

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 17th July, 2019

*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

VISITING DELEGATION FROM NDUUNDUNE SECONDARY SCHOOL, MAKUENI COUNTY

The Speaker (Hon. Lusaka): Hon. Senators, I would like to acknowledge the presence in the Public Gallery this afternoon of visiting students and teachers from Nduundune Secondary School in Makueni County.

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

VISITING DELEGATION FROM NYAMIRA COUNTY ASSEMBLY

The Speaker (Hon. Lusaka): Hon. Senators, I would like to acknowledge the presence in the Speaker's Gallery this afternoon of a visiting delegation of officers from the County Assembly of Nyamira. The officers are undertaking a four days benchmarking visit to Parliament on the operations of ICT Department and implementation of paperless solutions.

They are-

- | | | |
|-----|----------------------|--|
| (1) | Mr. David Ombego | - Director, Legislative and Committee Services |
| (2) | Mr. Stephen Egoha | - ICT Officer |
| (3) | Mr. Geoffrey Onchari | - ICT Officer |
| (4) | Mr. Dan Nyamache | - ICT Officer |

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

I thank you.

(Applause)

Kindly proceed, Sen. Pareno.

Sen. Pareno: Mr. Speaker, Sir, I join you in welcoming the students from Makueni County to the Senate as well as the officers from Nyamira County Assembly. The school administration made a wise decision of bringing students to the Senate to see what devolution is doing to this country. This is the right place for the officers from Nyamira County Assembly to benchmark. We have had a lot of benchmarking activities from the other counties. It is only befitting that they are here today to learn from the best.

We no longer say that the students are the leaders of tomorrow because they are the leaders of today. I urge them to take time to learn from what they see and hear during our debate.

Mr. Speaker, Sir, I thank you.

Sen. Wambua: Mr. Speaker, Sir, I take this opportunity to join you in welcoming the visitors to the Senate today on my own behalf and on behalf of the Senator for Makueni and Nyamira counties. This is a great opportunity for the students from Nduundune Secondary School to visit the Senate and follow the proceedings of this House of Parliament so that they can be inspired to offer themselves for leadership in this Republic in the different capacities. This is the House that prides itself as the champion of devolution. Therefore, I hope that by the time the officers from Nyamira County Assembly complete their benchmarking visit, they will have learnt something on the way forward for devolution.

I thank you.

Sen. (Dr.) Langat: Mr. Speaker, Sir, I take this opportunity to welcome students from Makueni County and officers from Nyamira County Assembly. I congratulate the officers from Nyamira County Assembly for coming to the Senate. Nyamira County neighbours Bomet County. We have been living in harmony with them for a long time. The harmony that has exists between our two communities should continue.

I also congratulate the students for visiting this House. I am sure their teachers have taught them that the Senate is a very important legislative organ in this country. We are the House that is responsible for doing the oversight of what is happening in our counties. I congratulate them for visiting and encourage them to work very hard in their academics and be disciplined. I hope that one day, they will be seated where we are and encourage visiting students.

I thank you.

Sen. Olekina: Bw. Spika, nakuunga mkono kuwakaribisha wanafunzi kutoka Kaunti ya Makueni kwa niaba ya Seneta wa Kaunti ya Makueni, Sen. Mutula Kilonzo Jnr. Nawahimiza wanafunzi watunze mazingara yao kwani ni jambo muhimu. Nawasihi wanafunzi wapande miti shuleni. Sisi ni viongozi wa leo na wao ndio viongozi wa kesho.

Maafisa kutoka Kaunti ya Nyamira wakitazama Seneti wataona kwamba tunatumia teknolojia kujadili mambo hapa. Hapo mbeleni, tulikuwa tunatumia makaratasi mengi lakini sasa mambo yamebaadilika. Naomba kwamba wakirudi Kaunti ya Nyamira, watumie teknolojia kama Seneti.

The Speaker (Hon. Lusaka): Sen. Olekina, that is a very good trial from you. You have shocked the entire House. It was a good spirit.

Next Order.

PAPERS LAID

THE TSC STRATEGIC PLAN FOR THE PERIOD 2019-2023

Sen. (Dr.) Langat: Mr. Speaker, Sir, pursuant to Standing Order 221(2), I beg to lay the following Paper on the Table of the Senate today, Wednesday, 17th July, 2019-
The Teachers Service Commission Strategic Plan for the period 2019-2023.

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

The Speaker (Hon. Lusaka): Is the Chairperson, Vice Chair or any Member of the Standing Committee on Labour and Social Welfare in the House? If none of them is available, let us proceed.

Next Order.

NOTICE OF MOTION

RETIREMENT AGE FOR PERSONS WITH DISABILITIES IN PUBLIC SERVICE

Sen. (Dr.) Musuruve is not in to give her notice of Motion. This is, therefore, deferred.

(Notice of Motion deferred)

STATEMENTS

RECOGNITION OF PERSONS LIVING WITH DISABILITIES

The Speaker (Hon. Lusaka): Sen. (Dr.) Musuruve is not there. So, the Statement is deferred.

(Statement deferred)

INCORPORATION OF DRAMA AND OTHER CO-CURRICULAR
ACTIVITIES IN EDUCATION CURRICULUM

The Speaker (Hon. Lusaka): Sen. (Dr.) Milgo is not there. So, the Statement is deferred.

(Statement deferred)

INCREASE IN INCIDENTS OF BULLYING IN SCHOOLS

Sen. Iman: Mr. Speaker, Sir, I rise pursuant to Standing Order 48(1) to seek a Statement from the Standing Committee on Education concerning the increase in cases of bullying in schools in the country.

In the Statement, the Committee should-

(a) Explain the reason behind the increase in incidences of bullying in schools in Kenya especially in secondary schools.

(b) Table statistics on the incidences of bullying in secondary schools which have been reported to the Ministry of Education indicating their nature and action taken thereon by the Government and the respective schools.

(c) Explain the measures put in place by the Ministry to curb the menace and deal with the underlying causes.

(d) State measures put by schools to offer assistance to victims of bullying including psychological assistance to ensure that they are able to continue with their education.

I thank you.

Sen. Farhiya: Mr. Speaker, Sir, I thank you for giving me an opportunity to contribute to this statement. I wish to thank Sen. Iman for bringing that issue to the House.

There are many unresolved mental issues in this country and our children in schools are not spared. Bullying existed even in our time but it never escalated to such unprecedented level where someone ends up dead or mentally incapacitated because of damages inflicted as a result of bullying. It is unfair for students to be taken to the graveyards at night and tortured there. That issue needs to be addressed.

I do not know how we shall legislate this. It is an issue that needs to be addressed. Teachers and school administration need to pay keen attention in terms of ensuring that children do not necessarily suffer to that level until somebody is admitted to hospital.

Thank you, Mr. Speaker, Sir.

Sen. Olekina: Mhe. Spika, nakushukuru kwa kunipa nafasi hii ili nichangie mjadala huu kuhusu ukosefu wa nidhamu kwa wanafunzi. Zamani tulipokuwa shule, wakati tulipokuwa “Kidato cha Kumi” ama *Form Two*, kulikuwa na unyanyasaji wa wanafunzi.

Mjadala huu ni wa maana sana kwa sababu katika shule nyingi katika nchi hii, wanafunzi wengi wananyanyaswa ama bullying. Ningemhimiza Mwenyekiti wa Kamati ya Elimu aweze kutilia maanani jambo hili---

The Speaker (Hon. Lusaka): Order, Senator. Sen. Kinyua, what is your point of intervention?

Sen. Kinyua: Bw. Spika, nimesikia Seneta mwenzangu akisema kidato cha kumi. Mahali ambapo mimi nilisomea hapakuwa na kidato cha kumi. Hata hivyo, katika nchi hii ya Kenya, hakuna kidato cha kumi. Nadhani alimaanisha kidato cha pili ama *Form Two*.

Asante, Bw. Spika.

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

Sen. Wambua: Mhe. Spika, hata mimi Seneta wa Kaunti ya Narok amenichanganya. Ameongea kuhusu kidato cha kumi alafu akatafsiri na kusema *Form Two*. Hapo sijamwelewa vizuri alikuwa anaongea juu ya nini? Tafadhali naomba afafanue.

The Speaker (Hon. Lusaka): Sen. Olekina, you may have gone into unfamiliar waters. You will have to be careful.

(Laughter)

Sen. Olekina: Bw. Spika, Waswahili walisema, asiyefunzwa na mamake, hufunzwa na ulimwengu. Nimekubali kufunzwa na wenzangu kwa sababu mimi nimefanya *direct translation*. Nimetafsiri kuwa kile ambacho Wazungu wanasema 10th Grade; ambacho ni kidato cha kumi ukifanya utafsiri huo. Lakini nimeshukuru kuelezwa ya kwamba ni kidato cha pili.

Tukiwa hapa, sisi wote tunajifunza. Ili tusipoteze umuhimu wa Taarifa ambayo imeletwa na Seneta mwenzetu, ni lazima sisi kama viongozi tutilie maanani mambo ambayo yanaathiri wanafunzi katika shule zetu. Ni vibaya sana kwa mzazi kumpeleka mtoto wake shule kusoma lakini anadhulumiwa na wenzake. Ikiwa kuna dhuluma

(Laughter)

Leo hii, nimesema ya kwamba, katika Bunge hii tunakubaliwa kutumia lugha ya Kiswahili---

(Sen. Kinyua stood up in his place)

Sen. Olekina: Kwani umekuwa mwalimu wa Kiswahili?

(Laughter)

The Speaker (Hon. Lusaka): Order, hon. Members.

Sen. Kinyua, what is your intervention.

Sen. Kinyua: Bw. Spika, nakubaliana na Sen. Olekina alivyosema kwamba asiyefunzwa na mamake, hufunzwa na ulimwengu; na amesema vizuri. Lakini anatumia lugha kwa sababu amesema leo amekuja kuchangia; itakuwa ni vigumu kwetu sisi ambao tumekuja hapa kumfunza, tutakuwa na shida kubwa kumfunza siku ya leo.

Nataka kusema amefanya vizuri lakini kusema “ikiwa kuna dhuluma”--- Anapaswa kutohoa jina “dhulma” vizuri ndio liweze kueleweka na wale wote ambao wanaelewa ile lugha.

Itakuwa ni jambo la kuwakejeli wanaoelewa hiyo lugha kwa sababu tutadhania ya kwamba maneno anayosema--- Mimi naonelea akiongea kwa lugha ya kingereza, huwa anajadili vilivyo kwa ufasaha na weledi. Lakini akiongea kwa lugha ya Kiswahili, inamkanganya kidogo mpaka hatumwelewi kabisa.

Asante, Bw. Spika.

Sen. Faki: Asante Bw. Spika, kwa kunipa fursa hii. Kiswahili ni lugha ya taifa. Tunajua kwamba wengi wetu sio mahiri katika lugha hii. Lakini ni sawa kuwaruhusu Seneta wenzangu wazungumze lugha ya Kiswahili bila kutatizwa na hoja za nidhamu ambazo nyingine hazina msingi.

Bw. Spika, ufasaha wa lugha unatokana na uzungumzaji wa lugha mara kwa mara. Kwa hivyo, nakubali kwamba ndugu yetu, Seneta, kutoka Gatuzi wa Narok hana uzoefu wa kuzungumza Lugha ya Kiswahili katika Bunge hili lakini akipewa fursa ataweza kuzungumza lugha hii kwa ufasaha kwa sababu alizaliwa kama Mmaasai na sio Mwingereza. Kawaida huwa anaongea lugha ya Kingereza kama Mwingereza.

Asante sana, Mhe. Spika.

The Speaker (Hon. Lusaka): Asante sana. Ningependa pia kumpongeza Seneta Gatuzi wa Jimbo la Narok kwa kujaribu kuzungumza Kiswahili. Tumruhusu aweze kuendelea kwa sababu hapa tuko kwenye darasa la kujifunza Kiswahili. Jambo la muhimu ni kwamba aweze kueleweka kiasi ili Wakenya wajue yale ambayo anasema.

Endelea, Mhe. Olekina.

Sen. Olekina: Mhe. Spika, nashukuru sana kwa kunisaidia ili niweze kumaliza. Seneta mwenzetu ameleta taarifa ambayo ametueleza ya kwamba kuna wanafunzi ambao wanadhulumiwa katika shule zetu na kuwafanya watoroke shule.

Mheshimiwa Spika, nimeshukuru. Asante.

(Laughter)

The Speaker (Hon. Lusaka): Asante sana kwa kujinusuru kwa sababu kidogo ulikuwa unaingia matatizoni.

Hon. Senators: Speak in Kiswahili!

Sen. Halake: No, I am from northern Kenya. *Sisi hatujui Kiswahili; mambo ya ngamia tu ndio tunaielewa. Samahani nitazungumza kingereza.*

Mr. Speaker, Sir, thank you for giving me the chance to contribute to this all-important Statement by Sen. Iman. Congratulations Sen. Iman. As they say in Swahili, *uchungu wa mwana aujuaye ni mama*. It is very important that you gave us, as mothers, the opportunity to say something about this important Statement.

A study that was done in this country, last year or the year before; where 82 per cent of students reported having been bullied in schools. The most interesting thing is that bullying is more prevalent in national schools than in provincial schools. It is a dream of all kids to do well. I am sure they are in the Speaker's Gallery trying to learn. The fact that national schools are the worst offenders is really wanting bearing in mind that these

are the smartest kids. I wonder what is happening in this area. This study found that, while bullying is prevalent around the world, the Kenyan trend and rate was much higher than the world trend and rate.

Are we becoming a society that is becoming very violent even amongst the kids? It is very worrying and we need to look at what is causing this anti-social behavior in our children. The individual performance of these kids, who are already in national schools, who came with such high marks is being affected and they move from being A-students to really something that is very worrying in terms of their performance and self-esteem.

There is the vicious cycle, where the child who was once bullied, by the time he is in Form Three, he becomes the bully. We need to look at how this country can curb the vicious cycle of the people that have been bullied in the lower classes becoming the bullies.

Mr. Speaker, Sir, the most worrying thing about this trend is that people are taking away belongings of the children. It is not just bullying, it is actually theft. We cannot have our children becoming thieves at such an early age. When they start working in the offices, then we start saying there is corruption and people are stealing public funds. This trend starts when children are so young in high school where under the guise of bullying, the bullies actually take away belongings of other children. That is also a form of theft and corruption.

Are we then presiding over a generation of children who will become leaders or workers that will be stealing? We need to really take this very seriously. I hope the Committee on Education looks into this and does something so that we break the vicious cycle of the bullied becoming bullies and corruption starting very early because they are blackmailing and talking ill about others.

I cannot remember the percentages but I know it is a disturbing report which should be shared with the Committee, so that they further look into these issues.

Mr. Speaker, Sir, I congratulate Sen. Iman for bringing this important Statement. I hope it will be given the attention it deserves. I look forward to seeing what will be done.

Sen. Cheruiyot: Thank you, Mr. Speaker, Sir, for giving me this chance. I join the rest of my colleagues in adding my voice to this serious issue that has been brought to the fore in the Statement by our colleague. We need to pay keen attention to moral decadence in our institutions, especially secondary schools.

It is my sincere hope that the Committee on Education chaired by my good friend, Sen. (Dr.) Langat, will do something. I have no doubt on his capabilities to demand discipline from students because that is what he demanded from me when I was his student. I hope he will be a bit firm on this one than how he used to deal with me.

The Statement only raises the issue of bullying but there are three issues I would like the Committee to consider when they will be looking into this Statement. They should invite the Ministry to explain how they intend to handle the vices because it is a growing concern to many parents who take their children to public institutions. These are bullying, drug abuse and gay and lesbianism. If not properly checked, these three issues have the capability of wiping out an entire generation in our country.

Sen. Halake: On a point of order, Mr. Speaker, Sir. I think the Senator for Kericho County is confusing us because gay and lesbianism has nothing to do with bullying. Could he tell us how that is related to bullying?

Sen. Cheruiyot: I blame Sen. Prengei for engaging the good Senator from Isiolo to a point of not following what I said. Had she followed through, she would have heard that I said that the Committee should further look into the other two issues. Sen. Prengei, please, allow Sen. Halake to concentrate on the debate.

Mr. Speaker, Sir, I hope those three issues will be looked into keenly because right now any parent in this country is worried about the current trend. Previously, it used to be in all public schools but it is now happening even in faith-based institutions. That tells you that there is no institution that is safe from the three vices that I have mentioned.

I urge the Committee to invite officers from the Ministry. They could as well invite the rest of the stakeholders to make proposals. The Senate and the National Assembly should support them so that we save the next generation.

Sen. Wario: Asante, Bw. Spika, kunipa nafasi ili kumuunga mkono Seneta aliyewasilisha taarifa hii. Vile tunavyojua, kuna mambo yanayofanyika katika shule za upili. Kuna mambo yanayofanyika wanafunzi wanapojiunga na shule za upili na hiyo ni dhuluma. Kamati ya Elimu inafaa kufanya uchunguzi na kupendekeza jinsi ya kukomesha dhuluma katika shule za upili.

Wanafunzi wengi wanahofia kwenda shule kwa sababu kuna baadhi wanaoamrisha kwenda kwa magoti. Baadhi humwagiwa maji baridi na wengine hupata kichapo cha mbwa. Hiyo si haki kwa sababu wazazi hupeleka watoto wao shuleni ili wasome bila shida. Ikiwa wanadhulumiwa, wengi hawawezi kusoma kwa sababu wanaogopa wenzao.

Kumekuwa na ongezeko la visa vya dhuluma. Mimi pia nilidhulumiwa wakati nilipokuwa shule ya upili. Cha kushangaza ni kwamba bado kuna dhuluma shuleni. Watoto wetu hawafai kudhulumiwa na wengine. Dhuluma shuleni inafaa kukomeshwa kwa sababu inaweza kufanya wanafunzi wa shule za msingi kukataa kwenda shule wakichukulia kuwa shule si pahali pazuri. Kwa hivyo, visa vya wanafunzi kudhulumiwa shuleni vinafaa kukomeshwa.

The Speaker (Hon. Lusaka): Natumai Sen. Olekina amesikia jinsi Kiswahili kinafaa kuzungumzwa.

(Laughter)

(Sen. Olekina spoke off record)

Sen. Wambua: The Senator for Narok County is inciting me to use Kiswahili Language but I will not go that route.

Mr. Speaker, Sir, I join my colleagues in supporting the Statement on bullying in schools. One of the things we must establish, as a Senate and leaders in this country, is that schools are supposed to be safe places for our children. Schools are not places where our children should go and be afraid of being attacked by their colleagues simply on account of them being juniors to the bullies.

I urge the Committee on Education to take this matter a little bit more seriously. The Chairman of the Committee on Education is not even listening but I hope that when the Statement finally gets to his desk, he will establish that schools are supposed to be safe places for our children and invoke Part II of the Constitution on Rights and Fundamental Freedoms. Our children have a right to inherent dignity and the right to have that dignity respected and protected by the school administrations, teachers and fellow students.

I thank you.

Sen. Were: Bw. Spika, leo nafikiri tutaongea Kiswahili ili tukuze lugha ya taifa na umoja wa Wakenya.

Mr. Speaker, Sir, mambo ya bullying katika shule---

Sen. (Dr.) Ali: On a point of order, Mr. Speaker, Sir. Are Members allowed to mix languages? One should not use English and Kiswahili at the same time. They should choose to either speak in Kiswahili or English.

The Speaker (Hon. Lusaka): That is noted. Proceed, Sen. Were.

Sen. Were: Mr. Speaker, Sir, I will revert to English because I do not want to suffer the same challenge. Bullying is a serious issue---

Sen. Omanga: On a point of Order, Mr. Speaker, Sir.

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

Sen. Omanga: Mr. Speaker, Sir, is it in order for hon. Senator to mix languages as she contributes? I thought she would have continued speaking in Kiswahili to the end without reverting to English language. If she cannot, then I think she has nothing important to add.

The Speaker (Hon. Lusaka): Sen. Were, you started with Kiswahili language and you must carry that across to the end.

(Laughter)

I refer you to Standing Order No. 87 (2). *Kwa hivyo, jaribu hadi mwisho.*

Sen. Were: Asante, Bw. Spika.

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

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

Sen. Madzayo: Bw. Spika, sisi sote hatufahamu lugha ya Kiswahili kwa ufasaha. Wewe ni mtu amabaye umekua ukiona maneno hayo yakitendeka hapa na umekua na roho ya kuweza kuwasikiliza. Mimi ningeomba, Sen. Were ni dada yangu, ana upungufu kidogo wa kuweza kujieleza kwa lugha hii. Kwa hivyo, mpatie nafasi aweze kujieleza katika lugha anayoifahamu sana.

