

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 12th March, 2019

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

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

PRAYER

COMMUNICATION FROM THE CHAIR

INVITATION TO A MEETING WITH CS, MINISTRY OF ENERGY

The Deputy Speaker (Sen. (Prof.) Kindiki): Hon. Senators, as you may recall, on 11th October, 2018, the Senator for Wajir County, Sen. (Dr.) Abdullahi Ali, MP, sought a Statement from the Standing Committee on Energy regarding frequent power rationing and power blackouts in Wajir County.

Further, on 6th December, 2018, nominated Senator, Sen. Judith Pareno, MP, sought a Statement from the Standing Committee on Energy regarding vandalism of electricity transformers serving schools and community projects in Kajiado County. The two Statements elicited a lot of interest from Senators.

In order to effectively address concerns raised in the two Statements, the Standing Committee on Energy has invited the Cabinet Secretary, Ministry of Energy, to a meeting of the Committee, to address the matters and any other Statement relating to energy production and supply in Kenya.

All hon. Senators are invited to the meeting of the Standing Committee, scheduled to be held tomorrow, Wednesday, 13th March, 2019 at 11.00 a.m., in the Senate Chamber.

I thank you.

Sen. Wetangula: Mr. Deputy Speaker, Sir, I have a long-standing Statement in relation to energy about the Turkana Wind Power. Does it also fall under this category or it will stand on its own and we expect a Statement from my distinguished tycoon colleague from Nyeri County.

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator! Did you say “tycoon colleague” or “Senator colleague”?

(Laughter)

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Sen. Wetangula: Mr. Deputy Speaker, Sir, I meant what I said.

The Deputy Speaker (Sen. (Prof.) Kindiki): That neither of you is a Senator; because both of you are tycoons.

(Loud consultations)

Order Senators!

The Chairman, Sen. (Eng.) Ephraim Maina Kirinyaga, kindly proceed.

Sen. (Eng.) Maina: Mr. Deputy Speaker, Sir, I expected you to make a ruling on adding unwarranted adjectives onto people's names especially regarding to hon. Members of this House. We are all equal in all respects, spirit and everything else.

(Laughter)

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

Sen. Cherargei, would you like to say something?

Sen. Cherargei: Mr. Deputy Speaker, Sir, there is a book called *Shamba la Wanyama* where all animals are equal but sometimes, there are animals which are more equal than others. However, I agree with Sen. (Eng.) Maina that we should be referred to with the names that are known. If we use that sort name like calling Sen. (Eng.) Maina, engineer tycoon, some people can be scared.

(Laughter)

We should just refer to him as Sen. (Eng.) Maina without adding the word 'tycoon' because it will scare some of us who have not reached there. I agree that the excitement of the Senators is because they are using other yard sticks to measure their abilities.

The Deputy Speaker (Sen. (Prof.) Kindiki): If I heard Sen. Wetangula right, although he spoke in an unconventional manner, he alleged that Sen. Cherargei is not equal to Sen. (Eng.) Maina. I, therefore, wanted to hear your comment before I make mine.

What is it, Sen. Linturi?

Sen. Linturi: Mr. Deputy Speaker, Sir, truth be told. Truth is painful, but we must get honest as leaders in this country. Equality is a fallacy. When Sen. Wetangula uses an adjective like 'tycoon', I am of the view that he knows what he is saying and he means what he is saying. We all cannot claim to be tycoons in this House. Similarly, we must appreciate what one has done in life when he is alive and tell him that he has done well. It is the same way we cannot be called professors here because we are not professors. If you have climbed the academic ladder and you are referred to as a doctor, let us give you the honour of referring to you as a doctor or professor.

My friend, Sen. (Eng.) Maina, has done well in terms of creating wealth in this country. For that matter, I do not find any problem in referring to him as a tycoon. Only that I do not know whether they are peers with Sen. Wetangula. If they are, then they are

okay communicating to each other that way. However, Sen. Cherargei, you are not at that level. We understand that you are still growing up.

Thank you.

(Laughter)

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

Sen. Cherargei, I gave you an opportunity to defend yourself and you squandered it. Therefore, that opportunity is gone forever.

Hon. Senators, I can only say that you are free to refer to people's "titles". I say that with the word title in quotes. However, the Standing Orders are very clear, that Senators shall refer to each other as Senator so and so.

If you want to add other prefixes and honorifics including Mr., Mrs., Madam, *Mzee*, Tycoon, *Kijana* or any other, that is fine so long as that title or honorific is acceptable, especially to the beneficiary or the addressee of the title or honorific. It should not be offensive or used to ridicule a Senator. Even so, using a honorific which is acceptable does not excuse you from referring to that colleague as Senator so and so. Be guided accordingly.

Sen. (Eng.) Maina, I recall Sen. Wetangula, sometime towards the end of the last Session, also brought a very passionate issue of national importance concerning the issues around Lake Turkana Wind Power Project. The question is, because that was a request to your committee and I have just communicated the request of the Standing Committee on Energy, how come this issue has not been addressed? Would you have an explanation why you would not want this Statement to be addressed through that meeting?

Sen. (Eng.) Maina: Mr. Deputy Speaker, Sir, the subject regarding the question of Sen. Wetangula will be handled as a normal question in this House. That is an agreement between the Speaker, Hon. Lusaka, Sen. Wetangula and I. We had some discussion and agreed that the question will be tackled competently tomorrow afternoon. Therefore, I expect some decorum that once such an agreement has been arrived at, I do not find it in order for my friend to raise it.

Regarding the power shortage in Wajir and the---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator! We are not discussing Statements. The Speaker has just communicated that tomorrow the CS for Energy will be available to all interested who will attend as friends of the Committee. The matters in question will be the two Statements; the Statement by Sen. Judy Pareno and the earlier one requested by the Senator for Wajir County.

The issue at hand is whether Sen. Wetangula's earlier sought Statement will be included. I heard you say that you discussed this with Sen. Wetangula and Speaker Lusaka and agreed on the way forward. Is that the case, Sen. Wetangula?

Sen. Wetangula: Mr. Deputy Speaker, Sir, there has been absolutely no discussion or agreement on this matter. What my distinguished friend and colleague did was that he gave me a very scanty answer last week, which I have looked at and is incurably inadequate. I would seek your intervention that this issue which is extremely weighty because it is involving billions of taxpayers' money that may have gone astray,

be included in those issues that the CS will be able to address. Yours truly will be here promptly to prosecute the question.

To make the record clear, there has been no meeting between me, my colleague and the Speaker. The Speaker only directed that the answer be brought as urgently as is practically possible. As we say, if you can access Jesus, you do not need John the Baptist. If the CS is coming tomorrow, let us deal with him.

Sen. (Eng.) Maina: Mr. Deputy Speaker, Sir, first of all, there is a point which I would like squared. I want it squared, not from any other person, but from the Speaker himself, hon. Lusaka. This is a matter of integrity---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. (Eng.) Maina! Why is it difficult to invite Sen. Wetangula, who is already invited anyway by virtue of the Speaker's Communication to attend tomorrow's meeting and raise the issues he wants to raise? I am sure he is raising them for the sake of the people of Kenya, but not because of his own sake.

Secondly, I can see the communication is clear on the agenda. Nothing prevents an Any Other Business (AOB) being raised even on that issue unless there are things you would want to explain further than that.

Sen. (Eng.) Maina, I see no prejudice if Sen. Wetangula attends that meeting and raises that issue as an AOB. Even if it is not addressed substantively, he could even get a commitment by the CS when the substantive issues will be addressed maybe as a way of follow up.

Sen. (Eng.) Maina: Mr. Deputy Speaker, Sir, this is a matter of integrity. I will get in touch with the Speaker---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! Who is lacking integrity here? Whose integrity is at stake? Is it yours? Is it Sen. Wetangula's? Is it Speaker Lusaka's or is it mine?

Sen. (Eng.) Maina: In this respect, Mr. Deputy Speaker, Sir. I made a statement that we agreed with the Speaker and Sen. Wetangula. The Speaker was on the Chair; both of us walked up to him and we agreed. I still stand by that.

Now I can go on---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! We are spending too much time on this issue. The thrust of this issue is whether the issue of Lake Turkana Wind Project can be raised either as a substantive issue or AOB in tomorrow's meeting before the CS. Mr. Chairman, I would like to know whether there is anything prejudicial to the Committee, or to the CS if that matter is addressed tomorrow by Sen. Wetangula.

Sen. (Eng.) Maina: In my position, I still stand that he can raise the matter as an AOB. However, it will be competently addressed in the House as had been earlier ruled by the Speaker.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Wetangula, you are free to attend tomorrow's meeting and raise that issue. However, as the Chairman has said, the manner in which it was directed, the issue be disposed of should also be complied with. If it was directed that there shall be a Report, then it should be there. However, I do not see any prejudice if you attend tomorrow and raise the issue.

Sen. Wetangula: Mr. Deputy Speaker, Sir, the record of this House will bear me out. When I raised the issue, more than 10 Members contributed to it, chiding the Chairman for not bringing the answer. The Speaker directed that the answer be brought as urgently as possible. Indeed, subsequent to that, the Chairman brought me what looked like an answer. I even asked him that I go through it, compare with my notes then he can try to answer the question.

Since the CS is coming and the answer is drawn from the CS anyway, it is easier for us to interrogate him on the issue. I do not see any question of integrity coming in here. At no time have I held any meeting with the Speaker and Sen. (Eng.) Maina. We communicated from where I am standing. Sen. Olekina and many Senators spoke and were angry about this issue delaying for that long, including Sen. Hargura from the area where I have asked the question.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. I direct that Sen. Wetangula is free to raise that issue in tomorrow's meeting as an AOB. It is so ordered.

