



REPUBLIC OF KENYA

**THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT (*FOURTH SESSION*)**

**REPORT OF THE TASKFORCE ON TRANSLATION OF THE
5TH EDITION OF THE NATIONAL ASSEMBLY STANDING
ORDERS (ENGLISH VERSION) TO KISWAHILI**

TO

THE CLERK OF THE NATIONAL ASSEMBLY

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PREFACE

Standing Orders (rules of procedure) help define the character of a Parliament by describing the rights and obligations of elected parliamentarians, identifying and assigning roles and functions to the key organs of the institution, setting out the manner in which business is to be conducted, and ensuring some form of management of the House is in place. At the same time, the rules must show to the wider public that Parliament works fairly and effectively.

These rules are fairly succinct, affording ample discretionary powers to the Speaker and other presiding officers with adequate detail and possible answers to almost every conceivable problem that may arise. They are also essential, not just in a technical sense but also in obtaining the right balance between the rights of the parliamentary groups, be they party or independents, and the capacity to decide between the need for detailed scrutiny and the need for efficiency. They also help in terms of making visible to the public the democratic values that parliamentary democracy represents.

The National Assembly Standing Orders contains more than 267 Standing Orders (with a few deleted standing orders) and an additional eight Schedules. They specify, among other things, the duties of individual Members, officers, parties, independents, parliamentary party caucuses and detail how the House organises its legislative and budgetary procedures. Included in the rules are rules of debate, oversight roles of the House in administrative affairs, internal affairs, foreign and security policy, relations with other arms of government, relations with the other House, relations with supranational parliaments; its role in public appointments, rules of conduct and the role and functioning of committees among others.

Of course there will always be situations which, in order to be resolved, require a combination of rules, sensibility, tact, and respect of tradition or unwritten rules. It is essential that parliamentary rules are identified by all political groups, including the majority, the minority, and independents as they truly reflect the importance of the institution of Parliament in the overall democratic governance of our country. Rules should genuinely reflect the spirit of parliamentary democracy and should never be imposed on the minority, or independents, by the majority.

These rules have been translated to Kiswahili to enable an even wider understanding and use. This is not without a history.

Presidential Decree

Until 1974 when the First President of Kenya the late Mzee Jomo Kenyatta ordered Parliament to use Kiswahili as a language of debate in the House, many attempts had been made to find a solution to the question of whether to continue using English, a language considered then as colonial, as a medium of debate by a *House of the people*. Other attempts have since been made to encourage bilingual communication in the House. The Constitution and Standing Orders would later be amended to allow for the use of both Kiswahili and English.

While many parliaments in Africa have adopted English only or French only language policies in their parliaments, others have allowed the use of several indigenous languages in addition to a foreign language. Kenya is one country that has had a checkered history in its attempts to mainstream Kiswahili usage in parliamentary proceedings and by other arms of Government. Kiswahili is increasingly spreading globally and rapidly becoming more than just ordinary lingua franca in East Africa. Until recently, this important African language played a limited role in the technical fields such as science, technology, higher education or government. For instance, its use in Kenya's National Assembly was

underdeveloped in the colonial era despite the fact that since 1944 when the first African MP joined the Legislative Council up to independence in 1963 when many native Kenyans had been elected or nominated to parliament.

In the early years of independence, some leaders felt that the adoption of Kiswahili would promote cultural nationalism. It was in 1974 that the KANU National Governing Council met and decided to adopt the use of Kiswahili during debate. On July 4, 1974 President Jomo Kenyatta declared Kiswahili a Parliamentary language, and the following day, Parliament was treated to drama as MPs attempted to make contributions in the language. It was even news when Kenyatta addressed Parliament in Kiswahili.

The Minister for Information and Broadcasting, Mr. Robert Stanley Matano, a Swahili speaker, was among those who pushed hard for its recognition, but it was a move that caught many MPs unawares and spread confusion in the first days. Debate was laced with raw humour as MPs struggled to pick appropriate words to translate parliamentary jargon to Kiswahili. However, President Jomo Kenyatta was not amused that MPs were hesitant to debate in Kiswahili. In a discussion with Fred Mati, the Speaker of the House then, he demanded an explanation for that.

On July 15, 1974, when Parliament was debating a motion concerning the proposal to set up an impartial body to oversee land transactions, Speaker Fred Mati said: "I have an important announcement to make, I have spoken to his Excellency the President on the question of this House switching from English to Swahili. I have explained to him the difficulties we have switching over to Kiswahili but it is his feeling that we should, as an experiment, start straight away, but we shall in due course start sorting out our difficulties." From then on, he ordered that the next MP, who happened to be the member for Kilungu Mr. Mutiso Muyu, to address the House in Kiswahili, a move that attracted points of order from several MPs.

Kikuyu MP, Mr. J. K. Gatuguta wanted to know appropriate words to use for 'point of order', and if they would address the Speaker as 'Mwenyekiti' or 'Msemaji', but no one had an answer. Indeed, this was uncharted waters for them. There are MPs who offered misleading translations. For example, one MP said whenever his constituents went to the Ministry of Lands to ask why the issuance of title deeds was being delayed, they were always told to check again 'mwezi ujao'. He wanted to know what the officials at the Ministry meant by 'mwezi ujao' which never came. In an attempt to answer the question, Mr. G. G. Kariuki, the Assistant Minister for Lands and Settlement said: "*Kwa Kiswahili, mwezi ujao ni sawa sawa na 'as soon as possible' katika lugha ya Kiingereza.*" Another MP shot up in protest and said, "I don't know whether this is the correct translation, or whether it is just applicable to his Ministry."

As the MPs continued to debate, the Member for Butere, Mr. Martin Shikuku felt that the MPs were breaking the law by debating in Kiswahili because the Standing Orders stipulated that debate should be in English. He suggested that the House first suspend the orders. However, Mr. G. G. Kariuki responded by saying: "The President, as we all know, is above all laws, now, he has already decided that we must speak in Kiswahili. We agreed yesterday and now, Mzee is demanding to know why we are not speaking in Kiswahili, I would like us to go on as planned even though some words are hard to pronounce." During the same debate, George Anyona said he had difficulties expressing himself in Kiswahili. A member shouted that he should then speak in his Gusii language. The same fate befell MP for Makuyu, Mr. Wachira Waweru who spoke about shortage of a particular drug in hospitals. But he said he did not know what the drug was called, and the MP for Kisumu Central, Mrs. Grace Onyango advised him to speak in Kikuyu. He started explaining in his mother tongue but was cut short by loud laughter.

