

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 21st May, 2019

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

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

PRAYER

MESSAGE FROM THE NATIONAL ASSEMBLY

APPOINTMENT OF ADDITIONAL MEMBERS TO THE MEDIATION COMMITTEE ON THE DIVISION OF REVENUE BILL, 2019

The Speaker (Hon. Lusaka): Hon. Senators, as you may recall, on Tuesday, 14th May, 2019, I reported a Message from the National Assembly on the Decision of the National Assembly on the Senate amendments to the Division of Revenue Bill (National Assembly Bill No. 11 of 2019). In that Message, I indicated the names of Members of the National Assembly and the Senate who had been appointed to serve in the Mediation Committee on the Division of Revenue Bill, (National Assembly Bill No. 11 of 2019).

Subsequently, I received communication from the Clerk of the National Assembly confirming that the Speaker of the National Assembly had nominated an additional Member to the Committee, the Hon. (Dr.) Makali Mulu, MP. Consequently, I have appointed Sen. Johnson Sakaja, MP, to the Committee.

Hon. Senators, the Membership of the Committee will be as follows:-

- (1) The Hon. Adan Duale, EGH, MP;
- (2) The Hon. John Mbadi, EGH, MP;
- (3) The Hon. Kimani Ichung'wa, MP;
- (4) The Hon. Cecily Mbarire, MGH, MP;
- (5) The Hon. (Dr.) Makali Mulu, MP;
- (6) Sen. Mohamed M. Mahamud, MP;
- (7) Sen. Mutula Kilonzo Jnr. MP;
- (8) Sen. Susan Kihika, MP;
- (9) Sen. Ledama Olekina, MP; and
- (10) Sen. Johnson Sakaja, MP

I thank you.

PETITION**IMPLEMENTATION OF THE NATIONAL HOUSING
POLICY IN LUMUMBA AND KIBUYE
ESTATES, KISUMU COUNTY**

Hon. Senators, pursuant to Standing Orders Nos.226 (1) and 232(b), I hereby report to the Senate that a petition has been submitted through the Office of the Clerk by Mr. John Fizlad Elly Odenyo representing the residents of Lumumba and Kibuye Estates in Kisumu County.

In the petition, the petitioners state as follows:-

(a) THAT, there is lack of a comprehensive and substantive rights respecting and protecting, non-discriminatory national housing policy that is compliant with the Constitution.

(b) THAT, the only policy document on housing is Sessional Paper No.3 on the National Housing Policy of 2004 which does not capture the envisioned spirit and the aspirations of the 2010 Constitution.

(c) THAT, Kenya has also ratified international treaties and conventions including the Universal Declaration of Human Rights and International Covenant on Economics, Social and Cultural Rights, among others that provide the right to housing.

(d) THAT, when the comprehensive national housing policy is in place, the rights and obligations of both the tenants and landlords will be protected and upheld.

(e) THAT, the residents of Lumumba and Kibuye Estates in Kisumu County are being rendered homeless by the arbitrary increase of rent payable to Kisumu County Government

(f) THAT, the National Housing Policy will stipulate the nature of consultations with the people to be affected in both the case of slum upgrading program as well as the planned construction of affordable housing.

The petitioners therefore pray that the Senate;

(i) Exercise its constitutional obligation under Articles 94 and 96 of the Constitution to enact the National Housing Law that will give effect to all relevant articles in the Constitution with regards to right to housing in terms of availability, affordability, accessibility and adequacy

(ii) Causes public and private partnerships between the national and county Governments on affordable housing to be put on hold pending the enactment of a National Housing Policy.

Hon. Senators, pursuant to Standing Orders 231, I shall now allow comments, observations and clarifications in relation to the petition for not more than 30 minutes.

Kindly proceed, Sen. Faki.

Sen. Faki: Asante, Bw. Spika, kwa kunipa fursa hii kuunga mkono maombi ambayo yameletwa na wakaazi wa Kisumu. Ni kweli kwamba kwa sasa, Serikali haina utaratibu kwa maswala ya nyumba. Kwa mfano, kule Mombasa, nyumba zinazomilikiwa

na National Housing Corporation (NHC) hususan National Housing Estate Magongo, wakaazi wamekuwa wakipata shida sana. Kodi zimeongezwa ilhali wanaishi katika hali duni. Nyumba zao zimeezekwa au zimefunikwa juu na mabati ya *asbestos* ambayo inadhuru afya ya binadamu.

Bw. Spika, huu ni wakati mwafaka wa kuunga mkono maombi ya watu wa Kisumu kwa sababu maswala ya nyumba yanaathiri sehemu zote za nchi. Ujenzi was nyumba ni mojawapo ya Big Four Agenda ya Serikali. Lakini utapata mpaka sasa nyumba ambazo watu wengi wanaishi hususan wafanyikazi wa Serikali ni duni sana. Kwa mfano, nyumba zote katika Mbaraki Police Line zinafaa kupigwa marufuku kwa binadamu kuishi. Polisi wanaishi katika nyumba zilizo katika hali duni kuliko zile ambazo watu wanaishi katika maeneo ya vitongoji duni. Ni lazima Serikali itoe mwongozo kuhusiana na maswala ya nyumba. Kama Serikali ingetaka kuwapa wananchi makaazi, ingeanza na wafanyikazi wa Serikali, ili kila mmoja wao aishi nyumba ambayo mwanadamu anastahili kuishi.

The Speaker (Hon. Lusaka): Hon. Senators, since I do not see any other interest, pursuant to Standing Order No.232(1), the Petition stands committed to the relevant Standing Committee; the Committee on Lands, Environment and Natural Resources.

In terms of Standing Orders 232(2), the Committee will be required, in not more than 60 calendar days from the time of reading the prayer, to respond to the Petitioner by way of a report addressed to the Petition and laid on the Table of the Senate.

I thank you.

Next Order.

PAPERS LAID

FINANCIAL STATEMENTS ON BUNGOMA COUNTY ASSEMBLY - MCAs CAR LOAN AND MORTGAGE FUND

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today, Tuesday, 21st May, 2019:

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

(Sen. Murkomen laid the document on the Table)

REPORT ON THE 3RD STATUTORY MEETING OF THE FP-ICGLR COMMITTEE ON ECONOMIC DEVELOPMENT

Sen. Poghiso: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today, Tuesday, 21st May, 2019-

Report on the 3rd Statutory Meeting of the Committee on Economic Development, Regional Integration and Natural Resources of the FP-ICGLR, held in Bujumbura, Burundi, on 13th to 14th March, 2019.

(Sen. Poghismo laid the document on the Table)

NOTICE OF MOTION

NOTING OF REPORT ON THE 3RD STATUTORY MEETING OF THE FP-ICGLR COMMITTEE ON ECONOMIC DEVELOPMENT

The Speaker (Hon. Lusaka): Sen. Poghismo, you have the Floor.

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

THAT, this House notes the Report on the 3rd Statutory Meeting of the Committee on Economic Development, Regional Integration and Natural Resources of the FP-ICGLR, held in Bujumbura, Burundi, on 13th to 14th March, 2019, laid on the Table of the House on Tuesday, 21st May, 2019.

The Speaker (Hon. Lusaka): Next Order.

STATEMENTS

Sen. Halake had two Statements but it seems she has not come. So, I defer the Statements.

PREPAREDNESS FOR THE CYCLIC DROUGHT AND FLOODS IN THE COUNTRY

FRAUDULENT SACCO SOCIETIES IN KENYA

(Statements deferred)

UNEXPLAINED DETENTION AND ABUSE OF THE RIGHTS OF MPS AND A FORMER CS

Sen. Cherargei: Thank you, Mr. Speaker, Sir. I rise to seek a Statement on the unexplained detention and abuse of the rights of Sen. Cleophas Malalah, who is the Deputy Minority Leader; former Cabinet Secretary (CS), Rashid Echesa, Hon. Justus Murunga, MP Matungu, and Hon. David Gikaria, MP, Nakuru Town East.

Mr. Speaker, Sir, on 17th of May, 2019, the distinguished Senator for Kakamega County, hon. Cleophas Malalah and the immediate former Cabinet Secretary (CS) for the Ministry of Sports, Culture and the Arts, Mr. Rashid Echesa, were held in detention by

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the Kenya Police through the Directorate of Criminal Investigations (DCI). The duo were later joined in detention by hon. Justus Murunga, MP Matungu Constituency. Also detained over the weekend was Hon. David Gikaria, MP, Nakuru Town East. The first three were released on what we were told was in compliance with a circular from the Office of the Director of Public Prosecution (DPP) which was also shared on social media. All the four have shared ordeals of mistreatment and manhandling in the hands of the authorities.

Mr. Speaker, Sir, when did knee jerk directives from security heads in this country and in particular, the CS, Ministry of Interior and Coordination of National Government, Dr. Fred Matiangi; Director of Criminal Investigation (DCI), Mr. George Kinoti; Inspector General of Police, Mr. Hillary Mutyambai; and, the “one man show” Director of Public Prosecution (DPP), Mr. Noordin Haji, replace the fundamental Bill of Rights guaranteed by the Constitution of Kenya?

Why should we allow circulars emanating from these institutions to replace Article 29(a) of the Constitution, which expressly prohibits arbitrary deprivation of freedom without a just cause? Sometimes I am tempted to believe that the current DPP is over excited about using letterheads of that office, either to direct arrests or order release. The right to freedom is so fundamental that its deprivation should only be informed by concrete evidence, ready for presentation to a court of law.

As the Chairperson of the Committee on Justice, Legal Affairs and Human Rights, I am concerned that we continue to allow the DCI and the DPP to abuse Article 49 of the Constitution, detailing the rights of arrested persons. If an MP or a former CS can be denied the right to speak to an advocate, the right to be released on police bond, to see a doctor or is manhandled by enforcement officers, then I can only imagine what the ordinary Kenyans go through in the hands of the Kenya Police. We transformed our enforcement agencies from a force to a service but from the ordeals we are getting from our colleagues, we have not made any fundamental progress.

We know that there is a loophole under Article 49(f)(2) of the Constitution being exploited by the Kenya Police to hold a person for over 24 hours. However, they make it so obvious and wait for Fridays – or *kamata kamata* Fridays, as is known – to effect arrests so that citizens spend over 72 hours in the cells. This is the height of impunity! Even after that 72-hour detention, the State appears in court to seek further detention to finish investigations.

We need to pronounce ourselves here, that unless the State already has sufficient evidence to sustain a prosecution, nobody should be detained. This country shall not and will not operate at the whims of overzealous and excited heads. It shall only be run by the supreme law of the land, statutes passed by Parliament and, in the absence of both, it shall be guided by the rules of natural justice. At the rate we are going, I do not believe we shall be serving any justice to victims. What we are doing is simply ruining the careers and lives of respected members of the society.

Mr. Speaker, Sir, I urge this House to pronounce itself on the place of the Constitution of Kenya against the place of individual heads. In so doing, I am alive to the lives lost in Matungu in Kakamega County. I equally cry for the lost souls. I am only cautioning that if we progress in the direction we are taking, the dead and their families

shall never get justice. It will be useful to add that my Statement is not only informed by the weekend happenings. The abuse of the fundamental rights of arrested persons, who should otherwise be presumed innocent, has been a culture for some time now. Today it is Sen. Malalah, Mr. Echesa and hon. Gikaria; tomorrow, it will be another set from this House or outside.

Finally, let me close with the words of the German Lutheran Pastor, Martin Niemöller, who said: “First, they came for the Socialists. I did not speak out because I was not a Socialist. Then they came for the Trade Unionists and I did not speak out because I was not a Trade Unionist. Then they came for the Jews, and I did not speak because I was not a Jew. Then they came for me and there was no one left to speak for me”.

Thank you.

Sen. Khaniri: Mr. Speaker, Sir, I stand to make comments and support the Statement that has been delivered by my neighbour, Sen. Cherargei of Nandi County. Let me state that what happened to these three leaders is a serious assault on the fundamental rights that are provided for in the Constitution; that is the right to freedom.

It should be explained why these people were put in before proper investigations were conducted and concluded. Our Constitution is very clear; that, you remain innocent until proven guilty only by a court of law. Our expectation is that the Director of Public Prosecutions (DPP) should order for arrests when investigations have been done and they are ready for prosecution.

I was disturbed. I went to visit Sen. Malalah in his cell in Kisumu. He was detained for two nights and released without being charged. This is a serious abuse of the Constitution. This House must make a very strong pronouncement on this matter. You can imagine if this is happening to elected leaders, then what do the general *wananchi* go through in the hands of the police? I was disturbed by the way *Mheshimiwa* Gikaria was mishandled by the police and tortured. We must condemn this in the strongest terms possible and ensure that this does not recur to leaders and members of the society.

Mr. Speaker, Sir, I support.

The Speaker (Hon. Lusaka): Proceed, Senate Minority Leader, Sen. Orenge.

The Senate Minority Leader (Sen. Orenge): Mr. Speaker, Sir, let me also rise in support of this statement. I also had the opportunity to go to Kisumu Central Police Station to see the Deputy Minority Leader in custody. Without fear of contradiction, the law as established under the Constitution is for compliance. It is not for any other reason. When it comes to the Constitution, we should be speaking the same language. It does not matter whose rights are being violated, whether it is your brother or sister. In order to build a one united democratic nation, whenever any rights of a citizen or any individual in this country are violated, it should be the concern of us all.

I have said here before that I may support whatever campaigns that are going on to fight against injustices or corruption but that does not give the State the power or authority to arrest people as they want and keep them as they want. The law is very clear. There is a habit now that is growing within the law enforcement agencies; that, you are arrested and taken to court only for the prosecution to ask for you to be detained for a

week, two or three weeks. This habit used to be there in the old days where somebody was taken to court on holding charges for one, two or three weeks.

They have found a new mechanism of arresting people and keeping them without charge. I was surprised when I went to the Central Police Station in Kisumu and being a lawyer, I demanded why the Deputy Minority Leader was under custody. There was no explanation. The entries that were made in the Occurrence Book (OB) were at variance with what he had been told. One officer told me that he was being held for a conspiracy to murder. Sometimes when we see a charge of conspiracy, it means that they cannot find a substantive charge. I would appeal to the law enforcement agencies that it looks better to investigate, complete the investigation, take somebody to court and let the charges be read out.

It may be popular now as it has been before when there are campaigns of a certain kind to give licence for the arrest of people without charge or keep them in detention without taking them to court. We have had this experience but I would like to remind ourselves that in 1799 when Louis XVI was overthrown, it was very popular. People were crying for each other's heads. Robespierre was one of the leaders of that revolution and he became a dictator. Over a period of six months, people were being beheaded; guillotined without process. I hope that in Kenya, these historical lessons are not forgotten. I like the statement the Deputy Minority Leader made, that it should not end there. He should take steps to ensure that his rights are protected.

Mr. Speaker, Sir, we need your protection. You remember that Sen. Malalah was here requesting a statement to be made why the killings were going on in Matungu. The House was very appreciative. In fact, Sen. Malalah seems to have been concerned and had taken steps even before the law enforcement agencies started sending people to the ground. Instead of being lauded and merited for doing so, he now became the hunted. I hope that this habit will stop. Sen. Malalah, if you need anything to be done, let us as a House – because I know it is you today and tomorrow it may be one of us, but never sit back and let somebody trample upon your rights.

The Sen. Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, first of all, I thank the Chair of the Committee on Justice, Legal Affairs and Human Rights, Sen. Cherargei for coming up with this very important statement. Martin Luther King Jnr. said that injustice anywhere is injustice everywhere. I stand with Sen. Malalah, hon. Echesa, former Cabinet Secretary, Hon. Murunga; MP for Matungu and Hon. Gikaria, MP for Nakuru Town East. All these four gentlemen are just but an example of injustice happening in the country, not just to MPs but also to ordinary citizens.

It is unfortunate. It must be known to the public that, all of us, as leaders support the Government and security apparatus as they protect the property and lives of citizens of Kenya. It was just last week when we debated here, courtesy of Sen. Malalah, the desire to solve the situation in Kakamega and the deaths that were occurring in Matungu. None of us will pontificate here that it is good for any person to lose children. In fact, I just realised that – yesterday, I watched in the news that a small child was killed, purportedly by those people whom we are told are gangs operating in Kakamega County.

It would be irresponsible for us in leadership to purport or assume that investigations have been concluded and therefore, so and so is innocent and so and so is

guilty. What we are talking about here is the process of law. It is extremely important. I saw Sen. Malalah in a video, trying to defend himself. He asked why he was being arrested and he was told that he was just being arrested. It is a right to be told why you are being arrested and be told where you will be held. It is a right to be told you are about to be arrested and you have an opportunity to call your lawyer so that he can be available. It is also a right to be told what you are being arrested for. Is it bailable or not?