Next Order!

Sen. Ndwiga: On a point of order, Mr. Deputy Speaker, Sir. Now that you have ordered that Sen. Wetangula can raise the issue, it is important that we communicate with the CS's office that, that issue will be raised here tomorrow, so that he comes prepared with the right answers.

Deputy Speaker (Sen. (Prof.) Kindiki): I direct the Chairman of the Committee communicate to the CS in the very specific and particular words that I have used; that the matter will be raised as an AOB. Just in case there is need to leave a window for further engagement on that issue subsequently as the Chairman has insinuated.

Next Order!

PETITION

AGREEMENT BETWEEN ISIOLO COUNTY GOVERNMENT AND LIVING GOODS LIMITED

Hon. Senators, we have one Petition listed on the Order Paper, that is the Petition relating to Isiolo County Government and a company called Living Goods which was raised by the Senator for Isiolo Sen. Fatuma Dullo. However, Sen. Dullo is away on official duty out of the country and has requested that we defer it.

(Petition Deferred)

Next Order.

PAPERS LAIDREPORT OF THE FIRST ORDINARY SESSION OF
THE 5TH PARLIAMENT OF THE PAP

Sen. (Dr.) Ali: Mr. Deputy Speaker, Sir, I beg to lay the following Paper on the Table of the House of the Senate today, Tuesday, 12th March, 2019.

Report of the First Ordinary Session of the Fifth Parliament of the Pan African Parliament held in Kigali Rwanda from 18th October to 3rd November, 2018.

(Sen. (Dr.) Ali laid the document on the Table)

REPORTS ON THE FINANCIAL STATEMENTS
OF VARIOUS COUNTY EXECUTIVES

Deputy Speaker (Sen. (Prof.) Kindiki): Where is the Senate Majority Leader? That item is deferred to later date.

(Laying of Paper deferred)

Next Order.

NOTICE OF MOTION

NOTING OF REPORTS OF THE PAN AFRICAN PARLIAMENT

Sen. (Dr.) Ali: Mr. Deputy Speaker, Sir, I beg to give Notice of the following Motion:-

THAT, this House notes the Reports of the Sixth Ordinary Session of the Fourth Pan African Parliament held in Midrand, South Africa from 7th to 18th May, 2018, laid on the Table of the House on Tuesday, 24th July, 2018; and the First Ordinary Session of the Fifth Parliament of the Pan African Parliament held in Kigali Rwanda from 18th October to 3rd November, 2018, laid on the Table of the House on Tuesday, 12th March, 2019.

STATEMENTSCIRCULATION OF COUNTERFEIT AND SUBSTANDARD
PRODUCTS IN THE COUNTRY

Sen. Khaniri: Mr. Deputy Speaker, Sir, I rise pursuant to the provisions of Standing Order 48(1) to seek a Statement from the Standing Committee on Tourism, Trade, Industrialization regarding the increased circulation in the country of counterfeit and substandard products, especially alcoholic brands.

In the Statement the Chairman of the Committee should explain:

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- (i) The Standardization and Quality Control measures in place, especially on the imported products aimed at combating counterfeiting and dumping of substandard products.
- (ii) How manufacturers are accessing legal KRA stamps batch numbers and QR codes for use on counterfeit bottles of alcohol
- (iii) Measures that have been taken by the relevant Government bodies to protect Kenyans from unknowingly purchasing and consuming the counterfeit alcohol
- (iv) The measures that the Government has put in place to sensitize retailers and the public to identify the counterfeit bottles of alcohol and other products.

The Deputy Speaker (Sen. (Prof.) Kindiki): Chairperson of the Committee on Tourism, Trade and Industrialization have you noted?

Sen. (Dr.) Langat: Mr. Deputy Speaker, Sir, I am a Member of that Committee and I have noted that.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Comply with the Standing Orders.

STATUS OF IMPLEMENTATION OF THE SENATE RESOLUTION
OF 18TH JULY, 2018, ON REGISTRATION OF PWDs

Sen. Khaniri: Mr. Deputy Speaker, I rise to seek a Statement from the Standing Committee on Labour and Social Welfare regarding the status of implementation of the Senate Resolution of 18th July, 2018, on the registration of Persons with Disabilities (PWDs).

Mr. Deputy Speaker, Sir, the House will remember that I moved a Motion on the Registration of PWDs, which was unanimously passed by this House. Therefore, the gist of this Statement is just to know the progress on what the Ministry has done so far.

In the Statement, the Committee should provide:-

- (1) A progress Report on the Senate Resolution and specifically the measures that have been taken by the national Government to register persons living with disabilities in addition to the planned 2019 census.
- (2) The number of PWDs who have been registered from July, 2018, to date, indicating their respective county of residence.
- (3) Collaborative initiatives aimed at ensuring 100 per cent registration of PWDs amongst the national Government, the National Council of Persons Living with Disabilities and county governments.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Where is the Chairperson, Vice Chairperson or a Member of the Committee on Labour and Social Welfare?

Sen. (Dr.) Milgo: Thank you, Mr. Deputy Speaker, Sir. I beg to bring the progress on Thursday.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Sen. Khaniri, that is a commitment from the Committee; you will get the progress report on Thursday.

Well done, Sen. (Dr.) Milgo.
Next Statement No. 4(c) by Sen. (Dr.) Zani.
She is not in the House. The Statement is deferred.

POLICY ON THE DEVOLVED SYSTEM OF GOVERNMENT

(Statement Deferred)

Next Statement No.4(d) by Sen. (Dr.) Abdullahi Ali.

INCREASED DRUG ABUSE IN WAJIR COUNTY

Sen. (Dr.) Ali: Thank you, Mr. Deputy Speaker, Sir. Pursuant to Standing Order 48(1), I rise to seek a Statement from the Standing Committee on National Security, Defense and Foreign Relations regarding increased drug abuse in Wajir County. In the Statement, the Committee should:-

- (1) State the number of the National Agency for the Campaign Against Drug Abuse (NACADA) offices that have been established in the counties.
- (2) State the reasons as to why the NACADA office has not yet been established in Wajir County, and whether there are plans to establish the office in the County and other counties where their offices have not yet been established?
- (3) State the steps that are being taken by the national Government, county governments and other relevant organs and government agencies to raise public awareness on the dangers and effects of drugs and substance abuse in the country, in a bid to control and stop entirely the abuse of drugs and other substances in the country and more specifically in Wajir County.

Mr. Deputy Speaker, Sir, Wajir has, of late, had a lot of problems with drugs. There are some streets in the town that have been named 'Dead Street' because nobody moves there. At night, you see everybody falling around---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order Senator! You are requesting for a Statement.

Sen. (Dr.) Ali: Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Let us hear from the Chairperson, Vice Chairperson or a Member of the National Security, Defense and Foreign Relations Committee?

Yes, proceed, Sen. Wetangula.

Sen. Wetangula: Mr. Deputy Speaker, Sir, I am a member of the Committee and I will convey the request to the Chairperson and hopefully bring the answer in two weeks.

The Deputy Speaker (Sen. (Prof.) Kindiki): It is so ordered.

Statement 4(e) by Sen. for Wajir County, Sen. (Dr.) Abdullahi Ali.

STATUS OF TVET CENTRES IN NORTH EASTERN KENYA

Sen. (Dr.) Ali: Thank you, Mr. Deputy Speaker, Sir. Pursuant to Standing Order 48(1), I rise to seek a Statement from the Standing Committee on Education on Technical and Vocational Training in Northern Kenya. In the Statement, the Committee should state:-

(1) The number---

(Loud Consultations)

Mr. Deputy Speaker, Sir, the Chairman is not even listening.

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

Sen. (Dr.) Ali: Mr. Deputy Speaker, Sir, pursuant to Standing Order 48(1) ---

(Loud Consultations)

The Deputy Speaker (Sen. (Prof.) Kindiki): Consultations should be done, not only in low tones, but gracefully.

Sen. (Dr.) Ali: Mr. Deputy Speaker, Sir, pursuant to Standing Order 48(1) I rise to seek a Statement from the Standing Committee on Education regarding Technical and Vocational Training in Northern Kenya. In the Statement, the Committee should state:-

(1) The number of Technical and Vocational Educational Training (TVET) centres in North Eastern Kenya.

(2) Clarify on the number of students admitted and those who graduated from TVET centres and polytechnics from each constituency in Wajir County during the last five years.

(3) Specify the number of tutors or teachers spread out in all the TVET centres and polytechnics from each constituency in Wajir, and how they are managed in those constituencies; who employs the teachers and what happens in those institutes?

Thank you, Mr. Deputy Speaker, Sir.

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

Where is the Chairperson of the Committee?

Sen. (Dr.) Langat: Mr. Deputy Speaker, Sir, it is noted and---

The Deputy Speaker (Sen. (Prof.) Kindiki): It will be acted on accordingly.

Sen. (Dr.) Langat: Yes, in two weeks, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): It is so ordered.

Sen. (Dr.) Langat: Thank you.

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

Sen. Faki, proceed with your Statement under Standing Order 47(1).

ALLEGED HARASSMENT AND INTIMIDATION OF
MOMBASA MCAs BY CEC MEMBERS

Sen. Faki: Mr. Deputy Speaker, Sir, I rise pursuant to Standing Order No. 47(1) to make a Statement on a county issue regarding the County Assembly of Mombasa. The County Assembly of Mombasa is established under the Constitution of Kenya and the County Governments Act as a Legislative and oversight arm of the County Government of Mombasa. As part of its oversight function, the County Assembly invited three County Executive Committee (CEC) members for a meeting with their respective committees. However, the CEC Members did not honour their invitation, but instead issued threats to dissolve the County Assembly, claiming that they have failed to perform their mandate.