Mr. Charles Njonjo had difficulty in comprehending the Kiswahili language, when Mr. Ronald Ngala spoke in Kiswahili and asked him to explain how the Government would deal with religious sects that broke the law. He said: “Mr Speaker Sir, I am afraid my Kiswahili is very limited and frankly speaking, I must confess that I did not understand a single word from the Honourable Member’s question.” Hon. Ngala had to repeat his question in English.

The MPs went on to mix English and Kiswahili in their debates. This became so common that the Hansard (Parliament’s Official Record) staff complained it had become difficult to transcribe debate. The Speaker raised the matter and gave a firm order that they must not mix the two languages. Later in 1974, Parliament amended Section 53(1) of the Constitution to provide that **“the official languages of the National Assembly shall be Kiswahili and English and the business of the National Assembly may be conducted in either or both languages.”** Later, members would be allowed to use either of the languages without mixing. The practice subsists to date.

On August 25th, 2016, the EALA Assembly resolved that Kiswahili should be introduced as one of the official languages of the East African Community. The Resolution thus urged the Summit of EAC to amend the Treaty for the establishment of the Community to provide for Kiswahili as one of the official languages of the Community. The Resolution whose mover was Hon Abubakar Zein reiterated that embracing the Kiswahili language is also bound to increase the participation of the people of East Africa in the Affairs of the Community as well as promote African culture. Kiswahili, according to Hon Zein, is flexible and has its root in bantu languages. An overwhelming number of legislators rose in support of the Resolution.

Article 7 and 120 of the Constitution and National Assembly Standing Order 77 and 223 leave no doubt that Kiswahili should be the language of use in the Houses of Parliament. Article 7 provides that Kiswahili is the **national and official** language of the Republic. Article 120 provides that **“the official languages of Parliament shall be Kiswahili, English and Kenyan Sign Language, and the business of Parliament may be conducted in English, Kiswahili and Kenyan Sign Language”**. Standing Orders 77 and 223 buttress the use of Kiswahili in the House. Standing Order 77 provides that **“A Member who begins a speech in any of the languages provided for under paragraph (1) shall continue in the same language until the conclusion of the Member’s speech”**. It is also important to note that Article 259(2) provides that “If there is a conflict between different language versions of this Constitution, the English language version prevails”. Article 120(2) also provides that “In case of a conflict between different language versions of an Act of Parliament, the version signed by the President shall prevail”. We shall wait to see how these important provisions shall be realised at policy level.

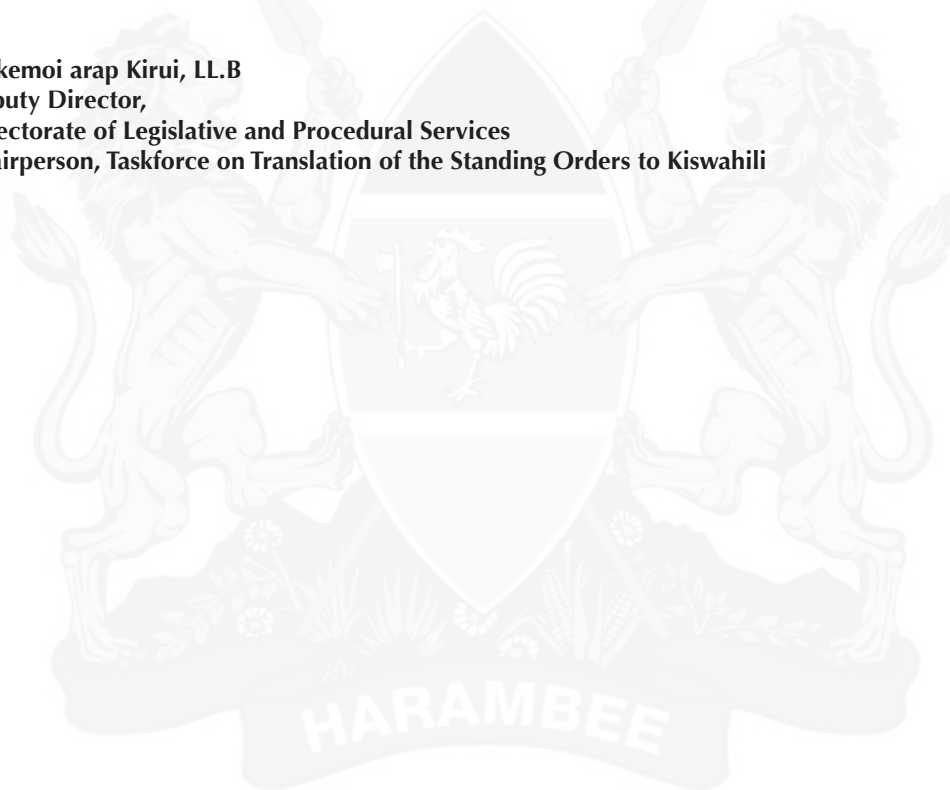
While Members have been keen to use Kiswahili while filing business, while debating in the House and committees and, too, while preparing reports, the development of the parliamentary language register had not yet been well developed. Now this is a thing of the past. The register is taking shape. The Standing Orders have been translated and a glossary of terms duly prepared. We hope at a later stage to also translate the Speaker’s Rules.

This of course presents an opportunity for the Houses of Parliament to set up a fully-fledged department of Kiswahili to further expand the use and promotion of Kiswahili as an official language of Parliament. Indeed, the Deputy Speaker Hon. Moses Cheboi, while moving a Motion for the adoption of the Third Report of the Procedure and House Rules Committee on the translation of the National Assembly Standing Orders to Kiswahili prepared by the Taskforce and laid on Table of the House on Tuesday, 29th October 2019 sought the approval of the working draft of the Kiswahili version of the National Assembly Standing Orders. He also moved that the Kiswahili version takes effect at the commencement of the Fourth Session of the Twelfth Parliament. It is important to note that the bilingual version and *Kanuni za Kudumu, Toleo la Tano (Tafsiri ya Kwanza)*, are now in use.

It is hoped that Parliament will continue to develop policies to enhance bilingual communication towards realising the strategic mission and vision of the Parliamentary Service Commission to take Parliament to the people, and to add efficiency to the translation process by making it easier to turn around preparation of documents, official reports and journals of the House and committees. The quality and standards of translation will be developed through strategic partnerships with language departments of our universities, translation experts and the National Kiswahili Association (CHAKI-TA). The Taskforce hopes that, going forward, the House will consider setting up a National Language Council and a legal framework to ensure an expanded use of Kiswahili in all sectors of society.