The Speaker (Hon. Lusaka): Hatutaanzisha mtindo wa kuvunja sheria ambazo tumetunga sisi wenyewe. Kwa sababu ya huo upungufu wake katika lugha hii, atajipanga tena ili aweze kujieleza kwa lugha anayoifahamu kwa ufasaha atakapopata nafasi nyingine.

Pia ningependa kuwashauri wengine wetu ambao wana mtindo wa kuchanganya lugha kwamba watumie lugha unayoifahamu kwa ufasaha.

Sen. (Prof.) Ongeri: Thank you, Mr. Speaker, Sir, I shall not attempt to go on the direction of Kiswahili language because I want to make a very important point.

It is quite clear that bullying has a hostile intent in any manner and way. When children go to school, they go to learn experiences that will sustain them in their lifetime. They will be able to learn, to be able to know the normal decorum that they must follow in order to be able to sustain themselves in life. It is one way bequeathing our children boys and girls at school the ability to engage others in a much more friendly way than in a hostile manner.

When we have bullying in schools is a clear indication that that school is out of order. There is no order in that school and students are not being taught to behave in a certain manner and accept each other the way they are.

During my period of time as the Minister for Education, this is one of the things that I took a very stern action on. I urge headmasters, headmistresses, Parents/Teachers Association (PTA), teachers and the students' council to meet and get an orderly way of doing things in those schools. The bullying is done by the students who have been there longer than the others. If it is done repeatedly, not occasional occurrence, then that becomes an intent which is hostile. That bullying is unacceptable in law and nobody should accept it in our schools.

Mr. Speaker, Sir, sometimes this bullying leads to injury. The injury needs not be physical, but it can also be psychological trauma. This is much more dangerous than the physical injury because physical injury can heal. However, if it gets to an extreme extent where you have broken limbs or broken parts of the body that becomes a very dangerous criminal act which needs to meet the full force of law.

Mr. Speaker, Sir, we, as parents and everybody else should discourage this bullying. We should never go that way. Let us welcome students in our schools in a very civilized way, especially now that Christianity and Islam has taken roots in our learning institutions. We should be able to allow children to grow in an orderly fashion. Our God is a God of order, not a God of chaos.

I thank you, Mr. Speaker, Sir.

(Interruption of Debate on Statement)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATIONS FROM VARIOUS SCHOOLS

The Speaker (Hon. Lusaka): Hon. Senators, before we proceed, I wish to make a few communications. I would like to acknowledge the presence in the Public Gallery this afternoon of visiting Students and Teachers of Ol'Kejuado High School in Kajiado County.

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

I thank you

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

I would also like to acknowledge the presence in the Public Gallery of visiting Students and Teachers from Inyokoni Secondary School in Makueni County.

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

I thank you.

(Applause)

(Resumption of Debate on Statement)

Sen. Kinyua: Asante sana, Bw. Spika. Ninaungana nawe kuwakaribisha wanafunzi waleo ambao umetaja kutoka kaunti za Makueni na Kajiado. Masomo ndio uti wa mgongo wa maendeleo ya nchi yetu. Ni vizuri wamekuja kuona vile ambavyo tunajadili katika Seneti hii.

Kuhusu kudhulumiwa kwa wanafunzi wa kidato cha kwanza katika shule zetu, si shida bali ni janga. Dhuluma hizi hutokea kila wakati na zimekuwa mazoea katika shule zetu.

Tunataka Kamati ya Elimu ambayo itakashughulikia swala hili, iangalie kwa mapana na marefu, wakizingatia ya kwamba limekuwa likitendeka kila wakati. Wanafunzi wengi wameacha masomo yao kwa sababu wenzao wanawadhulumu ni kama wahuni na wakora. Kazi yao ni kudhulumiwa. Ni vizuri kama Kamati hii, iangalie mambo mengine ambayo yamekuwa yakijitokeza katika shule zetu. Kwa mfano, kuna swala la dawa za kulevya, pombe na kadhalika katika shule zetu za upili.

Kamati isizingatie tu majukumu yale yaliyotajwa hapa, bali waangalie kwa mapana na marefu ili jambo hili likomeshwe mara moja. Kwa sababu ukiingia katika kidato cha kwanza, unapata mambo hayo yanaendelea. Shule zetu zimekuwa kama magereza ambapo wanafunzi hutezwa.

Sen. Madzayo: Asante, Bw. Spika. Ningependa kuunga mkono taarifa hii. Tunaona ya kwamba watoto wakiwa wamekubaliwa kuingia shule za upili, hasa shule ambazo ni za hadhi ya juu, siku ya kwanza, wiki ya kwanza, mwezi wa kwanza au muhula wa kwanza, wanateswa na wenzao wa vidatu vingine. Wanaweza kuwafanya wenzao kuwa kama watumwa.

Wakati mzazi anapopeleka mtoto wake shule, nia yake ni kwamba mtoto huyo aweze kujifunza na kupata masomo ambayo yatamfaidi siku zake za usoni. Lakini hii dhuluma inayoendelea katika shule zetu hakubaliki kamwe. Juzi tulisoma kwenye gazeti, jua ya Nairobi School ambapo wanafunzi wa kidato cha kwanza walifanyiwa dhuluma kubwa na wenzao. Hii ni shule ya kifahari. Hayo ni makosa ambayo hatutaki yafanyike tena.

Jambo hili hutokea kwa sababu walimu wamezembea kazini. Badala ya kuwafundisha watoto wetu, wao wanashughulika na mambo yao. Ni lazima wasomeshe watoto wetu ili wapate elimu ambayo itawafaidi katika masiha yao.

Bw. Spika, vitendo hivi vinatendeka katika shule zetu za upili. Ninalikemea sana jambo hili la dhuluma katika shule zetu. Ni lazima tupate njia mwafaka ya kukomesha dhuluma katika shule zetu.

Sen. Seneta: Thank you, Mr. Speaker, Sir, for allowing me to add my voice on this important Statement.

Before I do that, I want to join you in welcoming the students from Olkejuado High School from Kajiado County. Olkejuado High School is one of the best boys' schools in the county. They are welcome to the Senate and they should know that the Senate represents the counties. They should enjoy their learning here.

Bullying in our secondary schools should be looked into. The Ministry should put measures in place to protect our students. Students should not be bullied by their colleagues and school workers. Our students join these schools with a lot of hope just for them to get into an environment that is not conducive for learning. The Committee on Education will look at this and we will also invite the other Members to share their experiences with the Committee.

Sen. (Dr.) Zani: Ahsante sana, Bwana "Mzungumzishi" kwa nafasi hii. Mimi pia ningependa kuungana na wewe kuwakaribisha wageni ambao wamefika hapa. Kuna wale ambao wametoka Kajiado, Makueni na pia---

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

The Speaker (Hon. Lusaka): Sen. Olekina, what is your point of intervention?

Sen. Olekina: Mheshimiwa Spika, sijaboea katika lugha ya Kiswahili lakini ningependa dada yangu afafanue kile ambacho anachokiita "mzungumzishi" kwa sababu mimi ninajua kwamba wewe ni Mheshimiwa Spika unapoketi hapo.

Sen. (Dr.) Zani: Ahsante sana. Kuna kitendo cha kuzungumza na yule mtu ambaye anawapatia wenzake nafasi kuzungumza anaitwa "mzungumzishi". Kwa hivyo, ninaweza kusema, Bwana Spika na katika hali ya kuunda Lugha ya Kiswahili, ninaweza iendeleza zaidi na kusema "Bwana Mzungumzishi". Lakini, mtu ambaye anataka kutumia neno kama hili ni lazima azungumze kwa makini ndiposa maneno yasije yakamtatiza. Ukitaka kutumia neno "mzungumzishi", ni lazima ujue kulitamka vizuri lakini pia unaweza kusema Bwana Spika.

Ahsante tena, "Bwana Mzungumzishi", kwa nafasi hii. Ninakuunga mkono kuwakaribisha wale ambao wamekuja kututembelea ili waone vile tunavyounda sheria katika Bunge hili.

Jambo lingine ambalo ningependa kulizungumzia ni shida ambayo wanafunzi wetu wanapitia wakiwa shuleni. Watoto hawa hupelekwa shuleni kusoma ili wajiendelesha katika maisha. Lakini tunaona mara nyingi wakienda---

(Senators consulted loudly)

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

Sen. (Dr.) Zani: Wanafunzi hawa hupata matatizo wakienda katika shule hizi. Hii ni kwa sababu wenzao huwa wanawaweka katika hali ya kutatanisha na hali ya kuongeza hofu katika mwili na akili zao. Hii ni jambo ambalo limeendelea kwa muda mrefu. Kwa hivyo, ni muhimu ya kwamba tulizungumzie.

Itakuwa vizuri kama tunaweza kutafuta mwalimu maalum ambaye kazi yake itakuwa ni---

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

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

The Senate Minority Leader (Sen. Orengo): Bw. Spika, Seneta Maalum anaendelea kukubandika jina na kusema ya kwamba wewe ni “Mzungumzishi”---

(Laughter)

Nimeangalia Katiba ya Kenya ambayo imeandikwa kwa Kiswahili na imechapishwa na *Government Printer* na hakuna jina “Mzungumzishi”. Nimeangalia pia nakala za Bunge na nimeona ya kwamba jina maalum la mtu ambaye anaongoza mazungumzo ya Bunge la Seneti ni Bwana Spika. Nimeangalia pia Kamusi na jina hilo halipo.

Kiswahili cha watu wa Pemba ni tofauti na Kiswahili cha watu wa Mombasa. Kwa hivyo, hiyo Kiswahili ya dada yangu inaweza kuwa ile ya watu wa Kwale. Kulingana na Kiswahili sanifu ambayo inatumika katika *Senate*, wewe ni Bwana Spika na hauwezi kubandikwa jina nyingine.

Sen. Madzayo: Ahsante sana, Bw. Spika. Nampa kongole ndugu yangu, Sen. Orengo, kwa huo ufafanuzi. Katika hoja yangu ya nidhamu, nilikuwa nataka kusema mambo hayo hayo.

Ninatoka katika eneo moja na Sen. (Dr.) Zani na ninamheshimu sana. Yeye ni msomi. Katika wale madaktari wanaotoka kule kwetu, yeye yuko katika ulingo wa hali ya juu sana---

(Laughter)

Leo amenoa kwa sababu amekuita “mzungumzishi”. Katika Bunge la Tanzania, Bwana Spika anaitwa Bwana Spika. Hajapewa jina lingine na Mheshimiwa Mbunge huwa anaitwa Mheshimiwa Mbunge wa eneo fulani. Hakuna jina kama “mzungumzishi” ama cheo cha “mzungumzishi”.

Je, ni haki dadangu kuendelea kutumia jina “mzungumzishi”? Tunaomba aliondoe jina hilo jina atumie jina Bwana Spika.

The Speaker (Hon. Lusaka): Nitasikia kutoka kwa Sen. Wario.

Sen. Wario: Ahsante sana, Bw. Spika, kwa kunipa nafasi hii. Ninamheshimu sana Seneta mteule anayetoka katika Kaunti ya Kwale, Sen. (Dr.) Zani. Yeye ni msomi na mjuzi wa Lugha ya Kiswahili. Kwa kweli, mtu ambaye anaongoza kikao katika Bunge ni Mwenyekiti ama Bwana Spika. “Mzungumzishi” ni yule ambaye anafanya watu ambao ni bubu waweze kuongea.

(Laughter)

Kwa hivyo, Bw. Spika wa Bunge hili la Seneti, usiruhusu mtu akuite “mzungumzishi” kwa sababu wewe ni Bwana Spika.

Asante sana, Bw. Spika.

(Laughter)

The Speaker (Hon. Lusaka): Wacha nisikie kutoka kwa Sen. Faki.

Sen. Faki: Asante sana, Bw. Spika. Hatufai kumsulubisha Sen. (Dr.) Zani kwa kutumia neno “mzungumzishi”. Hii ni kwa sababu lugha ya Kiswahili ni lugha ambayo inakuwa. Kwa mfano, katika msamiati au Kamusi ya Kiswahili hatukuwa na neno ‘tarakilishi.’ Lakini kwa vile lugha inaendelea kukua tumepata maneno mengi mapya.

“Mzungumzishi” ni baadhi ya maneno ambayo yamekuja baada ya kukua kwa Lugha ya Kiswahili. Kwa hivyo, badala ya kumsulubisha Sen. (Dr.) Zani, angepewa muda wa kuwasilisha ushahidi kwamba neno hili linakubalika katika Lugha ya Kiswahili. Nafikiri hiyo ndio itakuwa njia sawa ya kumsaidia na kutusaidia sisi ambao tuko hapa.

Lakini napinga ufafanuzi wa Sen. Wario kwamba “mzungumzishi” ni yule mtu ambaye anazungumzisha watu viziwi.

Asante sana, Bw. Spika.

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

Sen. Pareno: Asante sana, Bw. Spika. Ningemwomba dada yangu Sen. (Dr.) Zani alifutilie mbali neno “mzungumzishi”, kwa sababu halifai katika rekodi zetu za Seneti. Ni neno ambalo hatujui maana yake, kama vile tumeangalia katika Kamusi ya Kiswahili. Halifai kabisa.

Bw. Spika, ningependa pia kuwa kama wenzetu wanataka kuzungumza kwa Kiswahili, wanafaa kujifunza kwanza ili wasifanye Seneti kuwa mahali pa kujifunza.

(Laughter)

Kwa hivyo, nawaomba wajifunze kwanza kisha waje hapa kunena Kiswahili sanifu.

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

Sen. Mutula Kilonzo Jnr.: Bw. Spika, sisi ambao tunatoka eneo la Ukambani hatuna ufasaha mzuri wa Kiswahili. Hata hivyo, kwa sababu swala hili la “mzungumzishi” limeleta kizungumkuti na utata, ningependa umpatie nafasi Sen. (Dr.) Zani alete kamusi ambayo itafafanua jambo hili, ili baina ya Sen. Wario ambaye anasema “mzungumzishi” ina maana tofauti, na Katiba ya Kenya ambayo imetafsiriwa kwa Kiswahili--- Hata mimi niko nayo. Naomba nje nayo kesho ili tujadili swala hili na kuamua kama tunaweza kumwita Bw. Spika “mzungumzishi”.

Asante sana, Bw. Spika.

The Speaker (Hon. Lusaka): Sen. Malalah, atakuwa wa mwisho kabla nitoe uamuzi wangu.

Sen. Malalah: Bw. Spika, sisi kama Waswahili wa bara, tumeangalia katika kamusi ya mtandao, ambayo kwa jina ya kizungu inaitwa *Google*. Neno “mzungumzishi” kwa lugha ya kimombo inamaanisha *chatter*. Ningependa kusema kwamba lugha ambayo Sen. (Dr.) Zani ametumia siyo lugha ambayo tunaweza kutumia katika Bunge hili.

Ningependa kumhimiza ya kwamba ni muhimu haswa wale Waswahili ambao wanatoka eneo la Pwani waache kutumia maneno makubwa kututisha sisi ambao tunatoka bara. Watumie ngeli ambazo zinaeleweka. Kiswahili cha kule Kakamega

kinaheshimika na kueleweka, sio Kiswahili cha kuongea maneno ambayo hayaeleweki. Ningependa kuwaonya wenzetu ambao wanatoka Pwani kwamba watumie Kiswahili rahisi ambayo inaeleweka.

Asante, Bw. Spika.

The Speaker (Hon. Lusaka): *Order, Members!* Nafikiri mmejadili swala hilo kwa muda mrefu. Kulingana na hali ilivyo katika ‘Nyumba’, ningemwomba Sen. (Dr.) Zani atumie neno ‘Spika.’

Sen. (Dr.) Zani: Asante sana. Kwanza, ningependa kusema kwamba katika Bunge la Kumi na Moja, swala hili liliulizwa. Sen. Kembi-Gitura alikuwa ameketi kwenye Kiti hicho. Tulilizungumzia na kukubali hili neno.

Pili, katika hali ya kuendeleza lugha na falsafa ya lugha, ni muhimu kwamba lugha inaendelea kukuwa. Kama kuna wakati tunaweza kutumia jina lingine badala ya ‘Spika,’ ningefurahi sana, haswa sisi watu wa Pwani kama wakuza wa Lugha ya Kiswahili. Leo ningeskia wenzangu wakipiga makofi wakisema: “Leo umeleta neno jipya ambalo litatusaidia katika lugha.”

Kuna wanafalsafa kama Prof. Abdul Aziz na Prof. Mberia kutoka Chuo Kikuu cha Nairobi ambao tutazungumza nao. Sitaki kuwa na huzuni kwamba jina nzuri kama hili linaweza kuuliwa. Jina hili lilitumiwa katika Bunge la Kumi na Moja.

Kwa hivyo, nikiendelea kuzunguza sitataja neno “mzungumzishi” na ‘Bw. Spika.’ Nitaendelea bila kutaja maneno yote mawili. Nikiendelea, tufikirie sana na wenzangu. Vile vile tunaweza kuwauliza wakuza lugha wengine watueleze kama “mzungumzishi” ni mtu ambaye anasaidia bubu kuzungumza. Je, bubu anaweza kusaidiwa kuzungumza? Bubu ni mtu ambaye hawezi kuzungumza. Kwa hivyo, ukisema unamfanya azungumze, unatuelezea nini hapa?

Kwa sababu nafikiria nimewapa changamoto ya kufaa, namalizia nikisema kwamba ni muhimu walimu ambao wako katika shule hizi wawasaidie wanafunzi kama hawa ambao pengine wanapata shida tofauti tofauti. Tungependekeza kuwe na mwalimu maalum ambaye atakuwa anaweza kuchukua shida za wanafunzi na kuzitatua na kuhakikisha kwamba zimetatuliwa ili wanafunzi waendeleo na mafunzo yao.

Asante sana, “Bwana Mzungumzishi”.

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

Sen. Cheruiyot: Mr. Speaker, Sir, you do not give directions in vain. When you give directions, they should be respected. You directed that Sen. (Dr.) Zani should desist from referring to you as “mzungumzishi” and, instead, refer to you as ‘Bw. Spika.’ I hope you heard how she concluded her remarks. It will be unfortunate if you allowed that to stand in our records.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Sen. (Dr.) Zani, what did you say?

Sen. (Dr.) Zani: Bw. Spika. nilikuita “Bwana Mzungumzishi” kama vile nilimuita Sen. Kembi-Gitura “mzungumzishi” na hakuna ambaye aliniambia hivyo.

The Speaker (Hon. Lusaka): Order! Order! Nilikuwa nimetoa uamuzi kwamba kwa sasa utumie neno ‘Spika’ mpaka wakati tutapata ukweli wa neno “mzungumzishi”.

Please, withdraw that.

Sen. (Dr.) Zani: Unaningojea niombe msamaha kwa kutumia jina la kifalsafa? Je, huo ndio msalaba mnaniwekea katika Seneti leo, mimi mwana wa Zakaria Zani, mwalimu wa Kiswahili na mwandishi? Tafadhali, poleni sana.

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

Sen. Wario: Bw. Spika, tunamheshimu sana Sen. (Dr.) Zani kutoka jimbo la Pwani, sehemu ile ya Kwale. Alitangulia kusema kwamba hatatumia neno “Bw. Spika” wala “mzungumzishi”. Hata hivyo, amemaliza kwa kutumia neno “mzungumzishi”. Tungependa aondoe arifa ambayo ametoa ili isikae katika rekodi zetu na kuheshimu Bunge la Seneti.

Asante, Bw. Spika.

The Speaker (Hon. Lusaka): Sen. (Dr.) Zani, nilikuwa nimetoa uamuzi na kwa sababu ya sheria za Seneti hii, ninakuuliza uzingatie sheria hizo.

Sen. (Dr.) Zani: Asante sana, “Bwana Mzungumzishi”. Nimeangalia katika *Google* ambayo nimepewa na Sen. Faki. Jina hilo lipo. Sitasema unisamehe kwa sababu wenzangu hawakujua kwamba jina hili liko.

Vile nilisema, tunaweza kuliacha jambo hili kwa leo na kwa heshima ya Waswahili ambao wamefanya bidii kukuza lugha hii ya Kiswahili. Najua nikizumgumza vile nilivyosema ninakumbuka na nikifikiria haya, tuseme tuweke, tuache watu waangalie na watuelezee vile tutakavyoenda mbele. Hatuwezi kusema tusitumie neno ambalo limetumika.

