

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 12<sup>th</sup> November 2015

The House met at 9.30 a.m.

*[The Deputy Speaker (Hon. (Dr.) Laboso) in the Chair]*

PRAYERS

QUORUM

**Hon. Deputy Speaker:** The Quorum Bell needs to be rung.

*(The Quorum Bell was rung)*

Hon. Members, we are now properly constituted. We can begin our business today.

MOTION

DEVELOPMENT OF NATIONAL CURRICULUM FOR TRAINING  
OF MEDICAL PERSONNEL ON EMERGENCY CARE

**Hon. Deputy Speaker:** Order Members, the debate on this Motion had been concluded. Therefore, we were just left with putting the Question on the Motion as amended.

*(Question of the Motion as amended put and agreed to)*

*Resolved accordingly:*

THAT, aware that Article 43 (1) (a) and (2) of the Constitution provides for the right to the highest attainable standard of health for every person; further aware that emergency health care is an important component of standard health services; concerned that many lives continue to be lost due to lack of adequate emergency health care and poor response to emergencies in the country; noting that only 13% of public health facilities in the country have basic components to support emergency cases; deeply concerned that emergency patients are exposed to untrained personnel and/or good Samaritans who in most cases worsen the situation; cognizant of the need for the Country to have a well-coordinated emergency care system; this House resolves that the Government immediately develops and implements a national curriculum for training of all medical personnel in the country on emergency medical care.

**BILLS***Second Reading*THE PROTECTION OF TRADITIONAL KNOWLEDGE AND  
TRADITIONAL CULTURAL EXPRESSIONS BILL

**Hon. Deputy Speaker:** Hon. Members, as you are aware, this Bill has a constitutional deadline.

**Hon. Aden:** On a point of order, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** What is your point of order, Hon. Abdikadir?

**Hon. Aden:** Thank you, Hon. Deputy Speaker. My point of order is with regard to the poor lighting in this Chamber. Unfortunately, as you can see up here, almost all the bulbs have blown out. It is becoming very difficult for us to read some of the documents we have. I seek your direction that the House be properly equipped so that we can do our work.

**Hon. Deputy Speaker:** Okay, Hon. Abdikadir. I hope that has been noted by those concerned and that this will be rectified as quickly as possible.

As I was saying, this Bill has a constitutional deadline. I believe that part of the reason why we passed a Procedural Motion yesterday to have Thursday morning sittings was for us to dispense of the Sessional Papers as well as the Bills with constitutional deadlines. So, let us treat this matter very seriously and proceed to give our input into this debate.

Let us have the Leader of the Majority Party or the representative.

**Hon. Katoo:** Hon. Deputy Speaker, as you have rightly put it, we are here on Thursday morning because of those Bills with constitutional timelines. I urge Members to be keen and also avail ourselves to beat the deadline we have already extended, which we cannot extend twice.

Hon. Deputy Speaker, I beg to Move that the Protection of Traditional Knowledge and Traditional Cultural Expressions Bill 2015 be now read a Second Time.

As you are aware, the Protection of Traditional Knowledge and Traditional Cultural Expressions Bill 2015 is one of the legislations to be enacted by Parliament as required under Article 261 (1) of the Constitution. Therefore, this Bill was supposed to have been passed by 27<sup>th</sup> August this year. It went through the First Reading in the National Assembly on 19<sup>th</sup> August 2015. The National Assembly extended the time for its enactment.

As presented before this House, this Bill seeks to provide a legal framework for the protection and promotion of traditional knowledge and traditional cultural expressions and to give effect to Articles 11, 40(5) and 69(1)(c) of the Constitution. The people of Kenya have a diversity of very rich cultural heritage which include, among others, traditional literature, traditional arts and crafts, music, visual arts, ceremonies and traditional beliefs. Others are traditional architecture associated with particular sites as well as forms of traditional knowledge related to traditional medicines and traditional medical practices. Kenya also has a rich cultural heritage in agriculture, forest management and conservation and sustainable use of biological diversity. This has been derived through the generation living in close contact with nature and transmitted through repeated practice, apprenticeship with elders and specialists of oral tradition. Those are some of the issues that the Bill tries to address in terms of traditional culture and traditional knowledge.

Despite the existence of intellectual property regimes in Kenya, there has been no proper legal protection mechanism or framework for traditional knowledge and traditional cultural expression. This is due to the inadequacy of the existing intellectual property regime which does not really address all the aspects necessary for the protection of traditional knowledge and traditional cultural expression. This has resulted in the widespread unfair exploitation of the traditional knowledge and cultural heritage for the commercial and business interests and the continuous loss of important elements of traditional knowledge and traditional cultural expression. Those are some of the lacunas that this Bill is trying to correct.

The following is a summary of the salient features of the proposed law. It is not really a very long Bill. Therefore, I will be brief. In accordance with the Constitution, Clause 3 of the Bill provides for the guidance of the natural values and principles of governance as set out in Article 10 of the Constitution. It talks to every person dealing with matters relating to traditional knowledge or traditional cultural expression.

On Clause 4, you will agree that in terms of dealing with traditional knowledge and traditional cultural expression, there will be an element of the county governments given the functions under the Fourth Schedule of the Constitution.

Clauses 4 and 5 of the Bill combined provides for the responsibilities of both the county and national Governments respectively, in the protection of traditional knowledge and traditional cultural expression.

Specifically, Clause 4 of the Bill states that:-

“(1) A county government shall, through the county executive Committee member responsible for matters relating to culture, be responsible for—

(a) in relation to the repository and for purpose of collecting and compiling information relating to traditional knowledge and traditional cultural expression—

(i) the primary registration of traditional knowledge and traditional cultural expression within a county for the purpose of recognition under this Act;

(ii) the receipt, documentation, storage and updating of information relating to traditional knowledge and traditional cultural expressions from communities within a county;”

There is also assigned a role of preservation and conservation of traditional knowledge and traditional cultural expression as well as the protection and promotion of the said expression of communities within a county.

The county Government is assigned the role of facilitation or collaboration, access to or sharing of information and data relating to traditional knowledge and traditional cultural expressions between county governments.

Clause 5 of the Bill states as follows:-

“The national Government shall, under this Act be responsible for—

(a) the establishment and maintenance of the Repository;

(b) the promotion and conservation of traditional knowledge and traditional cultural expressions of communities in Kenya;

(c) the protection of traditional knowledge and traditional cultural expressions from misuse and misappropriation; and

- (d) the facilitation of access of information and the sharing of information and data relating to traditional knowledge and traditional cultural expressions.”

Clause 6 of the Bill, under Part 2, deals with the protection of traditional knowledge. We have criteria that should be met before protection can be extended to traditional knowledge. Just to quote one of the rules, it should be generated, preserved and transmitted from one generation to another, within a community for economic, ritual narrative, decorative or recreational purposes. That knowledge should be individually or collectively generated. It should be distinctively associated or belongs to a community. Those are important aspects, among others that are listed in the Bill.

Clause 7 is about formalities related to the protection of the traditional knowledge. It includes non subjection of traditional knowledge to formalities and the registration of traditional knowledge within counties by county governments for declaratory purposes.

This is very important especially when you look at Clause 7(4) where it says:-

“Where a community in Kenya shares traditional knowledge with a community outside Kenya, the national and county government shall register the owners of the traditional knowledge in Kenya and maintain relevant records.”

Clause 9, talks of conferring the rights of protection to all holders of the traditional knowledge. That one read together with Clause 10 provide for the rights conferred upon the holders of the traditional knowledge. Those rights include authorization of exploration of their traditional knowledge.

It is very important because you cannot just go and explore that traditional knowledge. You have to get the right from those who generated it. Also, it prevents any person from exploring that traditional knowledge without the owners’ prior informed consent.

Finally, Clause 11 of the Bill acknowledges the owners of the traditional knowledge by any person who would use the traditional knowledge and traditional cultural expression beyond the traditional context. This is very important in terms of recognition. If you look at it in details, it talks of the origin of the knowledge or expression and the use of such knowledge or expression in a manner that respect the cultural values of the holders. That cultural value of the holders be it individuals or communities, need to be respected.

This is a Bill concerning counties within the meaning of Article 110 of the Constitution and, therefore, those are some of the reasons why we were talking of the morning sessions. Many of those Bills have to go to the Senate. Should there be any amendments, we should create time and agree so that we beat the deadlines as extended by this House in August this year.

Therefore, I beg to move and kindly request Hon. Florence Kajuju to second.

**Hon. Deputy Speaker:** Hon. Kajuju, I hope you are as traditional as Hon. Katoo ole Metito.

**Hon. (Ms.) Kajuju:** Thank you, Hon. Deputy Speaker. I rise to second this Bill.

I would request Hon. Members to look at Clause 2 that deals with the interpretation of the content of the Bill. It is important that Hon. Members understand what the Bill defines in as far as the interpretation of various clauses in the Bill are concerned.

One of the issues I would like to enlighten Hon. Members is the definition of “community” in as far as this Bill is concerned. The term “community” in this Bill means a “homogenous and consciously distinct group of the people who share any of the following

attributes”. There are several attributes set out in that Bill and one of them is common ancestry or people who have a similar culture or geographical space within which you share as a community.

The reason I am picking this issue to enlighten Hon. Members is because, as a country, we are made up of various communities. Each community in Kenya has a distinct relationship within its membership. So, it would be important for Hon. Members to understand the meaning of the term “community” in as far as this Bill is concerned and see whether that is the understanding within their various communities.

With regard to the issue of customary laws, norms and practices of the local and traditional communities that are legally recognized in Kenya, it is important that we understand the Bill as far as the definitions contained in this Bill are expressed.

This is a very important Bill in as far as our Constitution is concerned. To implement various provisions that are set out in the Constitution, Articles 10, 11, 40 and 69 are very important with regard to traditions, knowledge and traditional cultural expressions.

Having a look at the Bill, from Clauses 21 to 24, I would speak to the issues of moral rights and their meaning as espoused in the Bill. A moral right is the right to assign and enter into licensing agreements relating to the traditional knowledge and traditional cultural expressions by the owners, other additional rights, assignments, licensing and equitable benefits of sharing rights.

It is important that we define the meaning of “moral rights” and understand what the Bill states in as far as the rights are concerned.

Clause 21 shows that moral rights include the traditional knowledge and cultural expressions. In this clause, if you have that wealth of traditional knowledge, then you have a right not to be treated in a derogatory way.

As the holder of the moral right, the law does not allow you to suffer any prejudice. Once this Bill is passed, it will be a law that will not allow you to suffer any prejudice. Your right to ownership of that cultural expression and traditional knowledge will be protected under Clause 21 of this Bill. That goes on to indicate that the moral rights shall continue to be in force in perpetuating and shall not be transferable and capable of being waived.

Clause 22 explains how the county governments and the national Government will go about the issue of licensing various traditional knowledge and cultural expressions that are going to be there. It will be a shared function of the county governments and the national Government.

The Cabinet Secretary (CS) who will be in charge of the execution of this particular Bill will have a lot of leeway in ensuring that each and every step taken, the people in charge will seek his advice.

More importantly, Clause 22 deals with the issue of when parties enter into a licensing agreement. They are expected to seek advice from the CS. This way, he or she will facilitate and support them so that they are able to enter into a binding agreement to safeguard each and every party within the agreement. Thus, there will be no breach of the agreement. At the end of the day, once the licensing agreement is executed, the CS will be the custodian of the said agreement.

Clause 24 of the Bill provides for equitable sharing of benefits arising from the commercial or industrial use of the knowledge to be determined by mutual agreement between the parties. If the parties have a common source of the traditional knowledge and cultural expressions, this Bill will provide a way in which the parties, by mutual agreement, can enter

into an equitable benefit of sharing resources so that none of them is denied what he or she is supposed to have.

Kenyans are very rich in culture and diversity. Those are some of the things we should protect. I believe the drafters of the Constitution must have seen that we need to protect our culture and diversity because our ancestors were there. Within our counties, there are various traditional elders as well.

In Meru County, we have our very own esteemed *Njuri Ncheke* Council of Elders. Much as it does not bring on board the women, we appreciate them. Those are the people who guide the community, advise the young people and protect the heritage of Meru County. That is why the Constitution drafters felt that it is important to protect that which gives us an identity as the people of Kenya.

I believe this Bill is good and will ensure that we do not get lost and suffer lack of knowledge and wisdom that our forefathers believed in. Most importantly, we should pass it on to the generations to come. Therefore, it is my submission that the protection of traditional knowledge and traditional cultural expressions is a very good Bill. I request Members to look at it and support it. Once we do this, we will not only be doing it for ourselves, but also for the future generation. We must have a legacy or something to pass on to the people of Kenya. We know that counties are also supposed to play a key role in ensuring that we protect and safeguard our culture. It would be very important that all of us participate in this process to ensure that which must be done for the sake of our country, our children and the generation to come is done.

I, therefore, second the Bill.

Thank you.

*(Question proposed)*

**Hon. Deputy Speaker:** Hon. Abdikadir Omar.

**Hon. (Ms.) Abdalla:** Good to see you, Hon. Abdikadir Omar.

**Hon. Aden:** Thank you, Hon. Deputy Speaker. Good to see you too, *Mheshimiwa* Amina. I take the opportunity to thank you for giving me the opportunity to contribute to this very important Bill.