It is our hope that this translation will help Members of Parliament, the public, and students of parliament to better interact with the work of the Houses of Parliament.

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ACKNOWLEDGEMENT

I wish to thank the Clerk of the National Assembly, Mr. Michael R. Sialai, EBS, for entrusting me and my fellow members of the Taskforce, namely, Mr. Salem Lorot (*Legal Counsel II*), Ms. Anne Shibuko (*Clerk Assistant II*), Mr. Benson Inzofu Mwale (*Clerk Assistant II*), Mr. Mwambeo Mwang'ombe (*Hansard Reporter II*) and Mr. Mwahunga Kalama (*Hansard Reporter III*) with the noble duty of steering the translation work. Thanks go to all members of the Taskforce and the members of the secretariat Ms. Rabecca Munyao (*Personal Secretary*) and Ms. Assumpta Mbugua (*Office Assistant*) for the dedication to duty exhibited throughout the translation and during internal and external peer review exercise. The Taskforce also appreciates the extensive peer review work and support received from Mr. Jeremiah Ndombi (*Deputy Clerk*), Mr. Samuel Njoroge (*Director, Legislative and Procedural Services*), Mr. Rana K. Tiampati (*Principal Clerk Assistant – Head, Table Office*), Dr. Phillip B. Buchere (*Deputy Director and Head of Research, CPST*), Mr. Ken Angwa (*Hansard Reporter III*), Ms. Dorcas Ambuto (*Principal Public Communications Officer*) and Ms. Nelly Jarah (*Legal Clerk – Directorate of Litigation and Compliance, PJS*). The support and contributions of Parliamentary Interns Mr. Boniface Mutuku, Mr. Brian Wechabe, Mr. Maxwell Koome to the work of the taskforce is also highly appreciated.

The Taskforce also commends the invaluable support extended to the National Assembly by the University of Nairobi, Moi University and Kenyatta University through language experts Prof. Iribe Mwangi, Chairman of the Department of Kiswahili, University of Nairobi and his colleague Dr. Prisca Jerono; Dr. Robert Oduori and Mr. Vincent Magugu (*Moi University*); and Prof. Geoffrey Kitula King'ei and Dr. Miriam Osore (*Kenyatta University*). We also appreciate the invaluable support of independent language experts and translators Prof. Clarah Momanyi and Mr. Nuhu Bakari. We also wish to thank the Clerk of the Parliament of the United Republic of Tanzania and the Clerk of the National Assembly of Kenya for enlisting the invaluable support of Mr. Athman Hussein (*Director, Committee Services*) and Mr. Mossy Lukuvi (*Legal Counsel*), both from the Parliament of the United Republic of Tanzania, and Ms. Vidah Mutasa from the Baraza la Kiswahili la Tanzania (*BAKITA*). Their professional advice and support was timely and quite rich.



TRANSLATION OF LEGAL TEXTS: CHALLENGES AND OPPORTUNITIES

Njenga Grace Waithira in her thesis titled *Changamoto Za Kutafsiri Matini Za Kisheria: Tathmini Ya Katiba Ya Kenya (2010)*, makes a detailed study of the challenges of translating legal texts with a special focus on the Constitution of Kenya (2010). Grace writes, in Kiswahili language:

Mchakato wa kutafsiri sheria huwa na changamoto na mgumu kwa vile huhusiana na uhalisi wa sheria, lugha inayotumiwa katika sheria, tofauti za kitamaduni za lugha husika na tofauti za kiisimu. Mambo haya hufanya uwanja wa sheria kuwa na sifa za upekee unaopatikana tu katika sheria. Sifa hizi zinaweza kubainishwa kama sifa za kiisimu na zisizo za kiisimu.

The translation of the above quotation is as follows:

The translation of law is a difficult undertaking since it relates to the reality of law, the language that is used in law, differences in the culture of the language in question and the linguistic differences. These factors contribute to the difficulty of law thus giving it unique characteristics that could only be found in law. These characteristics could be categorised as linguistic or non-linguistic.

Grace further writes that words with ordinary meanings often-times have legal meanings thus requiring a reader legal text to understand law in order to lay bare the meaning of a text. In addition, Grace observes that legal texts are technical in nature. On the technicality of legal texts, Grace writes:

Kwa mfano neno 'Bill'. Neno hili katika kamusi za Kiingereza huwa na maana kama hizi zifuatazo katika lugha ya kawaida; (i) Namna fulani ya mdomo wa ndege, (ii) namna ya upanga, (iii) namna ya mundu (iv) sururu (v) ncha moja ya nanga ya makombe, lakini katika lugha ya kisheria lina maana ya, waraka, hati ya malamiko au maandishi yaliyo katika kina cha mswada wa sheria. Neno hili hubadilika maana yake katika sheria kwa kufuata ni kitu gani kimeongezwa. Kwa mfano, ikiwa ni neno 'exchange' limeongezwa na kuwa 'bill of exchange' huwa na maana ya hawala lakini ikiwa ni 'bill of lading' inakuwa hati ya upakizi. Hali hii ya kutofautiana maana ya maneno katika msemo wa kawaida na katika sheria imefanyia lugha ya sheria iwe ngumu. Na ndipo ikawa sheria ni taaluma inayojitegemea yenyewe.

In other words, Grace gives the example that the word "Bill" has different ordinary meanings yet in law it may refer to a document or a proposed law. Further, a "Bill of exchange" or a "Bill of lading" have specific legal meanings other than ordinary ones.

Another challenge that Grace points out is that of getting Kiswahili terminologies that match English terminologies. For instance, during the translation of the Standing Orders, the Taskforce Members and the Kiswahili experts grappled with the translation of the words "dilatory motion". After much discussion to understand the true nature of dilatory motions, the translation that was settled for was "Hoja ya Mkawilisho" which incorporates the delaying nature (kawia- delay) of such a motion hence "mkawilisho" from the word "kawia".

Grace writes:

Tatizo lingine linalopatikana katika kutoa maana ya maneno ya kisheria ya Kiswahili ni pale iwapo neno la Kiswahili linaeleza maana ya kisheria la Kiingereza na wakati huo neno hilo la Kiswahili lina maana nyingine ambayo kwa Kiingereza kuna neno lingine ambalo lina maana tofauti kabisa. Kwa mfano neno 'provisions' linatafsiriwa kama masharti lakini neno hili masharti vilevile lina maana ya neno la Kiingereza 'terms' na 'conditions'. Maneno haya yana maana tofauti kabisa na neno 'provisions'.