Asante Bw. Spika.

Sen. Madzayo: Bw. Spika, asante. Kuna tafakari mbili hapa za *Google*. *Google* ile ya Sen. Malalah inasema wewe ni *chatter* ile *Google* nyingine inasema ya kwamba wewe ni “mzungumzishi”. Hata hivyo, tunasema ya kwamba *Google* hizi zote mbili hazifai kwa sababu sio Kamusi ya Kiswahili. *Google* moja imetoa kwa maktaba na nyingine ya Sen. Malalah ninafikiria pengine *ame-Google* pande hiyo--- Maktaba imetoka upande za Pwani; hii ya Sen. Malalah ambapo Spika anaitwa *chatter* hatujui ni ya upande gani.

Katika maoni yangu, hiyo amri uliyotoa kwanza---

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

Bw. Spika, mimi ninaongea hapa katika Bunge na ningependa unitegee masikio kwa sababu ukishatoa amri iwe ni sawa au si sawa, ni lazima amri yako itimie ndani ya Bunge hili. Hatusemi kwamba yale Seneta dada yangu alivyokuwa anasema au Sen. Malalah wana makosa. Lakini tunasema kwamba kwa sababu umetoa amri, hiyo amri yako itimie halafu kama kuna marekebisho ya aina yoyote, yaletwe kesho; sio leo baada ya Bw. Spika kutoa amri ya Bunge hili.

(Applause)

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

Sen. Cheruiyot: Mr. Speaker, Sir, the issue before you has got nothing to do with Kiswahili anymore. It is about the traditions and procedures of this House that are under

threat. On previous occasions when we have had such an issue, it is such a grave offence for a Senator to challenge the authority of the Speaker. Once the Speaker has issued a direction, for somebody to purport to still try and argue with you, not only challenges the authority of the Speaker, but this House in its entirety.

Mr. Speaker, Sir, therefore, I would wish to request that you take firm action against the Senator who continues to portray this completely unbecoming behaviour. Please, guide this House.

Thank you.

The Speaker (Hon. Lusaka): Sen. (Dr.) Zani, I have made a ruling from the Chair. What do you have to say?

Sen. (Dr.) Zani: Asante, Bw. Spika. Nimesema huu leo ni msalaba na nitaubeba.

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

The Speaker (Hon. Lusaka): Sen. (Dr.) Zani, this is a House of rules and procedures. I have said that I am directing that you withdraw the statement unless you seek for more time to bring an authenticated version of that word.

Sen. (Dr.) Zani: Bw. Spika, nimesikia ya kwamba kuna aina mbili za *Google*---

(An hon. Senator spoke off record)

I am explaining! Naelezea tafadhali na ni muhimu kuelezeana! Kuna aina moja ya *Google* ambayo inaeleza ya kwamba mzungumzishi ni sawa. Leo jioni nitazungumza na Prof. Abdulaziz, Prof. Kithaka wa Mberia na Waswahili wengine halafu tutaleta hoja hiyo na tuizungumzie ili tuijue. Kiswahili Hoyee!

Sen. (Dr.) Langat: On a point of order, Mr. Speaker, Sir.

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

Sen. (Dr.) Langat: Mr. Speaker, Sir, you should not continue entertaining this kind of gross disorderly behaviour. According to the Standing Order No.117-

“A Senator commits an act of gross disorderly conduct if the Senator-

(a) Defies a ruling or direction of the Speaker or Chairperson of Committees.”

If we continue this chaotic and Neanderthal behaviour, this House will become just like any other market. Therefore, give us direction.

The Speaker (Hon. Lusaka): Sen. (Dr.) Zani, I have said that you either withdraw or ask for more time to bring a clarification. Do not circumvolute. Just withdraw or---

Sen. (Dr.) Zani: Asante, Bw. Spika. Nimeongea nikasema kwamba nitazungumza na hawa profesa wawili katika hali ya kutafuta muda zaidi na kuleta suluhisho ili tuhakikishe kwamba neno “mzungumzishi” linaweza kutumiwa kama Bw. Spika.

Sen. (Prof.) Kindiki: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): What is your point or order?

Sen. (Prof.) Kindiki: Mr. Speaker, Sir, the consequences of Standing Order No. 117 are very dire. I think you should help us by ordering Sen. (Dr.) Zani firmly to

terminate the process she is engaged in and withdraw or we continue because it is becoming a circus.

The Speaker (Hon. Lusaka): Hon. Members, I wish to remind this House of Standing Order No.117 - Gross disorderly conduct:

“A Senator commits an act of gross disorderly conduct if the Senator-

(a) Defies a ruling or direction of the Speaker or Chairperson of Committees.

(b) Declines to retract use of unparliamentally language or declines to offer apologies despite having been ordered to do so by the Speaker.

(c) Fails to declare personal interest in a matter before the Senate or a Committee.”

What is most important here is (b) where a Senator

“Declines to retract use of unparliamentally language or declines to offer apologies despite having been ordered to do so by the Speaker.”

You are therefore, out of order according to Standing Order No. 117(b). Therefore, you may leave the Chamber for the rest of the sitting.

(Applause)

(Sen. (Dr.) Zani withdrew from the Chamber)

Next Order.

MOTION

ADOPTION OF THE MEDIATION COMMITTEE REPORT ON THE LAND VALUE INDEX LAWS (AMENDMENT) BILL, 2018

THAT, the Senate adopts the Report of the Mediation Committee on the Land Value Index Laws Bill (National Assembly Bills No.3 of 2018) laid on the Table of the Senate on Wednesday, 10th July, 2019, and pursuant to Article 113 of the Constitution and Standing Order No.161(3) of the Senate Standing Orders approves the mediated version of the Bill.

(Sen. Mwangi on 11.7. 2019)

(Resumption of Debate interrupted on 16.7.2019)

The Speaker (Hon. Lusaka): I order that the Division Bell be rung for two minutes.

(The Division Bell was rung for two minutes)

I now direct that the Doors be closed and the Bars drawn.

(The Doors were closed and the Bars drawn)

(Voting in progress)

Please, logout and login.
Assisted voters, please, approach the Clerks-at-the Table.

*(Sen. Halake approached the Clerks-at-the Table
and registered her vote)*

DIVISION

ELECTRONIC VOTING

(Question, that the Senate adopts the report of the Mediation Committee on the Land Value Index Laws Bill (National Assembly Bills No.3 of 2018) laid on the Table of the Senate on Wednesday, 10th July, 2019 and pursuant to Article 113 of the Constitution and Standing Order 161(3) of the Senate Standing Orders approves the mediated version of the Bill, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Cheruiyot, Kericho County; Sen. Farhiya, Nairobi; Sen. Faki, Mombasa County; Sen. (Eng.) Hargura, Marsabit County; Sen. Halake, Isiolo County; Sen. Iman, Garissa County; Sen. (Dr.) Kabaka, Machakos County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Mahamud, Mandera County; Sen. Malalah, Kakamega County; Sen. (Dr.) Mbito, Trans Nzoia County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita-Taveta County; Sen. Olekina, Narok County; Sen. Prengei, Nakuru County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orengo, Siaya County; Sen. Seneta, Kajiado County; Sen. Wambua, Kitui County and Sen. Wario, Tana River County.

NOES: Nil

The Speaker (Hon. Lusaka): Hon. Senators, the results of the voting are as follows:-

AYES: 25

NOES: Nil.

ABSTENTIONS: Nil

‘Ayes’ have it.

(Question carried by 25 votes to nil)

Next Order.

BILL*Second Reading*

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

(Sen. (Dr.) Zani on 9.7.2019)

(Resumption of debate interrupted on 16.7.2019)

DIVISION

ELECTRONIC VOTING

*(Question, that The Public Finance Management (Amendment) Bill
(Senate Bills No.3 of 2019) be now read a Second Time, put
and the Senate proceeded to vote by County Delegations)*

AYES: Sen. Cheruiyot, Kericho County; Sen. Faki, Mombasa County; Sen. Farhiya, Nairobi County; Sen. Halake, Isiolo County; Sen. (Eng.) Hargura, Marsabit County; Sen. Iman, Garissa County; Sen. (Dr.) Kabaka, Machakos County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Mahamud, Mandera County; Sen. Malalah, Kakamega County; Sen. (Dr.) Mbito, Trans Nzoia County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita-Taveta County; Sen. Olekina, Narok County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orenge, Siaya County; Sen. Prengei, Nakuru County; Sen. Seneta, Kajiado County; Sen. Wambua, Kitui County; and, Sen. Wario, Tana River County.

NOES: Nil.

The Speaker (Hon. Lusaka): Hon. Senators, the results of the Division are as follows:-

AYES: 25.

NOES: Nil.

ABSTENTIONS: Nil.

The "Ayes" have it.

(Question carried by 25 votes to nil)

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

I direct that the Doors be opened and Bars drawn.

(The Doors were opened and the Bars drawn)

We will go back to Order No.7, Statements, to allow the Chairperson for the Committee on Delegated Legislation to make her Statement.

(Resumption of Statements)

STATEMENT

ACTIVITIES OF THE COMMITTEE ON DELEGATED LEGISLATION

Sen. Farhiya: Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No.51 (1) (b) to make a Statement on the activities of the Sessional Committee on Delegated Legislation for the period commencing 1st January to 30th June, 2019.

During the period under review, the Committee held a total of 16 Sittings and undertook four county visits. The counties include Nairobi, Kirinyaga, Machakos and Kajiado. The Committee also held two engagements with their counterpart County Assembly Delegated Legislation Committees of Uasin Gishu, Tharaka-Nithi, Embu, Vihiga, Kericho and Elgeyo-Marakwet counties.

Mr. Speaker, Sir, as you are aware, our Committee, being a Sessional Committee, does not handle Bills and Statements. The Committee's mandate focuses on delegated legislation or statutory instruments developed by Government agencies.

In the period under review, the Committee considered the draft Parliamentary Service (Catering Committee) Regulations of 2018 and forwarded its recommendations to the Parliamentary Service Commission. The Committee has also actively engaged the Ministry of Agriculture, Livestock and Fisheries, the Ministry of Water and Irrigation and the Ministry of Industry, Trade and Co-operatives concerning draft regulations on various matters that concern county governments.

Following these engagements, the Ministry of Agriculture, Livestock, and Fisheries submitted the following proposed draft regulations for the Committee's consideration-

- (a) The Crops (Food Crops) Regulations, 2019
- (b) The Crops (Horticulture Crops) Regulations, 2019
- (c) The Crops (Tea Industry) Regulations, 2019

The Ministry further submitted the following published Regulations for scrutiny by the Committee-

- (a) The Irish Potatoes Regulations, 2019
- (b) The Crops (Coffee General) Regulations, 2019

Mr. Speaker, Sir, with respect to county visits and engagements, the Committee has held meetings with counterpart Committees from several county assemblies. Some of the key observations made by the Committee from these engagements include-

- (1) Most county executives made regulations without presenting them to their respective county assemblies for their scrutiny.

- (2) There is need for continued engagement with the Members of counterpart committees of the county assemblies.
- (3) A common feature among the counties was lack of or insufficient legal officers in the county executives.
- (4) Publishing of Bills and Regulations emanating from the counties by the Government Printer remains a challenge for county governments.

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

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

Mr. Deputy Speaker Sir, in the period under review, our Committee experienced challenges occasioned by the fact that the relevant line Ministries tend to submit statutory instruments to the National Assembly and not to the Senate, even when the functions involved are devolved, in violation of the Statutory Instruments Act, 2013. I am happy to report that our Committee has engaged the Ministries concerned and the response has been positive.

Mr. Deputy Speaker Sir, in the next reporting period, the Committee will be interrogating the following matters-

- (1) Consideration of the following draft Regulations-
 - (a) The Draft Crops (Food Crops) Regulations, 2019;
 - (b) The Draft Crops (Horticulture Crops) Regulations, 2019;
 - (c) The Draft Crops (Tea Industry) Regulations, 2019;
 - (d) The Draft Public Procurement and Asset Disposal (Regulations) 2019.
- (2) Scrutiny of the following Regulations-
 - (a) The Crops (Coffee General) Regulations, 2019.
 - (b) The Irish Potatoes Regulations, 2019.

The Committee will also undertake County visits and engagements in Kisumu, Nyamira, Kisii, Migori and Homabay Counties.

Thank you.

The Deputy Speaker (Sen.(Prof.) Kindiki): Sen. Cherargei is not here. That is the end of that matter.

Order Senators. That is the end of Statements for today. I am going to defer Order No.10.

Next Order.

COMMITTEE OF THE WHOLE

THE COUNTY GOVERNMENT RETIREMENT SCHEME BILL
(NATIONAL ASSEMBLY BILLS NO.10 OF 2018)

(Committee of the whole deferred)

Next Order; Order No. 11.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

COMMITTEE OF THE WHOLE

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

Where is Sen. Halake. She is not here? I will defer Order No.11 with a caveat. There are some items that have consistently been on the Order Paper for months. Every time the Mover is either absent or they technically disappear. Be warned, that unless you consult the Chair when you have an item appearing in the Order Paper, we will not be just deferring business. We will actually remove it altogether and it cannot be reinstated within the Session.

I will defer Order No. 11 which has been with us forever.

(Committee of the Whole deferred)

Next Order!

COMMITTEE OF THE WHOLE

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

Sen. (Dr.) Zani has suffered the fate of disobedience. Therefore, we will defer Order No. 12.

(Committee of the whole deferred)

For the next Orders; 13-15, Sen. Olekina, please approach the Chair.

(Sen. Olekina consulted the Deputy Speaker)

Order Nos. 13 to 15 have been deferred.

COMMITTEE OF THE WHOLE

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

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

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

(Committee of the Whole deferred)

We will go to Order No. 16.

BILL

Second Reading

THE COMMISSION ON ADMINISTRATIVE JUSTICE
(AMENDMENT) BILL (SENATE BILLS NO. 6 OF 2019)

(Sen. Were on 16.7.2019)

(Resumption of debate interrupted on 16.7. 2019)

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Were, you had started moving it. You are left with 56 minutes, but you do not have to use all of them.

Sen. Were: Thank you, Mr. Deputy Speaker, Sir. I had started moving this Bill yesterday and I had indicated that this amendment to the Commission of Administrative Justice Act came as a result of a Motion which we debated here in May last year.

As I said yesterday, when a Motion is in motion, very little gets to be done. I made the decision to establish the offices of the Ombudsman at the County level in legislation.

Mr. Deputy Speaker, Sir, Section 8 of the Commission on Administrative Justice Act outlines various functions of the Commission. I will mention verbatim from this Section which includes:

One, to investigate any conduct in State affairs or any act or omission in public administration by any State organ, State and public officer both at the national and county level; that officer who is alleged or suspected to be prejudicial, improper or is likely to result in any impropriety or prejudice.

Secondly, the Commission of Administrative Justice is to investigate complaints of abuse of power, unfair treatment, manifest in justice or unlawful, oppressive, unfair or unresponsive official conduct within the public sector.

Thirdly, its role is to enquire into allegations of maladministration, delay, administrative injustice, discourtesy, incompetence, misbehavior, inefficiency or ineptitude within the public service.

Fourthly, the role of the Ombudsman is to facilitate the setting up of, and build complaint handling capacity in the sectors of public service, public offices and State organs. They need to work with different public institutions to promote alternative dispute resolution methods in the resolution of complaints relating to public administration.

To recommend compensation or other appropriate remedies against persons or bodies to which this Act applies.

Finally, to work with the Kenya National Commission on Human Rights to ensure efficiency, effectiveness and complementarity in the activities and establish mechanisms for referrals and collaborations.

Mr. Deputy Speaker, Sir, complaints about maladministration are threatening the success of devolution. Kenyans, therefore, need an office or an outlet where they can ventilate and have their issues resolved. Having said that, I will move into the content of the Bill.

This Bill is a brief one which seeks to do the following: One, it seeks to establish offices in each county, make the process of final vacancies clearer, make necessary amendments to align the Act to the Constitution and also make the Commission on Administrative Justice a continuous office without the need to amalgamate.

Mr. Deputy Speaker, Sir, on the issue of establishing offices in each county, the Act currently states that offices may be established at any place. I believe that it is on the basis of this that the Commission has offices in only four counties; Nairobi, Kisumu, Mombasa, Isiolo and recently, Uasin Gishu.

The proposal of the Bill, therefore, is to make it mandatory for offices to be established in each county but have the headquarters in Nairobi. The benefits of having these offices at the county level are numerous. The Government currently is focused towards the *Huduma Mashinani* initiative.

As earlier indicated, services rendered by the office of the Ombudsman are critical to every citizen as they have a link to provision of public service to every person. Having offices thinly spread out across the Republic, makes it difficult to access these services as travel and other incidental costs may not be affordable to many Kenyans and especially those who seek public service yet the services of the office of Ombudsman are offered for free. Decentralization of these offices will also lead to decongestion of the existing offices, therefore, resulting in better service delivery in terms of monitoring delivery of public services within the counties.

Mr. Deputy Speaker, Sir, moving to the counties will also create awareness on the roles and functions of the office of the Ombudsman. Right now, few people know about it apart from reading about it in the newspapers. Some people think that the Chairperson of that office is still hon. Otiende Amollo, yet he left office a long time ago.

Therefore, when we move these offices to the counties, people will be more aware of them and their functions. Public servants in the counties will be compelled to offer efficient services to avoid complaints and repercussions that follow.

In as much as some Senators were concerned about the budgetary implications of setting up these offices, it is obvious that the benefits of having these offices cannot be underestimated.

The Bill also proposes to make amendments to delete the reference made to the office of the Prime Minister to align the Act with the Constitution and the current structure of governance.

On the matter of filing of vacancies within the Commission, the Act currently makes reference to appointment of commissioners after commencement of the Act. This Bill, therefore, proposes to insert a provision to make the procedure used during the

inaugural appointment applicable to vacancies that may arise at the Commission at any other time to ensure that the process is time bound.

Finally, Mr. Deputy Speaker, Sir, currently, the Act has a sunset Clause that the Commission on Administrative Justice should be amalgamated with the Kenya National Human Rights and Equality Commission (KNHREC). On the other hand, the said KNHREC also has a similar sunset clause. Therefore, this Bill seeks to amend this Section so that the office of the Ombudsman and KNHREC have a life line to continue to operate.

It is also worth noting that the recent proposals of the Building Bridges Initiative (BBI) have singled out the office of the Ombudsman as an office that needs to be set up, at least, at regional level. So, the benefits of this office cannot be gainsaid. The gains made by the Commission so far are numerous. If you visit their Website or social media platforms, they have outlined various ways they have helped Kenyans to receive justice after being denied proper administrative services both at the county and the national level.

Mr. Deputy Speaker, Sir, the two Commissions, that is the Office of the Ombudsman and KNHREC are complementary and not competitive. For example, the right to access information is provided by the Constitution. The Access to Information Act, 2016 goes into detail as to the disclosure of information by public entities. The office of the Ombudsman has given the oversight and enforcement functions to the Access of Information Act, 2016. This is a specific assignment which does not negate having the KNHREC as well.

It is my hope that Senators will support this Bill and make proposals to enrich it at the Committee Stage. I further recommend amendments to Section 8C, 32(2) (b) and 42 (4) to include the Senate in the reporting mechanisms as overseers from Parliament.

With those few remarks, I beg to move and call upon Sen. (Dr.) Musuruve to second.

Sen. (Dr.) Musuruve: Thank you, Mr. Deputy Speaker, Sir, for giving me the opportunity to second this Bill. I commend Sen. Were for coming up with it. This is a Bill that supports devolution. It will ensure that services are delivered to *wananachi*. As a Senate, our core business is to ensure that we serve the county governments and that service delivery is effective and efficient. In representing the county governments and their interests, the common man comes in handy.

The creation of an office of the Ombudsman in all the counties is a good idea. These offices will address issues of maladministration in the public sector which has been done wrongly and eventually, the common man does not get the services.

There are many things that go wrong in the counties. There are instances where there are delays in getting basic identifications, for example, national identification cards (IDs) and birth certificates. These are services that should be handled at the county level so that they are not delayed. There are also times when justice is delayed in the counties.

There are indefinite issues that concern what happens in the 47 counties that come to the Floor of this Senate, for example, double land allocation, delays in getting birth certificates, early pregnancies and corruption. These are some of the issues that need to be handled at the county level.

