

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 2nd October, 2018

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

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

PRAYER

COMMUNICATIONS FROM THE CHAIR

The Speaker (Hon. Lusaka): Hon. Senators, I have two communications to make.

RETURN FROM HISTORIC SITTINGS IN UASIN GISHU COUNTY

I wish to take this opportunity to welcome you back to Nairobi after the weeklong sittings in Uasin Gishu County Assembly. As you may be aware, the Senate made a resolution to sit in the County Assembly of Uasin Gishu on 21st June, 2018. This marked a very important part of our journey as the second Senate of the Republic of Kenya; and the first time that the Parliament of Kenya sat outside of Nairobi. It points to a key milestone and, obviously, a permanent stamp in the annals of history.

Hon. Senators, history is written by people who dare the journey. As we made history, I am reminded about the challenges of catching the eye of the Speaker, and a claim by some Senators on how many times they should stand to be given a chance to speak. This was a clear departure from our digital systems to a manual system and a reminder that we have the responsibility to nurture our county assemblies in developing their systems.

Hon. Senators, allow me, from the outset, to thank all Senators who made time to attend both Chamber and Committee proceedings. This was a clear demonstration of our commitment in the Senate, to pursue matters of interest to counties, and to protect the interests of county governments.

I admired the zeal and energy with which all Senators were able to move from one Committee room to another and the level of engagement with the people of Uasin Gishu County. This was real time public participation.

Hon. Senators, as we celebrate this historic milestone since the enactment of the Constitution, I wish to remind all Senators of our key responsibility to protect the interest

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of counties and their governments. I believe that by interacting with the people in the counties, we have been able to collect issues that require our legislative intervention.

These sittings resulted in a number of interactions that have cemented the relationship between the Senate and the county governments. As you may have noted, the *ad hoc* Committee on maize and the Committee on Agriculture, Livestock and Fisheries held deliberations with various stakeholders. They also held a public participation meeting on issues of maize, which was widely covered in the mainstream and social media, resulting in the release of funds from the national Government to the maize farmers.

(Applause)

Hon. Senators, three governors appeared before the County Public Accounts and Investments Committee (CPAIC) to give account of all the national revenues allocated to the counties by the Senate. The Committee on Finance and Budget held meetings with counterpart committees in the County, and undertook public participation on the Public Private Partnership (Amendment) Bill. The Committee on Health addressed health funding with stakeholders at the Moi Teaching and Referral Hospital. The Committee on Justice, Legal Affairs and Human Rights visited the G.K. Prison and Remand in Eldoret. In fact, I was happy because some Senators said that, that was the first time they were going to prison, not as prisoners.

Similarly, the committees on Health and Education, accompanied by the Senate leadership visited special schools in Uasin Gishu County. I wish to urge all Senators who may have identified any matter that may require intervention of the Senate not to hesitate to contact my office or the office of the Clerk of the Senate for further advice and or facilitation.

Hon. Senators, I also wish to express my gratitude to the leadership and the people of the County of Uasin Gishu for the warm reception we received. This welcome was not just ordinary. I also want to thank the Secretariat, led by the Clerk of the Senate. The quality and speed with which work was done by our staff was exemplary. It was not easy to differentiate that we were away from home, because work was seamlessly delivered to meet the demands of the Senate.

(Applause)

Hon. Senators, I applaud you all for the commitment and dedication you exhibited in the depth of your participation in both the Plenary and Committee meetings, as well as the engagements in Uasin Gishu County.

I thank you.

(Applause)

Sen. (Prof.) Kamar: Thank you, Mr. Speaker, Sir, for giving me this opportunity to join you in thanking our honourable Senators for the wonderful sitting we had in Eldoret. I want to thank all of them for their great participation, not just in the House, but also outside the House.

Mr. Speaker, Sir, on behalf of the people of Uasin Gishu County, I thank you and the whole House for choosing to come to Eldoret. We were honoured and privileged to host the Senate in Uasin Gishu County. The people of Uasin Gishu County are saying, thank you.

They learnt a lot from the activities that were held outside the County Assembly sittings. I would encourage the Senate to go out, not just once a year, but we need to be on the ground two, three or even four times a year. I am not saying that because we want to be visited 47 years from now, but because I recommend the benefits that the people of Uasin Gishu enjoyed to any other county. These include the excellently designed interactive sessions that were organised by the committees. We say that our sittings in this House are open because one can watch and listen to the proceedings in the Gallery but the situation on the ground is different.

Members of the public were sitting just behind the Committee Members and they learnt a lot. Some even sneaked in their questions. One of the notable things that happened were the trips that we made. When the Committee on Roads and Transportation visited the Eldoret International Airport and the bypass, they were very surprised to receive a petition on the ground.

I want to thank you, Mr. Speaker, Sir, and the Clerk for being able to execute the Petition on the same day. They had never seen such efficiency before and were very grateful. Many of them called to say, they did not know that a Petition they handed in would be executed in Eldoret.

I want to join you in thanking our staff. They worked as if they were here; they moved very calmly, you would not see but we noticed a lot of action.

The MCAs learnt a lot especially with regard to time keeping such that 2.00 p.m., meant 2.00 p.m., and 10.00 a.m., meant 10.00 a.m.

We demonstrated leadership while there and these experiences should be spread throughout the country. The experience by the Committee of Health at the School of Medicine and the Moi Teaching and Referral Hospital (MTRH) is something that should be shared, especially with our largest referral hospital; Kenyatta National Hospital.

We discovered that our professionals are seeking avenues to meet us yet they are not able to. So, it was wonderful for them to have met us and also got the opportunity to express themselves. We are referring to the Big Four Agenda, and it is important that we share their dream with the public.

In fact, in the meeting at MTRH, many issues were raised that need to be addressed if at all the universal healthcare is to be realized. These issues are very important for the committees in this House to deal with.

I want to join you in thanking the Senate and congratulate the committees for executing their mandate very well, both in the House and outside. More so, for including public participation.

We are very grateful, as Uasin Gishu County, for having been chosen to be the first ever host and destination of the sittings of the Senate outside Nairobi.

The Speaker (Hon. Lusaka): Sen. Poghismo Samuel.

Sen. Poghismo: Thank you very much, Mr. Speaker, Sir.

This is basically to return thanks and appreciate you and your office for organizing such a successful *Bunge Mashinani*, a situation which is envisaged in the Constitution but which had not been put into practice. I want to thank you together with the officers of this House for such a seamless and very successful one week sitting in Uasin Gishu.

We saw something about the sovereignty that is embodied in the people of this country. I was not there at the public hearing on maize, but one could tell that the people exercised their sovereignty directly. They took us to task over the issue. This proved that we should do more of this. We should have more of meetings outside our comfort zones.

I would like to thank Members because we all basically adapted; we literally became natives of Uasin Gishu County and adapted to drinking *mursik* became our diet.

It is, therefore, possible for us to move from place to place in this country and adapt to various cultures and situations very fast since it is only the Senate that can do that.

Thank you, for organizing that.

The Speaker (Hon. Lusaka): Sen. James Orengo, Senate Minority Leader.

The Senate Minority Leader (Sen. Orengo): Thank you very much, Mr. Speaker, Sir.

I must congratulate you for taking that bold decision. It has happened for the first time. Never before has any Chamber of the House when it was bicameral in the previous year; National Assembly or the Senate, ever held their sittings outside Nairobi, leave alone sessions.

I believe that was a matter of courage despite what others might want to say. It is there in the Constitution that Parliament can meet in any part of Kenya. It demonstrates that every part of Kenya is as important as any other part of Kenya. In that respect, Garissa is as important as Nairobi and Mandera is as important as Garissa, because sometimes when we say that we cannot cede any inch of the territory in Kenya, we should show it by taking important institutions like Parliament to other areas.

If it was possible, I would ask Parliament to go and meet in Migingo Island to assert the authority of the Republic of Kenya since everyone is scared of going to Migingo Island. I think if we went to Migingo Island, we would boost the spirits of the citizens who are living in there and who feel that they are not part of this country.

First of all, let me congratulate you, Mr. Speaker, Sir, for that very bold decision.

The other thing that is very important is what is now anchored in the Constitution; people's participation. In every business that we do including oversight, there should be participation of the people unlike when we hold sessions here in Nairobi where it is only for those who can afford to get to Nairobi.

This time, we could see people participation in Eldoret to the extent that all the communities that met there did a wonderful job including the Arua Community on the Maize Saga where we heard directly from the farmers and it was a very instructive meeting in Eldoret.

The Committees on Justice, Legal Affairs and Human Rights went to Eldoret Prison. That is another demonstration that we are to reach every citizen; whatever the

status, low or high. I hope that we use it as a basis for holding future visits in other counties.

I congratulate Prof. Kamar. She was a good host and also chaired some of the sessions. People from her own county were able to see her sitting on the Chair of the Speaker's Panel chairing an *ad hoc* Committee. This helped in boosting the sense of inclusion and participation for the people in that particular part of Kenya.

Lastly, I think that we did a wonderful job in our business. We concluded debate to the extent of the First and Second Readings of some Bills. We had Motions including the ones in which we recognized the achievement of our sportsmen and women. Speaking on that subject in Eldoret had a particular significance which was appreciated by the people in that area.

When I talked with the Governor of Elgeyo-Marakwet together with the Leader of Majority, he emphasized that one of the sources of investment in a very real and significant way in that county is from our sportsmen and women. They are taking their money back home to places where they come from, not just building houses but putting their money in business and other investments. These visits also made it possible for us to see for ourselves that investments that we take for granted are actually making a difference in those counties.

I appreciate that decision and I hope that very soon, we will go to another county including the possibility of going to Migingo Island.

Thank you.

The Speaker (Hon. Lusaka): Sen. Kilonzo Mutula Junior.

Sen. Mutula Kilonzo Jnr: Thank you, Mr. Speaker, Sir. I want to say that this was momentous and we also bonded with the citizens. For strong reasons, the leadership agreed to work together. The clip that is circulating on social media on the public hearing on the Maize Scandal was not circulated by the traditional media but by people who were visiting.

It shows the patience of leadership led by you, Mr. Speaker, Sir, listening very patiently to people who, to some extent were criticizing ourselves. The leadership had the tremendous opportunity of meeting the Berlin Marathon Champion, Mr. Henry Kipchoge, a very humble man, and the lady in Nandi County. They also had the opportunity go to MTRH.

I must say that when I went for the public participation at the MTRH, I did not know that I would end up on the operation table the following day. We should improve healthcare. I sat in an ambulance from Kapsabet and I remember questioning the doctor as to whether in real sense, that was an ambulance. It did not seem to me to be one, had the situation been much worse than it was, I do not know what those doctors would have done.

Certainly, I have a great passion to ensure that we have a better medical care because the sort of operation, minor as it was, that I underwent at the MTRH, it is most likely that it was a landmark since there was none intrusion and in just 40 minutes, I was out of there and Kenyans were at least relieved that it was not as bad as it was made to look.

We are proud of Sen. Kamar, being one of the first elected women Senators. She showcased why we should have more women in leadership. I keep saying that and, fortunately, when I do so, Sen. Beth Mugo is normally in the House

(Applause)

I sat as a special rapporteur for the 162 parliaments in gender parity, and one person that was recognized in the Women Atlas of the world, is one lady who does not speak much; Sen. Beth Mugo, for the work she has done for the women of this world. She was recognized for that. Our trip there confirms why we should elect more women.

Mr. Speaker, Sir, you have reacted to some of the comments that I have seen in the press. I do not think we should bother so much with the naysayers who are not interested in the positive things we did in Eldoret. If we can spend some money to showcase, whether in a documentary or paid-up advert, I think we should showcase the things that we did.

The mud houses that wardens are living in at Eldoret Prison are an embarrassment to this Republic yet there is a project worth so many millions that has been stuck for 10 years. Even if we spend some money, let us bring it to the attention of the world, that there are Kenyans who are living in mud houses while guarding other Kenyans. There are Kenyans who have been in remand and have had mentions since 2004 and their cases have not proceeded. These are issues that we must highlight because these Kenyans are suffering. There is a genuine need to talk about the girl child. We met some women in the prisons who are doing very nice knitting.

Mr. Speaker, Sir, I thank you for taking this bold step and, yes, I think we should sit in Nairobi but also find a way of sitting in Isiolo, Turkana and Lamu counties. I would like to have a sitting in Lamu. We can go by boat and ride on a donkey. We should consider having a sitting in Lamu County so that the people can feel the presence of the Senate.

Many people told me, especially those who we left behind, and Sen. Kamar mentioned it, that there is less traffic in Uasin Gishu County other than the Senate business that brought Eldoret back to life.

Thank you.

The Speaker (Hon. Lusaka): I see a lot of interest. So, I will give the remaining Senators two minutes each.

Proceed, Sen. Kibiru.

Sen. Kibiru: Mr. Speaker, Sir, I also join my colleagues in saying that it was a wonderful event. The issue now is; how can we fast-track some of the issues that came up out of the deliberations that we had in Eldoret? We visited a number of projects with you. A number of issues came up. I urge that we expedite the issues that came up and showcase that our trip to Eldoret can bear fruits.

Examples of the issues include, the Special Economic Zones – investors are suffering and do not get the right attention and the cooperative movement. When we sat in the County Public Accounts and Investments Committee (CPAIC) there was the issue of expediting the County Attorney Bill.

Therefore, I urge, that as Senate, we should expedite and come up with a showcase so that we can give feedback to the people of Uasin Gishu County – that, this is what we discussed, this is what came up and this is what we have achieved for that reason.

Thank you, Sen. (Prof.) Kamar for the wonderful time we had in Uasin Gishu County.

The Speaker (Hon. Lusaka): Thank you. The House Business Committee (HBC) is already dealing with the issue that you have raised. It is very important.

Proceed, Sen. Wambua.

Sen. Wambua: Mr. Speaker, Sir, I join my colleagues in congratulating you and the leadership of this House for the bold step to undertake all the sessions in Uasin Gishu. I had an opportunity to visit the bypass under construction in Eldoret with the Committee on Roads and Transportation. We went to Maili Tisa and Kapseret. You could tell that people need our services on the ground. I challenge us that we ride on the success of the visit to Uasin Gishu, to get more committees visiting the counties to address issues that directly affect our people.

We should also challenge our county assemblies; wherever they have sessions, they could set aside some time to sit under trees in those counties, especially counties that have border disputes. They could have joint sittings at the same place to discuss issues affecting them and resolve them amicably with the residents on the ground.

I also take this opportunity to thank my teacher, Sen. (Prof.) Kamar for being a very good host. She had promised to take me to her farm, which she never did but we will follow up on that later.

I thank you.

Sen. Cherargei: Mr. Speaker, Sir, from the onset, I thank you and colleagues who had an opportunity to visit Uasin Gishu County. As the custodians and protectors of the interests of the counties, it was an honour, as their neighbouring Senator. I thank my colleague, Sen. (Prof.) Kamar for hosting us very well. The people had an opportunity to attend – more so, people from Nandi County benefited.

I had an opportunity, among other 13 Senators, led by Sen. Mutula Kilonzo Jnr.; Sen. Kihika, and Sen. Wambua, to address the County Assembly. The lessons we learnt are very important. We visited the GK Prison in Eldoret. We had an opportunity to engage many stakeholders to ensure that they facilitate devolution. I thank our colleagues. In the spirit of going forward, we should ensure that we work across the country so that by the time we come and sit here – I know the naysayers, the prophets of doom and many other people who did not want us to succeed have tried to churn out stories – in the spirit of moving forward, let us not even engage them. We should ensure that we move forward.

The chicken from Nandi is very sweet and Sen. Mutula Kilonzo Jnr. can attest to that.

(Laughter)

So, any time you can have one.

Mr. Speaker, Sir, I know that where you come from, they value chicken. Any time you go to Bungoma, your home county, make sure you pass through Nandi County so that you appreciate the sweetness of the chicken, courtesy of Sen. Mutula Kilonzo Jnr.

The Speaker (Hon. Lusaka): Chicken that can land somebody in hospital cannot be sweet.

(Laughter)

Proceed, Sen. Faki.

Sen. Faki: Asante Bw. Spika kwa kunipa fursa hii ili nijiunge na Maseneta wenzangu kulipongeza Bunge la Seneti na Karani wetu kwa vikao vyema ambavyo tulifanya mjini Eldoret.

