

PARLIAMENT OF KENYA**THE NATIONAL ASSEMBLY****THE HANSARD****Tuesday, 2nd March 2021**

The House met at 7.00 p.m.

[The Speaker (Hon. Justin Muturi) in the Chair]

PRAYERS

QUORUM

Hon. Speaker: Ring the Quorum Bell.*(The Quorum Bell was rung)*

We can now commence business.

COMMUNICATION FROM THE CHAIRUPDATE ON THE RESOLUTIONS OF COUNTY ASSEMBLIES ON THE
DRAFT CONSTITUTION OF KENYA (AMENDMENT) BILL, 2020**Hon. Speaker:** Order Members! Take your seats.

Hon. Members, further to the Communication I made on Thursday, 25th February 2021 regarding the status of returns by the county assemblies to the Speakers of the Houses of Parliament with respect to the Draft Constitution of Kenya (Amendment) Bill, 2020, I wish to give the following update.

Hon. Members, in my said Communication, I did list the thirty-three (33) county assemblies that had made returns to the Speakers of the Houses of Parliament. In addition to that number, we have since received respective certificates and draft Bills from the Speakers of the following other county assemblies: Wajir, Marsabit, Isiolo, Kiambu, Lamu, Turkana, Samburu, Nandi and Bomet. At the same time, the Speakers of the county assemblies of Kwale and Nyamira have since submitted copies of the Draft Bills which were debated and passed by their county assemblies.

Hon., Members, the certificates received from county assemblies I have mentioned, indicate that they approved the Draft Constitution of Kenya (Amendment) Bill, 2020 (popularly referred to as the Building Bridges Initiative (BBI) Bill), except the County Assembly of Nandi, which rejected the Bill. In summary, therefore, as at close of business yesterday, 1st March 2021, forty-two (42) county assemblies had submitted their decisions on the Draft Bill to the Speakers of the Houses of Parliament. The five (5) county assemblies that were yet to submit their decisions

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on the Draft Bill as at close of business yesterday, Monday, 1st March 2021 were Migori, Elgeyo Marakwet, Uasin Gishu, Mandera and Kilifi.

This notwithstanding, Hon. Members, it will be recalled that the Speaker of the Senate and I did communicate to our respective Houses that the Draft Constitution of Kenya (Amendment) Bill, 2020, popularly referred to as the BBI Bill, has met the threshold contemplated under Article 257(7) of the Constitution, having been approved by a majority of the county assemblies.

Hon. Members, having said that, there are two procedural questions that have been brought to my attention relating to the process of consideration in Parliament of a Bill under Article 257 of the Constitution. These two issues are:

- (i) Should the Bill be republished, and if so, what value would the republication add to the process; and,
- (ii) Does Standing Order No.120 regarding the 14 days maturity period apply to such a Bill before its introduction in Parliament?

Hon. Members, you will recall that, during the period of admitting returns from the county assemblies with respect to the *Punguza Mizigo* Initiative, the Speaker of the Senate and I observed that our rules of procedure are deficient with respect to fully actualising the parliamentary process contemplated under Article 257 of the Constitution.

With respect to the 14 days maturity period before First Reading, the House is aware that the maturity period is a commonwealth parliamentary practice which is aimed at according the House, and indeed, the public, a notification period on the presence of a Bill before its formal introduction in the House by way of First Reading. This, however, applies to a Bill being introduced in a House for the first time. It does not apply to a Bill that has originated from another House. As such, Bills originating from the Senate are not subjected to this publication period.

However, Hon. Members, with respect to a Bill under Article 257 of Constitution, such notice period would serve little value. As Members will note, Article 257 of the Constitution contemplates expeditious processing of a Bill to amend the Constitution by popular initiative. Specifically, Clause 7 of the Article, which notes that such a Bill shall be introduced in Parliament without undue delay, is, in my view, instructive.

To my mind, the urgency implied by the provision seems to be drawn from the lengthy process attached to the consideration of the Bill in terms of collection of signatures in support, verification of said signatures, public participation by the various county assemblies and, ultimately, approval by the assemblies. I am of the considered opinion, therefore, that the House is under obligation to do everything necessary within its powers to expedite the introduction of the Bill for consideration.

Hon. Members, in our consultations over the processing of the Bill in the two Houses, the Speaker of the Senate and I were initially of the view that it should be republished before its introduction with minor changes to reflect the current year (2021) on its face and to include a footnote indicating its approval by a majority of the county assemblies pursuant to the provisions of Article 257(7) of the Constitution. Indeed, the Clerks of the Houses of Parliament who had been directed to republish the Bill had so requested the Government Printer to expedite the republication of the said Bill.

However, Hon. Members, you should note that should the Bill be republished with the said footnotes, it completely changes from being the Bill which has been approved and considered by the various county assemblies.

(Applause)

Indeed, even to have the year 2021 on it would mean that it is a different Bill.

(Applause)

Hon. Members, in order to protect the integrity of the Bill as proposed by its promoters and presented to the county assemblies as well as the process contemplated under Article 257 of the Constitution, I am now of the opinion that republication of the Bill would serve no practical purpose, may lead to unnecessary delays in the introduction and consideration of the Bill and may create confusion as to the operative version of the Bill. Consequently, the House Business Committee, at its meeting held today, Tuesday, 2nd March 2021, has resolved that that Bill be introduced in the House for First Reading on Thursday, 4th March 2021, in the form that it was presented to the 47 county assemblies by the Independent Electoral and Boundaries Commission (IEBC).

In this regard, Hon. Members, and pursuant to Article 257 of the Constitution, I do direct as follows:

- (i) THAT, the draft Constitution of Kenya (Amendment) Bill, 2020, popularly referred to as the Building Bridges Initiative (BBI) Constitutional Amendment Bill, be introduced in the House for its First Reading on Thursday, 4th March 2021; and,
- (ii) THAT, the Clerk of the National Assembly urgently obtains sufficient copies of the said Bill in the form that it was presented to the 47 county assemblies by the IEBC to enable its introduction into the House as directed.

Hon. Members, the House is accordingly guided, and I thank you.

Proceed.

PAPERS LAID

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon. Speaker. I beg to lay the following Papers on the Table of the House today, Tuesday, 2nd March 2021, Evening Sitting:

Reports of the Auditor-General and Financial Statements in respect of the following institutions for the year ended 30th June 2019, and the certificates therein:

1. Technical and Vocational Education and Training Authority;
2. Anti-Counterfeit Authority;
3. Kenya Industrial Property Institute;
4. The European Widows and Orphans Pension Fund by the National Treasury;
5. Consolidated Fund Services - Public Debt by the National Treasury;
6. The National Council for Nomadic Education in Kenya - State Department for Early Learning and Basic Education;
7. Kenya National Commission for United Nations Educational, Scientific and Cultural Organization (UNESCO);
8. National Authority for Campaign Against Alcohol and Drug Abuse;
9. Public Trustee of Kenya;
10. Kenya Literature Bureau;
11. Consolidated Fund Services - Pensions and Gratuities - the National Treasury;
12. Karatina University;
13. Kisii University;

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14. Consolidated Fund Services (CFS) - Salaries, Allowances and Miscellaneous Services;
 15. Consolidated Fund Services Subscriptions to International Organizations - the National Treasury;
 16. State Department for Crop Development;
 17. Rice-Based Market Oriented Agricultural Promotion Project by the State Department for Crop Development and Agricultural Research; and,
 18. The State Department for Early Learning and Basic Education.
- Thank you, Hon. Speaker.
Hon. Speaker: Next Order!