Mr. Deputy Speaker, Sir, this office will ensure that service delivery to *wananchi* is efficient and effective. As a Senate, it is exactly what we want. That is why we are fighting for delivery of services so that they reach the common man. This office will also ensure that public officers comply with Article 6 of the Constitution and are made accountable to serve selflessly.

Sometimes in the counties, you find issues that have been reported to the police but they do not take action. There are also instances where a person can have a case with the Occurrence Book (OB) number but when they make a follow up, the case disappears into thin air. This is where service is not delivered effectively and justice is delayed. However, the office of the Ombudsman will ensure that services are delivered to the common man.

One of the things that this office will do is to ensure that there is an indicator of performance which will be the number of complaints gotten from the public and how many have been solved. This will ensure that people do not abdicate their duties and responsibilities.

Mr. Deputy Speaker, Sir, some of the cases that are taken to court and take a long time to be resolved can easily be resolved at the county level. There are alternative ways of solving dispute, for example, in a situation where neighbours are not in good terms and there is a conflict, negotiation and arbitration comes in handy.

The office of the Ombudsman will ensure that some of the cases that pile up in courts are resolved at the county level so that serious cases go to court and are given the attention that they deserve. It will also ensure that there will be no congestion that is experienced in public offices in Nairobi and elsewhere, because services will be devolved.

This Bill also seeks to amend Section 6. It is proposed here that Nairobi will be the headquarters of the Ombudsman. We will also have satellite offices for the Ombudsman in the 47 counties. This is a noble idea. Nairobi is cosmopolitan and the capital city of Kenya. It is well meaning that we have it as the headquarters of the Ombudsman. In case of any referrals that need to be done from the counties we can do teleconferencing.

There is a seamless way of sorting out issues at both national and county levels. Nairobi is where we find most national offices. It will now be possible to ensure that services are delivered to *wananchi* from the national level to the county level.

This office should be a stand-alone office. It may be very expensive to initiate this process in all the counties. However, it will be cost effective in ensuring that we are defending our Constitution. Article 1 of the Constitution clearly says that this country belongs to the people of Kenya. Therefore, we must ensure that services go to the people of Kenya. We want to ensure that these services are delivered effectively and efficiently so that our people are happy. Our goal is to serve our people at all levels.

The office of the Ombudsman has a scope. It will be mandated with the task of capacity building in the counties. At county level, officers will be trained on how to listen to the public and register their complaints. With capacity building at the county level, Kenyans from all walks of life will be served efficiently.

This office will also come in handy when it comes to performance contracting. It will have data on complaints, the nature of the complaints and how they were addressed. For example, in a situation where there are delays in getting identity cards, it is possible to find out how many people came with such complaints and how they were assisted. If those complaints were resolved, that is an indicator of efficiency for that particular office.

The Office of the Ombudsman is important because it promotes constitutionalism. It ensures that we empower and serve *wananchi* selflessly. We must be selfless in defending the Constitution. We must be selfless in ensuring that services reach the common man at the grassroots level.

I urge Senators to support this Bill. Let us see the light at the end of the tunnel for purposes of ensuring that we, as the Senate, are serving the common man as we represent counties and also defend their interests. That is our core mandate as leaders.

With those few remarks, I second.

(Question proposed)

Sen. Cheruiyot: Thank you, Mr. Deputy Speaker, Sir, for giving me this chance to make my contributions to this Bill by our colleague Sen. Were. This is a wonderful Bill and I support it. Any endeavour by parliamentarians or whoever, to advance the course of justice in our country should be supported by all men of good intent and purpose in life. This Bill endeavours to see citizens accessing justice at the lowest level.

The history of an Ombudsman comes from medieval times. Ombudsmen were referred to as secret royal inspectors. These were people who were sent out by the King to oversee the performance of government officials. They were supposed to carry out their services incognito; nobody would recognize what they were doing. For example, they would go to a public hospital or institutions, dressed like normal citizens to assess how members of the public were being served. If the services were found to be wanting, the Ombudsmen or secret royal inspectors would report back to the King. They would say that they visited this and that Government institution and found that people were complaining about the way services were being offered to them.

Borrowing closely from that, many countries have enacted laws setting up the office of Ombudsman. People go to this when they want their government to address administrative issues. We, as Senators, will always support any idea of taking services closer to our people. We should ensure that there is no undue advantage that a citizen of this country gains from being born in Nairobi City County or any county within the close proximity of Nairobi. On many occasions, we have brought to this House through Petitions, pertinent issues affecting members of the public when we feel they are not able to get services because of not being closer to Nairobi City.

We should endeavor as a House to ensure that if there are any critical Government services that, to date, have not been devolved to each of our 47 counties, they be devolved immediately. I brought the Statement on issuance of passports in Nairobi. In this country, we still have centralized services regardless of the provisions of the new Constitution. It is a pity that nine years down the line, we are still insisting on using a few of the former provincial headquarters to be the issuance centres of passports.

In that Statement, I requested the Ministry to consider the possibility of ensuring each county has their own passport issuant centre. If we are talking about the issuance of passports, what about the office? Many of the average Kenyan folk consider passports to be a luxury. Perhaps, anywhere close to 50 to 60 per cent of the country do not have this document and do not see the need to have it. The numbers could even be higher. Compare and contrast that to the need of having an office of the Ombudsman in each and every county.

This Bill is extremely timely. It would be important for this Senate to hasten this process. This so that we ensure each and every county headquarters has a representative of the office of the Ombudsman. Kenya citizens will ensure that each and every time they do not get particular services in a Government office, they know which office they will report to.

Having one Ombudsman office per county is not enough. It is just a good beginning. In many of our counties, the average folk plans for once per month travel. It is a big occasion for people to travel from the village all the way to the county headquarters. Many of the people that we represent in this House have to budget and plan their lives depending on the resources that are available to them, and, therefore, establishing an office only at the headquarters will not be enough. It is just a good starting point for people to know that there is a representative of the Ombudsman in their county.

Mr. Deputy Speaker, Sir, the whole concept of decentralization of the services of the Ombudsman should cascade down to the sub-counties or sub-locations, if possible. That way, people will know that if they have a dispute with the chief who in many of our localities is the final authority on many issues, they will still receive justice.

Those of us who have an opportunity to be in Nairobi and have had the chance to get good education, we know the ease with which we can access justice. However, to many of the people that we represent here, the difference between right and wrong in many of our villages is determined by what the chief considers to be right or wrong.

Many people will take their disputes to the chief and once the matter has been determined by him or her, that is the end of the story for many of our constituents. Where do the citizens take their complaints if they feel that on some occasions, they did not get what they consider administrative justice? This is important because part of the laws that the office of the Ombudsman will have - as is being proposed in this Bill - under their watch or implementation, is the Fair Administrative Actions Act which is a very important law in this Republic.

Mr. Deputy Speaker, Sir, if you take time to read and understand the Fair Administrative Actions Act, you will realize that on many occasions, our citizens continue to suffer and face decisions of public officials, which, if they were to take before a competent Government officer; an Ombudsman, who would interpret for them, they would discover that they did not follow the dictates of the Fair Administrative Actions Act, they would then perhaps live a free and happier life than what is the case presently.

I take cognizance of the fact that there is a proposal to have headquarters in Nairobi. I will never tire trying to convince fellow Senators on the need to move on from the idea of having the headquarter in Nairobi. When will other counties get a share of having Government offices in their locality if we insist that for every agency that we are

creating, we want it to be headquartered in Nairobi? I suggested a headquarter outside Nairobi in the Tea Bill, but I could not convince my colleagues in the Ministry of Agriculture.

Mr. Deputy Speaker, Sir, Sen. Were may suggest that we have the headquarter outside Nairobi. You can even suggest Bungoma or Kisumu. After all, in a Bill like this one, the office of the Ombudsman will have representatives or branches in each of the 47 counties. What is the problem taking these headquarters to Kisumu, Mandera or Turkana? Think about any other part of the country that has not had the opportunity of hosting a national Government institution.

We keep on talking about integration and building bridges, yet all that we are doing is lip service. We are not committing any deliberate action to bring Kenyans together. How will the people in Turkana know how people in Narok or Kisumu live, if we cannot ensure that the headquarters of such important institutions are decentralized to such places?

Sen. Were perhaps has a better opportunity than I had with the Tea Bill of trying to relocate headquarters to the counties. She can pick any of the 47 counties. After all, there will be a representative office in each of the 47 county headquarters. There is no reason why the headquarters of the Ombudsman office cannot be taken to any other part of the country.

Mr. Deputy Speaker, Sir, one of the things that Sen. Were may also need to consider is how the county assemblies can have a say in the operations of the county offices. If we are speaking about counties, then we go ahead and legislate on how the national Parliament will nominate persons to the offices and oversight them, what about our county assemblies? I believe that somewhere within the framework of these offices, there can be a say at least of reports that the Ombudsman is supposed to present before the county assembly or how the county assembly oversees the operations of the county offices.

There must at least be annexes that you need to establish so that public officials in our county governments know that the resident Ombudsman oversees their actions and it is not just the county assembly that gets to see how they perform their duties. There needs to be a way that we ensure that happens.

If you read more about the office of the Ombudsman in many other jurisdictions like the United Kingdom (UK), they are actually domiciled within parliaments. In other jurisdictions, they are referred to as Parliamentary Ombudsman Office. This is because parliaments are a gathering of the people. This is where the complaints about maladministration are found. It will, therefore, be important for us to knit it together to ensure that the resident Ombudsman office in a particular county, at least, has a connection with the resident county assembly so that the MCAs can channel some of the complaints that they have with public officers into this particular office.

Mr. Deputy Speaker, Sir, part of what an Ombudsman does is to send recommendations including proposing alterations of by-laws and different laws. They can send the same to county assemblies with proposals on how certain issues should be dealt with. That is something that you may want to consider.

I have noted with concern that in this Bill, Parliament and the National Assembly are used interchangeably. This is the Twelfth Parliament and we know how much we have run into issues in that regard. It is important that Sen. Were checks keenly and ensures that in the place where she means Parliament, let it be Parliament and where she means the National Assembly, let it be the National Assembly.

We should be serious about the business of considering laws and not add additional powers to our colleagues in the National Assembly, yet we continue to learn and realize that when creating a county office, the Senate should have a say in terms of the people who occupy those particular offices. If the Inspector-General of Police is vetted by this House, then who else can we not vet? In the Constitution, there is no law that will deter us from ensuring that the people who are nominated to be county Ombudsmen are not taken through a nomination process via this House.

Mr. Deputy Speaker, Sir, I urge Sen. Were to stick with the work of Parliament as opposed to the National Assembly. We would like to know the persons going to check the public officers in the counties, for example, I would like to have a say on who goes to check public officers in Kericho County. There is a sense with which someone respects you when they know that you had a say in how they got into that particular office or for that matter, how they can get out of that particular office.

Finally, it will be important for us to also consider how after nominating someone to sit in the Ombudsman office, what if they get into office and fail to perform as expected by the citizens of that particular county? What is the recall process? Can a Senator, for example, have a say over that particular officer? Can the MCAs or the Members of the National Assembly have a say over that particular issue?

Mr. Deputy Speaker, Sir, overall, this is a good law and practice. I expect our colleagues who sit in the County Public Accounts and Investments Committee (CPAIC) to consider doing the same for the Office of the Auditor-General. I do not see why the Office of the Auditor-General is not in every county. It should be anchored in an Act of Parliament that every county deserves to have the office of the Auditor-General represented.

As a Senator, I should walk to the office in Kericho, for example, and ask them if they are aware of certain things. Audit should be an underlying process as opposed to checking where people went wrong.

Mr. Deputy Speaker, Sir, with those many remarks, I beg to support and urge my colleague, Sen. Were, to consider some of the proposed amendments. I thank you.

The Deputy Speaker (Sen. (Prof.) Kindiki): Indeed, the remarks are many. The rules of debate require you to say things which have not been said by others.

Sen. Halake: Mr. Deputy Speaker, Sir, I will observe the rules. I rise to support this Bill by my sister Sen. Were. This is an important Bill in the sense that the number one risk to devolution is service delivery; leave alone the finances that we are fighting for. The number one thing that can make or break devolution is not necessarily the amount of money but service delivery at the local level.

This Bill seeks to ensure that services are delivered justly by the Commission on Administrative Justice (CAJ). The Bill seeks to ensure the promotion of constitutionalism

and devolution. Therefore, it is one of the most important Bills of our time. I am happy to note that this House has seen it fit to ensure that we pass it.

Among the roles of the CAJ is to safeguard special rights. It promotes compliance of the rights of the minority and marginalised groups in public administration. This complements its duty to ensure protection and promotion of human rights and freedom in public administration. Therefore, this Bill not only seeks to promote devolution and constitutionalism but also to uphold the rights of the marginalised and especially the poor people who usually do not get services.

We have poor people who cannot afford to come to Nairobi or go to the few offices of the Ombudsman in this country. This Bill seeks to take services close where people live and work. Decentralisation of the Office of the Ombudsman is both a human rights and devolution issue.

This Bill is important because it seeks to ensure that the Office of the Ombudsman provides alternative dispute resolution mechanisms. That is important since not everybody can access justice because our courts are expensive. Sometimes cases take long, therefore, denying justice to the people that most need it. Having the Office of the Ombudsman devolved to the 47 counties is not just cascading work but it will ensure that we strengthen mechanisms for alternative dispute resolution.

In addition, the office of the Ombudsman is supposed to enhance capacity building to Government institutions. No wonder, we have capacity gaps when it comes to provision of services in our counties. With this Bill, counties will be protected and their capacities built to enhance service delivery to our people. With the passage of this Bill, capacities of the counties will be built and mechanisms for alternative dispute resolution put in place. Marginalised groups will also access fair and justice services on time.

The mandate of the office of the Ombudsman is to give advisory opinion and make recommendations. The CAJ also makes recommendations on legal policy or administrative measures to address specific concerns. The recommendations may be published or kept confidential. Therefore, our people will get legal policy or administrative services right where they need them in the counties. Therefore, this Bill will mitigate risks of our counties not being centres of service provision that our people need. These are some of the issues that the Bill seeks to address in terms of provision of legal services and mechanisms for alternative dispute resolution.

This Bill is timely. It seeks to address maladministration or malpractices as a result of delaying services, inaction, inefficiency, ineptitude, discourtesy and non-responsiveness of some officers working in public institutions, not just at the county level but also at the national level. Issues of conduct and integrity have also been taken care of. The CAJ will investigate improper conduct, abuse of power and misbehavior in public service.

Provision of such services at the county level cannot be gainsaid. Therefore, we should support this Bill. As protectors of counties and county governments as enshrined in Article 96 of our Constitution, we should support this Bill which seeks to strengthen devolution by taking services closer to the people.

I do not want to belabour the point but there are many complaints about inaction by the police, unfair dismissal from work, delays in receiving identification cards,

passports and pensions, abuse of office by public officers and irregular allocation of land. All these things are dealt with in the counties. If offices of the Ombudsman are established in all the counties, it will provide counties with a framework within which to provide services to people.

Mr. Deputy Speaker, Sir, I do not want to belabour this too much. This is a timely Bill that needs to be supported and implemented and I look forward to the implementation of the provision of this Bill. Once again, I congratulate Sen. Were for bringing this Bill which is timely.

I thank you.

Sen. Olekina: Mr. Deputy Speaker, Sir, I will be very brief and go straight to the point because a lot of the issues I wanted to bring out have already been brought out by my colleagues. I support the amendments in this Bill. I congratulate my sister for coming up with such a timely Bill when we are talking about devolution because service delivery is key. Everyone in this country, regardless of where they come from and their economic position, must get services.

One of my biggest problems is to do with austerity measures. When austerity measures are introduced to curb Government spending, it makes it difficult for people to get services. I urge her to think about how such issues should be dealt with. By cutting on the expenditure, it is like the Government does not want services to be delivered to the people.

There is a reason why offices of the Ombudsman were established worldwide. I remember New Zealand was the fourth country to introduce the office of the Ombudsman.

A couple of years ago, I had an issue with the Judiciary because the court premises in Narok had not been completed and there was limited service delivery to the people of Narok. When I complained to the former Chief Justice, Hon. Willy Mutunga, he directed me to the office of the Ombudsman.

Bringing the headquarter of that office to Nairobi means that someone who does not know of the existence of that office will never get their services. Currently, the legislators act as the Ombudsman because people complain to them regarding the services that they are not receiving. The legislators are the ones who deal with issues of that office. We come up with laws and other than that, we pick up the phone and call particular Government offices to ask them the reason as to why they are not doing x, y, z.

Earlier on, we had the issue of people not getting birth certificates. If this office is devolved in Narok, Machakos or any other county, people can go there and report that they have not been issued with birth certificates or title deeds.

This is a timely Bill and I hope that we will all support it. I encourage my good friend, Sen. Were, to remove the clause that states that the headquarter will be in Nairobi. Instead, she should push for the 47 offices in the counties to have the same powers as the office in Nairobi because they all offer services. We should not send everything to Nairobi. If that office does not have enough budget, the people will not get services, not until the Senate or the Members of Parliament in the 'Lower House' allocate more money to it.

We should not think of issues of public administration from a central perspective. We are a devolved system of Government and this House must continue defending devolution and all the services that come with devolution. That is the only way for advancement.

I support this Bill because a lot of people have been treated unfairly. For example, people wake up in the morning and go to the District Commissioners' office expecting to receive some services but they are treated in a manner to suggest 'uta do' or where will you take your complain? Knowing that one can complain to the ombudsman will empower citizens. I would like my sister to incorporate---

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

Sen. Olekina: The distinguished Senator, Sen. Were. In this House, we have---

The Deputy Speaker (Sen. (Prof.) Kindiki): You said that you are going to ask your sister to amend the Bill.

Sen. Olekina: Mr. Deputy Speaker, Sir, I stand corrected. I was talking of my sister, the distinguished Senator, Sen. Were, who is the sponsor of this Bill. I want her to think of a way of making this office permanent. I had consultations with her earlier on and she informed me that it is because this office is supposed to be merged with the Kenya National Human Rights and Equality Commission Office which has a sunset.

We always want services to be delivered to our people. We cannot have a clause that sees the end of this particular office. It is like saying that the office of the Chief Justice will one day cease to exist. I request my sister to differentiate the role of the Kenya National Human Rights and Equality Commission and the role of the Ombudsman. She should also ensure that the two roles are unique, independent and perpetual. It should not come to an end because service delivery does not end.

We also have to figure out a way of letting the people know that this office does exist. Very few people in this country read the newspaper or have access to information on legislation. I do not know how far the Committee has gone with public participation on this Bill though we should look for a way that will enable the Ombudsman to go around the 47 counties with the intention of making the citizens know of the existence of that office and its function, which is to assist them if they are denied certain services.

With those many remarks, I beg to support.

Sen. Mwaura: Thank you, Mr. Deputy Speaker, Sir. I rise to support the Commission on Administrative Justice (Amendment) Bill (Senate Bills No. 6 of 2019).

The right to administrative action is a right that is enshrined in Article 47 on Fair Administrative Action Act. The Constitution is clear on how we are supposed to ensure that Kenyans get the services that they deserve but that has not been the case.

The Commission on Administrative Justice is a split in Article 59 of the Constitution with regard to the Kenya National Human Rights and Equality Commission which in the wisdom of implementation, was divided into three; the Kenya National Commission on Human Rights, Commission on Administrative Justice (CAJ) and the National Gender and Equality Commission.

There have been serious issues of maladministration in CAJ with regard to public service delivery. This country has not demonstrated that public service administration can become part and parcel of our governance and elements of self-determination through

due process. That is because we are still dealing with issues of how public officials react to requests by the public. In fact, the members of the public have been forced to pay for services that are supposed to be free.

This has been shared as if it is a function of the devolved governments. The bureaucratisation of county governments has not allowed people to appreciate the social welfare mechanism around the institution of governorship and Members of County Assemblies as to occasion proper service delivery. In the first five years of devolution, we saw the governors buy ambulances that were to be used to refer patients to the national hospitals rather than deal with the issue. One can tell that there is no proper documentation on how members of the public have benefited from the functions of devolved government.

Therefore, these forms of maladministration require some kind of repository where people can get recourse. I am afraid to say that even at the national level we have not seen this happening. I have just received a letter from the Commission on Administrative Justice (CAJ) on a gentleman called Kosgey who was unfairly dismissed by the Kenya Dairy Board. There is another gentleman whose hand was cut off while working with Kakuzi Limited. If you look at Kenya Dairy Board and Kakuzi Limited it is about a devolved function, which is agriculture, but then they still have to come to Delta House to be heard.