Vile vile, ninachukua fursa hii kumpongeza Sen. (Prof.) Kamar, Seneta wa Kaunti ya Uasin Gishu kwa makaribisho na kututunza vizuri kwa muda was siku tano. Ilikuwa ni tajriba nzuri kwa sisi ambao tunahudumia Seneti kwa mara ya kwanza, kwa sababu tumepata fursa ya kuonana na wananchi wengine wa Kenya ambao labda hatungeweza kuwaona katika kazi zetu za kawaida. Sio wengi wanaopata fursa kuja hapa kulitembelea Bunge la Seneti.

Kwa hivyo, safari zetu katika eneo la Eldoret zisiwe za mwisho. Tutembelee kaunti zingine. Kama Seneta wa Mombasa, ninachukua fursa hii kuwaalika Mombasa. Wakati wowote mkiwa tayari tutawapokea.

Mwisho, tumesoma mambo mengi ambayo yanafanyika katika sehemu tofauti. Kwa mfano, tuliweza kusikiza *petition* ya wakaazi wa Kericho kuhusiana na ile ardhi ambayo ilichukuliwa na *multinationals* hapo nyuma. Tatizo hili liko katika Kaunti jirani ya Nandi na pia kaunti nyingi zina matatizo kama haya. Kwa hivyo, haya ni mambo ambayo lazima Bunge la Seneti likae, tuyatatue haraka ili wananchi wawe na matumaini kwamba sisi twaweza kuyatatua matatizo ya nchi ya Kenya.

Asante Bw. Spika. Mungu akubariki.

Sen. Kihika: Mr. Speaker, Sir, I also rise to support. As Senate, we had a wonderful week with “Senate *Mashinani*”. It should be replicated over time so that we move around to different parts of this country. Some of us who had probably not spent as much time in that area of the county were able to interact and learn a lot of new things, in addition to taking *mursik*, every day for the whole week.

In addition, it was a pleasure to hear from petitioners on some petitions that we have in the Committee on Justice, Legal Affairs and Human Rights. They were very passionate. These were the petitioners on the ownership of land by multinationals. They were from Kericho and Bomet Counties. We witnessed how passionate they were. They looked up to us to help resolve the issues. This shows how important the Senate is in the era of devolution.

With the Senate Committee on Justice, Legal and Affairs and Human Rights, I visited the Eldoret GK Prison. We were quite surprised by the eloquence of prisoners as they stated their challenges. I was shocked to learn that it takes years before they are tried and that is unacceptable. As we continue with prison reforms, that was firsthand insight to us as Senate. I believe we will become better legislators back in the House, having interacted with the locals and having taken devolution to the people.

I thank you.

Sen. Khaniri: Mr. Speaker, Sir, I thank you for the opportunity. I would like to join my colleagues in hailing you and the entire leadership of the Senate for the very well-thought decision of going to Uasin Gishu last week.

I also join my colleagues in thanking our host Senator, Prof. Margaret Kamar, for the wonderful way she hosted us together with the entire county government of Uasin Gishu.

Going to Uasin Gishu County was a game changer. People are now looking at devolution differently and the Senate in a totally different manner. It was not only a game changer but also a wakeup call.

We must make it a tradition that we do not just go for sessions and committee meetings. We must set aside a day to visit projects so that we get to know what respective county governments have done. We should know whether there are any flagship projects. It was a wakeup call because some governors are already panicking because there are no projects to show Members of this Senate when we visit. It was a wakeup call and people will now start initiating serious projects. That must be part of the programme in every county we will be visiting.

We must endeavour to visit at least three counties in a year but we can do better than that. I think we also aroused the national Government---

The Speaker (Hon. Lusaka): I will add you one minute to conclude.

Sen. Khaniri: One minute will allow me to make a very important point.

Mr. Speaker, Sir, you will realise that maize farmers had many meetings with many leaders but the moment the *ad hoc* Committee led by Sen. Wetangula and Sen. (Prof.) Kamar met them, because of the fury that was exhibited in that meeting, the Government has now acted and the farmers will be paid. So, it benefited the farmers of Eldoret.

I thank you.

Sen. Shiyonga: Mr. Speaker, Sir, thank you so much, for giving this time to join my colleagues in congratulating you for the opportunity to have our sittings outside Nairobi. I also thank Sen. (Prof.) Kamar for allowing us to be in her county. The comfort we got was overwhelming.

The implementation of the issues we raised in Uasin Gishu should be considered to enrich devolution that is wanting. A petition was presented to us when we visited Moi Teaching and Referral Hospital (MTRH) and it raised one of the key issues for the Committee on Health which had visited MTRH. When we visited MTRH, we got the people that we wanted and we were able to sort out many issues raised in the Petition, real time.

We had to struggle to catch your eye. That made me to be alert in the Chamber so that I could catch your eye to be given a chance to speak. It made me happy because I remained alert and focused and that gave me all the glory that I needed.

Once again, I congratulate you, Mr. Speaker, Sir, and Sen. (Prof.) Kamar for ensuring that we were okay while in Uasin Gishu.

Sen. Wako: Thank you, Mr. Speaker, Sir, for giving me this opportunity. I must say that the historic sittings outside Nairobi were very commendable. I thank the Senator

for that area, (Prof.) Margaret Kamar; the county government, led by Hon. Mandago; and the County Assembly. They welcomed us very well but at the same time they drew us to the problem that the county faces.

I remember the meeting we had with farmers and the meeting at the hospital which for the first time made me to know the unique problems of Level 5 and Level 6 hospitals in Eldoret. I welcome the side events which were organised because they were very educative.

I remember going to Nandi. Somebody has boasted here that Nandi chicken is the best. I want to tell the Senator for Nandi that Nandi chicken is not the best. The best chicken is from Busia, followed by Vihiga, Kakamega and then Bungoma.

The Speaker (Hon. Lusaka): Sen. Wako, you are out of order!

Sen. Wako: Mr. Speaker, Sir, the Nandi chicken is so hard that it nearly killed our Senator. Ours is very soft, tasty and nice and flows down the throat to the stomach.

The Speaker (Hon. Lusaka): Senator, you are out of order! You have not done any research on that.

(Sen. Wako spoke off record)

Order! You are not on record. Let us now have Sen. Farhiya.

Sen. Farhiya: Mr. Speaker, Sir, I congratulate you for leading us to Uasin Gishu County. I also congratulate Sen. (Prof.) Kamar for being a great host and for Uasin Gishu County making history by being the first county for the Senate to have a sitting in.

I happened to sit in one of the meetings of the Committee on Finance and Budget. Like Sen. Mutula Kilonzo Jnr. has said, when you put ladies into leadership positions, they execute their roles very well.

We had a Chief Officer (CO) in one of our plenaries discussing the issue of budgets and their cycles in the county and I was impressed by how she articulated issues. If you have the right person with the right qualifications, then they will execute their roles very well. I witnessed that in Uasin Gishu County and I thank the Governor of Uasin Gishu County for giving that lady an opportunity. She happens to be in my profession. She is a member of the Institute of Certified Public Accountants of Kenya (ICPAK). I was impressed by her.

The other thing is that I also had an opportunity to attend the Committee on Health meeting in Eldoret---

The Speaker (Hon. Lusaka): Your time is up. Let us have Sen. (Dr.) Kabaka.

Sen. (Dr.) Kabaka: Mr. Speaker, Sir, thank you for giving me this opportunity to also air my views with regard to the visit in Uasin Gishu County and our experience.

First, I would like to follow suit by congratulating our able Prof. Kamar, the Senator for Uasin Gishu County for the organised visits in her county. I would also like to thank all the Senators who participated.

This is one of the conferences – if I may call it so – where every Senator was well represented. We thank God it all ended well. Article 1 of the Constitution is about the supremacy of the people. Indeed, the power has been devolved. This is an unprecedented occurrence since Independence. It was the first time after over 50 years of Independence

that Parliament sat outside Nairobi. In fact, we devolved Senate to the people at the grassroots level.

I do not want to name names, but we heard naysayers saying that this could not have been possible. I can only say that they are blind and ignorant not to see the importance of devolution in this country. This achievement was a big milestone in the history of this country. Farmers are now being paid their dues courtesy to our visit to Eldoret.

Mr. Speaker, Sir, while in Uasin Gishu County, we were able to see completed and ongoing projects even in neighbouring counties. Our visits---

The Speaker (Hon. Lusaka): Sorry, your time is up, but I will add you one more minute to conclude.

Sen. (Dr.) Kabaka: Thank you, Mr. Speaker, Sir. Our visits to various project sites were a kind of warning shot to indolent governors, that any time we will be visiting them, they must be on top of things. I urge them to complete their projects on time.

Our visit to evaluate projects was of great importance to all of us, including Sen. (Prof.) Kamar, the Senator for Uasin Gishu County. Next time, because of the proximity of Machakos to Nairobi City County, I am praying that we visit Machakos County.

Sen. (Eng.) Maina: Thank you, Mr. Speaker, Sir. I also rise to add my voice to this debate. To me, the visit was a good event. I also congratulate Sen. (Prof.) Kamar for having arranged this visit.

Our greatest achievements in Uasin Gishu County was that maize farmers were paid. However, we should ask ourselves how many other Kenyan farmers are suffering. We did not have to go to Uasin Gishu County for farmers to be paid. I wish we could have pushed their payment from here. If we say that this will be our *modus operandi*, then we will end up dealing with very few cases in this House.

I was impressed by the farmer who spoke on behalf of many Kenyan farmers. Truly, what he said was nothing new because we know maize is our staple food. Therefore, it must be given the first priority. Pastoralists who deliver their cattle to Kenya Meat Commission (KMC) in Athi River are not also paid immediately they deliver. Therefore, I would like to ask this House to identify some of these issues to push for payments for our farmers.

Next time we go somewhere, let us visit one of the dispensaries and not just a referral hospital. Some of our dispensaries are in pathetic conditions. The visit was an eye opener for us to know where the money we approve here goes to. We should not be given money just for splendor and grandeur here and there.

Mr. Speaker, Sir, one more minute, please.

The Speaker (Hon. Lusaka): Okay. I add you one minute to conclude.

Sen. (Eng.) Maina: Thank you, Mr. Speaker, Sir. I was also very impressed by the people of Uasin Gishu County. They are very united, organised and hard working. We saw many development projects in that area and I encourage them to keep it up so that they can be emulated by others.

I congratulate Sen. (Prof.) Kamar, Sen. Cheruiyot and the people of Uasin Gishu County. I hope we have more and more opportunities to visit many counties.

The Speaker (Hon. Lusaka): Let us have Sen. Seneta followed by Sen. Nyamunga and then we conclude.

Sen. Seneta: Mr. Speaker, Sir, thank you, for giving me a chance to also appreciate your office, the Secretariat, the organising Committee, the Senator for Uasin Gishu County, (Sen. (Prof.) Kamar who was our host, for making “Senate *Mashinani*” a success.

The Committee on Education visited several polytechnics. We learnt quite a number of things; one of them was that, if counties were to empower their people with technical skills, they will develop faster.

We also visited Early Childhood Development (ECD) centres. We saw great work that has been done by Uasin Gishu County in terms of developing standard ECD classes which are well designed. However, there is need to develop administration offices for ECD teachers and playgrounds for the children to make a success story.

We also managed to meet farmers and there were a number of things that came up in our meetings with them. It was sad to note that many counties do not realise that agriculture is a fully devolved function.

Sen. Nyamunga: Thank you, Mr. Speaker, Sir, for giving me this opportunity to also add my voice in congratulating the leaders and people of Uasin Gishu County for hosting us.

First of all, I would like to set the record straight. The first sitting was in Kisumu County and not Uasin Gishu County. I thank all the Senators who managed to visit Kisumu County where we attended a church service. We had a quorum 17 Senators sitting in Kisumu County. To me, that was very commendable.

(Applause)

Secondly, devolution is working. The devolved unit of health is actually working. Much as we had the unfortunate experience in Sen. Mutula Kilonzo Jnr.’s case, it proved to all of us that health *mashinani* works. Within a short time, we moved from Nandi County to Eldoret and we found all the medical staff were there waiting to receive us. One of us was treated in record time and discharged. That was commendable. I thank the people, doctors and the medical fraternity in Nandi County.

Lastly, our visit was of great use to all of us because we managed to cut across neighbouring counties like Nandi, Elgeyo-Marakwet---

(Loud consultations)

The Speaker (Hon. Lusaka): Hon. Members, let us consult in low tones.

Sen. Nyamunga: Mr. Speaker, Sir, I am making very important contribution. It gave us an opportunity to visiting many neighbouring counties. It was a good visit. We learnt a lot from Uasin Gishu County and the Governor. The fact that he moves together with his people ---

STATE OF PREPARATIONS FOR THE CONFERENCE
ON SUSTAINABLE BLUE ECONOMY

The Speaker (Hon. Lusaka): Hon. Members, I have another Communication to make. As you may be aware, Kenya will be hosting a high level conference on the Sustainable Blue Economy from 26th to 28th November, 2018 in Nairobi.

The Blue Economy is a new frontier for development as we move to tap into the productive capacity of our water resources and empower communities in a sustainable way and build our economy.

In preparation for the said conference, the Ministry of Foreign Affairs has requested to have a meeting to appraise hon. Senators on the state of preparations for the said conference and deliberate on areas of collaboration with the Senate.

The meeting is scheduled to be held tomorrow, Wednesday, 3rd October, 2018 at 7.30 a.m. in the Senate Chamber. It will be preceded by breakfast, which will be served in the Members' Restaurant, Parliament Buildings.

Hon. Senators, in this regard, I take this opportunity to invite and urge all hon. Senators to plan for and attend this important meeting.

I thank you.

Next Order.

STATEMENTS

AWARD OF SCHOLARSHIPS BY THE MINISTRY OF EDUCATION

Sen. Haji: Mr. Speaker, Sir, pursuant to Standing Order No.48, I rise to seek a Statement from the Standing Committee on Education on the award of scholarships by the Ministry of Education to Kenyan students studying outside the country in undergraduate and postgraduate levels.

In the Statement the Committee should:

- 1) State the number and type of scholarships that have been granted by the Ministry of Education to students for the last five years, indicating the area of study and county of origin of the beneficiaries.
- 2) Explain the method and criteria used in the award of the scholarships.
- 3) Provide a schedule indicating the names of the students that have benefited from the scholarships, completed their studies and returned to the country in the same period.

I thank you.

Sen. (Eng.) Hargura: Mr. Speaker, Sir, on the same Statement, this is an area where parts of this country have not benefited. It is better that we get a very clear understanding of what goes on at the Ministry of Education. This is because we hear of scholarships, but do not know how they are given. Unfortunately, some areas have not been benefiting at all.

Sen. Mwaruma: Thank you, Mr. Speaker, Sir, for this opportunity. I agree with the Senator who has sought this Statement. It is true that people are normally given

scholarships, but we never know how they got them, the criteria for selection, regional and gender balance and everything.

It should be expedited so that we get to know how the award of scholarships is done in terms of criteria and regional balance.

I thank you.

The Speaker (Hon. Lusaka): Next Order.

BILLS

Second Reading

THE PETROLEUM BILL (NATIONAL ASSEMBLY BILLS NO.48 OF 2017)

(Sen. Murkomen on 25.9.2018)

(Resumption of debate interrupted on 26.9.2018)

(Division)

The Speaker (Hon. Lusaka): We defer the Division to next time.

(Division deferred)

Sen. Haji: On a point of order, Mr. Speaker, Sir. You have not ordered the Committee on Education to give me the Statement and the period they will take.

The Speaker (Hon. Lusaka): The Committee will provide the Statement.

Second Reading

THE LOCAL CONTENT BILL (SENATE BILLS NO.10 OF 2018)

The Speaker (Hon. Lusaka): That is also deferred.

(Bill deferred)

THE IMPEACHMENT PROCEDURE BILL (SENATE BILLS NO.15 OF 2018)

The Speaker (Hon. Lusaka): Let us have the Chairperson of the Committee on Justice, Legal Affairs and Human Rights.