MOTION

ADOPTION OF REPORT ON OPTIMISATION OF REVENUE IN GRAIN HANDLING SERVICES AT PORT OF MOMBASA

(Hon. (Ms.) Gladys Wanga on 25.2.2021- Evening Sitting)

(Debate concluded on 25.2.2021)

Hon. Speaker: Hon. Members, I confirm that the House still quorate. We have the requisite numbers for me to put the Question. Let me just note that debate on this Motion was concluded on 25th February 2021, and what remained was for the Question to be put which I hereby do.

(Question put and agreed to)

BILL

Second Reading

THE COUNTY STATUTORY INSTRUMENTS BILL

(Hon. Kassait Kamket on 25.2.2021 – Evening Sitting)

(Resumption of Debate interrupted on 25.2.2021 – Evening Sitting)

Hon. Speaker: Was somebody on his feet? Was it you, Hon. Maanzo? You have a balance of eight minutes.

Hon. Daniel Maanzo (Makueni, WDM-Kenya): Thank you, Hon. Speaker.

The County Statutory Instruments Bill deals with the statutory instruments or delegated legislation from counties whereby the CECM or the minister of a county is likely to make some regulations. This started a long time ago, with counties. It is currently being aligned to the practice at the National Assembly or the national Government where CSs make regulations and they are approved by this House. The same process we apply here is what is going to be duplicated in the

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counties. As I have said, this has been running even during the time of county councils. The collection of revenues in county councils has had regulations. The leases in the county have had regulations, even issues to deal with health because health is devolved. In agriculture, like we are dealing with the case of locusts in a number of counties, all those and even the COVID-19 regulations we made here, some will apply from the national level down to the counties and some will be specific counties. This has been operating without a law and there has been a lot of non-compliance or at times misuse of the regulations made by the counties through their executives. That is why we are now supporting this Bill. It has been developed from the Senate so that the same can be duplicated at the counties and there could be order and the same system we use here so that there is no law which is made from the counties without an approval of the elected members of the county assemblies.

It is a way of making sure there is accountability and making sure that there is fairness and making sure that whatever regulations made at the county are reasonable and are made to serve the people. They should follow the law so that they are constitutional and they are regulated by an Act of Parliament. They cannot go outside the same practice we do public participation before we approve these regulations to make sure that public participation has taken place and the stakeholders dealing with that matter have participated. It is constitutional and also making sure that there are records. Where an instrument has been made in a county, it can also be annulled by the assembly there if it has not complied with the law or, in one way or another, it is unconstitutional or illegal. Therefore, this is going to make sure a lot of illegalities which have been committed there in the counties or some torturous regulations or regulations which have not been by the people through public participation have been in operation in many counties.

I believe this law will not be applied retrospectively. The moment it becomes a law, it is going to be practiced immediately. Thereafter and most probably many instruments which are operational in the counties will now be approved properly by county assemblies and will be able to serve in a better way.

Therefore, I believe this is a very good law. We have been doing it here and making sure whatever Government regulations are made are pursuant to Acts of Parliament. We really do not have Acts of County Assemblies but, definitely, some of the regulations even originate from a statute of law which exists, but has to be applied at the counties if the function is devolved, like the Health Regulations. Some will be specific to a specific county. There can be an outbreak which is specific to a specific county and then regulations have to be made. Therefore, when they are made, they have to be ratified by the assemblies there. So, I believe it is a very good law. It is going to serve the country better. It is going to cause a committee of the county assembly dealing with delegated legislations, similar to what we have here. I believe this is going to improve service delivery to the people. I beg to support and thank you.

Hon. Speaker: Before I move on to the next Member, I was just wondering. Sometimes, I wonder whether the entire Order Paper is always uploaded on the website, even for the Evening Sittings. If it is, I was just wondering why the Mover of the business that we just concluded was not in the House. I think Chairs of Committees are encouraged to be present when their matters are coming up for decision.

Next is Hon. Millie Odhiambo.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Speaker. I support the Bill.

In supporting the Bill, I want to say that it is timely because the counties have been operating without regulatory framework in many issues which has created confusion. At the

national level, we have such a law, thanks to Hon. Amina Abdalla. It has guided the way the national Government works, especially in issues of delegated legislation. In my constituency, the lack of such frameworks has affected fishing, especially on fish caging because sometimes you have the officers operating without a regulatory framework and sometimes discretion gets to be abused when there is no regulatory framework. So, when you have this, it will at least ensure that there is a way the counties will be able to deal with the fishing sector.

The other issue that I have noticed that is of concern is that we now have a regulatory framework for the counties and at the national level. But, there are times when we have conflicting roles where we have concurrent mandates between the counties and national Government. In such a situation, it actually impacts negatively on the people that the regulations seek to help. Again, I will give an example of the fishing sector where we have a back and forth especially on issues of fish caging where we do not know which body or person has the mandate of what or who has the mandate of allowing fishermen to do caging or who can stop them and all that. So, it will be very good when we have this law.

I do not have much to say in relation to this Bill. It is done well. But, I would just wish that we make certain amendments. I know that Members always wonder why I insist on gender when it is already provided constitutionally. But, as I was telling Hon. Kaluma last week, only the wearer of the shoe knows where it pinches. Even though issues of gender are provided constitutionally, in practice, people just turn a blind eye when you do not provide it by law. They do not comply. But, there is compliance when it is in the law and re-emphasised in the law. Because of that, I would wish, for instance on Clause 7(1) on regulatory impact assessment, we would include gender as a condition. In Clause 22, where the principles to be considered whether the instrument is good that we would actually consider the effects either directly or in effect on groups such as for women, persons with disability and marginalised communities because if we do not do that, sometimes, even a good instrument can have a negative impact. Like if you do a regulatory instrument that focuses say on doing work or something on Saturday and you come to my constituency, you will not get the women because most women are the ones who attend church. Men are averse to attending church. So, you probably will get the men. So, we must actually always look at those kinds of issues. That, again, appears in Clause 22(2)(d). I think those are the only concerns I have.

Sorry, I was also just concerned and I hope the Mover can speak to Clause 20 (3) where we are talking retrospectively of the instrument. I do not understand why it should apply in certain instances. I want to ask the Mover to clarify in respect to that.

Hon. Speaker, I support.

Hon. Speaker: It is an interesting observation about this gender issue. As you rightly pointed out, it is there only that you like exercising it. I am sure most of us have seen in the print media the happenings in one of the first world countries, namely Japan, where the LDP ruling party has for the first time in history, invited three women to listen to men discussing how to lead. The other day, the gentleman, who was the Director of the Olympics Organizing Committee, was forced to step aside because of the remarks he made – that, he generally did not like meetings with women because they make too much noise. Hon. Millie, I am sure you read about that and I think we need to have meetings with some of those people so that they can get those concerns and how it is practiced here.

Let us have Hon. Sankok.

Hon. David ole Sankok (Nominated, JP): Thank you, Hon. Speaker, for giving me an opportunity to inject my voice, not from the angle of gender, but from the angle of persons with disabilities. Before I go to specific clauses, we all know that the Constitution of Kenya, 2010

created devolution. We devolved a lot of resources, but we did not devolve powers to manage resources and to make certain regulations. It was an amorphous kind of devolution where roadside declarations were made touching on very important sectors such as water, health and other key devolved functions.