Mr. Deputy Speaker, Sir, what is interesting is that even when CAJ writes to these entities, they take forever to respond. There are two letters in my office. One is by the CAJ asking the Kenya Dairy Board to respond, and it has been over a year. I have another letter by the Ministry of Labour and Social Protection to Kakuzi Limited on that gentleman whose hand was chopped off. Many people come to my office - as a Senator - so that I can help them access administrative justice. I congratulate Sen. Were because it means that there will be staff that will be responsible for these kinds of procedures.

I remember when I used to work in the public service, maladministration and inattention, and all those kinds of big words that are used to demonstrate lack of service delivery, were being domesticated around the office of the public information, where I used to be a public communications manager. However, that is not enough. We need to have a kind of referral and curative mechanism, so that we are able not just to go for court review or tribunal as envisaged in the Constitution, but also how we can have superiors in forms of decision making being able to cure that which has already occurred at the local level.

I would also want also add that much as we have a sunset clause on the issue of human rights - because it is the gamut of human rights - we need to also separate, so that we also create a system that shows how we can improve our public service delivery at the county level.

Mr. Deputy Speaker, Sir, I strongly support and reiterate that we must also not be caught up in the contestations around bi-cameralism. Let us just clearly state unequivocally the role to the Senate with regards to oversight of such functions.

Mr. Deputy Speaker, Sir, I support.

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

Finally, we will have Sen. Pareno.

Sen. Pareno: Thank you, Mr. Deputy Speaker, Sir, for allowing me to contribute to this Bill. I thank Sen. Petronila for coming up with this Bill, whose effect will be to devolve the office of the Ombudsman. It will also take services down to the people.

I once had an encounter with the Office of the Ombudsman and felt that it actually does justice. One's complaints are heard faster. Being a lawyer, I would have preferred to go to court, but looking at the circumstances surrounding the issue that I was handling, which was behalf of my community, where there was interference in terms of supply of electricity--- We had a lady who just came and said: "Yes, I am the Member of Parliament (MP) here and there shall not be supply of power in this village." We felt discriminated. That is when it occurred to me that the Office of the Ombudsman existed. We had options to weigh, including going to court. Of course, we were able to flex our muscles to show that we were in that village and nobody would make decisions on our behalf. We would make our own decisions. We went to the Rural Electrification Authority (REA) offices and got that power, while somebody somewhere was saying: "This power supply shall not be."

Mr. Deputy Speaker, Sir, that is when it occurred to me that it is faster to go to the Ombudsman office. It was cheaper, less complex and without pleadings. We found a form which we just filled. We did not even have to call witnesses. All we did was to file in statements, stating exactly what we were complaining about, and within no time, the matter was heard and determined.

I kept saying that, that was an alternative way of handling disputes that do not necessarily have to call for court intervention. Whoever thought of the office of the Ombudsman, thought of how services could be delivered to the people.

Also, by creating county offices, we will be raising awareness. This is because I realised that it was I, the lawyer, and another person who is learned, who knows that there exists an Ombudsman in this country or other institutions. If we could concentrate on implementing the objectives of this Bill, to ensure we have the office of the Ombudsman in the 47 counties, people will be aware that there is also this alternative mode of dispute resolution. This devolution would help in raising awareness in as far as the mandate of the Ombudsman is concerned.

It is like the people against their own Government, and we know how the citizens behave. When it is the Government they just submit. They do not know they can question their own authorities and properly question them within the ambit of the Ombudsman without so much friction.

Mr. Deputy Speaker, Sir, this will also help to take care of issues of unfair decision and abuse of power and corruption, because it will be reachable. I accessed the Office of the Ombudsman because I knew there was such an office. I even checked on *Google* to find their location since I did not know. I had to come to Nairobi all the way from Kajiado. You can imagine how accessible it will be if at the end of the day we have it in the counties. It is less expensive and accessible. You can imagine if it was that village woman who was to wake up and get into a *Matatu* to find the Office of the Ombudsman, which is somewhere in Westlands, Nairobi. This definitely, will go a long way to make it accessible and to ensure that the people will get the services.

I also noted, when I was addressing the issues that were touching on my village, that they had very lean personnel, leading to inefficiency at the end of the day. If we devolve, it means that there will be more personnel to serve the people. It also means that they will be able to reach out. When I was being served, there was very little that could be done. At some point we were told that the officer concerned was not there and we had to wait yet, we had come all the way to be able to access the service. This Bill will ensure that we devolve the services with the personnel and the resources required. Therefore, it will be reachable to the people.

I also notice that they do ratings. There are reports – I think they are quarterly reports - from institutions that are given to the Ombudsman, on the performance and compliance. If the office of the ombudsman is devolved to the counties, it will be easier to encourage good performance and ratings. I am sure that no institution will want to be rated low or the last. Therefore, at the end of the day, with those reports that the Ombudsman also gives, it will encourage good performance and our people to give the services in a better way.

Mr. Deputy Speaker, Sir, I thank Sen. Petronila for, initially, coming up with a Motion and proceeding to come up with this very encouraging Bill.

Mr. Deputy Speaker, Sir, I support.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Sen. Pareno. It is Sen. Were and not Sen. Petronila. You cannot use the First name and the title at the same time.

I now call upon the Mover to reply.

Proceed, Sen. Were.

Sen. Were: Thank you, Mr. Deputy Speaker, Sir. I would like to thank all the Senators who have contributed to this Bill. Sen. (Dr.) Musuruve and Sen. Halake have talked about the Office of the Ombudsman providing an alternative dispute resolution mechanism. This will reduce court cases and, therefore, give justice to Kenyans who are seeking proper service delivery. Sen. (Dr.) Musuruve also talked about performance contracting as a way of encouraging proper administrative justice. Sen. Cheruiyot talked at length about the Office of the Ombudsman operating like inspectors, who can go to a public institution and find out how services are being offered. He proposed several amendments, which I will consider.

Sen. Halake also said that this Bill will be a relief to the marginalized, as it will touch on their rights and fill the capacity gaps in public service delivery. This will then be filled by some of the feedback, which is a result of the Ombudsman interventions. Sen. Olekina had some budgetary concerns, which I had also espoused earlier. The concerns are that we need to give this office more money so that they can devolve fully, as is required. The Office of the Commission on Administrative Justice (CAJ) or the Ombudsman and the Kenya National Human Rights Commission (KNHRC) are complimentary and not competitive. Therefore, they cannot merge into one.

Sen. Mwaura talked about fair administration being a basic human right; and I thank him for that contribution. Sen Pareno, who seconded it when it came as a Motion in 2018, said that there have been actual remedies provided by the office of the Ombudsman in her area. She encouraged Kenyans to seek out the services of the Office of the

Ombudsman because they are free. She also touched on budgetary allocations to ensure that we give money to this office so that they can devolve fully.

Mr. Deputy Speaker, Sir I thank all the Senators who have contributed. The amendments they have proposed will be dully considered by me, as the Mover, and even by the Committee concerned.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker, Sir, pursuant to Standing Order 61---

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

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

With those many remarks, I beg to move.

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

(Sen. Were resumed her seat)

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Were, I assume you are on a point of order now. What is your point of order? This learning curve is taking forever; you cannot combine replying and making another request.

You are, therefore, now on a point of order. What is it Sen. Were?

Sen. Were: Mr. Deputy Speaker, Sir, pursuant to Standing Order 61(3), I beg that you defer putting of the question to a later date.

The Deputy Speaker (Sen. (Prof.) Kindiki): It is so ordered. The Division will be tomorrow.

(Putting of the question on the Bill deferred)

Hon. Senators, that brings us to the end of that Order. I will reorganize the order of proceedings for the remainder of the sitting. Therefore, I direct that we now move to the Committee of the Whole. I direct that Orders No.11 and 15 be dealt with in the Committee of the Whole.

COMMITTEE OF THE WHOLE

(Order for Committee read)

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

IN THE COMMITTEE

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

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

The Temporary Speaker (Sen. Lelegwe): Hon. Senators, we are now in the Committee of Whole considering the Local Content Bill (Senate Bills No.10 of 2018).

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

Clause 3

Sen. Seneta: Mr. Temporary Chairman, Sir, I beg to move-

THAT, Clause 3 of the Bill be amended by inserting the words “and minerals” immediately after the words “other petroleum resources”.

(Question of the amendment proposed)

The Temporary Speaker (Sen. Lelegwe): The Division will be at the end.

Clause 4

Sen. Seneta: Mr. Temporary Chairman, Sir, I beg to move-

THAT, Clause 4 of the Bill be amended –

- (a) by deleting the words “and their retention in the country” appearing at the end of paragraph (a);
- (b) in paragraph (d) by inserting the word “local” immediately after the words “capable and sustainable”; and,
- (c) in paragraph (f) by deleting the word “content” appearing immediately after the words “through local” and substituting therefore the word “capacity”.

(Question of the amendment proposed)

The Temporary Speaker (Sen. Lelegwe): The Division will be at the end.

Clause 5 and 6

(Question, that Clauses 5 and 6 be part of the Bill, proposed)

The Division will be at the end.

Clause 7

Sen. Seneta: Mr. Temporary Chairman, Sir, I beg to move-

THAT, Clause 7 of the Bill be amended –

(a) in paragraph (b) by –

- (i) deleting sub-paragraph (i) and substituting the following new paragraph –
 - (i) managing, in collaboration with the relevant State entity, the pace and scheduling of extractive industry programmes in order to enable local persons to take advantage of the opportunities along the extractive value chain;

- (ii) inserting the words “identified by the Committee” immediately after the words “in-country programmes” in sub -paragraph (ii)
 - (iii) deleting the word “capture” appearing immediately after the words “development and wealth” in paragraph (iv) and substituting therefor the word “creation”.
- (b) in paragraph (d) by inserting the words “developed by the respective Ministries” immediately after the words “across all policy frameworks”.

(Question of the amendment proposed)

The Temporary Speaker (Sen. Lelegwe): The Division will be at the end.

Clause 8

Sen. Seneta: Mr. Temporary Chairman, Sir, I beg to move-
THAT, Clause 8 of the Bill be amended –

(a) by inserting the following new paragraph immediately after paragraph (f) –

- (fa) collaborate with the Committee in the identification of goods and services that are available within the respective county and keep a data base of such goods and services;

(Question of the amendment proposed)

The Temporary Speaker (Sen. Lelegwe): The Division will be at the end.

Clause 9

(Question, that Clause 9 be part of the Bill, proposed)

The Division will be at the end.

Clause 10

Sen. Seneta: Mr. Temporary Chairman, Sir, I beg to move-

THAT, Clause 10 of the Bill be amended in sub-clause (2) by inserting the words “the relevant Ministries and the relevant stakeholders” immediately after the words “the county governments).

(Question of the amendment proposed)

The Temporary Speaker (Sen. Lelegwe): The Division will be at the end.

Clause 11

Sen. Seneta: Mr. Temporary Chairman, Sir, I beg to move:-

THAT, Clause 11 of the Bill be amended by –

- (a) renumbering the existing provision as sub clause (1);
- (b) inserting the following new sub-clause immediately after the new sub -clause (1) –

(2) The Committee shall avail for inspection by members of the public, the register kept by it under subsection (1).

(Question of the amendment proposed)

The Temporary Speaker (Sen. Lelegwe): The Division will be at the end.

Clause 12

Sen. Seneta: Mr. Temporary Chairman, Sir, I beg to move-

THAT, clause 12 of the Bill be amended in sub-clause (1) by–

- (i) inserting the following new paragraph immediately after paragraph (d) –

(da) the Principal Secretary responsible for matters relating to education or a representative designated in writing;

- (ii) deleting paragraph (e) and substituting therefor the following new paragraph –

(e) two persons of the opposite gender nominated by the Council of Governors from persons residing in a county in which extractive activities are being undertaken and appointed by the Cabinet Secretary;

- (iii) deleting the words “nominated by players” and substituting therefor the words “of the opposite gender nominated by an association representing the largest number of players” immediately after the words “two persons” in paragraph (f).

(Question of the amendment proposed)

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

Clauses 13 to 18

(Question, that Clauses 13 to 18 be part of the Bill, proposed)

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

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

Clause 19

Sen. Seneta: Mr. Temporary Chairman, Sir, I beg to move-

THAT, Clause 19 of the Bill be amended in sub-clause (1) by deleting the words “Ministry responsible for matters relating to the petroleum industry” appearing immediately after the words “unit within the” and substituting therefor the words “respective Ministry”.

(Question of the amendment proposed)

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

Clauses 20 and 21

(Question, that Clauses 20 and 21 be part of the Bill, proposed)

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

Clause 22

Sen. Seneta: Mr. Temporary Chairman, Sir, I beg to move-

THAT, clause 22 of the Bill be amended –

(a) in sub-clause (2) by deleting the word “operator” appearing at the beginning of the sub-clause and substituting therefor the word “applicant”;

(b) in sub-clause (3) by–

(i) deleting the word “operator” appearing at the beginning of the introductory clause and substituting therefor the word “applicant”;

(ii) deleting paragraph (c) and substituting therefor the following new paragraph –

(c) workforce development strategies in relation to locals including training plans and projections to address any competency gaps that may have been identified by the Committee and the operator in relation to the local labour force;

(c) by deleting the introductory clause in sub-clause (4) and substituting therefor the following new introductory clause –

(4) An applicant shall set out in the applicant’s local content plan, the strategies through which the applicant shall –

(Question of the amendment proposed)

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

Clauses 23 to 25

(Question, that Clauses 23 to 25 be part of the Bill, proposed)

The Division will be at the end.

Clause 26

Sen. Seneta: Mr. Temporary Chairman, Sir, I beg to move- THAT, Clause 26 of the Bill be amended –

- (a) in sub-clause (1) deleting the word “operator” appearing immediately after the word “An” and substituting therefor the word “applicant”;
- (b) in sub-clause (2) by deleting the word “skills” appearing immediately after the words “specification of the” in paragraph (a)(i) and substituting therefor the word “competencies”;
- (c) in sub-clause (3) by deleting the word “operator” appearing at the beginning of the introductory clause and substituting therefor the word “applicant”.

(Question of the amendment proposed)

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

Clause 27

Sen. Seneta: Mr. Temporary Chairman, Sir, I beg to move-

THAT, clause 27 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (4) –

- (4a) The Committee shall –
 - (a) in consultation with the relevant Ministries, operators and stakeholders, identify existing gaps in competencies and skills in the local workforce;
 - (b) develop a common competency system and development plan within the respective sectors and for the various disciplines required in the extractive industry;
 - (c) maintain a database of the skills and competencies available locally; and

(d) collaborate with the relevant Ministries in building the capacity of local training institutions to administer the trainings necessary to develop the skills and competencies identified under paragraph (a).

(Question of the amendment proposed)

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

Clauses 28 to 37

(Question, that Clauses 28 to 37 be part of the Bill, proposed)

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

Clause 38

Sen. Seneta: Mr. Temporary Chairman, Sir, I beg to move- THAT, Clause 38 of the Bill be amended by –

- (a) deleting sub-clause (3); and
- (b) deleting sub-clause (5).

(Question of the amendment proposed)

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

Clauses 39 to 41

(Question, that Clauses 39 to 41 be part of the Bill, proposed)

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

Clause 42

Sen. Seneta: Mr. Temporary Chairman, Sir, I beg to move- THAT, Clause 42 of the Bill be amended by deleting the words “grant of a licence or” appearing immediately after the words “company in the”.

(Question of the amendment proposed)

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

Clauses 43 to 48

(Question, that Clauses 43 to 48 be part of the Bill, proposed)

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

Clause 49

Sen. Seneta: Mr. Temporary Chairman, Sir, I beg to move:-
THAT, clause 49 of the Bill be amended in sub-clause (3) by inserting the words “and non-Kenyans” immediately after the words “are Kenyan nationals” in paragraph (e).

(Question of the amendment proposed)

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

Clause 50

Sen. Seneta: Mr. Temporary Chairman, Sir, I beg to move-
THAT, clause 50 of the Bill be amended in the introductory clause to sub-clause (2) by deleting the word “a” appearing immediately after the words “the Cabinet Secretary” and substituting therefor the words “an annual”.

(Question of the amendment proposed)

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

Clauses 51 to 53

(Question, that Clauses 51 to 53 be part of the Bill, proposed)

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

Clause 54

Sen. Seneta: Mr. Temporary Chairman, Sir, I beg to move-

THAT, clause 54 of the Bill be amended –

(a) in sub-clause (1) by deleting the words “not more than two million shillings or to imprisonment for at term of not more than three years” appearing immediately after the words “a fine of” and substituting therefor the words “at least ten million shillings or to imprisonment for a term of at least three years”;

(b) in sub-clause (2) by deleting the words “not more than three million shillings or to imprisonment for at term of not more than five years” appearing immediately after the words “a fine of” and substituting therefor the words “at least five million shillings or to imprisonment for a term of at least five years”;

(c) in sub-clause (3) by deleting the words “not more than three million shillings or to imprisonment for at term of not more than five years” appearing immediately after the words “a fine of” and substituting therefor the words “at least ten million shillings or to imprisonment for a term of at least five years”;

(d) in sub-clause (5) by deleting the words “not exceeding eight hundred thousand shillings or to imprisonment for at term not exceeding twelve months” appearing immediately after the words “liable to a fine” and substituting therefor the words “of at least five million shillings or to imprisonment for a term of at least three years”.

(Question of the amendment proposed)

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

Clauses 55 and 56

(Question, that Clauses 55 and 56 be part of the Bill, proposed)

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

Clause 57

Sen. Seneta: Mr. Temporary Chairman, Sir, I beg to move-

THAT, Clause 57 of the Bill be amended –

(a) in sub-clause (3) by deleting the words “neglected children” appearing immediately after the words “in relation to” in

paragraph (a) and substituting therefor the words “the extractive industry”;

(b) in sub-clause (4) by deleting the words “county executive committee member” appearing immediately after the words “authority of the” in paragraph (a) and substituting therefor the words “Cabinet Secretary”.

(Question of the amendment proposed)

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

Clause 58

(Question, that Clause 58 be part of the Bill, proposed)

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

The Schedule

(Question, that the Schedule be part of the Bill, proposed)

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

Clause 2

Sen. Seneta: Mr. Temporary Chairman, Sir, I beg to move:-
THAT, clause 2 of the Bill be amended in the definition of the word “Cabinet Secretary” by deleting the words “the extractive industry” appearing immediately after the words “matters related to” and substituting therefor the word “devolution”.

(Question of the amendment proposed)

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

Long Title

Sen. Seneta: Mr. Temporary Chairman, Sir, I beg to move-
THAT the Bill be amended by deleting the Long Title and substituting therefor the following new Long Title –

AN ACT of Parliament to provide a framework to facilitate the local ownership, control and financing of activities connected with the exploitation of gas, oil, petroleum resources and mineral resources; to provide a framework to increase the local value capture along the value chain in the exploration of gas, oil, petroleum resources and mineral resources; and for connected purposes.

(Question of the amendment proposed)

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

Clause 1

(Question, that Clause 1 be part of the Bill, proposed)

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

Proceed, Sen. Halake.

Sen. Halake: Mr. Temporary Chairman, Sir, pursuant to Standing Order 148(1), I beg to move that the Committee of the Whole do report progress on its consideration of the Local Content Bill (Senate Bills No. 10 of 2018), and seek leave to sit again tomorrow.

Sen. (Dr.) Milgo seconded.

(Question proposed)

(Question put and agreed to)

The Temporary Chairperson (Sen. (Dr.) Lelegwe): Hon. Senators, we are still in the Committee of the Whole to consider The Mental Health (Amendment) Bill (Senate Bills No.32 of 2018).

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

Clause 2

Sen. (Dr.) Mbiti: Mr. Temporary Chairperson, I beg to move-

THAT, the Bill be amended by deleting Clause 2 and substituting therefor the following new clause—

2. The Mental Health Act, hereinafter referred to as the principal Act, is amended by deleting the long title and substituting therefor the following new long title—

An Act of Parliament to provide for the prevention of mental illness, to provide for the care, treatment and rehabilitation of persons with mental illness; to provide for procedures of admission, treatment and general management of persons with mental illness; and for connected purposes.

(Question of the amendment proposed)

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

Clause 3

Sen. (Dr.) Mbiti: Mr. Temporary Chairperson, I beg to move—
THAT, Clause 3 of the Bill be amended—

(a) in paragraph (b) by deleting the definition of the term “mental health facility” and substituting therefor the following new definition—

“mental health unit” means a place within a health facility, designated by a notice in the Gazette, to be a place for the reception and treatment of persons with mental illness, by the—

(a) Board, in the case of a national referral hospital or any other national government facility; or

(b) county executive committee member in the case of a county health facility in that county.