(Loud Consultations)

Mr. Deputy Speaker, Sir, I beg to be protected.

The Deputy Speaker (Sen. (Prof.) Kindiki): From what?

Sen. Faki: Loud noise in the Chamber.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senators! Sen. Faki, there can never be noise in the Chamber; there can only be loud consultations.

Sen. Faki: Loud consultations, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Hon. Senators, consult in low tones.

Sen. Faki: This morning, Mr. Deputy Speaker, Sir, scores of people in Mombasa were invited to sign what is called a 'Petition for the dissolution of the County Assembly.' This is an act of intimidation on the Members of the County Assembly (MCAs), which should not be condoned. The role of the County Assembly is enshrined in the Constitution and the County Governments Act. This role cannot be accomplished effectively if the county assembly is denied an opportunity to summon and/or interview Members of the county executive.

Mr. Deputy Speaker, Sir, as a representative of the people in the County Assembly, the MCAs are the voice of the people. Their voices ought to be heard in order to achieve the aspirations of the people they represent. Any attempt to deter them by harassing, intimidating or threatening the MCAs is an affront to the independence of the County Assembly and this has to be stopped.

The MCAs should be allowed to do their work. I believe that there are sufficient provisions in the Standing Orders of the County Assembly of Mombasa to safeguard the interests, if any, of the CEC Members in appearing before the Committees. They, therefore, do not require the threats, harassment and intimidation currently being meted out on the MCAs of Mombasa.

Therefore, Mr. Deputy Speaker, Sir, I wish to bring this matter to the attention of the Senate as the guardian of devolution and urge it to come in to protect the Mombasa County Assembly, to avoid a situation where the assembly will be paralyzed, leaving the Executive with a free hand to operate in the county. This issue needs to be addressed urgently to avoid a similar situation like that of Makueni County during the last term of the 11th Parliament.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Sen. Faki.

Sen. Wetangula, I will give you, maybe and two other Senators, a chance to make very brief comments.

Sen. Wetangula: Mr. Deputy Speaker, Sir, I have listened very keenly to what the distinguished Senator for Mombasa County has said. If it is true - and I have no doubt that it is - it is a very serious matter.

The executive in any county is accountable to the assembly in terms of primary oversight, budgeting, approval of budgets and programmes of the county government.

If the county executive of Mombasa is engineering an intimidation of the county assembly, first, my distinguished colleague should tell them that they are engaging in a futile exercise. This is because there is no provision in law for the county executive to dissolve the county assembly.

Secondly, the only provision available is if matters reach a level where the President sets up a Committee, and when they dissolve the county government, both the executive and the assembly will go home. So, they are just undermining themselves.

Mr. Deputy Speaker, Sir, more importantly, I encourage Sen. Faki to arm himself with a few colleague from this House, to go and address the county assembly; encourage them to be firm and steadfast in their oversight work. More importantly, tell them that whatever they do that the county executive does not abide by, they forward to this Senate for further action.

We support you, Sen. Faki, in defending the integrity and independence of the county assembly.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. I can see that the level of interest is very high. Everyone will have only two minutes.

Proceed, Chairperson of the Committee on Devolution and Intergovernmental Relations.

Sen. Kinyua: Thank you, Mr. Deputy Speaker, Sir. I add my voice in telling the executive in Mombasa that the county assembly has its own and separate power to oversight the county government. As the Chairperson of the Senate Committee on Devolution and Intergovernmental Relations, I wish to tell my colleague, Sen. Faki, that we will join him and go to Mombasa, so that we can get to the root cause of what is happening there.

I thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Well stated, Chairperson, although I expected you to address the House in Kiswahili language, now that we are talking about the County Assembly of Mombasa, which is a Kiswahili speaking region.

Sen. Faki: On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): What is out of order, Sen. Faki?

Sen. Faki: Mr. Deputy Speaker, Sir, I have heard you say that Kiswahili is the language of Mombasa. It is a national language used in this Senate, the National Assembly and all other places. It is, therefore, the national language in Kenya.

The Deputy Speaker (Sen. (Prof.) Kindiki): I hope you are not saying that the Speaker is out of order, but just clarifying that Kiswahili is a national language.

Sen. Faki: Mr. Deputy Speaker, Sir, I was just clarifying.

The Deputy Speaker (Sen. (Prof.) Kindiki): That is true, but it is also true that Mombasa is a Kiswahili speaking region, generally. That is where it is widely spoken, but it is also true that it is a national language.

Proceed, Sen. Abshiro and make it very briefly.

Sen. Halake: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity. I congratulate Sen. Faki for bringing up this matter because I think it is prevalent in many places, where Members of the County Assemblies are intimidated, so to speak, by the executive.

Mr. Deputy Speaker, Sir, if we look at the objects and principles of devolution, first, it is to promote democratic and accountable exercise of power. What is happening around the country and not Mombasa alone is that we are seeing more and more abuse of the principles of devolution. This is where the executive pretty much - and perhaps even what we sometimes see even at the national level - is not being accountable. Every time the legislative arm asks for accountability or exercises its mandate on oversight, then it becomes an exercise of intimidation.

The second one is to enhance checks and balances and the separation of power. If in the Constitution, Parliament has summoning powers that are as good as what our Judges have, then I think we, as this House, must exercise that power to ensure that the integrity of legislature, both at the national and county levels---

The Deputy Speaker (Sen. (Prof.) Kindiki): Please, summarise.

Sen. Halake: Mr. Deputy Speaker, Sir, there is a lot I that need to say, but I am willing to support, accompany and make sure accountability is guaranteed both at the national and county levels.

I thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Well done. Thank you. Proceed, Sen. Ochillo-Ayacko.

Sen. Ochillo-Ayacko: Thank you, Mr. Deputy Speaker, Sir. This level of thuggery is very prevalent and more so, in a county such as Migori. Last week a gang called *Sangwenya* was transported to the County Assembly of Migori and forcefully evicted Members of the County Assembly, including the Deputy Speaker.

If we do not rise, as a House, to defend devolution and more so, the accountability aspect of it, we are likely to have no institution to assist us in the primary oversight.

I add my voice and support the concerns raised by brother, Sen. Faki, from Mombasa. I encourage us to try and make an example out of rogue county officials, so that this bad behaviour does not take root in our counties.

I thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Proceed, Sen. Cheruiyot and make it brief.

Sen. Cheruiyot: Mr. Deputy Speaker, Sir, I will be brief. This is a very serious matter that is being raised by our colleague. It actually warrants the summoning of the head of the executive of his county government to appear before this House. This is because as a big brother to the county assemblies, if we allow them to be bullied by the

executive, especially second term governors, our role of overseeing county governments will be watered down.

I will, therefore, support any move or measure that will be proposed later on as a recourse to this very grave occurrence.

I thank you, Mr. Deputy Speaker, Sir.

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

Let us have Sen. Madzayo.

Sen. Madzayo: Asante sana, Bw. Naibu Spika kwa kuniruhusu niongeze sauti yangu kuhusu taarifa ya ndugu yangu, Sen. Faki.

Ni jambo la kusikitisha kuona ya kwamba yule anayelinda mwenzake ndiye sasa anayetakikana kulindwa. Hili ni jambo la kusikitisha kwa sababu Bunge la Kaunti linatakikana kuangalia matumizi, makadirio na kazi inavyoendelea katika serikali zetu za kaunti.

Ni jambo la kusikitisha kuona ya kwamba sasa wale *county executives* wana mamlaka zaidi ya bunge lililoko katika serikali za mashinani. Tunawaambia kwamba tabia kama hizo hazifai kulingana na maadili yaliyomo ndani ya Katiba. Katiba yetu inatuambia kwamba bunge litakuwa na uwezo wa kuangalia kazi inavyoendelea ndani ya serikali za kaunti.

Bw. Naibu Spika, ikiwa kuna kitendo kama hicho kinachoendelea vile ambavyo Sen. Faki amesema ingekuwa vizuri kikome kwa sababu wao kama *executives* hawana mamlaka ya kuweza kuwafuta kazi wale waliochaguliwa na wananchi katika serikali za kaunti. Kwa hivyo, lazima kuwe na uwiano mwema ndani ya serikali za Mashinani na wasifanye vitendo vya kupinga Katiba ya Kenya na uwezo wa zile bunge za mashinani.

Asante.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you. What is out of order, Sen. Cheruiyot?

Sen. Cheruiyot: On a point of order, Mr. Deputy Speaker, Sir. I have realised that when Senators rise and speak in English, they are given two minutes. When they do so in Swahili, you allow them five minutes. Is it the direction of the Deputy Speaker or the Deputy Speaker is mesmerized?

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! As Sen. Faki pointed out, we need to promote Kiswahili as a national language. One way of achieving that is by being lenient to those who use that language. However, it is noted. We need to be fair and impartial.

Last but not least, Sen. Cherargei. There is also Sen. (Dr.) Langat. Did you want to say something?

Sen. (Dr.) Langat: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): One minute each. If you speak in Kiswahili, two minutes.

Sen. Cherargei: Asante, Bw. Naibu Spika. Sitaki jambo hili lipite kabla sijaongeze sauti yangu. Ninafikiri shida kubwa ambazo kaunti zetu ziko nazo ni kwa sababu pesa zinatolewa na serikali za kaunti kupitia Mawaziri wao wa fedha. Katika Kamati yetu, tumejaribu kushughulikia hayo maswala kuhakikisha bunge za kaunti

zipate uwezo wa kupata pesa zao katika akaunti zao kutoka Serikali kuu ili waweze kuendesha shughuli zao bila vitisho kutoka kwa magavana.