Grace thus indicates that another difficulty arises when a Kiswahili word gives the legal meaning of the word in English but at the same time that Kiswahili word has a different English meaning. For instance, the word “provisions” may be translated as “conditions” yet the word may have the English meaning of “terms” and “conditions”. Grace points out that these words have different meanings from the word “provisions”.

In addressing these challenges, Grace proposes a raft of recommendations. First, she indicates that Kiswahili translations of legal texts should try as much as possible to identify and use Kiswahili terms. She points out that ordinary Kiswahili words may be used in translation of legal texts but be assigned different meanings aligned to legal contexts. She reveals that there are existing Kiswahili words in Islamic law or customary law thus making the task easier. For example, words such as “jurisdiction” (mamlaka), “testimony” (ushahidi) and “bill of exchange” (hawala). Secondly, Grace also suggests that Kiswahili words may be used in a way that will give them new meanings. For example, “sue” or “to claim” translates to “dai”. Therefore, “to claim against each other” translates to “daiana” and “to cause claim against each other” translates to “daianisha”.

Thirdly, Grace proposes the use of loan words from the English words and giving them Kiswahili forms. For example, governor- gavana, county - kaunti, speaker- spika.

Fourth, she proposes a translation method of explanation in circumstances that permit it for example the words “ex officio” and “prima facie” which may be translated through explanation.

Fifth, Grace proposes the combination of existing words in Kiswahili so as to form a word with a new meaning. Existing words in a language may also be assigned new meanings which may be seen to have lost their original meanings.

In her thesis *Changamoto za Kutafsiri Constitution of Kenya 2010- Mkinzano wa Kiisimu na Usawidi wa Kisheria: Kifani cha Sura ya 3 na Sura ya 4*, Grace Mweti writes as follows:

Wasifu mwingine na ambao una uwezekano wa kujitokeza katika Sura ya 3 na Sura ya 4 ni matumizi ya lugha ya kigeni. Vifungu na maneno mengi ya Kilatini huweza kutumika katika matini za kisheria kwa mfano, ab initio, ex delicto na ex parte. Maneno haya ni ya kigeni. Kanuni ya tafsiri ni kuna uwezekano wa maneno haya kupotea katika matini lengwa lakini maana iliyokusudiwa haipotei. Kwa mfano,

Ab initio- tangu mwanzo

Ex delicto- kitu kinachotokana na dosari au kosa

Ex parte- upande mmoja

To translate the above-quoted text, Mweti indicates that another characteristic of legal texts is the use of foreign language. She observes that groups of words and many Latin words may be used in legal texts for example *ab initio*, *ex delicto* and *ex parte*. She writes that these words are foreign but a rule in translation is to translate the intended meaning of words even though the words in source language may disappear.

Therefore, Mweti observes the following (in Kiswahili language):

Hivyo basi katika kutafsiri Katiba mtafsiri akitumia maelezo kuwakilisha maneno na vifungu vya kigeni kunatokea mkinzano wa ujitokezaji wa maana ya kiisimu ambayo haiakisi masharti na matarajio ya usawidi wa kisheria na matini ile inapoteza upekee wake kama matini ya kisheria.

Thus, a conflict arises when foreign words appear in legal texts and the translator opts to use explanatory words. The conflict arises when the linguistic meaning does not reflect the conditions and expectations of legal texts thereby causing the loss of uniqueness of a legal text.

Mweti also writes that the legal register contains action words which pose translation difficulties. These words are “shall” and “will”. The use of these words depend on who says them and in what context. If they are not translated well, their meanings may be lost. Mweti rightly observes that these words have been used a lot in the Constitution of Kenya 2010. During the translation of the Standing Orders, a similar difficulty arose but on the need to provide clarity in the translation of the words “shall” and “may”. This was exacerbated by instances where the word “may” connotes “shall” thereby providing for obligation and not discretion as one would expect. Therefore, the translation work would involve delving into the contexts within which the word “may” had been used in the legal text of the Standing Orders.

Mweti similarly points out another characteristic of legal texts: they are very long and mixed-up. She observes that a single sentence may contain many ideas thus posing difficulties in comprehension. Mweti writes that long sentences pose great translation difficulties. This problem was experienced a lot during the translation of the Standing Orders. The sentences often times were very long and interspersed with so many ideas. Translating those sentences to Kiswahili posed great challenges: one, the sentence could not be split up into several sentences since there was a need to retain the order found in the English text; two, although the Kiswahili translation retained the meaning in the English text, the sentences still appeared unwieldy especially to Kiswahili readers who are the target audience.

Mweti further writes:

Mtaalam wa tafsiri inabidi pia asitumie kamusi moja pekee katika kutafsiri kwake. Ingawaje kamusi hizi husaidia wakati wa kutafsiri zinafaa zitumike kwa uangalifu sana akinuia kulenga maana inayokusudiwa na si kuchukua maana ya kamusi pekee bila kuihusisha na maana ya kisheria.

Mweti therefore writes that a translation expert should not rely on only one Kiswahili dictionary in translation. Even though these dictionaries help in translation, they should be used carefully in order to translate the intended meaning and not to assign meanings in dictionaries only but involving legal meanings.

Mweti proposes that translated work should be edited in-depth to ensure that translation has been done effectively. A translator does this to ensure that the intended message has been transferred from the source text to the target text without losing meaning. When the translator goes through the work, he or she may correct errors that may have occurred during translation. A translator, Mweti indicates, should ensure that there’s a flow in translated work and that it is not a word-for-word translation devoid of context. In addition, the translator should ensure that the formal and official nature of the Constitution is not lost during translation.

ESTABLISHMENT AND MEMBERSHIP OF THE TASKFORCE

Establishment of the Taskforce

The Taskforce on Translation of the National Assembly Standing Orders to Kiswahili was appointed by the Clerk of the National Assembly in February 2019. The team was tasked with working on a Draft Translation of the Standing Orders which was to be subjected to internal review, and later to an external (both local and regional) peer review, and validation by Kiswahili language experts and translators.