I have said here before and I am glad now that it seems the whole House agrees that we should not turn our criminal justice system to be a mob justice kind of institution. It should be an example about the rule of law. It should not be an entity for pleasing the powers that be or political sides. It should not be an opportunity for you to arrest someone from NASA, and then you arrest one from Jubilee to look like---- We are doing what Ocampo tried to do with the post-election violence of 2007/2008. I said and I insist on the Floor of this House, that it must be that the evidence will lead you to the suspect. It must be well-collected evidence.

One of the things that shocks me about our criminal justice system is this idea of arresting people and then after two or three months, you release them and say there was no evidence; or you rush to court and say, we have not even recorded any statement from the suspect. By the time, you are arresting somebody at the level of a former Cabinet Secretary, for example, hon. Echesa, Sen. Malalah or hon. Gikaria who is the Chair of the Committee on Energy; you should at least have recorded a statement from that person or sought for the support and direction of the DPP. It is ridiculous to arrest someone then release them without telling them what their crime is.

We want to know the truth. It should not stop at what the Chairperson of the Committee on Legal Affairs and Human Rights has done. It should not just be a Statement where we express our outrage. The Committee on Legal Affairs and Human Rights has three senior members in the Kenyan Bar. They should establish what happened in that situation and it should be an example on how law enforcement will be conducted in this country.

I have seen our friends, in the Minority side, getting worried that we might be targeting their friend, who is a Jubilee Cabinet Secretary (CS).

(Laughter)

It is ironic for anyone to imagine that our desire is to remove someone from the CS position when we raise issues of that magnitude. That is far-fetched. I am glad that the Minority side is now defending the CS in charge of the Ministry of Interior and Coordination of National Security. Those of us from this other side do not care if that person is a CS or a permanent secretary. All we want is the truth which will make our systems to work efficiently. The truth should also help us hold everybody accountable despite their position. I advise my friends in the Minority side not to jump to conclusions and defence. They should not conclude that so and so is being targeted. What we want is the process of truth.

I talked to Sen. Malalah when he was in the cells and it is important for us to note that we can all find ourselves in the same situation. I liked what the Chairperson of the

Committee on Legal Affairs and Human Rights said. He said that one can laugh at Sen. Malalah today just to find themselves in the same situation tomorrow. The process has to be clear, fair, and recognisable in law. It must also respect the rule of law.

I support.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Speaker, Sir. I appreciate the comment by the Committee on Legal Affairs and Human Rights through the Chairperson, Sen. Cherargei. However, we must speak more when Kenyans face the same challenges that Sen. Malalah faced. The amazing thing about this issue is that Sen. Malalah is innocent yet he spent three days in custody as the gold scammers were being interviewed on television. In fact, those scammers were almost cat walking for scamming gold. That is the contradiction in this country. The principle of the rule of law is that everybody is equal before the law. That means that the person of interest in the gold scam should be talking from a police station and not from a television station.

Sen. Malalah is magnanimous and that is why he shared food with the prisoners. When he walked out of custody, he was smiling but he said that he was going to sue. We are not just a third world country; we are nearly primitive. You cannot incarcerate somebody for three days for nothing. That is called unlawful custody; a tort, and Sen. Malalah is entitled to compensation for unlawful custody. I saw the video where Sen. Malalah said that a particular police officer would always be present when he was being arrested. Imagine what ordinary Kenyans go through. Sen. Malalah had the opportunity to say; 'please do not handcuff me' but ordinary Kenyans are handcuffed every day. Women are handcuffed by men and people are beaten.

Can the Chairperson of the Committee on Legal Affairs and Human Rights speak to some of the injustices that Kenyans are facing through the police? As we said; today it is me and it might be you tomorrow. Sen. Orenge talked of the revolution eating its own babies and some of the things that he said are coming to pass. I have not said anything about someone from the Majority side but this Government has treated the leaders in an unfair manner to justify arresting people.

I have learnt that the victims are found cut but with no blood, hence, associating Sen. Malalah to the crimes in Kakamega is associating him with cultish and devilish acts. It is wrong to incarcerate him for nothing and associate him with others simply because he wanted to find out what was happening.

In the Magna Carta 1215, the rule of law, nobody is above the law. In this country, some people are above the law and that is why I said that some people are cat walking when they should be in court. Sen. Malalah is probably being harassed because he does not have a godfather or he could have insulted somebody. Those in power must read the Bible where it says that those who live by the sword will die by the same sword.

Sen. Kihika: Thank you, Mr. Speaker, Sir. I also rise to support the timely Statement by the Chairperson of the Committee on Legal Affairs and Human Rights.

I was surprised to see how far back we have gone as a country. We seem to be worse off now than we were at the height of the KANU era. A Member of Parliament, Hon. Gikaria, was badly beaten up. He told me that the picture of him making rounds in the social media where he only had one shoe was taken when he had lost consciousness.

He lost consciousness for three hours and was dumped somewhere. When they were arresting him, he was with his six year old daughter and they teargassed the girl.

I condemn police brutality and that does not mean that I am anti police. We cannot continue thinking that some people are above the law. I was disturbed to see my fellow Kenyans on social media alleging that the Member of Parliament (MP) may have slapped a policeman, and that is why he had to suffer that sort of humiliation.

The position is that whether or not a policeman had been slapped, they are not above the law. The proper thing to do was to restrain him - which they did - handcuff, arrest and let him face the law. However, the beating was done while he was handcuffed. If that is not impunity, then I want to know what impunity is.

We have the Ministry of Interior and Coordination of National Government, whose officers ‘cat-walk’ around; acting as if they are completely above the law. They are helped by their lapdogs at the Directorate of Criminal Investigation (DCI) and the Directorate of Public Prosecutions (DPP), who are quick to prosecute cases in the media and we see the no tangible results. I stand to condemn what they did to my fellow Senator, Sen. Malalah, the former Cabinet Secretary (CS), Mr. Echesa, the Member for Matungu Constituency, Hon. Murunga and Hon. Gikaria.

The Chairperson of the Committee on Justice, Legal Affairs and Human Rights has brought a very timely Statement that must be interrogated and taken a step further. We must have the Independent Police Oversight Authority (IPOA) come here and tell us what they do in their investigations when we have police brutality going on. The police officers are supposed to protect and serve the citizens of this country. However, when they are the ones acting as judge, jury and executioner, then we have a problem. We shall not be cowed or quiet because of Mr. Kibicho and his “boys”. We insist that they too are not above the law. We shall no longer be afraid.

I stand here as a Senator whose security detail was taken away. I wonder what they intend to do with us because, clearly, those whose security detail was taken away were from a specific political persuasion. As we continue on this dark road, I challenge the Senate as a whole – the Majority side as well as the Minority side - that we must work hard to make sure the rule of law is upheld in this country. Nobody is above the rule of law.

The investigators and prosecutors cannot be arresting people without having put together their investigations. They should not hold somebody in cell for three days and then say: “There is no case to answer to.” We need them to turn around and sue them individually, so that maybe at that point, they will understand that they are not in the offices to prosecute their cases in the media.

Mr. Speaker, Sir, we have read about the gold scam, and then we have a DPP who has the nerve to come on social media and tell people to stop talking about the recording. Are some cows more sacred than others? That is my question here today.

Thank you, very much, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Proceed, Sen. Omogeni.

Sen. Omogeni: Mr. Speaker, Sir, I also rise in support of the Statement that has been raised on the Floor by our good friend, Sen. Cherargei. First of all, we must appreciate that when we enacted the Constitution, 2010, it was not in vain. We have a

chapter that is dedicated to what we call fundamental human rights - respect for people's human rights.

Mr. Speaker, Sir, when we talk of a suspect holding the office of a Senator being arrested, detained in a police station for two nights and released without any charges being preferred against him, ordinary Kenyans need to worry. If this is happening to Sen. Malalah, what is happening to Wanjiku, Moraa and Oloo out there?

That newly appointed Inspector General of Police (IG) should understand that in fulfilment of his constitutional mandate under Article 245(2), he is supposed to exercise independent command of the Police Service. Under Article 245(4), he is not supposed to receive direction from any person, to enable him investigate any crime against any person.

If we go further to Article 49(h) the police have powers to release a suspect on bond pending presentation before court and a charge being preferred. Why should you arrest a Senator, who does not pose any flight risk; keep him in police cells, in very inhuman conditions for two days and then release him without a charge? Our forefathers and leaders who passed on after the year 2010 must be turning in their graves; wondering whether we are still under the old constitutional order. That is not the way the police should conduct business.

It is not right for the police to say that they will arrest you, lock you up, conduct investigations, and if they think they have not found any grounds to charge you, then they release you. That is not the way it should be. The police should only arrest a Kenyan after they have conducted investigations and there are grounds to sustain a criminal charge in a court of law. If we allow these kinds of abuses by the police, then we cannot say we are a democratic state. We are under the tyranny of the police if this can happen.

Mr. Speaker, Sir, I saw the picture of the Hon. Gikaria in Nakuru; on a cold floor and without shoes. Why should this happen even after passing our Constitution, 2010? That is not the way the police should conduct business in this country.

I urge the Chairperson of the Committee on Justice, Legal Affairs and Human Rights to invite the Kenya Human Rights Commission (KHRC) to look at the conditions under which people are arrested and detained in police cells.

Madam Speaker, if that is what is happening to Kenyans, then we are not in a free democratic country that respects human rights. We will be living a lie. This House should take stern action against the Kenya Police, especially the Officer Commanding Kisumu Police Station. Even after direction from the DPP, Sen. Malalah was kept in police cells up to long past 9.00 p.m. It actually took a protest from people who travelled all the way from Kakamega for Sen. Malalah to be released. That means that the police even want to defy directives from the DPP. What a shame?

I protest against that shameful conduct of our police officers.

I support.

The Speaker (Hon. Lusaka): Sen. Omogeni, I do not think I look like a madam. You referred to me as such twice.

(Laughter)

Sen. Omogeni: Mr. Speaker, Sir, I apologise.

The Speaker (Hon. Lusaka): Proceed, Sen. Pareno.

Sen. Pareno: Thank you, Mr. Speaker, Sir. I also join my colleagues in supporting this Statement and condemning in the strongest terms possible the arrest of Sen. Malalah, hon. Gikaria, hon. Murunga and former CS, Echesa.

I remember on Thursday before we adjourned, Sen. Malalah was so excited and planning for a very big function in Kakamega. In fact, he had a function called 'Jobs Expo' which he holds yearly. I think it was the second time he was to do it. This is where our youth and many sponsors and supporters come in to help get jobs for our unemployed youth.

When I heard that he had been arrested a day before that function, I wondered whether somebody somewhere was trying to sabotage the rising star in Sen. Malalah and the good work he is trying to do. Why on that eve, yet for a whole week this Senate had been discussing the attacks in Matungu? We were all concerned and a Statement had been done. He was one of the people following up on the Statement.

Mr. Speaker, Sir, be it Sen. Malalah or any other Kenyan, why would you arrest somebody on a Friday and do not even bond them out, so that you do your case? You arrest somebody and put them in until Monday, only to release them by concluding that there is no charge against them. I think we are failing our citizens as a country. Being a Senator or not, nobody deserves to be put in wrongly. I encourage Sen. Malalah to sue directly for wrongful confinement so that anybody who is vicariously liable pays for what they have done to him. This should serve as a lesson for mistreating Kenyans in general.

Mr. Speaker, Sir, we should condemn today what has happened to Sen. Malalah and say we obey the rule of the law. We have kept screaming and talking loudly as opposition about the rule of the law in this country. We were mistreated towards 2017 general elections. People were brutally, maimed and others killed by the police. However, there was so much loud silence from a lot of quarters. Therefore, we should not only come and speak when we are on the receiving end as Senators or any other person. This is because at the end of the day, the rule of law is for all of us. It is us today and tomorrow it is you.

Mr. Speaker, Sir, I remember, senior counsel and our Senate Minority Leader, Sen. Orendo saying that systems will eat their own children and we are seeing it happen. At that time, people did not listen or call for the rule of law when people were killed and brutally attacked left, right and center in 2017. However, I am happy that every one of us is now waking up.

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

The Speaker (Hon. Lusaka): What is your point of order, Senate Majority Leader?

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, I did not want to interrupt Sen. Pareno because her thought process was going on very well. However, she keeps saying that people never called for the rule of law and that 2017 elections happened and people ignored or did this or that. Is she suggesting that the people who

suffered because of 2007, 2017 elections or any other period that has just passed is *fait accompli* and there is nothing that can be done? Is it her suggestion that it has become the past and when we talk about the current situation that has affected legislators, everyone including those who are saying there were issues then, are happy that they no longer have concerns and it is no longer an issue and it is something in the past? Could it be necessary for Sen. Pareno to say that as we deal with this matter, there is a pending matter related to certain people that were affected and are in this stage?

Mr. Speaker, Sir, is it in order, on the Floor of this House, to try to show the public that we, as Senators, no longer care about baby Pendo or any other person who died because of either demonstrations or acts of policemen in 2017 elections?

The Speaker (Hon. Lusaka): Sen. Pareno, you may need to comment on that.

Sen. Pareno: Mr. Speaker, Sir, those are his own conclusions. He is too much ahead of me because that is not my thought. I am only stating what has happened in this country. We have had brutal killings and attacks by the police in the past and we should be so loud and caring. That is all I am saying. It is me today and you tomorrow. Therefore, nobody should come out thinking that at the end, we are happy that anybody was hurt. So, can we stop it once and for all and speak as loudly as possible at all times? That is what I am saying.

There are times we spoke so loudly but we were in the battle alone. So, I emphasize this so that it is for all of us. At this particular time, it is our Sen. Malalah, Hon. Gikaria, former Cabinet Secretary (CS) Echesa and hon. Murunga but the same is happening to the citizens. We should be so loud at all times and defend the rule of law at all times.

I am saying this because I remember this Senate watering down laws, not thinking that at the end of the day, we were watering down some of these elections laws, and it will come back to haunt all of us. So, this is our business and we should get as serious as it sounds. Therefore, I support this Statement.

In the same vein, as was indicated earlier on, we should come up with a solution so that it is not just a Statement. I am happy that it is the Chairperson of the Committee on Justice, Legal Affairs and Human Rights who has come up very strongly. Let us come up with the legal measures to ensure that this does not happen to a Senator, a hon. Member or another Kenyan.

Sen. Wambua: Thank you, Mr. Speaker, Sir. I also stand in support of this Statement by the Chairperson of the Committee on Justice, Legal Affairs and Human Rights. I will be brief.

I start by saying that whether we admit it or not, we have already taken the first baby steps back to the dark days of detention without trial. Therefore, it is up to us as leaders to put a stop to a movement in that direction.

Mr. Speaker, Sir, it appears that there is a calculated move to intimidate and assassinate the characters, especially of leaders, that in one way or the other, do not seem to be in good books with law enforcement agencies.

All of us have congratulated Sen. Malalah for the good work that he is doing for the people of Kakamega. The good Senator was on his way to preside over a function in Kakamega County which definitely would have given him political mileage. However,

all of a sudden, he is arrested and put in. As this would only happen in this country, the Director of public Prosecution (DPP) woke up and wrote a letter ordering the release of the Senator and other elected leaders.

Mr. Speaker, Sir, why in the first place would anybody, leave alone an elected leader be arrested if the police do not know why they are arresting them? For example, police meet somebody on the streets of Matungu where there are killings taking place - we must condemn the killings - and they decide that certain leaders must go in. however, after a second thought, they say that they have no evidence to hold the people and they should be released and set free.

Mr. Speaker, Sir, in my previous life as a journalist, the principle is very simple. Follow the story where it leads you. The same principle must apply in police investigations. They should follow evidence wherever it leads them. It is a shame and a disservice to the people, not just of Matungu in Kakamega but of this country that innocent lives have been lost and the police are unable to figure out who is killing innocent people. It is a shame.

Mr. Speaker, Sir, this should go on record that in the Ruaraka Land Report, where the Cabinet Secretary for Interior and Coordination of National Government was adversely mentioned, he was handled with great care and respect. The Ethics and Anti-Corruption Commission (EACC) went to his office and recorded his statement; why are elected leaders being subjected to humiliation? What exactly is it that the leadership and Executive would want to achieve by subjecting elected leaders to this kind of shame?

Mr. Speaker, Sir, I say this with bitterness because I have suffered almost the same fate of my colleague, Sen. Malalah. A region in Kitui was invaded by camel herders and they killed people. I went with law enforcement officers to address the public. The rule of law must apply to everyone including elected leaders, citizens and the Executive because there is nobody who is above the law.

I thank you.

The Speaker (Hon. Lusaka): In the interest of time, I will allow only three minutes for those I will give an opportunity to speak.

Sen. Olekina: Mr. Speaker, Sir, I rise to support the Statement by the Deputy Senate Minority Leader. I am baffled by the way leaders are treated in this country. Article 49 of the Constitution spells out the rights of an arrested person. It also gives the arrested person the right to be represented by an attorney and be told why they are being arrested. We can sit here and condemn the actions of police officers but if we do not move as a House to defend the Constitution, we will be failing Kenyans.

