

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 17th October, 2013

The House met at 2.30 p.m.

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

PRAYERS

REQUESTS FOR STATEMENTS

Hon. Deputy Speaker: Order! Order, Members! Now, hon. Peter Shehe and hon. Onesmus Njuki, was this for Notices of Motion or Statements?

Hon. Members: Statements.

Hon. Deputy Speaker: Okay; we will start with hon. Peter Shehe.

WELFARE OF DEPENDANTS OF PEOPLE LIVING WITH DISABILITY

Hon. Shehe: Thank you, hon. Deputy Speaker. Pursuant to Standing Order No. 44(2)(c), I wish to seek a Statement from the Chairperson of the Departmental Committee on Labour and Social Welfare regarding the dependants of people living with disability. Most of the persons living with disability have healthy children and others with special needs. These children require basic needs like food, shelter, clothing and health care. It is noted that their parents are low income earners, or have no income and are, therefore, unable to provide for these children.

In the Statement the Chairperson should report on the measures the Government is taking to ensure the dependants get the minimum basic needs and whether the Government can consider expanding the mandate of the national fund for the disabled in Kenya to cater for these dependants.

Hon. Deputy Speaker: Hon. John Kihagi.

APPOINTMENT/GAZETTEMMENT OF *IMARISHA* LAKE NAIVASHA MANAGEMENT BOARD

Hon. Kihagi: Thank you, hon. Deputy Speaker. Pursuant to Standing Order No. 44(2)(c), I wish to seek a Statement from the Chairperson of the Departmental Committee on Environment and Natural Resources regarding the appointment and gazettelement of members of the *Imarisha* Lake Naivasha Management Board.

The *Imarisha* Lake Naivasha Management Board was established by the then Prime Minister on 12th May, 2011 to develop a programme to co-ordinate the activities of various players engaged in the conservation of Lake Naivasha and its catchment, and for

this purpose to review and approve projects. A team of 11 members was gazetted as board members for a period of one year, ending on 5th April, 2012.

In her Statement, the Chairperson should inquire into and report on:-

(a) the status of the Board, including the current and immediate past members;

(b) when the Board Members will be appointed and gazetted in adherence to the Constitution;

(c) which Government department will house the Board now that the office of the Prime Minister is no longer in existence; and

(d) the budget of the Board in the current and previous financial years, including how it is to be funded.

Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker: Thank you, hon. Kihagi. Your Statement is addressed to which Committee?

Hon. Kihagi: Environment and Natural Resources.

Hon. Deputy Speaker: Chairperson, Vice-Chair or any Member of the Committee on Environment and Natural Resources, can we get an indication on when that Statement will be given? Is that Marcus Muluvi? Well there are two of you; let one of you speak.

Hon. Muluvi: Thank you, hon. Deputy Speaker. I promise the Member that we will give him an answer in three weeks' time.

Hon. Deputy Speaker: When you accept the responsibility, it is up to you to make sure you inform all your Committee members, and ensure the Statement is given in time.

Hon. Muluvi: We will do that, hon. Deputy, Speaker.

Hon. Deputy Speaker: The first Statement on dependants of people living with disability; we did not get an indication from the Chair on when it can be given. The Chairperson or Vice-Chair of the Committee on Environment and Natural Resources, please respond. I see hon. Wanyama standing up.

Hon. Sitati: Thank you, hon. Deputy Speaker. Given that the Statement raised touches on some budgetary issues, the Committee will give an answer in three weeks' time, because we have to consult various departments.

Hon. Deputy Speaker: Give the undertaking and make sure you report the same to your Committee. Hon. Francis Njenga, take the Floor.

DELAYED PAYMENT OF DUES TO RETIRED TEACHERS

Hon. Njenga: Thank you, hon. Deputy Speaker. Pursuant to Standing Order No. 44(2)(c), I wish to seek a Statement from the Chairperson of the Departmental Committee on Education, Research and Technology, regarding teachers who retired in 1997 and even earlier.