Hon. Speaker, the County Statutory Instruments Bill (Senate Bill No.21 of 2018) has come at an opportune time. It should have come like yesterday but now that it is here with us...

Hon. (Ms.) Fatuma Gedi (Wajir CWR, PDR): On a point of order, Hon. Speaker.

Hon. Speaker: Hon. Sankok, there is a point of order.

Hon. (Ms.) Fatuma Gedi (Wajir CWR, PDR): Hon. Speaker, COVID-19 is here with us and our colleagues are not observing social distance.

Hon. Speaker: Hon. Members, you are encouraged to social distance even as you remain masked.

Proceed, Hon. Sankok.

Hon. David ole Sankok (Nominated, JP): Thank you, Hon. Speaker. It is unfortunate that Hon. Gedi is also out of order because we do not have friends here but Members of the august House.

Hon. Speaker, before I was rudely interrupted, I was saying that we need to devolve powers so that those regulations and statutory instruments are made in the right channels, and are specific to the needs of different regions. It has been difficult to make laws in this House because of trying to balance regions. That is because a law that will work well in Maasai land may not work well in Muhoroni, where Hon. Oyoo represents. It may be traditionally in conflict with the people from the Northern Kenya Region. When those laws are formulated and ratified by the county assemblies, they will be specific and customised for the sake of the needs of those persons.

I will not tire, just like Hon. Millie Odhiambo, in speaking for persons living with disabilities. Article 54(2a) of the Constitution talks about involvement of persons with disability in appointive and nominative positions. As we put these instruments in place, we want to urge the county assemblies to ensure that persons with disabilities are involved fully. Since they have been marginalised for a long time, we do not want that marginalisation to be devolved to county governments and assemblies.

This is an important Bill, and I support it. I want to urge the Members of this august House to support the Bill so that we can have structures in our county governments and assemblies so that devolution can work.

Thank you, Hon. Speaker.

Hon. Speaker: Member for Kabondo Kasipul, Hon. (Ms.) Eve Obara.

Hon. (Ms.) Eve Obara (Kabondo Kasipul, ODM): Thank you, Hon. Speaker. I stand to support the Bill. The Bill is important because it provides for a clear framework for handling statutory instruments from the beginning to the end. I will pick two main issues from this Bill and they are on the fundamental shifts that the Bill introduces. It provides for a regulatory impact assessment at the intended regulation which is critical in determining the necessity of a regulation and its potential impact on the affected parties.

Hon. Speaker, it also provides for a framework for the county governments to apply its terms of scrutiny and operations in respect of the statutory instruments.

Thank you, Hon. Speaker. I support.

Hon. Speaker: The Member for Nyaribari Chache, you have the Floor.

Hon. Richard Tong’i (Nyaribari Chache, JP): Thank you, Hon. Speaker, for giving me an opportunity to support this Bill. It is going to make a difference in the management of affairs at

the county level now that the country has taken the devolution route. If we can fix and get it right at the county levels, I am sure the country will be a better place to live in. A great servant of this world, Mother Theresa once said, "If each of us would only sweep our own doorsteps, the whole world would be clean". If our counties get it right and do their best in terms of service delivery, then the country will be a very good place to live in. We will have eliminated complaints that the national Government has not delivered and blame games will be a thing of the past.

When that happens, one of the ways to operationalise this Bill will be public participation. If they want to pass any law, they must involve the public by way of notice of the pending business in their mother tongues. I listened to Millie Odhiambo, and I am very concerned about the boy child. That is Amariba Secondary School to be precise. When we were assessing the number of children enrolled in the school, 60 per cent were girls and 40 per cent were boys. That begs the question where the boys are and what we are doing to empower them. When the girls are of age to get married, where will be the boys to marry them? If we do not prepare the boys now, they will be afraid of the girls. This Bill is attempting to address the inequalities we have at the county level. I am sure we will do a lot more. As counties come up with laws to govern them, they must look at the bigger picture. Some counties are too small to have restrictive laws because we trade across counties. I would encourage a situation where we have amalgamated counties that will sit down to agree on the laws that will govern all of them, so that they do not shoot themselves on the foot by making laws that will limit how they trade and partner with their neighbouring counties. Kisii County, for example, is known for bananas among other fruits. It is also known for avocados that grow effortlessly. If we do not develop laws to govern sale of farm produce, we will have hurt its people without planning to do so.

As we support this Bill, we need to encourage counties to do it and do it well. I will be happy if we get to the point where we have a model like what we have in the National Government Constituencies Development Fund (NG-CDF) that, by the time money leaves the Treasury going to the counties, we all know what that money is going to do even if it is not 100 per cent. If we know what 50 per cent of the money is going to do, the public will be empowered to know how their money is spent. As it is, that is at the whims of the governors and counties leadership to decide how much they are going to put into development. It is up to them to decide where the money will go. If you get a county like Kisii that has nine constituencies, the governor can decide to take money to one side of the county. That will leave the rest of the constituencies suffering. If these laws can be made and involve all constituencies ahead of time before receiving the money, that will be a major step in addressing the misuse of money that we have at the county level, thus curtailing corruption that is said to be at the county level. We cannot keep whining by saying that things do not work at the counties and yet we are not doing anything about it.

I am grateful that the BBI Bill is attempting to address the issue of management at the ward level. The five per cent money that will be allocated at the ward level will somehow attempt to bring equity on matters of development. Five percent of, for example, 100 million divided by the number of wards that could be 20, you will only have two million. It is not enough compared to the kind of money that goes to the counties. It is a good start but, certainly, it is not enough to address the challenges that we have at the county level. We must deliberately go out of our way to make sure that we have a way of ensuring the projects are known. By opening data in a computer, we should know, for example, what projects are being undertaken in Meru. By a click of a button, we can tell the projects that are being undertaken by the Nairobi County Government. That way, we will be able to address the issues we are having today. If people wanted to know about the NG-CDF projects in my constituency today, they do not need to see me. All they need to do is to

go to the NG-CDF website and they will see all the projects that are being done. That will give us a way of assessing ourselves. We will try to balance the way we divide the money in our custody.

With those many remarks, I support this Bill. It will help us as a country. I wish we had some of those issues of budgeting incorporated, so that we have a way of measuring what goes to the counties. In management they say if it cannot be measured, it cannot be rewarded. If we cannot measure, we will have no tools to measure that which we will have achieved. I support.

Thank you.

Hon. Speaker: Member for Kitui Central.

Hon. Makali Mulu (Kitui Central, WDM–K): Thank you, Hon. Speaker for giving me the opportunity to add my voice to this important Bill; the County Statutory Instruments Bill (Senate Bill No.21 of 2018). When you look at this Bill, it is a 2018 Bill and we are in 2021. That means it has been doing rounds for about three years and that is why I do not agree with the Members who are saying that it is a timely Bill. This Bill should have been passed a long time ago. If you look at the design of the county assemblies and Parliament, the National Assembly is supposed to be a replica of county assemblies, so that what we do in this House is also done on the ground at the county level. The good thing is that we have the Bill with us as the National Assembly. I want to thank the HBC for allocating time for this important Bill.