(There was a technical hitch)

We are frustrated but we speak because of the ordinary Kenyans who cannot get an opportunity for anyone to speak on their behalf. We have been elected in this House to ensure that we defend the Constitution and we have got the powers. That is the reason there are three arms of Government, namely; the Judiciary, the Executive and the Legislative Arms of Government. It is time that we looked at that law and made the changes.

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I remember a few years ago, there was a Member of Parliament (MP) from Kaimosi who introduced a Motion in the National Assembly to try and stop such kind of treatment where MPs were being arrested on Friday. I bailed out several times a former MP called Hon. Matthew Lempurkel. He would be arrested in Nairobi on Friday, taken around 10 different counties and availed on Tuesday after a lot of pressure. We cannot let that happen and allow it to continue.

Mr. Speaker, Sir, it is time we took this opportunity to make sure that we correct that because if we do not, we will keep on lamenting. Who knows? Maybe next time it will be you! The Cabinet Secretary in charge of security is supposed to be a technocrat as per the Constitution. He should only enjoy a little bit more privileges because of the docket but he is treated like a god. We have to think about that.

How can the same police officers who harass leaders still expect these leaders here to fight for them to get better services? How do we do that yet they do not respect the rule of law? When a police officer is told to go and arrest somebody, they should have the Constitution with them and tell their leaders what it says. We need to move expeditiously by amending the law and I hope that the Member who brought this Statement will initiate either amendments to the Penal Code or to certain legislations to ensure that not only MPs are protected but also the poor Kenyans who are always arrested and detained even for a week before they are taken to a court of law.

As I wind up, in other jurisdictions, when you are arrested, unless there is any reason to keep you in jail, you are entitled to bail. This is an hon. distinguished Senator and they know where to find him. They can either find him here or at his home. Why treat him as if he is the worst criminal ever? We must condemn that.

I support.

The Speaker (Hon. Lusaka): Next is Sen. Madzayo. You can use that opportunity to comment on a similar situation.

Sen. Madzayo: Mr. Speaker, Sir, today is a sad day for this country. We have witnessed elected MPs, particularly our colleague in the Senate and Hon. David Gikaria and Hon. Justus Murunga being arrested. It is a shame for that to happen without any explanations. How can the police officers stop hon. Members from doing their work and arrest them in the streets the way they arrested our brother and colleague Sen. Malalah? It is sad to embarrass and deny an elected MP from carrying out their daily duties. All of us condemn the police in the strongest terms possible for not only arresting Sen. Malalah and the other MPs but also causing disharmony amongst MPs.

Mr. Speaker, Sir, I would like to talk about an issue that took place in my county this morning. Today at about 6.00 a.m., in total disregard to the law, the police invaded a certain village called Kijijini in Mtwapa and shot some people who were protesting when some bulldozers pulled down houses of the locals who have been staying on that particular piece of land for over 40 years. Their mothers and fathers are there. That place has graveyards, churches and residences.

When the people protested, instead of firing in the air, just in case the police officers felt threatened, which I believe they should not have felt threatened because they were armed and in combat attire as if they were going to fight another military yet the protesters had *vikoi* and the rest, they shot at them. This is the Holy month of Ramadhan

but they shot and killed some people without any justification. They purportedly were serving an order to an old man who is 70 years old and cannot even talk. That *mzee* does not even know how to read or write but he has been living on that piece of land together with his family.

I would like to talk about what happened to a Member of the County Assembly (MCA) of that area, Mr. Sammy Ndago. When he went to find out what had happened, it is sad that before he could even open his mouth to ask what they were doing to his people, he was arrested. As I speak, he is in Mtwapa Police Station locked up. No charges have been preferred and they did not even hear him but instead put him behind bars. What can you as a leader do if something like that happens where your people's properties are destroyed?

They do not have any respect because they drove on the graves with their bulldozers and could not allow the elected MCA to ask why. You are left wondering why you should be elected or why you should ask for votes from the people if when you ask why something is being done to your people---

(Sen. Madzayo's microphone went off)

The Speaker (Hon. Lusaka): Sen. Madzayo, I will add you one more minute.

Sen. Madzayo: Mr. Speaker, Sir, I would like to add my voice to this issue of arbitrary arrests. It is unfair, unjust and against the Constitution to arrest any individual without any warrant of arrest. I urge my brother who is the Chairperson of the Committee on Justice, Legal Affairs and Human Rights to ensure that he summons the Inspector-General of Police (IG) and the Director of Public Prosecutions (DPP) to come to this House to explain to us whether this is contained in the Constitution or it is a new law which some of us do not know about; considering that we know all the laws. The IG and the DPP should come here and explain to us whether they have applied the Constitution to the issue of arbitrary killings or whatever they have done to our brother, Sen. Malalah.

Thank you, Mr. Speaker, Sir.

Sen. Cheruiyot: Mr. Speaker, Sir, this is a very grave matter that has been raised by our colleague, Sen. Cherargei. It is really unfortunate what happened to our colleagues, Sen. Malalah and hon. Gikaria. They had a terrible weekend courtesy of police officers who do not appear to be living in the century that we are living in. It is really unfortunate that as a House, despite the fact that we have been confronted with this issue a couple of times, we have never been able to rise to the occasion and find a proper solution.

There is no better way other than to use the privilege that we have as a House of Parliament to summon the Inspector-General and the Cabinet Secretary that is in charge because the trend of events tells you that there is somebody who is co-ordinating all these attacks on the Members of Parliament and civilians with total disregard to the Constitution.

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

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

Mr. Deputy Speaker, Sir, it is not out of child's play that people were arrested and before you know it, they were released. That tells you that somebody sits down; watches as this is happening; monitors the reactions and then gives instructions on when to arrest and when to release.

Mr. Deputy Speaker, Sir, this matter will not be complete if we only discuss and talk about it this afternoon yet you do not give proper direction on how a specific committee of this House will guide the whole House on how to unravel this particular issue.

This Constitution provided for the Independent Police Oversight Authority (IPOA). However, we have continued to deny that oversight institution the budget to execute their work and the goodwill and support that we can give them as both Houses of Parliament to ensure that they keep these rogue officers in check and ensure that they are brought to book each and every time they violate the rights of not only leaders but even ordinary Kenyans. That is not the kind of police force that we envisioned when we passed the 2010 Constitution.

Mr. Deputy Speaker, Sir, I hope you are aware that in difficult times like this, the Houses of Parliament have always risen to the occasion and stood firm on matters of the police biting more than they are allowed to by the law. You will remember that a few years back when we were debating the Elections (amendment) Laws and police officers were sent to cordon off the House of Parliament. The Speaker then made a firm ruling that we suspend the sittings of Parliament until such a time as those who had sent them, asked the police officers to vacate the precincts of Parliament. That was a painful decision. It is even alleged to have caused the job of the former Speaker of this House. However, we must move on undeterred because---

(Sen. Cheruiyot's microphone went off)

Mr. Deputy Speaker, Sir, kindly give me a minute to conclude.

The Deputy Speaker (Sen. (Prof.) Kindiki): Granted.

Sen. Cheruiyot: Mr. Deputy Speaker, Sir, if we allow this to happen to leaders, you can imagine what will happen to *wananchi* who do not have a voice. If a police officer can manhandle the Deputy Minority Leader of the Senate, what will happen to the ordinary villager in Vihiga County? You must give proper direction that those responsible be summoned, brought before this House and a policy framework be given on how suspects will be treated.

Thank you, Mr. Deputy Speaker, Sir.

Sen. (Dr.) Kabaka: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to air my views and support the Statement by the Senator for Nandi County and the Chairperson of the Committee on Justice, Legal Affairs and Human Rights, Sen. Cherargei. A lot has been said - so I will not repeat it - but I need to emphasize one thing. The so-called fundamental rights of individuals and their freedoms are God-given; they

are not State-given. When I say so, I am addressing great minds, the Chair being one of them, as a leading lawyer in International Law.

Kenya is a signatory to so many conventions, Treaties and agreements with regard to this point which we are emphasizing. It is clear that whereas we have the Constitution 2010, this document has meaning in so far as the citizens of this Republic are concerned. Nevertheless, it is nonsense to the police force. It is very sad that the police officers are well endowed with training on human rights. Sometimes you wonder where these lessons end up. Just the other day, we subjected the new IG to a very thorough scrutiny in this House and he did swear by the Bible that he will uphold the rule of law.

The person who should be summoned is the Inspector-General of Police because the buck stops with the leadership. Police officers normally take orders from their superiors. There is no better person than Mr. Hillary Mutyambai, my former classmate, who should come here and explain the brutality meted out against Kenyan citizens by the police officers.

Mr. Deputy Speaker, Sir, I beg to rest my case.

The Deputy Speaker (Sen. (Prof.) Kindiki): The level of interest is high on this matter. I am sorry that we will not be able to expend with everyone.

Let us first hear from Sen. (Dr.) Musuruve.

Sen. (Dr.) Musuruve: Thank you, Mr. Deputy Speaker, Sir, for giving me an opportunity to add my voice to this matter. I want to support the Statement by the Chairperson of the Committee on Justice, Legal Affairs and Human Rights. I want to condemn in the strongest terms possible, the arrest of Sen. Malalah by the police officers on Friday. It is really unthinkable that the police could do that. I remember last week on Thursday, in this House, Sen. Malalah is the one who blew the whistle about insecurity in the area. If you check in the HANSARD, it is indicated clearly that Sen. Malalah said that the police need to do something concerning insecurity.

Mr. Deputy Speaker, Sir, it is wanting if, we as leaders can blow the whistle on what is happening in our constituencies and end up being the prime suspects. It is a worrying trend in this country because as we stand here we represent our people in our counties. We have to bring out clearly the ills we are seeing in our counties so that necessary action can be taken.

I visited Sen. Malalah in the police cell the day before yesterday and saw what he was going through. I really sympathized with him but I thank God that I had an opportunity to encourage him that he did well by talking about the issue of insecurity in his county. Even as I was comforting him, I was worried because I was also captured in the HANSARD raising the issue of insecurity in Mwamba. I wondered whether the issue would also be politicized so that I would also end up bundled into the police cells. We politicize issues so that Sen. (Dr.) Musuruve, or any other politician, is arrested and bundled into a cell. That is not fair to us.

There is need for us to think of a mechanism to ensure that when heinous activities are committed in a county, police are allowed to do their work. They should not simply become lazy and blame it on politicians and arrest them. They should do their work diligently if they want to improve security situation in this country. Politicians should not use us, as scapegoats.

Mr. Deputy Speaker, Sir, it is unthinkable because Sen. Malalah was arrested for blowing the whistle. What about other common *wananchi* who are arrested and cannot speak for themselves? They are arrested to help with investigations on something that they do not know. Since they do not know, there is nobody to speak on their behalf. Police officers should refrain from arresting people on flimsy grounds and before they have completed their investigation.

The Deputy Speaker (Sen. (Prof.) Kindiki): You time is up! Sen. Faki.

Sen. Faki: Asante, Bw. Naibu Spika, kwa kunipa fursa hii kuchangia taarifa ya Sen. Cheragei wa Kaunti ya Nandi.

Kwanza ninalaani kitendo cha polisi chakumkamata Seneta wa Kakamega pamoja na aliyekuwa waziri wa michezo na Mbunge wa Matungu, kufuatia ghasia zinazotokea katika maneo ya Matungu. Kama wabunge na viongozi, tuna haki ya kuheshimiwa na kupewa fursa ya kujiwasilisha katika Makao Makuu ya polisi ama mahali popote polisi atatuhitaji kuliko kutushika hadharani, kututia pingu na kutupeleka kama ambao ni wahalifu.

Kisa cha Mhe. Gikaria, Mbunge wa Nakuru Mjini ni cha kusikitisha sana. Hii ni mara ya pili mwaka huu yeye kushikwa. Kila anaposhikwa, polisi wanamchukua kama mhalifu wa kawaida.

Ninampongeza Mhe. Malalah kwa uzoefu wake wamazingira aliyokuwa nayo kwa muda mchache.

(Laughter)

Alitengamana na washukiwa wengine waliokuwa korokoroni na ikawa maisha ya kawaida kama vile anavyoishi kama mheshimiwa. Ninafikiri huo ni uzoefu wake wa nyuma uliyomfanya kuwa na uvumilivu wa aina hiyo alipoingia maeneo ya shida.

Bw. Naibu Spika, la msingi ni kwamba, hii Katiba ambayo tuliipigania kwa muda mrefu na kuiopitisha, hivi sasa inachukuliwa kama karatasi tu. Katiba inasema kwamba yeyote anayeshitakiwa mahakamani, apewe *bond* mara moja iwapoatazuiwa kwa zaidi ya masaa 24. Licha ya Mhe. Malalah kuwa Seneta wa Kaunti ya Kakamega, aliwekwa ndani kwa siku tatu. Waswahili wanasema kwamba, ukiona mwenzako ananyolewa, tia kichwa chako maji. Sasa ninaona upande wa Serikali katika Bunge hili unaona kwamba kweli yale malalamiko ambayo maseneta wa upinzani walikuwa wanalalamika, yanaweza kuwafikia.

Tulilalamika hapa wakati Babu Owino aliwekwa korokoroni bila sababu yoyote. Tulilalamika wakati Wabunge sita waliotambulika kama “Pangani Six” walishikwa bila makossa yoyote. Juzi katika Kaunti ya Mombasa, Waislamu 40 walikamatwa usiku wakitoka katika Swala ya *Taraweh* na kupelekwa mahakama ya Shanzu na kusomewa mashtaka ati wakoidlena---

The Deputy Speaker (Sen. (Prof.) Kindiki): Your time is up! I will, however, add you 30 seconds.

Sen. Faki: Bw. Naibu Spika, bahati nzuri Mahakama ya Shanzu ikaona makosa yale hayakuwa na msingi wowote na wakayatupilia mbali. Mkuu wa Polisi ameajiriwa tu

juzi hata miezi miwili haijaisha. Ni aibu kuona polisi chini yake wakivunja sharia ovyo ovyo.

Lazima Mkuu wa Polisi na Waziri Matiang'i waje hapa. Wakati tulipozungumzia ulaghai wa shamba la Ruaraka, kuna wale waliyosema kwamba Matiang'i ni mweupe kama theluji, lakini sasa wanaona zile shida ambazo tunapata kutoka kwake.

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

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

Sen. Nyamunga: Mr. Deputy Speaker, Sir, I am very disturbed. Is it in order for Members to stand one after another, only to talk about leaders who have gone through police injustices and forgetting about Baby Pendo who has not got justice to this day, many women who were raped, children who were defiled and many other people who have nobody to represent them in this House? At least sen. Malalah was in Kisumu where everybody was with him there and Senators travelled from Kakamega to Kisumu to support him.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Nyamunga! We have a Standing Order on relevance. This Statement is about that matter that you are talking about. You do not expect Senators to discuss other matters, though important, because of the rule on relevance.

Hon. Members, we leave it at that. I now allow Sen. Malalah to make a personal Statement pursuant to Standing Order No.53.

PERSONAL STATEMENT

INSECURITY IN MATUNGU CONSTITUENCY

Sen. Malalah: Thank you, Mr. Deputy Speaker, Sir. I want to make a personal Statement in pursuant to Standing Order No.53. It states:

“During Statement Hour, a Senator may, by the indulgence of the Senate, explain matters of a personal nature although there is no question before the Senate, but such matter may not be debated.”

First of all, I express my sincere gratitude to all the Members of the Senate who stood with me during the most trying moments over the weekend. I specifically thank the leadership of the Senate Minority and Majority, who came to visit me in the cell. However, I would not want to delve into the issues that happened on that fateful day, but focus on the issues and the state of security in Matungu Constituency.

I am a strong person. I assure the Senate and the nation at large that we should not lament about Malalah being arrested, but let us all focus on Matungu killings. As I speak, people of Matungu Constituency are being mishandled both by the gang and the General Service Unit (GSU) who are there for operation. It is sad that the authorities and the leadership of the Ministry of Interior and Coordination of National Government have decided to derail from the main focus affecting the people of Matungu Constituency.

Let me tell the nation: Matungu Constituency has only 40 policemen which translates to eight policemen per ward. This constituency has five wards. This means that in one shift, there are only four policemen working in one ward. We need to look into this

issue more seriously. I want to challenge the leadership of the security organs in this country to look into the Matungu issue more seriously. We, as a county, specifically Matungu Constituency, is understaffed.

Mr. Deputy Speaker, Sir, the police in Matungu Constituency do not have the equipment to fight crime. You cannot imagine that the entire Matungu Constituency has only three vehicles. One of them stalled, but it is being repaired in Eldoret Town while the second one is being used by the Assistant County Commissioner in Matungu Constituency. Therefore, we only have one police vehicle to patrol the entire constituency. It is sad for me to witness people in authority politicizing this serious issue affecting our people instead of tackling it to its logical conclusion.