The retired teachers went to court seeking resolution of their unpaid gratuities and other dues, and the High Court ruled in their favour, awarding them a total of Kshs.16.4 billion. The National Treasury budgeted Kshs.3.34 billion in the Financial Year 2009/2010 and Kshs.2.6 billion in the Financial Year 2010/2011. Unfortunately, not a single cent has been paid to date. Some retirees have passed on while others continue to age.

Hon. Deputy Speaker, in her Statement, the Chairperson should inquire into and report on whether the Government respects the court's order and abides by the provision in its budget to pay the retired teachers. Two, whether the Government will compensate the said retired teachers for the delay in paying them and thirdly; whether the Government can provide to the lawyers or advocates of the said retired teachers a schedule of the proposed settlement.

Further, I would like to take this opportunity, with your permission, to say that early in the month of June, I sought a Statement from the Committee on Finance, Planning and Trade regarding the settlement of Internally Displaced Persons (IDPs) and those who were integrated. I have not received the Statement from the Chairperson of the Committee on how they plan to settle the remaining IDPs because some are being settled. But more importantly, the integrated IDPs continue suffering with their relatives. I would request that the Chair intervenes so that I can be given these two Statements.

Thank you.

Hon. Deputy Speaker: Somebody to respond to your first Statement on the Committee on Education, Research and Technology because the other one had been committed already.

Hon. Ng'ongo: On a point of order, hon. Deputy Speaker. Regarding the first request by hon. Njenga, you will recall that in the 10th Parliament this issue did come up and the Minister then promised payment at a particular time. Therefore, as the Committee looks at this matter, I think it would be important also for it to go back to the records of Parliament and hold the Ministry accountable because these retired teachers are suffering and they are all over the country. They keep on asking us when they will be paid and this is a matter even courts had determined.

That is what I wanted to point out, hon. Deputy Speaker?

Hon. Deputy Speaker: Yes, hon. Ng'ongo, I remember very clearly, having been in the Committee on Education, Research and Technology. Yes, that is really true, what was remaining was for the Ministry to make the payment. So, please refer back to history even as we get a response. Is the Chairperson of the Committee on Education, Research and Technology or the vice here?

Hon. Melly: Thank you, hon. Deputy Speaker. I think the matter as raised by the two hon. Members is weighty and we will take due consideration. We will seek to bring a very comprehensive report here in two weeks' time.

MEASURES TO CURB CATTLE RUSTLING

Hon. Lomunokol: Hon. Deputy Speaker, pursuant to Standing Order 44(2)(c) I wish to request for a Statement from the Chairperson of the Departmental Committee on Administration and National Security regarding the state of insecurity in the country. Incidents of violence related to cattle rustling are still rampant in parts of this country. One person was killed and several others injured during a recent incident.

Hon. Deputy Speaker, in his Statement the Chairperson should inquire into and report on when and how the Government will recover the stolen livestock which is purported to have been taken by non-raiders; failure to which we will act. Let us know if there are any plans in place to recruit and equip Kenya Police Reservists (KPRs) to assist in providing security in the area, given that the Kenya Police personnel are not sufficient in number, are ill-equipped and are unable to access areas with poor road network.

Hon. Deputy Speaker: Thank you. The Chairperson of the Committee on Administration and National Security, hon. Abongotum, can we get an indication when you can address that?

Hon. Abongotum: Hon. Deputy Speaker, I know that issue is really urgent, considering that Kacheliba Constituency borders Uganda and that region is very volatile. I remember leading a team of Members of Parliament from that region together with the hon. Member to go and preach peace.

So, the matter is urgent. I will take two weeks to give the response.

DISBURSEMENT OF SUBSIDIZED YOUTH POLYTECHNIC TUITION

Hon. Alouch: Thank you, hon. Deputy Speaker. In terms of Standing Order No.44(2)(c), I request for a Statement from the Chairperson of the Departmental Committee on Education, Research and Technology concerning disbursement of the subsidized youth polytechnic tuition (SYPT) by the national Government, to youth polytechnics in the country.