Delegated legislation is something that the House has benefited the country with. Cabinet Secretaries and CECs at the county level, to some extent, have a window that they can participate in legislation. What is critical is that through this Bill, county assemblies will have a way to ensure that, that delegated authority is not abused and it is used for the benefit of the counties. Regulations provide an operational framework, so that when a law is passed, the nitty gritty details of how to operationalise it may not be captured by the main law. What happens is that through the regulations, you are able to capture more details. As a result of that, you will realise that in terms of implementing, there is a clear structure of how to implement some of the issues that have been agreed in the law.

The challenge that we have been facing both at national and county level is the issue of public participation. That is the issue Hon. Millie and Hon. 001 mentioned. If we get it right in public participation, there will be inclusion and everybody will have a sense of belonging from giving their input. We all know that there are a number of Bills on public participation from the Senate that are still doing rounds and we have not finalised them. It is time we passed a law that focuses on public participation, so that we have a clear legal framework on how to conduct public participation. Women, people living with disabilities, the elderly and other marginalised groups will have a sense of belonging, inclusion and participation. To me, that is critical.

The other issue is that county governments are unique in their own sense. If, for example, you visit the County Government of Kitui and the County Government of Mandera, they have unique needs. County assemblies are expected to provide a legal framework that will assist county governments to address the needs of their people.

One of the cross-cutting issues is own-revenue generation. Every county in this country collects money other than the money they receive from the national Government, the so-called equitable share. One of the challenges we face is that despite county governments collecting money, there are a lot of gaps in terms of how to collect the money and how to use it. These days most county governments collect much lower amounts of money compared to the defunct local authorities. You ask yourself how come county governments are not able to collect much more as compared to the defunct local authorities. It is basically because some county assemblies have not

approved the expected regulations to guide how to go about it. This proposed Bill will go a long way to provide a framework to ensure that things run correctly.

The other point is that most county governments are also investing. You go to a place like Kitui County where we have KICOTEC production plants. Where a county invests, it will also put in place regulations to guide the process of investment so that they get value for money. They will get good returns on their investment. This is delegated legislation and I see an opportunity where members of county executives in charge of trade and finance should forward to the county assemblies regulations which will provide the required legal framework to make sure that things are done in the right way.

As I conclude, at the National Assembly level, we only get to interact with those regulations when they have been proposed for annulment. So many regulations only go through the Committee on Delegated Legislation and their processing ends there. If you have an interest in any, you could go and pick them to read. They never reach the House. I would encourage a situation where even those regulations which are being approved by the Committee on Delegated Legislation are brought to the House, so that the membership of the House can get to know what is being proposed and to align the proposals with the main Acts.

I want to appeal to all my colleagues that we fast-track this Senate Bill to become an Act of Parliament, so that county assemblies can engage in serious review of all regulations that have been prepared by different county assemblies. That will assist this country even as we assist county governments.

With those many remarks, I support. Hon. Speaker, thank you very much.

Hon. Speaker: Member for Saku.

Hon. Ali Rasso (Saku, JP): Thank you very much, Hon. Speaker. I beg to add my voice to this Bill. I am attracted to its object which is to provide a comprehensive framework for the making, scrutiny, publication and operation of statutory instruments.

When we operationalised county governments in 2013, they were taken through all the systems of the National Assembly. The National Assembly, under your leadership, provided a lot of guidance. County governments lacked human resource, legal and legislative capacities. They did not have a good grasp of constitutional provisions to make laws.

Through this Bill, different county assemblies will make their own local laws but what we must really look after as a House is to ensure that neighbouring counties - let us say they are coffee or tea-producing counties - do not come up with different statutory instruments that are in contradiction or that impose levies that are likely to hurt the people. Those of us who travel long distances know that there are many toll stations, for example, between Meru and Isiolo, between Isiolo and Marsabit, between Nanyuki and Laikipia and Meru. Through this Bill, we will have a standardised system that will be operating at the devolved local level.

My colleagues have talked about public participation. Clause 8 talks about publication in the *Kenya Gazette* and in one paper of wide national coverage. In rural areas, you must talk to people through meetings, *barazas* and town halls. So, in terms of public participation, the county governments must go out of their way to reach the public in different ways than that being used by the National Assembly.

Finally, this Bill provides adequate guidance in terms of the no-go zones in which county assemblies should not pass regulations. If they do, they must be very clear that the regulations do not contradict the Constitution and the laws of the land. The Mandera County Assembly and the Kisumu County Assembly should pass regulations that are within the law.

With those few remarks, Hon. Speaker, I beg to support.

Hon. Speaker: Member for Bondo.

Hon. Gideon Ochanda (Bondo, ODM): Thank you, Hon. Speaker. We do not want to doubt the position of the whole issue of statutory instruments. We have seen their importance, we have applied them nationally and we have used them over a period of time. Having them at the county government level is as critical as having them at the national Government level. This Parliament should not bequeath the next one the kind of burden we have in respect of how the National Assembly and the Senate operate.

In terms of procedure and application, assuming that Nakuru County Government by last year had developed their own statutory instruments based on the understanding of what happens with national statutory instruments, what would this law mean to them now? I am seeing a situation where we are deliberately passing legislation and we are very clear that we are doing so in vain. Who is to implement this legislation? In my view, every county assembly is supposed to come up with their legislation.

Once they do, and with little guidance from the national legislation that exists, they are then able to implement. How is a county government able to implement this legislation the way it is? It may as well be a reference material. Each county assembly is supposed to come up with its legislation. The way laws are done and the Constitution arranged, there is nowhere a specific county government is supposed to implement legislation from the Senate. I am seeing a big problem on how we are moving forward.

I do not doubt the importance of the law or these statutory instruments. The main problem is the whole issue of implementation, Parliament working in vain or where we reposit this as a legislation, we are going to run parallel as to what exists in the name of the national Statutory Instruments Act which we know and a new one from the Senate. The one from the Senate is clearly not going to be implemented. Senate has no mechanism of following it up to see whether it is implemented or not.

In my view, we need to come up with a way of lessening the burden of doing legislation in vain. If we do not do it, we are going to have a big problem in the next Parliament which is going to be both a bigger Senate and National Assembly. This will arise from the burden we inherited from what we are not able to correct. Through the CIOC, we could try and look at some of these things such that we get to see how we can harmonise some of these processes. If the Constitution does not provide them in a clear manner, can we procedurally, in the House, between the Senate and the National Assembly, get a way on how we can harness some of these things, such that we do not continue with this burden that we are in at the moment?

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Ochanda, those are serious points. What came to my mind when you raised that issue was the provisions of Article 96(3), the oversight authority that is bestowed on the Senate. That is in regard to revenue, finances and not how laws are implemented by county assemblies.

Let me hear from a Member of the defunct Committee of Experts. Hon. Otiende Amolo, kindly have the Floor.

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): Thank you, Hon. Speaker. At the outset, I support this Bill.

In my view, this is one of those rare instances when the Senate has properly exercised its jurisdiction on matters relevant to it. There are many instances when the Senate has been overreaching on matters that do not concern county governments. It is a proper one because the

primary purpose of the Senate is to protect the interests of the counties. This includes the interests of the people of the county, governors and the representatives of the people.

This Bill seeks to put in a very clear and timely manner how statutory instruments are to be enacted within the county, the limitation of the governor and his or her CECs.

It becomes a very good counterpart to an already existing legislation, the Statutory Instruments Act of 2013. On its face, and on a clear reading, it seemed to have concentrated on national legislation and not so much on the county level legislation. That is why, I, think, it is quite important.