Indeed, safeguarding of the cultural rights of Kenyans is very important because our culture is our identity as a country. This Bill has very good proposals with regard to how we should protect and safeguard our traditions and cultures. It gives responsibility to both the county governments and the national Government to ensure that those rights are protected as they are in the Constitution.

This Bill is progressive in nature. The proposals in the Bill will encourage many cultural practices by the different communities in Kenya. They will now have the full protection and support of the Government so that they are able to showcase the beauty of their cultures.

I recently visited a cultural show in Turkana. It was a great experience on how each community in Kenya has unique traditional and cultural practices. I sometimes wonder why we are not able to exploit that beauty as a country. Every community in Kenya has one of those very beautiful cultural traditions including my own in the northern part of Kenya. We have a lot to showcase. This Bill will be a legislation that protects and ensures that those particular rights are taken good care of. Because of lack of this kind of legislation, this country and many of our communities have suffered in the past.

If I can give an example of *kiondo* or the locally made baskets, it is unfortunate that today, it is something that has been branded and owned by the Japanese. However, the traditional Kamba basket is what we know as *kiondo*.

Unfortunately, the international rights to *kiondo* are no longer with Kenyans but with another country out there. This is very sad. This is contrary to our Constitution. Article 11(3) (a) of the Constitution states that:-

“Parliament shall enact legislation to-

(a) ensure that communities receive compensation or royalties for the use of their cultures and cultural heritage.”

From now on, the Kamba community in Kenya will stand up and say that the *kiondo* was theirs and they must receive royalties in exchange of that.

In the very least, the country can work to ensure that this particular item is seen as an innovation from Kenya. The western world has innovations. We cannot just make, for example the brand *Ford* in our country. It belongs to somebody else. If you make any of the simple Chinese made appliances, you will be taken to court for reproducing them or claiming to own them because they are the property rights owned by other nations. For that same reason, original traditional artefacts of Kenya should be owned by Kenyans. The royalties and benefits of the same should come to this country.

The Maasai tradition is abused. Our brothers, the Maasai, have lost out completely on this one. If you go to different parts of the world, you will find funny people trying to dance and dress like the Maasai. They claim to be Maasai. We know that Maasai is also a tradition. If you dress and walk on the streets of London or New York dressed like a Maasai, somebody will point out that you must be a Kenyan. Why are we not earning royalties and rights over this beautiful tradition as a country? We should look at these things.

The other worrying thing is that certain unfortunate commercial practices are taking away certain things which are only found in this country. In this case, I am talking about plants. This Bill and the Constitution covers plants and seeds originally found in this country. Traditional practises such as charcoal burning, unfortunately, target the most endangered species of plants in this country. It is dangerous because those are indigenous species. One tree might take hundreds of years to grow. Unless those particular plants are identified in different parts of the country and protected, we might end up losing our indigenous species of plants. We should use this kind of laws to identify and enlist plants, including herbs and shrubs. We should protect those indigenous plant species from the destructive practice of charcoal burning.

We have very unique wildlife which is only associated with our country. Unfortunately, a large number of our wildlife is dwindling as a result of the bad practice of poaching. With this kind of legislation at hand, we should list the endangered species and ensure we provide protection for the same. That way, this country will enjoy the magnificent and worldwide appreciated facts and phenomenon such as the Maasai Mara. When you visit any part of the world, you will realize that the tourist shops and travel agencies there display very beautiful pictures of the Maasai Mara. Those pictures attract customers and give them a lifetime experience, which is good. If you are going to use my pictures which are my identity to sell your business, then I must earn some royalties from you. Those are some of the unique things we have in our country. Before, we never had good legislation to protect our traditional cultural expressions. The *kiondo*, the Maasai culture, unique species of plants and wildlife, and the phenomenal structures should be protected as endangered species. We should ensure that if they

are used anywhere else in the world in any form, then royalties and benefits, as stated in the Constitution, should be earned by communities in Kenya.

**The Deputy Speaker:** Hon. (Dr.) Pukose.

**Hon. (Dr.) Pukose:** Thank you, Hon. Deputy Speaker, for allowing me to contribute to the Bill, which is a constitutional Bill. At the outset, let me say that it is a good Bill and it is timely. What the Bill is trying to achieve at the national and the county level is good.

In my county of Trans Nzoia, the county government has been organising cultural festivals in Cherangany among the Marakwet communities. In Endebess, the Sabaot Cultural Festival is held at Mount Elgon Lodge. This is a good thing. Initially, this was organised without a framework. Now that this House has come up with a Bill that will provide the framework for registration, documentation and safe-keeping of the records on the various cultural practices, this will go a long way in protecting our traditional cultural expressions. If this Bill is passed, then we will be able carry out those functions in a more organised way and with a framework and consultation between the national Government and the county government.

This Bill also provides that the Cabinet Secretary (CS) responsible, through public participation, can determine the traditional practices and expression from different communities. In Trans Nzoia County, we have all the 42 tribes of this country. Each community is distinct and has its own expressions and traditional practices. This is a God-given thing. All those expressions and traditional practices need to be expressed and carried out in an organised way. They can be kept in the museums and people can identify different traditional practises from different communities by identifying what is distinct to a particular community. Through that, we can pass this knowledge from one generation to the other.

In Western Kenya, we have the Sabaot and the Luhya. Those two tribes are also found in Uganda. When you visit Uganda, you can easily identify both the Sabaot and Luhya traditional songs and cultural practices. This will go a long way in enhancing both our cultural relationship and how we relate with each other. It will enhance communal participation and harmony amongst the people. It will create a sense of identity within the various groups.

With those few remarks, I support this Bill.

**The Deputy Speaker:** Hon. Cyprian Iringo.

**Hon. Iringo Kubai:** Thank you, Hon. Deputy Speaker, for giving me this opportunity. I rise to support the Bill. At the outset, I would like to state that hon. Members should pass this Bill. This is because it brings about recognition and seeks to protect our various cultures and traditions.

Each and every community of this world, Africa and Kenya in particular, has rich historical culture which was largely affected by the onset of civilization brought about by western cultures. Our cultures have been eroded by the belief that being westernised is the way to go. I believe that even before foreigners came to colonise us, each and every community in this country had its own culture and way of living, including their traditional way of worship and handling disputes. In the long run, our cultures have been eroded because people think being westernised is the right way of life. I believe it is not the right way. During those olden days, we had our own gods. In Meru, we used to pray to the gods of *Nyambene* and *Igombe*. I do not see the difference between our gods then, and the God we are told of by the Christians. We also believed in a super being despite the fact we that we believed they lived in the mountains. Because of that erosion, you find that our children, especially those born in towns in recent years, if you ask them about those traditions, they do not know them. Those traditions are going



down the drain and this rich culture is getting eroded. At the end of the day, some of us who have embraced the western way of life think that whatever was done by our forefathers was out of the norm, sinful or not the right way. But with this Bill and the protection of those cultural and traditional ways of life, we can retrace what got lost and bring back the culture, especially that which is unique to us to be enshrined and protected for future generations and for those who do not know what was being done in the 19<sup>th</sup> Century by our forefathers. They can embrace the same.

Hon. Deputy Speaker, in Meru, we have a cultural practice whereby if you have wronged somebody and you have to swear that you are going to give the truth about an incident, you hold your brother's ear. Once you do that, it is like the Christians lifting the Bible and swearing to tell the truth. But if you tell a young child or somebody born in town to hold his brother's ear and say the truth, he or she might laugh because he or she does not see the sense in it. But if you ask a man of 60 or 70 to say the same and he knows that he is going to lie, he will not do it because he knows the repercussions. We have our *Njuri Ncheke* who are enshrined in the laws and lives of Merus. Once the *Njuri Ncheke* have decided a case, even if you take it anywhere else, the belief is that their decision is final. You cannot go to another court or any other place to have redress.

Those cultures should be protected. Look at the Maasai way of life, they have got a very rich culture which has been penetrated by westerners to the extent that you find *Wazungus* dressing like Maasais. We have seen whites coming all the way from Europe to come and see the Maasai jump the way they do or see them practise their traditions like chewing meat in the bush. They do those things. This is a rich culture which can be used to attract tourists.

We also need patents for the same. If a *Mzungu* dresses like a Maasai, he must pay for it. If a *Mzungu* wears a monkey's hide or hats which are worn by our Meru elders, he must pay for them because this is our culture. Those are traditions which should be protected and people should earn from them.

I also support the fact that no individuals should take people's ways of life to benefit themselves individually. If it is a traditional way of life for a certain community, let it be for the benefit of that particular community but not for individuals so that whatever is gained from selling or marketing that particular culture should benefit that community and the future generations.

With those remarks, I support the Bill.

**Hon. Deputy Speaker:** Hon. Chris Wamalwa.

**Hon. Wakhungu:** Thank you, Hon. Deputy Speaker for giving me this opportunity to contribute to this very important Bill. We know very well that this is one of the Bills with a constitutional time-frame with the objective of protection of traditional knowledge and traditional cultural expressions. A lot is going wrong in society because of the erosion of culture. Culture is the way people behave. It describes the dos and don'ts in a given society. Looking at our forefathers, they lived peacefully because of the respect they had for culture. Indeed, it is important that the State shall protect culture.

Traditionally, there was a description of cultural values. For instance, in every community, there is a way you are supposed to behave. It gave a framework on issues of marriage and family. In this case, when you look at Article 45 of our Constitution, it clearly states:-

“The family is the natural and fundamental unit of society and the necessary basis of social order.” Currently, we are seeing many things going wrong. For instance, when you come to the Luhya community, there is a critical stage called “initiation” which is practised through circumcision. Every month of August of an even year, you find the people of Western Kenya very busy in that cultural practice. If it is protected and funded, it can be a very good tourist attraction.

We have very many indigenous species that, maybe, are owned or controlled by a given society. For example, when you go to the Meru community, they have a lot of attention when it comes to *miraa*. The Luhya have a species called “*mwarubaini*” which I am told cures 40 diseases. If money is given to protect such endangered species, they will solve some of the problems we are facing in this country.

Many other speakers have talked about the traditional way of dressing among the Maasai. Some people are using it as a *logo*, but the Maasai are not being compensated. I am happy when I look at this Bill because it provides for royalties and compensation. We have an institution called the Kenya Industrial Property Institute (KIPI) in this country. It is supposed to safeguard issues of intellectual property. We have many communities associated with different issues as far as intellectual property is concerned. Many colleagues have mentioned the *kiondo* which we are told is patented and the benefits go to Japan. It is high time institutions like KIPI are funded so that they can protect some of those patents protected under different communities.

On the issue of family, in our traditional beliefs, we know very well that it is between a man and a woman. We are having emerging trends from the West where you see some abnormal things happening. You get a man marrying a man and a woman marrying a woman, which is against Christian teachings. We know very well that in the traditional family way of life, everything is pro-life. So, if we have a Bill which will protect those traditional knowledge and beliefs, culture will help in upholding moral values. We will not have abortion and divorce, for instance, which are as a result of erosion of culture. In traditional days, we never had cases of divorce. If they were there, they were minimal. But currently, we see divorce is there. This is because of the erosion of traditional values. Indeed, it is important that this Bill is going to bring harmony once funding is in place, and if we have those traditional ways of doing things. When you go to the Maasai community, there is a way of transiting from childhood to adulthood. In the Kikuyu and Luhya communities, there is that transition. Right now, that transition is lacking. You find a child of 18 or 20 years still under the care of the father or mother. But in our traditional way of doing things, a child is up to a certain age. Once you go through the initiation, you transit from childhood to adulthood. So, when you go to adulthood, you are supposed to start taking good care of yourself and start looking for a house. Right now, because of the absence of that, you will find somebody who is 30, 40 or more years and he has not thought of marrying. We are missing out. Once this Bill comes into place, I know it will protect traditional knowledge and culture.

We also have the council of elders; the *Njuri Ncheke* which is very strong. The Luhya community has the Luhya Council of Elders. When there are small disputes, those heads can sort out those issues. When it comes to the allocation of this money, you will find that some of the traditional healers and elders in our communities are languishing in poverty and disease. It is important that a good amount of money is allocated to take care of that.

I am happy to learn that with regard to this matter, county governments are coming up with cultural weeks. I have seen the cultural weeks of the Maasai and Turkana communities. We

are calling upon the county governments to prioritise the issue of having cultural exhibitions. That is because they can be a basis for tourist attraction.

In Europe or other countries, tourists go to see traditional sites. Those sites attract a lot of tourists. Why can we not also use the same issue in this country? In Kakamega, we have forests which have unique birds. It can be a very good tourist attraction. We have some old buildings which we can classify as cultural sites so that they are viewed as attractive sites for tourists. It is high time the Tourism Board looked into the issue of culture as a tourist attraction.

With regard to our foreign policy, focus has been on our economic pillars. The issue of culture has not been given attention. It is high time the Ministry of Foreign Affairs explored this issue to see how they can use it to attract tourists. Culture in this country is diverse, rich and contributes to our way of doing things. It is important for us to focus on this and provide royalties. The Government should ensure that the traditions and intellectual property of various communities are protected.