In 2006, the Cabinet appreciated the need to empower the youth and create employment by providing them with access to technical education and training at subsidized rates. They subsidized tuition to polytechnics at the rate of Kshs15,000 per student per year; those students who are dully registered at the youth polytechnics. The Government instructed the relevant Ministry to implement the same and consequently in all public youth polytechnics, each registered student was subsidized at that rate of Kshs15,000 per year until the end of 2012. From January, 2013 to date, the Government has not remitted this subsidy to the youth polytechnics, thereby grossly jeopardizing operations of these institutions.

Hon. Deputy Speaker, the Chairperson should inquire into and report on how many public youth polytechnics are registered with the relevant Ministry and how many students are enrolled in these institutions; two, why the Government has failed to disburse SYPT to some or to all these institutions; how the failure to disburse these funds has affected operations of these institutions; and lastly, what urgent steps the Government is taking to resume payment of SYPT to these institutions.

Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Alouch, are you asking the Statement now or you are just finding out when it was going to be responded to. I thought you said that you had asked it earlier. Is this the first time you are requesting for the response? I may have missed your point.

Hon. Alouch: Hon. Deputy Speaker, it is request for a Statement now.

Hon. Deputy Speaker: You are requesting for the first time? Which Committee are you requesting it from?

Hon. Alouch: The Departmental Committee on Education, Research and Technology.

Hon. Deputy Speaker: Who is here from the Departmental Committee on Education, Research and Technology? Who is responding on behalf of the Chair of the Committee, is it hon. Kombe?

Hon. Kombe: Thank you, hon. Deputy Speaker. I will treat the matter with the urgency it deserves and bring a comprehensive report on the issues the Member has raised after two weeks.

Hon. Deputy Speaker: First of all, were you responding on behalf of the Chair, Departmental Committee on Education, Research and Technology or you were supplementing what the Member had asked?

Hon. Kombe: Hon. Deputy Speaker, I was responding on behalf of the Departmental Committee on Education, Research and Technology.

Hon. Deputy Speaker: How long do you need?

Hon. Kombe: Two weeks, hon. Deputy Speaker.

Hon. Deputy Speaker: I give you two weeks, and you must inform the Committee.

Yes, hon. Kiuna.

ISSUANCE OF FIREARMS WITHOUT APPROVAL BY SECURITY COMMITTEES

Hon. J.K. Ng'ang'a: Thank you, hon. Deputy Speaker. Pursuant to Standing Order No.44(2)(c), I wish to request for a Statement from the Chairperson, Departmental Committee on Administration and National Security regarding issuance of firearms. A number of people around the country applied for provision of firearm certificates between November, 2012 and March, 2013 and they were issued without following the stipulated process. All applications must be approved by the security committee of the relevant county or district. The Chairperson should inquire into and report on the number of applications approved by the security committee in each county during that period, November, 2012 and March, 2013; the alleged cases of certificates issued without following due process; and, the measures being taken to ensure that all applications for issuance of firearms follow due process.

Hon. Deputy Speaker: Yes, the Chair, Departmental Committee on Administration and National Security, hon. Kamama.

Hon. Abongotum: Hon. Deputy Speaker, this is an issue that requires thorough investigations or scrutiny. We will not encourage each and every Kenyan to have a firearm, but the Government will give in exceptional situations where a certain person deserves the licence. So, we want to go to the bottom of that issue because the situation as it is now--- I want to confirm that the issuance of firearms has been frozen because of the investigations that have been going on. However, on the issue where some people are playing games, we will confirm and give a response in two weeks' time.

Hon. Deputy Speaker: Thank you, Chair. Yes, although I am aware that, that is not your card. I hope you will get Kshs2,000 so that we can give you a card.

Hon. Gitari: Hon. Deputy Speaker, Sir, what happened is that I was here with my fellow county man and he accidentally carried my card when we exchanged seats. I still have my card. I want to use this card because I have a request for a Statement that I want to make.

Hon. Deputy Speaker: It is okay.