Clause 5 of this Bill helps us in a very fundamental way, at least, at the county level, in terms of this animal called public participation. To date, that idea of public participation has been a thorn in the flesh even for this House. It has also become the discretion of every judge to decide whether there was sufficient public participation or not. It has become what we call the length of the chancellor's foot. What this Bill does at the county level, at least, is to prescribe in detail the manner and mode of public participation in a way that lends itself not to defeat an instrument after it has been enacted. In ours, we are still at the mercy of interpretation.

The proposed Clause 6 then does something that is very innovative, the regulatory impact assessment along the lines of the environmental impact assessment. This is quite important because it gives both the county and the people of that county an opportunity to re-examine the cost of that instrument whether there is an alternative and its effects, which I think, is very important. It is something that we have not always done sufficiently even at the national level.

Lastly, and in support of this Bill, it also empowers the county assembly. It does so because it removes the whims of the governor in terms of making decrees, but then have the force of law at the county level. Every instrument then must be brought to the county assembly within seven days and must be passed. If it is not brought within the prescribed time or passed, it cannot have the force of law. It binds the governor and his or her government to ensure accountability by presenting all those things that they want to have the force of law before the county government. That is very important. I only have one problem with the proposed Clause 18.

Clause 18 does something that I have never seen in any legislation. It stipulates that whatever instrument is passed will cease to have effect exactly 10 years from the date it was passed. I have never seen any legislation that contemplates its own death without any invitation.

It is very curious because legislation and statutory instruments are supposed to exist in perpetuity until and unless, the body that enacted them, choses to repeal or amend them. A proposal that you can make a statutory instrument after all these proposals, then it automatically lapses, for me, it flies in the face of all constitutional propositions that I know, and it also flies in the case of logic. What is more curious is that it proposes that the only thing that can save that automatic death, if the regulations say that it does not have to die, is trite law. Regulations cannot be enacted to contradict a substantive provision in the Act. That means there is no way any regulation can save any instrument if this particular part passes. That is my own issue with it which I believe our Committee and this august House will give due consideration during the Committee of the whole House.

With that, I support.

Hon. Speaker: Obviously, I would imagine that any regulation at the county level would have to be based on some substantive legislation. It is, therefore, illogical to imagine that the subsidiary legislation could subsist if the law itself is deleted. I suspect that is the point Hon. Otiende was trying raise.

Member for Kathiani, kindly, have the Floor.

Hon. Robert Mbui (Kathiani, WDM-K): Thank you, Hon. Speaker for this opportunity.

I support the County Statutory Instruments Bill. This basically deals with the delegated legislation. These are the powers given to the regulation-making authorities so that they can actualise laws that are already passed by the assemblies.

I hope governors would be respectful of these laws when it goes to the counties. Most of the times, I have seen legislation in county assemblies completely ignored and rubbished by governors. A case in point is our County Assembly of Machakos where MCAs rejected CECs during vetting, but they are still in office. It is unfortunate. I wish it does not get abused by the leadership in the counties if we pass this. They must begin to believe in the rule of law.

Hon. Speaker, many of these have been picked from the Statutory Instruments Act which is basically used by the Committee on Delegated Legislation of this House and also for regulation-making authorities at the national level. In my observation of that Act, I have seen certain flaws, maybe not completely negative, but certain things they have picked which I think they needed to have thought through. The first one is in the definition of a statutory instrument. The definition is extremely wide because it talks about 'any rule, order, regulation, direction, form, tariff of costs of fees, letters, patent, commission, warrant, proclamation, resolution and guideline. All those. Those are so wide such that anything a CEC or a governor does from their office suddenly seems to be a regulation. That is one of the problems we have been having even at the national level. There are so many things that Cabinet Secretaries would do and we are not too sure how exactly to handle them. They pass proclamations and guidelines in their offices and say that is not one of the things that should come to the House.

A case in point was when the National Treasury decided that you could not deposit or withdraw more than a certain amount of money. That was a guideline. Unfortunately, it did not come to the House as a regulation yet clearly, it had the force of law and imparts on many people and how they do business. Therefore, I think they needed to have considered to reduce the wide definition, so that it is very specific to the things that are going to affect county business. The other issue that has been canvassed by my colleagues is that of public participation; the threshold. This is one of the problems we have constantly faced because when it comes to public participation, the question is who must be consulted. Many times you find that it seems like everybody must be consulted. Even when we put it out to the public and even if people do not respond to the adverts, there is always that argument that so and so, or such and such a sector is affected, and therefore, they should have been given an opportunity. This definition needs to be clear in terms of exactly who should participate to be consulted in consideration before making statutory instrument.

Hon. Speaker, another issue we have noted is many times the regulation-making authorities would avoid the regulatory impact statement. That is a statement that confirms to the public whether it is going to be expensive for the public and what it would cost the public. Many times they want to avoid that. In fact, many statutory instruments brought to this House do not even have the regulatory impact assessment because they always try to wiggle out of it. Therefore, this is important and I think it is important that county assemblies follow through.

Finally, it is the issue of scrutinising a statutory instrument by county assemblies. There needs to be that pre-publication scrutiny. I would advise county assemblies when this law passes to ensure that before any regulation is published, they go through a pre-publication scrutiny. We have noted that many times regulation-making authorities would go ahead and publish in the *Kenya Gazette* and that is the time we come face to face with the regulations. In addition, many times there are some basic flaws on minor things that need to be changed. Unfortunately, once it is published, the only recourse that we have - which is also in this law for county assemblies - is

that they have to annul. Therefore, it becomes an exercise in futility when regulation-making authorities make a regulation, publish it, send it to the assembly and then it is rejected. It is important that they ensure that there is pre-publication scrutiny where both parties, the county assemblies and the regulation-making authorities that would be the CECs and the governor's team, have meetings and discussions. This is so that by the time it is published, it becomes law without wastage of much time.

With those few remarks, Hon. Speaker, I thank you and support.

Hon. Speaker: This issue of public participation, and because I know there are some two or three Bills, you know it is also important that even as a House, we look at it with a lot of care because parliaments the world over regulate their own procedures. To have an Act of Parliament decreeing what amounts to public participation, sufficient or insufficient, for me, I think it flies in the face of the independent role that parliaments the world over have in regulating their own procedures. It is a good thing that we know it is there in our Constitution, but I also think these are things that must be found in the rules of Houses of Parliament.

(Applause)

You cannot go to make a law - a standalone Act of Parliament - to come and regulate or state what public participation is. To even change anything in that law, you need to amend it, and to repeal it, but you know the reason why those things are best left to the procedures of the House is that the Houses regulate their own procedures. Of course, again, and I like what Hon. (Dr.) Otiende Amollo has talked about the interpretation, even as you sit notwithstanding the directions we gave last week about the documents that were brought from some ministry on economic partnership agreement, we instructed that there be fresh public hearings. Some other tired bodies have rushed to court to say they need now the courts to decree that there must be sufficient public participation. You see the danger of having some of these things put in legislation, that you want sufficient public participation.