Sen. Cherargei: Mr. Speaker, Sir, I beg to move:

That the Impeachment Procedure Bill (Senate Bills No.15 of 2018) be now read a Second Time.

Article 10 (2) of the Constitution of Kenya provides for the national values and principles of governance. In particular, it provides that good governance, integrity, transparency and accountability bind all State and public officers. Impeachment is one of the tenets of ensuring that certain State officers exercise executive authority, both at national and county levels.

Mr. Speaker, Sir, this Bill provides for the procedure for the removal from office by impeachment of the President and Deputy President, Cabinet Secretary (CS), governor and deputy governor and the county executive committee member, among others.

The promulgation of the Constitution of Kenya, 2010 – it is good that we have the Attorney-General, *Emeritus*, Sen. Amos Wako in the House - was to ensure that we come up with legislation to facilitate its implementation.

Mr. Speaker, Sir, when it comes to impeachment within our counties, Members of the County Assemblies (MCAs) are falling into a trap, where they do not have a proper or standardised procedure or legal framework that will facilitate impeachment. Impeachment is not a novel idea introduced by the Constitution or proposed by this Bill. The remedy has been historically available in various systems of law.

For instance, in the 14th Century, impeachment in England was a means of initiating criminal proceedings based on clamour or outcry. However, subsequent subjects of impeachment were often political figures. Impeachment became not merely a means of initiating criminal proceedings, but also a method of trial.

Mr. Speaker, Sir, in the United States of America, Alexander Hamilton, the Chief of Staff for President George Washington and one of the interpreters and promoters of the US Constitution wrote that impeachment is a method of national inquest into the conduct of public men. I think he also meant women.

In this light, impeachment is not based on criminal activity, but rather morality and professional conduct. For instance, in July, 2014 a Member of Missouri House of Representatives filed articles of---

(Loud consultations)

The Speaker (Hon. Lusaka): Members, let us consult in low tones. We are discussing a very important Bill.

Sen. Cherargei: Mr. Speaker, Sir, coincidentally, they are all Members of the Committee on Justice, Legal Affairs and Human Rights, led by the Senate Minority Leader, Sen. Orenge, the Attorney-General *Emeritus*, Sen. Wako and the newly-wed in town, Sen. Kang'ata. I do not know whether he is experiencing new excitements in the marital bliss and that is what he is sharing with colleagues.

(Laughter)

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

Sen. Cherargei: Maybe he is getting tips on how to proceed in some of those issues from the most experienced, Sen. Orengo and Sen. Wako.

(Laughter)

For instance, in July, 2014 a Member of the Missouri House of Representatives filed articles of impeachment against Governor J. Nixon, who was a Democrat, for ordering Missouri's Department of Revenue to accept joint tax returns filed by same-sex couples who had been legally married in other states. The Missouri Constitution prohibits the state from recognising same-sex marriage. It is not a criminal activity as such, but rather morality and professional conduct. It is a political trial process and that is essentially what we have done.

Mr. Speaker, Sir, this behooves the question: What is an impeachment? The Senate considered the report of the special committee investigating the proposed removal from office of the current Governor of Kericho County, Prof. Paul Chepkwony, who is serving the second term.

The Senate in Philippines adopted the approval of the exposition of Sen. Miriam Defensor Santiago, who in her key note address at a workshop said-

“An impeachment trial is a unique process because it is hybrid. It is both *quasi*-judicial and *quasi* political.”

Mr. Speaker, Sir, as I indicated, these are *quasi*-judicial and political powers. It is neither a civil nor a criminal case. A criminal case is designed to punish an offender and to seek retribution. In contrast, impeachment is the first step in a process that tries to remedy a wrong in governance.

Mr. Speaker, Sir, this is an issue of governance. We are trying to improve the standards, ability and collective responsibility of public office holders. It has been said that the purpose of impeachment is not personal punishment but rather to maintain a constitutional Government through the removal of unfit officials from position of public trust.

In the first generation of devolution through the impeachment of Gov. Martin Wambora, Gov. Paul Chepkwony and the late Governor of Nyeri County, Kenyan courts have grown on the specific jurisdiction that it is a *sui generis* process that is *quasi*-judicial in nature and the rules of natural justice and fair administration action must be observed. I commend the Committee on Justice, Legal Affairs and Human Rights for bringing this Bill to the House.

During the first generation of impeachment of governors after the promulgation of the Constitution in 2010 and the subsequent elections in 2013, people could rush to court and before the matter is heard in the impeachment procedure, there were injunctions in place.

Therefore, the purpose of impeachment is not to apportion culpability, criminal or otherwise. However, it is to ensure that the people of a county are governed in a manner consistent with the Constitution and laws of Kenya. Impeachment, therefore, ensures accountability, political governance as well as policy and political responsibility. That is why, I assure the Council of Governors (CoG) and the 47 county chiefs that the Bill is not

in any way targeting them. In fact, we are trying to enrich and ensure that we come up with laws that will facilitate seamless running of our counties. This will ensure that when somebody is given an office, they do not do as they wish.

The threshold of accountability and political governance should go high. I know that collective responsibility and political accountability is something that is rare in this country, like a snow ball in hell. I assure this House that with the coming into force of this law, it will at least deal with this.

Governors and anybody else should be assured that they are not the targets. We are trying to assist Members of County Assemblies (MCAs) by giving them the capacity to ensure that they do their work and follow the procedure that is in place. In fact, before impeachment comes to the Senate, we will give them the opportunity to ensure they put in place and follow the procedure, so that they do not run into head winds of legal procedures.

Mr. Speaker, Sir, it is against this background that this Bill seeks to provide for the procedure for the removal from office by impeachment of the President, Deputy President, Cabinet Secretary (CS), Governor, Deputy Governor and County Executive Committee (CEC) Member.

This House has been given powers by the Constitution, especially on the impeachment of the President. Therefore, we are trying to put in place the necessary procedure to factor in some of these issues. For example, where the CS has not discharged his or her duties as provided for by the law or within the tenets that are within the legal framework in this country, they can still be impeached. Apart from the impeachment procedure of Governors and Deputy Governors, the impeachment of a CEC will also ensure their threshold of accountability is high so that when they mess, they can be impeached.

In fact, we are giving more powers to MCAs, so that they can assist the governor in running the county as it should be. Therefore, in the first generation of devolution, it is worth noting that most CECs could not be removed from office simply because there was no procedure or process for removal.

Mr. Speaker, Sir, the Bill provides a definite law on impeachment proceedings, thus ensuring that the removal of certain State office holders is carried out through due process of the law. As I had insisted before, we are now trying to ensure that the process is followed so that someone does not need to move to the courts because of some of the missing links when the procedure started.

The Bill also sets mandatory timeliness for various stages which is important in impeachment proceedings, thereby ensuring that the proceedings are expedited further by proposing a period within which court matters relating to impeachment shall be concluded. The Bill will minimize anxiety over prolonged, undecided fate of the chief executive of the nation, county or other members of their cabinet.

Mr. Speaker, Sir, it is worth noting that most of our judicial processes take longer time than anticipated. Therefore, this Bill will reduce public anxiety and provide enough time to the person being impeached.

Article 145 of the Constitution of Kenya read together with Article 150(1) and (2) provide for the removal of the President and Deputy President by impeachment.

In this respect, Article 145(1) states-

“A Member of the National Assembly, supported by at least a third of all the members, may move a motion for the impeachment of the President-

(a) on the ground of a gross violation of a provision of this Constitution or any other law;

(b) where there are serious reasons for believing that the President has committed a crime under national or international law; or

(c) for gross misconduct.”

Article 145(2)(a) further provides-

“If a motion under clause (1) is supported by at least two-thirds of the members of the National Assembly-

(a) the Speaker of the National Assembly shall inform the Speaker of the Senate of that resolution within the two days;”

In the procedure for the removal of the President and Deputy President by impeachment under Articles 145, 150(1) and (2), the National Assembly may be described as an indictment Chamber while the Senate is the trial Chamber. This is important so that all of us are aware that the process provided constitutionally starts from the National Assembly with the terms of impeachment. Therefore, the Senate may establish a special Committee to investigate the grounds contained in the Motion for the impeachment of the President.

Mr. Speaker, Sir, the Constitution has provided a more elaborate process on how the President or the Deputy President should be impeached. The process gets kick-started from the National Assembly. That is why I have summarized and have called the National Assembly the indictment Chamber and the Senate becomes the trial Chamber.

The Senate, as in the case of the governors, may form a special Committee to investigate grounds contained in a Motion for impeachment of the President. However, it is more important for posterity for some of us who have dreams of becoming President and Deputy President of this country to be well advised on the law that is in place.

I assure that during this time, the law might not be used because there is no one to be impeached, either the President or the Deputy President, unless the governors.

Mr. Speaker, Sir, Article 152 (6) of the Constitution provides that-

“A Member of the National Assembly, supported by at least one quarter of all the members of the Assembly, may propose a motion requiring the President to dismiss a Cabinet Secretary-”

Therefore, the Motion should be supported by at least a third of Members of the National Assembly which also have vetting powers upon CS.

Article 152(7) (a) and (b) of the Constitution states-

“(7) If a motion under clause (6) is supported by at least one-third of the members of the National Assembly—

a) the Assembly shall appoint a select committee comprising eleven of its members to investigate the matter; and

- b) the select committee shall, within ten days, report to the Assembly whether it finds the allegations against the Cabinet Secretary to be substantiated.”

Therefore, under Article 152, the National Assembly has the power to ensure that the CS is dismissed. Anyway, if the National Assembly was alive and not moribund or ineffective, they would have impeached most of the CS's. Unfortunately, because of many issues that are there, including Members of Parliament (MPs) receiving bribes of Kshs10,000 in toilets, it is hard to effect some of these things.

Therefore, the National Assembly is required to establish a select committee to investigate the matter and report whether the allegations have been substantiated. This is the ideal law.

Article 181(1) of the Constitution provides for the removal from office of a county governor. This is where we are, and this is what was used in the first generation of devolution when we saw Gov. Wambora of Embu, Gov. Chepkwony of Kericho and the Late Gov. Gachagua of Nyeri, among others, facing impeachment.

Article 181(1) states:

“(b) where there are serious reasons for believing that the county governor has committed a crime under national or international law;

(c) abuse of office or gross misconduct; or

(d) physical or mental incapacity to perform the functions of office of county governor.”

Mr. Speaker, Sir, what we have done is to import Article 181, and tried to breathe life into it by ensuring that we create a procedure. This is because abuse of office, gross misconduct, physical or mental incapacity to perform the functions of the office of the county governor are in place.

Section 33 of the County Governments Act of 2012 provides that:

“(1) A Member of the county assembly may by notice to the speaker, supported by at least a third of all the members, move a motion for the removal of the governor under Article 181 of the Constitution.”

We are now trying to ensure that we have synchronized that law to the level where we have a unified or one law in order to have a more elaborate process of how this should be done. Therefore, Members of the County Assemblies (MCAs) were using this during the first generation of devolution. We are lucky because you are the immediate former Governor of Bungoma County and you know the dangerous and lethal weapon which the MCAs used to have. This was blackmailing the governor to fulfill their selfish interests.

I know that we have very good MCAs in this nation who know their work. However, when they decide to intimidate and blackmail you by unleashing the lethal weapon of mass destruction, then you should be very worried as a governor.

Mr. Speaker, Sir, Section 33 continues to say:

“(2) If a motion under subsection (1) is supported by at least two-thirds of all the members of the county assembly—

(a) the speaker of the county assembly shall inform the Speaker of the Senate of that resolution within two days;

(3) Within seven days after receiving notice of a resolution from the speaker of the county assembly—

(b) the Senate, by resolution, may appoint a special committee comprising eleven of its members to investigate the matter.”

This is similar to the process of removal of the President by impeachment, where the county assembly is the indictment chamber while the Senate is the trial chamber.

Mr. Speaker, Sir, it is good that we have second or current serving Senators who have undergone this procedure. Many people who are dreaming, imagining or planning to vie for the position of governor; like Sen. Kilonzo Jnr., who wants to vie for the position of the Governor of Makueni; Sen. Kihika among others.

I can also see Rtd. Judge, Sen. Madzayo, who has been putting his arsenal together for the titanic battle in his county. Therefore, you should be well advised on how these procedures are so that you can know how to evade issues when the time comes. This is because it is more of a *quasi*-judicial or *quasi*-political process. It can neither be criminal nor civil; you should, therefore, be well advised.

Mr. Speaker, Sir, I want to run through Part II, because I know that there is a lot of interest in this Bill and my colleagues want to flesh it up by adding one or two issues.

Part II outlines the removal of the President and the Deputy President by impeachment and gives further details concerning the timelines within which such impeachment procedures should be concluded in the National Assembly and the Senate.

As I have said in my opening remarks, this is to put the nation---. You can imagine that if the process of impeaching the President or the Deputy President is ongoing, if we do not have a timeline where the courts can intervene or within which to conclude the matter, then even the person in office can take advantage of this situation. We want it to be timely so that the person in the office does not do this. This is because the longer it takes, the more likely the process can be manipulated. Even the courts have even been given time when they can intervene for the entire process.

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

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

I know that we have a change in the Chair. We welcome you, Mr. Deputy Speaker, Sir.

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

Sen. Cheragei: Mr. Deputy Speaker, Sir, the impeachment proceedings commence when a Member of National Assembly submits a Motion in the prescribed form. I know that as my colleagues go through the Bill, they will see that the Bill has provided for that in the Schedule. I know that this is where most people are asking how the process starts. The Constitution tried to provide an elaborate process.

Section 2 states:

“(2) The Clerk of the National Assembly shall confirm that the proposed motion—

(c) is signed in support by at least a third of all the Members of the National Assembly.

(3) The Clerk of the National Assembly, shall submit the proposed motion to the Speaker.”

At this point, the Clerk will also look at the Act and the grounds provided by the Constitution and submit to the Speaker of the National Assembly. Section 2(4) of the Bill stipulates that:

“(4) The Speaker shall examine the proposed motion and the list containing the names of the supporting Members submitted under subsection (1) and, if satisfied that the proposed motion—

(a) complies with subsection (1), approve the motion and inform the Member within three days; or”

This is the timeline that we have increased, such that when a member of the National Assembly does that, the Speaker should have responded within three days.

Therefore, within three days after being transmitted from the Clerk to the Speaker, the Member of National Assembly needs to get the necessary support and give notice within seven days. The Motion is then moved within 14 days of giving notice. The National Assembly shall dispose of the Motion within seven days from the day the Motion is moved. The Speaker of the National Assembly should then transmit it to the Speaker of the Senate within two days.

Mr. Deputy Speaker, Sir, when I started my comments, I said that the National Assembly, at this instance, becomes the indictment chamber; whereas the Senate becomes the trial chamber. Therefore, we have tried to bring in timelines to ensure that the process is carried out expeditiously.

Mr. Deputy Speaker, Sir, the proceedings for the removal of President by impeachment in the Senate is mentioned in Part II Section 5:

“(1) Pursuant to Article 145 (3) of the Constitution, within seven days after receiving the notice of a resolution from the Speaker of the National Assembly under section 4 (8) (a)—

(a) the Speaker of the Senate shall convene a meeting of the Senate to hear charges against the President; and

(b) the Senate, by resolution, may appoint a special committee comprising eleven of its members to investigate the matter.”

The role of this special committee is to investigate the allegations against the President.

Mr. Deputy Speaker, Sir, just like in the same instance for governors, we have also introduced a special committee in the impeachment of the President. Since the inception of this Senate, there are quite a number of impeachment proceedings which have gone through the process. If the special committee finds the allegations to be substantiated, the Senate is to vote on the impeachment charges.

Mr. Deputy Speaker, Sir, I know that you served in the first Senate after the 2010 Constitution. You, therefore, know that the President has a right – in the same way we have done with the governors – to defend himself. The President can choose to defend himself or not. We are supposed to have a date, time and place where he can appear

before the Senate to tell his side of the story. I know that as a Professor of law, you know that the principles of natural justice demand that you hear both sides.

If two-thirds of the Senate vote to uphold the charges, the President ceases to hold office. I want to assure the House that we are putting the law into place. Before you came in, it was well advised that if anyone dreams, imagines or puts his arsenal in place to run for the Presidency, they should be well advised about the law. I know that we might not impeach the current people in power – both President Uhuru Kenyatta and Hon. Ruto – any time soon. However, if you vie for the position of President or Deputy President, you should be well advised.