If we want to deal seriously with issues of insecurity in Matungu, we need to activate the community policing policy that was put in place recently. The *Nyumba Kumi Initiative* in Matungu does not have equipment to even report any incidents of crime. Recently, I visited Matungu Constituency and donated 100 mobile phones and 100 torches to the *Nyumba Kumi Initiative*, only to be arrested as a person who is conspiring to kill my people. It is very sad indeed. In the 2017 General Election, people of Matungu Constituency overwhelming voted for me as their Senator. What reason would I have to kill my people?

It is sad that two days before I was arrested, I was called by a friend who works with the intelligence. I want to narrate to you this awful story. That friend of mine told me that they had done an intelligence report on the security situation in Matungu Constituency and handed it their senior security officials in Kakamega. However, they were told that report was not balanced or it was incomplete. They were told to complete it by inserting my name.

It is sad that nowadays the intelligence reports are politicized. I miss the KANU era whereby the intelligence officers roasted *mahindi choma* on the streets or were shoe cobblers. Nowadays, we have children of rich people being employed in the intelligence service. Those children cannot speak vernacular. They cannot go deep into the villages to extract intelligence. I want us to revert to that system whereby we had even madmen being in the intelligence service. That is the only way we can get credible intelligence.

When I was told that my name had been dragged into the intelligence report, my conscience was very clear.

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

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

Sen. Madzayo: Asante Bw. Naibu Spika. Sijui kama umemsikiza huyu ndugu yangu akiongea hapa. Anasema katika hizo harakati kuna wenda wazimu.

The Deputy Speaker (Sen. (Prof.) Kindiki): Ndugu yako yupi, Sen. Madzayo?

Sen. Madzayo: Sen. Malalah, yule alikuwa karibu awe habusu lakini hakuwa habusu.

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

Sen. Madzayo: Je, ni sawa kusema kwamba ndani ya kile kitengo cha ujasusi kuna wenda wazimu au tunaweza kuwaajiri kama majasusi?

Sen. Malalah: Mr. Deputy Speaker, I meant that we needed even to have people who can pretend to be mad so that they come up with the correct intelligence rather than employing children of rich people in this country.

When I was arrested, it was very bad. I believe all of you have seen the video circulating on the social media. It is sad that we have even tribalised the police force. I was arrested by 15 officers. Of which, 13 are from the same tribe. When I was handed over to Kisumu Police Station, we had a situation whereby police officers from a certain tribe disagreed with police officers from another tribe. We had some from a tribe that tried to defend me. They told other officers from the other tribe that they could deal with me now that I was in the police custody, but they insisted on assaulting me. It is unfortunate that our police force has been divided on tribal lines. It is a shame.

I was detained in a small corridor which had no aeration. I was locked up there and became unconscious for four hours. My bodyguards were denied access to come and help me while I lay down there helpless. My father went to Aga Khan Hospital and came with a doctor, but they denied that doctor access until 3.00 a.m. in the morning when they allowed in one doctor under the guard of a police officer to treat me. The doctor insisted that he wanted to record that he had seen me and the state in which I was, but he was manhandled out of the police cells. This is bad. We need to condemn this. If this can be done to me, an elected leader, what about a common *mwananchi*?

I was denied my privileges of even communicating with my lawyer. I was not told why I was arrested until some DCIO from Busia County came on Saturday and told me that I needed to record a statement. While doing so, I demanded to know what they had accused me of. They told me, conspiracy to murder – something of the sort. I was surprised. I braced myself for tough questions from the DCIO. He asked me five or six questions which sounded funny to me. For example, where do you stay? Do you know the MCA by the name Lubira Sudwori from Mayoni? What is your relationship between you and the MP? Do you know that MCA is vying for the MP seat in 2022? Surely? I was perturbed. After which, I was taken back to my cell.

I take this opportunity to thank Governor Anyang-Nyong'o who came and pleaded with the police officers, so that I could be given some clean room because I was staying just next to the toilets. I thank him for ensuring that at least, he brought every meal to me. That is why I am still healthy, courtesy of him.

I condemn the fact that the police do not respect the rule of law. The DPP issued an order for my release at around 9.00 a.m. However, by 6.00 p.m., that order had not been received by the said police. The motive was to have me sleep in the cell. One of the investigative officers from Kakamega bought the order, but the Officer in Charge of the Station (OCS) refused to release me. He kept me there up to midnight with the excuse that they had sent a junior officer. It is wrong for the police officers to defy orders irrespective of who brought them.

Some members of the public were agitating for my release and the police officers chose to throw teargas in the cell where I was. It was sad to learn that there was no water in the women's cell. The women in that cell were actually crying. Lucky enough, we had water in our cell although we were suffocating. We need to relook into the police reforms

so as to know if they are helping this country. Recently, they merged the administration police and the Kenya police.

The Deputy Speaker (Sen. (Prof.) Kindiki): Summarise, Sen. Malalah.

Sen. Malalah: Mr. Deputy Speaker, Sir, I want the Chairperson of the Committee on Justice, Legal Affairs and Human Rights to interrogate if the reforms are working or not. He should tell us if the reforms end on paper or whether they are helping this country.

I want to assure the people of Kakamega that I will continue representing them and fighting for them. I recently requested for Statements from the Inspector General and the Cabinet Secretary regarding the Matungu issue. I want to insist that I will not be intimidated by the arrests. I will continue agitating for the rights of the people of Kakamega without fear. I want to request the Chairperson of the Committee on Security, Defence and Foreign Relations to ensure that the questions that I tabled in this House last week are answered because the people of Kakamega are dying and suffering.

Lastly---

The Deputy Speaker (Sen. (Prof.) Kindiki): That is the third lastly. I hope that it is the last one. For avoidance of doubt, I give you one minute.

Sen. Malalah: Thank you, Mr. Deputy Speaker, Sir. I request for an additional 30 seconds.

I am surprised that the principles that founded our nation and those which are practiced under the watch of the Kenyan flag and the police crown yawn so wide and deep. Therefore, as a leadership, it is our responsibility to fight the enemies of democracy and put them in a situation where they will have to choose between giving us freedom or giving us death.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. That is the end of that Order.

Next Order.

We have some Statements under Standing Order No. 51(1)(b). Is the Chairperson of the Committee on Agriculture, Livestock and Fisheries ready? Sen. Ndwiga, are you ready?

Sen. Ndwiga: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): That is okay. The other Statements appearing in today's Order Paper are deferred. I will grant the Chairperson of the Committee on Agriculture, Livestock and Fisheries to give his report.

STATEMENTS

ACTIVITIES OF THE COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL AFFAIRS

ACTIVITIES OF THE COMMITTEE ON EDUCATION

ACTIVITIES OF THE COMMITTEE ON ENERGY

ACTIVITIES OF THE COMMITTEE ON FINANCE AND BUDGET

ACTIVITIES OF THE COMMITTEE ON HEALTH

(Statements deferred)

ACTIVITIES OF THE COMMITTEE ON
AGRICULTURE, LIVESTOCK AND FISHERIES

The Deputy Speaker (Sen. (Prof.) Kindiki): Proceed, Sen. Ndwiga.

Sen. Ndwiga: Thank you, Mr. Deputy Speaker, Sir. I rise pursuant to Standing Order No. 51(10)(b) to make a Statement on the activities of the Standing Committee on Agriculture, Livestock and Fisheries for the period commencing 12th February, 2019 to 30th April, 2019.

During the period under review, our Committee held a total of 16 sittings, considered three Bills, one Petition, five Statements and undertook county visits to four counties. The Committee also held two engagements with stakeholders and held a public hearing forum on one Bill.

In respect of Bills, the following are the Bills that were considered; The Tea Bill (Senate Bills No. 36 of 2018), The Warehouse Receipt System Bill (Senate Bills No. 10 of 2017) and The Irrigation Bill (National Assembly Bill No. 46 of 2017).

On the Tea Bill (Senate Bills No. 36 of 2018), our Committee held a public hearing forum considered the submissions received from the public and tabled its Report in the Senate.

With regard to The Warehouse Receipt System Bill (Senate Bills No. 10 of 2017), The National Assembly amendment to the Bill were referred to our Committee on 12th February, 2019. After considering the amendments to the Bill, the Committee recommended that pursuant to Standing Order No. 159(4) of the Senate, the Senate rejects the amendments of the National Assembly.

As Hon. Senators are aware, a Mediation Committee was thereafter constituted as provided for under Article 113 of the Constitution. The Mediation Committee, which I was privileged to chair, came up with an agreed version of the Bill which has since been adopted by the National Assembly and has been considered before the Senate. I commend the entire Mediation Committee for their dedication and commitment to the process which led to a successful mediation process.

The Committee also considered The Irrigation Bill (National Assembly Bill No. 46 of 2017) and proposed a number of amendments which were considered and passed by the Senate. Hon. Senators will, however, recall that the Senate amendments to the Bill were rejected by the National Assembly and the Bill was subsequently referred to mediation pursuant to Article 113 of the Constitution. The mediation process is on-going.

Regarding Statements pursuant to Standing Order No. 48(1)(5), several Statements were referred to the Committee during the period under review. Three of these Statements were sought by Sen. Wetangula, Sen. (Prof.) Ekal and Sen. Cherargei. Four Statements were generally sought under the state department of agricultural

research. We have scheduled a meeting with the Cabinet Secretary (CS) and his team on 29th May, 2019, where we have invited the Senators concerned to attend.

The other two Statements were sought by Sen. Seneta and fall under the State Department of Livestock. The Committee will be meeting the CS and his team on 4th June, 2019. We have invited the Senator to attend.

With regard to Petitions, the Committee considered one concerning tea, coffee and macadamia farmers, which was committed to the Committee on 7th November, 2018. The Committee met the Petitioners, considered the matter and tabled its report in the Senate. Arising from this Petition, the Committee is presently working on an amendment Bill to amend the Crops Act, 2013, so as to unbundle the regulation and management of major crops that fall within the ambit of the Agriculture and Food Authority (AFA). It will establish stand-alone agencies for their regulations.

In respect of county visits, in the period under review, the Committee undertook very successful county visits to Migori, Marsabit, Tana River and Kilifi counties. The visit to Migori which was held on 1st March, 2019 was to the South Nyanza Sugar Company Limited. The Committee's primary objective was to appraise itself on the status of the company and investigate allegations of non-payment of employees and local sugar farmers.

Mr. Deputy Speaker, Sir, the Committee met with the company's board and management, employees and local farmers. It is important to inform this Senate that within a week of the visit by our Committee, the matter was resolved and the employees and local farmers paid their dues.

The Committee also visited Tana River and Kilifi counties between 23rd and 25th April, 2019. The purpose was to visit the Galana-Kulalu Irrigation Scheme in Tana River County, to appraise itself on this project and its viability. It was also to appraise itself on the cashew nuts and fish farming sectors and their status in Kilifi County.

The Committee met the National Irrigation Board, the contractor of the projects, the governor and officials of the County Government of Kilifi among others. Of concern to the Committee was that whereas a significant portion of the project is still incomplete, the total payments made so far is Kshs6,107,133,000.00 out of the contract sum of Kshs7,294,853,000.36.

Mr. Deputy Speaker, Sir, in addition, out of the 10,000 acres under the contract, only 5,100 acres are complete. This matter is still actively before our Committee. We shall be tabling a full report in the Senate once we have concluded consideration of the matter.

On 8th April, 2019, the Committee visited Marsabit County to establish the challenges facing livestock farmers and the implementation status of the Kenya Livestock Insurance Programme (KLIP). The Committee met with officials of the county government, the county assembly and livestock farmers. It was noted that the KLIP has not been very effective and that data captured under the programme was inaccurate. Use of satellite to monitor vegetation for payment to farmer was also found to be inaccurate, as it captures the *mathenge* plant which is not consumed by animals.

The Committee also participated in a high level sugar consultative meeting in Kisumu on 11th March, 2019, organised by the Ministry of Agriculture, Livestock and

Fisheries. A resolution was made to privatise sugar companies. It also participated in the International Coffee Organisation conference held between 25th and 29th March, 2019 at the Kenyatta International Convention Centre (KICC) in Nairobi.

Mr. Deputy Speaker, Sir, during the period under review, my Committee experienced challenges in the execution of its mandate due to lack of quorum. I propose that Members be encouraged to confirm their attendance well in advance of meetings and the provision in Standing Order No.201 on failure of a Senator to attend four consecutive meetings be enforced.

(Applause)

Going forward, the Committee intends to carry out the following key activities during the next quarter:

(1) Publication of a Bill to amend the Crops Act, 2013 so as to unbundle the regulation and management of major crops that fall within the ambit of the AFA, and establish stand-alone agencies for their regulation.

(2) Hold a workshop with the Ministry of Agriculture, Livestock and Fisheries and AFA on the proposed amendments to the Crops Act, 2013.

(3) Hold a meeting with the Ministry of Agriculture, Livestock and Fisheries and the Privatisation Commission to establish the roadmap towards privatisation of the Kenya Meat Commission (KMC) and sugar companies, and transitional arrangements for the same.

(4) Hold a follow-up meeting with stakeholders of the Galana-Kulalu Irrigation Scheme Project to chart a wayforward for the completion of the project.

Mr. Deputy Speaker, Sir, I wish to report that such a meeting happened today.

(5) Hold a follow-up meeting with the South Nyanza Sugar Company Limited on the current status of the company.

I thank you, Mr. Deputy Speaker, Sir.

(Sen. Ndwiga laid the document on the Table)

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

BILLS

First Reading

THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL (SENATE BILLS NO.3 OF 2019)

(Order for the First Reading read - Read the First Time and committed to the relevant Committee.)

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

*First Reading*THE CONTROL OF STRAY DOGS BILL
(SENATE BILLS NO.4 OF 2019)

(Order for the First Reading read - Read the First Time and committed to the relevant Committee.)

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

First Reading

THE COUNTY TOURISM BILL (SENATE BILLS NO.5 OF 2019)

(Order for the First Reading read - Read the First Time and committed to the relevant Committee.)

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

*First Reading*THE COMMISSION ON ADMINISTRATIVE JUSTICE
(AMENDMENT)BILL (SENATE BILL NO. 6 OF 2019)

(Order for the First Reading read - Read the First Time and committed to the relevant Committee)

The Deputy Speaker (Sen. (Prof.) Kindiki): Next Order. Whips do we have numbers?

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, we generally agreed at the Senate Business Committee (SBC) that we will schedule all Divisions tomorrow and every Wednesday for purposes of consistency so that Members can participate in the Division and other business on Tuesday and Thursday.

The Deputy Speaker (Sen. (Prof.) Kindiki): That was SBC. This is plenary.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, I beg your leave.

The Deputy Speaker (Sen. (Prof.) Kindiki): Plenary is guided by the Order Paper.

Sen. Mutula Kilonzo Jnr.: I apologise, I thought that you were represented.

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): This is plenary.

14. **Sen. Mutula Kilonzo Jnr.:** I beg your leave that we defer orders Nos.12, 13 and

The Deputy Speaker (Sen. (Prof.) Kindiki): That is better.

Sen. Mutula Kilonzo Jnr.: I live and learn. I beg your leave that we defer orders Nos.12, 13 and 14 to tomorrow in line with the SBC direction.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. As requested by the Senate Minority Whip, I see no objection, because we are unlikely to get enough people to vote. Of course, nothing prevents us from voting technically. However, going by our tradition, I direct that Orders Nos.12, 13 and 14 be deferred to tomorrow.

BILLS

Second Reading

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

(Bill Deferred)

Second Reading

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

(Bill Deferred)

MOTION

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

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 161 (3) of the Senate Standing Orders approves the mediated version of the Bill.

(Motion deferred)

Next Order.

BILL*Second Reading*THE DETERMINATION OF THE NATURE OF BILLS
(PROCEDURE) BILL (SENATE BILLS NO. 30 OF 2018)*(Sen. Sakaja on 3.4.2019)**(Resumption of debate interrupted on 3.4.2019)*

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. The last time this Bill was debated, Sen. Sakaja had the Floor and had 58 minutes remaining.

Sen. Sakaja: Thank you, Mr. Deputy Speaker, Sir. Yes, I have 58 minutes to go. I can see Sen. Naomi is shocked on whether I will use them. Hon. Martin Shikuku used to debate for three hours on the Floor of the House. So, I intend to make use of the time, but possibly less.

Mr. Deputy Speaker, Sir, the Determination of the Nature of Bills (Procedure) Bill is very important for the working of this House to ensure that both Houses of Parliament are able to work in concert with each other and move together so that we can stop the cacophony that has been there between both Houses with respect to determining whether a Bill should come to both Houses, whether it is a money Bill and the nature of it for it to proceed.

Mr. Deputy Speaker, Sir, our Constitution establishes a bicameral system of Parliament. Article 94 sets out the general mandate of Parliament while Article 95 and 96 goes to the specific roles of either House of Parliament.