APPOINTMENT OF DIRECTOR-GENERAL OF LANDS BY CABINET SECRETARY

Hon. Gitari: Thank you, hon. Deputy Speaker, for allowing me to use this card. I would like to seek a Statement, pursuant to Standing Order No.44(2)(c), from the Leader of Majority Party on the recent appointment of the Director-General of Lands by the Cabinet Secretary.

The Lands Act and the Lands Registration Act, 2012 do not envisage such a position and yet the Cabinet Secretary single-handedly appointed the holder of the office. I would like the Leader of Majority Party to come and report to this House on the following: One, why the Cabinet Secretary revoked the appointment of Mr. Zablon Mabea who was a presidential appointee and a former Commissioner of Lands; two, why the Cabinet Secretary appointed Mr. Peter Kahuho as the Acting Director-General despite the fact that the National Lands Commission protested the move; three, why the Government seal which is used to seal titles deeds was removed from Ardhi House to Ruaraka Survey Field Headquarters Office; and four, the procedure used in the appointment of such public officers.

The Leader of Majority Party should also tell us why about 17,000 titles which were prepared in the name of the Commissioner of Lands, Zablon Mabea have not yet been signed and what happened to such titles because they have to be replaced. Lastly, will it be prudent for the *Kenya Gazette* appointing the Director-General to be subjected to the Committee on Delegated Legislation for consideration and investigation?

Hon. Deputy Speaker: That is okay. Hon. Mbadi, I can see that you are on a point of order.

Hon. Ng'ongo: Hon. Deputy Speaker, I was just concerned how we will treat this. Remember that I had sought a similar Statement, not on this particular office. Anyway, let me reserve that. I do not know how this can be consolidated so that the Leader of Majority Party can bring one comprehensive Statement because it appears this Ministry has a problem regarding appointments.

Hon. Deputy Speaker: Are we giving that task to the Leader of Majority Party? Your Statement was not directed to him but to the Chair of the Departmental Committee. Can we hear from the Chair of the Committee on the whereabouts of hon. Mbadi's Statement and whether we need to move it to the Leader of Majority Party? Can you handle both requests or in consultation with the Leader of Majority Party?

Hon. Mwiru: Thank you very much, hon. Deputy Speaker. That is a matter we had discussed with the Leader of Majority Party before we got to the House this afternoon. My Committee is capable of handling both matters. This is because what is happening at the moment at the Ministry of Lands is total impunity.

(Applause)

Some of the procedures that are supposed to be followed in appointment of some of these public officers are not being followed. One person has taken the power single-handedly to transfer, sack and do anything to these public officers. Therefore, there are many problems in the Ministry of Lands. In fact, I was going further than even getting the Statement from the Cabinet Secretary who will appear before my Committee. I was going to seek further directions from the Public Service Commission. Mr. Mabea has been mentioned as having been the Commissioner of Lands. The handing over was not even done well, there are files strewn on the corridor at the moment and that particular place is

in a mess. It is necessary that the law and the Constitution of this country that everyone has sworn to defend are followed. As the Chair of this Committee, I am not ready to suffer problems of another person. I am on this issue and I want to deliver both Statements on Wednesday because I want to deal with the Public Service Commission as well.

Hon. Deputy Speaker: What is your point of order, hon. Olago?

Hon. Aluoch: Thank you, hon. Deputy Speaker. You have heard from hon. Gitari that the appointment of the so-called Director-General of Lands has been gazetted. Impunity must be hit at and hit at very hard. If the Cabinet Secretary purports to have done this as per the law and went ahead to gazette that appointment, clearly this is a matter that should be taken up by the Committee on Delegated Legislation right away, so that they can look at the legality of the appointment. In my view, this is clear impunity.

Hon. Deputy Speaker: Leader of Majority Party, as you can see the concern of Members, this is an issue that is no longer just about the Committee on Lands. It has also moved to the Committee on Delegated Legislation. As the Leader of Majority Party, you can give an undertaking to facilitate, first of all, the enjoinder of the Committee on Delegated Legislation. Of course, the Committee on Lands will be the key Committee but, as you have rightfully said, we want a report next week on both matters – the one that was raised by hon. Mbadi and the one that was raised by hon. Gitari. Can we get an undertaking?