Katika swala hili, ninaunga mkono yule anayeongoza Kaunti ya Mombasa aitwe hapa katika Bunge la Seneti ndio aweze---

Sen. Wetangula: On a point of order, Mr. Deputy Speaker, Sir. Is the distinguished Senator for Nandi County in order to address this House and say he wished something that is already happening to happen?

In the last Parliament, this House – and you remember – fought so hard to give autonomy to county assemblies and their Exchequer comes directly from the Controller of Budget (COB). They are under no financial control whatsoever, howsoever from the county executive.

Is the distinguished Senator in order to speak without *pine curium*?

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. I think it is more of information. So, you have been updated that there is progress in that respect.

Conclude, Sen. Cherargei.

Sen. Cherargei: Bw. Naibu Spika, ninamshukuru Sen. Wetangula. Ninafikiri Kiswahili kinachanganyisha wakati fulani. Asante kwa kuongeza hayo maoni. Ninaunga mkono Kamati husika ---.

Sen. Madzayo: Hoja ya nidhamu, Bw. Naibu Spika, kutendanisha ni kama kumaanisha kwamba wakili, Sen. Wetangula hakielewi Kiswahili sawa sawa, ama alikuwa anamaanisha jambo gani?

The Deputy Speaker (Sen. (Prof.) Kindiki): What did you mean Sen. Cherargei? Did you mean that Sen. Wetangula has difficulties appreciating Kiswahili?

Sen. Cherargei: Bw. Naibu Spika, sijasema hivyo. Ninafikiri nilikuwa nasema yale ambayo---

The Deputy Speaker (Sen. (Prof.) Kindiki): Is it you who has difficulties?

Sen. Cherargei: Bw. Naibu Wa Spika, sio mimi. Nimeongea vizuri. Ninafikiri tu ni---

The Deputy Speaker (Sen. (Prof.) Kindiki): Although you said that yourself.

Sen. Cherargei: Bw. Naibu Wa Spika, unajua watu wamezoea kuelewa kupitia Kiingereza. Huwa changamoto kwa muda fulani. Hata hivyo, ninaunga mkono kwamba Kamati husika hata imuite Gavana wa Kaunti ya Mombasa ile aangazie haya maswala mazito kuhusiana na bunge la Kaunti ya Mombasa ili tusuluhishe maswala hayo.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. We need to bring this to an end.

Sen. (Dr.) Langat, strictly two minutes.

Sen. (Dr.) Langat: Thank you, Mr. Deputy Speaker, Sir, for allowing me this chance to give my views. As the Senate, we must stand strong with the county assemblies. If we allow county assemblies to be harassed by the executives, that one will spill over to the point where it will be so difficult for us to do oversight.

Even to us here, sometimes we invite Cabinet Secretaries to very crucial meetings only for them to fail to come without giving us proper reasons why. We stand with Sen. Faki from Mombasa and let him know that whatsoever you would wish that we support,

we shall stand together to make sure that our brothers in the County Assemblies are respected so that they do their work, especially oversight, effectively.

I support.

The Senate Minority Leader (Sen. Orengo): Thank you, Mr. Deputy Speaker, Sir. I rise to support. In supporting, I want us to remind ourselves that the Principles of Devolved Governments under Article 175 are based on the principles of separation of powers so that the county executive and the assemblies each have their powers enumerated in the Constitution. Nobody should ever think that you can dissolve a county assembly. Probably, it is possible to impeach a governor by extension, remove a county executive but you cannot by any legal mechanism dissolve a county assembly other than through the process of suspension and dissolution of the entire county government.

Those who are trying to interfere with the work of the county assembly, do not know what they are doing. County assemblies are part of the legislature at the county level just as much as we are the legislature at the national level. Therefore, I would wish to give my support to the distinguished Member from Mombasa County and tell him that this is work that the county assembly must and should do in overseeing the County Executive and most of the County Executive Committee (CEC) members.

Therefore, let the people of Mombasa County know that we stand with the county assembly because representation at the county level is firmly based on having those county assemblies as legislatures. The county executive, although a separate arm of government - representation and the devolved unit is really enforced by the existence of county assemblies.

I hope the people and the County Executive in Mombasa County should realise that county assemblies in the order of things, are superior to the County Executive. Just in as much as at the national level, Parliament is superior to the Executive and the Judiciary. If you look at the architecture of our Constitution, Parliament comes first, the Executive and then the Judiciary. Although they are separate and equal, but in the order of hierarchy, the Legislature is first amongst equals.

The Deputy Speaker (Sen. (Prof.) Kindiki): It is true, Sen. Orengo, as a matter of law, the Legislature is the only arm of Government that is elected directly by the people – the entire arm is directly elected by the people. That lends credence to your theory, that Parliament is supreme to the other two arms of Government.

Finally, Sen. Mutula Kilonzo Jnr., two minutes.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, it is with great disappointment that a Statement like this can be issued, particularly with the experience that we had in Makueni County.

I expressed this during the Devolution Conference. Part of my disappointment is when a topic on oversight is being discussed, Members of the County Assembly (MCAs) are not asked to participate and we know very well that when it comes to oversight of county governments, MCAs all over the country are being mistreated, intimidated, *et cetera*.

In a matter like this one, the Committee in charge of devolution – on this score - I must thank Sen. Murkomen; when he was the Chairperson of the Committee on Devolution, things like this would not even come to the Floor. By now, the Committee

would be in Mombasa County reading the riot act to the Governor of Mombasa County. He could be the Sultan of Mombasa but he is not the Sultan of Mombasa County Assembly and he cannot dissolve it, whether in his dreams, wishful or otherwise.

I am happy that in mid-April, we will go to Kisumu for the Legislative Summit. Let us give the opportunities to the county assemblies to tell governors wherever they are that they form part of the governments. We must protect county assemblies.

I have said this before and I want to repeat. We will not give more finances to county governments unless we empower the Senate and the county assemblies. Otherwise, governors will become monstrous. I have said this before and it is happening. A governor can stand on top of a car and tell you that he will throw you out of your office by making sure that the Senate is dissolved. I am sorry but there was a reason to require governors to have degrees because they have not read this Constitution.

I thank you.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order Senator! Senate Minority Leader, I will allow you to close and I will give you three minutes.

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, I thank the Senator for Mombasa for coming up with this important Statement. I will start where Senator Junior ended, that education is very important---

The Deputy Speaker (Sen. (Prof.) Kindiki): Senator who?

The Senate Majority Leader (Sen. Murkomen): Sen. Mutula Kilonzo Jnr. I can say Sen. Mutula, Sen. Junior, Junior Senator--- On a serious note, Sen. Mutula Kilonzo Jnr. has said an important thing.

It is important for our leaders in the counties, especially governors, to have certain level of education to facilitate the ability to appreciate the importance of county assemblies as arms of governments. This is not something for Mombasa alone. Many other county assemblies are facing a lot of attack from the county executives. As usual, Members of County Assemblies (MCAs) do oversight work but they do not receive the support they require.

County assemblies must operate in an environment that is free of intimidation and threats. They must be reminded by those of us who will go for the Legislative Summit in a month's time the importance of county assemblies in budgeting and development in the counties.

I am aware that MCAs of my county are also facing attack. There are people who think that giving the county assembly Kshs500 million to oversight Kshs5.5 billion that we gave to Elgeyo-Marakwet County is a lot of money yet that county assembly must pay salaries, conduct public participation, legislation and oversight work in every ward. In fact, my county is one of the counties with the Ward Development Fund and there is an approach to oversighting those functions. I find it insulting. They were given a very little amount, which is just a fraction of Kshs5.5 billion that was allocated to the county. The rest is under the County Executive, yet they still attack MCAs when they do their job.

I support the Senator for Mombasa. I believe that this House must not act in vain. We should not just be debaters but we must take action. When this Statement goes to whatever committee that will look at it, it must lead us to passing a resolution in this

House on how county assemblies will be relating with county executives and how to guarantee their autonomy, so that we have county governments that work and deliver for the people.

It is sad that Mombasa, being the second largest city in the country at the coast, has to face this kind of situation where the county assembly is attacked. I hope that the necessary committee will summon Governor Joho and hire the services of Sen. Mutula Kilonzo Jnr. to take him slowly and surely through the necessary legislation that guarantees what we have separation of powers in the county governments.

I thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Hon. Senators, I deliberately allowed the time I have allowed on this matter because I share the sentiments of the House, that this is a very important matter. First, I would like to thank all those who have intervened. I also thank Sen. Faki who has brought the Statement.

As Sen. Orengo said, county assemblies are actually county parliaments and they are mirrored on the national Parliament. Therefore, it is not by coincidence or by sheer luck that Article 1(3) of the Constitution, in enumerating arms of Government, starts with Parliament, followed by the Executive and the Judiciary. There is a reason why the drafters did not start with the Judiciary and end with any other arm.

That reason is what Sen. Orengo has told us, which is that parliaments, whether national or county parliaments, are the only arms out of the three arms of government that are directly given the mandate by the people through voting. It follows that Parliament is supreme. There is no arm of Government above parliament except the people themselves. So, above Parliaments, it is not the Executives or the Judiciary. The only constitutional organ above any parliament is an organ called the people.