The Deputy Speaker (Sen. (Prof) Kindiki): Order, Senator. Are you making this law for particular people?

Sen. Cherargei: No, Mr. Deputy Speaker, Sir. I was just using a comparative analysis to advise the people who want to become running mates or to vie for the presidency that they should read the law so that when we want to impeach you in future--

I know some of my friends who want to become running mates and there are others who want to vie for the presidency in this House. You should, therefore, get advice so that you can be ahead of others, who have not been Senators. We are praying for those people who want to become running mates. We are, therefore, making these laws to enrich the Constitution---

The Deputy Speaker (Sen. (Prof) Kindiki): They appear to be very many.

Sen. Cherargei: Mr. Deputy Speaker, Sir, of course, they are many. I know them all by name.

(Laughter)

However, before the Holy Spirit guides them, we will mention them when that time comes and in an appropriate forum.

Allow me to move to the part on the removal of a Cabinet Secretary. Those who are in the winning team and are looking forward to be Cabinet Secretaries should pay attention so as to know where they can fall even as they prepare for 2022.

A Motion in the prescribed form will be prepared by a Member of the National Assembly asking the President to dismiss a Cabinet Secretary. I am not accusing Members of the National Assembly of anything but if the allegations are anything to go by, and if they were focused on their work of overlooking the national Government Cabinet Secretaries, then not less than half of the Cabinet as it is constituted should have gone home for many issues. We hear allegations of the Members of the National Assembly receiving Kshs10,000 in public toilets and some of them have admitted before--

The Deputy Speaker (Sen. (Prof.) Kindiki): Order. Would it make a difference if the toilet was private? You seem to be saying that the allegations are committed in public toilets.

Sen. Cherargei: Mr. Deputy Speaker, Sir, it is within the precincts of Parliament. I do not know if the toilets that are in National Assembly and the Senate are public or

private toilets because the public cannot use them. It is only the Members who use them. Maybe, it may be the corridors or the lounges but I want to say that if---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator. For purposes of your argument, the classification of the toilet is irrelevant.

Sen. Cherargei: Mr. Deputy Speaker, Sir, these are some of the issues that are in the public domain. I am telling Kenyans what the Members of the National Assembly should be doing in order to impeach the Cabinet Secretary *vis-a-vis* what they are allegedly doing.

The Clerk of the National Assembly will forward the Motion to the Speaker of the National Assembly upon confirming that the Motion complies with the law. The Speaker of the National Assembly will examine the Motion, and if it complies with the procedure, the Member intending to move the Motion will be notified within three days. You will realize that we are trying to reduce the timelines so as not to create space for monkey business.

If you create more time in African countries or anywhere across the world, there can be monkey business and some issues can come up. Therefore, by reducing the timelines, we want to reduce the anxiety of the Cabinet Secretary and the nation. If we do not give timelines, the office holder might delay the process of discharging his or her mandate.

The Member will then move the Motion, and if it will be supported by at least one-third of all the Members, the National Assembly will be required to appoint a select committee to investigate and report to the National Assembly within ten days. The Speaker has been given the power to investigate within ten days after the Motion is supported by one-third. If the select committee finds allegations, no further proceedings are to be undertaken. The National Assembly will be required to vote.

If the allegations are substantiated, the resolution requires the Cabinet Secretary to be dismissed. Clause 11(a) and (b) states that:

“Pursuant to Article 152(10) of the Constitution, if a resolution under section 10(b)(ii) is supported by a majority of the members of the National Assembly –

- (a) the Speaker shall promptly deliver the resolution to the President; and
- (b) the President shall dismiss the Cabinet Secretary.”

Therefore, you will realize that before this gets to the President, in respect to the principle of national justice, we have ensured that the Cabinet Secretary can appear before the Senate Committee during the investigations to defend themselves or choose not to if they wish, such that it will be very easy when it gets to the point where the National Assembly is concluding the removal.

Finally, Part Four is on the removal of a county governor and deputy governor. We want to ensure that the business of the Senate is not to impeach or remove a county governor or deputy governor. We are trying to put in place the law that will ensure seamless, transparency and accountability such that the office-holders will behave and conduct themselves in the manner that befits a serious State officer or an office holder.

We have looked at Article 181 of the Constitution and Section 13 of the County Governments Act in line with this. In the first generation of devolution, you will find that

we had Members of the County Assemblies who did not know where to start when they wanted to impeach a governor.

I attended the funeral of the late Ambassador George Godia in Vihiga and there were allegations that the Members of the County Assembly (MCAs) want to impeach the Governor of Vihiga County, hon. (Dr.) Wilberforce Otichillo. However, they were wondering how to start the process. I am asking them to hold their horses until this law becomes an Act. We would want to see this law put into action and to see if they have got the necessary processes in place.

Clause 14 (1) states that:

“A Member of the County Assembly who intends to move a Motion under section 13, shall submit to the Speaker of the county assembly the Motion together with a list of the members of the county assembly who support the Motion, in the form prescribed in the Schedule.”

We know that there are challenges on the issue of capacity. I am not saying that one must go to school to be a leader though there are certain minimum academic qualifications that one must meet or particular standards to be met as provided by Chapter Six on leadership and integrity.

With the challenges that come out, we have tried, for all intents and purposes, to put in place a standardised form to guide our Members of County Assembly on how they should ensure that they---

The speaker of the respective county assembly is not required to examine the Motion as he does not---. I know that there was contention in this.

Clause 14 (2)(b) states that if the Speaker is satisfied that it:

“Does not comply with Section 13, decline to approve the Motion and inform the Member within four days giving reasons for the refusal”.

We have said that this Motion should be looked at by the speaker of the respective county assembly within four days so as to prevent what I had earlier referred to as monkey business. We know what happens in the running of counties nowadays. If we do not have proper laws in place, we might run into criminal enterprises.

Mr. Deputy Speaker, Sir, I know you as a professor of law. We have introduced the reasons as to why a county assembly speaker might approve or decline to approve so as not to risk somebody allegedly meeting somewhere with the governor and then they decide to do monkey business to a point where they can decide that the Motion should not go through yet the accusations read by the Member of the County Assembly are valid. That is why we have put “within four days”. It is either the lack or in the wisdom of the county assembly speaker that will make him allow it or disallow it. If it is the lack of it, they must give us the reasons if it is in his wisdom.

The Speaker is required to notify the member within four days writing reasons for the refusals.

The Bill further provides in Clause 14 (3)(a) that:

“If the speaker fails to respond to Motion within seven days of receiving the Motion under subsection (2)-

The Motion shall be taken to have been approved”.

In this country, we have had office holders decide to disappear or create their own kidnapping. I think that it mostly happened in the first generation of devolution. I do not want to mention names. Some people decided to disappear for one week and it came to the attention of this Senate at that point in time. We all know how powerful some governors are. It is not easy even to shake their hands.

Mr. Deputy Speaker, you know this very well. If they decided to disappear ---

The Deputy Speaker (Sen. (Prof.) Kindiki): I do not know, Senator.

Sen. Cherargei: Mr. Deputy Speaker, Sir, they are so powerful because of the resources they control. They run their own governments. They have resources at their disposal. In fact, I experienced the wrath of the first Governor of Nandi County when I was attacked by goons. Some of them are dangerous. They can ensure that you do not see the light of day.

Some speakers may decide to disappear and not to be seen to approve the Motion. We are saying that if they fail to do so within seven days, then that Motion will be deemed to have been approved. If they try to do their chicken or monkey business so that they do not approve the Motion, it will not change anything because within the seven days stipulated in this Bill, that Motion will be deemed to have been approved.

This is also meant to protect the Mover of the Motion. We need to protect the MCA who is moving the Motion on the Floor of a county assembly. As I said, we have set 14 days as the timeline within which the impeachment of the President, the Deputy President, the Cabinet Secretary, the Governor, the Deputy Governor and the County Executive Committee Member can commence.

The law provides that a governor be served with a copy of the Motion and other documents and, be accorded an opportunity to appear before MCAs to be heard. This is a new development because for the first time, the governor will be given an opportunity to appear before the MCAs.

Currently, I am happy that we do not have governors who suffer from inferiority complex. However, the Council of Governors (CoG) might see this as infringing on their rights. If they do not wish to appear before the MCAs, so be it. However, if they respect the law and the spirit of devolution, they will have no choice. They must appear before the MCAs so that they can also be heard in accordance with the principles of natural justice.

If the County Assembly by two-thirds majority approves impeachment of the governor and then proceeds to the Senate, the Speaker of the County Assembly shall submit the notice of Motion and any other necessary documentation to the Senate within three days.

It further says here that:

“Within 10 days of receiving the resolution of the County Assembly, the Speaker of the Senate will be required to convene a meeting of the Senate to hear the charges against the governor”.

In this regard, the Senate may investigate the matter with or without the involvement of a special Committee. This Senate has done it before and the process is almost similar.

If majority of the county delegations of the Senate vote to impeach the governor, he will cease to hold office. The Speaker of the Senate will inform the Speaker of the county assembly of that resolution. If the Senate vote fails, the Motion to impeach the governor on the same charges may only be reintroduced in the County Assembly, 90 days from the date of the previous Senate vote.

I know there is a contention on this. Many people think it should be more than six months or even within a year. However, we put 90 days so that we do not risk if the impeachment procedure against, for example, governor 'x' or 'y' fails. We also prevent it from becoming trivial where MCAs, because of political vendetta, may gang up against a governor because of political forces, pressure, clannism and commercial interests initiate a process of removing him from office.

The procedure for the removal of the governor applies with necessary modification for the removal of the deputy governor. Therefore, the procedure of removing the governor is the same as that of the deputy governor. The procedure of impeaching the President is the same as that of removing the Deputy President from the office. We have also highlighted the procedure for removing a Cabinet Secretary from office.

I urge the new generation of governors to read the law and understand it, especially Article 181 of the Constitution and Section 33 of the County Governments Act. I plead with hon. Senators to fast-track the passage of this Bill into law, so that we empower MCAs to do their work effectively.

We are not targeting to remove governors from the office in this Bill. We have seen their memorandum and we will take on board their concerns. The Bible says that the guilty are always afraid. All the governors should not worry, but discharge their mandate within the law. We are only asking them to be accountable and transparent to the people in their counties. They should play their politics to the letter and behave in a manner that befits a State officer.

If they strictly follow the law, be accountable and uphold the national values and principles as provided under Article 10 of the Constitution, I am sure even for the next many generations, we might not even need to impeach a governor or deputy governor, the President and the Deputy President.

I see Rtd. Judge, Sen. Stewart Madzayo is excited about this law because I know when he becomes the governor he will discharge his duties within it. We will not need to bring him here or ask him to appear before the County Assembly to defend himself against some allegations. Equally, Sen. Mutula Kilonzo Jnr., who has a dream of becoming Makeni County Governor, is also excited.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order. Sen. Cherargei, why are you turning yourself to be IEBC? You already know who will run for what office from one corner to the other of the country. How is that possible?

Sen. Cherargei: Mr. Deputy Speaker, Sir, it is my prayers. In the African context, we do not expect the worst, but always the best. As a prophet of hope and being prayerful, I can see the future. I can even tell your - Mr. Deputy Speaker, Sir - future from where I sit.

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator! Are you a fortune teller or something?

Sen. Cherargei: Mr. Deputy Speaker, Sir, you cannot say that in our African context. If you say I am a fortune teller, that is a distortion of westerners. There is a specific name which is provided.

The Deputy Speaker (Sen. (Prof.) Kindiki): Which is?

Sen. Cherargei: Mr. Deputy Speaker, Sir, these are prophets of hope and the future. I was with Sen. Madzayo and Sen. Mutula Kilonzo Jnr., when we were having the sweet chicken in Nandi County. Sen. Mutula Kilonzo Jnr. can attest to that fact that the chicken in Nandi is the best followed by the chicken from Busia, Kakamega and many other counties.

The Deputy Speaker (Sen. (Prof.) Kindiki): Is that as a result of a scientific study?

Sen. Cherargei: There is a scientific study after---

The Deputy Speaker (Sen. (Prof.) Kindiki): Or it is in the same trend of fortune telling?

Sen. Cherargei: No, it is scientific. I have witnesses. These are Sen. Stewart Madzayo, Sen. Rose Nyamunga and Sen. Mutula Kilonzo Jnr., because they know its sweetness.

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

The Deputy Speaker (Sen. (Prof.) Kindiki): What is it Senator Wako?

Sen. Wako: Mr. Deputy Speaker, Sir, is the hon. Senator in order to say that Sen. Mutula Kilonzo Jnr., knows the sweetness while we know that Sen. Mutula Kilonzo Jnr. did not know the sweetness but the bitterness of the chicken which almost killed him?

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Cherargei, are you misleading us? Did Sen. Mutula Kilonzo Jnr., enjoy the chicken in Nandi? He did not!

Sen. Cherargei: Mr. Deputy Speaker, Sir, I was there. There are many witnesses. He really enjoyed it. Although we ate within a short time, Sen. Mutula Kilonzo Jnr., enjoyed. He even made a comment about it and even Sen. Madzayo can attest to it. The problem is that we ate within a short time. There is a song entitled; "It is short and sweet". So, you can understand that it was very sweet. I can say that because Sen. Mutula Kilonzo Jnr. accepted.

The Deputy Speaker (Sen. (Prof.) Kindiki): Okay, hon. Senators. Let us abandon the chicken story. Let us come back to the Bill.

Sen. Cherargei: Mr. Deputy Speaker, Sir, before I move to the final part in the interest of time and also to give my colleagues time to comment and add their *Solomonic* thoughts to this Bill, the aspect of ensuring the process of impeaching a governor is within the procedure.

I thank my Committee Members. In the process, we want to create the procedure and ensure that the process is done within the law and the aspect.

On Part IV of the Bill, which is the final part, miscellaneous provisions have been provided for - removal of the County Executive Committee (CEC) Member. It

remembers how a Cabinet Secretary should be removed. We have also provided short timelines so that we can ensure it is done within time.

The Bill proposes that the process for the removal of a county executive member would commence by a Member of a County Assembly (MCA) submitting to the Speaker of the respective county assembly, a Motion in a prescribed form supported by at least, one third of the Members of the County Assembly. This is provided for. When we are relooking at the process or when somebody wants to challenge the court, there is always a process or documentation. We are still building the capacity of our county assemblies. This will ensure that we give MCAs a standardized process. If we do not have a standardized process, an MCA in Isiolo County would come up with a totally different thing from Makueni, Kisumu or Mombasa counties.

If the Motion complies with the requirements, the MCA intending to move the Motion is notified within two days. We are trying to ensure that we limit the time so that we also put to rest the anxiety of a CEC or even a governor because the longer it takes, it might affect the operations of the county.

If, however, the speaker declines to approve the Motion, the speaker shall inform the Member within two days. The Member is then required to move the Motion and if supported by at least one third of the Members, the county assembly shall appoint a select committee to investigate and report to the county assembly within 14 days. The committee looks at the charges that have been raised against the CEC. We are fast-tracking this issue to ensure that the report is ready within 14 days.

The CEC has the right to appear and be represented before the select committee just like the President, the Deputy President, Governor, Cabinet Secretary or Deputy Governor. They choose either to represent themselves or be legally represented before the committee.

If the select committee finds that the allegations against the CEC are unsubstantiated, no further proceedings shall be taken. If any of the allegations are, however, found to be substantiated, the county assembly shall vote on impeachment charges. If the Motion is supported by two thirds of the MCAs, the speaker shall deliver the resolution to the governor within three days. The governor shall dismiss the Member of the county executive within two days of receipt of the resolution or upon receiving the resolution.

We have tried to focus on time in all these aspects of impeachment procedure. This should be done within a month or not more than one month. At the end of the day, it is within a specific timeline. We have to fast-track it in order to put anxiety at bay and ensure that it does not give opportunity for other issues to arise.