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, hon. Gitari, hon. Mbadi and the Chair have raised a matter of great importance. It is about the Constitution. Hon. Gitari has referred to the Lands Act, which the Cabinet Secretary is purported to have overlooked in making the said appointment. I totally agree with hon. Olago Aluoch. Impunity must end. That is why we went for a presidential system of government. If you choose to be a Cabinet Secretary, you stay there and follow the Constitution and the laws of this country. If you happen to be a Member of Parliament, then you do the oversight that hon. Members are doing.

Therefore, hon. Deputy Speaker, I want your direction to the effect that, starting tomorrow, the joint committee shall sit and interrogate the Ministry, so that we can bring a comprehensive report to this House on Wednesday morning. If possible, if the Members of the joint committee feel that the Gazette Notice is unlawful, on the same Wednesday, this House must demand its revocation. We are talking about a Director General of Lands. That office is not provided for in any statute. It is not in the Lands Commission Act. It is not in the Constitution. We are not in Somalia; there are laws in this country.

The Speaker gave a ruling yesterday. As the Leader of Majority Party, I do not want to stand here and protect Cabinet Secretaries who want to live in the past. I want to stand here and protect Cabinet Secretaries who respect the rule of law and the Constitution. So, on Wednesday morning, the joint committee will bring a report on the matter.

Hon. Deputy Speaker: So, it shall be. Hon. Chepkong'a, what is your point of order? Is it on the same matter?

Hon. Chepkong'a: Hon. Deputy Speaker, I have a very serious point of order. I sought a Statement on Tuesday. I have just been sitting close to the Leader of Majority Party, and he does not appear to be looking at me favourably. He gave an undertaking

then, with respect to another Ministry that is operating with a lot of impunity; namely, the Ministry of Defence. The Statement is about the ongoing recruitment of members of the Kenya Defence Forces. He undertook to give the Statement today at 2.30 p.m. but he does not appear, from his demeanour, that he wants to do so.

Hon. Deputy Speaker: Oh, yes! I remember very clearly that, that was a matter that was of interest to the House. Leader of Majority Party, can we know from you whether you are just waiting for your turn to give the Statement?

Hon. A.B. Duale: Hon. Deputy Speaker, my demeanour is very clear but I want to seek your indulgence. The Committees on Administration and National Security and Defence and Foreign Relations have been meeting with the top security organs of this country, including the Cabinet Secretary for Defence and other officials from the Ministry of Interior and Coordination of National Government since morning, from 8.00 a.m. until 2.00 p.m. Since I have to consult and get their signatures on this Report, I want to ask my good friend, hon. Chepkong'a, who is the able Chairman of the Departmental Committee on Justice and Legal Affairs, to give me more time because the entire Defence team was in Parliament until 2.00 p.m. So, they could not go through the Statement request.

Hon. Deputy Speaker, with your indulgence, I will issue it on Tuesday afternoon. I urge my good friend, hon. Chepkong'a, to bear with me.

Hon. Deputy Speaker: Hon. Chepkong'a, under the circumstances and understanding what matters have taken place today, you can allow the Leader of Majority Party to bring the Statement on Tuesday.

Hon. Chepkong'a: Thank you, hon. Deputy Speaker. Given the seriousness with which he is seeking to prosecute this matter, I will allow him but he must know that there is impunity that is going on in the Ministry of Defence. People must be stopped from committing atrocities against our laws.

Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker: Okay, I can see that all the Chairpersons are very clear about their mandates.

What is your point of order, hon. Ronald Tonui?

Hon. Tonui: Hon. Deputy Speaker, my point of order is on two issues. A month ago, I raised a Question on tea bonuses and the Committee promised---

Hon. Deputy Speaker: Hon. Tonui, we do not have Questions anymore. You seek a Statement.

(Hon. Chumel stood between hon. Tonui and the Chair)

Hon. Moroto, you know the Standing Orders. You cannot stand between the Speaker and a Member who is speaking. Please, let us follow the rules.

Proceed, hon. Tonui.