Having said that, it has also come to my attention, as a student of law, that when we talk about anti-devolutionist and people who are fighting devolution, sometimes, we do not assess or look at the threats that face devolution from within the counties themselves. I dare say, it is my position, that one of the greatest threats to devolution is some of the governors and generally county executives. This is because by trying to subvert the supremacy of county assemblies as organs that are directly elected by the people, you will be emasculating devolution and defeating the purpose for which devolution has been placed as the centerpiece of our Constitution.

Thirdly, the episode about Mombasa County Assembly reminds us of the ugly and dark past of this country, where Members of Parliament (MPs) could not even speak or comment about the Executive without attracting reprisals.

Fourthly, I would like to read Article 96(1) for purposes of emphasis. If you look at functions of this House under Article 96(1) it says-

“The Senate represents the counties, and serves to protect the interests of the counties and their governments.”

The protection of county governments by the Senate includes the protection of governors and the executives when they are right but also the protection of the county assemblies. For those who may not appreciate, the truth is that county assemblies are part of county governments. The common parlance is that county governments refer to county executive arms of government.

Therefore, Hon. Senators, having considered all those reasons, including the reasons advanced by Sen. Faki and the other Senators who made observations on this Statement, I determine that this is a matter that falls within the discretion of the Speaker under Standing Order No. 47(3), which empowers the Speaker in appropriate cases to refer Statements of this nature to the relevant Committee for further action. I, therefore, determine that this is an appropriate case for referral to the Committee. Therefore, having found that, I direct the Committee on Devolution and Intergovernmental Relations to seize itself of this matter and involve as many Senators as would want to become friends of the Committee for this purpose. They should device mechanisms of exploring this matter in a more elaborate way and report back to the House in two weeks by tabling a written report.

It is so ordered.

This is an exceptional case because the threat that is facing the county assembly is wide spread. I am of the view that the issue of Mombasa should be addressed so well that it should send a warning across the country. People should know that they cannot play around with county assemblies and get away with it. Therefore, I have made that exceptional ruling because of the gravity of this matter.

Sen. (Eng.) Mahamud: On a point of order, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it, Sen. (Eng.) Mahamud, before we go to the next order?

PROCEDURAL MOTION

ELECTION OF A SENATOR TO PRESIDE OVER SITTINGS OF THE HOUSE PURSUANT TO STANDING ORDER NO.15 AND ARTICLE 107 (1) OF THE CONSTITUTION

Sen. (Eng.) Mahamud: Mr. Deputy Speaker, Sir, I beg to move the following Procedural Motion:-

THAT, pursuant to Senate Standing Order No.15 and Article 107 (1) (c) of the Constitution, the Senate elects Sen. Abshiro Halake to preside over the Sittings of the Senate for the remainder of the day.

Looking at the House, quite a number of the people who preside over the Senate affairs are absent today. I can only see the Deputy Speaker, who is on the Chair, and Sen. Nyamunga. The rest are away on other duties. For the convenience of the House, it is proper that we elect another Senator to assist in presiding over the House. I propose that we elect Sen. Halake to preside along with others for the remainder of the day.

I ask Sen. Kinyua to second.

Sen. Kinyua: I second.

The Deputy Speaker (Sen. (Prof.) Kindiki): Do we have any intervention or should I propose the question?

(Question proposed)

(Question put and agreed to)

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you and congratulations Sen. Halake.

Next Order.

BILLS

First Reading

THE PERSONS WITH DISABILITIES (AMENDMENT)
BILL (SENATE BILLS NO. 1 OF 2019)

*(Order for First Reading read – Read the First Time
and ordered to be referred to the relevant Senate Committee)*

The Deputy Speaker (Sen. (Prof.) Kindiki): Next Order.

Second Reading

THE PRESERVATION OF HUMAN DIGNITY AND
ENFORCEMENT OF ECONOMIC AND SOCIAL
RIGHTS BILL (SENATE BILLS NO 27 OF 2018)

(Sen. Halake on 28.02.2019)

(Resumption of debate interrupted on 28.02.2019)

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Halake, do you want us to proceed with that item? Do we have numbers? Where are the whips?

Sen. Halake: Mr. Deputy Speaker, Sir, a quick count reveals that we do not have enough numbers. I think that we need 24 delegations.

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

The Deputy Speaker (Sen. (Prof.) Kindiki): Sorry, Sen. Halake.

Sen. Halake: Mr. Deputy Speaker, Sir, it looks like we do not have enough numbers.

The Deputy Speaker (Sen. (Prof.) Kindiki): Let us first ring the division bell. I direct that the division bell be rung for five minutes.

(The Division Bell was rung)

Order, Senators. Sen. Halake, I am about to direct that the doors be closed and the Bar drawn. I need to know from you whether you are satisfied that we have numbers required to proceed with a successive Division.

(Sen. Halake spoke off-record)

Give the microphone to Sen. Halake.

Sen. Halake: Thank you, Mr. Deputy Speaker, Sir. We do not have the numbers. Therefore, I request that we defer Division to a time when we have numbers.

The Deputy Speaker (Sen. (Prof.) Kindiki): I direct that Division on the item that appears under Order No.9 be deferred to tomorrow.

It is so ordered.

(Division on the Bill deferred)

Second Reading

THE PERSONS WITH DISABILITIES (AMENDMENT) BILL
(SENATE BILLS NO.1 OF 2019)

(Bill deferred)

Next Order!

COMMITTEE OF THE WHOLE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE WAREHOUSE RECEIPTS SYSTEM BILL
(SENATE BILLS NO.1 OF 2017)

(Consideration of National Assembly Amendments)

The Temporary Chairperson (Sen. Nyamunga): Hon. Senators, let us take our seats and pay attention. We are considering The Warehouse Receipts System Bill (Senate Bills No.10 of 2017).

Clause 2

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THAT, Clause 2 of the Bill be amended—

(a) in the definition of “holder” by deleting the words “who is in possession of the receipt” appearing immediately after the words “warehouse receipts”;

(b) by deleting the definition of “owner”;

(c) by deleting the definition of the word “warehouse operator” and substituting thereof the following new definition—

“warehouse operator” means a person engaging in the business of hiring out space for storing goods and issuance of warehouse receipts;

(d) in the definition of the term “warehouse receipt system” by deleting the word “receipts” appearing immediately after the words “the management of the transfer of the” and substituting therefor the term “receipt”; and

(e) by inserting the following new definition in its proper alphabetical sequence—
“inspector” means an officer of the Council or an authorized officer appointed by the Council in the *gazette*, to carry out inspections under this Act.

(Question of the amendment proposed)

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

Clause 3

Clause 3 of the Bill be amended—

(a) by deleting subclause (3) and substituting therefor the following new subclause—

(3) The Council shall consist of—

(a) a Chairperson, who shall be appointed by the President;

(b) the Principal Secretary for the time being responsible for matters related to agriculture or a representative;

(c) the Principal Secretary for the time being responsible for matters related to finance or a representative;

(d) one person nominated by the Council of Governors;

(e) the Director-General of Agriculture and Food Authority or representative;

(f) the chief executive officer of the Council who shall be an *ex-officio* member;

(g) one person nominated by the Kenya Farmers Association;

(h) one person nominated by Kenyan members of the Eastern Africa Grain Council;

(i) one person nominated by Kenya Bankers Association; and

(j) one person nominated by the Kenya Warehouse Operators Association.”

(b) by deleting subclause (5) and substituting thereof with the following subclause—

(5) A person shall be qualified for appointment as chairperson of the Board if such a person—

- (a) is a citizen of Kenya;
- (b) meets the requirements of leadership and integrity set out in Chapter 6 of the Constitution;
- (c) holds relevant academic and professional qualifications including a university degree in a relevant field; and
- (d) has at least eight years' experience in—
 - (i) agriculture;
 - (ii) finance;
 - (iii) business;
 - (iv) law;
 - (v) procurement; or
 - (vi) administration.
- (c) in subclause (9), by—
 - (i) inserting the words, “in contravention of the Public Officer Ethics Act and any other relevant law” immediately after the word “office” in paragraph (c);
 - (ii) deleting the words “in the opinion of the Council” appearing in paragraph (e);
 - (iii) deleting paragraph (g) and substituting therefor with the following paragraph—
 - “(g) conviction of an offence and sentenced to six months imprisonment without an option of a fine.”

(Question of the amendment proposed)

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

Clause 4

- Clause 4 of the Bill be amended—
- (a) in paragraph (a) by inserting the word “produced” immediately after the word “commodities”;
 - (b) by inserting the following new paragraphs immediately after paragraph (j)—
 - (ja) in accordance with the provision of this Act, suspend operations of warehouse operators, inspectors, weighers, graders or other service providers operating under the Act for contravention of the Act;
 - (jb) issue, suspend or revoke registration or licenses issued under the Act;

(Question of the amendment proposed)

Clauses 5-8

(Question that Clauses 5-8 be part of the Bill proposed)

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

Clause 9

Clause 9 of the Bill be amended in subclause (3) by deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) holds a relevant university degree from a recognized university in Kenya.”

(Question of the amendment proposed)

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

Clause 10

Clause 10 of the Bill be amended by inserting the words “a company secretary and” immediately after word “employ”.

(Question of the amendment proposed)

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

Clause 11

Clause 11 of the Bill be amended—

(a) by renumbering the existing clause as subclause (1);

(b) by inserting the following new subclause immediately after subclause (1) —

(2) The Council shall publish the names of persons engaged as experts under subsection (1), in the *gazette*.

(Question of the amendment proposed)

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

Clauses 12 to 15

(Question that Clauses 12 to 15 be part of the Bill proposed)

Clause 16

Clause 16 of the Bill be amended in subclause (5) by inserting the word “annual” immediately before the word “report”.