In this House, we come from different cultural backgrounds. We are diverse. The Government must respect the diversity that we have. Where I come from, alcohol like *busaa* is very critical. It is a traditional drink that must be respected. During circumcision ceremonies, *busaa* is made for people to drink and enjoy. We do not expect the police to harass people at Christmas time or when we are having customary practices like circumcision. That is because we are enjoying ourselves. This is our culture. *Busaa* is regarded as a very important drink that brings *wazees* together. It was not made for the youth.

The youth started taking *busaa* recently. The law can take its course for people who abuse the drink. If people are practising their culture, that must be respected. The Luo community has its own traditions; the Kikuyu have their own traditions. As the State moves forward, we should respect different cultures in this country.

I support the Bill.

**Hon. Deputy Speaker:** Hon. Kimani Njuguna.

**Hon. H. K. Njuguna:** Thank you, Hon. Deputy Speaker. I rise to support this Bill.

First, like my colleagues have said, this is a Bill with a constitutional timeline as espoused by Articles 11, 40 and 69 of our Constitution. This is the right moment to bring this Bill. I am very happy because for once, in this country, we would like to protect our own traditional knowledge and expression. It is like we have realised ourselves. We have been accused at times of behaving more “English” than the Englishmen themselves. At times, it seems as if we do not go in a certain way, we will lose the 42 tribes in this country.

We recognise the Maasai in terms of their unique traditions and expressions. The Kikuyu are unique because of their traditions and expressions. The Pokot are distinctive because of their traditions and expressions. Tourists come from outside this continent to see the Maasai and other tribes. They come to experience our traditions and expressions. That is what we are trying to protect in this Bill.

I would like to compare and contrast intellectual property law with what we are discussing. At times, we confuse the two. The intellectual property law, as it is today, protects the “I” as opposed to the “We” or the community. The “I” that the intellectual property law seeks to protect must be a new discovery, novelty or creation.

For purposes of understanding, one example is that of *M-Pesa*. It was not there before. Somebody must have discovered it. It was a new creation and a novelty. Therefore, it can be patented and have commercial value. When it comes to the “we”, we are referring to the

traditions. Like what my colleagues have said, for instance the *kiondo*. I would like to correct my colleague who referred to it as *shiondo*. We call it *kiondo* in the Kikuyu community. At times, those practices are shared across the communities. The *kiondo* is a tradition that has been passed from generation to generation. Traditional knowledge is defined as a body of knowledge that is passed on from generation to generation. It is not a new discovery. It has contributed a lot to the knowledge that we have today.

The problem with regard to the *kiondo* is that the Japanese have patented it as their own. It is an item that came from Kenya through the Kikuyu and Kamba communities. As at now, there is no commercial value. How do we preserve the knowledge that is passed on from generation to generation and owned by the “we” or the community? Looking at this knowledge in terms of the diversity, we have our 42 tribes. You can then see how rich this country is and why it is important that we take cognisance of this traditional knowledge and protect it. There is the commercial benefit which those communities are not enjoying.

One example is Lake Bogoria. While going through the internet, I learnt that there was a detergent that was discovered in Lake Bogoria that fades jeans. There is a white man who came to Lake Bogoria, got the detergent and developed it for commercial use for purposes of fading jeans. The people who live around Lake Bogoria are no longer benefitting from that product. Other people are benefitting. If this law had been in place, we would have protected such knowledge and the community would be benefitting.

Another example is what my colleagues are calling traditional practices such as the marriage ceremonies and traditional liquors like *muratina*. If this law had been in place, perhaps *muratina* would have been our whisky today. But because we did not have this law, it is viewed as an illicit brew and it is not developed because we lack a legal framework to assist in developing such practices.

Take for instance the traditional medicine. I have come across two cases of traditional medicine that have left me very surprised and feeling like, perhaps, we have lost a whole branch of science in terms of medicine. In the year 2000, when AIDS was a scary disease in this country, I heard of somebody who had a problem and the doctors gave up. We got in touch with a traditional medicine practitioner and the patient is still alive today. The problem is that because it is not protected, those practitioners will not release this knowledge. Perhaps, this is knowledge that was left behind by their forefathers or great-grandfathers.

There is need to have a legal framework so that, that knowledge can be upgraded. We talked about the *Njuri Ncheke*, the Kikuyu and the Luhya elders. They have a role to play in our society and we need to protect them. We need to protect this knowledge, which is important. Other countries like India and China have developed their traditional medicines. I am aware there is a Traditional Medicine Bill before this House and I applaud the effort of coming up with the Bill, so that our communities can benefit from their traditional knowledge and expressions. The Maasais should benefit from their expressions. People travel all the way to come and see how they dance. The benefit is in addressing the “we” since this is community knowledge. The benefit is in addressing the community owned knowledge as opposed to the ‘I’ knowledge.

With those few remarks, I support and applaud this Bill and initiative.

**The Deputy Speaker:** The Hon. Zainabu Chidzuga.

**Hon. (Ms.) Chidzuga:** Shukrani Naibu Spika kwa kunipa nafasi niweze kuuchangia Mswada huu ambao umekuja kwa wakati unaofaa. Itakuwa bora kwa Bunge kuutilia maanani na kuupitisha haraka iwezekanavyo ili mwananchi aweze kuona faida ya utamaduni wake.

Ukiangalia maisha ya sasa, vile ambavyo vijana wetu wanavyolelewa na vile wanavyoishi, utakuta kwamba tumepoteza hadhi zetu kama Waafrika na kama Wakenya. Mambo mengi ya kitamaduni tumeyaacha na hii imetuingiza katika matatizo makubwa haswa katika upande wa mavazi na vyakula. Mababu zetu wameishi maisha marefu zaidi kuliko sisi kwa sababu waliegemea vyakula vya kitamaduni na matibabu ya kitamaduni.

Mavazi yetu ya kitamaduni tumeyawacha kiwango cha kwamba hata katika Bunge letu, tumeshindwa kujionyesha tumetoka katika asilia gani. Wakati umefika wa Bunge kutenga siku maalum ambayo tunaweza kuvaa kitamaduni ili tuonyeshe vizazi vyetu ni kipi kilicho bora katika utamaduni wetu.

Kupitia Mswada huu, tutaweza kulinda mazingira ya utamaduni wetu. Tutaweza kuhifadhi utamaduni wetu kuanzia vyombo ambavyo tulikuwa tukitumia kuanzia vyakula mpaka namna ya kutoa utao kwa watoto wetu. Kwa ushirikiano baina ya Serikali Kuu na serikali za majimbo, tutaweza kuukuza utamaduni wetu ikiwa sote tutazungumza kwa sauti moja na kushirikiana katika kushauriana.

Katika maeneo yetu ya Pwani, kuna mavazi ambayo yamepotea. Tulikuwa na hando, vazi ambalo lilivaliwa na akina mama. Mama akivaa vazi hilo, hata akipita, unaona raha anavyotembea. Kuna mavazi ya ushanga ambao tukivaa kiunoni, shingoni na mikononi mpaka miguuni, mama au msichana anapendeza. Leo hii, hayo yote tumeyatupilia mbali na tumeingia katika mavazi yaitwayo *tights*, ambayo yanaonyesha maumbile ya mwamamke ambayo ni kinyume na dini na utamaduni wetu. Tukiyatilia maanani yale yote ambayo yameandikwa katika huu Mswada, tutaokoa mambo mengi.

Kwa upande wa mapishi, vifaa ambavyo vilikuwa vikitumiwa na wazee wetu kama vile nyungu na vikaango, chakula ulikuwa ukikila unapata radha tamu ya chakula. Ulikuwa unapata ile radha ya ile mboga. Leo, kutokana na sufuria ambazo tunatumia, saratani ndio hiyo kwa sababu ile sufuria inafikia wakati inanza kuisha. Haishi kwa sababu imehomeka na moto, ni wewe ambao unakula vile vipande vya ile sufuria. Kwa hivyo, tukihifadhi utamaduni wetu na kuulinda kisheria, tutaweza kuyaokoa maisha yetu pia kulingana na yale ambavyo yanatukumba hivi leo.

Angalia chombo kinachoitwa uteo. Uteo ni chombo ambacho kimesukwa kupitia mnazi ambacho kinatumiwa na akina mama kudondoa chakula kama vile mchele au maharagwe na kuyatenganisha. Leo, tumekimbilia mambo ya *blender* na vifaa vingine vya kisasa kinyume na utamaduni wetu. Viko wapi vitu vyetu vya zamani? Hivi ni vitu ambavyo wazungu wanatoka kule wanakotoka kuja kuvifuata na mwisho wanavinunua na wanaenda navyo na sisi tunabaki bila chochote. Wengine hawanunui, wanatumia mbinu zao na wanabeba kwa kisingizio eti ni zawadi lakini akifika kule, hiki ni chombo ambacho kina dhamani kubwa sana.

Kwa hivyo, Mswada huu utatusaidia na tutaweza kuwafuatilia wale ambao waliiba utamaduni wetu. Tutadai watulipe kwa kiwango kile ambacho kitakuwa sawa kulingalisha na utamaduni wetu. Ni lazima tuukuze utamaduni wetu na kuulinda.

Kule Pwani, mti wa mnazi una mazao na mambo mengi, lakini umewekwa kando. Tukihifadhi yale yanayotokana na mnazi, tutaokoa hata matumizi mabaya yaliyoko leo. Watoto wamepotelea kwa unywaji mbaya wa pombe. Lakini ukiangalia pombe ya mnazi, kwa wale wanayoitumia, ni kilevyo ambacho hakidhuru kama vile pombe za *whisky* zinavyodhuru. Tukipata njia ya kuhifadhi vitu kama hivyo kwa njia sawa, tutapata manufaa mengi. Kule kwetu, kuna ile changa tunaitumia kama *yeast* kwa mahamri au mandazi. Pombe ya mnazi ina dhamani zaidi ya vile watu wanavyoifikiria. Iko na mambo mengi sana. Watu wakioza watoto wao, ni

lazima kinywaji kile kiweko. Je, leo tunaambiwa tulete makreti ya *Tusker*. Huo sio utamaduni. Turudini katika utamaduni wetu na tuyavae mavazi yetu ili na sisi tuhesabike katika ulimwengu kuliko vile ilivyo leo. Mpaka hapa ndani ya Bunge ni lazima ujifunge tai na uvae sketi ndio uhesabike kwamba wewe ni Mbunge. Haifai! Tuukuze utamaduni wetu na turudi katika makavadhi yetu. Kupitia Mswada huu, tutaweza kuyalinda yale makaya na kuyakuza mpaka hata watalii wakija, waweze kuyatembelea ili waone utamaduni wetu na waelewe. Pia, tutakuwa tunawapatia watoto wetu nafasi ya kupata utao na mwongozo kulingana na utamaduni wetu, kinyume na vile ilivyo leo. Watoto wetu wamepotoka kwa sababu ya kufuata tamaduni za kutoka nje.

Namshukuru Mheshimiwa ambaye alitayarisha Mswada huu. Tutauunga mkono na kuupitisha haraka iwezekanavyo na tuweke pesa zote hapo kwa sababu tutakuwa tunajiokoa sisi wenyewe.

**Hon. Korir:** Thank you, Hon. Deputy Speaker for giving me a chance to contribute to this Bill that has a constitutional timeline.

I thank the people who made the Constitution and realised the importance of protecting our cultures and making sure that they become part of us and live with us for generations to come.

The first thing that we need to start with is to encourage the county governments to build cultural centres. Many speakers have talked about having cultural days in our counties where people can showcase their cultures.

Hon. Deputy Speaker, the best part about it is creating those cultural centres which most of us will think that we are creating for foreign tourists. Those will be good for our children. Many people are moving away from the rural areas to cities. You have children in the city who do not know anything about where you came from or about your culture, but when we create those cultural centres in our counties, children from the cities can go back to the countryside and learn about their cultures. That is the best way to raise the next generation.

I know young men will say that we are in the 21<sup>st</sup> Century and we have to move with the trend. When I was young, we used to be told that: “*Muacha mila ni mtumwa*”. If you leave your traditions, you become a servant. That is what we have become. We have become people who do not know where they came from. We need continuity, but our children will never learn our cultures if we do not have a place for them to see their parents’ culture.

Some of us grew up in grass-thatched houses. Nowadays, it is difficult to see those grass-thatched houses and they are disappearing. But we want to tell our children where we came from, how we grew up and how we got where we are. If we do not have those cultural centres, it will be very difficult to do that. We need to protect our culture and traditions, so that they are not used even at international courts of law.

We have the International Criminal Court (ICC) case, for example. I was sad when I was listening to the ICC case using the Kalenjin culture of circumcision as a way of incriminating our Deputy President. They said that he is the one who was organizing those events and it was criminal. That is not a criminal offence. It is something that we, as the Kalenjin Community, are proud of. It is a way of becoming a man. It is not a way of becoming warriors or fighters. We need to put a clause in this Bill that provides that our cultures cannot be used against us in any court of law in this world. Our Deputy President should not be accused about such things. That should not be used anywhere in the world. That is our culture.