DECREASE IN TEA BONUS

Hon. Tonui: Hon. Deputy Speaker, I was saying that a month ago, I sought a Statement from the Committee on Agriculture regarding the fall of prices of tea. This is a very critical matter. The Committee had promised to table a Report within a week but to-

date, they have not done so. Farmers are very worried about the fall of tea prices. So, I would like that matter sorted out.

Hon. Deputy Speaker, I also have a Statement request which has been approved by you. I do not know whether I can get a response first on the one I have just raised and then request for the next Statement.

Hon. Deputy Speaker: Request for the Statement first and then we can ask the Committee on Agriculture to respond.

COMPENSATION FOR TEACHERS ENGAGED BY KNEC

Hon. Tonui: Hon. Deputy Speaker, pursuant to Standing Order 44(2) (c), I would like to request for a Statement from the Chairperson of the Committee on Education, Research and Technology regarding compensation for teachers engaged by the Kenya National Examinations Council (KNEC) as examiners and invigilators for national examinations.

The Kenya Union of Post-Primary Education Teachers (KUPPET) has written severally to KNEC regarding discrimination and underpayment of teachers engaged in the national examination process. For instance, principals and head teachers are not compensated for overseeing the examination process. Neither are the teachers of applied subjects and science subjects who participate in the examination process through marking projects for months and making preparations for practical exams, respectively.

Hon. Deputy Speaker, the Chairperson of the Committee should inquire into and report on the following:-

(i) plans to compensate all those involved in the examination process in various capacities as teachers of applied subjects, principals and head teachers and offer appropriate accommodation for examiners, instead of requiring them to use student dormitories, given that it is un-African for a man to sleep on his daughter's bed;

(ii) measures put in place to ensure prompt payment of examiners and invigilators immediately examinations are completed and marked, respectively;

(iii) what plans are in place to review the pay per script allowance for examiners annually and the meagre Kshs100 paid to examiners as out of pocket allowance to conform with the rising costs of living; and,

(iv) give reasons for the stoppage of reimbursement of travel expenses to teachers attending training of examiners and marking

Hon. Deputy Speaker: Chairperson of the Departmental Committee on Education, Research and Technology, when can that be availed?

Hon. (Ms.) S.W. Chege: Thank you, hon. Deputy Speaker. I would like to be given one week because I know the matter is urgent. I know that matters of examination in this country are very important. In one week's time we will have the answer.

Hon. Deputy Speaker: One week it shall be. What about the earlier Statement that was sought about tea bonuses? Is the Chairman of the Departmental Committee on Agriculture, Livestock and Co-operatives present? Is any Member of that Committee present? Leader of Majority Party, we come back to you.

Hon. A.B. Duale: Hon. Deputy Speaker, now that I have the benefit to speak on behalf of the Chairman that Statement will be delivered in seven days' time and I will communicate to the Chairman.

Hon. Deputy Speaker: Okay, seven days it shall be. We are now through with requests for Statements. We will now get Statements. I am sorry, hon. Njuki and hon. Moroto have not requested for Statements.

DELAYED TARMACKING OF ROADS IN THARAKA NITHI COUNTY

Hon. Njuki: Hon. Deputy Speaker, pursuant to Standing Order No.44(2) (c) I wish to seek a Statement from the Chairperson of the Departmental Committee on Transport, Public Works and Housing regarding delayed tarmacking of roads by the Kenya Urban Roads Authority (KURA) and the Kenya Rural Roads Authority (KERRA). This problem has been specifically and especially felt in Chuka Town in Tharaka Nithi County which is a town that has been in existence for the last 100 years, but has not benefited from this upgrading of roads. This is in spite of the town being in the neighbourhood of other towns of the same age, namely Meru, Embu, Nkubu and Ishiara which are fully tarmacked.

The roads authorities have engaged contractors to design the roads and do the tarmacking most recently in June, 2013, but funds have not been released to allow the contractors to carry out the work. At the moment, Intex Limited is the company that has been awarded the tender although the funds have not been released.