On the legislative mandate of this House, the Constitution in Article 96(2) states that-

“The Senates participates in the law making function of Parliament by considering, debating and approving Bills concerning counties as provided in Articles 109 to 113.

If you look at 109 in the Constitution, it provides for the exercise for the legislative powers for both Houses. In summary, Article 109(2) says that-

“Any Bill may originate in the National Assembly”

Article 109 (3) states that:-

“A Bill not concerning county governments is considered only in the National Assembly, and passed in accordance with Article 122 and the Standing Orders of the Assembly.

Article 109(4) states that-

“A Bill concerning county governments may originate in the National Assembly or in the Senate and passed in accordance with Articles 110, 113, Articles 122 and 123 and the Standing Orders of the Houses.”

Article 109 (5) states that-

“A Bill may be introduced by any member or committee of the relevant House or Parliament but a money Bill may be introduced only in the National Assembly in accordance with Article 114.

Article 110(3) expressly provides that-

“Before either House considers a Bill, the Speakers of 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 Bill or an ordinary Bill.”

This is why we have come together with Sen. Mutula Kilonzo Jnr. to co-sponsor, this Bill because this is where there has been no clarity. This is our second co-sponsoring

The question whether a Bill concerns counties is, therefore, one that is to determine jointly by the Speakers of both Houses. It is not a matter to be determined by only one Speaker of one House. They must be able to come together.

Mr. Deputy Speaker, Sir, over the past few years since 2013, this has been a problem. I have had the privilege of being in both Houses of Parliament. I have been in the National Assembly and the Senate. Apart from the trivial jokes that have always been there about is which is the upper or lower House. In fact, I used to say that the National Assembly can be the lower House, but with the upper hand. This is because it had the upper hand. It had the knife and the yam, especially in the budget making process. However, that rivalry, because we would sit in settings and see the kind of attitude and disdain towards the Senate in The National Assembly, is very unhealthy. Both Houses of Parliament need each other.

The framers of our Constitution knew why we got two Houses of Parliament. It is as if a bird asks itself for it to fly, which wing does it need, the right or left wing? A bird will need both wings for it to fly. Therefore, this Bill seeks then to provide clarity and give further expression to the provision of the Constitution of this joint determination by both Speakers of the Houses.

Mr. Deputy Speaker, Sir, since operationalization of the bicameral system, that question has continued to be a sticking point so much that in the early days of the Eleventh Parliament, the Speaker of the Senate, the Rt. hon. Ekwere Ekwere sought the advisory opinion of the Supreme Court in the matter of the Division of Revenue Bill.

In that landmark advisory opinion, the Supreme Court stated a finding that has been ignored time and time again. It stated that the Senate should find something that affects the functions of counties in almost every Bill that comes to Parliament making it a Bill that must be considered by both Houses. That is the Supreme Court of the Republic of Kenya, the apex court in this land. Unfortunately, despite the binding nature of decisions of the Supreme Court, the challenge of interpretation of what constitutes a Bill concerning counties continues to oblique us.

Appreciating that both Speakers might not always concur on such questions, the Supreme Court went further and proposed a most pragmatic mechanism for the resolution of such disputes.

They said “from a broad purposive view of the Constitution, the intent of the drafters as the regards of the exercise of the legislative powers, was that any disagreement as to the nature of a Bill should be harmoniously settled through mediation.

An obligation is placed on the two speakers, where they cannot agree between themselves to engage mediation a mechanism”

The Supreme Court went on to say that they would each be required to appoint an equal number of Members who will deliberate upon the question and file the report within a specified period of time. It had also proposed that the two Chambers could establish a standing mediation committee that exists in perpetuity throughout the term of Parliament to deliberate upon and resolve any dispute regarding the path of legislation to be adopted for different subject matter. Efforts to pursue the proposed mechanism were not successful.

In that spirit, whenever the Speakers fail to agree on any matter relating to the nature of a Bill, the Speaker of the Senate would invite - this used to happen - the Speaker of The National Assembly to form a joint mediation committee, but the Speaker of the National Assembly would always ignore. These requests were never acceded to in the last Parliament.

In addition to the challenges I have highlighted on the matter of the interpretation of what is a Bill concerning counties, there has been differing opinions on what a money Bill is and how to approach such matters.

On a number of occasions during the concurrence process on whether a Bill concerns counties has envisaged under Article 110 of the Constitution, the Speaker of the National Assembly has objected to the origination of certain Bills in the Senate on the basis that they are money Bills.

Mr. Deputy Speaker, Sir, why are money Bills considered only in the National Assembly? This is a question that we must ask ourselves. It is provided for in our Constitution and it is a feature in most bicameral commonwealth jurisdictions. However, the House would benefit from the research that Sen. Mutula Kilonzo Jnr. and I undertook.

From our research, in United Kingdom (UK), we found that the concept of a money Bill was introduced following the rejection of the 1909 Budget. The House of Commons sought to establish its formal dominance over the House of Lords which had broken the convention by opposing the budget.

We found that the law was introduced following the rejection of the 1909 Budget in the United Kingdom (UK). The House of Commons sought to establish its dominance over the House of Lords which had broken convention by opposing the Budget in 1909. A Parliament Act that governed the relationship between the House of Commons and the House of Lords which looked at preventing a recurrence of the budget problems was then enacted in 1911. That law was largely opposed in the House of Lords and a cross-party discussion to unlock that failed.

After a second General Election in December, 1911, the Act was passed with the support of the Monarch at that time called King George V who threatened to create liberal peers to overcome the conservative majority. The Act effectively removed the right of the House of Lords to introduce and to veto money Bills completely.

The position and experience in most Commonwealth bicameral parliaments on origination of money Bills is traced to that British experience. So, there was no fundamental or concrete reason as to why the Senate should not consider money Bills. We just copied a tradition which started in 1909 in the UK just because the House of

Lords, the Upper House at that time, objected a budget. There is no other legal reason. In the copy and paste nature of many of our Commonwealth parliaments, we just took that position.

In view of this context, when time comes to amend our Constitution, we may consider whether it is necessary to retain Article 114 as it is. The reason is that there is no legal framework on how the Speakers of both Houses may enforce the concurrence on the Bills presented to both Houses of Parliament and how that aspiration and provision in the Constitution should be implemented. It is against this background that we have made proposals. We have also taken into account the proposals made by the Supreme Court in its 2013 Advisory Opinion.

The principal object of the Bill is to give effect to Article 110(3) of the Constitution which provides that:

“Before either House considers a Bill, the Speakers of the National Assembly and 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.”

We have provided a framework in this Bill. I will take you through some of the clauses through which both Houses can resolve issues on other Bills that concern counties. The procedure for dispute resolution is provided in this Bill. The Bill also provides for concurrence and consequences for non-concurrence because there might be non-concurrence on a Bill. Allow me to highlight the salient provisions and why we felt they are necessary.

I will start with the concurrence procedure that the Bill proposes and the interpretation to Bills concerning counties and money Bills. In Clause 5, the Speaker of the House where a Bill originates must seek the concurrence of the Speaker of the other House as to whether the Bill concerns counties in compliance with Article 110(3).

Further, the Speaker from whom concurrence is sought must respond within seven days, failure to which the Bill is read a First Time in the originating House. This is to avoid situations where we have seen correspondence being ignored in both Houses. It will ensure that the legislative business of one House is not unduly delayed by the failure of the Speaker of the other House to respond to a request for concurrence. So, if there is no response in seven days, the Bill proceeds.

In Clause 6, we have provided that where the Speakers of both Houses fail to concur on the nature of a Bill, then they shall refer the Bill to a Joint Committee established to determine the nature of the Bill. Each Speaker shall appoint three Members. So, there will be three Members of the National Assembly and three Members of the Senate to sit in a joint committee.

That is not a standing committee, but an *ad hoc* committee that will be established only for the purposes of a specific Bill in anticipation of the fact that with the guidance that the Bill will be intended to provide, the disputes will be few and far between. Therefore, a standing committee will not be necessary because we do not anticipate that there will always be a dispute. We believe that if the Speakers establish the mechanism of responding within seven days, they will resolve the question of the nature of Bills.

Clause 7(1) states that:

“The Joint Committee shall, within seven days of its constitution consider the Bill and submit a report to each of the Speakers with its recommendations on whether the Bill is—

- (a) a Bill concerning counties;
- (b) if it is a Bill concerning counties, whether it is a special or an ordinary Bill; or
- (c) a money Bill.”

If the Speakers agree with a joint committee, they shall each signify on a certificate of concurrence in the form set out in the Schedule of this Bill on whether they concur with the recommendations contained in the report of the joint committee on the nature of a particular Bill. If the Speakers fail to concur with the recommendations of the report of the joint committee, the joint committee shall prepare a report to the Speakers requesting Parliament to refer the Bill to the Supreme Court for its advisory on that matter. Reference to the Supreme Court is well within the mandate of the Supreme Court.

If you look at Article 163(6) of the Constitution, it says that:

“The Supreme Court may give an advisory opinion at the request of the national government, any State organ, or any county government with respect to any matter concerning county government.”

Mr. Deputy Speaker, Sir, it is also interesting for Members to note that the Constitution we had at Independence where we had a bicameral Parliament provided clearly that there shall be reference to the Supreme Court where Houses failed to agree on money Bill issues. The money Bill issues did not start yesterday. Even in the First Parliament of the Republic of Kenya, we had issues of money Bills. They were provided for in the Constitution and failure of concurrence would be handled by the Supreme Court.

Finally, Clause 15 talks about a Bill being presented to the President for assent. We normally see the Speakers, Majority Leaders and Clerks going together for the President to assent to a Bill. A Bill has to be accompanied by certificate of concurrence from the Speakers of both Houses of Parliament.

We do not want to have a situation like what we saw the other day when our leadership was invited for presidential assent. We knew we were going to witness assent of a Bill that came from this House. In that function, the Health Bill that did not come to this House, despite health being a devolved function, was assented to. It left our leadership with egg on their faces when they said that it should not have been assented to yet they were seen in the photos standing there and clapping as it was being assented to. The certificate of concurrence must accompany any Bill that goes to the President for assent.

You need to look at the interpretation of the terms “Bills concerning counties”. Article 110 of the Constitution states that:

- “(1) In this Constitution, “a Bill concerning county government” means—
 - (a) a Bill containing provisions affecting the functions and powers of the county governments set out in the Fourth Schedule;
 - (b) a Bill relating to the election of members of a county assembly or a county executive; and

(c) a Bill referred to in Chapter Twelve affecting the finances of county governments.”

It is important for us to get to the depth of what constitutes a Bill concerning counties.

Clause 8(a) of this Bill gives interpretation of categories of Bills containing provisions affecting the functions and powers of the county governments set out in the Fourth Schedule. It is very important for us to note the use of the word “affecting”. This means that the Bill does not have to only deal with the functions listed in Part 2 of the Fourth Schedule for it to affect the functions and powers of county governments. The English meaning of the word “affecting” is far broader than that.

As such, Clause 8(1) (a) to (f) gives a comprehensive list of such scenarios which we have provided for. It states as follows:

“A Bill shall be a Bill concerning county governments under Article 110(1) (a) of the Constitution if the Bill –

- (a) directly or indirectly affects the operations of the county governments;
- (b) would have a direct or indirect impact on the functions of county governments under Part 2 of the Fourth Schedule to the Constitution;
- (c) would have an impact on the exercise by any person upon whom a function or power is conferred under the Bill on any institution or office of the county government, the finances of the county government or the property held by or vested in the county government;
- (d) confers a function or power on a person that would affect the exercise of the functions and the powers of the county governments;
- (e) seeks to transfer a function or power between the national government and the county governments under Article 187 of the Constitution; or
- (f) provides for any other matter that would affect the functions and powers of the county governments.”

That is the true meaning of the word “affecting” as provided for both in the Constitution and in this Bill.

Clause 8(2) on the other hand provides for Bills affecting the finances of county governments and also gives a comprehensive list of what such matters may entail. It states as follows:

“A Bill shall be a Bill that affects the finances of a county government under Article 110(1)(c) of the Constitution if–

- (a) the Bill provides for –
 - (i) the equitable sharing of revenue under Article 202(1) of the Constitution;
 - (ii) a matter set out under Article 204 of the Constitution;
 - (iii) the withdrawal of money from the Consolidated Fund under Article 206 of the Constitution that affects the finances of county governments;
 - (iv) the withdrawal of money from a County Revenue Fund;
 - (v) of public funds by counties and the management of those funds;
 - (vi) advances from the Contingencies Fund under Article 208 of the Constitution that affects the finances of county governments;

- (vii) the imposition of a tax, duty or charge by the national government;
 - (viii) borrowing by the national government that affects the finances of county governments;
 - (ix) the terms and conditions under which the national government may guarantee a loan under Article 212 (a) of the Constitution.; or
 - (x) any other matter referred to in Chapter Twelve of the Constitution affecting the finances of county governments.
- (b) the Bill is –
- (i) the annual Division of Revenue Bill; or
 - (ii) the annual County Allocation of Revenue Bill.”

Mr. Deputy Speaker, Sir, there are currently two schools of thought. We need to agree on which is the prevailing school of thought so that it hold. There are two schools of thought that have emerged on the interpretation of Money Bills. The first school of thought is to the effect that any Bill that has any provision having financial implication is a Money Bill irrespective of other matters contained in the Bill. That school of thought is founded on the traditional Commonwealth model that required the approval of the crown where a legislation had monetary implications. I remember that in the Tenth Parliament and before, any such Bill would have to go to the Ministry of Finance to get that approval, based on the traditional model from the Commonwealth.

As I mentioned, this was the position in the United Kingdom, in Kenya under the former Constitution and continues to be the position in a number of Commonwealth countries around the world. The rationale behind this was that passing Bills that had monetary implications without the approval of the Executive would disrupt the agenda and policies of the Executive and they would not be able to implement the Bill that had been passed.

Going by the interpretation of this first school of thought, virtually all legislative proposals that have been drafted in the Senate or that Senators have proposed for drafting with exception of very few would fall within the definition of a Money Bill. In such a case, the introduction of the Bill to the Senate would, therefore, not be possible. This view fails to give the Constitution a holistic and purposive interpretation

Mr. Deputy Speaker, Sir, the second school of thought with respect to what is a Money Bill is to the effect that in terms of Article 114(1) of the Constitution, a Money Bill may not deal with any matter other than those listed in the definition of a Money Bill under Article 114(3). Just because a Bill has some financial implication does not make it a Money Bill. A Bill is a Money Bill if it does not deal with any other matter other than those listed in the definition of a Money Bill under Article 114. That is where we make a mistake.

A Bill could be dealing with agriculture or health. However, since there is a financial implication, we call it a Money Bill. That is not the proper interpretation. Article 114 (3) states that: –

- “In this Constitution, “a Money Bill” means a Bill, other than a Bill specified in Article 218, that contains provisions dealing with;
- a) taxes;

- b) the imposition of charges on a public fund or the variation or repeal of any of those charges;
- c) the appropriation, receipt, custody, investment or issue of public money;
- d) the raising or guaranteeing of any loan or its repayment; or
- e) matters incidental to any of those matters.”

As such, where a Bill deals with other matters, in addition to any matters set out in under Article 114(3) of the Constitution, then it follows that the Bill will not qualify to be a Money Bill. That is the proper interpretation of what a Money Bill is.

Mr. Deputy Speaker, Sir, I would also like to note that the National Assembly has introduced a procedure where the minute Senate Bills get to the National Assembly, they are referred to the Budget and Appropriations Committee for certification as to whether they are Money Bills. The practice has been that if the Committee finds that the Bill is a Money Bill, no further action is taken. This procedure is completely inconsistent with the Constitution because the Constitution does not contemplate a situation where a House can veto a Bill originating from another House without a vote. There is no such provision within the Constitution. What they are doing is unconstitutional and must be challenged.

Mr. Deputy Speaker, Sir, Article 109(4) of the Constitution states as follows:-

“A Bill concerning county government may originate in the National Assembly or the Senate, and is passed in accordance with Article 110 to 113, Articles 122 and 123 and the Standing Orders of the Houses.”

There is no mention anywhere of reference of Bills that concern counties to the Budget and the Appropriations Committee to be looked at by a Committee of the House in the manner contemplated under Article 114 as they have been doing and that must be challenged.

This Bill provides clarity as to how it is introduced. You cannot veto the action of another House without coming to the Floor to vote on it. Those provisions and that process are actually in our Constitution.

Clause 10 of the Bill follows the approach which is consistent with Article 259 on the interpretation of the Constitution, particularly the requirement which states that;

“This Constitution shall be interpreted in a manner that –

- a) promotes values, purposes and principles;
- b) advances the rule of law and the human rights and fundamental freedoms in the Bill of Rights;
- c) permits the development of the law; and
- d) contributes to good governance.”