You cannot use the Kikuyu culture to say that Kikuyus are criminals, neither can you use the Kalenjin culture to say that they are criminals. That should not happen at all. That was very sad. This Bill should protect our people from that.

Most of us have talked about the Maasai culture. When talking about the Maasai culture, we do not have to talk about protecting our cultures from outsiders. Everybody has talked about *Wazungu*, but even the Government is misusing the Maasai culture. The Brand Kenya initiative is using the Maasai brand to advertise Kenya and yet, they are not paying the Maasais. If the Government is using items of the Maasai culture to advertise this country, then the Maasais should be compensated. Everybody should be proud and keep their culture as a way of life. They should be proud of it.

I saw a Kikuyu man on television saying how he has used his finances to create a museum or a place where people can see how the *Mau Mau* used to fight the white man. That man has safeguarded those things. It is not cheap to do that. What is the Government doing to help people who are willing to safeguard our traditions? They should be compensated for their hard work and dedication to make sure that those things are kept for the future generations to benefit.

With those few remarks, I support this Bill. Let us add some amendments because, as I said, this Bill should not only protect, but also prevent our cultures from being used by any international court of law as evidence to incriminate our people.

**Hon. Deputy Speaker:** Hon. Mary Seneta.

**Hon. (Ms.) Seneta:** Thank you, Hon. Deputy Speaker for giving me a chance to contribute to this very important Bill. From the outset, I support the Bill which is very timely. We have a very rich culture and diversity of traditions that have made us live proudly for a long time. For a very long time, this has organized our communities.

This Bill creates a framework which will enable both the county governments and the national Government to promote and preserve our culture. The Bill has given a mandate to county governments to register, document and come up with a proper system of promoting and preserving culture. Some communities in this country have very rich cultures that have not benefited them because they have been exploited by many people.

The Maasai has a very rich culture and many people use artifacts of Maasai women. Big hotels in this country and even outside use artifacts of Maasai women or morans on washroom doors. In real sense, the local communities do not benefit from their cultures and cultural expressions. This Bill seeks to protect the exploitation of those cultures.

This Bill has also given the national Government the mandate to preserve and conserve this very rich resource. Culture, on its own, is a resource. There are people in this country who are talented in terms of traditional songs, poetry and proverbs, and who earn nothing out of this. This has been exploited by outsiders.

We also have very rich structures in our traditional systems. A long time ago, we used to have very proper traditional judicial systems. People never went to court for minor issues like divorce. In the Maasai culture, we never had issues of divorce because we had a traditional judicial system that settled such issues. We also had our values which prevented people from the kind of decay that we are seeing today. Today, people are killing each other in families. Women are being killed in families. We have also seen young people killing their fellow young people in the family structure. Our traditions have been eroded and not preserved.

This Bill gives us a way of protecting, preserving and transmitting our good values to the next generations. The Bill has also given a mandate to the county governments to look for a way of preserving culture and transmitting it to future generations.

As one of my colleagues has just said, there are young people who go to school in other countries at a very early age and when they come back, they cannot even express themselves in their traditional languages. If we have a law that can preserve those cultures and we find a way of transmitting the cultures to our generations to come, then our young people can learn what our parents used to do.

I also support this Bill because it creates a framework for preventing the exploitation of traditional knowledge and cultural expressions. There are people using our rich cultures to benefit themselves as individuals or as communities at the expense of other communities. Therefore, if this law is well implemented, it will give us a chance to, once again, become ourselves. A cultured person is a real person. It will give us a chance to, once again, protect and invest in our cultures.

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Hon. Andrew Mwadime.

**Hon. Mwadime:** Shukrani, Mhe. Naibu wa Spika kwa kunipa fursa hii kuchangia Mswada huu. Kwa kweli, utamaduni ni kitu muhimu. Tujiulize utamaduni ni nini? Ni nini kinachangia utamaduni? Hapo ndipo tutafahamu maana ya vile wahenga walivyosema, “Muacha mila ni mtumwa”. Hii inaambatana na msemu unaosema, “Penye wazee hapaharibiki neno”. Ni kwa sababu utamaduni ni mambo ambayo yamechunguzwa na yametokezea kwa muda mrefu, yakahifadhiwa mpaka leo hii na tunayatumia kwa mambo mengine. Hapa nchini, tumetupa utamaduni kidogo.

Nakumbuka kwetu Taita Taveta, kulikuwa na utamaduni wa kuhifadhi mazingara. Kulikuwa na mahali wazee walikuwa wanaenda kufanya mazingaombwe yao na kuomba miungu yao. Ikiwa hapakuwa na mvua, baada ya maombi hayo, mvua ingenyesha. Lakini leo hii, hakuna mambo kama hayo na ndiyo maana hakuna mvua kabisa kule kwetu. Vile vile, miti ilikuwa inahifadhiwa. Siku hizi hilo halipo. Misitu yote imeharibiwa na hivi karibuni, itapotea.

Nakumbuka tulipokuwa wadogo tukiwa shule za chekechea, tulikuwa tunaongea lugha za kitamaduni. Kuongea peke yake kunachangia pakubwa kuhifadhi utamaduni. Lakini siku hizi, tunapenda kuongea Kiingereza ijapokuwa hatuwezi kuongea kama Mwingereza mwenyewe. Nampa kongole yule ambaye ameleta Mswada huu. Ikiwezekana, sharti Serikali ihifadhi hela za kutosha ili utamaduni ulindwe.

Kwa hayo machache, naunga mkono Mswada huu kwa asilimia mia moja. Ahsante sana, Mhe. Naibu wa Spika.

**Hon. Deputy Speaker:** Hon. Joseph Kiuna.

**Hon. J.K. Ng’ang’a:** Thank you, Hon. Deputy Speaker. I also rise to support this Bill, which is long overdue. The way a majority of Kenyans normally dress is telling that we have completely forgotten our culture and where we came from. It is high time we started rethinking about ourselves. Where did we lose direction?

As others have said, I also commend the Maa and Ogiek communities for resisting western influence. The two communities have been persistent in observing and preserving their traditions, especially in terms of dressing. So, I congratulate the Maa and the Ogiek communities. However, I also appeal to other communities, especially the Kikuyu, who tend to think that education is everything, to embrace their traditions. They have completely forgotten



where they came from. It is high time they went back and found out the little they can trace from the few remaining *wazees* or senior citizens.

The way we dress here in Kenya is troubling. The Indian community came here in the 18<sup>th</sup> Century, but they still retain their culture. How come we were used to wearing traditional dresses but, immediately the white man came; we abandoned whatever we used to do and started emulating the white man? For instance, in Parliament, it is compulsory that all men must wear a neck tie. What is the meaning of that? Even during hot seasons, especially in January and February, when everybody is sweating, we are still required to put on a neck tie. We need to have our traditional clothing. Our neighbouring Ugandan and Tanzanian women have their own traditional clothing. Why not Kenya? Why can we not have a Kenyan dress code? The West African nations have their own cultures and traditional dress code and they are very proud of it. We Kenyans have lost direction.

As others have mentioned, this is the best time for us to rethink as Kenyans, wake up and re-trace our direction. There is a lot of social injustice and immorality because the youth have forgotten our traditional values. For example, youth from the Kikuyu community do not respect their seniors anymore. My constituency neighbours the Maa community. When a young Maa man meets his senior, however well the young man is educated, he will bow and greet the senior humbly. For us, we have forgotten everything. We think education and money is everything.

We need to go back to our traditional ways of worship. Every community had their way of worship. On food, I remember traditional foods like yams, arrow roots and cassava. They are very nutritious, but we have abandoned them. This is the time to go back to such foods.

We need to support this Bill not just by passing it here in Parliament, but also by making sure that the national Government sets aside enough funds to facilitate its implementation. Let it be compulsory for all the counties to collect and give enough funds for the implementation of this Bill once it is passed, so that we can reclaim our traditions. If we can do that, we will be proud of our country. We will realise a lot of revenue by attracting tourists.

Thank you, Hon. Deputy Speaker. I support the Bill.

**Hon. Deputy Speaker:** Hon. Geoffrey Odanga.

**Hon. Odanga:** Thank you, Hon. Deputy Speaker. Unlike all---

**Hon. Saney:** Hon. Deputy Speaker, I think I have the microphone.

**Hon. Deputy Speaker:** Sorry. The microphones are misbehaving. I have given Hon. Geoffrey Odanga the opportunity to speak.

**Hon. Odanga:** I think I got it right.

**Hon. Deputy Speaker:** Some of you may have been moved in the list from where you were initially. I will consider your position.

**Hon. Odanga:** Thank you, Hon. Deputy Speaker. I stand to support the Bill as it is. Hon. Deputy Speaker, there is a Swahili saying that says: "*Muacha mila ni mtumwa.*" This means that culture is a way of life. When you talk of culture, you are talking of the food people eat, their dressing, their way of worship and everything else they do. Therefore, it is very important for each one of us to be identified with a community from which we come from. It is unfortunate that it has taken 52 years before thinking about protecting and promoting our traditional knowledge and traditional cultural expressions.

Hon. Deputy Speaker, I would like to emphasize that even as we protect, we must think about promoting traditional knowledge and cultural expressions. We will promote by planting

more of our plant species and ensuring that they are marketed. Most of those species have rich medicinal values and they need to be protected and promoted.

Other things that need to be protected and promoted include artistic works like paintings, engravings and sculptures, among others. This will ensure that they get markets within and beyond Kenya. Kenya is a country that has a majority of Bantu people who are associated with pottery. Most of the Bantu people keep water in pots to cool instead of the refrigerators that we have today. They also preserve their foodstuffs for cooking. This was a very important article that was used by the Bantu people. We need to protect pottery because it is also used in the making of plates that we use for eating. We need to protect and promote all those items including the *kiondos*, so that they can promote our economy and attract tourism in this country. The fact that we are talking about patenting them is to ensure that no people can get them without the permission of the owners of that knowledge and expression. This is important and, for that matter, I would like to support this Bill.

In traditional African societies, there was rite of passage from childhood to adulthood. This was a time when young men and women would be secluded. They were then taught what they were expected to do in their adult lives. That is how societies function. Today, we have abandoned all that and left our children to do things that they have not been taught and prepared for. We have left issues of culture to the school system which the curriculum does not address very well. Therefore, it is important that, as we talk about the traditional knowledge, cultural expression and cultural promotion, we should think of having the same in our school curriculum so that our children are taught about our values and how to promote them.

In addition, we should also think of developing cultural centres in our counties and sub-counties. This requires funding. We are, therefore, calling on the Government to ensure that cultural centres are developed and kept if this Bill is passed.

Thank you, Hon. Deputy Speaker, I support.

**Hon. Deputy Speaker:** Hon. Gunga Mwinga.

**Hon. Chea:** Thank you, Hon. Deputy Speaker for this opportunity. I rise to support the Bill. In supporting this Bill, I want to begin by saying that, indeed, the culture and traditions of various societies are a way of life and are so rich that if they are well utilized, they can serve as a source of income.

Communities have been defined in Clause 2 of the Bill and if you look at it, you realize that various communities have their way of doing things right from birth through marriage to death. There are so many things that are attached to the rights of passage that I believe, if they are taken seriously, this country will go a long way.

In the community that I come from, we have tried in terms of preservation of those cultures. My community is rich in what we call *kayas*. If today you had the occasion to visit *Kaya Fungo*, you will realize where some of those things that are attached to our communities are found. We have had so many people visiting those areas. We have had the tourists that Members have spoken about. They have, on so many occasions, visited our *kayas* and they have been impressed. We only need to formalize them so that they can serve the people.

Hon. Deputy Speaker, what attracts me in this Bill are the provisions of Clause 4 and Clause 5 of the Bill, which talk about the roles of the county and national Government. If the county and national Government are not taking this issue seriously, I do not think we will go far. The roles that have been set out in the Bill for the county and the national Government surround protection, preservation and promotion of traditional practices and cultures. It is important and

we see it happening that a good number of counties within our Republic have organized cultural weeks. They have also gone ahead to promote cultures. Several weeks ago, my own Governor hosted a very big group of local musicians. Some of the issues that have been defined as traditional practices here include our local songs. So, those are very important steps. The only thing that we probably need to do is to have enough funding to ensure that emphasis is given on such activities.

Hon. Deputy Speaker, I cannot conclude without speaking to Clause 38 and Clause 39 of this Bill. The problem that has affected progression of our traditional practices and knowledge is the question of protection by our law. So, you now realize that a holder, as defined under Clause 2 of this Bill, is capable of instituting civil action and taking somebody to court for having infringed a particular right. Those are very important developments in the law. Clause 39 of this Bill talks about the remedies that are available to any person who goes to court. These remedies include questions of injunction.

One is able to go to court and ensure that somebody is prohibited from doing whatever another community is doing. The most important thing here is the question of compensation. Many times, you realise that a right would be infringed but there would be no compensation for it. Under the provisions of Section 39 of this Bill, the question of compensation has been seriously addressed.