(Question of the amendment proposed)

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

Clause 17

Clause 17 of the Bill be amended—

(a) by deleting subclause (3) and substituting therefore the following new clause—

“(3) The County Executive Committee member may—

(a) issue a license where the applicant meets all the requirements set out in the prescribed regulations;

(b) decline to issue a license for the conduct of a warehouse where the County Executive Committee member establishes that—

(i) the warehouse is not suitable for the proper storage of agricultural commodities;

(ii) the operator is incompetent to conduct such warehouse in accordance with this Act and the regulations made hereunder; or

(iii) there is any other sufficient reason within the purposes of Act for not issuing such licenses.

(b) by inserting the following new subclause immediately after subclause (4) —

(4A) A person who operates a warehouse under the Warehouse Receipts System without a license issued by the county executive committee commits an offence.

(Question of the amendment proposed)

Clauses 18 to 20

(Question that Clauses 18 to 20 be part of the Bill proposed)

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

Clause 21

Clause 21 of the Bill be amended—

(a) in subclause (4) by inserting the words “and shall be liable on conviction to a fine not exceeding a hundred thousand shillings or imprisonment for a term not exceeding three years, or both” immediately after the word “offence”;

(b) in subclause (5)—

(i) by deleting the word “or” appearing immediately before the word “graders”;

(ii) by inserting the words “or other service providers” immediately after the word “graders”; and

(c) by inserting the following new subclause immediately after subclause (8) —

“(8A) The Council shall maintain a database which shall be availed for inspection by any person upon application pursuant to Article 35 of the Constitution.”

(Question of the amendment proposed)

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

Clauses 22

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

Clause 23

Clause 23 the Bill be amended—

(a) by deleting the words “Warehouse Receipts Appeals Committee” wherever they appear and substituting therefor the words “Warehouse Receipts System Dispute Resolution Committee”;

(b) in subclause (1) by inserting the following new paragraph immediately after paragraph (d)—

(da) complaints by registered, licensed or other persons operating under this Act;

(c) in subclause (2) by—

(i) deleting paragraph (a) and substituting thereof with the following paragraph—

(a) a chairperson appointed by the Cabinet Secretary who shall be an advocate of not less than seven years standing and with experience in dispute resolution; and

(ii) deleting the word “adjudication” in paragraph (b) and substituting thereof with the word “resolution”.

(d) in subclause (4) by deleting the words “Appeals Committee” and substituting therefor the words “Dispute Resolution Committee”.

(Question of the amendment proposed)

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

Clause 24

Clause 24 of the Bill be deleted and substituted thereof with the following new clause—

Grading and weighing of agricultural products.

24. (1) A licensed warehouse operator shall ensure commodities stored in a licensed agricultural warehouse meet the standards

published by the Kenya Bureau of Standards and are weighed using equipment certified in accordance with laws related to weights and measures.

(2) The grading of agricultural commodities shall be undertaken by agricultural commodity graders certified by a mandated institution.

(3) The Council shall provide guidelines on the minimum qualifications and competencies required of graders and weighers.

(Question of the amendment proposed)

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

Clause 25

Clause 25 of the Bill be deleted and substituted thereof with the following new clause—

Inspection of
stored

products. 25.(1) The Chief Executive Officer, appointed Council Inspectors or authorized officers of the Council may inspect any agricultural commodity stored in a licensed warehouse and records

relating to warehouse receipts where its considered necessary.

(2) The Council shall appoint and gazette inspectors who shall exercise such powers in accordance with regulations made under this Act.

(Question of the amendment proposed)

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

Clauses 26

(Question that Clause 26 be part of the Bill proposed)

Clause 27

Clause 27 of the Bill be amended by inserting the words, “insurance contracts, professional indemnities, warehouse receipts registry” immediately after the words “examine all”

(Question of the amendment proposed)

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

Clauses 28 to 29

(Question that Clauses 28 to 29 be part of the Bill proposed)

Clause 30

Clause 30 of the Bill be amended by inserting the following new subclause immediately after subclause (1)—

“(1A) The Central Registry shall have the necessary infrastructure to link it with a central depository of a commodities exchange licensed by the Capital Markets Authority.”

(Question of the amendment proposed)

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

Clause 31

Clause 31 of the Bill be amended in—

(a) subclause (2), by deleting the words “issue a warehouse receipt” and substitute thereof with the words, “issue a warehouse replacement receipt”;

(b) subclause (3) by deleting the word “duplicate” and substituting thereof with the word “replacement”; and

(c) subclause (4), by deleting the word “deals” immediately after the word “person” and substituting therefor the word “who”.

(Question of the amendment proposed)

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

Clause 32

Clause 32 of the Bill be amended by deleting the word “duplicate” and substituting with the word “replacement”.

(Question of the amendment proposed)

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

Clauses 33 to 38

(Question that Clauses 33 to 38 be part of the Bill proposed)

Clause 39

Clause 39 of the Bill amended by deleting the phrase “section 35” and substituting therefor with the phrase “section 38”.

(Question of the amendment proposed)

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

Clause 40

(Question that Clause 40 be part of the Bill proposed)

Clause 41

Clause 41 of the Bill be amended—

(a) by deleting the words “in a case where endorsement is essential for negotiation” appearing in subclause (1);

(b) in subclause (2) by deleting the words “In a case where it is essential that a warehouse receipt should be endorsed before it is transferred, that” and substituting therefor the word “A”.

(Question of the amendment proposed)

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

Clause 42

(Question that Clauses 42 be part of the Bill proposed)

Clause 43

Clause 43 of the Bill be deleted and substituted thereof with the following new clause—

Issuing of
fraudulent
warehouse
receipts.

43. A warehouse operator, or any officer, agent, or employee of a warehouse operator, who issues or aids in issuing a receipt knowing the goods for which such receipt is issued have not been actually received by such warehouse operator, or are not under his actual control at the time of issuing such receipt, commits an offence and is liable on conviction to a term of imprisonment not exceeding ten years or a fine not exceeding ten million Kenya shillings, or to both.

(Question of the amendment proposed)

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

Clause 44

Clause 44 of the Bill be deleted and substituted thereof with the following new clause—

Issuing of
receipts
with false
information.

44. A warehouse operator, or any officer, agent, or employee of a warehouse operator, who fraudulently issues or knowingly facilitates the fraudulent issuing of a receipt for goods based on a false statement or a false statement to the effect that the warehouse is licensed under this Act or the goods are insured if they are not so insured or fails to disclose such fact, commits an offence and is liable on conviction a fine not exceeding ten million Kenya shillings or to a term of imprisonment not exceeding ten years, or both.

(Question of the amendment proposed)

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

Clause 45

Clause 45 of the Bill be deleted and substituted thereof with the following new clause—

Unlawful
issuing of
duplicate
receipts.

45. A warehouse operator or any officer, agent, or employee of a warehouse operator, who issues or facilitates the issuing of a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and not cancelled, without plainly placing upon the face thereof the word “Replacement”, commits an offence and is liable on conviction to a fine not exceeding ten million Kenya shillings or a term of imprisonment not exceeding ten years, or both.

(Question of the amendment proposed)

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

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Clauses 46 to 47

(Question that Clauses 46 to 47 be part of the Bill proposed)

Clause 48

Clause 48 of the Bill be amended by deleting the word “one” and substituting therefor the word “three”.

(Question of the amendment proposed)

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

Clause 49

(Question that Clause 49 be part of the Bill proposed)

Clause 50

Clause 50 of the Bill be amended by deleting the word “shall” and substituting therefor the word “may”.

(Question of the amendment proposed)

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

Schedule

The Schedule to the Bill amended-

(a) in paragraph 1 by deleting subparagraph (4) and substituting therefor the following new subparagraph—

(4) A meeting shall be presided over by the chairperson or in the absence of the chairperson, the members present shall appoint one of their members to preside at the meeting.

(b) in paragraph (2) by deleting the word “three” in sub-paragraph (2) and substituting thereof with the word “five”.

(Question of the amendment proposed)

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

We have finished considering the amendments to the Bill. I call upon the Mover to reply.

Sen. Ndwiga: Madam Temporary Chairperson, I beg to move that the Committee do report to the Senate its consideration of the National Assembly amendments to The Warehouse Receipts System Bill (Senate Bills No. 10 of 2017) and its rejection thereof.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

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

Sen. Nyamunga: Madam Temporary Speaker, I beg to report that the Committee of the Whole has considered and rejected the National Assembly amendments to The Warehouse Receipts System Bill (Senate Bills No. 10 of 2017).

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

Sen. Ndwiga: Madam Temporary Speaker, I beg to move that the House do agree with the Committee on the said report and I ask Sen. (Rev.) Waqo to second.

Sen. (Rev.) Waqo: Madam Temporary Speaker, I want to congratulate you and second the report.

(Question proposed)

The Temporary Speaker (Sen. Halake): Hon Senators, pursuant to Standing Order No.152, I recommit the Bill for Division at the Committee of the Whole.

COMMITTEE OF THE WHOLE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE WAREHOUSE RECEIPTS SYSTEM BILL (SENATE BILLS NO. 10 OF 2017)

(Consideration of the National Assembly amendments)

The Temporary Chairperson (Sen. Nyamunga): Hon. Senators, we are ready to do the Division. Kindly log in.

You can now vote.
Assisted voters to approach the Clerks at-the-Table.