In Many jurisdictions that I know of, parliaments merely advertise. In fact, these days of technology, you just put it in your website. Those who care to follow and understand what parliaments are doing will pay attention. In fact, in many jurisdictions, you are told: You want to address us on which area of this legislation? How much time do you require? If you are a person who has researched well, would you want one hour, 30 minutes? Things like those so that it is something that is going to inform the House and enrich what is going to be the product from the House or from that process. Public participation cannot be you go and hold a *baraza* and then people are just asking for *chai* and other things like *mandazi*. That, you cannot call us to come to this hall and fail to give us transport back to where we came from now that you call it public participation. We must also look at some of these things as committees of this House, so that when you go out there and find that the people coming there are just coming because they have been told there are some visitors; *waheshimiwa*... I mean, you are at liberty to call it off and say you want something more impactful.

Member for Homa Bay Town.

Hon. Peter Kaluma (Homa Bay Town, ODM): Thank you, Hon. Speaker. I came to the evening session to deal with the matter of narcotic drugs. I have to be honest I have not looked at this law, but I have listened to various presentations here, more so from Hon. Ochanda, Hon. (Dr.) Otiende Amollo, Hon. (Dr.) Makali Mulu and Hon. Mbui. If the matters they are speaking to are

the matters in that proposed legislation from the Senate, then I am worried we are wasting our time on something which should not be discussed by a House of Parliament up here.

I am giving four reasons as to why this Bill is for rejection and I am saying it is outright *ex-facie* unconstitutional. A look at our Constitution, 48 governments are established in Kenya, namely, one national Government and a government in each of the 47 counties. That is the language of the Constitution. The Constitution says they will be distinct, but interdependent.

Hon. Speaker, we have Parliament at the national level with the two Houses as the legislative arm of the national Government. At the county level, we have the County Assemblies as the legislative arm of the County Governments. What is not shared out with governments at the county level is the Judiciary. The question we must ask ourselves is how does the Parliament of the national Government, comprising of the Senate and the National Assembly, sit to prescribe matters for parliaments in the counties? How would matters to do with subsidiary legislation be dealt with in the 47 counties? We should remember the subsidiary legislation, or regulations, are out of delegated authority. As the Hon. Speaker has rightly said, authority will be delegated by that parliament, which is the County Assembly in the context of a county government. It is that legislation in the county that will say there could be delegated legislation or regulations of this nature. It is that legislation in that individual County Government that will prescribe matters around which regulations can be made.

It cannot be for this House to come up with a law that will tie the hands of a County Assembly or dictate certain matters to the County Assemblies. Our equivalent at the county level can determine how they want to do their things and under what regulations. We must reject any attempt by this House to purport to legislate for the county governments because it is unconstitutional. It is like the national Government, through the national Parliament is dictating to the County Governments and the County Assemblies how regulated authority should be spoken about.

Hon. Speaker, you have spoken about public participation, and I am happy. It is like you were seeing my thoughts. Parliaments all over the world transact their businesses under their internal procedures. Those internal procedures are in the form of Standing Orders, which have anchorage in the Constitution in our case. We are told you will regulate your procedures; you will provide in the Standing Orders how you do things. What if, as has been happening, you go for public participation somewhere and people ask you for bus fare? This is something all Committee Members experience as they go for public participation out there. Members of the public ask for bus fare, water and food. What value do people gathered in a room during public participation forums add to a legislative proposal or to a public issue you are investigating out there?

That is why you are right. If we are to come up with a law on public participation, it must find its space within the Standing Orders so that we can prescribe it. It should not be a stand-alone piece of legislation. We should remember that the legislative process goes beyond the House. If we make a public participation law, it will have to get presidential assent. What if it is sent back with proposals which tie our hands completely? What will we do? Let us go to our Standing Orders because that is what our Constitution says.

Hon. Speaker, Hon. (Dr.) Otiende Amollo has said that some governors can decide to run a morgue and issue decrees which are unlawful. It is the work of the Members of the County Assemblies MCA to check whether any decrees being issued have anchorage in some parent law enacted by the relevant Assembly. If a County Assembly finds a governor conducting himself inappropriately, they have the power to initiate his impeachment on account of gross abuse. So, we should not take up matters concerning the County Governments and imagine that, as the

Parliament of the Republic of Kenya, we have some legislative oversight role over parliaments at the County Government level. The Parliament in Homa Bay County may want to enact a law on how fishing matters are to be dealt with. The County Assembly may come up with a regulatory framework for that sector within the confines of Homa Bay County. The framework can consist of regulations that are totally different from what the parliaments in Murang'a or Kiambu may want to do their business. That is why they are distinct. That is the word of the Constitution.

Therefore, I urge that this particular one be killed. This is the kind of matter where I agree with the courts. I doubt whether you were consulted on the constitutionality of this Bill before it was transacted by our sister House. Knowing your legal mind, this is not something that would have taken our legislative time when we have more serious matters pending. I urge Members to take the position that the views Hon. (Dr) Amollo has given us and others cannot save this thing. It is for rejection now that there is no ruling, finding it unconstitutional.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Members, Hon. Kaluma thinks that there is legislative overreach? Let us hear Hon. Wangwe.

Hon. Emmanuel Wangwe (Navakholo, JP): Thank you, Hon. Speaker. I rise on a point of order especially following the legal opinion that Hon. Kaluma has given. For the benefit of those of us who are not lawyers, would I be in order to suggest that you make a ruling instead of putting it to vote? Taking a vote might allow this House to vote for an illegality should the Motion be in the manner that Hon. Kaluma has put it. I am requesting that you give a ruling as to whether this House is debating a properly constituted Bill.

Thank you, Hon. Speaker

Hon. Speaker: Hon. Wangwe, let me not go into the constitutionality of the Bill before the House at this point, even though the issue you have raised is of great moments. We will look into the constitutionality of the Bill. For the time being, I will allow those Members who are interested or the Mover. I have just noticed that there are some Members who are here for the other business.

Hon. Jared Okelo (Nyando, ODM): (*Inaudible*).

Hon. Speaker: The Member for Nyando, what did you say?

Hon. Jared Okelo (Nyando, ODM): Thank you, Hon. Speaker. I dully acknowledge the valuable contributions by the Members of this House. At the same time, I take cognizance of the mood of the House and seek your indulgence to invoke Standing Order 95 to call upon the Mover to reply.

Thank you, Hon. Speaker.

(Laughter)

Hon. Speaker: Hon. Members, the Member for Nyando having risen in his place and claimed that reading the mood in the House, he thinks it is safe that the Mover be called up to reply. I will put the Question.

(Question put and agreed to)

So, the Member for Nyando has read the mood of the House correctly.

Let us have Hon. Kamket.

Hon. Kassait Kamket (Tiaty, KANU): Thank you, Hon. Speaker, I beg to reply. I think the Member for Nyando has what was once referred to as a *mood-meter* to measure the mood of the House. I want to begin by appreciating the last speaker, Hon. Kaluma who passionately made a pitch for rejection of this Bill. However, I want to refer him to Article 108 of the Constitution.

Hon. Speaker: Article 108 is on ranking in the House.

Hon. Kassait Kamket (Tiaty, KANU): Forgive me, Hon. Speaker. It is Article 191 which talks about conflict of laws. Article 191(2) of the Constitution talks about national legislation prevailing over county legislation.

Article 191(2) says:

“National legislation prevails over county legislation if –

- (a) the national legislation applies uniformly throughout Kenya and any of the conditions specified in clause (3) is satisfied; or
- (b) the national legislation is aimed at preventing unreasonable action by a county that

- - (i) is prejudicial to the economic, health or security interests of Kenya or another county; or

- - (ii) impedes the implementation of national economic policy”.