The other issue is the question of the applicability of customary laws and practices. This is a very important issue. Different communities had their own ways of settling disputes. For instance, in the Giriama community where I come from, we used to have pronounced oath givers. When parties had differences, they would subject themselves to an oath giver so that some of these issues would be settled. Parties would settle their disputes amicably and go back home happy. We would not expect anybody to retract such kind of a settlement. Now, people have to go to court and it is quite expensive for them. At the end of the day, the court system is adversarial because one party has to lose. I believe we will progress as a country if some of these traditional ways of doing things are well taken care of.

With those remarks, I wish to support this Bill. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Grace Kiptui.

**Hon. (Ms.) Kiptui:** Thank you, Hon. Temporary Deputy Speaker for the opportunity. Listening to my colleagues and having looked at the Bill, it is like going down memory lane because when you hear the passion with which people are debating this Bill, it tell us that we have really missed being ourselves.

I know that when the colonialists came to our country, they began by telling us that our traditions, food, way of dressing, songs and everything were backward simply because they needed to generate a market for their goods. Thank God that we have a new Constitution that recognises our cultures and traditions. This Bill is very important and it will help reinforce and reinstate our culture and identity as Kenyans. If we implement it well, I am sure it will save us a lot.

Looking at the Members seated in this House this morning, I can bet that this could be the remnants of the people who went fully through their cultural upbringing. I am one of them. If we look at issues like our cultural medicines, we will find that the trees that produce them are being destroyed left, right and centre by the young people because they do not understand what they

are. To them, they are just materials to make charcoal but to an old person who benefited from this traditional medicine, they are valuable trees.

So, I support this Bill fully and if it is implemented, we should patent our medicinal plants. We also need to identify and protect them so that even the medicine men that are still alive feel protected and can come out and demonstrate their skills.

We should look at traditional dances. Very many of our traditional dancers are just used during national holidays and yet these talented dancers should be organised so that they can sell their talent like any other talent, for example, football and athletics. These dancers should earn money on a daily basis from their dances. I pray that this Bill is implemented. Every county should have a cultural centre where they meet and exchange skills and the knowledge that they have.

I support this Bill 100 per cent.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Ibrahim Saney.

**Hon. Saney:** Thank you, Hon. Temporary Deputy Speaker. Traditions and cultures are derived from community livelihoods. They say necessity is the mother of invention. How communities toil to eke a living and how they struggle to at least cope with their immediate environment defines their behaviour, way of life and beliefs. That has over the years been communicated informally to the next generations through imitations and oral communication.

As much as it is a constitutional requirement that this Bill has to be enacted, it is a milestone today in the history of this country that we are trying to develop laws of very informal issues. Cultures and traditions are very informal and we are trying to formalise that which is informal. I appreciate that traditional knowledge and cultures have preceded scientific developments.

In agriculture, it is traditions and cultures that came up with the first forms of farming, harvesting and food storage. They were the early inventors. I recognise that it is through traditional knowledge and cultures that we have made developments in medicine. On pastoralism, pastoralism is the most ancient way of livelihood and there is a lot in native knowledge and traditional practices that is still as relevant.

As we speak, this House has passed a Sessional Paper on conflict resolution and peace building. It is good to bring to the memory of this House that we recognised traditional early warning systems which were cascaded to a regional level. That is to appreciate that traditional knowledge and cultures are part and parcel of how we do things presently. Severally, traditional knowledge and cultures are regarded primitive but this has been the basis and the foundation of scientific advances. Scientists say that scientific issues are verifiable but the truth is that traditional practices and knowledge having been tested over time are the most reliable sources of knowledge.

In supporting this Bill, I want to say that it will reflect the diversity of this country in appreciating its varied cultures and traditions. It boldly states that cultures and traditions have to be preserved and conserved for posterity.

On the issue of patents, I recognise that patents are vested in individuals. It has to at least attach patents to customary issues because the ownership is with the larger group or a community. As much as the counties will be the repositories of establishing which culture belongs to which community, I believe that the country does not have the capacity and the mechanism to establish ownership of cultures. What is very important and of concern to Kenyans

is the fact that we must appreciate our cultures and traditions without delving much into ownership. It is cross-cutting. It is just like discussing ancient migratory routes. Every community in Kenya claims to have come from somewhere. If you will be talking of ownership of cultures, then we will be delving into a bottomless pit which may not deliver results. It is just good to appreciate our cultures as divergent as they are. The issue of ownership is not something that can be easily resolved.

One other thing is on the objectives of this Bill. It is good, but it appears so vague. It is just good on paper. We would be interested on how to measure and implement those objectives. A serious policy paper that will come up with strategies, objectives and indicators that are measurable will further complement this policy. It is about policies which should be mainstreamed across all the sectors of the Government. The national Government and the county governments will be key in appreciating those wonderful objectives.

I am a bit interested in a clause that indicates that there must be consent of the owners of cultures and traditions before broadcasts are made. That will be tying the hands of very many actors, especially the media. It is hard to resolve the ownership of these cultures as I have earlier alluded. Trying to get the consent of owners of cultures will not be practical. Cultures and traditions are vested in communities. Individuals cannot be custodians of cultures and traditions. So, it is a bit vague and ambiguous to claim that there will be authority or consent coming from somebody. Nobody would be keeping the culture of my community.

I come from Wajir North and I believe the culture is cross-cutting for every individual from my community. Trying to claim that there will be an authority for use of culture and there will be the custodial responsibilities of keeping cultures will raise a lot of conflict. Our media has always used cultures very positively. If we tie the use of our cultures and the reflection of our diversity on a positive note to consent, which will lead to serious dispute, it will do us much harm.

As much as this Bill is good, I still question its capacity. It appears academic because it is very good in writing. It is nice. Yes, we want to appreciate our cultures and we need to keep them for posterity, but the way the Bill has been worded, clearly indicates that we will never attain the capacity for enforcement. It is good and it will pass, but one thing that we will with time be questioning is: "How has it been enforced?" How will the Government make sure that this culture and tradition belongs to a particular community? How will it be used? How will benefits accrued from a particular culture be passed? It looks very academic, flowing and entertaining, but practically it is not implementable. As much as it is a constitutional requirement that this House enacts this legislation, the issue of patents for cultures and traditions, as I have said earlier on must be looked into. Who will be the patent holder of my community's culture?

Some cultures are cross-cutting. They touch on the entire Cushitic Community. How will you patent this? Who will be the actual owners? Who are the custodians? We need to relook into this policy. It is good, well intended, but aspects of practicability are questionable.

With those few remarks, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): I now give Hon. Soipan Tuyu this chance.

**Hon. (Ms.) Tuyu:** Thank you, Hon. Temporary Deputy Speaker, for the chance so that I can also add my voice in support of this Bill which is very timely. The protection of traditional knowledge and cultural expressions, even though I say the Bill is timely, is something that we should have been ahead of as a nation.

I wish to highlight a few very salient provisions of this Bill, one of them being the express protection of cultural heritage, which is very pertinent. Heritage here is again divided into various parts, namely movable, immovable and intangible. We have seen tangible cultural heritage like shrines and secret sites, which are very sentimental and dear to some of our communities. They are even the subject of land grabbing. The Bill then comes to provide a much needed protection for these sites in respect and recognition of our cultural traditional heritages.

The protection of traditional knowledge and cultural expressions from derogatory treatment is also provided for under the Bill and this is really commendable. I wish to highlight the provisions of Clause 10, which provides for rights conferred to holders of traditional knowledge. I will not go back to what the definition of “community” is, but there is a provision for express and exclusive right of a community to authorise the exploitation of their traditional knowledge or prevent any person from exploiting their traditional knowledge as well as their cultural expression.

While I support the Bill, we need to think very critically because some of the things we are seeking to protect in this Bill are things that we may rightfully say, have been overtaken by events. We have cultural expression items for the various communities in this country. For example, the *Kikoi* for the coastal communities has been patented somewhere in Japan. The Maasai necklace is a key cultural expression for the Maasai Community. How do we salvage that which has already been overtaken by events in terms of even patenting outside this country?

Under Clause 37, the Bill provides for sanctions and remedies where atrocities are committed under this Bill. I will be one of the people who will look critically at this in light of our intellectual property law in relation to patent and licensing to see how we can salvage those cultural expressions which have already been taken away.

It has been said that our communities are rich in traditional knowledge and we are not devoid of examples. There are some traditional medicines that have been seen to work, although some of them have backfired like the great exodus to Loliondo in the Republic of Tanzania or the Babu concoction. I am not sure whether it worked, but some communities in this country have very rich knowledge in the area of medicine, some of which has been taken out of the country for further exploration and even for production of some medicines without any benefit going back to these communities.

This makes this Bill very important for us. Even as I think about salvaging our traditional knowledge and cultural expressions from exploitation by outsiders, internally in this country, we are underrating and not maximizing the use of our museums and archives. Some of our museums are being used for purposes which have nothing to do with the protection of our rich heritage and cultural expressions. It is incumbent upon the Cabinet Secretary in charge of our museums to implement this. We may even start internally by making sure that our museums are being used for the right purpose of promoting the objects of this Bill.

Lastly, it is laudable that Clause 15 of this Bill removes legal hurdles in seeking to protect traditional cultural expressions. It provides that recording and recognition shall not be subject to much formality. This will ease the issue of recording and recognition for purposes of promotion and protection of our cultural expressions and traditional knowledge. I also wish to say that we must be cautious when protecting our cultural heritage because in defining “intangible cultural heritage,” the Bill includes cultural practices. This might be a subject of abuse where we have some practices and cultures in our communities which are not in tandem with the Constitution and which may be seen to be repugnant to justice. Female Genital

Mutilation (FGM) is one of these. We must be clear from the outset that every protection that is being sought under this Bill must be in line with the Constitution. We may see people going to court under the guise of protection of their intangible cultural heritage which are not in line with human dignity and rights and which may not be in line with the requirements of justice and our Constitution.

With those few remarks, I wish to support and congratulate the Leader of the Majority Party for prioritising this Bill and bringing it to the Floor.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Makali Mulu.

**Hon. Mulu:** Thank you, Hon. Temporary Deputy Speaker for giving me the chance to also support this important Bill.

This Bill is quite important to this country. Despite it being one of the Bills which are going to give effect to our new Constitution, it is also very important in terms of ensuring that our traditional knowledge and cultural expressions are not only protected but are also promoted.

We have a number of communities in this country. I had a chance to interact with almost all these communities in my working life. One of the things I have realised is that this country is very rich in terms of customs and cultural practices. It is unfortunate that after almost 52 years of Independence, it is now that we are taking it seriously as a country to make sure that we protect this knowledge and cultural practices.

Intellectuals in this country and in the world have made sure that their intellectual property rights have been protected through legislative frameworks or other frameworks which make sure that once you discover something as an intellectual, then that right is protected and you benefit out of it. This should have happened to our customs and traditions. It is unfortunate that it has not happened. I thank the framers of the new Constitution 2010 who thought that this is an important issue to be taken care of in this country.

This country will go very far if we take advantage of the diversity of our traditions and use it as a unifying factor. These traditions also vary from one community to another. The history of these traditions made sure that communities remained united and disciplined and there was a kind of transfer mechanism from one generation to another. We lost that bit after we ignored this. There is a lot of division in some communities in this country because that unifying factor disappeared.

I will give an example of the Kamba community to which I belong. This community has very rich traditions and cultural practices. These traditions and practices used to revolve around trees. We had a lot of traditional medicines from our trees. None of us would really complain about blood pressure or diabetes because the medicine from our trees helped us get through these problems. However, over time, we ignored that and now even kids who are less than 20 years old are suffering from high blood pressure and diabetes. You wonder where the diseases come from.

The Kamba community is known for wood carving. If you go to any place in this world, you will not miss a wood carving made by Kamba artists. This has not been protected and you realise that even other people who are not experts in this particular area are also doing their carvings. This has really degraded what has been known for a long time to be a speciality of the Kamba community.

We also had our own religion. People used to be very committed to that religion. At times when there was no rain, elders would go to holy places which had been identified, spend a day or

two there and by the time they came back from those areas, it would start to rain. I do not know what god they used to worship at that time but I think they were very committed to their worship. We also lost this because of change in our lifestyles and traditions.

The other area is marriage. How we conducted our marriages was very clear. There was a lot of research before you married a lady. One needed to find out a lot about the lady's family. It was important to know how the family behaved. If for instance, it was found out that the family was one of witches then one would not marry from such a family. Overtime, families remained very intact and we had minimal divorce cases due to these traditions. We are also losing this with time. I know we are all going for what we call the civilised way of living but it also has its own challenges.

The other thing was traditional foods. Our community had its own traditional foods. Some of us who were brought up eating that food have remained very strong. We are not visiting hospitals all the time because we have the natural immunity as a result of eating that food.

We all need to support this Bill. It is going to provide us with the opportunity to adopt those traditions which used to make us remain united. As the previous speaker has said, we must make sure that whatever we pass is not against the Constitution 2010 because that will be wrong.

I have interest in three Clauses in this Bill. Clause 8(1) says:-

“Every county government shall establish and maintain a register which shall contain information relating to traditional knowledge and traditional cultural expressions collected and documented by the county government during the registration process.”