DIVISION

(The Division on the National Assembly amendments to the Warehouse Receipts System Bill was nullified by the Speaker. Consequently, the results of the purported voting were expunged from the record of the House proceedings by the order of the Speaker)

COMMITTEE OF THE WHOLE

(Order of the Committee read)

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

IN THE COMMITTEE

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

THE ASSUMPTION OF OFFICE OF THE COUNTY
GOVERNOR BILL (SENATE BILLS NO.1 OF 2018)

(Consideration of the National Assembly Amendments)

The Temporary Chairperson (Sen. Nyamunga): Hon. Senators, we are moving on to consider the National Assembly amendments to The Assumption of Office of the County Governor Bill (Senate Bills No.1 of 2018).

Clause 2

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

THAT, Clause 2 be amended by inserting the definition of the word “county public officer” in its proper sequence—

“county public officer” has the meaning assigned to it under the County Governments Act.

(Question of the amendment proposed)

Clause 3 to 4

(Question that Clauses 3 to 4 be part of the Bill proposed)

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

Clause 5

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THAT, Clause 5 of the Bill be amended in sub clause 2 by inserting the following new paragraph immediately after paragraph (f)–

“(fa) a representative of the Ministry responsible for matters related to devolution;

(Question of the amendment proposed)

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

Clause 6

THAT, Clause 6 of the Bill be amended in sub clause (1) by deleting the words “to be at the service of the Governor elect” appearing in paragraph (c) and substituting therefor the words “for the Governor-elect.”

(Question of the amendment proposed)

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

Clauses 7 to 15

(Question that Clauses 7 to 15 be part of the Bill proposed)

Clause 16

THAT, Clause 16 of the Bill be amended by–

(a) renumbering the proposed clause as sub clause (1);

(b) inserting the following new paragraph immediately after paragraph (b) —

“(c) to swearing of a speaker of a county assembly who assumes office under Article 182(5) of the Constitution”;

(c) inserting the following new sub clause after the proposed clause—

“(2) Upon nullification of an election of a county governor and a receipt of the notification by a relevant speaker, the speaker of a county assembly shall assume office as a governor within seven days and an election shall be held pursuant to Article 182(5) of the Constitution.”

(Question of the amendment proposed)

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

Clauses 17 to 20

(Question that Clauses 17 to 20 be part of the Bill proposed)

Clause 21

THAT, Clause 21 of the Bill be amended by inserting the word “committee” immediately after the word “governor”

(Question of the amendment proposed)

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

Clauses 22

(Question that Clauses 22 be part of the Bill proposed)

Clause 23

THAT Clause 23 of the Bill be amended by inserting the following new subsection immediately after the proposed new subsection (1B)—

“(1C) Where a vacancy arises as contemplated under section (1A), the speaker of a county assembly shall act as a governor and an election shall be held pursuant to Article 182(5) of the Constitution.”

(Question of the amendment proposed)

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

Hon. Senators, we are going for Division. I ask that the Division Bell to be rung for two minutes.

(The Division Bell was rung)

The Temporary Chairperson (Sen. Nyamunga): Can the door be locked and the Bars drawn?

(The doors were locked and Bars drawn)

The Temporary Chairperson (Sen. Nyamunga): Hon. Senators, you can now log in and start voting.

(The Senators proceeded to vote)

DIVISION

(The Division on the National Assembly amendments to the Assumption of Office of the County Governor Bill was nullified by the Speaker. Consequently, the results of the purported voting were expunged from the record of House proceedings by the order of the Speaker)

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The Temporary Speaker (Sen. Halake): Next Order.

BILLS

Second Reading

THE COUNTY STATUTORY INSTRUMENTS BILL (SENATE BILLS NO. 21 OF 2018)

The Temporary Speaker (Sen. Halake): Let us have the Chairperson, Sessional Committee on Delegated Legislation, Sen. Farhiya, to move the Bill.

Sen. Farhiya: Thank you, Madam Temporary Speaker. I beg to move that The County Statutory Instruments Bill (Senate Bills No. 21 of 2018) be now read a Second Time. Article 185(1) and (2) of the Constitutions provides that:-

“The legislative authority of a county is vested in, and exercised by, the county assembly.

(2) The county assembly may make any laws that are necessary for, or incidental to, the effective performance of the functions and exercise the powers of the county government under the Fourth Schedule.”

The important provision of Article 185 of the Constitution is that the power to make county laws vests exclusively on the county assemblies. However, it is a well-established principle in law-making that a legislature may be unable to enact a law that would be responsive to every present and future circumstances. It is in this context that the implementers of the legislation as such as the executive of an arm of Government are usually given powers to make subsidiary legislation.

Madam Temporary Speaker, the legislature delegates its lawmaking powers to the executive and any other body charged with the implementation of the law. The delegation of lawmaking power, however, is coupled with the requirement that such powers must be exercised within the limits contemplated by the legislature in a principal Act. Therefore, a legislature must ensure that authority to make delegated legislation is exercised prudently by those given such powers.

Currently, at the national level, the Statutory Instruments Act sets the procedure through which Parliament considers and approves statutory instruments. There is no law at the moment that provides for a similar process for county assemblies.

This Bill seeks to provide procedure for considering statutory instruments by county assemblies. The salient provision of the Bill provides that all statutory instruments must be subjected to a provision that is proposed in a new law.

In this respect, the Bill defines statutory instruments as:-

“A rule, order, regulation, direction, form, tariff of cost or fees, letter, patent, commission, warrant, proclamation, resolution, guideline or other statutory instrument issued, made or established in the execution of power conferred by or under an Act of county assembly under which that statutory instrument or subsidiary legislation is expressly authorised to be issued.”

Madam Temporary Speaker, the Bill requires that the statutory instrument regulation-making authority shall consult with the persons who are likely to be affected by the proposed instrument and invite members of the public to give their views within a prescribed period.

The Bill requires the regulation-making authority prior to making the statutory instrument, to prepare a regulatory impact statement regarding the instrument if the proposed statutory instrument is likely to impose significant cost on the community or part of the community.

In preparing the regulatory impact assessment, the regulation making authority is required to obtain independent advice as to the adequacy of the regulatory impact statement and of the assessment including in the statement in accordance with the guidelines.

Madam Temporary Speaker, the Bill seeks to exempt certain types of statutory instruments from the requirement of preparation of regulatory impact assessment. These includes statutory instruments that deal with matters that are not of legislative character and do not operate to the disadvantage of any person. Enactment of statutory instrument should take into account the prevailing Kenyan legislative drafting practice in the commencement of an Act or a provision of an Act of the county assembly or subsidiary legislation.

The Bill proposes that every regulation making authority shall within seven sitting days after the publication of the instrument submit a copy of the statutory instrument and explanatory memorandum to the clerk of the county assembly for tabling before the county assembly.

If an instrument is not laid before the county assembly in this manner, it shall cease to have an effect immediately after the last day on which it should be laid. However, any act done under the instrument before it ceases to have an effect shall not be prejudiced.

The Bill proposes that the respective county assembly committee on delegated legislation shall scrutinise the statutory instrument to consider *inter alia* whether it accords with the provision of the Constitution and other laws, if it imposes tax, infringes on fundamental rights and freedoms of the public, contains a matter which in the opinion of the Committee, should more properly be dealt with in an act of county assembly, involves expenditure of consolidated fund or any other public revenue, inappropriately delegates legislative power, or appears for any reason to infringe on the rule of law.

Madam Temporary Speaker, the Committee is required where possible to confer with the regulation-making authority during the scrutiny of the statutory instrument.

The Bill further proposes that the Committee shall table a report of its findings and the county assembly may resolve that the statutory instrument is void. In this case, the statutory instrument shall stand revoked. The regulatory authority is required to publish the revocation within 14 days.

Madam Temporary Speaker, the Bill is similar to the one applicable under the National Parliament as set out in the Statutory Instrument Act.

In conclusion, by enacting this Bill, the Senate will be providing a process through which instruments proposed to have a force of law within counties may be

scrutinised by county assemblies. This will ensure that the statutory instrument conforms to the constitution and other written laws that are made for the purposes of ensuring effective delivery of services and maintenance of law and order in the counties. I, therefore, urge the hon. Senators to support this Bill.

During our county visit, as the Senate Sessional Committee on Delegated Legislation Members, we found that quite a number of the Bills passed in most of the county assemblies have no regulations. The reasons are varied. However, one of the biggest impediments is that there is no law that is providing a framework to ensure that the county assemblies review regulations that are tabled and the procedure through which these regulations are passed. This is because the powers to make regulations are in their docket, but they have delegated that to the Executive.

I beg to move and invite Sen. Faki to second.

I thank you, Madam Temporary Speaker.

Sen. Faki: Asante, Bi. Spika wa Muda, kwa kunipa fursa hii kuunga mkono Mswada wa kanuni za kaunti, ama *kwa Kiingereza, The County Statutory Instruments Bill, 2018*. Mswada huu umekuja wakati mwafaka kwa sababu kaunti nyingi hazijapitisha mwongozo wa vipi watachapisha kanuni ambazo zinatumiwa kutekeleza sheria ambazo wanapitisha katika mabunge ya kaunti. Kwa hivyo, Mswada huu utasaidia kuwapa mwongozo zile serikali au mabunge ya kaunti kuhakikisha kwamba ni njia gani watatumia kupitisha kanuni ambazo zitatumika kutekeleza sheria zinazopitishwa.