(b) by inserting the following new definition immediately after the definition of the term “Director”—

“guardian” in relation to a minor with mental illness includes—

(a) the parents of the minor;

(b) a person who has parental responsibility over the minor;

(c) a person who has legal custody of the minor;

(d) in the absence of a parent, a person who has care and control of the minor;

(e) in the absence of a parent or a person who has care and control of the minor, a person who has actual custody of the minor.

(c) by inserting the following new definition immediately after the definition of the term “health care provider”—

“Health Information System” means the Health Information System established by the Ministry of Health under Section 105 of the Health Act;

- (d) by deleting the definition of the term “person suffering from mental illness and substituting therefor the following new definition—
“person with mental illness” means a person who has been found to be so suffering under this Act and includes—
(a) a person suffering from maternal mental illness; and
(b) a person diagnosed with mental impairment due to alcohol or substance abuse.
- (e) by deleting the definition of the term “a person in charge” and substituting therefor the following new definition—
“person in charge”, in relation to a health facility, means the person for the time being authorized by the Director, in the case of a National Referral Hospital, or the County Executive Committee Member, in the case of a county health facility, to be in medical charge of the respective health facility.
- (f) by deleting the definition of the term “representative” and substituting therefor the following new definition —
“representative” means—
(a) a spouse of that person, or if unable or unwilling;
(b) the child of that person, where such child has attained the age of eighteen years, or if unable or unwilling;
(c) a parent of that person, or if unable or unwilling;
(d) a relative of that person, or if unable or unwilling; or
(e) a person under whose care or charge the person with mental illness is.
- (g) in the definition of the term “mental health practitioner” by inserting the following new paragraph immediately after paragraph (d)—
(e) psychiatric nurse under the Nurses Act.
- (h) by inserting the following new definition immediately after the definition of the term “representative”—
“supporter” means a person appointed under section 3J by the person with mental illness to make decisions on behalf of the person with mental illness according to the will and preference of the person with mental illness.

(Question of the amendment proposed)

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

Clause 4

(Question, that Clause 4 be part of the Bill, proposed)

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

Clause 5

Sen. (Dr.) Mbiti: Mr. Temporary Chairperson, I beg to move—
THAT, Clause 5 of the Bill be amended –

(a) in the proposed new section 2C –

(i) by deleting the word “disability” appearing immediately after the words “for persons with” in paragraph (b) (ii) and substituting therefor the words “mental illness”;

(ii) by deleting paragraph (e) (i) and substituting therefor the following new paragraph—

(i) the number of qualified health professionals required to serve a mental health unit including the number of psychiatrists, psychologists, clinical officers who specialise in psychiatry, psychiatric nurses, counsellors, occupational therapists and allied health workers;

(iii) by deleting the word “facility” appearing immediately after the words “by a mental health” in paragraph (e) (ii) and substituting therefor the word “unit”;

(iv) by inserting the following new paragraphs immediately after paragraph (h)—

(i) develop and implement strategies and programmes to curb stigma related to mental health and mental health care and treatment; and

(j) implement programmes and strategies to guarantee students access information on mental health, mental health care and treatment.

(b) in the proposed new section 2D –

(i) by deleting the words “and 4” appearing immediately after the words “level 2, 3” in subsection (1) (a) and substituting therefor the words “4 and 5”;

(ii) by deleting the words “persons with mental illness within the county” appearing immediately after the words “strategies relating to” in subsection (1) (c) and substituting therefor the words “mental illness and mental health care”;

(iii) by deleting the words “dignified and life outside the mental health facility” appearing immediately after the words “mental illness lives

a” in subsection (1) (i) and substituting therefor the words “dignified life outside the mental health unit”;

(iv) by deleting the words “suffering from” appearing immediately after the words “care of persons” in subsection (2) (d) and substituting therefor the word “with”;

(v) by inserting the following new paragraphs immediately after subsection (2)(f)-

(g) advice the Board on the implementation of county specific programmes on mental health;

(h) collaborate with the Board and such other relevant agencies in ensuring a coordinated approach in the delivery of mental health services in the respective county;

(i) undertake the collection and dissemination of data on mental health in the respective county; and

(j) coordinate the activities of all institutions, private sector institutions, non-governmental organisations and community-based organisation involved in the delivery of mental health services in the county.

(vi) by deleting the word “committee” appearing immediately after the words “this section to a” in subsection (3) and substituting therefor the words “county mental health council”

(c) by inserting the following new section immediately after the proposed new section 2D—

County
mental
health
councils.

2E. (1) There is established in each county government a county mental health council.

(2) The county mental health council shall consist of—

(a) the county director of health appointed under section 19 of the Health Act;

(b) the chairperson to the county education board established under section 17 of the Basic Education Act or a representative; and

No.21 of
2017.

(c) five persons nominated by the county executive committee member by notice in the Gazette.

No.14 of
2013

(3) The county executive committee member when making appointments under subsection 2 (c) shall ensure —

(a) that one person is nominated from each of the following organisations—

(i) a body representing caregivers of persons with mental illness in the county; and

(ii) a body representing the mental health practitioners in the county; and

(b) the one third gender principle is observed.

(4) The members of the county mental health council, except the person appointed under subsection (2) (a) and (b) shall serve for a single term of three years and shall not be eligible for reappointment.

(5) A member of the county mental health council shall cease to be member if that person—

(a) is absent from three consecutive meetings of the council without the permission of the chairperson;

(b) resigns in writing, addressed, to the county executive committee member;

(c) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;

(d) is declared bankrupt;

(e) is unable to perform the functions of his office by reason of mental or physical infirmity; or

(f) dies.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. (Dr.) Lelegwe): There was a further amendment by Sen. Kwamboka, but since she is absent, it is dropped.

(Proposed amendment to Clause 5 by Sen. Kwamboka dropped)

Clause 6

Sen. (Dr.) Mbiti: Mr. Temporary Chairperson, I beg to move:-

THAT, Clause 6 of the Bill be amended—

(a) in the proposed new section 3 by—

- (i) deleting the word “and” appearing immediately after the word “affairs of the community” in paragraph (a); and
- (ii) deleting the words “to live in dignity and security” appearing immediately after the words “under the Constitution” in paragraph (b);
- (b) in the proposed new section 3A by —
 - (i) inserting the word “outpatient” immediately after the words “to community health and” in subsection (3); and
 - (ii) deleting subsection (6);
- (c) by deleting the proposed new section 3B substituting therefor the following new section—

Consent to
 treatment 3B (1) Every health care provider
 shall, where the person with mental
 illness has attained the age of
 majority—

(a) inform the person with mental illness, of
 the right of that person to choose an
 appropriate form of treatment; and

(b) obtain the written consent from that
 person before administering any treatment.

(2) Where the person with mental illness is incapable of
 making an informed decision on the form of treatment under
 subsection (1), such consent shall be sought and obtained
 from —

(a) the supporter of the person with mental
 illness duly appointed under this Act, who
 shall, when giving consent, comply with the
 will and preferences of that person; or

(b) the representative of the person with mental
 illness, where a supporter has not been
 appointed.

(3) Every health care provider shall, where a person with
 mental illness is a minor, —

(a) inform the guardian of the minor of the
 right of the guardian to choose an
 appropriate form of treatment for the minor;
 and

(b) obtain written consent from the guardian before
 administering any treatment.

(d) by deleting the proposed new section 3C and substituting
 therefor the following new section—

Right to treatment
planning.

3C. (1) A person with mental illness has the right to participate in the formulation of their treatment plans.

(2) Every mental health practitioner shall, where the person with mental illness –

(a) has attained the age of majority inform the person, of their right to participate in the formulation of their

treatment plans; or

(b) is a minor, inform the guardian of the minor of the right of the guardian to participate in formulating treatment plans on behalf of the minor.

(3) Where a person with mental illness is incapable of exercising the right under subsection (1) due to the nature of the illness, the mental health practitioner shall inform the—

(a) supporter of the person with mental illness duly appointed under this Act, of the supporter's right to participate in formulating the treatment plans; or

(b) where a person with mental illness has not appointed a supporter, inform the representative of the person with mental illness, of the representative's right to participate in formulating the treatment plans.

(4) A supporter, while exercising the right to participate in treatment planning under this

- section, shall comply with the will and preference of the person with mental illness.
- (e) in the proposed new section 3D by deleting subsection (2) and substituting therefor the following new subsection—
- (2) Where the National or county government has in place a medical scheme, the National and county governments shall, in implementing the scheme, take in to account the needs of persons with mental illness and shall ensure that the implementation of the scheme results in the fair treatment of such persons.
- (f) in the proposed new section 3E by deleting the word “mental” appearing immediately after the words “within or outside a” in subsection (2) (a);
- (g) by deleting the proposed new section 3F;
- (h) by deleting the proposed new section 3H and substituting therefor the following new section—

Right to
access to
information

3H. (1) A person with mental illness is, pursuant to Article 35 of the Constitution, entitled to information regarding that person’s –

- (a) mental and other health status;
- (b) clinical records and other related information maintained by a health facility; and
- (c) health service providers.
- (2) Any representations made by a person with mental illness shall, on the request of the person with mental illness, form part of the records of that person.
- (3) Where a person with mental illness is unable to exercise their rights under this section, the following persons shall be entitled to access the information on that person’s behalf—
- (a) a duly appointed supporter of the person with mental illness;
- (b) in the absence of a supporter, the representative of the person with mental illness; or
- (c) in the case where the person with mental illness is a minor, the guardian of that minor.
- (4) The Access to Information Act shall apply to the access of information by a person with mental illness under this Act.

- (5) The Cabinet Secretary shall, in consultation with the Cabinet Secretary responsible for matters relating to information and communication technology and the Commission on Administrative Justice, make regulations on access to information under this section.
- (6) Without prejudice to the generality of subsection (5), such regulations may provide for—
- (a) the procedure for making an application for access to information under this section;
 - (b) the procedure for the processing of an application and availing the information applied for; and
 - (c) the duration within which the information requested under this section shall be made available.
- (i) in the proposed new section 3I (2) by inserting the following new paragraph immediately after paragraph (e)—
- (ea) is authorised by the person with mental illness under a duly executed supportive decision-making agreement.
- (j) by deleting the proposed new section 3J and substituting therefor the following new sections—
- Right to
appoint a
supporter. 3J. (1) A person with mental illness may appoint a person to act as that person's supporter for the purpose of this Act.
- (2) A person with mental illness shall in appointing a supporter, enter in to a supportive decision-making agreement with the proposed supporter.
- (3) A supportive decision-making agreement shall be in writing and shall only be valid if—
- (a) at the time of making of the agreement, the person with mental illness was aware of their actions;
 - (b) the person with mental illness has signed or affixed their mark to the agreement;
 - (c) the signature or mark of the person with mental illness, is so placed that it shall appear that it was intended to give effect to the writing as a supportive decision-making agreement;
 - (d) the agreement is attested by two or more competent witnesses, one of whom shall be the doctor of the person with mental illness;
 - (e) the person with mental illness signs or affixes their mark to the agreement in the presence of the witnesses; and

- (f) each of the witnesses signs the agreement in the presence of the person with mental illness.
- (3) A person is eligible for appointment as a supporter if that person—
 - (a) has attained the age of majority; or
 - (b) is a Public Trustee appointed under the Public Trustee Act.

Cap 168

- (4) Where a person with mental illness is unable to appoint a supporter under subsection (1), the representative of the person may represent the person with mental illness for the purpose of treatment and care under this Act.
- (5) A supporter or representative of a person with mental illness, as the case may be, may appoint another person to represent the person with mental illness in any complaint procedure or appeal.
- (6) A person with mental illness, the supporter or representative of a person with mental illness or a person appointed under subsection (5) is entitled, where necessary, to the services of an interpreter who shall be made available free of charge.
- (7) A person with mental illness, the supporter or the representative of the person with mental illness, or a person appointed under subsection (5) has the right to—
 - (a) produce at any hearing, independent medical reports and such other reports or evidence that are relevant to the status of the person with mental illness; and
 - (b) attend, participate and be heard in any hearing under this Act.

Decisions by
the supporter. 3JA. (1) A supporter owes a duty of care to the person with mental illness and shall ensure that any decision made by the supporter is in accordance to the will and preference of the person with mental illness.

- (2) In determining whether a decision conforms to the will and preference of the person with mental illness the supporter shall—
 - (a) consider whether the decision conforms to the longer lasting general beliefs, values and desires that the person with mental illness subscribes to; and
 - (b) interpret the will and preference of the person with mental illness taking in to account the rights

conferred on such person under the Constitution and international human rights law.

(3) In exercising the power to make a decision in accordance with the will and preference of a person with mental illness, the supporter shall—

(a) not make a decision that will result in a conflict of interest; and

(b) ensure that the decision applies for the shortest time possible and the supporter shall make continuous efforts to have the person with mental illness express their own will and preference.

(k) in the proposed new section 3K by—

(i) deleting subsection (2); and

(ii) deleting subsection (3).

(Question of the amendment proposed)

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

Clause 7

Sen. (Dr.) Mbiti: Mr. Temporary Chairperson, I beg to move:-

THAT, Clause 7 of the Bill be amended—

(a) in paragraph (a)—

(i) by deleting paragraph (b) in the proposed new subsection (2) and substituting therefor the following new paragraph—

(b) the following persons with knowledge and at least four years' experience in mental health care—

(i) a psychiatrist, in active practice in a mental health care set up, nominated by the Medical Practitioners and Dentists Board;

(ii) a counsellor or psychologist, in active practice in a mental health care set up, nominated by the Counsellors and Psychologists Board;

(iii) a psychiatric nurse, in active practice in a mental health care set up, nominated by the Nursing Council of Kenya;

(iv) a clinical officer, in active practice in a mental health care set up, nominated by the Clinical Officers Council.

(ii) by deleting paragraph (c) in the proposed new subsection (2) and substituting therefor the following new paragraph—

(c) one person nominated by such organisations that advocate for the rights of persons with mental illness as the Cabinet Secretary may determine;

(Question of the amendment proposed)

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

Clause 8

Sen. (Dr.) Mbiti: Mr. Temporary Chairperson, I beg to move:-

THAT, Clause 8 of the Bill be amended by deleting the words “the county mental health council” appearing immediately after the words “committee of the Board” in the proposed new section 4C.

(Question of the amendment proposed)

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

Clause 9

Sen. (Dr.) Mbiti: Mr. Temporary Chairperson, I beg to move:-

THAT, Clause 9 of the Bill be amended—

(a) by deleting paragraph (c) and substituting therefor the following new paragraph—

(c) by deleting paragraph (b) and substituting therefor the following new paragraph—

(b) advise the National government and county governments on the levels of access to mental health care services in Kenya and the most appropriate strategies and programmes for the care of persons with mental illness and the effective delivery of mental health care services at the national and county levels of government;

(b) by deleting paragraph (d) and substituting therefor the following new paragraph—

(d) by deleting paragraph (c) and substituting therefor the following new paragraphs—

(c) set standards for the establishment of mental health units;

(ca) approve the establishment of mental health units within national referral hospitals;

(c) by deleting paragraph (e) and substituting therefor the following new paragraph—

(e) by deleting paragraph (d) and substituting therefor the following new paragraph—

- (d) inspect mental health units and mental health facilities to ensure that they meet the prescribed standards;
- (d) by deleting paragraph (f) and substituting therefor the following new paragraph—
 - (f) by deleting paragraph (e);
- (e) by deleting paragraph (g) and substituting therefor the following new paragraph—
 - (g) by deleting paragraph (f);
- (f) by deleting paragraph (h) and substituting therefor the following new paragraph—
 - (h) by deleting paragraph (g);

(Question of the amendment proposed)

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

Clause 10

Sen. (Dr.) Mbiti: Mr. Temporary Chairperson, I beg to move:-
THAT, Clause 10 of the Bill be amended—

- (a) in paragraph (a)—
 - (i) by deleting paragraph (a) in the proposed new subsection (1B) and substituting therefor the following new paragraph—
 - (a) holds a masters of medicine degree in Psychiatry from a university recognised in Kenya;
 - (ii) by deleting paragraph (b) in the proposed new subsection (1B) and substituting therefor the following new paragraph—
 - (b) is registered by the Medical Practitioners and Dentists Board as a psychiatrist;

(Question of the amendment proposed)

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

Clauses 11 and 12

(Question, that Clauses 11 and 12 be part of the Bill, proposed)

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

Clause 13

Sen. (Dr.) Mbiti: Mr. Temporary Chairperson, I beg to move—
THAT, Clause 13 of the Bill be amended by inserting the words “units and” appearing immediately after the words “Management of mental health”.

(Question of the amendment proposed)

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

Clause 14

Sen. (Dr.) Mbiti: Mr. Temporary Chairperson, I beg to move—
THAT, Clause 14 of the Bill be amended—

(a) in paragraph (a) by deleting the word “facilities” and substituting therefor the word “units”;

(b) in paragraph (b) by—

(i) deleting the proposed new subsection (2) and substituting therefor the following new subsection—

(2) The Board may, by notice in the Gazette, designate such places within a national referral hospital or any other national government facility as the Board may consider necessary as a mental health unit.

(ii) deleting the proposed new subsection (2A) and substituting therefor the following new subsection—

(2A) A county executive committee member may, by notice in the Gazette, designate such a place within a county health facility in the respective county as the committee member may consider necessary as a mental health unit.

(c) by deleting paragraph (d);

(d) by deleting paragraph (e) and substituting therefor the following new paragraph—

(e) by deleting subsection (5) and substituting therefor the following new subsection—

(5) The Cabinet Secretary, in consultation with the Board and the Council of County Governors, shall make rules for the proper management of mental health units.

(e) in paragraph (f)—

(i) by deleting the proposed new subsection (6) and substituting therefor the following new subsection— (6) A level 3, 4, 5 and 6 health facility which has a mental health unit designated under this section shall provide within it in-patient and out-patient treatment of persons with mental illness.

(ii) by deleting the words “subsection (7) (b)” appearing immediately after the words “facility established under” in the proposed new subsection (6A) and substituting therefor the words “subsection (9A) (b)”.

(Question of the amendment proposed)

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

Clause 15

Sen. (Dr.) Mbiti: Mr. Temporary Chairperson, I beg to move— THAT, Clause 15 of the Bill be amended—

(a) by deleting paragraph (a) in the proposed new section 9A and substituting therefor the following new paragraph—

(a) a mental health unit operated and managed by the national government or a county government as the case may be; and

(b) by deleting the proposed new section 9B and substituting therefor the following new section—

Establishment of a private
mental health facility

9B. (1) A person who intends to establish private

mental health facility shall submit an application to the relevant medical

regulatory body in the prescribed form together with the prescribed fee.

(2) A person in medical charge of a private mental health facility shall be a mental health practitioner who is qualified and duly registered as a—

(a) psychiatrist;

(b) psychologist;

(c) clinical officer who specialises in psychiatry; or

(d) psychiatric nurse.

(3) Where an approval is given under subsection (1), the applicant shall notify the county mental health council of the approval in the prescribed form.

(4) The county mental health council shall—

(a) maintain a register of all private mental health facilities operating in the county;

(b) submit a list of all private mental health facilities operating in the county to the

Board annually; and

(c) inspect private mental health facilities within the respective county and report its findings to the Board for remedial action.

(5) A private mental health facility shall be subject

to the standards and regulations affecting mental health units under this Act.

(6) The Cabinet Secretary in consultation with

county executive committee members and the Board shall –

(a) develop a template for reports to be

submitted to the Board under subsection

(4); and

(b) prescribe any other standards and regulations that a private mental health facility should adhere to.

(c) by deleting the proposed new section 9 D and substituting therefor the following new section—

Reports by mental health facilities and units.

9D. (1) A person in charge of a mental health facility or unit shall submit a monthly report to the Board and the county executive committee member on—

(a) the number of voluntary or involuntary patients the mental health facility or unit has received;

(b) the number of voluntary or involuntary patients the mental health facility or unit has discharged;

(c) the number of voluntary patients or involuntary patients still under the care of the mental health facility or unit;

(d) the number of voluntary or involuntary patients who have died in the course of treatment in the mental health facility or unit;

(e) the number of patients who have undergone emergency mental health care treatment; and

(f) the number of patients who have been subjected to restraint and seclusion and the number of times restraint and seclusion has been used as an additional parameter during the course of their treatment.