In his Statement the Chairperson should inquire and report on the cause of the delay in the release of funds and commencement of works; the reason for the Government to spend money on road designs and budgeting and not implement the activity; and the time period within which these roads can be completed especially because we are approaching the rains.

Hon. Deputy Speaker because this matter is very urgent and the rains are about – Chuka Town becomes a cowshed when it rains – we will appreciate if we got the answer in the shortest time possible.

Hon. (Ms.) Mbarire: Hon. Deputy Speaker, I am a Member of that Committee. I do not know whether I can take up the matter.

Hon. Deputy Speaker: Yes, you can speak on behalf of the Committee now that the Chairperson and the Vice-Chairperson are not present.

Hon. (Ms.) Mbarire: In view of the important issue the hon. Member has raised and knowing that our table is full with many other requests for Statements, I wish to request that we are given three weeks to bring a Statement on the matter.

Hon. Deputy Speaker: Okay, three weeks. You know there are so many issues concerning roads. Everybody is always requesting Statements about roads. Please, let us not belabor the point because she is also speaking on behalf of the Chairperson; it is not about her. She has to take this matter to the Committee and then take it to the relevant Ministry. Please, hon. Njuki, let us leave the matter there.

Hon. Njuki: Hon. Deputy Speaker, I have indicated that there is a tendency for this thing to recur. This is because tenders are awarded, money allocated and after a few days, the money disappears. We know that Intex Company Ltd has been awarded the tender and yet at the moment there is no money allocated for this particular road. We want to know what will happen to this case. I think three weeks is a long time.

Hon. Deputy Speaker: Your point has been made. Thank you.

DISQUALIFICATION OF KAPENGURIA BOYS HIGH SCHOOL STUDENTS FROM
PARTICIPATING IN BALL GAMES

Hon. Chumel: Hon. Deputy Speaker, pursuant to Standing Order No.44(2)(c) I wish to request for a Statement from the Chairperson of the Departmental Committee on Education, Research and Technology regarding disqualification of Messrs. Nyakundi, Henry Otieno and Koskei from Kapenguria Boys High School from participation in the secondary school ball games.

The three were disqualified on the ground that they were not *bona fide* students of the said school. It was alleged that Koskei was a herds boy and the entire team was disqualified from the ball games.

In the Statement, the Chairperson should inquire into and report on whether or not the three are *bona fide* students of the school and the action that will be taken against the officials or teachers who were involved in disqualifying these young men.

Hon. (Ms.) S.W. Chege: Hon. Deputy Speaker, I ask for two weeks so that we get all the information.

Hon. Deputy Speaker: Okay. Two weeks it shall be.

STATUS OF SAN MARCO SPACE APPLICATION CENTRE

Hon. (Dr.) Ottichilo: Hon. Deputy Speaker, two weeks ago I sought a Statement on the current management and operational status of San Marco Space Application Center in Ngomeni, Malindi. The Leader of Majority Party agreed to bring the Statement today.

Hon. Deputy Speaker: Yes, I was here and so I remember that clearly.

Hon. A.B. Duale: Hon. Deputy Speaker, it is true that I was to bring that Statement today. The Statement was to come from the Ministry of Defence. Since I have been here since morning I want the hon. Member to indulge me. The Statement is ready and it was just for the Minister to sign. I will bring it on Tuesday together with that of hon. Chepkong'a.

Hon. Deputy Speaker: Hon. Dr. Ottichilo, I think you can bear with the situation.

Hon. (Dr.) Ottichilo: Hon. Deputy Speaker, I will be patient.

STATEMENTS

Hon. Deputy Speaker: We will now have a response from hon. Alex Mwiru.

Hon. Mwiru: Hon. Deputy Speaker, I have two Statements to deliver today. Unfortunately, I have got information that the Member for Kisauni, hon. Rashid Juma is indisposed and so he is not present. Therefore, I was seeking directions whether I could deliver this Statement on Thursday, next week.

Hon. Deputy Speaker: You can reserve that until Tuesday if the hon. Member will be there.