- (3) The following are the conditions referred to in clause (2) (a) –

- - (a) the national legislation provides for a matter that cannot be regulated effectively by legislation enacted by the individual counties;

- - (b) the national legislation provides for a matter that, to be dealt with effectively, requires uniformity across the nation, and the national legislation provides that uniformity by establishing –

- - - (i) norms and standards; or

- - - (ii) national policies; or

I believe with that reading of the Constitution, in my view, it may address the issues or the fears raised by Hon. Kaluma, in terms of the need for this legislation to provide for a regulatory framework for county assemblies to look at statutory instruments. I want to appreciate all the Members who contributed to this Bill. A majority of them except for that move by Hon. Kaluma have supported this Bill. I listened very carefully to the issues raised by Members, and I believe this law by the Senate is basically to bring a specific law to address the issue of statutory instrument in the county assemblies.

I heard what Hon. Otiende Amollo raised about Section 18. Hon. Amollo, that section is also provided for in the National Statutory Instruments Act 2013. If you look at Section 20 of the National Statutory Instrument Act, that provision is there and it is a very good provision in law. It talks about staged automatic expiry of statutory instruments.

The purpose of this part is to reduce substantially the regulatory burden on the people of Kenya without compromising law and order, essential economic, environmental and social objectives. If you go through the entire section, it is also to ensure subordinate legislation that is relevant to the economic, social and general well-being of the people of Kenya. This will ensure that part of Kenya statute books consisting of statutory instrument is of the highest standards. It is about ensuring that whatever instruments that are brought, do not last forever given the changing circumstances in the lives of the people.

On the matter of public participation, I have heard very interesting issues that are raised by you, Hon. Kaluma, and many other Members including Hon. Mbui, who is a Member of the committee. I would like Members to concretise the issues that they want to improve in the Bill. I

would like to encourage Members to concretise their contributions in terms of amendments at the right time. That includes the issues raised by Hon. Makali Mulu who said that many statutory instruments come to the Floor of the House only when they are coming for annulment. It is a very good idea, but we need to concretise it. We should not just make contributions and leave it there.

I know the elephant in the room is the issue of mediation. Members sometimes do not want to get tied to the long process of mediation. They want to get through with it and let the law pass. As Members of this Assembly believe, a certain addition or subtraction needs to come to the Bill. You are free to bring your issue in terms of amendments. Otherwise, I feel that the Members understood this Bill and in terms of helping the county assemblies, when this Bill becomes law, it will help the county assemblies to do their work in a smarter way.

Speaking in retrospect, as a former speaker of a county assembly, it has been quite chaotic down there and it continues to be. So, this National Assembly is the mirror that should help the younger assemblies that we are growing constitutionally. When we come up with such an important law in terms of helping the county assemblies to legislate properly and do their work in an orderly manner; it is a positive step in terms of making things flow in an orderly manner in the county assemblies.

I want to agree with Hon. Members that the Executive always has this idea of coming up with decrees and all manner of things without following the right procedure. This Statutory Instrument Act, either at the county or the National Assembly helps to put things in line. We have had to annul many regulations from this Assembly. I am sure in the county assembly there are many pieces of legislation or decrees that have been made and not been followed. These things have serious impact on the people.

With those few remarks, I beg to reply.

Hon. Speaker: Very well. Reasons for not proceeding to the next level, which was putting of the Question, are glaring. We move to the next order.

BILL

Second Reading

THE NARCOTICS, DRUGS AND PSYCHOTROPIC SUBSTANCES (CONTROL) (AMENDMENT) BILL, 2020

Hon. Paul Koinange (Kiambaa, JP): Thank you, Hon. Speaker. The main objective of The Narcotics, Drugs and Psychotropic Substances (Control) (Amendment) Bill, 2020, is to amend The Narcotics, Drugs and Psychotropic Substances Control Act (No. 4 of 1994) in order to enhance penalties related to the offences in possession and trafficking in narcotics and psychotropic substances. Define preciseness and chemical substances which may be used in the manufacture of narcotics. Define who law enforcement officers are in respect to the Act, prescribe offences for a law enforcement officer who aids or abets or is accessory to any offence under the Act; provide for the offences arising out of conspiracy, provide for power to intercept communication and the admissibility of intercepted communication, and provide for an obligation to disclose information that may aid to prevent commission of offenses arising under the Act, and that may secure the arrest of perpetrators of the crime.

(The Speaker (Hon. Justin Muturi) left the Chair)

*(The Temporary Deputy Speaker (Hon. (Ms.)
Jessica Mbalu) took the Chair)*

The Narcotics, Drugs Psychotropic Substances Control (Amendment) Bill, 2020, was read the First Time on 8th October 2020 and subsequently committed to the Committee, pursuant to Standing Order No.127 (1) and, for report to the House. The Committee considered the Bill in its sitting held from 15th to 17th November 2020 and adopted its Report on Monday, 30th November 2020.

In accordance with Article 118 of the Constitution and Standing Orders No. 127 (3), the Committee sought views from the public by way of written memoranda. The institutions that made representation to the Committee on the Bill, includes the following:

- (a) State Department for Interior and Citizen Service;
- (b) Directorate of Criminal Investigation (DCI); and,
- (c) National Intelligence Service (NIS).

Hon. Temporary Deputy Speaker, the Committee observed the following with regard to the Bill that in order to enhance the objectives of the Bill. It was necessary to insert new definitions in the Bill. They include, “clandestine laboratory”, “market value” and “public officer”. The import of the proposed amendment is to curb illicit drug operations, which can be set up in private, commercial and mobile property and which pose risk to human health and surrounding environment.

The sentence with respect to cannabis should be reduced in order to reflect the current practice in our courts. The proposed amendment is to provide that where a person satisfies the court that the cannabis was intended for his own consumption, imprisonment should be not more than five years or a fine of not more than Ksh100,000. There is need for a new section to provide for landlords and owners of buildings to conduct due diligence on their tenants and occupiers of their premises, in order to avoid setting up of clandestine laboratories.

As I conclude, the Committee observed that drug trafficking operations pose risk to human health, society and the surrounding environment. The perpetrators of such acts include law enforcement officers and public officers. Therefore, the Committee proposed a new section to provide for disqualification of persons from being elected or appointed to a public office, where such persons are convicted under the Act.

In view of the above, the Committee has proposed amendments to the Bill in order to enhance the objectives of the Bill. I, therefore, invite Members to take time and read the Report of the Committee.

As individual Members of this House, we are called upon to make good decisions for the sake of our future generations. We need to safeguard the future of our children and generations to come. It is about time that we acted like the developed world does when it comes to dealing with drug lords - be ruthless with them. We also need to act firmly on the enablers of the illegal business of narcotics, drugs and psychotropic substances. These include some unscrupulous Government officers and law enforcement officers who think they can illicitly enrich themselves at the expense of our children. If we do not act now, we risk seeing our children being converted into zombies by drug lords as we watch helplessly.

I beg to move and ask Hon. Kaluma to second.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. Let us have Hon. Kaluma for seconding.

Hon. Peter Kaluma (Homa Bay Town, ODM): Thank you, Hon. Temporary Deputy Speaker. I would also like to thank my Chair for ably moving this important Bill.