(2) The subcounty health records officer shall enter the data submitted under subsection (1) in to the Health Information System within fourteen days of receipt.

(d) in the proposed new section 9E —

(i) by inserting the words “or unit as the case may be” immediately after the words “mental health facility” in subsection (3) (b);

(ii) by inserting the words “or unit as the case may be” immediately after the words “mental health facility” in subsection (4).

(iii) subsection (5) by inserting the words “or unit as the case may be” immediately after the words “health practitioner within the facility”.

(iv) by deleting subsection (6) and substituting therefor the following new subsection—

(6) The person in charge of a mental health facility or unit as the case may be, shall, within twenty-four hours, give notice of the restraint or seclusion of the person with mental illness to the –

- (a) duly appointed supporter of the person with mental illness;
- (b) in the case where the person with mental illness has not appointed a supporter, to the representative of the person with mental illness; or
- (c) in the case of a minor with mental illness, to the guardian of that minor.

(e) by deleting the proposed new section 9D appearing immediately after the proposed new section 9E and substituting therefor the following new section—

Informed
Consent

9F. (1) A mental health practitioner shall not administer mental health care, treatment or admit a person to a mental health facility or unit under this Part without the informed consent of—

- (a) the person with mental illness;
- (b) the supporter of that person, where the person with mental illness is unable at the particular time to give consent;
- (c) the representative of that person, where the person with mental illness has not appointed a supporter; or
- (d) the guardian of the person with mental illness, where the person with mental illness is a minor.

(2) Consent under subsection (1) shall be valid if—

- (a) given freely without threats or improper inducement;
- (b) there is appropriate and adequate disclosure of all relevant information relating to the treatment, including information on the type, purpose, likely duration and expected benefits of the treatment;
- (c) choices are given to the persons under subsection (1), in accordance with prescribed clinical practice;
- (d) where consent is sought from a person under paragraph (b), (c) (d), the person is competent to give the consent; and

(e) consent is written and recorded in the records of the person with mental illness.

(Question of the amendment proposed)

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

Clause 16

(Question, that Clause 16 be part of the Bill, proposed)

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

Clause 17

Sen. (Dr.) Mbiti: Mr. Temporary Chairperson, I beg to move-

THAT Clause 17 of the Bill be amended in the proposed new section 10—

(a) in subsection (1)—

(i) by inserting the words “or unit” immediately after the words “mental health facility” in the introductory clause;

(ii) by deleting paragraph (b) and substituting therefor the following new paragraph—

(b) referral where necessary to an appropriate mental health facility or unit;

(b) by deleting subsection (2) and substituting therefor the following new subsection—

(2) Where a minor requires admission to a mental health facility or unit, for treatment under subsection (1), the guardian of that person shall submit a written application, in the prescribed form, to the person in charge of a mental health facility or unit as the case may be, for the admission of the minor.

(c) in subsection (3) by inserting the words “or unit, as the case may be,” immediately after the words “mental health facility”;

(d) in subsection 4—

(i) by deleting the words “Board shall in consultation with” appearing immediately after the word “The” in the introductory clause and substituting therefor the words “Cabinet Secretary shall in consultation with the Board and” in the introductory clause;

(ii) by deleting paragraph (b) and substituting therefor the following new paragraph—

(b) the procedure to be followed by the mental health facility or unit in dealing with a patient admitted under subsection (2), where the guardian of the person with mental illness—

- (i) dies;
- (ii) becomes incapable of supporting or representing the person with mental illness as the case may be; or
- (iii) refuses or neglects to perform their duties under the Act;

(Question of the amendment proposed)

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

Clauses 18 to 21

(Question, that Clauses 18 to 21, be part of the Bill proposed)

The Division will be at the end.

Clause 22

Sen. (Dr.) Mbito: Mr. Temporary Chairperson, I beg to move:-

THAT, Clause 22 of the Bill be amended—

(a) in paragraph (b) by inserting “or unit,” immediately after the words “mental health facility” in the proposed new subsection (1)

(b) (ii);

(b) by deleting the proposed new subsection (1A) and substituting therefor the following new subsection—

(1A) An application under subsection (1) shall be made in the prescribed form to the person in charge of the mental health facility or unit, as the case may be, by the following persons—

(a) a duly appointed supporter of the person with mental illness in accordance to the will and preference of the person with mental illness;

(b) in the absence of a duly appointed supporter, a representative of the person with mental illness;

(c) in case of a minor with mental illness, by the guardian of the minor; or

d) where the person in paragraphs (a), (b) or (c) are not available or willing to make the application, by

any other person who is carer or relative of that person.

(c) in the proposed new subsection (1C) by deleting the word “condition” appearing immediately after the words “health of the person” in paragraph (b);

(d) in the proposed new subsection (1D) by deleting paragraph (e) and substituting therefor the following new paragraph—

(e) by deleting subsection (6) and substituting therefor the following new subsections—

(6) A person in charge shall not admit an involuntary patient for a period exceeding six months unless the person in charge has—

(a) carried out or caused to be carried out a review of the status of mental health of the patient; and

(b) sought or retained the recommendation of the medical health practitioner for the extended admission of the patient.

(6A) Before extending the period of admission under subsection (6) the person in charge shall seek the consent of –

(a) the supporter of that person, where the person with mental illness is unable at the particular time to give consent;

(b) the representative of that person, where the person with mental illness has not appointed a supporter; or

(c) the guardian of the person with mental illness, where the person with mental illness is a minor.

(i) by inserting the words “or unit,” immediately after the words “mental

health facility” in the proposed new subsection (6);

(ii) by deleting the word “hospital” appearing immediately after the words

“retained in a mental” in the proposed new subsection (6B) and substituting therefor the words “health facility or unit”.

(Question of the amendment proposed)

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

Clauses 23 and 24

(Question, that Clauses 23 and 24 be part of the Bill, proposed)

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

The Division will be at the end.

Clause 25

Sen. (Dr.) Mbiti: Mr. Temporary Chairperson, I beg to move:-

THAT, Clause 25 of the Bill be amended in the proposed new section 15 A—

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

(3) Where emergency treatment is administered and a person is admitted under this section, the person in charge shall, within twenty four hours of admission, inform the next kin of the person with mental illness.

(b) by deleting subsection (5) and substituting therefor the following new subsection—

(5) Where a mental health practitioner determines that the person with mental illness requires care beyond the period under subsection (4), the mental health practitioner shall obtain written consent from—

(a) a duly appointed supporter of the person with mental illness;

(b) a representative of the person with mental illness, where the person with mental illness has not appointed a supporter; or

(c) the guardian of the person with mental illness, where the person with mental illness is a minor.

(c) by deleting subsection (6).

(Question of the amendment proposed)

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

Clause 26

Sen. (Dr.) Mbiti: Mr. Temporary Chairperson, I beg to move:-

THAT clause 26 of the Bill be amended—

(a) in paragraph (b)—

(i) by deleting the word “mental” appearing immediately after the words “subsection (1) to a” in the proposed new subsection (2);

(ii) by deleting the word “mental” appearing immediately after the words “person was delivered to a” in the proposed new subsection (2A);

(b) in paragraph (c) by deleting the proposed new subsection (3) and substituting therefor the following new subsection—

(3) Upon delivery of a person to a health facility under subsection (2), the person in charge of the health facility shall, within seventy-hours—

(a) examine or cause the person to be examined to determine whether the person should be admitted as an involuntary patient under section 14 or handed over to the care of—

(i) a duly appointed supporter of the person with mental illness;

(ii) in the absence of a supporter duly appointed under this Act, a representative of the person with mental

illness; or

(iii) in the case where the person with mental illness is a minor, the guardian of the minor;

and

(b) make the necessary arrangements for the person's treatment and care.

(Question of the amendment proposed)

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

Clause 27

(Question, that Clause 27 be part of the Bill, proposed)

The Division will be at the end.

Clause 28

Sen. (Dr.) Mbiti: Mr. Temporary Chairperson, I beg to move-

THAT, the Bill be amended by deleting clause 28 and substituting therefor the following new clause—

Amendment
of section 17
of Cap 248

28. The principal Act is amended by deleting section 17 and substituting therefor the following new section—

Admission of a member
of the Kenya Defence
Forces for observation
and treatment.

17. (1) Notwithstanding anything to the contrary in this Act, any member of the Kenya Defence Forces may be admitted in to a mental health unit for observation if a medical officer of the Kenya Defence Forces certifies to the person in charge that—

(a) the medical officer has examined the member of

the Kenya Defence Forces within a period of forty-eight hours of the admission; and

(b) for the reasons recorded in the certificate, the member of the Kenya Defence Forces requires admission to a mental health unit for observation and treatment.

(2) A member of the Kenya Defence Forces may, subject to subsection (3), be admitted to a mental health unit under subsection (1) for an initial period not exceeding fourteen days from the date of admission.

(3) A person in charge may extend the period of admission after—

(a) carrying out or causing to be carried out a review of the status of mental health of the member of the Kenya Defence Forces; and

(b) seeking the recommendation of two medical practitioners, one of whom shall be a psychiatrist, and the medical officer of the Kenya Defence Forces for the extended admission of the patient.

(4) A member of the Kenya Defence Forces admitted to a mental health unit under subsection (1) may be discharged from that hospital if two medical practitioners, one of whom shall be psychiatrist, by a letter to the person in charge certifies that—

(a) they have examined the member of the Kenya Defence Forces within a

period of seventy-two hours before issuing the letter; and

(c) for the reasons recorded in the letter it is desirable that the member of the Kenya Defence Forces be discharged from the mental health unit and where the mental health unit is not within a Kenya Defence Forces hospital the member of the Kenya Defence Forces shall be discharged to the nearest Kenya Defence Forces health unit which shall arrange to transport the patient to the Kenya Defence Forces Unit the patient belongs to.

(5) Where any member of the Kenya Defence Forces suffers from mental illness while away from the member's Kenya Defence Forces unit, and is in any circumstances admitted in to a mental health unit, the person in charge shall inform the nearest Kenya Defence Forces unit directly or through an administrative officer or gazetted police officer.

(6) If a member of the Kenya Defence Forces admitted to a mental health unit under this section ceases to be a member of the Kenya Defence Forces while admitted, the relevant

authority in the Kenya Defence Forces shall inform the person in charge of that fact and the patient shall be deemed to be an involuntary patient under Part VI admitted from the date the information is received.

(Question of the amendment proposed)

The Temporary Chairperson (Sen. (Dr.) Lelegwe): The Division will be at the end.
Clause 29

(Question that Clause 29 be part of the Bill proposed)

The Division will be at the end.

Clause 30

Sen. (Dr.) Mbiti: Mr. Temporary Chairperson, I beg to move-

THAT, Clause 30 of the Bill be amended—

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

(a) by deleting subsection (1) and substituting therefor the following new subsection—

(1) The Cabinet Secretary may, upon consultation with the Cabinet Secretary responsible for finance, by notice in the *Gazette*, prescribe the fees payable for the admission of persons with mental illness in a mental health unit established in a National Referral Hospitals.

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

(aa) by inserting the following new subsection immediately after subsection (1)—

(1A) The county executive committee member may, by

notice in the *Gazette*, prescribe the fees payable for admission of persons with mental illness in a county mental health unit.

(Question of the amendment proposed)

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

Clause 31

(Question that Clause 31 be part of the Bill proposed)

The Division will be at the end.

Clause 32

Sen. (Dr.) Mbiti: Mr. Temporary Chairperson, I beg to move –

THAT, Clause 32 of the Bill be amended—

(a) in the proposed new section 20A by deleting the words “The Board in consultation with the Cabinet Secretary and the Council of County Governors” appearing at the beginning of subsection (3) and substituting therefor the words “The Cabinet Secretary in consultation with the Board and the Council of County Governors”.

(b) by deleting the proposed new section 20B.

(Question of the amendment proposed)

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

Clause 33

Sen. (Dr.) Mbiti: Mr. Temporary Chairperson, I beg to move –

THAT the Bill be amended by deleting clause 33 and substituting therefor the following new clause—

Amendment
Of section 21
of Cap 248

33. The principal Act is amended by deleting section 21 and substituting with the following new section-

Discharge. **21** (1) A person in charge may, by

order in writing and upon the recommendation of the medical practitioner and mental health practitioner in charge of the person’s treatment, order the discharge of a person with mental illness from the health facility and that person shall thereupon be discharged as having recovered from mental illness.

(2) A person with mental illness shall be discharged from the health facility under subsection (1) where the medical practitioner and the mental health practitioner in charge of managing the person make a decision that the person can no longer receive any other or further treatment from a health facility and appropriate efforts are being made towards re-integration of the person into the community, and for specialized and personalised after-care services.

(Question of the amendment proposed)

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

Clause 34

Sen. (Dr.) Mbiti: Mr. Temporary Chairperson, I beg to move: –

THAT, Clause 34 of the Bill be deleted and substituted with the following new clause—

Amendment
of section 23 Cap
248.

34. The principal Act is amended by deleting section 22 and substituting therefor the following new section—
Interim
discharge.

22.(1) A person in charge may, upon consultation with the mental health practitioner in charge of the treatment of a person with illness, discharge the person with mental illness into the custody and care of, —

- (a) the supporter of the person with mental illness;
 - (b) the representative of the person with mental illness; or
 - (c) where the person with mental illness is a minor, the guardian of the minor.
- (2) Any person listed under subsection (1) (a), (b) and (c) who intends to take the person with mental illness into their care and custody under subsection (1) shall apply to the person in charge for the custody and care of the person with mental illness in the prescribed form.
- (3) The person in charge shall consider an application under subsection (2) and may release the person with mental illness in to the custody and care of the applicant upon such conditions as the person in charge may impose.
- (4) Where a person who takes the custody and care of a person with mental illness under subsection (3) is subsequently unable or unwilling to continue with the care of the person with mental illness such person shall report the matter to the person in charge of the health facility.
- (5) The person in charge of the health facility shall admit the person with mental illness back to the mental health unit under the terms and conditions that the person with mental illness had been admitted before delivery to the applicant under subsection (3).

(Question of the amendment proposed)

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

Clause 35

Sen. (Dr.) Mbiti: Mr. Temporary Chairperson, I beg to move:-

THAT, clause 35 of the Bill be amended—

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

(a) by deleting subsection (1) and substituting therefor the following new subsections—

(1) A person may, by order of the Director or the respective county executive committee member be transferred from one national referral hospital mental health unit to another national referral hospital mental health unit or from one county health facility mental health unit to another county health facility mental health unit as the case may be.

(1B) Before transferring a person under subsection (1), the person in charge, shall obtain consent from-

(a) the person with mental illness; or

(b) where the person with mental illness—

(i) is unable to give consent, consent shall be obtained from the supporter of the person;

(ii) has not appointed a supporter, consent shall be obtained from the representative of the person; or

(iii) is a minor, consent shall be obtained from the guardian of the minor.

(b) in subsection (2) by deleting the words “mental hospital to which the transfer is made a certified copy of the order of the Director” appearing immediately after the words “charge of the mental” and substituting therefor the words “health facility to which the transfer is made a certified copy of the order of the Director or the relevant county executive committee member as the case may be”.

(Question of the amendment proposed)

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

Clause 36

Sen. (Dr.) Mbiti: Mr. Temporary Chairperson, I beg to move:-

THAT, the Bill be amended by deleting clause 36 and substituting therefor the following new clause—

36. The Principal Act is amended by deleting section

— Amendment of
section 24 of Cap
I 248
c

onic version of the Senate Hansard Report is for information purposes of this Report can be obtained from the Hansard Editor, Senate.

24 and substituting therefor the following new section—

<p>Treatment of a person with mental illness abroad.</p> <p>care with the appr</p> <p>subsection (1) may be made to the</p>	<p>24 (1) A person with mental illness may be transferred from a mental health unit in Kenya to a mental health unit in a foreign country for subsequent treatment and</p> <p>the Board.</p> <p>(2) An application for transfer under Board by—</p> <p>(a) the person with mental illness;</p> <p>(b) in the case where a person with mental illness—</p> <p style="padding-left: 40px;">(i) is unable to make the application, by the supporter of the person with mental illness;</p> <p style="padding-left: 40px;">(ii) has not appointed a supporter, by a representative of the person with mental illness; or</p> <p style="padding-left: 40px;">(iii) is minor, by the guardian of the minor.</p> <p>(3) The Board shall inquire into the case of the person to whom the application under subsection (1) relates in such manner as it considers fit, and if satisfied that the removal is likely to be for the benefit of the person, and that proper arrangements have been made for the proper removal and subsequent treatment and care, the Board may by warrant in the prescribed form and subject to subsection (4), direct that the person be delivered to the person named in the warrant for the purpose of being removed to the foreign</p>
---	--

country specified in the warrant.
 (4) A warrant for the removal of a person with mental illness to a foreign country shall not be issued by the Board under subsection (3) unless a prior consent to receive the person has been obtained from the proper authorities in the foreign country.

(Question of the amendment proposed)

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

Clause 37

Sen. (Dr.) Mbiti: Mr. Temporary Chairperson, I beg to move:-

THAT clause 37 of the Bill be amended—

(a) in the proposed new section 26—

(i) by deleting subsection (1) and substituting therefor the following new subsection—

(1) An application for an order for the management and administration of the estate of a person with mental illness may be made to the court, in the following order of priority, by —

(a) a supporter of the person with mental illness; or

(b) the representative of the person where the person with mental illness has not appointed a supporter.

(ii) by deleting paragraph (d) in subsection (2);

(iii) by inserting the words “where an application is made by a supporter to the” at the beginning of subsection (3) (b);

(b) in the proposed new section 27 by inserting the following new subsection immediately after subsection (2)—

(2A) The court may for the purposes of section (1), appoint the supporter or the representative of the person with mental illness as the manager of the estate

- of the person under subsection (2).
- (c) in the proposed new section 30 by inserting the words “the supporter,” immediately after the words “such fee as may be prescribed” in subsection (2);
- (d) in the proposed section 31, by deleting the proposed subsection (2) and substituting therefor the following new subsection—

(2) Where the court makes a determination that any property of a person who is mentally ill has been lost due to mismanagement of the estate of the person by the manager, the loss shall be recoverable summarily as a civil debt from the manager’s estate.

(Question of the amendment proposed)

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

Clause 38

Sen. (Dr.) Mbiti: Mr. Temporary Chairperson, I beg to move:-

THAT, clause 38 of the Bill be amended—

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

(a) subsection (1) and substituting therefor the following new subsection-

(1) The person in charge or a mental health practitioner in charge of any patient shall submit all letters written by the patient to the recipients as soon as practicable after such letters come to their notice.

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

(aa) subsection (2);

(c) by deleting paragraph (b) and substituting therefor the following new paragraph—

(b) subsection (3).

(Question of the amendment proposed)

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

Clause 39

Sen. (Dr.) Mbiti: Mr. Temporary Chairperson, I beg to move:-

THAT the Bill be amended by deleting clause 39 and substituting therefor the following new clause—

Amendment of
section 41 of
Cap 248 39.

Power to
refuse
reception into
mental
hospital.

39. Section 41 of the principal Act is deleted
and substituted with the following new section—

41. (1) A person in charge
may refuse to admit a person
with mental illness into the
mental facility or unit, if
the accommodation within
the facility or unit is insufficient
or unsuitable.

(2) Where the person
in charge refuses to admit
the person under subsection
(1), the person in charge
in consultation with the
mental health practitioner in
the health facility, shall
prescribe and administer
an outpatient treatment plan
while alternative
accommodation is being sought.

(Question of the amendment proposed)

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

Clauses 40 and 41

(Question, that Clauses 40 and 41 be part of the Bill proposed)

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

Clause 42

Sen. (Dr.) Mbiti: Mr. Temporary Chairperson, I beg to move:-

THAT clause 42 of the Bill be amended by deleting the proposed new section 44 and substituting therefor the following new subsection—

Correction of admission procedure.

was admitted, the person in

case may be.

44. Where, upon a person being admitted into a mental health facility or unit as the case may be, the person in charge discovers a defect in the admission procedure or the medical recommendation upon which the person in charge may require the defect to be corrected at any time within fourteen days after the person is admitted into the mental health facility or unit as the

(Question of the amendment proposed)

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

Clause 43

Sen. (Dr.) Mbiti: Mr. Temporary Chairperson, I beg to move:-

THAT, clause 43 of the Bill be amended—

(a) in the proposed new section 45 –

(i) by inserting the words “or unit as the case may be” immediately after the words “in to a mental health facility” in subsection (1);

(ii) by deleting subsection (2) and substituting therefore the following new subsection—

(2) Where a person who is admitted into a mental health facility or unit, escapes, a police officer, a person employed in such mental health facility or unit, or any other person authorized by the person in charge of the mental health facility or unit may, upon finding such person, convey that person into the mental health facility or unit.