If the county assembly vote fails, a Motion to impeach the county executive committee member based on the same charges may only be reintroduced to the county assembly, 90 days from the date of the last county assembly vote on the matter, and if only the Motion relates to a different fact. There is a principle of double jeopardy in criminal law. We have tried to mirror that in this aspect. Considering so many interests of county governments or even specific interest groups – commercial, political or any aspect – there could be somebody who is targeted politically.

Therefore, if we do not take care, we will run into a very dangerous landmine where if the Motion fails today in a particular county assembly, be it Tharaka-Nithi or Mombasa county assemblies and they have failed to impeach a CEC, for example, we want to ensure that the same facts are not used against the officer again. Maybe the same facts that the MCAs have reintroduced are found to have flimsy reasons. So, within 90 days, you can introduce a motion against a specific CEC but on different facts.

I assure the county executives in our counties that their jobs will be protected. This also ensures that MCAs or anybody else does not, in any way, proceed unnecessarily.

There are miscellaneous provisions. These are threshold services or processed. You can either be served personally or any other form these courts have developed or in form of advertisement in newspapers of national circulation.

An important thing I would like to comment on Section 34 on court proceedings. The Bill provides that a person may move to the High Court to review a decision under the proposed law within 14 days of the decision. We have tried to ensure that when the process is ongoing, court injunctions or any court decisions that can come along the way, will wait until the process is finished. Then, one can move to the High Court for review.

The High Court is then required to dispense with the suit within 30 days of filing. We have also ensured that, if there is any decision after the county assembly or Parliament, somebody who is affected; the President, the Deputy President, Governor, Deputy Governor, Cabinet Secretary or CEC, have time to move to the court of law. If they feel that they were unjustly removed from office and they do not have confidence in the entire process, within 30 days the court should have dispensed with the issue. It is normally said that justice delayed is justice denied and that is why we have ensured this is done within 30 days.

An appeal of the decision of the High Court shall be filed within 14 days, heard and determined within 45 days. So, within 14 days, if the High Court makes an unfavourable ruling to a particular party, they can move to the next court. This will be heard and determined within 45 days. With that hierarchy up to the level of the Supreme Court, we have ensured that this is done within 45 days.

So, the issue of reviewing the process in a court of law or through the judicial process, can come later when somebody does not believe in the outcome of the county assembly or Parliament. If anyone wants to challenge, they should wait until the process is completed. The Bill will amend sections 33 and 40 of the County Governments Act to align the provisions of the Act to the proposed law on impeachment proceedings.

Mr. Deputy Speaker, Sir, finally, I urge my colleagues that this is a very important Bill that will assist. Devolution is serving its second generation. We need to ensure that the legislation will ensure seamless running of our counties. It will also ensure that the threshold, as provided for under Chapter Six of the Constitution on Leadership and Integrity, the spirit and substance of our Constitution is met.

I assure all stakeholders, the presidency, Council of Governors, county governments, Governors, CECs and Cabinet Secretaries, that if they serve this country diligently, then there will be no need of applying this law.

Mr. Deputy Speaker Sir, if we fight corruption in this country and ensure accountability, transparency, focus and responsibility, the law will not need to come into use at any given time.

I call upon my colleagues to give their comments and request this House to fast-track the process and ensure that we complete it.

With those remarks, I beg to move and request Sen. Mutula Kilonzo Jnr., to second.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Mutula Kilonzo Jnr, I hope you will not revisit the chicken matter, which was used unnecessarily by the Mover.

(Laughter)

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, I will not. I do not think that it is something that we want to discuss in the sort of detail that Sen. Cherargei wants to.

The Deputy Speaker (Sen. (Prof.) Kindiki): He seems to have an interest, especially in the chicken.

Sen. Mutula Kilonzo Jnr.: Yes, Mr. Deputy Speaker, Sir. It was a bitter-sweet experience.

I rise to support the Impeachment Procedure Bill, 2018. During public hearings, there are those who thought and said that there is no reason to have a procedure in a separate Act to impeach the President and the Deputy President. This is because Articles 144, 145 and 150, in their own view, appear to be absolutely foolproof. Therefore, they were of the view that it is possible that this Bill might derogate from the principles in the Constitution.

Mr. Deputy Speaker, Sir, that decision will be left to the Senate to decide. However, we still think that the framework of impeachment of the President, Deputy President, Governor, County Executive Committee Member and Cabinet Secretary ought to be in one law like this, for whatever reason.

You are a teacher of Law and there is repetition. This is the sort of repetition that is not tautologous; that is the word. If I was a student I would get good marks.

Mr. Deputy Speaker, Sir, you and I were here in the last Parliament and we ran into headwinds in the impeachment of governors. In fact, in the impeachment of Deputy Governor Kiala an issue arose; whether we can actually impeach a deputy governor, because it is not provided for in the Constitution. We had to make a law, through Mr. Kiala's impeachment, that the impeachment of a deputy governor, applies *mutatis mutandis* with the impeachment of a governor. We have removed those ambiguities by providing for the impeachment of a governor.

Mr. Deputy Speaker, Sir, your friend, Judge Mabea, ruled that you cannot impeach a county executive, and he gave reasons for that. We have in this Bill, through the Committee on Justice, Legal Affairs and Human Rights, provided a method for the impeachment of a county executive. This is because the county executive, just like anybody else, is answerable to the governor and ultimately to the people who have put the governor in office. That is why the procedure is elaborate.

In terms of challenges, you are well aware of Gov. Wambora and his alleged nine lives. We ended up with Wambora one, Wambora two---

The Deputy Speaker (Sen. (Prof.) Kindiki): How many lives does he have?

Sen. Mutula Kilonzo Jnr.: Only one, Mr. Deputy Speaker, Sir.

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): So, the nine lives are alleged?

Sen. Mutula Kilonzo Jnr.: Yes, Mr. Deputy Speaker, Sir. It is the proverbial cat.

You know the challenges that we had in the impeachment of Gov. Wambora. The matter went on all the way to the Supreme Court and they sought an advisory opinion. The Supreme Court, in its wisdom said that when you impeach an elected representative of the people, like the governor, you must have public participation. This law provides for how that public participation on impeachment will be done.

Mr. Deputy Speaker, Sir, Article 152 of the Constitution talks about the impeachment of Cabinet Secretaries. The Chairperson of the Committee on Justice, Legal Affairs and Human Rights, Sen. Cherargei, appeared to say that, in fact, if our Members and colleagues in the National Assembly had taken Article 152 seriously, we would possibly have impeached two Cabinet Secretaries by now.

Why have they not been impeached? We do not want to impute improper motive, but it is in the public domain that some people ended up with Kshs10,000 in their pockets. It would have been much better if this law was in place so that we can have a proper process of impeaching a Cabinet Secretary if they befool the Constitution.

Mr. Deputy Speaker, Sir, a question has arisen, just like in the case of the late Gov. Gachagua – may his soul rest in eternal peace - and it will arise, assuming that the Governor of Migori is to be impeached. Now that the Governor is incarcerated, can somebody move a motion to impeach him, when they are unable to serve him? That arose during the case of the late Gov. Gachagua, where his lawyer, Mr. Wanyama, went with a letter and said: “This is a notice of appointment by Gov. Gachagua; you are at liberty to serve me.” The County Assembly said: “No! We do not know who you are; we will serve Gov. Gachagua.”

Mr. Deputy Speaker, Sir, an issue arose again on what constitutes evidence for purposes of impeachment. Was Gov. Wambora served with the evidence that would lead to his impeachment? I will surprise you. Your friend, the Governor of Makueni’s impeachment proceedings are still pending in court to date. Those are the questions that we have attempted, as the Committee on Justice, Legal Affairs and Human Rights, to address here.

An issue arose in the case of Gov. Mwangi wa Iria. You were here and remember how we quarreled as to whether the court should issue an injunction.

The Deputy Speaker (Sen. (Prof.) Kindiki): Who did you quarrel with?

Sen. Mutula Kilonzo Jnr.: Amongst ourselves, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): You need to be clear.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, at the time, both in Gov. (Prof.) Kibwana’s and Gov. Mwangi wa Iria’s cases, the Speaker was called upon to

make a ruling. The quarrel we had here was: “Can we proceed with this impeachment irrespective of the court order?”

Mr. Deputy Speaker, Sir, the then Speaker, Hon. Ekwe Ethuro, in his wisdom ruled that we must obey the court order however painful we thought it was at the time. It turned out that we were right. I am glad now that after speaking to the Judiciary and in this law, we have said that there is a process that will allow any person who is aggrieved by the impeachment process to go to the tail-end and attack the entirety of the proceedings, as opposed to what was perceived at the time to be an attempt to gag Parliament from conducting its proceedings.

That is why there was a constitutional amendment by hon. Kaluma which failed, saying that we cannot be enjoined by the courts. We refused because Parliament must also agree that it is subject to the law.

Mr. Deputy Speaker, Sir, the Chairman, Sen. Cherargei, mentioned the governors. I do not think that the intention of this law, as it is, is to make it easier to impeach a governor. We have said it very clearly - the Senate spoke very clearly in the impeachment of Gov. Chepkwony - that you cannot impeach for the sake of it.

Since you are a professor of law, a question must be addressed either now or later. What constitutes gross violation? What measures do we use to say that this is a violation of the Constitution that is not gross? What was the intention of the drafters of this Constitution – Sen. Wako is here – in Article 182, to say that there must be gross violation? That debate is still out there.

This law does not attempt to interrogate in detail what gross violation of the Constitution is. We had the case of Governor Prof. Chepkwony and we quoted impeachment of President Bill Clinton in the case of Monica Lewinsky. In fact, the word is not “quasi-judicial” but the Chairman has used “legal-political”. That means that it is both a political and legal process. How you find the balance is another thing.

According to Sen. Cherargei – I do not know whether he wants to be a fortune teller – he says that the possibility of impeachment of a president and deputy president will not arise soon. I do not know how he could figure that out in his fortune-telling. I wish he was doing fortune-telling---

The Deputy Speaker (Sen. (Prof.) Kindiki): I think he is applying the legal-political scale of balancing.

(Laughter)

Sen. Mutula Kilonzo Jnr.: I wish he was using the fortune-telling one when I was wining and dining with him.

The Deputy Speaker (Sen. (Prof.) Kindiki): You are on the “chicken” again?

(Laughter)

I thought you promised to avoid the “chicken” bit.

Sen. Mutula Kilonzo Jnr.: I will avoid it.

Mr. Deputy Speaker, Sir, the possibility of impeachment of a president and a deputy president is in the Constitution. Since you are also a teacher of law and you know,

this was not in the old Constitution. The drafters of the Constitution thought that the Senate and the National Assembly can subject a president to impeachment proceedings and that is a reality that I would like to see. A president can be put to task; like President Bill Clinton was put to task and told that he violated the Constitution. He had to answer those questions the way he did. We should not say it is impossible because the drafters of the Constitution made it possible to impeach a president.

I mentioned this to you when we were in Eldoret. I was very glad when the late Governor Gachagua came here and defended himself before the House. A governor must face the whole Senate of the Republic of Kenya as opposed to appearing before 10 Members of a special committee.

Although it is put here as an alternative, I would have preferred where the whole Senate is the main method of an impeachment. The same way, I would prefer that if we were to impeach a president, we cannot leave that process to 10 people in the National Assembly or the Senate. We should have him face 67 Senators and a speaker where everybody is watching so that we give Kenyans the benefit of listening to the allegations. Like they said in the Supreme Court, it cannot be a process like it was used by Members of County Assembly (MCAs) to get money and trips out of their governors like in the case of Nairobi and other counties where MCAs were complaining that they were refused trips.

This law must speak to Kenyans and particularly the people who have been given the mandate to impeach elected representatives. It cannot be whimsical or flippant, like in the case of Nyeri, to “sleep” in the Chamber or do whatever it takes to threaten impeaching the governor or getting whatever they want. That is not to say that Cabinet Secretaries should not face the full force of the law.

I thought that I would have a chance to address the Senator for Meru but he took off again, like he did at some point when he proposed a Motion to impeach a Cabinet Secretary.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order Senator! Are you imputing improper motives on our colleague? You should not use words like “took off” but instead use words like “retreated”.

Sen. Mutula Kilonzo Jnr.: We would have benefited from his Motion to impeach a Cabinet Secretary because since the advent of this new Constitution, we have not had the benefit of watching a full process.

I heard the Majority Leader of the National Assembly saying that Members of the National Assembly do not understand the impeachment process under Article 152 of the Constitution and that they are using it as a method of arm-twisting Cabinet Secretaries into positions that they want in their favour. I do not want to quote the Women Representative of Kiambu County but that appears to have been a motivation. This law should put in place a process where under Article 153 we will put Cabinet Secretaries to task.

We lost an opportunity during the “Sugargate” process--- Even now as we sit here, we do not know whether the sugar that Kenyans consume has mercury or not because we as Parliament failed in our duties, under Article 152, to put to task the

Cabinet Secretaries who were alleged to have allowed the importation of contraband sugar.

That said, in terms of this law, we have factored in, as the Committee on Justice, Legal Affairs and Human Rights, various recommendations made by the stakeholders. When I talk of deputy governors, Machakos County comes into my mind. When the Deputy Governor of Machakos County was saved by the Senate, he ended up suffering. Could we find a method of protecting our deputy governors just like the deputy speakers?

The Deputy speakers of Murang'a, Meru and Lamu counties have been thrown out of office because the court said that there is no provision in the law for a deputy speaker. Sometimes we must speak to this Constitution. There are Articles and aspects of interpretation and we must breathe life into the Constitution.

Mr. Deputy Speaker, Sir, the seat you are occupying is by virtue of practice, usage and custom. The positions of the Senate Majority Leader and the Senate Minority Leader are not provided for in the Constitution but they sit here legally by virtue of interpretation. It would be an absurdity to say that you can have majority and minority leaders in the National Assembly but not in the Senate, yet Parliament is recognised under Article 93.

This is one of the legislations that we must pass as quickly as possible. I hope it will not end up in the dustbin and the annals of history and the shelves of Parliament. Let it not be said that a Bill by Sen. Cherargei ended up nowhere.

With those few, I thank you.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you Sen. Mutula Kilonzo Jnr.

Sen. Cherargei, I hope you have taken note and your Committee will perhaps look deeper into some of the issues that have been raised by the Seconder of this Motion.

I think we dealt with this at length during the previous term. We dealt with the issue of gross violation of the Constitution, which is also repeated in Paragraph (c) of Article 181. Therefore, there must be some threshold and that kind of thing that causes outrage. In my view, it is a violation whose implication is to cause outrage that the Constitution has been defiled. It is not just violating or breaking the law.

Those are important suggestions, including the issue of plenary being the default mechanism as opposed to the select committee. These are experiences that the House should build on, so that the law does not just do the nuts and bolts and leaves out the emerging practices, experiences and jurisprudence.

Order Senators, I will now propose the question.

(Question proposed)

Proceed, Sen. Wako.

Sen. Wako: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to speak on this very important Bill. I commend the Committee on Justice, Legal Affairs and Human Rights, of which I am the father, in particular, of the Chairman---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Wako. What role have you assigned yourself to in that Committee? What did you say you were in that Committee?

Sen. Wako: I am the father of the Chairman.

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): You are the father of the Chairman, the Committee or of both?

Sen. Wako: Mr. Deputy Speaker, Sir, of the Chairman and Sen. Mutula Kilonzo Jnr.

The Deputy Speaker (Sen. (Prof.) Kindiki): All right. Let me not pursue it further than that. You need to be clear.

Sen. Wako: Mr. Deputy Speaker, Sir, I regard the Chairman and Sen. Mutula Kilonzo Jnr. and other Members as my children in law. In other words, they are my juniors.

The Deputy Speaker (Sen. (Prof.) Kindiki): That is clearer and it is not contested.

You may proceed.

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

This is an important Bill, which I am glad is being passed now. The very serious powers of impeachment have been conferred to the Senate under our Constitution. In fact, Article 145 is very clear that, we, the Senate, the “upper house” and the House of elders should be entrusted the exercise of this very grave powers to impeach a President, and under the County Governments Act, to impeach a governor. Of course, when it comes to Cabinet Secretaries, (CS’s), this is done by the relevant committee of the National Assembly. However, for the impeachment of the governor and the President, it is upon us to exercise that grave power.