Members of the Taskforce

The Taskforce comprised of the following Members -

- | | | | |
|----|-------------------------|---|------------------------------|
| 1. | Mr. Kipkemoi arap Kirui | - | Chairperson |
| 2. | Mr. Salem D. Lorot | - | Legal Counsel II, Member |
| 3. | Mr. Benson Inzofu Mwale | - | Clerk Assistant II, Member |
| 4. | Ms. Anne Shibuko Ogada | - | Clerk Assistant II, Member |
| 5. | Mr. Mwambeo Mwang'ombe | - | Hansard Reporter II, Member |
| 6. | Mr. Mwahunga Kalama | - | Hansard Reporter III, Member |

Secretariat

- | | | | |
|----|---------------------|---|--------------------|
| 7. | Ms. Rabecca Munyao | - | Personal Secretary |
| 8. | Ms. Assumpta Mbugua | - | Office Assistant |

MEMBERS OF THE TASKFORCE



Mr. Kipkemoi Arap Kirui
Chairperson



Mr. Salem D. Lorot
Legal Counsel II
Member



Mr. Benson Inzofu Mwale
Clerk Assistant II
Member



Ms. Anne Shibuko Ogada
Clerk Assistant II
Member



Mr. Mwambeo Mwang'ombe
Hansard Reporter II
Member



Mr. Mwahunga Kalama
Hansard Reporter III
Member



Ms. Rabeca Munyao
Personal Secretary

MANDATE OF THE TASKFORCE

The Taskforce on Translation of the National Assembly Standing Orders to Kiswahili was tasked with developing a Draft Translation of the Standing Orders which was to be subjected to internal review by departments and directorates of the National Assembly and Members of the Procedure and House Rules Committee, and later to an external (both local and regional) peer review, and validation by Kiswahili language experts and translators. The Clerk of the National Assembly proposed that upon development of a First Draft, the work would be reviewed by user departments and directorates. Since the members of the Taskforce were not Kiswahili language experts but originators of the initial translation, expert review would follow.

In the course of the translation, the Taskforce relied on the following dictionaries and reference materials: English Swahili Dictionary by Willy A. Kirkeby (Kakepela Publishig Company(T) Ltd), Kamusi ya Sheria: Kiingereza-Kiswahili by S.A.K. Mlacha (Taasisi ya Taaluma za Kiswahili Chuo Kikuu cha Dar es Salaam (TUKI)), Kamusi ya Kiswahili-Kiingereza, Toleo la Kwanza (TUKI), Kamusi ya Kiswahili-Kiingereza, Toleo la Pili (TUKI), English-Kiswahili Assorted Dictionary by K.W. Wamitila and Florence M. Kyallo (Focus Books), Kamusi Kuu ya Kiswahili, Toleo la Pili by Baraza la Kiswahili la Taifa (Longhorn Publishers Ltd), Kamusi ya Karne ya 21 (Longhorn Publishers Ltd), A Standard English-Swahili Dictionary (Oxford University Press), Oxford Dictionary of English (3rd Edition) edited by Angus Stevenson (Oxford University Press), Black's Law Dictionary (10th Edition) edited by Bryan A. Garner (Thomson Reuters), Oxford Dictionary of Law (8th Edition) edited by Jonathan Law (Oxford University Press), Oxford Advanced Learner's Dictionary of Current English (9th Edition) edited by A.S. Hornby (Oxford University Press). Erskine May's Parliamentary Practice and Procedure, often regarded as the Bible of Parliamentary Practice, was invaluable to the Taskforce.

Where the context permitted, *Kanuni za Kudumu za Bunge la Tanzania, Toleo la Januari, 2016* by Bunge la Tanzania was resourceful. In addition, *Katiba Mpya Inayopendekezwa* by the Government Printer was helpful in borrowing already translated terms. However, the Taskforce departed from use of some translated terms when it interrogated them and came to the conclusion that a different term was applicable. The Hansard, especially during the period when the House debated in Kiswahili, were instructive both on general understanding and borrowing of terms where they were applicable.

The Taskforce also relied on published works generally on law, translation, and linguistics in order to gain better understanding of its task. In this regard, the following and other resources were invaluable: A Textbook of Translation by Peter Newmark (Longhorn Publishers), The Ashgate Book of Legal Translation edited by Le Cheng, King Kui Sin and Anne Wagner (Ashgate Publishing Limited), and the Language of the Law by David Melinkoff (Little, Brown and Company). As demonstrated in Part I of this Report, the theses by Njenga Grace Waithira and Grace Mwetii helped the Taskforce appreciate the challenges of translating legal texts. Njenga Grace Waithira's thesis is titled *Changamoto Za Kutafsiri Matini Za Kisheria: Tathmini Ya Katiba Ya Kenya (2010)* whereas Grace Mwetii's is *Changamoto za Kutafsiri Constitution of Kenya 2010- Mkinzani wa Kiisimu na Usawidi wa Kisheria: Kifani cha Sura ya 3 na Sura ya 4*.

SITTINGS OF THE TASKFORCE

Formulation of Methodology

The Taskforce held its first two workshops on 1st March 2019 and 11th March 2019 in Nairobi and among other things -

- (i) formulated a work plan and generated common parliamentary terms;

- (ii) agreed to start with the first half of the Standing Orders up to Standing Order 100;
- (iii) divided the work among its Members, with each being assigned ten standing orders.

A total of 6 meetings were held on Mondays and Fridays within Parliament Buildings to review the draft done by each Member. However, the team was making slow progress due to related interruptions arising out of their daily duties, prompting a decision to have the rest of the meetings outside the precincts of Parliament. The decision enabled the Taskforce Members to discuss at length translated words before settling on the preferred words and less interruptions assisted the Members to substantially improve on their progress.

PART I TO VII

The Taskforce held its third workshop in Mombasa from 10th to 12th April, 2019 and worked on PART I to PART VII of the Standing Orders. The work was painstaking and pretty slow. These included the parts on the Introductory, Swearing-in of Members and election of Speaker, Vacation of office of Speaker and Deputy Speaker, Deputy Speaker and Chairperson of Committees, the Leader of the Majority Party and the Leader of the Minority Party, Address by President, visiting dignitary or other persons, Calendar, sittings and adjournments of the House and Quorum of the House.

Since this was the first time a Kiswahili language register on Parliament was being developed, a lot of the terms and words were hard to come by. The work would later be a foundation to the rest of the translation work.

PART VIII TO XVII

The Taskforce held its fourth workshop in Naivasha in June 2019 to work on PART VIII to PART XVII of the Standing Orders. These included parts on Order of Business, Messages, Questions, Statements, Approval of Public Appointments, Motions including Special Motions, Procedure for Removal from State Office, Voting and Divisions, Rules of Debate, Limitation of Debate, Order in the House and in Committee of the whole House.