(Question of the amendment proposed)

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

Clause 44

Sen. (Dr.) Mbiti: Mr. Temporary Chairperson, I beg to move-

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

THAT, the Bill be amended by deleting clause 44 and substituting therefor the following new clause—

Amendment of
section 46 Cap
248

44. The principal Act is amended by deleting section 46 and substituting therefor the following new section—

Complaints.

No. 21 of
2017.

46. (1) A person with mental illness shall have the right to lodge a complaint against any health professional with the Kenya Health Professions Oversight Authority established under section 45 of the Health Act, for the manner in which the person was treated by the health professional while in the custody, care and control of the health professional.

(2) Where the person with mental illness is incapable of lodging the complaint, the following persons may lodge the complaint on behalf of that person—

(a) a duly appointed supporter of that person;

(b) where the person with mental illness has not appointed a supporter, the representative of the person with mental illness,

(c) where the person with mental illness is a minor, the guardian of the minor.

(3) Where the persons specified under subsection (2) are unable or unwilling to lodge a complaint on behalf of the person with mental illness, any other person may lodge the complaint on behalf of the person with mental illness.

(4) The Authority shall hear and determine the complaint lodged under subsection (1) or (2) within six months and report its findings to the complainant.

(4) Where the complainant is dissatisfied with the decision of the Authority under this section, the complainant may appeal to the High Court.

(Question of the amendment proposed)

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

Clause 45

Sen. (Dr.) Mbito: Mr. Temporary Chairperson, I beg to move:-

THAT, clause 45 of the Bill be amended by deleting the proposed new section 49 and substituting therefor the following new section—

Aiding the escape of person suffering from mental	49. A person who wilfully assists the escape of any person with mental illness being conveyed to or from, or while under care and treatment in, a mental health facility or unit as the case may be, or who harbours any person suffering from mental illness whom the person knows has escaped from a mental health facility or unit as the case may be, commits an offence.
---	---

(Question of the amendment proposed)

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

Clause 46

Sen. (Dr.) Mbito: Mr. Temporary Chairperson, I beg to move:-

THAT, clause 46 of the Bill be amended by deleting the proposed new section 50 and substituting therefor the following new section—

Permitting patient to quit mental health facility unlawfully.	50. A person in charge, or any person employed at a mental health facility or unit as the case may be, who through wilful neglect or connivance permits any patient in the mental health facility or unit as the case may be, to leave such mental health facility or unit other than under this Act or any other law for the time being in force commits an offence.
---	---

(Question of the amendment proposed)

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

Clause 47

Sen. (Dr.) Mbiti: Mr. Temporary Chairperson, I beg to move:-

THAT, clause 47 of the Bill be amended by deleting the proposed new section 51 and substituting therefor the following new section—

Ill-treatment of person in mental health facility.	51. A person in charge of, or any person employed at, a mental health facility or unit as the case may be, who strikes, ill-treats, abuses or wilfully neglects any patient in the mental health facility or unit as the case may be, commits an offence.
---	--

(Question of the amendment proposed)

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

Clause 48

Sen. (Dr.) Mbiti: Mr. Temporary Chairperson, I beg to move:-

THAT, clause 48 of the Bill be deleted and substituted with the following new clause—

Amendment of section 52 of Cap 248.	48. Section 52 of the principal Act is amended by deleting the words “hospital, whether inside or outside the grounds of the mental hospital” appearing immediately after the words “patient in a mental” and substituting therefor the words “health facility or unit as the case may be, whether inside or outside the grounds of the mental health facility or unit as the case may be”
---	---

(Question of the amendment proposed)

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

Clauses 49 and 50

(Question of the amendment proposed)

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

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

Clause 51

Sen. (Dr.) Mbito: Mr. Temporary Chairperson, I beg to move:-

THAT, clause 51 of the Bill be amended by—

- (a) renumbering the existing clause as subclause (1);
- (b) inserting the following new subsection immediately after subsection (1)—

(2) A mental hospital by the Board prior to the commencement of this Act shall deemed to have been established under this Act.

(Question of the amendment proposed)

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

Clause 52

(Question, that Clause 52 be part of the Bill, proposed)

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

The Schedule

(Question, that The Schedule be part of the Bill, proposed)

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

The Title and Clause 1

*(Question, that the Title and Clause 1
be part of the Bill, proposed)*

The Temporary Chairperson (Sen. Lelegwe): The Division will be at the end.
Proceed, Sen. Kasanga.

Sen. Kasanga: Mr. Temporary Chairperson, Sir, pursuant to Standing Order 148, I beg to move that the Committee of the Whole do report progress on its consideration of The Mental Health (Amendment) Bill (Senate Bills No.32 of 2018) and seek leave to sit again tomorrow.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

PROGRESS REPORTED

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

The Temporary Speaker (Sen. Pareno): Hon. Senators, we are reporting progress by the Committee of the Whole on The Local Content Bill (Senate Bills No.10 of 2018).

Proceed, Chairperson.

Sen. Lelegwe: Madam Temporary Speaker, I beg to report that the Committee of the Whole has considered The Local Content Bill (Senate Bills No.10 of 2018) and seeks leave to sit again tomorrow.

The Temporary Speaker (Sen. Pareno): Mover?

Sen. Halake: Madam Temporary Speaker, I beg to move that the House do agree with the Committee on the said report, and ask Sen. Seneta to second.

Sen. Seneta: Madam Temporary Speaker, I second.

(Question proposed)

(Question put and agreed to)

The Temporary Speaker (Sen. Pareno): Hon. Senators, we now move to reporting of progress by the Committee of the Whole on The Mental Health (Amendment) Bill (Senate Bills No.32 of 2018).

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

Sen. Lelegwe: Madam Temporary Speaker, I beg to report progress that the Committee of the Whole has considered The Mental Health (Amendment) Bill (Senate Bills No.32 of 2019) and seeks leave to sit again tomorrow.

The Temporary Speaker (Sen. Pareno): Proceed, Mover; Sen. Kasanga.

Sen. Kasanga: Madam Temporary Speaker, I beg to move that the House do agree with the Committee of the Whole on the said Report. I request Sen. (Dr.) Mbitto to second.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

Sen. (Dr.) Mbito: Madam Temporary Speaker, I second.

(Question proposed)

(Question put and agreed to)

The Temporary Speaker (Sen. Pareno): Hon. Senators, I am informed that there is still consultation going on regarding Order Number 17 – the Control of Stray Dogs Bill (Senate Bills No. 4 of 2019) and it therefore, stands deferred to another date.

BILLS

Second Reading

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

(Bill deferred)

Next Order.

Second Reading

THE NATIONAL MUSEUM AND HERITAGE (AMENDMENT)
BILL (SENATE BILLS NO. 7 OF 2019)

Sen. (Dr.) Milgo: Thank you, Madam Temporary Speaker. I beg to move the National Museum and Heritage (Amendment) Bill (Senate Bills No. 7 of 2019). This Bill is very important because of the fact that museums are institutions that hold artefacts and articles---

The Temporary Speaker (Sen. Pareno): Order, Sen. (Dr.) Milgo. You have not moved. Kindly move and read the entire title, as provided.

Sen. (Dr.) Milgo: I am sorry, Madam Temporary Speaker. I beg to move that:-
The National Museum and Heritage (Amendment) Bill (Senate Bills No. 7 of 2019) be now read a Second Time.

Madam Temporary Speaker, this is a Bill on National Museums and heritage. Museums are institutions that hold artefacts and articles on the past. In this case, they contain tangible materials that are a reconstruction of the past, that serves as a source of cultural and communal identity.

For example, agricultural items used in the past by various communities in our country. They will be able to show us dressing, utensils, beads, skins, shoes and weaponry used in the past by our people. Museums can act as education resource centres not only for our youths, but for the visitors. We can also use Museums to conduct

research on how various communities lived, and how our people have evolved from the past to the present age.

Madam Temporary Speaker, museums can serve as reconciliation centres, if well maintained. They can also serve as meeting centres for our people to resolve their conflicts. Similarly, museums will play a very important role of creating employment opportunities for our youths. Currently, our country is experiencing a high rate of unemployment. Museums can, therefore, serve as employment centres. For example, in the United States of America (USA), museums have employed 1,850 workers.

In addition, people can set up businesses in Museums; for example, hotels to serve food to visitors. In West Pokot County, for instance, we have the famous jail where the first President and his colleagues were detained. We can take our children there and learn how hard to it was to fight for the Independence in this country.

Madam Temporary Speaker, there are very many valuable assets that can be preserved in museums. The Koitalel arap Samoei Museum, for example, is an institution that has been set up in Nandi County. Recently instruments used by him were shipped from the UK to Kenya, and they remind us of our past.

Madam Temporary Speaker, Article 11(1) of the Constitution recognises culture as the foundation of the nation and the cumulative civilization of the Kenyan people and our nation. The same Article 11(3)(a) goes further to say that Parliament shall enact legislation – in this case a marked legislation – to ensure that communities receive compensation – or in this case, royalties – for the use of their cultures and cultural heritage. Many of our communities have had their materials used. For instance, I know of the Maasai regalia, which is used whenever we go abroad. Recently, one of my colleagues was travelling abroad for his children's graduation and was asked to go there in Maasai regalia. In any case, those people should be recognised by being given some royalties for using their clothing or any other such material.

Item 25 of the Fourth Schedule of the Constitution assigns the responsibility of ancient and historical monuments of national importance to the national Government. Item No.4 of Part 2 of the Fourth Schedule of the Constitution also assigns the responsibility of cultural activities, public entertainment and public amenities to county governments. Therefore, museums should be included.

Madam Temporary Speaker, while the county governments have been assigned issues of entertainment as well as public amenities, the Bill has not spoken to such. In this case, how such centres should be set up in the counties should be provided for. This Bill will, therefore, play an important role to ensure that we provide for ways and means of establishing museums in our counties.

The National Museums and Heritage (Amendment) Bill, 2019, seeks to give effect to the Fourth Schedule of the Constitution as regards to the distribution of functions between the national Government and county governments. As it is right now, the Act actually strengthens only the national Government, and there is no provision as to how county governments will go about the issues of county museums. Once this Bill is passed, it will highlight or streamline ways of establishing such museums in the counties and managing them.

The National Museums and Heritage Act was enacted in 2006, before the Constitution 2010 was promulgated. As such, it consolidated all the functions relating to museums and heritage as a sole function of the national Government. While the Constitution 2010 provided for a bi-cameral Government where we have counties, this particular function was not devolved to the counties. As things stand now, national museums and heritage are only controlled by the national Government, and county governments do not have a part to play. This Bill will go a long way in assisting counties to conduct several issues. We know of counties where there have been many fights. If we had such museums, people could come together and learn about what happened in the past, such as the artefacts and the way people lived in the past.

Madam Temporary Speaker, since the counties are now fully functional, we ought to have sections of the national museums and heritage functions in the county. The National Museums and Heritage Act, which was enacted in 2006, only provided for management through the national Government. Therefore the National Board is just within the National Government. Therefore, there is nothing that has been described for the county governments.

Madam Temporary Speaker, this Act shall provide for the establishment, control, management and development of national museums and the identification, protection, conservation and transmission of the cultural and national heritage of Kenya.

Once this Bill is passed, the county governments will have a way of setting up museums in their counties, and they will have regulations on how to control them. They will also have a board to manage the museums; in this case the necessary regulations to develop will be stipulated in this particular Bill. The Bill will also help to identify ways of protecting the museums, together with the materials that are supposed to be conserved in those particular areas.

Madam Temporary Speaker, I remember that in my own culture, the *Kipsigis* culture, there are many items that were used in the past, like the item that was used to drink the traditional brew. Recently my child was asking me the name of that item, which, of late, is not seen around. If we had such museums, we would keep such items there for posterity. There are even items that were used to grind millet flour which, in our culture, we used to call *isiet* and the *goita*.

Madam Temporary Speaker, the establishment of Museums in various counties is long overdue. I know that of all the various cultures that we have in Kenya – the 42 tribes – they all have the various instruments they used for grinding flour. They also had different weapons, clothing and language.

Right now, Madam Temporary Speaker, some of our kids do not even understand certain languages. When we speak, we have to go further to explain to them what we mean. I am sure that if we had Museums, we would request people who understand the languages to write books, which we will keep in the Museums. That way, the future generations will be able to go to the Museums, read and know the different types of languages in our country. As you know, language is very dynamic. I remember even the vernacular language that we used to speak has changed very many times. Right now, we are even having a slang version of my own vernacular language. If this trend continues, the actual language will be lost in the future.

Madam Temporary Speaker, the Act also establishes the National Museums of Kenya (NMK), which has the legal status of a National Statutory Corporation. The legislative proposal before the Committee seeks to align the current Act to be in conformity with the Constitution; and with the aims of devolution as outlined in Article 174 of the Constitution. The first crucial amendments to the Act are through Clauses 3 and 4, which seek to rename the National Museums of Kenya as the Kenya Heritage Authority. This is in order to distinguish the extent the Parastatal, as a body, is limited to the national Government function as outlined in the Fourth Schedule of the Constitution.

Madam Temporary Speaker, Clause 4 re-aligns the function of the Kenya Heritage Authority by deleting the current Section 4 of the Act. Consequently, it replaces it with a set of new functions that are commensurate with the Constitution 2010. Clause 5 of the Bill also amends previous powers of the Authority and re-aligns them with the 2010 Constitution.

Our major challenge is that the only authority that overlooks the issues of the museums is at national Government whose major sittings are normally done in Nairobi. In any case, once this Bill passes, this will involve all the 47 counties.

The county museums are given a set of general functions in Clause 6 of the Bill through the deletion of Section 5 of the Act and replacing, therefore, a new Section. The county museums are required, under the new Section, to consult with the Cabinet Secretary (CS) on the matter of exchanging, selling or disposal of objects that are not required in the county museums to any person or institution inside or outside the country. Although we are saying that this Bill will give authority to the county governments to set up county museums, they will still seek authority from the National Museums Authority through the CS for them to sell or transfer some of the items.

Madam Temporary Speaker, I remember that sometimes back, there were people who transferred gazelles to other countries. Therefore, there could be counties that would be having certain animals that are useful, and they want to transfer them to other countries. However, a county will not have the sole authority to transfer such animals or any other item unless they have the authority of the CS.

Mr. Temporary Speaker, Sir, Clause 7 of the Bill further seeks to amend Section 5 through the insertion of a new section to the Act to establish the new office of a County Heritage Inspector. This position was assigned as the Chief Curator of the county museums. Once this Bill passes and we have county museums, the County Heritage Inspector's position will be created to take care of items that are in the museum.

Madam Temporary Speaker, Clause 8 of the Bill seeks to align the functions of the existing NMK through renaming it and setting out this jurisdiction, in conformity with the first part of the Fourth Schedule of the Constitution. Clauses 9 to 16 of the Bill seeks to rename the existing NMK by replacing the previous name of National Museums of Kenya to that of the authority, and adjust the principal Act accordingly.

Mr. Temporary Speaker, Sir, Clause 17 of the Bill seeks to realign Section 23 of the principal Act, which concerns accounts and audits to reflect the current constitutional dispensation. The current Act mentions the Controller and Auditor-General, which was the previous title of the office under the repealed Constitution. The new Clause seeks to adhere to the provisions of the Public Audit Act, 2015.

Madam Temporary Speaker, several issues were added to the Public Audit Act, 2015. Therefore, the National Museums of Kenya and Heritage are still using the old regulations. Once this Bill comes into being, the Public Audit Act, 2015 which is in place right now, will come into play and bring to speed what is happening in the national museums and help the county museums.

Madam Temporary Speaker, Clause 19 and 20 of the Bill seeks to amend the Principal Act to align with the Fourth Schedule of the Constitution by allowing the CS to make declarations on ancient and historical monuments of national importance and keep a register that shall contain records of such declarations.

This Bill will strengthen county museums. There will be funds set aside for Museums. For example, the Government provided some funding for the Cradle of Man. Therefore, the CS will register it, so that it is recognized nationally, despite the fact that it may be found in one of the counties. The National Museums Authority will register it as well.

Madam Temporary Speaker, Clauses 21 to 29 of the Bill seeks to rename the existing national museums by replacing the previous name 'National Museums' to that of the authority, in order to adjust the Principal Act accordingly. Clause 30 of the Bill seeks to amend the Principal Act in Section 4. This amendment will ensure that the contemplated Kenya Heritage Authority can enforce agreements for the protection of monuments. The Kenya Heritage Authority will still play an important role in enforcing agreements for protection of various monuments. The current monuments will also be registered by the national authority. You will realize the reason why we now want to use the name 'authority' is so that once you are talking about museums, this will incorporate both the national and county museums.

Madam Temporary Speaker, Clause 48 of the Bills seeks to amend the Principal Act by redefining the power of the CS as regards the burden of proof of the declarations. This amendment is to ensure conformity to the first part of the Fourth Schedule so that there will be regulations to govern the burdens of declaration by any Cabinet Secretary. Clause 50 of the Bill amends the transitional provisions of the Bill. Clause 51 amends the consequential amendment made to Section 23 of the Copyright Act by replacing the word 'National Museums' to the Contemplated Kenya Heritage Authority.

Madam temporary Speaker, I beg to move and I request Sen. (Dr.) Musuruve to second.

Sen. (Dr.) Musuruve: Thank you, Madam Temporary Speaker, for giving me an opportunity to second this Bill. I truly commend, Sen. (Dr.) Milgo for coming up with these amendments, which are timely, because our youth seem lost and confused about their culture. We, as a nation, are losing out on our culture. Culture is a way of life and it is expressed in many ways. This can be through song, dressing, and language. It is also expressed in the way we treat others and our significant others. We need to do something to ensure that our youth are aware of our culture. Some of our youth do not know their culture and they have taken up so much of the West culture.

Madam Temporary Speaker, there are instances I get confused. This is I sometimes meet someone who I not sure of their gender. There is need to ensure that we pass on the right culture to our children. This will ensure that they know, for example,

how an African woman needs to appear like. They should know how a real Luhya, Kikuyu or Maasai woman needs to appear like.

Culture is important and is part of our heritage. I would like to commend the Senator for coming up with this Bill, because it is something we need to inculcate in our youth. When museums are set up in the counties, it will be possible for each county to do an inventory of the artefacts of its culture, and ensure that all of them are preserved in the museums.

Madam Temporary Speaker, coming up with museums in all counties will ensure that we are not only preserving our culture, but also making it a source of income, research and education. Talking about education, I am looking at a way in which we are impacting cultural knowledge to our children, so that they impact it also to their children and so on, and so forth. In the olden times, education was passed on from the grandmother to the next generations. That way, were able to get the core issues of our culture. When the National Museum and Heritage Act was enacted in 2006, the Constitution 2010 had not been promulgated. Therefore, cultural issues had not been devolved to the counties. Therefore, there is need for us to ensure that cultural issues are devolved to our counties. That way, counties can take it as their responsibility, to ensure that culture is passed on from one generation to another.

Madam Temporary Speaker, there is need to align the National Museum and Heritage Act with the county governments. There is need for every county to have an office of a County Heritage Inspector. Counties should also have structures that are respected and conform to other structures so that eventually, people are able to respect the museums.

Madam Temporary Speaker, Article 11 of our Constitution states clearly that we need to preserve our culture. There is, therefore, need to defend the Constitution by ensuring that we preserve our culture. We can do it by ensuring that we preserve the songs which were sung a long time ago. There are also some foods that are even medicinal. When we talk of *mutere*, *tsiswa*, *tsisaga*, *tsinduma* and all many other foods, they are healthy to eat. What is happening right now? People have abandoned the healthy foods and they have gone for fast foods, which cancerous.

Therefore, Madam Temporary Speaker, we need to ensure that we have these museums in the counties so that our youth can get to know the kind of foods that were eaten in our communities. They can be places where universities can do research on traditional foods and medicines. We used to have *mukombero*---

The Temporary Speaker (Sen. Pareno): Order, Sen. (Dr.) Musuruve! You will have a balance of 15 minutes.

ADJOURNMENT

Hon. Senators, it is now 6.30 p.m., time to adjourn the House. The Senate, therefore, stands adjourned to tomorrow, Thursday 18th July, 2019, at 2.30 p.m.

The Senate rose at 6.30 p.m.