Mr. Deputy Speaker, Sir, you were the Majority Leader in the previous Senate. I am sure you noticed that when we first impeached a governor, there were a number of people who were saying that the threshold for impeachment had not been met. In other words, they felt that whatever allegations there were against the governor at that time - let me use the words of the Constitution – “such as gross misconduct or gross violation of the constitution and other Kenyan laws.” These words are not only under our Constitution, but also our laws.

Not everything can be provided for in law. Therefore, it leaves us now, to whom the powers have been given, to determine what is gross violation of the Constitution, not just a mere violation of the Constitution, but a gross violation. This must be more than a mere violation of the Constitution. What is gross misconduct? This is something that must be more than just misconduct.

Mr. Deputy Speaker, Sir, we also noticed from the experience of the last Senate that if we permitted, as we did, interventions by the courts at all times, then there were those who boasted outside these chambers that: “Nothing will happen to me, I will be governor until the next general election.” We saw that prophesy being fulfilled in the case of one governor who boasted that he would remain governor until the next general election.

He remained governor until the next general election and was cleared by the Independent Electoral and Boundaries Commission (IEBC). He campaigned and won. The process has begun again, going from court to court. I believe the matter is now at the

level of the Supreme Court although I can see that the Senator of that area is trying to intervene to see if he can reconcile the two leaders. Therefore, this power is important.

Mr. Deputy Speaker, Sir, the Chairperson of the Committee has explained in detail what is in the Bill. The Seconder, Sen. Mutula Kilonzo Jnr. has also given in detail, not only what is there, but also talked about our experience in this regard. Therefore, I will be very brief.

First, I want to emphasize that gross violation and gross misconduct in the Constitution, is a ground that runs through impeachment of a President, Deputy President, Governor and Cabinet Secretary. However, when it comes to the CEC, we have been a bit detailed in this Bill. For the CECs, we have not just talked about gross misconduct, gross violation of the Constitution and so on. Since they are not mentioned in the Constitution, it became necessary to mention the grounds in the Bill. I believe we have borrowed almost word for word from the County Governments Act.

We have said the CEC can be removed because of incompetence, abuse of office, gross misconduct, physical and mental incapacity and gross violation of the Constitution. We have also added incompetence and abuse of office. As we know, abuse of office is an offence under the Penal Code. It is also an offence under the Ethics and Anti Corruption Commission Act. This is so that in the exercise of these powers, we cannot be frivolous. We cannot use personal vendetta or personal agenda in exercising these powers, for to do so, we would be behaving in violation of and against the spirit of the Constitution.

I am saying this because when you hear what happened in the last term – and this came out very clearly in the case of Makueni County, if a CEC was not able to do what the MCAs wanted, they would leave his or her office and say: “We shall meet in the Chamber. We will impeach you.” That was always the threat. When we went round, as the Committee on Devolved Government then, that was the common threat by MCAs who were threatening CECs that if they did not do what they wanted such as provide for a certain road, they would impeach them.

Mr. Deputy Speaker, Sir, this can also be a threat which can come to the national level, if misused. Members of the National Assembly can also use that as a threat to Members of the Executive that: “If you do not do “A”, “B” and “C”, you will be impeached.”

Mr. Deputy Speaker, Sir, I was the Attorney-General of this country for many years. At that time, I knew people who were very prone to a Motion of no confidence against them, while by the nature of their offices, they were doing what they were required to do in the Constitution, which was not necessarily popular with the people. Here, I speak particularly of the Office of the Attorney-General at that time. The Office of the Director of Public Prosecution (DPP) is the one who is exercising those powers now.

I was speaking particularly also of the Principal Secretary (PS) for the Ministry of Interior and Coordination of National Government and the PS in the Ministry of Finance. Those three offices are prone to threats of impeachment or Motions of no confidence from the Members of the Legislature because “you have not done one or two things in my constituency,” and so on, and so forth. We are saying here that this power should not be

exercised just flippantly in that manner. It has to be after gross violation of human rights and the Constitution or gross misconduct.

Mr. Deputy Speaker, Sir, we are currently seeing what is going on in the United States of America (USA). It may not be an impeachment, but it is a confirmation of a candidate to an Office of the Supreme Court. I was looking at the *Cable News Network* (CNN) and this candidate nominee talked candidly on whether he drinks or not. He said that he used to drink when he was young; but not to the extent where he would sexually violate or harass somebody. However, his former classmates came out and said that he would drink all the time and do this or that.

Now, that can become an issue to be discussed for a whole day on CNN. The discussion would be on whether or not he was cheating and, therefore, whether he is fit to hold the post of a Supreme Court Judge. Therefore, the issue here – and we have made it very clear in this Bill – is that it must be a serious matter.

Mr. Deputy Speaker, Sir, the other one is Clause 33, which the Mover mentioned. Courts should only come in after a decision has been made.

(Applause)

A part of the problem that we experienced was that courts were intervening at all stages. In fact, they started intervening at the initial stage, at the County Assembly, when the Assembly was beginning to move the Motion. They would also intervene when the matter came here and, consequently, it takes time for the court to deal with the matter. Even when the court has dealt with the matter, it takes time for the appeal to be heard. Therefore, that case went on until the end of five years.

We have dealt with that mischief under Clause 33, which says that the courts can only review the matter after a final decision on impeachment has taken place. In other words, there ought to be respect of the various organs of the Government. Parliament and the Senate, in particular, has been given the powers to impeach. Let that process be completed first before another organ interferes with the process.

It is very clear that now, if you have to impeach under Clause 19(1), once a two-thirds majority have decided on this matter, the decision is final and the governor stands impeached. It reads:-

“If the majority of the county delegations of the Senate vote in support of the impeachment charge –

(a) the Governor shall cease to hold office.”

It is important to note that because of the seriousness of this matter, a decision can only be made by two-thirds of the Members of the Senate in case of the President; and the majority in case of the Governor. Now, why two-thirds? Therein lies the importance of the decision we are making, which is both political and legal. Even after the legal requirements have been satisfied, the political requirements must also be satisfied.

The political requirements will be satisfied when two-thirds of the Members sitting can vote in support. The reason why this is serious is because to amend this Constitution – apart from those matters which have been reserved to be amended through a referendum – all other matters can be amended by the National Assembly and the

Senate by, once again, two-thirds of the Members sitting. Therefore, the requirement of the two-thirds shows the seriousness of this matter.

Mr. Deputy Speaker, Sir, we have also made it clear in this Bill that although it is our mandate to be carrying out this function, we would like the public to also, in a sense, see what we are doing. In other words, we want the public to see that we are doing it in a very transparent and open manner. That is why Clause 32(2) states that:-

“All proceedings under this Act shall be open to the public unless in exceptional circumstances where the person presiding over the proceedings has determined that there are justifiable reasons for the exclusion of the public.”

Normally, those justifiable reasons in law are reasons which touch on the security of the country. Therefore, that very serious impending danger is where the security of the country may be disclosed, and which could endanger the very existence of the Republic. In that instance, that aspect of the evidence then goes *in camera*. Otherwise, for everything else, the public will be entitled to witness and say: “Yes, we voted for the President or the Governor. However, we have now seen, in a very open and transparent manner, that he is guilty of gross misconduct and gross violation of human rights and, therefore, he should be removed.”

We are saying this because during the public hearings, there were suggestions that we should not have those powers to remove somebody that has been elected by the people. They proposed that the matter should be referred to the people through a referendum so that they can vote on the issue.

Mr. Deputy Speaker, Sir, you know what happens during the referendum – there can be injustice, people may not necessarily decide on the merit of the matter but may decide on the politics of the matter. Therefore, it becomes necessary that since it is a judicial matter, it be determined in accordance with the procedure that we have outlined under this particular Bill.

With those few remarks, I support.

The Deputy Speaker (Sen. Kindiki): Thank you.

Sen. Halake: Thank you. Mr. Deputy Speaker, Sir. It is not easy to speak after the former Attorney General *Emeritus* of the Republic, but I will try my best to make my contribution.

I would like to congratulate the Chairperson, Standing Committee on Justice, Legal Affairs and Human Rights for bringing this Bill.

As I contribute, it is with a mixed bag of observations that I support this Bill because it is in our mandate to legislate, to give effect to broad articles of the Constitution, provide framework, actualize and operationalize some of these broad laws. The Senate has acted in good faith to ensure that we have legislation that gives guidance and provides steps to be followed in matters as grave as impeachment of a President, Deputy President, governors, Cabinet Secretaries and County Executive Committee members (CECs). So, in that respect, I support this because, a country is only as strong as the institutions, systems and processes it has in place. Otherwise, it would be dependent on the whims of anybody that wishes to misuse some of the powers they may have.

Mr. Deputy Speaker, Sir, this is a timely Bill that gives effect to articles 145 and 181, and many others with regard to impeachment and vacation of office of some of

these state officers. Again, it is guided by Article 10 with regard to the national values and principles of national governance. That is all good.

The other aspects are covered by Article 33; as Sen. Wako has mentioned, all the proceedings under the Act being open to the public so as to constitute enough public participation.

Mr. Deputy Speaker, Sir, the President was elected through universal suffrage by the people. At what point do they have a say in his removal? At what point do the people of the county perhaps have a say in the removal of a governor? We are the representatives of the people and we act on their behalf. However, there is a very good reason why the Public Participation Bill is such an important part of our Constitution.

I may be guided because I am not a lawyer. Article 33 states: "All proceedings under this Act should be open to the public unless in exceptional circumstances where the person presiding over the proceedings has determined that there are justifiable reasons for the exclusion of the public."

I would request the drafters of this Bill in attempt to provide good framework, actualize and give effect to the articles on Impeachment within our own Constitution to ensure that as much as we, legislators, have the power to impeach, perhaps the people should also have a say within this process as we go along.

I know the legal arm has been given a provision as well articulated by Sen. Wako under Article 33 of the Constitution, but I did not see the public participation aspect coming out. As proponents of public participation within the Senate, this House should also make sure that the legislation it makes provides that as well. In terms of strengthening institutions, giving credence and effect to our Constitution, I support the Bill.

Again, the Legislative Arm should always provide the citizens options wherever there is a challenge of whatever nature. This Bill provides the same for removal of certain key office holders. I am sure some of the shortcomings require to be looked into. I think the laws have pointed out with regard to ensuring that there is proper definition of some of the provisions, what constitutes gross violations, violation of national and international laws. Due to time constraint, I will not go into that.

The known emphasis on public participation was an interesting one and I thought it should be looked into. I felt that on something so important such as removing a President or a governor of a county, then perhaps those timelines may need to be re-looked at because we do not want to impose on ourselves certain prescriptive timeliness which become very hard for this Senate or the National Assembly, to achieve.

Mr. Deputy Speaker, Sir, with regard to oversight, the reason I support this Bill is that it should start by us especially clarifying the roles, responsibilities, what is to be measured and the process that is going to be followed for this House to hold our executive both at the national and county levels accountable. In as far as our role under Article 96 of oversight and Article 6 of legislation are concerned, then this Bill really does justice to those two mandates given to us by the Constitution.

I know there are certain provisions that read exactly like the Constitution and other laws. We should just break it down a little more by providing definition of some of

the provisions that already exist in the same format. Other than that, I do not wish to speak too much on these having spoken on them quite elaborately.

However, in terms of the spirit of our mandate of legislating, overlooking and providing the right systems, processes and giving effect to provisions on the broad laws and breaking it down for things that we can do in our legislative process, to hold ourselves and the executive accountable and perhaps to rectify wrongs be they legal; be they international laws that have been breached; this provides a very good framework that can be followed by this House and perhaps even by the National Assembly.

I feel that this law should be supported with regard to the content like has been pointed out, definitions, public participations and the loop to finish what we started. I know it starts off from a Member of Parliament initiating a Motion. I wondered if there is any provision for a member or citizen of this country to initiate some of these processes or are we just hogging the powers that have been given and entrusted to us by the same people? So, is there any provision anywhere that perhaps would be looked into so that then this is a shared responsibility and accountability? As much as we are the representatives of the people, we can share that responsibility.

I think it is about time that we supported it with whatever amendments that are to be made with regards to the feedback that has been given on the Floor of the House. I look forward to its implementation in the life of this Parliament.

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

Sen. Madzayo: Asante, Mhe. Naibu Spika kwa kunipa fursa hii kueleza maoni yangu juu ya Mswada huu. Kwanza, nampa heko ndugu yetu, Sen. Cherargei kwa kuleta Mswada huu mbele ya Bunge la Seneti. Imemchukua muda mwingi wa kutafakari na kuona umuhimu sisi kuwa na sheria hii. Kama mwanasheria nasema ya kwamba kusimamisha mfanyikazi wa Serikali tukianzia Rais, Naibu wake, Makatibu wa Kudumu, Baraza la Mawaziri, gavana anayetawala kaunti aliyochaguliwa na wale wanaochaguliwa na gavana kufanya kazi na yeye kama vile *County Executive Committee (CECs) Members*, ni lazima kuwe na mashtaka ambayo yanaweza kuwa na uzito fulani.

Tunajua kuwa CECs katika kaunti zetu wanajiita mawaziri. Sijui ni kwa sababu gani hatujaweza kuchukua hatua kwa jambo kama hili. Tukienda katika mikutano mbalimbali, hawa hujiita mawaziri. Sisi tunajua Waziri ni yule anayechaguliwa na mhe. Rais wa Jamhuri ya Kenya.

Mhe. Naibu Spika, kando na hayo, tunajua kuwa mashtaka au madai ya kuweza kumwondoa kiongozi kutoka mamlaka kama hayo niliyotaja ni lazima kuwe na mashtaka ambayo yanaweza kuwa na uzito fulani.

Mswada huu ni muhimu sana kwa sababu katika Bunge lililopita mimi nilikuwa mmoja wa Maseneta ambao tulijishughulisha na mashtaka dhidi ya kumwachishwa kazi kwa Gavana wa wa Kaunti ya Murang'a, mhe. Mwangi wa Iria. Hatimaye hatukuweza kufaulu kwa sababu alikimbia kortini. Korti ikatoa uamuzi wa kusimamisha Bunge kufanya kazi yake juu ya gavana huyo.

Sisi Wabunge tuliochaguliwa tukiwa na majukumu kama haya, sheria hii ni mwafaka sana kwa wakati huu. Tunajua kumekuwa na viongozi ambao wamekuwa wakizembea kazi baada ya kupewa nyadhifa na kimbilio lao kubwa limekuwa kortini. Tunasema Mswada huu uwezekufafanua vyema kwamba kukiwa na shughuli za

kumwachisha kazi mfanyikazi wa Serikali, korti isimame kwanza, ingojee mpaka hatua ya Bunge la Seneti imalizike. Wakati huo sasa mtu anaweza kupewa nafasi ya kwenda kwingine kufanya juhudi kama vile kusimamisha kesi hiyo.

Mhe. Naibu Spika, kwa maoni yangu Mswada huu umelenga hasa zaidi upande ule ambao watu wataku wawanavunja sheria. Kuna njia mbili za uvunjaji wa sheria: kwanza, uvunjaji wa sheria mtu akiwa bado ofisini na nje ya ofisi. Wale wanaopewa nafasi kama hizi wanafanya mashirika tofautitofauti ya Serikali. Kumekuwa na uvunjaji wa sheria. Tunasema ya kwamba sheria hii inawezakufafanua hayo zaidi. Ingeweza kuleta mambo tofautitofauti lakini tunasema ya kwamba muda uliopewa siku 30 kufanya shughuli hii ndani ya Bunge nimwafaka kabisa. Utakubaliana na mimi kuhusu nafasi ya siku 30. Mimi kama wakili naona kuwa mtu anawezakujitetea vilivyo kwa muda ya siku 30.

Naona kuwa muda ambao tumeweka ukipunguzwa itakuwa jambo bora zaidi katika sheria hii ikiwaitapitishwa hapa.

Mhe. Naibu Spika, mwisho, nasisitiza ya kwamba fitina ni kigezo kibaya. Mara nyingi tunaona ya kwamba magavana wamekuwa wakifanya kazi katika kaunti zao aidha wakiogopa mamlaka ambayo yana Wabunge Wa Kaunti (MCAs) ya kuweza kuchukua hatua kama hii. Gavana pia anaweza kukubaliana nao ili awezekujiokoa na aendelee na kazi.