Clause 8 (3) reads:-

“The national Government shall establish and maintain a comprehensive Traditional Knowledge Digital Repository which shall contain information relating to traditional knowledge and traditional cultural expressions that have been documented and registered by county governments.”

This is very important to me because once we have this register, it will be possible for people to know the areas documented in terms of our traditions and cultural expressions. I also revisit Clause 10, which has just been mentioned. It is very important.

It says that every community will have exclusive right to their traditions and cultural practices. It further states that, that right is only going to be exploited after getting authority from the same community to capitalise on that right. This is very important. For example, if the Kamba community is able to identify its traditional knowledge and cultural expressions and then document that, it means that no other community will be able to access such knowledge without getting authority from such a community. That way, the community can benefit from that kind of registration.

Clause 12(1) states:-

“Where protected traditional knowledge is not being sufficiently exploited by the owner or the right holder – that is the community we have just spoken about – or where the owner or rights holder in traditional knowledge refuses to grant licenses for exploitation the Cabinet Secretary may, with prior informed consent of the owners, grant a compulsory licence for exploitation subject to Article 40(3)(b) of the Constitution.”

Some communities may be selfish and say: “Since this is our knowledge and cultural practice, we are not going to allow any other community to use it.” So, this law allows that in



such a situation, the PS has the mandate to allow other communities for the sake of the bigger national interests.

Some of these clauses are very important. I urge my colleagues to make sure that we pass this law as soon as possible. Since this law will go to the Senate, I appeal to the Senate to ensure that they facilitate the process of getting this law enacted.

So, this is a very important framework for this country and I support it.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Irungu Kang'ata

**Hon. Kang'ata:** Thank you, Hon. Temporary Deputy Speaker. Allow me to urge Hon. Members to reject this Bill. The reason I am asking Hon. Members to reject this Bill is not because I do not like traditions. In fact, I am one of those people who deem themselves as traditionalist. I do not have an English name, I listen to the Roots and cultural music. So, I am very traditional. However, let us be pragmatic. Let us not look at things from a sentimental point of view. I can assure you that our African culture then and even now was not strong.

The reason why the white man came and conquered us was purely because we were weak and our cultures were not helping us to be strong. So, it makes sense for us to run away from them as soon as possible. Otherwise, why is it that all Islamic countries that were colonised by the white man never lost their culture? Look at Egypt and the whole of Africa and the Middle East, they never lost their culture. That tells you that the Islamic culture is a strong one. Here in Africa, 60 years of interaction with the *Mzungu* caused us to lose our culture. So, that tells that our culture was fake. Therefore, we should not be trying to revive something that is dead. So, let us be pragmatic.

A good example is Singapore where 75 per cent of its inhabitants are Chinese. When the first Prime Minister, Lee Kuan Yew assumed power, he was in a dilemma. He did not know whether to look to the West or China. Of course, the people were more inclined to China because they were of Chinese descendants. However, he was so pragmatic. He realised that China then being a poor country would not take them far. He told his people: "Let us go to the West and get rich" and they are now rich. My point is that looking backwards to our grandfathers is going to make this country poorer.

Be pragmatic my people and look to where people are progressing. That is the reality of life. There is a proposal that we should give intellectual property rights to some things, for instance, a *kiondo*. How can you give intellectual property to a community? If *kiondo* is for the Kikuyu, who is going to exploit it? When the *kiondo* is sold, is it going to benefit me as a Kikuyu? When you talk about the Kamba carvings, who is going to register a Kamba intellectual property? How are you going to exploit that one? It does not make sense. It must be something that accrues to an individual and not a community.

This is sentimentalism. Let us reject this Bill, become rational and the whole idea is that we adopt the culture of a winning person. I am not saying that we adopt the Western culture. Presently, the people who are about to be rich are the Chinese. I wish we were told to adopt the Chinese culture. It is the next super power.

Therefore, my dear sisters, let us forget our cultures because we lost it. I can bet with my life that in the next 20 years, there will be no person who will be speaking Kikuyu or Kamba. We shall be speaking Chinese or the new super power's language which will be there. So, we should be strategic and look at the emerging super power and join them, and then our people will

become rich. However, looking behind to adopt I do not know which culture, I am telling you my sisters and brothers, we are not going to help this country. This is sentimentalism.

A good example is that presently there is debate about community land. That is a concept that is predicated on the issue of culture. I can tell you that the Members of the Departmental Committee on Lands are unable up to now to define “community land”. This is because the present world is about an individual. There is nothing like community land anymore and that is the reality of life. You may refuse and shout me down but that is the reality. I am sure all of us here take our children to formal schools to learn western education and no one takes his or her children to the rural area to learn culture.

We may be busy here telling our people how our culture is good and the need to preserve it. However, the reality is that it will not help our people. Let us be pragmatic and join the winning team. This is the modern world which is rational.

I, therefore, oppose this Bill and ask Hon. Members to join me so that we become pragmatic.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Janet Wanyama.

**Hon. (Ms.) Wanyama:** Asante sana Mhe. Naibu Spika wa Muda. Ningependa kuunga mkono Mswada huu. Ninashangaa sana wakati Mheshimiwa mwenzangu anapowambia Wakenya kwamba utamaduni si kitu cha kudumu. Hali katika redio zetu kuna ratiba mbalimbali kama Sulwe FM, Inooro FM na West FM katika nchi ya Kenya. Inamaanisha nini? Lazima turudi nyumbani na tujifunze maadili na utamaduni wa nchi yetu ya Kenya.

Hapo awali mama akiwa mjamzito, alikuwa na yale mavazi ya heshima anayovaa. Si kama siku hizi mama anaweza kuwa mjamzito na anavaa suruali ndefu ama kaptula, kuonyesha kwamba sisi tumepoteza utamaduni wetu.

Kwa upande wa chakula, tulikuwa na mboga za kienyeji, tulikuwa na mihogo na ndizi. Hivi ni vyakula ambayo vilikuwa vinaleta afya kwa miili yetu.

Mhe. Kiongozi wa Walio Wengi Bungeni alifanya vizuri kuleta Mswada huu kwa sababu tunataka tujikumbushe mahali ambapo tumetoka na pale tunakoenda.

Katika upande wa Magharibi tulikuwa na Dini ya Musambwa. Ilikuwa inatuonyesha maadili yetu katika jamii ya Waluhya; jinsi ya kuishi. Lilikuwa ni jambo zuri sana. Licha ya kuwa na makanisa mengi katika nchi yetu ya Kenya, tulikuwa na yale yanatuonyesha sisi kama jamii mahali tutokapo na tuendapo.

Ningependa kuwambia wenzangu kwamba utamaduni na maadili katika nchi yetu ya Kenya unaweza kufunza watoto wetu tabia njema.

Siku hizi badala ya mtoto kuongea Kiingereza aseme “my father” anasema “buda wangu”. Mambo kama haya yanaturudisha nyuma kwa sababu tutakuwa tunachanganya lugha ambazo haziwezi kufahamika na wananchi wa Kenya, wasomi na wale wanaokuja nyuma yetu. Sisi kama viongozi tunatakikana tuonyeshe mfano mwema.

Mheshimiwa Naibu Spika wa Muda, iwapo mimi ni kiongozi kutoka jamii fulani, lazima nionyeshe watoto wetu ama watoto wangu utamaduni wa hapo awali kwamba ukipata mtu wa rika yangu, umuite “mama” lakini usimuite bibi yako. Hiyo itatuwezesha sisi viongozi ama wazazi kufunza watoto wetu mila zetu vile zinatakikana.

Hapo awali tulikuwa na pombe iliyoitwa *busaa*. Zamani haungeona mtoto anaketi na wazee na kushiriki unyuaji pombe pamoja. Yeye alikuwa anakaa mbali. Mzee alikuwa

anachukua mrija anapatia mwingine na anatoka nje. Anapeana heshima. Wakati huu ninaona watu rika yetu wanakula na kukaa pamoja na watoto wetu, ama unaona mtoto akirukia kitanda cha baba ama mama yake.

Ninaunga mkono tuwe na huu utamaduni ili tujifahamishe mahali ambapo tumetoka. Ninajua Serikali yetu itahakikisha kwamba kuna mahali ambapo tutakuwa tunafanyia utamaduni wetu.

Ninashukuru kwa sababu katika Trans-Nzoia County, nimetembelea sehemu ya ndugu yangu Mheshimiwa Fedinard K. Wanyonyi na kuona kwamba jamii tofauti tofauti wametenga siku ya ukumbusho wa tamaduni zao. Wanapika chakula chao cha kitamaduni na kuvaa mavazi kujikumbusha walikotoka. Jambo hili ni bora sana. Mwaka uliopita niliona mama amejifungua mtoto mlemavu lakini hakutaka watu wamuone. Lakini katika maadili na utamaduni wetu, ukijifungua mtoto kama huyo, watu wanasema huenda ikawa ni bahati sio laana katika jamii.

Ninaunga mkono Mswada huu ili kuhakikisha tunahifadhi maadili na tamaduni zetu katika nchi ya Kenya.

Asante sana, Mhe. Naibu Spika wa Muda.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Daniel Kazungu.

**Hon. Muzee:** Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to contribute. My colleague, the Member for Kiharu was trying to be the devil's advocate. In a way, he gave us his view.

I stand here to support this Bill because it is timely and very important. I want to quote a statement which was made recently by renown Prof. Ngugi wa Thiong'o, when he last visited Nairobi. He said: "If you embrace culture and your local language, you empower yourself. If you ape other people's culture, you become a slave." To me that was a very powerful statement.

Although my children go to western-type schools, I vowed that every evening I must speak my local language to them. It is important for them to know where they came from. Culture, as we have been told here, is the way of life. It defines a community. It looks at where the community is from, where it is and its future. It can manifest in different ways, including the way we look at religion and beliefs. This Bill is important for us. It is good that the Leader of the Majority Party brought this Bill and made it a priority today.

Over time, I have been very sad, disappointed and angry when I see politicians coming to my community at the Coast and are taken by quacks who call themselves elders. I am from the Mijikenda community and a very proud Giriama. They take people who do not deserve to be in the sacred areas called "the Kayas" that we revered very much. That makes me really sad.

For the first time, we have seen a law here that says that we will be registering the correct groupings which will now be the legitimate owners of our culture and heritage so that when something happens within our culture, it is acceptable. It will ensure that it does not offend me, my community or yours as well. The fact that we will be having proper registration of groups is a big plus. I support this Bill for that.

There is also the issue of copyright. Sometimes you look at traditional composers, musicians and oral experts, they have a lot of knowledge in culture and how the community has evolved. A lot of their work gets used so many times during cultural events and formal events. However, over time they end up being poor. I have examples in my community. We had Mr. Bin Hare, Mr. Nyerere Konde, Mr. Bin Mama and Mr. Konjo Kolio. I am sure other communities

also have people who were very strong and have contributed so much to their communities. They end up being poor because their works are used over time but they earn nothing.

This Bill gives them an opportunity to register and earn from the knowledge that they have. They not only earn from the knowledge, but also the community they come from. Therefore, that is a big plus. I support this Bill for that because they must earn from their works.

I find it a challenge because culture evolves. The way we were in the 17<sup>th</sup> Century is not the way we are today. There is also the fact we are integrating as a nation and a push to integrate ourselves as East Africa. That now brings another challenge. For example, how will the Mijikenda culture be in the next five years through its integration with other cultures? For example, in Malindi there is everybody, Kikuyu, Kisii, Maasai, Arabs and Europeans as well. So, how then do you put together a situation where you have a fusion of culture over time? How do you register that? That is a dilemma to me.

I am proud of being a Member of Parliament of a very strong multicultural set up where a good number of African communities and different races are. So, how do you do it when cultures fuse and they come together? How will you be registering them and who will own that corporate?

Lastly, this Bill looks mainly at the positive sides of cultural expressions. However, let us face it. There are also negative ones like witchcraft. It is practised by very many of our communities at the coast, the Kamba, the Kisii and in western Kenya. These things are there. We need to look at that. That is why I am coming with a Bill to either repeal or seriously amend the Witchcraft Act which has very draconian ways of looking at it. It was done during the colonial days in 1920s and 1930s when the European did not even understand witchcraft. In one instance, they said that it was bad and in the instance they said that they did not believe it. So, how do you legislate something that does not even exist in the first place? So, we need to look at that. These are things that this Bill has to look at; the negative part of our cultural expressions.

Witchcraft which is very prominent in my community needs to be looked at so that we do not appoint a judge to adjudicate over it. That should primarily be a cultural issue. It has been taken like that over years. Let us face it. People in my community are being killed every week and every month because they are suspected of practising witchcraft. I know that it is rife in many other areas in this country. So, we need to look at that. People are dying and now it is becoming an excuse. If your father is rich and you want to inherit his property, you say that he is a wizard and you kill him. So, we need to look at these issues which are real.

I know some people may not believe in that. I understand that because of issues of new religion which is coming up and religious beliefs like the ones for Christians and Muslims. These things are there. We should be alive to them.

So, I support this Bill. It is timely. Let us hope that we can look at the issues which we know we are comfortable with. For example, there are cultural practices like Female Genital Mutilation (FGM) and circumcision. We know that the Luo community does not circumcise their men. Is that a bad issue? The Giriama circumcise their men. Is that issue okay? We need to look at that so that we do not also bring conflicts which we do not need to deal with now.

