we reform the electoral system and we have an election for one day and the loser goes home, the rest of the reforms in this country will be so easy because we will have goodwill of having the leaders who Kenyans want. We will have the goodwill of everybody; whoever loses is happy and there are no problems. People do not have to die. The server is in France; in a country which we say is a middle economy; we are doing well. No, we are a pathetic country of deceitful leaders!

How much money is traded on Mpesa? Billions of Shillings. Kenyans sleep well at night because they know that the Mpesa platform is secure. What about the elections, what is so different? What do you think has more stake to Kenyans? Is it not their money? It is their money, because it is in billions, but we sleep well at night with *M-Shwari*, *Kochokocho*, *Pochopocho*, *Puliza*, *Fuliza*, we are happy. They can come up with whatever name and we are happy with it, and we feel secure. Why can we not feel secure with an election? We can *puliza* our money but we do not trust our elections. Is Mpesa managed in France? No; the Mpesa platform is managed in Kenya by Kenyans and by a Kenyan bank.

I am wondering why we need to import a chairman, for example, Justice Sax, who came from South Africa, who sat in the Kriegler Commission? Let us make him Chairperson so that when he announces Sen. Olekina as President, I cannot complain, because he cannot have spoken Maasai with him. He does not know him, his home or his relatives. As we proceed to interrogate how we are going to select IEBC Commissioners, remove Mr. Chebukati and replace him with Mwendwa, or Mwikali. What is going to be different? There will be no difference; it will be the same thing; interest upon interest.

We amended the law to say that the Commissioners should not involve themselves in procurement. These gentlemen and ladies in IEBC who are resigning put their hands, their feet and their everything hip deep in corruption with immediate effect. They were hip deep in the corruption at the IEBC. So, as my good friend amends this law, please interrogate what the problem is. The problem is not the form, the announcement, the voting, the Kenyan who walks in or anything else. The problems in this country begin at 5.01 p.m., the minute we close voting, and we need to address that. The only way we can address it is to follow this law.

Today, the IEBC appeared before the Committee on Legal Affairs, and Foreign Relations. They are required, under the election management law, to audit the system within one year. What do they say? We have no money. The only thing they are avoiding is the server.

That day when Mr. Chris Msando was to be interviewed at *NTV*, I was supposed to be with him in that interview. I had some information about how this system is supposed to work, and how we are supposed to inspect it. We were supposed to do a mock election in this way. People were supposed to come and vote in Parliament as a polling station. We were to scan the form and the transmission is done, for example, at Kenyatta International Convention Centre (KICC) or the Multimedia University of Kenya (MMUK).

We wanted to test it, but we never did. The former Chief Executive Officer (CEO), Mr. Chiloba, procured ballot papers the way he wanted, at the Al-Ghurair Company. It was “tenderpreneurship.” Our election is the most expensive in the world; it costs USD38 per voter. I wonder why we need to register more voters, because this country will go bankrupt during elections unless we bring in the Chinese.

Everybody that is talking about referendum should shudder to think what will happen when we can hardly get money for division of revenue. However, we possibly need Kshs20billion or Kshs25 billion to conduct our referendum with these same people who we distrust so much. Why have we forgotten that these people did what Sen. Pareno said? They nearly took us to the brink.

Mr. Temporary Speaker, Sir, someone has amended the law to say that when we have a commission of seven people; three of them can provide a quorum and we do need to have a Chairperson. When did we become such an awful country? Quorum in a Committee of seven is three. I am yet to understand the definition of quorum which means a majority. Are these the same people that will take us to the reforms?

Somebody said that we should not change these commissioners two years to the elections. However, we are about three years to the elections. We are proposing to have a referendum and in between, we start to prepare for the elections with Mr. Chebukati, Prof. Guliye and Justice Jessie Lessit, the same secretariat which is still in office. We recommended a disciplinary action to be taken against it in the Committee led by Sen. Orengo and the former Sen. Murungi. However, they did not touch them. I feel sad.

Mr. Temporary Speaker, Sir, our Constitution is the most beautiful document that says that whatever method used in election, the system is simple and accurate, verifiable, secure, accountable and transparent. It is plain English and simple, but we are unable to do so because of our selfish interests. Everything about this country is selfishness. The day we will put selfishness aside and love this country as we should, we will have a good election. It cannot be about reforms, who announces or compelling a person to sign.