Bi. Spika wa Muda, mara nyingi mambo yote hayawekwi katika miswada ya sheria; ila ni baadhi ya mambo tu yale muhimu yanayowekwa katika miswada ya sheria. Watekelezaji wa sheria hizi au kile kitengo cha utekelezaji, yaani *the executive* wanapewa fursa na sheria kutunga kanuni ambazo zinasaidia kutekeleza zile sheria zilizopitishwa. Kwa hivyo, sheria hii ni kigezo muhimu cha kuendeleza na kuzipa fursa serikali za kaunti kuhakikisha kwamba wanapitisha miswada; na vile vile kwamba miswada yenyewe inapitishiwa kanuni ya kutekeleza.

Bi. Spika wa Muda, sheria hii pia inajumuisha kaunti zote katika Jamhuri ya Kenya. kwa hivyo, kila kaunti ambayo haijapitisha mwongozo kama huu itapata fursa ya kutumia mwongozo huu ili kupitisha zile kanuni ambazo wanataka kupitisha ili kuendeleza kazi zao. Mara nyingi, kanuni hizi hutumiwa katika kukusanya ushuru au leseni kadha wa kadha ambazo zinatumiwa katika serikali za kaunti. Kwa hivyo, bila kanuni hizi, inakuwa vigumu kwa serikali za kaunti kukusanya fedha za kutekeleza miradi wanayoendeleza katika kaunti zao.

Bi. Spika Wa Muda, sheria hii inatoa mwongozo kwa *Executive* na kuwapa uwezo wa kutunga kanuni; lakini lazima kanuni zitakazotungwa ziambatane na ile sheria iliyopitishwa. Haiwezekani kwamba sheria inazungumza tofauti na kanuni ambazo zinapitishwa na wale watekelezaji zinakuwa tofauti. Kwa hivyo, sheria inatoa mwongozo kwamba lazima kanuni zote zitakazotengenezwa zilingane na ile sheria iliyopitishwa.

Vile vile, Bi. Spika wa Muda, uwezo uliopewa serikali za kaunti, yaani *Executive*, wa kutunga kanuni kanuni hizi, sio uwezo ambao hauna vigezo. Huu ni uwezo ambao lazima utekelezwe kulingana na vile sheria inavyosema. Kwa hivyo, iwapo watakwenda kinyume na zile sheria, zile kanuni ambazo watakuwa wametengeneza hazitakuwa na

maana yoyote kwa sababu zinapinga sheria ambazo ziko. Kupitisha kanuni hizi itasaidia kuyapa mabunge ya kaunti uwezo wa kuangalia ama kudhibiti uwezo wa serikali za kaunti katika kupitisha kanuni ambazo labda zinawaathiri wananchi katika eneo lile. Inasemekana kwamba sheria hii inaipa bunge la kaunti lile jukumu la kuangalia na kuangazia kazi zinazofanywa na kitengo cha utekelezaji, yaani *executive* kuhakikisha kwamba kanuni wanazopitisha zinaambatana na sheria.

Bi. Spika wa Muda, Mswada huu pia unatoa mwongozo wa vipi zile kanuni zitatengezwa hadi ziwe sheria. Kuna kifungu ambacho kinasema kwamba lazima ichapishwe katika gazeti rasmi la Serikali, na vile vile katika magazeti rasmi ya kaunti. Vile vile, inatoa fursa kwa wananchi ama washikadau wote katika kitengo kile ambacho kimekusudiwa kwenda kutoa mwongozo au kutoa maoni yao. Kwa mfano, ikiwa wanatunga kanuni za kudhibiti biashara ya boda boda, itakuwa ni lazima watoe fursa kwa washikadau wote – waendesha boda boda na wengineo – kutoa maoni yao kulingana na kanuni zilizotungwa.

Vile vile, Bi. Spika wa Muda, kanuni hizi zinazotungwa lazima zipelekwe katika bunge la kaunti ili zichunguzwe kabla ya kupitishwa. Kwa hivyo, hiyo pia inatoa fursa ya kuhakikisha kwamba kanuni zile zinazotungwa na utekelezaji wake zinaambatana na sheria, na zimepitishwa na bunge la kaunti ile.

Bi. Spika wa Muda, Mswada huu pia unatoa mwongozo kwamba kanuni zitakazopitishwa zitabatilishwa baada ya miaka kumi kutoka ile tarehe ambayo zimepitishwa. Tunaona kwamba kaunti nyingi zina kanuni za kutoka wakati wa Mwingereza. Kanuni zile zimetumika kutoka wakati wa Serikali ya ukoloni. Ukiangalia katika kaunti nyingi, kanuni zote zinazohusiana na ujenzi wa majumba zilitengezwa wakati wa ukoloni. Kwa hivyo, sheria hii inatoa mwongozo kwamba zile kanuni zinakufa baada ya kila miaka kumi.

Pia, sheria hii inapendekeza kwamba zikifa, lazima aidha ziongezwe muda, na muda utakaoongezwa hautazidi miezi kumi na miwili; ama kanuni zingine mpya zipitishwe kuhakikisha kwamba zinaambatana na sheria. Vile vile, kama zitaongezwa kwa muhula wa miezi kumi na miwili, itakuwa zinaweza kuongezwa mara moja peke yake. Kifungu cha 18(4), kinasema kwamba muda unaweza kuongezwa. Yaani muda wa miaka kumi unapokwisha, inaweza kuongezwa muda wa mwaka mmoja peke yake, wala sio zaidi ya hapo. Kwa hivyo, hiyo ni sheria nzuri ambayo lazima tuiunge mkono.

Swala lingine, Bi. Spika wa Muda, ni kwamba Kifungu cha 16 kinasema kwamba lazima kila kanuni itakayopitishwa na kukubaliwa iwekwe katika gazeti rasmi la Serikali, yaani *Kenya Gazette* na vile vile *county gazette*. Pia, lazima zipewe namba maalum; kwa mfano, No.001/1/2019. Huo ni mfano wa zile namba zitakazopeanwa katika hizi kanuni za kaunti ili ziwe rahisi kuzipambanua zinahusiana na jambo lipi, na ile inahusiana na jambo lipi.

Vile vile, sheria hii inasema kwamba kama kunatengenezwa kanuni fulani kuhusiana na swala fulani; kwa mfano, iwapo wanatengeneza kanuni kuhusiana na swala la kahawa, kanuni zile zitahusika na kahawa peke yake na hazitatumika kudhibiti maswala ya boda boda ama mambo mengine ambayo yanaweza kutokea. Kwa hivyo kila kanuni itakayotengezwa inahusisha sehemu fulani tu ya lile swala ambalo linadhibitiwa.

Bi. Spika wa Muda, kusema ukweli Mswada huu umekuja wakati mwafaka, na ni lazima tuunge mkono kwa sababu ni njia moja ya kusaidia serikali za kaunti kuweza kupata mapato ya kusaidia kuendesha kazi zao. Vile vile, kanuni ambazo zitaleta maswala ya kifedha – yaani zinazipa serikali za kaunti fursa ya kukusanya kodi – ni lazima ziwe na kodi maalum; kodi ya chini na juu. Kwa Kizungu yaani ni *minimum* na *maximum* charges ambazo zitakuwa zinalipishwa.

Kwa hivyo, Bi. Spika wa Muda, Mswada huu ni mzuri sana, na umeletwa wakati mwafaka ambapo mabunge mengi ya kaunti hayana sheria kama hii. Nawaomba ndugu zangu, Maseneta wote, waunge mkono Mswada huu kwa sababu utaleta manufaa Zaidi kwa serikali zetu za kaunti.

Asante, Bi. Spika wa Muda.

(Question proposed)

Sen. (Rev.) Waqo: Madam Temporary Speaker, pursuant to Standing Order No.105, I beg to move that the debate on the current Bill be now adjourned.

Sen. Farhiya: Madam Temporary Speaker, I beg to second.

(Question, that debate on the Bill be adjourned, proposed)

(Question, that debate on the Bill be adjourned, put and agreed to)

The Temporary Speaker (Sen. Halake): Let us go to the next Order.

Second Reading

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

The Temporary Speaker (Sen. Halake): Since the Sponsor of the Bill is not here, this is deferred.

(Bill deferred)

Next!

Second Reading

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

The Temporary Speaker (Sen. Halake): Once again, Hon. Senators, since the sponsors are not here, this is also deferred.

(Bill deferred)

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Let us move to the next Order.

Second Reading

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

The Temporary Speaker (Sen. Halake): The sponsor of the Bill is not here. Therefore, this is also deferred.

(Bill deferred)

Next Order!

Second Reading

THE MENTAL HEALTH (AMENDMENT) BILL
(SENATE BILLS NO.32 OF 2018)

The Temporary Speaker (Sen. Halake): Again, the sponsor of the Bill is not here. We will have this deferred as well.

(Bill deferred)

Let us move to the next Order.

Second Reading

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

The Temporary Speaker (Sen. Halake): I cannot see the sponsor of the Bill. So, we will defer this as well.

(Bill deferred)

Let us go to the next Order.

Second Reading

THE COUNTY WARDS (EQUITABLE DEVELOPMENT) BILL
(SENATE BILLS NO.34 OF 2018)

The Temporary Speaker (Sen. Halake): The Chairperson of the Standing Committee on Finance and Budget is not here. We will have to defer this one also.

(Bill deferred)

Next Order!

Second Reading

THE TEA BILL (SENATE BILLS NO.36 OF 2018)

The Temporary Speaker (Sen. Halake): Since the sponsor of the Bill is not in the House, this is also deferred.

(Bill deferred)

ADJOURNMENT

The Temporary Speaker (Sen. Halake): Hon. Senators, having concluded the business of today, it is now time to adjourn the House. The Senate, therefore, stands adjourned until tomorrow, Wednesday, 13th March, 2019, at 2.30 p.m.

The Senate rose at 5.05 p.m.