Nasema hivi kwa sababu tunapata kwamba wakati mwingi wale MCAs wakati ule ilikuwa kuanzisha shtaka kama hili ni lazima kwanza wamwambie gavana kuwa asipofanya kitendo fulani, basi wangechukua hatua fulani. Hayo yalikuwa mambo ya fitina. Mswada huu umefutilia bali mambo ya fitina. Ni lazima kuwe na mambo kamili katika mashtaka ya kumsimamisha mfanyikazi wa Serikali.

Asante, Mhe. Naibu Spika.

The Deputy Speaker (Sen. (Prof.) Kindiki): Asante. Let us have Sen. (Dr.) Musuruve.

Sen. (Dr.) Musuruve: Thank you, Mr. Deputy Speaker, Sir for giving me an opportunity to add my voice to this important Bill that affects us. One of our mandates as is to protect the interests of the county governments and devolution.

I commend Sen. Cherargei for this Bill that is affecting very important people in this country. When we talk about prudent management of the national and county resources, we must have good laws in place.

Mr. Deputy Speaker, Sir, on the issue of procedure, I am not a lawyer by profession. However, I feel that my thoughts are very important---

The Deputy Speaker (Sen. (Prof.) Kindiki): You are lawyer by what?

(Laughter)

You are just not a lawyer. Period! Is that not so? You cannot say you are not a lawyer by profession? You are a lawyer by what? Just say you are not a lawyer.

Sen. (Dr.) Musuruve: Thank you, Mr. Deputy Speaker, Sir. I am not a lawyer, but an educationist.

I appreciate this Bill that has been brought by the Committee on Justice, Legal Affairs and Human Rights. It is a well thought out Bill because the removal of the executive at the national and county level should not be done in the twinkle of an eye.

Procedure is quite good because it gives both sides time to evaluate the actions that will be taken. The Bill says clearly that the matter has to first of all go to the Speaker, who will evaluate and see if the motion is valid. If it is valid it goes to the next level. If it is not valid, the Speaker can dismiss it with reasons. This is very good because by the time the matter goes to the next level, it will have the blessings of the Speaker that, indeed, there is need for it to go on.

Mr. Deputy Speaker, Sir, constitutionally, there are grounds for removal of a member of the executive, for example, if he is incapacitated. However, the beauty of it is that there has to be evidence by medical practitioners that, indeed, they cannot perform. If they cannot perform, it goes to the next level. Legislators have to agree that, indeed, the member of the executive is unable to perform and can be impeached.

The act of procedure is important because it will minimize malice, for example, in a situation where there is a cartel that decides to impeach a certain executive for whatever reason. The procedure allows for members of the executive to defend themselves. It is humanly right for leaders to defend themselves and their actions.

Mr. Deputy Speaker, Sir, abuse of office is actually arbitrary. There is need to define what exactly abuse of office is. This Bill is not about the governors, the President or the executives in position now, but the future of Kenya. This Bill will set the pace. The Bill supports the fact that there is need to standardize the removal of executives. This is good because there will be a clear and fair playing ground for all the leaders. If this Bill becomes law the issue of objectivity will be addressed as opposed to subjectivity.

The fact that the Senate is also brought on board to participate in this action of impeachment, is quite in order because it has a mandate. The mandate of the Senate is directly on counties; to represent the counties and protect the interests of the counties. If a governor is brought before the Senate, it ought to be impartial, listen to the evidence presented and determine whether it is malice or objective.

Mr. Deputy Speaker, Sir, it is not an easy moment for leaders when they wake up one morning and are removed from office. Therefore, there is need for that procedure to be put in place. The impeachment of the executive is a check for both the executive and the people. The fact that the executive know that they can be impeached, they will do a self-check, to ensure that they do not violate the Constitution. They will walk the talk so that in case of impeachment, they will have evidence. They will say: "This is what I did and said." There will be transparency with regard to impeachment and the evidence that is brought on board.

Mr. Speaker, I support this Motion and I hope that it will actually translate into a Bill, as long as all the corrections are done---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator! It is a Bill.

Sen. (Dr.) Musuruve: Thank you very much, Mr. Deputy Speaker, Sir, for the correction.

The Deputy Speaker (Sen. (Prof.) Kindiki): Nonetheless, you support.

Sen. (Dr.) Musuruve: Mr. Deputy Speaker, Sir. I support.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you. I saw that you needed assistance to wind up.

The next one is the Senator for Bungoma, Sen. Wetangula.

Sen. Wetangula: Thank you, Mr. Deputy Speaker, Sir. I was going to start, if given a chance, to correct my distinguished sister that this is a Bill and not a Motion. Motion and Bill are not used interchangeably; they are different.

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

Sen. (Dr.) Musuruve: On a point of order, Mr. Deputy Speaker, Sir. I want to make it very clear that it is a Bill. It was a slip of the tongue. Thank you very much for the correction. I appreciate it, but I think it needs to end there.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well. Sen. (Dr.) Musuruve, take it lightly; it is not an adversarial process. Incidentally, in one way or the other, both of you are right. It is a Bill, but the way a Bill is processed, it is through a Motion. You move a Motion to introduce a Bill for debate. It is a Motion to debate a Bill.

Sen. Wetangula: Mr. Deputy Speaker, Sir, I did not, in any way, mean to slight my distinguished colleague. It was just for the record because people will read what we say here many years down the line. The moment she has made the correction, the HANSARD will similarly be corrected. Everywhere she said "Motion" will read "Bill."

Mr. Deputy Speaker, Sir, I also stand to support this Bill. This Bill comes late in the day. It is one of the Bills that, probably, we should have legislated in the rundown to the first elections under the Constitution, 2010. Indeed, in the last Parliament, we grappled with several scenarios and situations of impeachment of governors. It was quite clear that in the process of impeaching those governors at the assembly level, some of the constitutional provisos were not strictly followed.

You may recall that the Governor for Kericho was brought to this House, having been impeached by his assembly on the basis of signing a Memorandum of Understanding (MoU.) I did argue and still believe that I was right that an MoU is a document of comfort. It does not confer rights, responsibilities or commitments of any nature. It does not lead to any financial expenditure. Therefore, this Bill sets to clear the exuberance of members, sometimes, baying for one's blood and wanting to impeach because it is important for them to teach somebody a lesson or for various inexplicable reasons.

Equally important is the fact that a person who has been elected by universal suffrage to be removed from office--- Although they are representatives of the people, it is unlikely that the people who elected them are party to the process. Somebody can be vindictive, malicious, cheeky and vexatious and bring a motion of impeachment. In the process, if it is not properly defined in law, we might have the Jesus-type trial being meted on people. It went from the Sanhedrin and down to King Herod, who eventually asked the crowd whether to release robbers or Jesus. The crowd was ready to live with their robbers and have an innocent man hanged.

Mr. Deputy Speaker, Sir, this Bill is clear because it does not say anything new about impeachment. It is simply lifting the provisions of the Constitution and putting them in the Bill. It then provides for a process in terms of timelines and who does what and where. It is, indeed, important that although the President has been elected by

universal suffrage, he or she can get to office, become rogue, start to violate the Constitution and do all manner of things.

In the last couple of years, we saw the impeachment of the President of Brazil on the surprising basis of interfering with the budget process, which is something that was not successful. Former President Dilma Rousseff is alleged to have tried to influence Members of Parliament (MPs) to budget for some provisions that were going to help her friends. It is called lobbying in the United States of America (USA) and in Kenya we call it corruption. She was prosecuted before the Senate, impeached, lost the process in court and left office. I thought it was harsh and unfair because that budget was not passed, it was just intent yet she was impeached.

Mr. Deputy Speaker, Sir, in other countries, when a person violates the law, they are not subjected to the process of impeachment. They are simply prosecuted and jailed. A clear example is the lady Park Geun-hye of South Korea who, as fate would have it, immediately after a very high profile visit to Kenya, she arrived home and she was hauled into court, prosecuted and jailed for 26 years as a sitting President. These are countries with very mature systems, legal structures and; they strongly believe in the rule of law to the extent that there is no pretence like we have that anybody is above the law. There are some people in this country who think that applying the law on certain office holders is treason yet it is not. It is in fact, those kinds of things that can bring order and probity in society.

Mr. Deputy Speaker, Sir, I really like the provisions of the new Constitution. Those who have been wishing away the Senate, including our distinguished colleagues in the National Assembly, should know that on their own, they cannot remove the President from office. In fact, as it is now, under the law and the Constitution, they are the investigators and we are the judges. So, they can start pontificating on whether the judge is more important than the investigator. Their Chamber is for indictment and the trial lies here.

What is important is the two options given. I really look at the bungled impeachment of the Governor of Murang'a County which---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator. What do you mean by 'bungled' impeachment? Who bungled what and where?

Sen. Wetangula: Mr. Deputy Speaker, Sir, you and I take responsibility because we were the leaders of the House. We opted to go the Committee way and many people, including this Chamber and around the country, were not satisfied with the outcome of the proceedings of the Committee. In fact, if you remember, the Senator for Murang'a County, who was then the Deputy Speaker, had very unkind words to say on the Floor of the House on the outcome of the process.

The provisions of the law and the Standing Orders do not vest any powers in the House to overturn the decision of the Committee. That led to very acrimonious exchanges. As a senior lawyer, I read very painstaking charges leveled against the Governor of Murang'a County and the evidence adduced. I was not satisfied that the verdict of the Committee was correct. However, we live with it because it was a Committee of the House.

Mr. Deputy Speaker, Sir, this process gives us an option that we always had. I would like to guide this House that if the President, Deputy President or a governor is dragged into this House by law to be impeached, the right way to go is to convert this Chamber into a trial court. This is so that every Member participates and we do not empower a small group of Senators. I hope that we will guard our image because bad behavior is slowly creeping into this House. We are now having allegations of impropriety, acting without probity and Senators engaging in what Tanzanians call *Mulungula*. This is not good for this House. We want a Senate that is beyond Caesar's wife in character.

Mr. Deputy Speaker, Sir, we distinguished ourselves in the case of the former Governor for Nyeri County. When the late Gov. Gachagua was brought to this House, with the experience of the Murang'a bungle, we converted this House into a court. The distinguished governor came with good lawyers and at the end of the day, we passed a verdict that the reasons and the facts for impeachment of the late Gov. Gachagua fell way short of the legal threshold and the factual expectations. He went knowing that he had appeared before a fair House, had been given a fair hearing and just verdict.

That is what underlies fairness in the administration of justice. As we always say in law, it is better to let 99 rogues and guilty people go than to punish one innocent person because an innocent person must be maintained as innocent before the law whether it is judicial or *quasi* judicial as we are.

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

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

Madam Temporary Speaker, the timelines set in these proceedings look very tight but one would understand that if an impeachment is hanging on the head of the President, he or she is unlikely to discharge his or her functions fairly, with ease or use that small window to abuse the office further by being vindictive. So, once impeachment proceedings start, they must move without any break. In any case, it is the responsibility of anybody who undertakes an impeachment process to first gather their evidence properly and have their case tight, so that when they walk into the National Assembly--- If you are a Member of Parliament (MPs) probably acting by yourself or acting at the behest and on behalf of citizens who may have gathered evidence of violation of the Constitution, then you bring that evidence and you are given an opportunity to move without a break to finish this matter.

Madam Temporary Speaker, what may be something to guard against is the continued acting of the Judiciary in virtually shooting down anything and everything coming from Parliament to the extent that an impeachment grounded on law and fact sometimes may end up in court. We all live in this country and some of our judges are not quite straight; they are bent, so to speak. When a matter goes before a bent judge, you are likely to get a bent outcome.

In comparable jurisdictions, the judiciary acts independently, but it does not act independent of the society. The independence they enjoy is such that nobody will go and

breathe down their necks and say “we want this verdict.” However, they must also read the signs of the times. If it is very clear that the President has violated the Constitution or committed criminal acts and there is clear evidence, the courts of law should be hesitant to interfere with these processes. Of course, since it is provided in law, they should only interfere in the clearest of cases.

Madam Temporary Speaker, we had a running battle in the courts on the matter of the Governor for Embu County. We impeached him and they reversed the impeachment; the matter came again before us and he was impeached, but it was reversed. My good friend, Gov. Wambora, served his full term as an injunction Governor because he had been impeached, but he shielded himself with an injunction to the end of his term. We do not want to have a situation like that, because the will of the people, exercised through the Houses of Parliament at the national and county levels, should also be respected.

Madam Temporary Speaker, it is equally important that I should not forget to mention the removal from office of a Cabinet Secretary. There are situations where CSs – either by their closeness to the President who has appointed them; or by the strength of the communities where they come from; or by virtue of the various sectarian interests they represent – it becomes difficult for the appointing authority to remove them from office. This is so even when it is clear that they are violating the Constitution they swore to defend, uphold and respect.

This is so even when it is clear that they have committed criminal acts and that they do not morally merit holding that office. The appointing authority always fears sacking them because of the political consequences, especially where the appointing authority is serving his first term and is expecting to be elected for the second term. They then have to navigate carefully to protect what they call “future votes.”

Madam Temporary Speaker, where such errant CSs or County Executive Committee (CEC) Members are detected, it then becomes the duty of Parliament or the assemblies to prosecute them. This should be done by the representatives of the people acting collectively. In fact, that will help the President or the governors to remove the bad apples from their baskets where they are not able to do so on their own.

Madam Temporary Speaker, there are certain situations where you find yourself in a coalition and the head of a party in your coalition is your CS. Therefore, if you let him go, your government collapses. Therefore, you have to find a way where such people who become rogue can be removed from office through the representatives of the people. Once again, the timelines have been set and it is equally important.

Madam Temporary Speaker, all this trickles down to the assembly, where a governor who is unable to remove a CEC Member – because of political, ethnic or whatever considerations – can have it done by the assembly though this Act, which removes malicious conduct. If you want to remove the President, a CS or a governor, you must bring out the facts as set out in law. You have to prove whether they have violated the Constitution or a written law.

One must quote the Article of the Constitution or section of the law which has been violated. If they have committed offences, you must cite the offense committed and the law transgressed for it to become clear. One does not have to bring impeachment proceedings the next day under the colour of violation of law after he quarrelled with

someone in a social place just because he can command the respect of the House. This is very important because everybody is presumed innocent until proven guilty.

Everybody who has allegations against them must be subject to due process. As we say, I do not like what you say but I will die defending your right to say it, because of the rights of people as enshrined in the Constitution and the right to due process. There is nobody who is presumed guilty until they prove themselves innocent. Everybody is presumed innocent until proven guilty.

Madam Temporary Speaker, I support this Bill. I congratulate the Committee on Justice, Legal Affairs and Human Rights under the chairmanship of Sen. Samson Cherargei for designing and bringing a Bill that gives effect to impeachment clauses and Chapters of the Constitution so that it becomes clear, easy and determinate.

I heard one Senator say that we need to subject this process to public participation. It might just end up being a lynch mob. I do not think it is necessary. If you are representatives of the people, then you represent those people out there. You cannot take a President to Uhuru Park and ask a mob to declare his innocence or guilt. That is not the way to go in any civilized society. The House of Parliament is respected as a parley, as a representative of the people who elected representatives to this House, and when they act, they do so, on behalf of those people.

So, I discourage any notion that public participation should be there. We should also not overstretch public participation. I have been sitting in committees and what we have been calling public participation, particularly, in the Committee on Finance and Budget, year in year out, there are only four people who appear before us; the same people every year on everything. They say, I represent an NGO, pressure group, street and so on. Sometimes, it just becomes a playground for busy bodies. It becomes very difficult to make things work.

Let us give Houses of Parliament, assemblies at the county level, the National Assembly - with proper hierarchy – whoever was in doubt as to the hierarchy of Houses must read this Bill, look at the Constitution and see that the National Assembly indicts, this House tries. This House tries and convicts, and has the final word on the impeachment of the President and the Deputy President. That is the pecking order. It is not a matter for public debate any more.

Madam Temporary Speaker, I thank you. I beg to support.