PART XVIII TO XXIX AND SCHEDULES

The Taskforce thereafter held 16 in-house meetings to finalise the rest of the Standing Orders including the schedules. These work included Order in the House and in Committee of the whole House, Public Bills, Private Bills, Committee of the whole House, Select Committees, Public Petitions, Petition for removal of a member of a commission or independent office, Journals, Records and Broadcast of Proceedings, Public access to the House and its committees, General provisions, Amendment of Standing Orders and transitional provisions, and Schedules on Broadcasting Rules, Departmental Committees, General Form of a Public Petition, Joint Rules of the House of Parliament, Form of Nomination Paper, Form of Oath/Solemn Affirmation by a witness before a Committee, Form of Summons to Witness and Form of Affidavit of Service of Summons.

REVIEW BY COUNTERPARTS FROM THE PARLIAMENT OF TANZANIA

Tanzania prides itself in Kiswahili-speaking and Kiswahili is not just the official language of the country but a highly developed medium of communication. Further, her Standing Orders are in Kiswahili language. It is on this basis that the Clerk of the National Assembly identified the Parliament of the United Republic of Tanzania to provide a technical team that would assist the Taskforce in the review of the First Draft Translation of the Standing Orders.

The Clerk of the Parliament of Tanzania immediately responded and offered the following officers:

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| (i) | Mr. Athman Hussein | - | Director Committee Services, National Assembly of the United Republic of Tanzania |
| (ii) | Mr. Mossy Lukuvi | - | Legal Counsel, National Assembly of the United Republic of Tanzania |
| (iii) | Ms. Vidah Mutasa | - | BAKITA (Baraza la Kiswahili la Tanzania) |

The Taskforce visited the Parliament of the United Republic of Tanzania in Dodoma from 13th to 16th August, 2019. The interaction between members of the Taskforce and counterparts was an eye opener since the systems of governance between Kenya and Tanzania are dissimilar. The team further embarked on the translation of key terms common in parliamentary registers and that are used in the Standing Orders before commencing the translation of Parts I to PART V.

The team agreed to hold an extensive review of draft translation of the Standing Orders from 25th to 31st August, 2019 in Kisumu. During the workshop in Kisumu, the Taskforce also benefitted from reviews by Mr. Michael Sialai (*Clerk of the National Assembly*), Mr. Jeremiah Ndombi (*Deputy Clerk*), Mr. Samuel Njoroge (*Director, Legislative and Procedural Services*), and Mr. Rana Tiampati (*Principal Clerk Assistant I*). Due to the workload, the Clerk approved an extension of the engagement by an additional week up to 7th September, 2019 to enable the Taskforce complete the work. This was accomplished.

ADOPTION OF THE STANDING ORDERS BY THE PROCEDURE AND HOUSE RULES COMMITTEE

The Kiswahili version of the Standing Orders were adopted by the Procedure and House Rules Committee on 28th October, 2019. The Committee recommended that:

- (i) the House adopts the Kiswahili Translation of the National Assembly Standing Orders;
- (ii) the Clerk of the National Assembly—
 - (a) obtains views of additional local Kiswahili experts on the Kiswahili Translation of the National Assembly Standing Orders within sixty (60) days of the adoption of the Report; and
 - (b) incorporates any relevant changes under paragraph ii (a) to the Kiswahili Translation of the National Assembly Standing Orders before the commencement of the 4th Session of the 12th Parliament;
- (iii) the commencement of the usage of the Kiswahili Translation of the National Assembly Standing Orders be deferred to the 4th Session of the 12th Parliament.

LAUNCH OF THE KISWAHILI STANDING ORDERS

Following its launch on 31st October, 2019, the English - Kiswahili version of the National Assembly Standing Orders was adopted by the House on 1st November, 2019. The House resolved that the use of Kiswahili Standing Orders take effect at the beginning of the Fourth Session in February, 2020.

INTERNAL PEER REVIEW

The Clerk of the National Assembly wrote to the various Departments and Directorates requesting for internal peer review ahead of expert review by local universities. It was agreed that the officers tasked with providing feedback would be incorporated in the workshop where experts would be reviewing the final version.

REVIEW BY EXPERTS FROM KENYAN UNIVERSITIES

The following institutions were identified and approached by the National Assembly for expert review: -

- (i) The University of Nairobi
- (ii) Moi University
- (iii) Kenyatta University

The Universities wrote back proposing the following scholars from their Departments of Kiswahili: -

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|-------------------------|-------------------------|
| (i) Prof. Mwangi Iribe | - University of Nairobi |
| (ii) Dr. Prisca Jerono | - University of Nairobi |
| (iii) Dr. Robert Oduori | - Moi University |
| (iv) Mr. Vincent Magugu | - Moi University |
| (v) Prof. Kitula Kingei | - Kenyatta University |
| (vi) Dr. Miriam Osore | - Kenyatta University |

The Clerk also invited consultant translation experts Prof. Clarah Momanyi and Mr. Nuhu Bakari.

From the National Assembly, the following reviewers supported the Taskforce: -

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| (i) Mr. Michael Sialai, EBS | - Clerk of the National Assembly |
| (ii) Mr. Samuel J. Njoroge | - Director, Legislative and Procedural Services |
| (iii) Dr. Philip B. Buchere | - Deputy Director, CPST |
| (iv) Mr. Rana K. Tiampati | - Principal Clerk Assistant I |
| (v) Ms. Dorcas Ambuto | - Principal Public Communications Officer |
| (vi) Mr. Ken Angwa | - Hansard Reporter III |
| (vii) Ms. Nelly Jarah | - Legal Clerk I |

The team worked in Mombasa from 19th to 30th January, 2020. The taskforce completed its task on 30th January 2020. The work is now ready for publishing.

PUBLICATION

Kiswahili Only and Bilingual Versions

Having completed the task, the Taskforce prepared both a Kiswahili Only version and an English-Kiswahili version for publication.

CONCLUSION AND RECOMMENDATIONS

Janet Ainsworth, in *the Ashgate Handbook of Legal Translation*, sums up the task of a legal translator as follows:

The task of the legal translator can be stated with simplicity: it is to take a legal text expressed in one language, and create an equivalent legal text in another language, such that a legal decision-maker, applying either text to a particular legal issue or dispute, will arrive at the same conclusion regardless of which text is used.

The Taskforce sought to reflect the import of the above-quoted truth in its final translation work. As indicated in Part 1 of this Report, translation of legal texts bears unique difficulties. Janet correctly points out the difficulties that a legal translator faces. First, she indicates that “legal language by its nature is notoriously difficult and opaque, presenting considerable interpretive difficulties even when the interpretive questions arise within a monolingual framework.” She further reiterates that legal language is marked by its use of an obscure technical lexicon, adoption of ordinary words used in atypical senses as terms of art, archaic and foreign language-derived terminology, and complex syntactic structures and conventions.