Kenyans vote faithfully every year. We make them vote and queue in Nairobi for 12 hours. It is a sad day. These are not the resolutions. We should have an election that will end in one day and the winner should be the winner. Political parties should nominate the candidate that people want. That is it. There should be no fixing. That is the day.

However, that day has not come yet. We are still on the way to Damascus. Kenya is still walking on the road to Damascus. It is like Saul; it has not turned back. We are walking into 2022 like blind men and women who think that they know where they are going, and we are getting into a hole. The question is at what point we will learn that we are at the tipping point?

The Temporary Speaker (Sen. (Dr.) Lelegwe): Thank you, Sen. Mutula Kilonzo Jnr.

Proceed, Sen. (Rev.) Waqo.

Sen. (Rev.) Waqo: Mr. Temporary Speaker, Sir, I stand to support the Election Laws (Amendment) Bill (Senate Bills No.33 of 2018). I support the Bill simply because it will ensure that the documents containing election returns are signed by the candidates or their representatives.

I am one of the Senators who fight for justice of every Kenyan, and I congratulate Sen. Olekina for coming up with this amendment Bill. In order for us to have a free and

fair elections, we have no option but to amend, especially the election laws. If signing the forms will save the Kenya we are in today, then so be it.

As we all know, Kenya is a dynamic country with very creative and innovative people. We also have those who are good at destroying things and breaking the bridges built. With such types of people and other different characters in our society, we must have laws in place and which should be well protected.

We have experts who can interfere with any system and do anything to cause confusion, but the rest of Kenyans will just pretend not to be aware of what is happening. I am not accusing the other side of the House as my colleagues have done. We are all sinners because we have, in one way or another, participated in the mess that we are in. Many of us have been in leadership positions, but we have never protected the laws that God put in our hands. Therefore, we need to protect the laws that we put in place. We need to be patriotic enough because what we lack as a nation is patriotism. Everybody wants to benefit, manipulate, dictate and exploit. Given opportunity, that means that we are all potential thieves.

Mr. Temporary Speaker, Sir, Kenya has everything in place. We have all the necessary laws. In fact, the other day I was with somebody who said that our Constitution is one of the best. However, just because of the minds of people that I have described, we keep on destroying the good that we have in place. We have laws, policies and good strategic plans in place, which never see the light of the day because we are not committed, as a nation, to any transformation. As a nation, we need total transformation at every level.

What happens at the national level affects every Kenyan, even at the ward level. We have dictators at the national level, but we also have them even at the ward, constituency and county level. We have “small kings” who control everything, whose wish is always followed and whatever they want to do can be done, even if it means killing somebody or interfering with our system. Therefore, I recommend total transformation. Unfortunately, now that “Baba” is enjoying the “Handshake” and shared power, I do not know whether we have other Kenyans who can fight for total transformation and reformation.

It is my wish that all Senators will support this Bill so that in future, we have free and fair elections.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Thank you, Sen. (Rev.) Waqo.

I now call upon Sen. Olekina who is the Mover to reply.

Sen. Olekina: Mr. Temporary Speaker, Sir, I rise to reply. I thank all the Senators who have contributed to this Bill. From the sentiments of Sen. Orengo, Sen. Wetangula, Sen. Pareno, Sen. Were, Sen. (Dr.) Zani, Sen. (Rev.) Waqo and Sen. (Prof.) Ongeru – about eight distinguished Senators who spoke to this issues – it gives me the opportunity to go and sit down with the other Senators and try to come up with all the amendments.

I like the fact that everyone feels that it is an opportunity for us to amend the Elections Act and possibly come up with a situation where we separate the Elections Act from The Election Offences Act, so that we can have a proper discipline system. It is ridiculous that we are talking about the wage bill and the debts that we have in this country, yet we are still burdening our institutions.

Yes, the IEBC is a mess and we have to come up with a solution. However, at the same time, as Sen. Mutula Kilonzo Jnr. said that the most important thing is for us to

become disciplined. In the words of Sen. Mutula Kilonzo Jnr., which I completely associate myself with, we, as leaders, have failed. We have failed because we do not really care about the future of this nation. All we care about is how we can deceive the system, get in there and once we are there, we disappear and not even serve the people who we have now lied that they elected us.