It gives interpretation of a Money Bill as provided for in Article 114(1) read with Article 114(3) of the Constitution. As such, a Bill shall be a Money Bill within the definition of Article 114 of the Constitution if the primary object of the Bill is to provide for the matters listed in Clause 10 (1) (a) to (e). Therefore, it should not be referred to as a Money Bill just because, in the opinion of the Budget and Appropriations Committee of the National Assembly, it is a Money Bill. That is not how it should be done.

Mr. Deputy Speaker, Sir, this Bill also clarifies that a Bill is not a Money Bill if it provides the following:-

- a) the imposition, abolition, remission, alteration or regulation of any tax;
- b) the imposition of charges on a public fund, variation or repeal of any of those charges;
- c) the appropriation, receipt, custody, investment or issue of public money; and
- d) the raising or guaranteeing of any loan or its repayment by a county government.

You will recall that towards the expiry of the Eleventh Parliament, there were close to 30 Senate Bills that lapsed in the National Assembly because after the First Reading in the National Assembly, nothing else happened. They just ignored those Bills. We are providing in this Bill that when a Bill concerning county governments is referred to a House of Parliament, and the House fails to pass the Bill in one Session, the Bill shall be processed in accordance with Article 113 of the Constitution which provides for mediation. That will become a direct channel where we go to.

Mr. Deputy Speaker, Sir, this will mean that failure to process the Bill would be deemed as rejection of the Bill. Therefore, the provisions on mediation apply. We cannot be sending Bills to that House and they just sit on them or put them on the shelves and say “leave the Senate alone.” Similarly, in good faith, we, as the Senate, should also expedite Bills that come from the National Assembly.

I urge this honourable House to support this Bill and also call upon the National Assembly to support this Bill for the benefit of the people of Kenya.

I have been discussing with Members of the National Assembly on many issues. After the last election, we have a former governor who is now a Senator. The former Governor of Bungoma County is a Senator by virtue of him being the Speaker of the Senate. We also have previous Members of the Senate who are now Members of the National Assembly while others are Members of the County Assembly (MCAs). We have former Senators who are now governors. We have former Members of the National Assembly like yours truly, who are now in the Senate. Whenever we legislate, let us not think about our present situation. Let us legislate in fairness knowing that tomorrow, you might be anywhere. Let us do what is right for the people of Kenya.

This unhealthy competition between the Houses does not add *ugali* to the table of Kenyans. In fact, sometimes we act in a very juvenile manner. The sibling rivalry should have ended; it should have just been the teething process in the Eleventh Parliament. By now we should be able to respect each other. We should respect the place of the National Assembly and they should respect the place of the Senate as Parliament acting in concert. We are only Parliament when we are together. When we are not together, we are the National Assembly and the Senate. In fact, some the Bills that they have passed should be looked at as Acts of the National Assembly because they are not Acts of Parliament without the input of the Senate.

When I talk of the input of the Senate, I do not mean that every Bill should come to the Senate. The input of the Senate is in two stages. One, during the decision on concurrence. That is an input by the Senate. When the Speaker of the Senate is consulted by the Speaker of the National Assembly, that is input by the Senate. If they feel that that is a Bill that can go through the National assembly alone and that discussion has been done, then the Senate would be deemed to have participated. Secondly, the input of the

Senate is when the Bill needs to come to this House because it affects the counties. I have given the broad proper interpretation of what affecting counties mean.

Mr. Deputy Speaker, Sir, this impunity of just coming up with Bills that affect counties, some even on functions that are explicitly devolved like health and going off unscathed with impunity until you take it to the President to sign it into law, is something that must stop.

Mr. Deputy Speaker, Sir, I am made to understand that the Committee on Justice, Legal Affairs and Human Rights intends to put a legal challenge. Many laws that have been passed and are in operation in this country can be deemed to be unconstitutional and can plunge us into a crisis.

Mr. Deputy Speaker, Sir, I would have a more pragmatic approach that we dump it where it has reached and say that moving forward, once they pass this – because I believe that reason can prevail - this is the demeanor and the way we shall operate. This is the process that we shall take as both Houses of Parliament. Article 3 of the Constitution imposes an obligation on every person to respect, uphold and defend the Constitution. More specifically, Article 94(4) provides that Parliament shall protect this Constitution and promote the democratic governance of the Republic. Let us rise to the occasion and play our role in protecting the Constitution of the Republic of Kenya.

With those few remarks – I do not think I have used enough of my time – I beg to move. I would like to ask Sen. Mutula Kilonzo Jnr., who is the co-sponsor of this Bill to second.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Sakaja, not exhausting your time does not affect the quality of your words. There are either many or few depending on their number and, independent of how much time you took.

Sen. Sakaja: Mr. Deputy Speaker, Sir, they are many in terms of the weight and content; very deep philosophical and legal. I only used 30 minutes.

(Sen. Mutula Kilonzo Jnr. spoke off record)

You are actually co-sponsoring ---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order! You are a *functus officio*. Meaning, take your seat. Sen. Mutula Kilonzo Jnr., you are a co-sponsor. So, you will take half the time he ought to have taken to move, which is up to 30 minutes and then there will be a Secunder.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Deputy Speaker, Sir, for the opportunity. I rise to move the Bill. This is confusing although we are doing it for the second time with Sen. Sakaja.

I entirely agree with what he said. However, people like you and I who are legal scholars must sometimes feel very challenged when we say the law is clear. Over the weekend, one of my friends wore a T-shirt that was written: “The law is clear.” We say these words so many times. Somebody goes on television and says: “The law is clear on this position and x.” Sen. Sakaja says that the Constitution is clear. You wonder what the difficulty is.

When people like you who are known to be legal scholars and professors and teach law go to schools and teach people who watch us and think that we are role models for purposes of a legal career, what do they think of us when they see some of the things that we do? When we test them on the principles of Constitution making and bicameral legislature and we seem ourselves not to understand this very clear legislation--- That famous phrase; “the law is clear”, is beginning to sound like an oxymoron. It is like what they say; “a peaceful riot.” It does not make sense.

(Laughter)

Mr. Deputy Speaker, Sir, this country has so many laws. This morning, one of our colleagues brought a law on prompt payment of goods. We told them that the law is clear on this one. If you were to go to court and somebody owes you money and they have not paid, the law is clear. It is 14 per cent from date of filing. The law is also clear on contract law; if you sign into a contract to pay 20 per cent interest or commercial rate. The law is clear. You do not need to legislate. However, even we, legislators, are legislating on what is very clear.

We are now legislating, for example, in this Bill, what would be good manners. There is no ambiguity as to what should happen. We are now trying to put everybody in a straight jacket. What would you do when this happens?

Recently in your ruling on Paragraph 102, you quoted that a good Speaker – I remember mentioning that word and you chuckled – would find something about public finance, health and security that concerns counties. Does that make Speaker Muturi and Speaker Lusaka bad Speakers? I mean, from deductive logic. Does that make them bad Speakers because a good speaker would find something?

The Budget Policy Statement is normally brought here for us to give our views. We give our views as Parliament under Section 25. It is then goes out there to the Cabinet Secretary (CS) and they put it in the out tray. They say excess paper and forget all about it. Then with a keen eye, they look at what the National Assembly has done. What kind of people or leaders are we? Forget about good speakers. The Speaker of the National Assembly and the Senate is a representation of us. We say we are a representation of the people who voted for us. We voted for the two Speakers. Does that make us bad? We voted bad Speakers because if they are good we are good. If they are bad, we are also bad.

Mr. Deputy Speaker, Sir, I went to the Republic of Australia and our Speaker, who sits where you sit, should be called the president to distinguish the two. That particular time, the Senate then elected a person who is affiliated to what would be in our case, the Minority. That is the person who is entrusted with the Upper House, to give wisdom.

In our case, we have Speakers who have come from the same political affiliation. When a Bill is being signed you see both of them. I raised this issue about Sen. Murkomen who raised an objection on the Floor, but he appeared to have participated. I do not know whether the fact that he was there means he acquiesce. It is a question that at some point, we will have to address. Did he acquiesce by virtue of standing there?

However, our good Speaker – I keep insisting on a good Speaker – was even closer to the President than the Majority Leader. That person, under Article 110 was standing closer to the assenting authority---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Mutula Kilonzo Jnr.! Is your thesis that the level of acquiescence is proportional to the distance from the President?

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, when I challenged the Senate Majority Leader about his presence, he said, “Did you see my body language?” I have been attempting to read his body language, but it now reads more for the person who was closer to the President. Although the Speaker did not say we should read his body language, but could just look at him looking very keenly. A good Speaker would find something that concerns counties.

Sen. Sakaja is right that we are treating this country to a huge charade about what concerns counties *et cetera*. To the ordinary *mwananchi* who is in this city – Sen. Sakaja, Sen. Ndwiga and I represent a lot of them – in real sense do not care, as far as they are concerned, about anything that comes from this building. I am not talking about where we are; it is the building in terms of Parliament, because it is an Act of Parliament.

Although I have been invited for the prayer breakfast, I think it should be held in these precincts. This is the place where we need the most prayers; This is where we need Canon Naomi Waqo to pray, speak in tongues and call the Holy Spirit. Maybe somebody would drop. I do not know whether you can hold somebody and they drop in the process. We need prayers so that we can not only have a good Speaker, but so that we can have good leaders. This Parliament is supposed to produce good leaders. By the time we do legislation on some of these issues, small little nitty gritty as to what concerns counties and how we disagreed just simply means that we are no longer gentlemen and women.

If you were to say “*not yet uhuru*”, it is not yet *uhuru* in Parliament. It appears as if we have never freed ourselves. As we speak about devolution, upper chamber and lower chamber or bicameralism, it appears, from my reading that we have not yet understood it. Is it a wonder that some people think that we are too many; that we talk too much and do nothing, but when it comes to our house allowances, we seem to have a consensus? We will never disagree on those things that concerns our pockets and stomachs.

We must condemn ourselves and repent our sins, or we will pay the price. Sixty or seventy per cent of us will be shown the door by the public. I can tell you that it has happened because it is historical. Therefore, I plead with you to speak to Sen. Naomi Waqo. Please let us change; we need to change. We need to find a good Speaker and good leaders. We cannot speak to each other on Twitter.

Mr. Deputy Speaker, Sir, I have been watching the vetting in the Congress. You never quite get to see when they do legislation, except when you have controversial legislation like the one proposed by President Trump on immigration; or when you have the problem like the one of Obamacare. Even then, what you see is the strength of the House in terms of the Republicans and Democrats.

Another example is when vetting a Supreme Court Judge. You never quite see some of the things – the shenanigans we are treating Kenyans to – on matters concerning

counties or on a money Bill. Legislation is so difficult, and I congratulate Sen. Wamatangi. To get a Bill to have the hand of the President is really a lot of work. It pains to do all that work on a Bill and then it ends up in the dustbin because of our controversy about what concerns counties. For instance, one of the Bills about the youth that Sen. Sakaja is famous for never came here to the Senate. It concerns counties because the youth are also in counties. There are issue of youth employment and the 30 per cent we are talking about to ensure that they are catered for.

Mr. Deputy Speaker, Sir, do you need to remove your hat and teach us, as you teach good students, about what this Constitution says about us? Article 94 talks about Parliament. Article 96 is our special jurisdiction, what we call in Latin, *sui generis*. It is a special jurisdiction for us. The special jurisdiction for the National Assembly is in Article 95.

Then there is our special jurisdiction as to what concerns counties in Article 110. It is so simple; a matter affecting functions and powers of county governments, matters relating to election of county assembly and county executive. I argued with Sen. Murkomen and Sen. Sang about this when we amended the IEBC law on boundaries of wards and county assemblies but they did not see the point. Now maybe they do, but who said that Saul cannot become Paul?

Article 110(c) talks about matters affecting the finances of county governments. If you were to pick matters affecting finances of county governments, you would have everything under the sun, including debts. Even the national debt affects finances of counties. Similarly, the Kenya Revenue Authority (KRA) and shortage of meeting targets concerns counties. We have to find a way of discussing these issues; but as we do so, since this country has so much law, we still need a good Speaker in the National Assembly and a good Speaker in the Senate.

Even with this law, we still need a good Speaker. A good Speaker is like a good Judge. A good judge is like Lord Denning, a man who went behind the law to find the spirit behind the letter of the law. What was the spirit of the forefathers of the Constitution? That is what a good Speaker is. I, therefore, call upon Speaker Muturi and Speaker Lusaka to find themselves into history as good Speakers, because they are letting this country down. I must tell them on record.

Mr. Deputy Speaker, Sir, when the President and the former Prime Minister wanted a Grand Coalition Government, they went to Sagana, locked themselves up and came up with a Cabinet. Do we need to send Speaker Lusaka and Speaker Muturi to some place, take away their cell phones and ask them to sort out their issues? It is their issues; and we are legislating about them. We are legislating on how they can be good Speakers first before they become better Speakers.

Could you please write a treatise for us on “How to become a good Speaker as told by the Supreme Court?” That way, we will not have to tell them, “sit at midday or at one;” or “sit along the corridors, in Speaker Muturi’s or Speaker Lusaka’s office.” This Bill will then not be necessary; but it is necessary because, for some reason, we need to write down everything.

When I was at the British Parliament, I bought a book, and Prof. Siyanya was very interested in it. It is titled “*The Written Constitution of Britain*.” What is in that

book? It is not the written Constitution, because you and I know that it is not there; that is what we teach. However, the book is about the practices, good manners, tradition and usages that have become almost like the written law. Are we doing the same in this country?

Our good Speakers must go beyond the text of the Constitution to develop our law to the extent that one day we can write a book about the good Speakers, under Article 110. However, since we must also have a default, we have put a default Clause. We must go again to the Supreme Court, under Clause 14, to determine our disputes. Although we have put that default Clause, like any other place, Sen. Sakaja thought that this is like a last resort.

In good practice, we would not end up in the Supreme Court to determine whether a Bill is a matter concerning counties or not. Sen. Sakaja might not know this, but the court once said that, "Parliament, in its wisdom, for Parliament is forever wise." Those were the words used. If we are unable to mediate, because we have gone beyond the principle of mediation; the principle of mediation under Article 113 and 114 states that the Bill has failed. In this case, we have gone a step further to say that we can go to the Supreme Court to determine certain disputes that we have not agreed on during mediation. Where will we find good Speakers under Article 110, who will show leadership?

In the Schedule, we have the certificate of concurrence, and we have gone further to say that the President should not sign a law unless a signed certificate of concurrence under Section 8 is attached to the Bill. The word 'good' comes from the Good Samaritan. Under Article 110, a good Speaker will not need these kind of measures, because a good Speaker will make sure that the other Speaker has participated. If the two Speakers do what is required of them by law, then the President will not have to look for the certificate of concurrence.

Albeit late, I think that we can save devolution and this country. The Upper House in Germany commences all legislations and there are no issues with that. This House can only start the County Revenue Allocation Bill. Good Speakers will make sure that the division of revenue starts at the Senate so as to allow the Senators to give their input, pass the law then forward it to the National Assembly. The question is, are the good Speakers going to do that? I hope that the two good Speakers will not have a dispute as to whether this matter concerns counties or not; or whether they agreed before it was tabled in the National Assembly. The comments by the National Assembly Majority Leader suggested that concurrence was not done or they did not agree.

With those few remarks, I beg to move and ask Sen. (Dr.) Zani to second.

Sen. (Dr.) Zani: Thank you, Mr. Deputy Speaker, Sir. I beg to second. I wish that this Bill came earlier, although wishes are just that; wishes. This Bill would have saved us a headache, as articulated by the Movers of this Bill; Sen. Sakaja and Sen. Mutula Kilonzo Jnr.

Mr. Deputy Speaker, Sir, when I was a Member of the Senate Business Committee during the 11th Parliament, I used to wonder what the problem was. I did not know if the problem was administrative, such that the two Speakers could not sit together. If that was the case, what is it that would stop them from sitting together,

because they were all from the same political divide? I also wondered if the challenge arose from the lack of experienced personnel who could advise them. It is sad that many Members who moved various Bills found themselves in situations---

*(Sen. Murkomen consulted
the Deputy Speaker (Sen. (Prof.) Kindiki))*

Mr. Deputy Speaker, Sir, can I be protected? I can hardly think through my own thoughts.

When Members of this House---

The Deputy Speaker (Sen. (Prof.) Kindiki): What is the issue, Sen. (Dr.) Zani?

Sen. (Dr.) Zani: Mr. Deputy Speaker, Sir, I just want to be heard.

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

Sen. (Dr.) Zani: Mr. Deputy Speaker, Sir, by all of us, and that includes you.

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

Proceed.

Sen. (Dr.) Zani: Thank you, Mr. Deputy Speaker, Sir. Members of this House would progress with a Bill after getting advisory opinions from the legislative staff of the Senate and those of the National Assembly. Those in the Senate would tell the Member that the Bill was not a money Bill, and those of the National Assembly would tell the Member that the Bill was a money Bill. The whole experience would be very frustrating.