Secondly, Janet observes that contrary to popular belief, languages are not fully transparent and determinate systems for the transmission of propositional content and that even within a particular language, meaning is expressed in ways that are not hard-edged and precise but instead vague, allusive, and evocative. Language, she writes, is thus by its nature indeterminate, unbounded, and imprecise, leading to inevitable instances of ambiguity and lack of clarity in meaning.

Thirdly, Janet indicates that language is inextricably bound up in the systems of meaning and practice that we call by the short-hand name “culture,” and any attempt to transpose linguistic meaning from one culture-situated language into another is inevitably going to find things both lost and gained in translation. Janet further writes that even assuming that the translator can find a word in the target language that seem to be the equivalent in its primary sense of the word in the source language, the connotations attached to that word are unlikely to be the same in each language.

The challenges that beset a legal translator have been argued in theses and academic publications as briefly expounded in this Report. The intention is not to rehash them here but to illustrate a few of the unique challenges with a view to propose recommendations for future translation exercises. The following are the challenges and recommendations:

1. Long legislative sentences communicating more than one idea

The English version of the Standing Orders in most cases had very long legislative sentences communicating more than one idea. Perhaps part of the reason for this was to avoid splitting them up into several paragraphs since the users are used to chronological order of the standing orders and paragraphs.

However, these long sentences and paragraphs were the source of different challenges during translation. One, the translation transposed the inherent difficulties in comprehension although often times there was a need to split up the long sentences into several independent sentences. Two, the target

language has its own syntactic rules which may be different from the source language and the long sentences further compounded the difficulty in adhering to this basic rule.

The Taskforce therefore recommends that future review of the English version of the Standing Orders should take into consideration the challenges long legislative sentences pose in translation. Comprehensibility of the standing orders should be given high priority. Research has shown that an ideal comprehensible sentence should not exceed 25 words and the current trend is to draft in plain language and to communicate one idea in a single legislative sentence. There's a body of literature on the subject of plain language notably by David Melinkoff, Joe Kimble, Bryan Garner, Michèle Asprey, Richard Wydick, Butt and Castle, and Peter Tiersma.

Consequently, there is need to take a policy measure to implement these in future reviews of the Standing Orders.

2. Inadequate translation reference literature

In the course of the translation, the Taskforce relied on the following dictionaries and reference materials: English Swahili Dictionary by Willy A. Kirkeby (Kakepela Publishig Company(T) Ltd), Kamusi ya Sheria: Kiingereza-Kiswahili by S.A.K. Mlacha (Taasisi ya Taaluma za Kiswahili Chuo Kikuu cha Dar es Salaam (TUKI)), Kamusi ya Kiswahili-Kiingereza, Toleo la Kwanza (TUKI), Kamusi ya Kiswahili-Kiingereza, Toleo la Pili (TUKI), English-Kiswahili Assorted Dictionary by K.W. Wamitila and Florence M. Kyallo (Focus Books), Kamusi Kuu ya Kiswahili, Toleo la Pili by Baraza la Kiswahili la Taifa (Longhorn Publishers Ltd), Kamusi ya Karne ya 21 (Longhorn Publishers Ltd), A Standard English-Swahili Dictionary (Oxford University Press), Oxford Dictionary of English (3rd Edition) edited by Angus Stevenson (Oxford University Press), Black's Law Dictionary (10th Edition) edited by Bryan A. Garner (Thomson Reuters), Oxford Dictionary of Law (8th Edition) edited by Jonathan Law (Oxford University Press), Oxford Advanced Learner's Dictionary of Current English (9th Edition) edited by A.S. Hornby (Oxford University Press). Erskine May's Parliamentary Practice and Procedure, often regarded as the Bible of Parliamentary Practice, was invaluable to the Taskforce.

Where the context permitted, Kanuni za Kudumu za Bunge la Tanzania, Toleo la Januari, 2016 by Bunge la Tanzania was resourceful. In addition, Katiba Mpya Inayopendekezwa by the Government Printer was helpful in borrowing already translated terms. However, the Taskforce departed from use of some translated terms when it interrogated them and came to the conclusion that a different term was applicable. The Hansard, especially during the period when the House debated in Kiswahili, were instructive both on general understanding and borrowing of terms where they were applicable.

The Taskforce also relied on published works generally on law, translation, and linguistics in order to gain better understanding of its task. In this regard, the following and other resources were invaluable: A Textbook of Translation by Peter Newmark (Longhorn Publishers), The Ashgate Book of Legal Translation edited by Le Cheng, King Kui Sin and Anne Wagner (Ashgate Publishing Limited), and the Language of the Law by David Melinkoff (Little, Brown and Company). As demonstrated in Part I of this Report, the theses by Njenga Grace Waithira and Grace Mweti helped the Taskforce appreciate the challenges of translating legal texts. Njenga Grace Waithira's thesis is titled *Changamoto Za Kutafsiri Matini Za Kisheria: Tathmini Ya Katiba Ya Kenya (2010)* whereas Grace Mweti's is *Changamoto za Kutafsiri Constitution of Kenya 2010- Mkinzano wa Kiisimu na Usawidi wa Kisheria: Kifani cha Sura ya 3 na Sura ya 4*.

However, despite these resources, the Taskforce encountered the following difficulties. First, the Kiswahili dictionaries available did not have consistency in the meaning of defined words. It is therefore recommended that an oversight body similar to BAKITA in Tanzania should standardize the definition and use of Kiswahili words. A Kiswahili dictionary should therefore be authoritative and standardized across various publishing firms in Kenya. Secondly, apart from Mlacha's 116-page-long *Kamusi ya Sheria* published by TUKI more than ten years ago, there is no other specialized dictionary

for legal terms. Other fields have been covered well, for instance there is *Kamusi Sanifu ya Kompyuta* edited by Omari M. Kiputiputi (TUKI) that is a comprehensive 602-page-long. There is also *Kamusi Sanifu ya Biolojia, Fizikia na Kemia: English- Swahili Dictionary of Biology, Physics and Chemistry* (TUKI). Therefore, most dictionaries available did not specifically define most of the legal terms that the Taskforce encountered. The Taskforce therefore resorted to various methods to resolve this translation conundrum with the underlying objective of retaining the fidelity of the meaning of the legal text.