The matter of narcotic drugs has been an issue in our country and across the world for a long time. It has been so much that we even have United Nations conventions and conventions within our own continent dealing with the matter. We have had this law for a very long time. Our societies are still being destroyed. If you go to the Coast and several other places such as the frontier counties in the north, drugs are decimating our societies. If you remember, the main reason why President Trump was elected was because he said he would build a wall between the United States of America (USA) and Mexico, because drugs were destroying their society. The people supported him.

Having analysed the situation as the departmental committee in charge and looked at the law, we found up to six gaps which we seek to have this House seal so that we can bring a stop to this matter.

First, we are looking at the punishment regime for trafficking. If you look at the current law, option is given to traffickers to either pay fines or face life imprisonment. It has, therefore, become very easy, more so, for big or bulk traffickers - people who can have a whole ship of cocaine - to come and pay three times the value of that amount and escape being jailed.

In this Bill, we propose that life imprisonment shall be mandatory for a convicted trafficker, in addition to a fine amounting to three times the value of the drugs he is found with. Why do we say so? The previous law meant that the consumers would suffer more than the traffickers.

The other distinction we are making in terms of that charge is that, even if you are found with the drugs, under the current framework around punishment, whether you are holding them or just consuming, the punishment is one, in the manner I have spoken to.

Hon. Temporary Deputy Speaker, there is a problem across our courts. The lawyers who are here can confirm this. You have a street boy there who was given *cannabis* to smoke. He goes to court and the hands of the court are so tied because the fine is 20 years or a minimum of Ksh10 million. So, what are we saying? We are saying that life imprisonment is mandatory, in addition to payment of fines, for *cannabis* traffickers.

However, for consumers of *cannabis*, the sentence will be reduced to a maximum of five years or a fine not exceeding Ksh100,000. This is the practice already within our courts so that we do not have situations where they are forced to give sentences which are not prescribed in law and which is unconstitutional.

The second thing that we are dealing with in terms of the gap after punishment to deter drug trafficking is aiders and abettors. The apprehension of all drug dealers in the country is mostly in the vehicle of a police officer or a vehicle assigned to the police officer because it will not be easily stopped.

In other cases, you get them in a vehicle of a State officer. You have heard of vehicles granted to Cabinet Secretaries and other State officers being caught conveying drugs. What does that confirm? It confirms that there is a way in which law enforcement officers and public officers aid and abet drug trafficking. Therefore, what are we proposing?

Hon. Emmanuel Wangwe (Navakholo, JP): On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Kaluma, there is an intervention by the Member for Navakholo.

Hon. Emmanuel Wangwe (Navakholo, JP): Thank you, Hon. Temporary Deputy Speaker. I rise on a point of order. The great colleague from Homa Bay has referred most of the debate to the Americans and how they built a wall. Finally, he touched on the issue of *cannabis sativa* as being part of the narcotics.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Is it a point of order or point of information?

Hon. Emmanuel Wangwe (Navakholo, JP): Hon. Temporary Deputy Speaker, it is a point of order. I do not want to inform him because he is a very informed fellow. That is why I want to put it as a point of order. Is he right to put it to the House that *cannabis sativa* is part of the narcotics, and yet he is very much informed and aware that it is not only a drug but also medicinal?

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Order, Majority Whip! You are rightfully admitting that it is a point of information. As a matter of procedure in this House, you should inquire from Hon. Kaluma on whether he wants to be informed. Again, we have moved this Bill. Hon. Kaluma is seconding it. Order No. 10 is not yet an asset of the House. Please, as much you want to inform him... I am sure you will get a chance to speak to it because this is a House of debate. I rule that Hon. Kaluma seconds the Bill. When I propose the Question, it will become an asset of the House and Members will debate it.

Carry on, Hon. Kaluma.

Hon. Peter Kaluma (Homa Bay Town, ODM): I thank you. Hon. Members, public officers and law enforcement officers use the vessels which are granted to them to serve public interest to convey drugs because there is no offence of aiding and abetting in their circumstances under the current Act. So, we are creating an offence against those law enforcement officers and public officers who will aid in trafficking of drugs and prescribing punishment for it. The additional punishment we are prescribing, in addition to those fines and custodial sentence, is that if you are convicted of using public facilities or vessels which are granted to you to traffic drugs, you will not hold public office. Those are provisions within the Bill.

You saw the situation in the trial of the Akasha brothers. Our courts were defeated here because of the restriction of evidence that you may acquire by intercepting communication which they were easily compelled to release. So, we are creating provisions for limited and confined interception of communication under Article 24 of the Constitution. We are alive to the fact that there is a right to privacy and a right to communication. If you look at the proposed new Clause 80A, we are saying that only an officer at the level of a Chief Inspector can intercept information. They cannot intercept without applying to the court because it is going to be an infringement on fundamental right to privacy. That application must be made to the High Court by that officer, with the consent of the Director of Public Prosecutions (DPP).

We have also said that the information you are intercepting will be limited to finding information relevant to trafficking or the offence. For instance, a person cannot intercept your phone to see how you speak to your spouse or deal with those other matters. We have created an offence about law enforcement officers who seek to intercept communication from courts which do not relate to the matter and also on those who release that information improperly. It is a very hefty punishment.

Hon. Temporary Deputy Speaker, we have dealt with the issue of precursor chemicals at the fourth level. These are chemicals used to manufacture these drugs in some clandestine laboratories which we are also making provisions for. These precursor chemicals are not yet provided for. You can get people moving with things which do not fall under the definition of what

amounts to drugs and psychotropic substances, but are the chemicals which are then used to manufacture these drugs. We are bringing that range there so that it can be dealt with.

Lastly, this amendment seeks to align the Narcotics, Drugs and Psychotropic Substances Act to the United Nations Convention on matters relating to drugs in terms of definition of what amounts to drugs.

Hon. Temporary Deputy Speaker, I do not know whether I have time but because the Chair had ably moved, I request that this Bill...

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): You have one minute.

Hon. Peter Kaluma (Homa Bay Town, ODM): This Bill will be looked at together with the additional amendments in the Report. I urge Members to look at them and join the Committee in support and approving this innovative legislation so that we can deal with this societal malady once and for all.

I thank you, Hon. Temporary Deputy Speaker and I second.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well.

(Question proposed)

Let me give the first minute to Hon. Rasso Ali, Member for Saku.

Hon. Ali Rasso (Saku, JP): Thank you very much, Hon. Temporary Deputy Speaker. I rise to support this particular Bill. This is a very important Bill but we need to look at it alongside the statutes and some of the existing regulations. The Member for Navakholo talked about *cannabis*. It is out there in the market and on the streets. However, in Kenya, we have not legalised it. The street name for *cannabis sativa* is 'bhang' but it is categorised as a medicinal drug that can be prescribed by doctors and physicians in western countries.

This Bill is also about the major trafficker. Whether it is from the Caribbean...

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Order, Hon. Rasso Ali, Member for Saku. I wish to disrupt your contribution to the Bill. This being a House of procedure and rules, I do order that you will have a balance of eight minutes when debate on Narcotics, Drugs and Psychotropic Substances (Control) (Amendment) Bill (National Assembly Bill No. 27 of 2020), resumes. For that matter, you will have priority in speaking.

Hon. Members, the time being 9.01 p.m., this House stands adjourned until Thursday, 4th March 2021 at 10.00 a.m. It is so ordered.

The House rose at 9.01 p.m.