Thank you very much, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): I will give the Floor to Hon. Tong'i.

**Hon. Tong'i:** Thank you, Hon. Temporary Deputy Speaker, for the opportunity to speak to this Bill. This Bill is meant to help the country nurture and protect our values as a society. As

a country, we have a duty to bequeath our children some values which have worked well for the community.

Last evening, I was sharing a conversation with my little boy who will be turning six years by the end of the year. Just because he knows how to turn on a computer and use it and change channels in a TV, he thinks he is cleverer than those of us who do not know how to use it. If we had these values, then they would know education without values and character is not enough. You do not succeed as an individual just because you know how to use a few technical gadgets. One needs to know what the community, the country and the culture needs.

This Bill has come in handy; it is timely. We have lost it as a community and this can be seen in the way we handle our parents today. Even the good Bible says that we should respect our parents. It is the only commandment in the Bible with a blessing and a condition that when you respect your parents, your days on earth will be added. Our youth today handle their parents and seniors with total disrespect. We have failed to pass on the good values of our society which encouraged leaders and the youth to respect elders. It is a good thing to do. This Bill will come in handy to help us respect that.

If you look at the traditional foods we are eating today, you will find that they are very good. If you visit America today, you will realise that the traditional food there is more expensive than the genetically modified foods we eat today. If you were to buy the original food grown in an organic way and prepared in a good way, you are very likely to pay a lot of money. I am told that in the White House they only serve organically grown food. Why is it that God gave us nature and good climate which enables us to grow organic foods effortlessly yet we are running away from it?

The World Health Organization (WHO) in the last two weeks was very categorical by saying that if you want to live a little bit longer and avoid diseases like cancer and the emerging ones you should go traditional. The traditional food is what we have in abundance in Kenya. If you go back home, you can get that kind of food effortlessly.

I like a book written by an author called “Hellen”. She talks very well about traditional foods. She states that if we embrace and eat it, we will become a lot healthier. It would be a good thing for the economy of the country today because we are using a lot of money to treat people who are suffering from conditions which they would have avoided had they embraced what God requires us to eat.

In the Kisii tradition, we had traditional surgeons. There was Mzee Nyagoche who would perform an operation on people’s heads. His patients survived, recovered and would go back to work. There was also Pastor Abel Nyakundi who was a great “doctor”. He might not have gone to school, the way we understand it, but he could give medicine which worked very well. Today, if you give our children that kind of medicine which served the community very well, they would think you are bewitching them. It is the same message my colleague was passing on that some communities have embraced the witchcraft concept, which I think has been overtaken by events.

Come to think of it, it is not witchcraft. If you are poor and live in a grass-thatched house and something happens which cannot be explained by science, then the next natural thing for people to do is to lynch you and set you ablaze. It is such a painful experience. I hope those things will be addressed once we have this Bill in place.

In the Kisii community, we have set up Elders Council, whose main mandate is to pass on values of the society by writing books on what we stood for, how traditional days were

respected and how our cultural days were conducted. Mzee Nyachae had one every year and I would wish to go back and hold the same. Through that, we pass values to our children. You do not read these things in books. The way we did our circumcision was something I treasure today, painful as it was. Indeed, it is one of the best things that ever happened to us who had an opportunity to undergo it. It made a huge difference between being a small boy and believing in oneself and doing what an adult is supposed to do. Those values have served the community and the nation well. We should have a way of embracing them by probably setting up a museum in every county to cover and protect those values for posterity. If we do that our children will know how we lived and how we got to where we are today. If we have lost our culture they will also know how we lost it and how we should repair and go back to where we should be.

In the African tradition, there was no divorce. In my community, divorce was never given room. Today, we have many issues. Culture had a way of resolving disputes between a husband and wife. Culture had a way of resolving it in an amicable way to ensure the bigger picture of the family, community and the nation was respected in the process.

I support this Bill. It has come in handy and we need to support it. As a way of ensuring we are going to cement and weld this Bill to the community, I will soon invite most of you to attend my cultural day which will be conducted in Nyanturago so that you can appreciate the Kisii culture and dispense with what the media has passed on over the years that we lynch witches and old *mamas*. Have you ever asked yourself why those witches are only *mamas* and very old ones for that matter? Why can they not be men? If it is culture, then men should also be witches and the burning should be across the board. We should use this Bill to ensure our people are more educated and respect others regardless of their social status in the society.

I support this Bill because I believe it is the right way to go. I would like to urge Members to grab the Seventh Day Adventist book about the value of the foods we are supposed to eat. It is going to make a difference in the way we handle and perceive issues.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): I will give the Floor to Hon. Mbui.

**Hon. Mbui:** Thank you, Hon. Temporary Deputy Speaker for the opportunity to contribute to the Bill. I want to say it is important to know our history. It helps us to get in touch with our roots. This Bill is about knowing where we have come from and where we are. That will guide us in making decisions on where we want to be in future. I am impressed from what I have heard in this debate. People have spoken positively about traditional issues. I am happy Hon. Tong'i has just told us that there is a traditional healer who can compete with Dr. Ben Carson of the US in performing brain surgery; that is quite exciting.

Hon. Temporary Deputy Speaker, traditional cultures are those beliefs, opinions, values and attitudes that bind a community together. It is very important that all of us embrace our traditional values, beliefs and opinions. Unfortunately, I have noted that modernisation is actually an enemy of our cultures and it need not be because these things can coexist. There is a part for modernisation and there are those things that we need to hold very dear that are traditional. I want to point out some of the very positive traditional cultural practices that have existed since time immemorial that we need to understand so that we can support this Bill and entrench them in our laws.

The first one is that I believe in the days when people embraced tradition because there was always a sense of belonging. This meant that from the time you were born to the time you went through the initiation stages, to the time you married up to old age, you knew exactly what

was expected of you. Currently, many of our young people are born and live without the knowledge of what is expected of them. Very basic things like sex education was part and parcel of what traditional African societies always insisted on. But today, our children are taught practical sex education by our neighbour's children. This is unfortunate. It is a fact. Many of us shy away from these things because we cannot tell them this and that because those examples do not work for our children. This is something we all need to embrace.

I have noted the issue of respect. We keep talking about respect in our education system. If you look at the children growing up today, they have no respect for authority, elders and other people's property. These were things that were taught traditionally. They were taught by parents, aunties, neighbours and everyone within the community. But today, you cannot even discipline a child because there is a law that is against it. Those days, children belonged to the society or the community. A child who was doing wrong would be corrected by anybody within the region. Today, even in our school if a child is reprimanded, we go to the school and storm the head teacher's or principal's office and make a lot of noise as we talk about human rights. Unfortunately, we forget we are destroying the future of our children. So, it is important to understand that there are very many positives.

Another issue has been on the social media platforms of WhatsApp and Twitter. I do not know if it is true that some presidents said it or it was just manufactured in River Road but there is this thing of saying that Kenyans are natural thieves. You know if you go to the education system, they are stealing examinations even those of small children in primary school. Some teachers have been arrested for stealing the Kenya Certificate of Primary Examination (KCPE). There are also issues to do with the Kenya Certificate of Secondary Examination (KCSE) which is still on-going.

There are issues to do with corruption in the country and continuous blatant theft in all sectors of our society. These are things that had been addressed by our traditions. In fact, those days people respected themselves first and respected everybody else's properties. In the Kamba community they had a solution for theft. There would be no theft if those traditional Kamba practices were still being practised. There was something they called "*Kamuti*". This pot was crushed on the floor and if you had dared take somebody's property, it would either damage you or you return it. These are things that you need to know that where we come from, there are some solutions.

The food, drinks and traditional medicines that were used from time immemorial were actually positive. Many speakers have said it. It is unfortunate that the current foods we are eating are not even good for us. Maybe it is also because of the lives we lead now. We sit too much and make very little movement. All the same the food is not good. The drinks are destroying our youth and some of the medicines we are taking are turning against us. I read in the newspaper today that many antibiotics are no longer working because people have developed immunity or some sort of resistance to them. Basically, we need to go back to our traditions for positive answers to some of our problems.

Unfortunately, there are some negatives in our traditional cultural practices. One of them is FGM. That is something that we do not want to go back to. However, let us choose what to pick and what to ignore so that we can move forward with the positives and ignore the negatives. I am very happy with this Bill because it ropes in the counties to play a role in protecting these cultural traditions and practices. Clause 8(1) says that the county governments shall establish a register and collect information and expressions and document them for registration.

Recently, I read in the headlines of a local periodical that frogs and snakes were found in one of our senior government offices in Machakos County. I do not know whether these were traditional things that were being collected for future use or they were meant to scare away potential thieves in the county or they were meant to protect the thieves from being caught. It seems that Machakos County is a step ahead because we are already collecting paraphernalia that is involved in traditional issues to ensure that our region is safe.

In the counties, cultural shows are supposed to be encouraged. We have noted in our county that instead of having cultural shows we have had hip hop shows in Machakos People's Park. I would imagine that if this were to become law, we would encourage our county government to ensure that it encourages people to come up with traditional songs. When we have a Ministry of Tourism within the county, it should bring in people to see cultural practices of Machakos people and not to bring hip hop stars from outside who teach our youth what is not positive. Let us be proud. The national Government can allow that, but county governments should block and ensure that their own are the ones that are showcased in their regions. That would be very positive. I encourage our county governments to do that.

As I finish, the Constitution is clear that the Government must recognise and protect every community's traditional cultural values. It is there in the Constitution. It also states that the Government has to reflect the face of this country. It is unfortunate that this Government has two faces that are seen and not the 40 faces of our ethnic groups. It is important that all Kenyans are brought together so that when you speak Kenyan, it is Kamba, Kikuyu, Luo and everyone. It is important that, that is done. This law is going to be used to ensure that, that happens so that all of us are together.

Hon. Temporary Deputy Speaker, thank you for the opportunity. I support this Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): I give the Floor to Hon. Ali Wario.

**Hon. Wario:** Asante Mhe. Naibu Spika wa Muda kwa fursa hii. Ninachukua fursa hii kutoa kongole kwa Kiongozi wa Wengi Bungeni kwa kuleta Mswada huu hapa. Mada na maudhui ya Mswada huu ni kulinda mila na desturi yetu kama taifa.

Mhe. Kang'ata aliyenitangulia amenisikitisha akisema kuwa mila yetu kama Waafrika haina maana. Ni kwa masikitiko makubwa hayuko na sisi ndani ya hii Bunge. Ningependa kumwambia kwamba watu wamemwaga damu au wamekufa kwa minajili ya kulinda mila ya Mwaafrika hapa Kenya. Anataka kutuambia wale waliopigania Uhuru wa taifa hili walikuwa wajinga? Ningemwambia arudi darasani ajue mila ni nini.

Nimebahatika kusoma kitabu kilichoandikwa na Prof. Asmerom Legesse. Prof. Legesse ameandika kitabu kinachoitwa "*Oromo Democracy*". Amezungumza juu ya Wazulu wa South Africa vile wanaweza kufunza jeshi la kitamaduni la Kiafrika waweze kulinda taifa lao.

Pia, amezungumza kuhusu utawala wa Buganda na vile ambavyo Mfalme wa Buganda anaweza kutawala nchi ile bila msaada wa wakoloni. Amezungumza kuhusu jamii ya Waoromo ambao wako katika nchi za Ethiopia na Kenya. Wako na taasisi tatu za ajabu: Serikali ya utawala, bunge na mahakama ya desturi iliyokuwepo kabla mkoloni aje. Rais wao anaitwa "Bagada". Inafurahisha kumpata Mwafrika aliyefika kiwango hicho. Rais wa Oromo anatawala kwa muda wa miaka minne. Baada ya miaka minne, anampatia mtu mwingine mamlaka. Hakuna kuuana au kuzozana. Hiyo ndio mila ya Mwafrika. Ninaomba Mheshimiwa aliyesema kwamba mila ya Kiafrika haina maana akisome kitabu kinachoitwa "*Oromo Democracy*"



Tumepata nini kutoka kwa wazungu? Tumepata bunduki na utumwa. Mila ya Kizungu tuliyonayo leo katika nchi ya Kenya ni mila tumelazimishwa tuifuata kwa kutishiwa na bunduki. Ninasikitika kuwa siwezi kuingia katika Bunge hili bila tai. Ni masikitiko makubwa sana. Bunduki walioleta imeenda lakini sheria zao bado ziko. Sikubaliwi kuzungumza Bungeni mpaka nije na tai. Lini Mwafrika atazinduka na kuwa na uhuru?

Angalia tulivyopoteza mila. Mwafrika alikuwepo kwa miaka na miaka. Kwa masikitiko makubwa, angalia vile ambavyo ukahaba kiasi cha umalaya ulivyoenea mijini mwetu. Angalia vijana wetu. Kila mmoja wao anatumia madawa ya kulevya kwa sababu tumepoteza maadili kama jamii.