Mr. Temporary Speaker, Sir, because of time, I would like to also give an opportunity to Sen. (Dr.) Zani, whom I hope we can sit with and bring all the amendments together. During moving, I suggested that we invite most of the Senators to come during the Committee of the Whole, so that we can bring more amendments.

With those few remarks, Mr. Temporary Speaker, Sir, I thank you and request, under Standing Order 55(3), that the putting of the question be deferred to a later date.

The Temporary Speaker (Sen. Lelegwe): Hon. Senators, I defer the putting of the question on The Election Laws (Amendment) Bill (Senate Bills No.33 of 2018) to a later date.

(Putting of the question on the Bill deferred)

I also defer Order No.13.

Second Reading

THE NATIONAL COHESION AND PEACE BUILDING
BILL (SENATE BILLS NO.35 OF 2018)

(Bill deferred)

Next Order.

Second Reading

THE ELECTION LAWS (AMENDMENT) (NO. 2)
BILL (SENATE BILLS NO.37 OF 2018)

Sen. (Dr.) Zani: Mr. Temporary Speaker, Sir. I beg to move that The Election Laws (Amendment) (No. 2) Bill (Senate Bills No.37 of 2018) be now read a Second Time.

Mr. Temporary Speaker, Sir, on 18th April, 2018, Kinondo Ward in Kwale County had a by-election, where we had two candidates; Hamisi Omar and Juma Maone. Hamisi Omar, whom we called *Pweza*, was our Orange Democratic Movement (ODM) candidate while Juma Maone was a Jubilee candidate. The by-election was caused because at the initial election, they actually had an exact tally.

In that by-election, ODM won with 3,412 and Jubilee had 2,704. At the calculation of members who are meant to be nominated at the county assembly, an assumption is made that when there is an addition of any member, the representation in the assembly will also change. One new member has been added and I remember that, at that time, members from my ODM party were very optimistic because we knew that by

adding one more candidate, we would get a nomination slot. Upon further checking with the IEBC, they informed us that there is no law or provision in place for that adjustment, yet the representation from county assembly is a representation of members from the various political parties.

Therefore, Mr. Temporary Speaker, Sir, this amendment seeks to enable a possibility that specific adjustments can be done in county assemblies. It might not necessarily mean that members at the county assembly are being revoked in terms of their membership. It means that a political party is adding on a new member because of the work and effort that they have put through a by-election.

I beg to move and request Sen. Olekina to second.

Sen. Olekina: Mr. Temporary Speaker, Sir, I rise to second the Election Laws (Amendment) (No.2) Bill (Senate Bills No.37 of 2018). I recently came back from Northern Ireland, which is part of the United Kingdom (UK), where I had gone to observe the elections. Elections are held on the first preference basis. I believe this is the reason why, in a country where there was a lot of divisiveness, people find a way to get along and accept that certain people are preferred more than others.

I believe that my sister, Sen. (Dr.) Zani, is trying to come up with a mechanism whereby when things change because of a by election, and all of a sudden, one political party has more members elected, that political party ought to be given an opportunity to nominate another person. Then, because of the preference – the way the constituents have preferred that political party over another – it should be given an opportunity. I say so because of the work of a county government, a constituency or even a ward. If the people are disgruntled and they are not happy with the way one political party is delivering services to them, then we will not progress at any given time.

What I witnessed in Northern Ireland is that every vote counts. In Kenya, if we can take in lessons from those countries, and because of the divisiveness we have here, change the law. What Sen. (Dr.) Zani is proposing will help this country.

Mr. Temporary Speaker, Sir, I still have about one minute and 28 seconds. With those few remarks, I beg to second.

(Question proposed)

Sen. Pareno: Mr. Temporary Speaker, Sir, it is a bit exciting to know that we have many proposed amendments to our election laws, of course, to better our operations. As I had said, it is not really about much of the laws and the papers that we put forth, but mostly about how willing we are to implement---

ADJOURNMENT

The Temporary Speaker (Sen. (Dr.) Lelegwe): Order, Sen. Pareno. You will have a balance of 19 minutes when this Business appears on the Order Paper.

Hon. Senators, it is now 6.30 p.m., time to adjourn the House. The Senate, therefore, stands adjourned until tomorrow, Wednesday 15th May, 2019 at 2.30 p.m.

The Senate rose at 6.30 p.m.