When the Bill went to the National Assembly, the Members would never get any feedback as to whether it was a money Bill or not. They would only hear from the corridors that the Bill was stuck somewhere. The issue was probably not administrative, because that would have been sorted out as this Bill hopes to do. It is also not clear if the issue was political, because the Speakers of the National Assembly and the Senate came from the same political divide. Was it a question of sibling rivalry? I do not know. It is true that we could be having sibling rivalry, but it is not as bad as the media portrays it. It could be just an issue of pure logistics.

Congratulations, Sen. Sakaja and Sen. Mutula Kilonzo Jnr. I hope that this Bill will not be termed "a money Bill" when it gets to the National Assembly, for that will be malice. I have gone through the Bill and I do not see the provisions that are usually there in any money Bill and I hope that it will be dispensed with. I wish that the Members of the National Assembly understood the importance of the Bills that stalled there during the 11th Parliament. This is because they addressed important issues affecting people in the counties such as resources and management.

Mr. Deputy Speaker, Sir, we have to understand and accept that we are a bicameral Parliament. Rwanda does not have a problem with this arrangement. They told us that they originate a Bill in one House and it goes to the other House. If we have a problem with a Bill because we feel that it is a money Bill, why can we not find a way of going round it? Why can we not amend the Articles in the Constitution so as to allow for co-sponsorship of a Bill?

We can have a Bill being co-sponsored by Members from the National Assembly and the Senate, now that a money Bill has to originate from the National Assembly. Why

can we not have a provision where we can we re-edit a Bill and have it introduced in a specific House? We sent many Bills to the National Assembly and they were re-written and re-introduced to the Senate as Bills from National Assembly because they felt that those Bills should have originated from there.

Mr. Deputy Speaker, Sir, I will not look at the clauses, because Sen. Sakaja and Sen. Mutula Kilonzo Jnr. looked at them in detail. Sen. Mutula Kilonzo Jnr. talked of what needs to be done so as to apply Article 110(3) of the Constitution. In fact, we once suggested that we should have a piece of paper for the two Speakers to sign. When I read the first version of this Bill, I quickly thought to myself what will happen when finally the time comes to sign it into an Act. Then I quickly saw the provisions of Clause 15. I think this is how we will save ourselves.

Clause 15 says-

“A Bill presented for Presidential assent shall be accompanied by a certificate of joint concurrence by the Speakers of both Houses on the Bill.”

In fact, we need to suspend any other Business and facilitate this Bill. That way, we will see the light of day. As it has been said earlier, the provisions of whether or not a Bill is a money Bill and all the other provisions are sorted by this Bill, whose objects are very clear through a framework of determining the nature of the Bill.

As Sen. Mutula Kilonzo Jnr. said, the procedure of determining whether a Bill concerns counties seems straightforward, but it has been a big problem. We have seen it many times in this Senate that there is no Bill that does not concern counties. Everything happens and touches on the counties.

With regard to the framework for resolving a dispute on whether or not a Bill concerns counties, the dispute mechanism is very clear. A well-structured Mediation Committee will help us to get to that. There is also the signing of the various pieces of processing paperwork, which is very crucial in this Bill.

Mr. Deputy Speaker, Sir, Clause 5 says-

“Upon the publication of a Bill and before the Bill is read a First Time in the House originating the Bill, the Speaker of that House shall, pursuant to Article 110(3) of the Constitution, seek concurrence of the Speaker of the other House on the Bill-

- (a) Is a Bill concerning counties: and,
- (b) If it concerns counties, whether it is a special or an ordinary Bill.

That is where the problem has been. We have debated the Bill during the First and Second Readings; gone into debate and almost to the Third Reading without still determining whether or not it touches on counties or whether or not it is a Money Bill. This provision, coming at this point, is very important. Logistically, that is the way it needs to be done.

The need to have concurrence is addressed very clearly in all the clauses. Clause 5(3) says-

“Where no response is received within the period specified under subsection (2), the Speaker of the House originating the Bill may direct that the Bill be Read a First time.”

That is very critical, because there seems to be a cat and mouse game. Many times we have asked why we were not getting the concurrence from the two Speakers, and there has been no information coming about that from anywhere. Just making sure there is concurrence and putting it all together is very critical.

Mr. Deputy Speaker, Sir, Clause 6 talks about the Joint Committee. This is very critical because it will help us to analyse and get to the bottom of things. Various Clauses, especially Clause 10(2), are very important because they indicate what will be considered under specific circumstances. This is almost like a guidebook for the people who will be in the Mediation Committee.

As the Senate, these are the provisions that we need to look at the Bills and improve on them. In fact, I would suggest that we could even have a one day retreat with members of the National Assembly and ask ourselves what provision we can probably include to improve on a Bill. We could ask ourselves, for example, what provisions have been left out. We can gauge their mindset and get to know what they might finally say is a Money Bill that we have not been able to determine.

Mr. Deputy Speaker, Sir, this Bill should allow us to begin a thought process to look at the various provisions. This will ensure that at the end of the day, the provisions that are being made by the Committee are clear to them regarding whether or not it is a Money Bill or a Bill concerning counties. All those provisions clearly put out will help us to get there.

Mr. Deputy Speaker, Sir, Clause 12 says-

“The Joint Committee shall prepare a report to the Speakers requesting Parliament to refer the Bill to the Supreme Court for advisory opinion on the matter.”

That might be a first for us. It will save us from proceeding with the many Bills. At one point, we thought this was some sort of strategy to kill the Senate or make it look very inefficient because no Bills were coming from it. Over 90 Bills went and got stuck at the National Assembly. However, I am happy that in the 12th Parliament, many of these Bills are coming back and are being debated. However, it makes it so difficult to pass a Bill because we are caught up within a specific administrative issue that could have been solved earlier.

Mr. Deputy Speaker, Sir, I think our promise lies with the joint Committee and signing the certificate of joint concurrence. By signing the certificate as provided in Clause 15, the Speakers will not say that they have not participated. As we move on to build this Bill, we need to begin to understand the psyche of the Speakers and feelings of Members of the Senate and those of the National Assembly. We need to begin thinking about what they may bring up as stumbling blocks.

Mr. Deputy Speaker, Sir, when this Bill was initiated, I heard Members from the National Assembly complaining, because this was finally going to address an issue a key issue. They were asking what sort of a Bill we were bringing up. I am happy that this is

not a Money Bill and, therefore, it will be processed. I am looking forward to it becoming an Act, as it will save the Senate and the important Bills that the Senate always generates.

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

(Question proposed)

Sen. Were: Thank you, Mr. Deputy Speaker, Sir, for this opportunity to contribute to this Bill sponsored by Sen. Sakaja and Sen. Mutula Kilonzo Jnr. The Bill is long overdue. The issue of determining whether a Bill has matters concerning counties or is a money Bill has caused the Business of Senate to stagnate for a very long time. However, with the Joint Committee and a certificate certifying that there was concurrence from both Houses before a Bill is assented to, it will bring order into the conduct of Parliamentary Business. It is also important that we continue to appreciate that Kenya has a bicameral Parliament. So long as we have devolution, we should continue to appreciate the role of Senate.

Mr. Deputy Speaker, Sir, there are very many Bills from the Senate that are being declared as Money Bills. Consequently, they are not handled by the National Assembly and completely ignored. They could at least try and take over those Bills and deal with them, because we are both making laws, not for ourselves *per se*, but for the people of Kenya. That should be our driving force.

Mr. Deputy Speaker, Sir, I look forward to that good Speaker that Sen. Mutula Kilonzo Jnr. was talking about, who will determine the distinctive roles of the National Assembly and the Senate and give the Senate the respect it deserves. Senators have been talking about Bills from the Eleventh Parliament. However, even in this Twelfth Parliament, there are Bills that have gone to the National Assembly which have the title 'county' on them, and are still stuck there without being handled. They have been declared Money Bills and abandoned. It is as if we were making those Bills for ourselves and not the people of Kenya.

There are Bills that counties are waiting for to strengthen devolution and their work that are not being handled. However, when National Assembly Bills come here, we are put under pressure to pass them. Since we are the so called "big brother," we are quick to pass them without asking what is happening to our Bills that have been abandoned at the National Assembly.

Mr. Deputy Speaker, Sir, this Bill by Sen. Sakaja and Sen. Mutula Kilonzo Jnr. is a very important one. It should be fully supported and allowed to move as fast as possible so that we can finally have order in Parliament.

With those few remarks, Mr. Deputy Speaker, Sir, I beg to support.

Sen. Paredo: Thank you, Mr. Deputy Speaker, Sir, for allowing me to contribute to this Bill. I thank Sen. Mutula Kilonzo Jnr. and Sen. Sakaja for co-sponsoring it. Of course, it is long overdue, considering what we have gone through as a Senate in the recent happenings in the debate in the National Assembly about which Bills should be in the Senate, which ones are money Bills and which ones should be in the National Assembly. This is also crucial considering that last week, we were all lamenting about our Speaker and the Senate Majority Leader being in a function where they realised that

the Bill that was assented to by the President was a Bill on health, which is a devolved function and should have been handled by the Senate.

This Bill is an answer to the problems that we have had with regard to the handling of Bills and the nature of their determinations by our Speakers. It is sad that we have come to an extent of doing a Bill to sort ourselves out. For a long time, we have wondered whether our two Speakers, according to the constitutional provisions, sit down to concur and agree on which Bill should go to the Senate or the National Assembly.

If they have been sitting to get concurrence, it means that we have not felt that being implemented and the decision has not been done and, therefore, we will sort them out through a law. It would have been easier for them to do it without a law. However, be that as it may, we are happy that we finally have a Bill that comes out to sort this mess and iron out the differences between the Senate and the National Assembly. This law will ensure that they will not have to handle matters that are supposed to be handled by the Senate or the Senate to handle matters that can be easily handled by the National Assembly. It would lead to mutual agreement, concurrence and orderly business in terms of what the Senate and the National Assembly should handle.

Mr. Deputy Speaker, Sir, at the moment, we are handling several mediations. For example, mediation on the Irrigation Bill, the Warehousing Receipt Systems Bill and another Bill. A lot of concurrence would help us sort out most of these things. We would, therefore save on time on mediation and on a lot of things. Consequently, we will be effective in terms of giving service to the citizens. I am sure that this Bill will enable smooth running of Business. With concurrence, I am sure that mediation committees will come in only on rare occasions. Most of the time, it will be easier for them to agree and we will move forward as the Senate.

Mr. Deputy Speaker, Sir, this will also help us a lot in view of the fact that we had duplication of Bills. We have had cases where Members have indicated that a Bill is drafted here, but within no time, the same Bill with almost the same provisions is in the National Assembly. Therefore, duplication will be a thing of the past. Once there is concurrence that a certain Bill should be in this House, it will not be easier for Members to start duplicating Bills in the manner that we have seen in the past.

I remember there was a Bill in Second Reading here and, at the same time, it was at Third Reading at the National Assembly. When we looked at that Bill, it was the same Bill, word by word. Therefore, this particular Bill that Sen. Mutula Kilonzo Jnr. and Sen. Sakaja have come in with will help us to iron out some of these things and also stop this kind of duplication of Bills in this House and in the other House. This is the way forward. I hope that our Speakers will follow the provisions of this Bill to ensure that there is concurrence at all times. They should also remember that this is a provision that is provided for by the Articles of our Constitution.

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

Sen. (Rev.) Waqo: Thank you, Mr. Deputy Speaker, Sir, for allowing me to add my voice to this very important Bill. I also congratulate the sponsors of the Bill, Sen. Mutula Kilonzo Jnr. and Sen. Sakaja.

Mr. Deputy Speaker, Sir, I support this Bill because of my experience in the two years that I have been in the Senate. I have observed the dilemma that any sponsor of any

Bill goes through. Once they have drafted their Bills and it is read for the First Time, they wait for the conclusion or response from the other side, which keeps us in a big dilemma. I also support this Bill because of the experience, where we have seen some of the very important Bills which go to the other House but come back to us. In many occasions, we have seen a lot of mediation taking place because of disagreements in some areas.

Mr. Deputy Speaker, Sir, as I was going through the Bill, I noted that it will solve most of our problems. Clause 5 of this Bill states that-

“Upon the publication of a Bill and before the Bill is read a First Time in the House originating the Bill, the Speaker of that House shall, pursuant to Article 110(3) of the Constitution, seek the concurrences of the Speaker of the other House on whether the Bill-

(a) is a Bill concerning counties and,

(b) if it concerns the counties, whether it is a special or ordinary Bill.

This, to me this is a very crucial and important Bill. As we begin the important journey of a Bill going through all the process, that determination is important.

Under that, the time has also been set, because the Bill in Clause 5(2) suggests that-

“The Speaker from whom concurrence is sought under subsection (1) shall respond to the request for concurrence within a period of seven days from the date of receipt or the request.”

We know that sometimes when we make requests in writing, there is a lot of delay. However, with these specifications, the requests will be responded to within a specific timeframe. I am sure that all hon. Members will honour this and it shall receive the response that is needed within seven days, which is very good and will help the process of the particular Bill.

Clause 5(3) states that-

“Where no response is received within the period specified under subsection (2), the speaker of the House originating the Bill may direct that the Bill be Read a First Time.”

Clause 6 (1) suggests that-

“Where the Speakers of both houses fail to concur on the nature of a Bill as provided in section 5, the Speakers shall refer the Bill to a Joint Committee established to determine the nature of the Bill.”

This is crucial because the Committee will represent both Houses. I believe that the sponsor of the Bill will also be considered as one of the persons to be in that Joint Committee. This is because he or she has a good idea they know why they have come up with the Bill. Therefore, he or she can defend and justify the Bill and its amendments. In fact, we can be more specific and say that the sponsor of the Bill should be a Member of the joint Committee.

Mr. Deputy Speaker, Sir, the idea of three Members to sit in the Joint Committee is good, because we will all be well represented and our interested will be covered.

Clause 6(3) states that-

“The Joint Committee shall, at its first meeting, elect a chairperson and a vice-chairperson from amongst its members.”

That means that the Committee will decide what should happen and how the meeting shall proceed.

Under Clause 6(5), where the Chairperson and the Vice Chairperson are not present, the Committee will elect any other able Member to chair the meeting. That means that there will no vacuum. It also means that people will sit and deliberate on the issues before them, and time will not be wasted. It means that within the set time, the Bill will go through all the processes and be effected.

Clause 7(1) provides that the Joint Committee shall, within seven days of its constitution, consider the Bill and submit a report to each of the Speakers with its recommendations. This gives assurance that no time will be wasted. I suggested that the Sponsor of the Bill in question should be a member of the Joint Committee. However, even if he or she is not a member, they will know that the Bill will be determined.

Mr. Deputy Speaker, Sir, much has been said by hon. Senators. Mine is to just give reasons why I support the Bill. Before I conclude, I would like to touch on Clause 11, which states as follows-

“Within five days of receipt of a report of the Joint Committee under section 7(1), the Speakers of the respective Houses shall each signify on a certificate of joint concurrence in the form set out under the Schedule on whether they concur with the recommendations contained in the report of the Joint Committee on the nature of the Bill.”

As I said earlier, this is also important. It is important for each Speaker to signify on a certificate of concurrence because we know that anything can happen in the world of politics, and people can change their positions on some things. Therefore, by signing on the certificate of concurrence, we will be sure that they will walk together as a team.

Under Clause 12, where the Speakers of both Houses fail to concur with the recommendations of the report of the Joint Committee on whether a Bill concerns counties or is a money Bill, the Joint Committee shall prepare a report to the Speakers requesting Parliament to refer the Bill to the Supreme Court for advisory opinion on the matter. The procedures to be followed have been provided. To me, that is good, because the procedure will guide Senators or any hon. Member who will sponsor a Bill because there will be direction.

Mr. Deputy Speaker, Sir, I support this Bill simply because of what I have said. I know that all the Senators will smile when this Bill becomes law, because we will not have the dilemma that is currently there. I hope we will have the assurance that at the end of the day, Bills that will emanate from here will be enacted.

As I support this, I pray that the Bill will go through all the processes as soon as possible so as to become law.

Thank you, Mr. Deputy Speaker, Sir.

(Applause)

The Deputy Speaker (Sen. (Prof.) Kindiki): That is quite notable. Let us now listen to Sen. Kasanga.

Sen. Kasanga: Thank you, Mr. Deputy Speaker, Sir, for this opportunity. Let me congratulate Sen. Mutula Kilonzo Jnr. and Sen. Sakaja for bringing this Bill. We needed it a long time ago because it is a wonderful idea. I say so because being a first-time MP, it is a huge task to get down to our Business. Kenyans cannot understand how difficult the process is. Right from the beginning when you bring your proposals, you are told that the Senate cannot do something or it is a money Bill.