Ninasikitika kwamba wengine wanatuambia kuwa Mwafrika hana mila au mila yake haifai. Wanataka kwenda Uzunguni. Nimekuwa Uzunguni. Ukitaka kujua ukosefu wa mila ni nini angalia watoto wa Wazungu. Kuna sheria na polisi. Huwezi kumtuma yule mtoto. Ukimtuma utashtakiwa. Je, huko ndiko Mheshimiwa Kang'ata anataka twende? Hatuwezi kwenda huko. Tuna mila na desturi ambazo lazima ziheshimike.

Wafrika walikuwa wanazozana zamani. Kuna tofauti gani kati ya mizozo ya Kiafrika na ya Kizungu? Mwafrika hupigana kwa fimbo au mkuki. Mkuki mmoja hauwezi kuwaua watu kumi. Leo bastola tu inaweza kuwaua nusu ya walio katika Bunge hili.

Angalia vita vya Kiafrika, vita vya kimila na maendeleo ya Kizungu. Ikiwa wanaopigana wanakuja na fimbo, mkuki au bunduki ya rashasha, kwa nini mzozo hauishi katika sehemu za Kiafrika? Mzungu amekuja na kutugawanya katika misingi ya kikabila na mikoa. Amesema kuwa mikoa fulani ni bora kwa sababu hapo ndipo alikuwa akilima na kuvuna. Pia amesema kuwa mikoa mingine haina maana. Hiyo ni dhuluma. Leo hii tunavaa tai na tunaendeleza dhuluma ya Wazungu katika nchi yetu. Kwa masikitiko makubwa, wakoloni wametupa makabila 42 humu Kenya. Kuna makabila mengine zaidi ya 40 ambayo hawajatambua. Kwa sababu wakoloni hawakuwatambua na hawakutaka mila au lugha yao, sisi tulipopata utawala huu tuliwaacha katika giza.

Jamii za Muniwea na Malakote zinaishi Tana River. Ni jamii zilizo na lugha na mila zao. Leo hii hawawezi kuzungumza lugha au kutambua mila yao na hawana desturi kwa sababu wanaitwa “*Other Kenyans*”. Utu na ubinadamu wao umefunikwa na kuchanganywa. Wanaitwa “*Other Kenyans*”. Hawastahili kuwa kabila. Hiyo ni dhuluma. Iwapo tulipigana na kumuondoa mkoloni, ni haki yetu kutambua na kuheshimu mila na makabila ya wanaoishi katika Kenya. Tusianze kuwabagua watu kwa sababu idadi yao ni chache. Hiyo ni dhuluma. Sitachoka kuzungumza juu ya dhuluma mpaka ile siku itaeleweka katika nchi ya Kenya.

Ukizingatia taasisi ya ndoa, utafahamu kuwa tumechukua sana mila ya Kizungu mpaka siku hizi kuna mazungumzo kuhusu ushoga na kutooa katika nchi ya Kenya. Tunaelekea wapi? Mwanaume hataki kuoa kwa sababu ataolewa na mwanaume mwingine. Kwa nini? Ni mila tunaridhi kutoka kwa Wazungu kwa sababu tumeendelea sana. Maendeleo haya yanatupeleka wapi? Taasisi ya familia inaporomoshwa. Dunia imefika mahali ambapo ndoa haina maana. Kuoa hakuna maana kwa sababu mwanaume anaolewa. Tunaenda wapi?

Ninampongeza Mhe. Duale kwa kuuleta Mswada huu. Nimefurahishwa zaidi na Mswada huu kwa sababu maeneo ya ugatuzi yamepewa wajibu wa kuchangia vipi watahifadhi mila na desturi ya Mwafrika.

Kwa hayo machache, ninaomba kuunga mkono Mswada ulioko mbele yetu.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Mary Keraa.

**Hon. (Ms.) Keraa:** Thank you, Hon. Temporary Deputy Speaker. I rise to support this very important Bill which speaks about protection of traditional knowledge and traditional cultural expression.

Traditional cultural expression may include music, dance, art, design, names, signs and symbols, performances, ceremonies, architecture and narratives. It may speak to artistic or cultural expressions. Traditional cultural expressions may be considered as forms in which traditional culture is expressed. They form part of the identity and heritage of the traditional and indigenous community. They are passed down from generation to generation. They are integral to the cultural and social identities of indigenous and local communities. They embody know-how and skills and transmit core values and beliefs. Their protection is related to the promotion of creativity, enhanced cultural diversity and preservation of culture and heritage.

I would like to congratulate the Leader of the Majority Party for having come up with this very important Bill.

In the Kisii community we like dancing. As a Member of Parliament for Kisii County, when I go to meet our women in their groups, the first thing they do is to sing and dance seriously. I also dance because that forms part of leadership that when our leaders come, we need to dance. That is the identity of cultural practice.

I support this Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Ferdinand Wanyonyi.

**Hon. F.K. Wanyonyi:** Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to contribute to this very important Bill. I want to thank Hon. Duale for bringing it up. It is something that we have been looking forward to.

Hon. Temporary Deputy Speaker, in Kiswahili they say “*Mwacha mila ni mtumwa*”, meaning somebody who leaves his culture is a slave to anything. I want to agree with what every other speaker has said.

First and foremost, I want to reckon that African culture was and is still very rich. Last year, I travelled to the far East and I was very impressed to see a caption on their local television on circumcision ceremony in western Kenya. It was about five minutes and it was so real. Out there, our culture is a tourist attraction.

When I was the Managing Director of the Lake Basin Development Authority, we were talking with the Minister for Tourism to start a Western Kenya Tourist Circuit. One of the items in that bulletin was supposed to be the western cultural activities and one of them was circumcision. The western Kenya culture is very rich. However, if we do not pass this Bill, this will be forgotten. As you know, they do it once a year in western Kenya, as Hon. Wamalwa has said. The Kilgoris one will be done next year and it is dying off. This is traditional.

I am proud to have gone through the same ceremony. My son who is about 20 years old, I wanted him to go through the same ceremony, but somehow I was not able to do that. That is part of what we should preserve in this country. The principal objective of this is to protect and promote cultural knowledge.

Hon. Temporary Deputy Speaker, I travel as you do. You leave your country and go to another country and the food that you eat is not appealing. I went to Japan and I could not even enjoy their meal. I always looked around for *nyama choma* and I could not get it. For almost one-and-a-half weeks, I starved. Our cultural way of doing things like the way our mothers cooked our food should be preserved. There as a formula of cooking, for example, millet. They would

mix it up with cassava in a special way, so that you enjoy eating it. That is something that we should preserve. It is so cultural and was done very well.

When my daughter makes a meal in my house, I never enjoy it. I would rather my wife does it because she does it the way it is supposed to be done because she was taught by her mother. We are losing a side of this. Those of you who have eaten millet and *wimbi* foods find that it is very rough unless it is mixed with cassava. Ladies knew how to do that. We have to preserve that.

In the Luhya community, *busaa* is fermented in a special way such that when you take it, it has no problem. For the last two months, we had this liquor that has been banned because it is not good. If you watch a traditional lady preparing *busaa*, you will notice that it is clean and real. You enjoy taking it. It was also used for various cultural activities, for example, when people gathered to discuss dowry. During circumcision, people drank it the whole night and nobody complained of stomachache because it was well done.

This Bill is good. It is asking us to go back to our traditions. The county governments will do what is required. I come from Trans Nzoia County that neighbours West Pokot and Bungoma counties and I expect them to do things in the traditional way. This helps.

Last but not least, we have seen an attempt by the elites and we, the leaders, to hold cultural nights like the Luhya cultural nights. If you go there you will eat the real Luhya food. We have the Kamba and Luo cultural nights where you eat what was made by the Luos those days and not now. This has to be respected. This Bill should be passed so that we can go back to our roots and do things in our cultural ways.

Somebody mentioned that the current generation has no respect for the elders, which is true. They have no respect for the elderly people, but this Bill will help our youth to grow up in a disciplined way and make this country culturally rich. I do not want to go beyond that point, but my last shot is that we should support this Bill. We should fast-track it so that it can be implemented as soon as possible.

I support.

**The Temporary Deputy Speaker** (Hon. Ms. Shebesh): I give the Floor to Hon. Fatuma Ibrahim.

**Hon. (Ms.) F.I. Ali:** Thank you, Hon. Temporary Deputy Speaker for allowing me to speak on this Bill. From the outset, I want to appreciate and strongly support this timely Bill. This Bill has recognised the importance of traditional knowledge and traditional cultural expressions. This is the way to protect our rich resource.

Globally, the world is heading towards preserving, protecting and maintaining traditional knowledge, cultural practices and intellectual property rights. The country should have done this long time ago. The Bill is very crucial for us.

In this Bill, we need to strengthen the sharing of social and economic benefits of traditional knowledge, cultural expressions and other practices that arise from conservation, protection and promotion. To make this a law, we need to recognise that we have a very rich culture and we need to protect it. We also need to promote and invest resources, so that we can preserve and promote our culture for generations to come. Kenya is recognised for its diverse cultures. However, we have not tapped into the diverse culture in the various regions or counties.

An expert was talking to mothers in the United Kingdom (UK) and she was training them on how to nurture, massage and warm a baby. She was also telling them how to feed a baby on traditional nutritious foods. When I listened to this, I felt that it was heavily borrowed from our

continent and our country in terms of our traditional practices and knowledge on how to bring up a healthy baby.

We do not appreciate such knowledge in our country and even in our homes. We buy commercial products instead of using traditional foods which are nutritious and healthy for bringing up babies.

Many international communities feel that their traditional knowledge and practices are their banks and they invest in them. In this Bill, the role of communities' traditional knowledge and cultural experts has not been supported. We need to strengthen this Bill by providing for recognition and appreciation of traditional knowledge and cultural experts. I am saying this with regard to women who are the custodians of traditional knowledge and cultural practices.

We must recognise and specify in the Bill that traditional knowledge, cultural practices and expression experts should be recognised and included in any consent and knowledge. The Bill refers to informed consent of communities which is a global requirement for human rights. The Bill refers to that in several circumstances in seeking the participation and involvement of individuals and communities who are likely to be the custodians.

We need to strengthen the sharing of social and economic benefits arising from traditional knowledge and cultural practices giving situations where communities feel that they cannot consent their disposition, use and application of traditional knowledge and cultural practices. If we allow the CS to have the veto power to repossess traditional knowledge and cultural practices, then communities or the country may be repossessed from very expensive traditional knowledge, cultural expressions and artifacts.

It is known globally that Kenya, in particular has rich cultural practices that are economically viable and instrumental in providing or injecting economic growth. Our communities get peanuts from cultural artifacts or products. Sometimes they do not benefit from such products which are generated, promoted, preserved and maintained by them. We need to impose a high premium on preservation, promotion, protection and maintenance of traditional knowledge and cultural expressions. If people do not attach some significance to the element of protection and they are not facilitated to preserve these practices, we might be trending on a very dangerous ground. Many communities might be repossessed by the CS in terms of not utilising, advancing and investing in these practices. This is because some communities are challenged and cannot invest in these cultural practices.

We need to provide in the Bill a mechanism for funding specific communities and experts to produce knowledge on cultural expressions and traditional artefacts. Sometimes we do not document these traditions and people die without passing information and knowledge to our highly westernized generations. We do not bring to the media the whole discussion on our traditional knowledge, practices and cultures. It is beautiful to preserve our cultures however expensive it is.

I was looking at a photo somebody sent me on how the Somali community used to construct their traditional huts. There is serious expertise on how they did it. It is very hard to get some of the products now because there is no investment to protect those traditional and cultural practices, knowledge and artefacts. We need to invest heavily in preserving, promoting, protecting and maintaining traditional cultural expressions.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Members, I now want to give the Floor to the last speaker because we only have five minutes. I apologise to those who

wanted to speak to this matter, but it is not concluded. Debate on this Bill will continue at the next available sitting.

I give the Floor to Hon. Janet Teiya.

**Hon. (Ms.) Teiya:** Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity. First, I support the Bill. Secondly, I thank the Mover of the Bill.

The Bill is very important for our communities. Although some practices like FGM and early marriages among the Maasai are not good, there are very many other practices that are good in our communities. Things like dressing code and traditional songs and dances of the Maasai are very important and they attract visitors to this country.

I like this Bill because it provides that protection of traditional cultural expressions and communities will be recognised. The Bill protects traditional cultures so that no one will misuse or abuse their cultures.

With those few remarks, I support the Bill. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): There is an opportunity for one more Member to speak. I give the Floor to Hon. Shukran.

You just have two minutes, Hon. Shukran.

**Hon. (Ms.) Gure:** Thank you, Hon. Temporary Deputy Speaker. I rise to contribute to this very timely and necessary Bill. Culture guides communities to their origins.

This Bill provides a framework for the protection and promotion of traditional knowledge. This will encourage our young people to stick to our cultures because they will realise how important our cultures are.

In the Somali culture, there is a dress code. However, nowadays our young boys sag their pants and put on fitting shirts, which is against the teachings of our religion. In the Islamic religion, men cannot sag their pants to show their underpants.

The other thing is the traditional---

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Shukran, you will have another 8 minutes to contribute when we continue with this debate.

## ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Members, the time being 1.00 p.m., this House stands adjourned until this afternoon at 2.30 p.m.

The House rose at 1.00 p.m.