Sen. Kihika: Madam Temporary Speaker, I thank you for giving me the opportunity to support this Bill. I sit in the Committee on Justice, Legal Affairs and Human Rights. We have deliberated on this Bill over a lot of issues that have been raised by the Members. It is a very timely Bill, given that the last term of parliament was the first under the new Constitution and with new institutions. As such, many of the issues that came up regarding impeachments were probably in earnest just being experienced and put into practice. Now, we have realised where the gaps are. We are trying to seal them.

The offices under this Impeachment Bill; that of the President and Deputy President, Cabinet Secretaries, Governors and Deputy Governors as well as CECs are important offices with important mandates. It is important that we have a standardized process where we know what is expected.

As some Members have said, I have also seen this working in counties; where you may wake up one day and for some reason, maybe somebody wanted to go on a trip and there was no money for them to go and the next thing you hear the chants of impeachment. In the event where a governor or another person does not bend to what is being asked of them, be it legal or for whatever purpose, then you hear that impeachment is about to begin.

This Bill will help us to understand and know what exactly the threshold is, when you can bring this impeachment and you have to show what exactly the violation is. It is not just minor violation. We are talking about gross violation of the Constitution, any other law, gross misconduct or if the person has committed a crime under national or international law. This will ensure that we do away with petty reasons that we have sometimes, had when impeachments have been mentioned.

In addition to that, the Bill has given the timelines and what it takes to carry out an impeachment in the National Assembly, if it is a Cabinet Secretary, the President or the Deputy President, how long the process will take and how many signatures are required to initiate the process. Once the Speaker has approved, the number of days under which the Notice of Motion has to be moved and the number of days that the Motion must be brought to the Floor of the House have been provided.

I agree with a colleague who stated that we should not have select committees handling such serious issues like impeachments because we have seen that abused. We may not necessarily have any hard facts but we are all alive to what we read in the social media. We know that it is not easier as it seems to bribe a small group and it is even harder to bribe the whole House. I would rather impeachment proceedings are handled by the House as opposed to having them handled by select committees.

I used to work in the county assembly and the assembly could not impeach the County Executive Committee (CEC) members. You could have CECs walk around with impunity feeling that they do not have to perform or do what they are supposed to do. The law is very clear on when the CEC for Finance, for example, should bring what to the county assembly but they still did not do that. At the end of the day, nothing could be done to them because we could not impeach them and there was a judgment to that effect.

With this Bill, they will no longer sit comfortably. As much as we do not want them to be impeached because of, for example, not giving MCAs money to attend sports in Kisii County for a week – I have heard that as a ground for impeachment – we do not want frivolous impeachments. We also want to make sure that people who are employed to work in the counties do not just sit comfortably but perform their duties. They should know that they are accountable and they could be sent packing. This is important so that everybody is held accountable.

Some issues also came up during public participation meetings. There are groups that suggested that Parliament, which comprises the National Assembly and the Senate, or county assemblies should not impeach office holders. They suggested that we should subject them to public participation and let the public decide.

I also agree with the Senator for Bungoma who spoke just before me, that that will be ludicrous because it is the people that elected Members who sit both in the National Assembly and the Senate as well as the county assemblies. One of our major

roles as legislators is representation. As we sit here, I represent the people of Nakuru County. I should be able to use my judgment properly in executing this mandate. So, I do not believe that there should be room for the impeachment to be done by the public, but they should stay as the Bill states here right here, the National Assembly, the Senate or county assemblies.

In conclusion, Madam Temporary Speaker, we have also mentioned about the timelines that some Members have found a bit too short or quick for the process. However, I believe that with impeachment, for example, of the President, you do not want it extended for days on end because that would probably make the country unstable and also give way for “monkey business”. I think that was the term that was used a lot by my Chairperson of the Committee on Justice, Legal affairs and Human Rights. I think the timeliness are okay but, obviously, as a Committee, we are open to suggestions from Members on what they think would be more appropriate.

We also considered what other jurisdictions are doing in settling for the timelines that we have on the Bill. I believe it has been well thought out but as I said, we are open to suggestions from Members on any amendments as far as those timelines are concerned.

I support this Bill.

Sen. (Rev.) Waqo: Thank you, Madam Temporary Speaker, for allowing me to add my voice to this important Bill. I congratulate Sen. Cherargei for bringing this legislation to this august House.

I support this Bill because where we are as a nation, we seriously need such Bills to safeguard the offices that we have. I have gone through it and seen that it has been well designed and the Bill takes care of both the people and also the Executive. I say this because when you are in an office and you are impeached, it does not mean that the people that have been mandated to do that are removing you from office. President Clinton was impeached one time but he continued to serve. So, the fact that you will be exposed or you will go through that, does not mean that you will be removed from office.

I support this because it has been well designed. It is always good to have checks and balances in place. As I said, the speed at which our nation is moving, where we have all these counties and different people coming into power with different characters and different way of administration, we need to have such a Bill in place so that in case of anything, then the common man or citizen can be well protected. When people hold such big offices and especially when we talk of the President or Deputy President being impeached, people might think that this is a serious thing which can never be achieved. However, having this Bill in place confirms that there is no one who is above the law.

Madam Temporary Speaker, the Bill provides for the accused individual the right to appear before the panel. This gives an opportunity to the person to defend himself. When that happens, we can clearly see that there will be no malice and bias in the procedure. The accused individual will be given an opportunity to appear before the Committee. To me, if we did not have that clause, then I would have said we have a gap that needs to be filled.

Madam Temporary Speaker, Clause 2 (a) says the matter is to be investigated by that Committee. After that, it is when the Committee will make up its mind. That means that the decision is dependent on the investigation and its findings. It means that even if maybe an individual has been falsely accused, after investigation, then we will be better placed to make up our mind on what is happening.

Sen. Kihika talked about the timings. The Bill clearly proposes a period within which the matter is to be concluded. This is very good. We are used to a process that begins and never ends. However, with this Bill, we are assured of getting into a conclusion within a very short time. This helps both parties. The sooner the matter is concluded, the better even for the nation and the continuation of the work.

Madam Temporary Speaker, the Bill is well thought out and designed. As one of the leaders, my request is that even as we engage in impeachment and all these other things, we avoid being biased. My observation is that most of the time many ladies have been impeached and harassed. This Bill will protect both genders.

I congratulate Sen. Cherargei and the Senate Committee on Justice, Legal Affairs and Human Rights.

I support.

The Temporary Speaker (Sen. (Prof.) Kamar): Let us have Sen. (Dr.) Milgo.

Sen. (Dr.) Milgo: Thank you, Madam Temporary Speaker for giving me the opportunity to also speak to this Bill. I thank the Senate Committee on Justice, Legal Affairs and Human Rights led by their able Chairperson, Sen. Cherargei for this wonderful Bill.

Once we pass this Bill, it will serve as a cure to the many ills in the counties and national Government. Right now, in our country, we have many Government officers being accused of abuse of office, corruption, gross misconduct or violation of the law. Without a clear law, those officers will continue to perpetuate impunity in our country. However, this law will enable the concerned officers to carry out their activities according to the law. In case they mess up, they will face the law.

Madam Temporary Speaker, I support this Bill because, for the first time, the Executive will be forced to perform according to their expectations and give the electorate or those who put them in various offices value for their money. There are complaints regarding the various levels of Government and this happens because of lack of a law to ensure officers are answerable.

Madam Temporary Speaker, for the first time, this Bill sets up various committees at various levels, which is applicable to each category of officers. I imagine that this committee will conduct thorough investigation before advising the actual body that will carry out the final impeachment.

Madam Temporary Speaker, as some of my colleagues have noted, this Bill will also spell out the timelines to dispense of a particular case. There are cases that have been reported at various levels. In the past, we have had people being taken to court and their cases have stuck for many years. Justice delayed is justice denied. I imagine that with these timelines, the various levels of Government will know that it is no longer business as usual.

Madam Temporary Speaker, I support this Bill because the legal structure that has been put in place will ensure that before any impeachment is brought forward, the concerned people must have conducted a thorough analysis, to ensure that the accusations are true. You are aware of the many impeachments that were conducted in the Eleventh Parliament. As I speak, impeachment has been going on in some places without following any order.

Madam Temporary Speaker, this Bill will speak to those various kinds of malice, where people decide to impeach someone just because they have disagreed in the course of their work. The accusations should be confirmed. For example, an impeachment motion was moved just because someone refused to approve a trip for a group of people. With this particular legal procedure, for the first time, we shall have serious issues being discussed.

Clause 27, on the removal from office of a CEC, together with Clause 28 (11)(b) will bring a cure to a case where once allegations have been drawn out, we immediately have a malicious group coming up with the same issues. I particularly love this one because it says in Clause 28(11)(b)-

“A motion for the removal of that county executive committee member may, subject to subsection (12), only be re-introduced in the county assembly on the expiry of ninety days from the date of the vote by the county assembly under subsection (8).”

This will enable the concerned officers to carry out their duties without disturbances or worries. When we get people threatening someone that they can easily be impeached, and even after acquiring a court order stopping this, we have the same people leveling impeachment allegations immediately after one week---

Finally, I wish to support this Bill because of the provision for public participation. The public has been crying for public participation in many areas. While the public may not have the legal understanding of the matter, it can provide the social audit. This can add on to what we will be doing regarding impeachment. I support this Bill and thank the Committee on Justice, Legal Affairs and Human Rights for formulating such a great Bill.

We look forward to the passage of this Bill. I am sure once it is passed, our country will not be the same again.

The Temporary Speaker Sen. (Prof) Kamar): Thank you, Senator. Hon. Senators, I see no further requests so I would like to request the Mover to reply.

Sen. Cherargei: Thank you, Madam Temporary Speaker. I congratulate you for hosting us very well in Uasin Gishu County during the Inaugural Sitting of the Senate outside Nairobi County. We thank you for your meticulous arrangements. Our sittings last week went very well. I know the great people of Uasin Gishu County, the entire North Rift and the country at large will be able to celebrate and appreciate the role of the Senate. This is so that we do not see tired agendas, strategies, aims and schemes to remove the Senate which some of our colleagues in the National Assembly are trying to engage themselves in.

Secondly, I thank my colleagues. I have listened and heard what they have said, their opinions, proposals and ideas on how we can refine and fine-tune the Bill to the

required standards, to ensure efficiency in the discharge of the legal implications this law will bring in place. I want to assure my colleagues, all the issues, opinions, concerns, comments and advice will be taken with the seriousness it deserves. We will see how we can incorporate most of those to ensure that when this Bill is assented to by the President and comes to full force, it will fulfill the agenda that it is meant to.

On the issue of public participation, I know this House is considering the Public Participation Bill that is sponsored by one of the Members of my Committee, the Attorney-General *Emeritus*, Sen. Wako. You realize that the Constitution has provided for public participation in any engagement that involves the public.

Sen. Mutula Kilonzo Jnr. was bringing that aspect that it is a legal-political and not a quasi-judicial matter. The reason we, as a country, have ensured that public participation informs the entire fabric of this law is because we appreciate that the people you are subjecting to them – either the President, where the National Assembly becomes the indictment chamber and the Senate becomes the trial chamber – are people who have been elected and have enjoyed universal suffrage of Kenyans.

Therefore, it would be unfair if the public is not part of the process in either removing the governor, the Deputy President, the President, the Cabinet Secretary (CS), the chief executive, or the deputy governor. I agree with my colleagues that public participation has been given the necessary focus that it should be given. Maybe the Governor of Nairobi got around a million plus votes of Nairobians. Similarly, Kiambu County, where I come from, has around 200,000 votes.

Therefore, for us to reduce this to a process where particular people go, sit somewhere and remove that person from office, would be unfair to that person who was elected and to the public. Therefore, the public will have a critical role to play. I know that many legal decisions that our Courts of Law have tried to devolve on have been on the critical role that is played by public participation. Therefore, I agree with my colleagues that it has a bigger challenge. Public participation is important and we will incorporate it in the process.

Madam Temporary Speaker, on the issue of select committees, especially on the impeachment of the governor and deputy governor; the President and the Deputy President, we have introduced a clause which says that we might form a select committee. This committee, in some instances, may be composed of 10 people. We might play with the suggestion of having a full house, where the entire Senate of the Republic of Kenya can sit, listen to those charges and vote on them.

We have used the word “might;” it, therefore, depends on the wisdom of the Speaker when ruling on such an issue when it comes to the Senate. We will, however, look at how to review that part of the select committee so that we can see what can be done.

Madam Temporary Speaker, I agree that the threshold is quite high. This is because if you are trying to impeach somebody who enjoys being in elective position due to universal suffrage like the governor, the deputy governor, the President and the Deputy President, you must be very careful on how they are removed so that you do not risk court proceedings.

I would like to inform my colleagues that we have changed the law on the issue of challenging impeachment through the court process. There was a habit where if somebody was supposed to be impeached, he rushes to court and gets an injunction stopping the impeachment proceedings. We have now given them an opportunity so that by the time you are going to court, you can examine the entire process. The process can be reviewed and you can exhaust legal processes or mechanisms that are in place from the High Court to the highest level that we have in this country, through the Supreme Court.

Madam Temporary Speaker, those are the issues that my colleagues have raised and I want to assure them that we will fine tune them. In fact, we seek to amend Sections 33 and 40 of the County Governments Act No.17 of 2012; which were being used by MCAs, so that we can merge them into one. Our main concern, as a Committee, has always been to ensure that we bring one legislation that will encompass all this.

Madam Temporary Speaker, my seconder, Sen. Mutula Kilonzo Jnr, has said that there is an import of some sections of the Constitution into this Bill. Some of it is copy and paste. We do not want to duplicate the Constitution in any way, but we are seeking to bring it under one law. This will ensure that we exhaust the entire procedure and standardize it. The introduction of prescribed forms especially when you want to remove a CEC, a governor, or the President – in the level of National Assembly – will be factored in and ensure that all those issues are addressed.

In fact, the special committee that is in place - because they were using the removal of Governor and the CEC under sections 33 and 40 of the County Government Act, the biggest issue that some of my colleagues raised was: What is gross misconduct and violation of the Constitution? We will need to ensure that all these grounds that have been stated by the Constitution and section 33 and 40 of the County Governments Act are considered.

Madam Temporary Speaker, on that definition, we will ensure that it becomes precise, and the factors are provided for, so that we provide the necessary process of impeaching a governor. That is why we have provided under Clause 34, where the County Governments Act is amended by deleting section 33 and substituting it with a new section 33 where we are saying the procedure for the removal of the President on grounds of incapacity under Article 144 of Constitution shall, with necessary modification, apply to the removal of the governor.

Madam Temporary Speaker, if you look at the Schedule, we have introduced a new section in which we are trying to modify, in line with Article 181 of the Constitution on the removal of the Governor, to ensure that all these has been deleted and amended it by substituting it with the new section 33 in section 40 by deleting the words “subject to subsection (2) appearing at the beginning of subsection (1) and deleting subsection 40(2) to (6).

Madam Speaker, this is important so that we import everything from the County Governments Act, with necessary modification and within the Constitution, provided for the impeachment of the President and the governor. I want to assure my colleagues that the prescribed form will ensure that standardization is in place, so that it is indicated which in turn makes the issue become easy.

Madam Speaker, on the issue of legal process that is in court, I want to assure colleagues – because I know many colleagues have commented on the issue of timeliness – that we have ensured that the process is expeditious, so that we do not have unnecessary delay, anxiety and monkey business. We need to expediate the process so that we do not give room for some people to do monkey business. I know that there is a backlog of cases within the Judiciary, but since we have put it in the law, just the way the election petition was expeditiously done, providing these timelines within the judicial process especially in challenging this – it will allow us to run these proceedings in their entirety so that we remain focused.

For us to remain focused we do not have to challenge these proceedings in entirety. When we challenge them in courts, we might lose our focus--- I can see my time is up and I had not finished.

The Temporary Speaker (Sen. (Prof.) Kamar): If you have not finished, Sen. Cherargei, you can still do so, tomorrow because you have 16 minutes remaining.

Sen. Cherargei: Thank you, Madam Temporary Speaker.

ADJOURNMENT

The Temporary Speaker (Sen. (Prof.) Kamar): Hon. Senators, it is now 6.30 p.m. It is time for interruption of the business of the Senate. The House, therefore, stands adjourned until tomorrow Wednesday, 3rd October, 2018 at 2.30 p.m.

The Senate rose at 6.33 p.m.