First, I would like to appreciate the object of this Bill; that it will give us a framework for determining the nature of a Bill. That will guide MPs on what to bring to the House, depending on their own interests. Secondly, I like the third object of this Bill, which seeks to resolve a dispute as to whether a Bill concerns counties or not. Anything where dispute resolution is considered is a beautiful thing, because it guides and reduces the time and the hustle whereby two parties, be it the Speakers or the Houses, may not agree over the nature of a Bill.

Mr. Deputy Speaker, Sir, what I love about this Bill – because this is something that has affected me in the process of legislation – is Clause 8(2), which provides as follows-

“A Bill shall be a Bill that affects the finances of a county government under Article 110(1)(c) of the Constitution if–

- (a) the Bill provides for –
 - (i) the equitable sharing of revenue under Article 202(1) of the Constitution;
 - (ii) a matter set out under Article 204 of the Constitution;
 - (iii) the withdrawal of money from the Consolidated Fund under Article 206 of the Constitution that affects the finances of county governments;
 - (iv) the withdrawal of money from a County Revenue Fund;
 - (v) of public funds by counties and the management of those funds;
 - (vi) advances from the Contingencies Fund under Article 208 of the Constitution that affects the finances of county governments;
 - (vii) the imposition of a tax, duty or charge by the national government;
 - (viii) borrowing by the national government that affects the finances of county governments;
 - (ix) the terms and conditions under which the national government may guarantee a loan under Article 212 (a) of the Constitution.; or
 - (x) any other matter referred to in Chapter Twelve of the Constitution affecting the finances of county governments.
- (b) the Bill is –
 - (i) the annual Division of Revenue Bill; or
 - (ii) the annual County Allocation of Revenue Bill.”

In fact, I realised that many Government officials and Members of the National Assembly do not understand that we can interrogate matters of finances. Sometimes you may think of a Bill and just because it has anything to do with money, it becomes a

money Bill, which we are not supposed to touch. I faced that challenge when I sponsored a Bill about mental health, and the first thing the Ministry said was that it is a Money Bill and, therefore, not a Bill for the Senate. This was done without even deeply interrogating what I wanted to address when it comes to issues of finances.

Mr. Deputy Speaker, Sir, I like that this Bill by Sen. Mutula Kilonzo Jnr. and Sen. Sakaja has defined what the Bill provides for, and I appreciate that. I hope that because of this, we shall have a lot of clarity on how Senate Bills will be received, especially by the Government. I hope that there will also be a clearer understanding and awareness as to how far we can interrogate matters concerning counties.

Mr. Deputy Speaker, Sir, I congratulate the two Senators for this endeavor, which is extremely timely. I pray that it goes through because we need it, as the Senate.

Thank you, Mr. Deputy Speaker, Sir.

Sen. Shiyonga: Thank you, Mr. Deputy Speaker, Sir, for the opportunity to contribute to this Bill. First of all, I applaud Sen. Sakaja – although in his absence – and Sen. Mutula Kilonzo Jnr. for coming up with this Bill. Indeed, they have the interests of this House at heart.

This Bill is timely because sponsors of Bills in both the National Assembly and the Senate encounter difficulties. Whenever you think of coming up with a Bill, you have to ask yourself whether it is a money Bill or not, and whether it will go through. You have to ask yourself so many questions before you bring a Bill on the Floor of the House.

This particular Bill will give strength, especially to the newcomers like us. With the passage of this, when you come up with a Bill, you will not fear whether it is a money Bill or just an ordinary Bill. This Bill spells out the framework of determining the nature of a Bill and the procedure to determine whether it concerns counties or not. When you look at the framework of this particular Bill, you will realize that it is just trying to put things in line so as to seal the loophole that Members have been experiencing.

Mr. Deputy Speaker, Sir, both Speakers of the Senate and the National Assembly are Members who need to put their Houses in order when it comes to Bills. They are the ones who spearhead everything. When Bills go for Presidential assent, they are the ones who are present. Of late, we find that Members are disowning what is discussed in some Bills because they were not involved in the passage of those Bills. This Bill actually gives us leeway with regards to the right procedure, framework and the right way of doing things. Where there are disputes, the Bill has, once again, elaborated how best we can follow up and how best an individual or a sponsor of a Bill can follow the procedures and go through with the Bill.

I look at all that has been discussed in this Bill and I applaud the Members who came up with it. The two Speakers do not need to disagree on anything because they now have the road map on how they will sort out issues to do with Bills. We need a framework to guide us on how things are supposed to move in the two Houses of Parliament regarding the passage of Bills. If the Houses are divided, nothing can take place and no laws can be passed. Kenya depends on Legislators to pass Bills that will enable them to get the framework of policies that they can work with. Kenyans depend on the Senate and the National Assembly to make sure that things are right, especially in policy making and the right legislation.

Mr. Deputy Speaker, Sir, this Bill will enable us to make things sail in the correct way, and give us the authority that we need. It will also allow us to move in the right direction, other than confusing and bulldozing one another and deciding on which House is better than the other. Both are Houses of laws and policies, and they need to communicate to enable this country move ahead and come up with good legislation that will build Kenya with the new generation.

Thank you, Mr. Deputy Speaker, Sir. I applaud the sponsors of the Bill.

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

Proceed, Sen. Mwangi.

Sen. Mwangi: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to contribute to this Bill.

From the onset, I would say this Bill is long overdue. We should not hold lengthy discussions on this Bill, because it is the electorate that makes decisions. The electorate has taken a decision that there should be a Senate and a National Assembly, and that they should all legislate. That is what makes up this Parliament. Both of them are Members of this Parliament. A law should be made to ensure that both Houses are working and are busy giving service to the people of Kenya.

Mr. Deputy Speaker, Sir, from the onset, it should be clear that there is no Bill that does not affect counties. Bills are about the people and the voters of this country, and there is no Bill that does not touch on them. These voters are in the counties, and therefore, every Bill should come to this House. A Bill that has been passed by the National Assembly should not go to the President for assent without coming to this House.

This House was elected by a majority of the voters. Voters in a county elect every Senator here. Some counties comprise of even 10 constituencies. Therefore, a Bill in the National Assembly should come to the Senate before it goes for assent by the President, whether it is a money Bill or not.

It is clear that the Senate has had a very raw deal. It is time that the Constitution is amended so that it makes the Senate a upper House than the National Assembly. I believe this was the original intention. This is what is obtaining in the major economies, for instance, the United States of America (USA), Britain and many countries in Europe.

We went to Malaysia and found out that the Senate is the Upper House. Indeed, it should be the Upper House. There should be no question as to which House is the upper one, if voters in a county that has more than five constituencies elect me. I am certainly not equal to the one who is elected by voters in one constituency, yet both of us come to the legislature with two Houses. Obviously, the one elected by more votes is in the Upper House, and the one elected by fewer votes should be in the Lower House. This can only be done if the Constitution is amended. This Constitution should make sure that even when we elect a President, we give him all the powers so that he or she can control this country. It is either we want to elect one to control the country or we do not want one to control this country.

Mr. Deputy Speaker, Sir, this Bill is long overdue. Duties should be clear; who should do what? Even when we want to make it clear which House will do what, we must also make it very clear that the Senate is the Upper House. In Britain, it is called the

House of Lords, while in the US and in Canada, it is called the Senate. The Senate has more powers than the lower House because it does much more than the lower House. Particularly, in USA, it even serves for a longer term than the House of Representatives.

That is the only way we can clear these small problems of even the National Assembly abusing us when they are debating. We do not abuse them, but they abuse us. We allow them to abuse us because the Senate has people who are older and experienced; so we do not want to be seen to be competing with them. If the Constitution is amended and this Bill is made in line with it, then everything will be clear. The National Assembly will make laws, aware that these laws and everything they do has to pass through the Senate before it goes for assent by the President.

Mr. Deputy Speaker, Sir, we cannot continue demeaning people who were elected by a bigger population and make them think that they are equal to those who were elected by fewer votes. That is what this Bill is talking about. If it is made in tandem with a changed Constitution, it will be easy to rule this country. We respect leaders who are elected with more votes like the president. However, they must also know that we have been elected by the same people who elected them. We should, therefore, respect each other for us to run this country well.

Mr. Deputy Speaker, Sir, this country is becoming a police state. A Senator was recently arrested without a good reason. We need a law that will guide the police on how to arrest people who are respected by the electorate. People who are elected to come to this House must be respected, and there must be a way of arresting them, if need be. It is disrespect that is bringing this country down. We are talking of eradicating corruption, yet it is even growing bigger. We are doing a lot of work, thinking that we are saving this country, yet we are just increasing problems. We arrest people and lock them in the cells for a few days, they go to the courts and they are given bonds and, before long, the cases are over.

We should commit ourselves to this country. All that we do must be for this country's posterity and our children. Thieves used to be very few in the 70's and 80's, but Kenya is now number 160 out of 180 countries in corruption. It is one of the most corrupt countries. We must do something about this country. The Bill drafted by Sen. Mutula Kilonzo Jnr. and Sen. Sakaja can help us improve this country and make it better. However, the changes should be done in line with the changing of the Constitution. We should not continue singing of amending the Constitution; it should be amended now. Time is running out and we are taking too long---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Mwangi! Please take note of Standing Order 115, which refers to relevance. We are dealing with The Determination of the Nature of Bills (Procedure) Bill (Senate Bills No. 30 of 2018). It is not a Bill on corruption or insecurity. I encourage you to wind up, if you can.

Sen. Mwangi: Thank you, Mr. Deputy Speaker, Sir. I was building my case and explaining the relevance of the Bill to the House. Without what I am talking about, this Bill may not be relevant. This Bill has to be in line with the change of the Constitution, and that is why I mentioned the Constitution. The changes proposed in the Bill cannot happen without money, and that is why I talked about corruption.

I will stop at that point.

The Deputy Speaker (Sen. (Prof.) Kindiki): Well done, Sen. Mwangi. Nevertheless, Senators, Standing Order No. 115 says-

“The Speaker or the Chairperson of Committees, after having called attention to the conduct of a Senator who persists in irrelevance or tedious repetition either of the Senator’s own arguments or the arguments used by other Senators in debate may, after having first warned him or her direct that the Senator discontinue his or her speech.”

A Senator should not be irrelevant, meaning that they should remain relevant to the Motion and also avoid repetition. Keep it brief, make your points and you will have your few minutes of fame.

Proceed, Sen. Ndwiga.

Sen. Ndwiga: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to contribute to this very important Bill.

Mr. Deputy Speaker, Sir, my good friend has referred to the change of the Constitution. It takes me back to the drafting of the Constitution that we are going to revise. At the Bomas of Kenya when we were negotiating for the review of the Constitution, the most important item that everybody wanted in the Constitution was the Article on devolution. It was the only one Article that made some of us go ahead and campaign for adoption of the Constitution, even after there were disagreements. Those of us who were in Parliament before the Constitution was amended know what we and the country suffered from. We wanted a situation where the funds from the national Government would find a way to the counties. Therefore, the counties were meant to be the primary area of Government expenditure.

Mr. Deputy Speaker, Sir, at the point where there was controversy at that time, everybody agreed that whatever we may have wanted to achieve with the new Constitution, we wanted the livelihood of Kenyans to be made better. That would only be achieved if we had a devolved system; and that was how devolution was adopted. Later on, some of us in the National Assembly then went for another sitting in Naivasha and watered down what Kenyans wanted against the advice of the Committee of Experts (CoE). They watered down what was meant to be achieved by the constitutional amendment.

Mr. Deputy Speaker, Sir, it is that meeting in Naivasha that has brought us here, and given birth to this Bill. This is because when the National Assembly sat and had their interpretation, thereafter, as a result of the watering down of what was intended by the Bomas Draft, the National Assembly has been very bullish. They think that the fact that they removed the stature of the Senate from being the Upper House in terms of setting responsibilities, they would assume that responsibility. That cannot be. As my colleagues have said, the Senate has a much wider responsibility. When Bills are passed in the Senate and there is dispute, then we need to have a Committee to look at the disagreements.

Mr. Deputy Speaker, Sir, as you may have noticed, we have several disagreements on Bills passed by the National Assembly and the Senate, to the extent that we now have several Committees which are looking at all those Bills and their amendments. This delays the passage of Bills. I believe that if we have standing

Committees as proposed in this Bill, it will be faster to fast track Bills, even where we have disagreements.

Mr. Deputy Speaker, Sir, whoever wants to downplay the role of the Senate is misadvised. This is because worldwide, the Senate is the Upper House. I am proud to be a Member of this particular Senate because there is sobriety and very level headed debates in this House. We have not gone down to answer our colleagues in the National Assembly, who want to engage us in useless things. However, Kenyans have noticed that this House is steadfast in what it intends to achieve. That is where we need to get to. Therefore, I hope that this Bill will look at issues of Bills which are passed in the National Assembly or money Bills. I do not know of a situation where there is a Bill that does not affect counties.

Mr. Deputy Speaker, Sir, laws are made for people, and people do not live in Nairobi; they live in the counties. All the laws that we have passed here are meant for the people. Therefore, I am rather disappointed by the division that the Senate can only pass Bills that only emanate from the National Assembly, as if there are Bills for the Government. There are no Bills for Government; Bills are for the citizens of Kenya. Therefore, I hope that as we move on, we will find a way, maybe through the change of the Constitution. Therefore, we will give the Senate the image that it deserve and put it in its rightful place. I hope that if and when it happens – because I do not know when or if it will happen – but if it happens, I hope that we will be able to do so, because that is what Kenyans expect.

Mr. Deputy Speaker, Sir, if you go to the countryside today and ask Kenyans which House they think should be given more responsibilities and is level headed, you will not be surprised, because I am sure you already know that Kenyans have a lot of trust in the Senate. They believe that the Senate can regulate and lower temperatures in this country.

Mr. Deputy Speaker, Sir, you are a Member of the last Senate, which proves to Kenyans that this House can be quite sober and look at things from a perspective that is good for this country.

With those few remarks, Mr. Deputy Speaker, Sir, I beg to support.

(Applause)

The Deputy Speaker (Sen. (Prof.) Kindiki): Among other things, Sen. Mwangi, you should be grateful that the Senator for Embu County, your brother, Sen. Ndwiga, has assisted in providing the Speaker with the nexus which was missing, which is the relationship between constitutional reforms and this Bill. One of the things that made me to call you to order under Standing Order 115, was that I could not quite see the relationship. Therefore, you should be grateful to Sen. Ndwiga and, perhaps, buy him coffee after the rise of the House.

Proceed, Sen. Cherargei.

Sen. Cherargei: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity. From the outset, I congratulate Sen. Sakaja and Sen. Mutula Kilonzo Jnr.,

the Senate Minority Whip, who are the Sponsors of the Bill. Allow me to take this golden opportunity – I do not mean “fake gold” – to thank them for this.

Mr. Deputy Speaker, Sir, I am the Chairperson of the Committee on Justice, Legal Affairs and Human Rights, and Sen. Mutula Kilonzo Jnr. is a Member. This House gave us an opportunity to look at the Bill. Last week, there was a lot of hue and cry regarding the assent to the Health Bill by the President without the input of the Senate. When you look at Article 93 of the Constitution, Parliament means the Senate and the National Assembly. However, the ghosts and spirits that killed the first Senate are here to finish this Senate through what we call “claw back clauses”.

We all know about the famous *Huduma* Number. We literally had to “frog march” the Cabinet Secretary (CS) for the Ministry of Interior and Coordination of National Government to come here and explain to us what they meant, when they decided that all persons should be registered. I thank Kenyans, who are vigilant, because they moved to court and challenged that order. That is why it was done through an omnibus amendment Bill. Data protection is key.

Mr. Deputy Speaker, Sir, the initiative by His Excellency the President and the Jubilee Government to ensure that all persons are registered was out of the good intention. It was made to ensure that we have data to assist in the fight against terrorism and sharing of intelligence information so that we assist in protecting and keeping the country safe. That should not have been a license for tenderpreneurs and money launderers to axe the process.

Mr. Deputy Speaker, Sir, if that omnibus amendment Bill came to the Senate, I can assure you it would have been hard to escape thorough scrutiny by some of the learned people, led by you. You are a professor of law and you have practiced law with distinction. We also have people from different professional backgrounds here. We could have combed through the Bill to establish any missing link.

Our brothers and sisters in the “Lower House” have realised that if they want to pass something mischievous, they have to resort to other means. I thank both Senators, who are Sponsors of this Bill, for thinking through so that we have a legal framework. As we apply provisions of the Constitution, there are a lot of challenges---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Cherargei! When debate on this Bill resumes, you will have a balance of 16 minutes.

ADJOURNMENT

The Deputy Speaker (Sen. (Prof.) Kindiki): Hon. Senators, it is now 6.30 p.m., time to adjourn the House. The Senate, therefore, stands adjourned until tomorrow, Wednesday, 22nd May, 2019, at 2.30 p.m.

The Senate rose at 6.30 p.m.