Thirdly, *Kanuni za Kudumu za Bunge la Tanzania, Toleo la Januari, 2016* by Bunge la Tanzania was a basic reference text since the Tanzanian Parliament has its Standing Orders in Kiswahili language. It was very helpful. However, there were several challenges. One was that there are linguistic differences between Tanzanian Kiswahili and Kenyan Kiswahili. The second challenge was that the Tanzanian Parliament refers to paragraphs in their Standing Orders as “fasili”. However, a word that has gained notoriety and acceptance in Kenya is “aya”. Usage therefore dictates the choice of a term against another term in order to enhance effective communication to the target audience. The third challenge was that Tanzania is a unicameral legislature with a parliamentary system of government whereas Kenya’s Parliament is bicameral with a presidential system of government. Therefore, a lot of concepts and procedures in Kenya’s Parliament are not in Tanzania’s Standing Orders. In addition, Kenya’s National Assembly Standing Orders are pretty long, numbering more than 267 Standing Orders whereas Tanzania’s Standing Orders are about 157 Standing Orders. This therefore required the Taskforce, the experts, and consultants to grapple with the translation of Parts of the Standing Orders whose translation had no precedent anywhere in the continent. Overall, where it was possible, the Taskforce sought to maintain uniformity of the use of words in both the Tanzania’s Parliament and Kenya’s National Assembly. This was in a bid to have a standard Kiswahili parliamentary register across Eastern African Parliaments in light of accelerated embrace of Kiswahili in various parliaments in Eastern Africa.

The Taskforce therefore recommends the following. First, Kenya should borrow a leaf from Tanzania and have a robust policy and legislative framework on standardization of Kiswahili dictionaries and the general use and acceptance of Kiswahili lexicon. This will not only help future translation exercises but also be of great benefit to the populace. Previous attempts to have a body that performs this role— springing to mind is CHAKITA— but a statutory body will have the wherewithal to deal with these issues systematically and effectively.

Secondly, the Taskforce recommends that the academia and the publishing firms should give careful consideration the publication of a Kiswahili Legal Dictionary. This will not only be resourceful to the Parliament of Kenya but also to the other arms of government, particularly the judiciary and the legal profession, academics, and citizens. Mlacha’s *Kamusi ya Sheria* is helpful but experts need to build on his contribution.

3. The continuing dilemma of unambiguous and incomprehensible legal texts

Legislative Drafters seek to write unambiguous, plain, precise, and brief legislative sentences. However, V.C.R.A.C Crabbe in his book *Understanding Statutes* writes:

It is, however, the very nature of language that presents the greatest problem to successful communication. Language is considered as ‘perhaps the greatest human invention’, yet it is a most imperfect instrument for the expression of human thought. It has tremendous potential for vagueness, ambiguity, nonsense, imprecision, inaccuracy and indeed all the other horrors recognised by Parliamentary Counsel.

Therefore, these inadequacies inherent in language pose a continuing dilemma of the need to excise all legislative sentences of vagueness, imprecision and ambiguity. However, most times a legislative sentence may be imprecise or vague. The National Assembly Standing Orders are no exception. Thus, Taskforce Members who had applied various standing orders in specific circumstances in the course

of their duty were best placed to elaborate what a standing order exactly meant. In the absence of this, any legal translator would have had difficulty comprehending these standing orders.

The Taskforce therefore recommends that the Standing Orders be subjected to regular tests by its users and ordinary people in order to assess and review, where possible, standing orders that need to communicate better. This should be a continuous exercise. This will greatly lessen the burden of translating the Standing Orders.

4. Latent and unbuilt capacities of Members and Parliamentary Staff in the Kiswahili language

Although all Parliamentary Staff are tested in their Kiswahili proficiency during their interviews, there remains great opportunities to harness the proficiency and competence of staff in the Kiswahili language.

During the translation exercise, the Taskforce came to appreciate the importance of building the capacity of staff in the Kiswahili language so as to ensure continuity of the translation exercise and its acceptability in the National Assembly and Parliament in general.

To demonstrate this, a Member may request to have a Motion drafted in Kiswahili. Upon the House making a resolution, the Member may decide to have a legislative proposal drafted in Kiswahili. Once the legislative proposal is drafted in Kiswahili, the Member may require the Money Bill certification from the Parliamentary Budget Office be in Kiswahili. If this legislative proposal is published as a Bill, the Sponsoring Member may ask for the Speaker's Ruling (again, in Kiswahili) that the Committee's Report on consideration of the Bill be in Kiswahili language. The Member may propose amendments in Kiswahili. The support services of preparing moving notes may require the text to be in Kiswahili. The Hansard may require its entire text to be in Kiswahili like in 1974, for instance. Alternatively, there may be need to adopt bilingualism generally or bilingual legislation.

In sum, the translation of the Standing Orders may not be construed as a single event but the precipitation of numerous related activities which the National Assembly would need to urgently address. For instance, the parliamentary website needs to be translated to Kiswahili and continuously translated whenever there is new information uploaded. In order to build the staff capacity, there is a genuine need for tailor-made courses in Kiswahili for staff in order to address possible areas that the service-delivery of staff would be enhanced in a Kiswahili-as-a-mode-of-service-delivery environment.

Another approach is to have a Kiswahili translation unit with dedicated staff for this exercise. The Taskforce recommends that these options should be explored in order to buttress and consolidate the gains made so far.

In addition, there is a need to equip the library with translation tools such as dictionaries, especially Kiswahili ones, and books on translation. Also, there is a need to enhance collaboration with universities and institutions teaching languages and translation courses in order to explore opportunities of mutual interest.

At the core of all these, the leadership of the House, Members, and management should be given all the support in building their capacities in the Kiswahili language. This will greatly help in achieving accelerated use of the Kiswahili language in parliamentary business.

5. Need to involve Kiswahili translators during the periodic review of Standing Orders

This was the inaugural translation exercise of the National Assembly Standing Orders. Therefore, the Taskforce conducted the translation by its own, although it benefited immensely from the Taskforce Members who have participated in previous review of the Standing Orders.

The Taskforce therefore recommends that subsequent review of the Standing Orders should include

Kiswahili translators. This will have two advantages. One, the translation will be expeditious hence enabling timely publication of revised Standing Orders. Two, ambiguity, impreciseness or vagueness of drafted standing orders may be cured promptly since translation often-times forces clarity of thought in the source language.

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THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT
(*FOURTH SESSION*)

Clerk's Chambers
Parliament Buildings
NAIROBI

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