Hon. Mwiru: Hon. Deputy Speaker, there was an earlier ruling that delivery of Statements be done on Wednesdays and Thursdays and that is why I was seeking your indulgence that I deliver it on Thursday next week.

Hon. Deputy Speaker: That can be organized administratively.

GAZETTEMET OF COMMUNITY LAND AS NATIONAL RESERVE IN LAIKIPIA

Hon. Mwiru: Thank you, hon. Deputy Speaker. The other thing is that last week you gave direction that I shelve the delivery of a Statement that was sought by the hon. Member for Laikipia North, hon. Mathew Lempurkel. I am ready with the Statement today. This is a matter that was raised through a request for a Statement by hon. Lempurkel on eminent eviction of some people in a village called Lekiji in Laikipia North, Laikipia County. The Committee undertook the inspection tour of Lekiji on Wednesday, 31st July and Thursday, 1st August, 2013, and held a total of three sittings in Laikipia to consider the matter. It held meetings with the Laikipia County Commissioner, the Deputy Governor, the County Lands officials---

(Loud consultations)

Hon. Deputy Speaker: Order, Members. Your consultations are too high. We cannot hear the response.

Hon. Mwiru: Hon. Deputy Speaker, we also met the county leaders and the local security leaders and thereafter toured the Lekiji area. The Committee also invited the owner of the farm, Mr. Nigel Trent, who appeared before the Committee and gave a chronology of the efforts made towards evicting the community from its land, L.R.No.2747. Mr. Trent informed the Committee that he and his brother, Christopher Francis Trent, bought the parcel of land on 19th October, 1995 from Machamuka Farmers Company Limited and that prior to that, the later had obtained a judgment in Nyahururu, Senior Resident Magistrate Case No.371 of 1994 against individuals who had trespassed on his land.

The respondents thereafter moved to court for a stay of eviction and the application was dismissed in court on 23rd September, 1999. The community continued filing counter claims in court to no avail and on 10th July, 2012, the court directed them to vacate the land within 90 days, failure to which they would be evicted. The Member for Laikipia North also appeared before the Committee and gave evidence on the Lekiji Settlement and their dire need for resettlement. The Committee also invited the Cabinet Secretary for Land, Housing and Urban Development, who appeared before the Committee twice to answer to requests and address the Members' concerns over the issue.

I wish to report to the House as follows: The request by the Member for Laikipia North, Mathew Lempurkel and his explanation to the Committee was upheld after the visit by the Committee. The Committee toured the farm in which the community lives. The Members toured Lekiji Primary School, which was largely built of mud and thatch. One structure, however, was built of stone where the residential area comprises of mud and thatch huts, where the villagers lived. The school was built through community efforts, church and Government funding through the CDF while the Impala Ranch in the neighbourhood also contributed towards the buildings in the schools. The school has a population of 361 pupils and seven teachers, six of whom are posted by the Teachers Service Commission. A chief's camp also exists within the farm. The residents claim to have lived in the ranch for over 50 years and appeared destitute.

The advice that we were given by the Cabinet Secretary is that on the particular area where the people have lived for over 50 years without disturbance, indeed, the claimant, who is the owner has never been able to do any development on that particular farm. The Committee felt that it was only necessary that the residents of Lekiji be settled by the Government and compensation be done to the owner of the farm because he is not on the ground. Indeed, this is not a problem of Lekiji alone. It is a problem for the whole country and it is only necessary that even the poor and the vulnerable are also taken care of. Therefore, it was the view of the Committee that these people be settled on the Lekiji area; that particular L.R.No.2427.

Hon. Lempurkel: Hon. Deputy Speaker, as a Member of the Lands Committee, this community has been living there for the last 50 years. There are about 400 families against one. So, it was our recommendation as a Committee that this community be settled on that area and Mr. Trent be compensated by the Government.

Hon. Deputy Speaker: Hon. Lempurkel, I hope you are now talking not as a Member of the Committee, but as the originator of this Statement. So, do you have supplementary issues that you need to raise or you have addressed them all in the Committee? If you have addressed them all in the Committee, you can give another Member a chance. Are you asking for a supplementary clarification on the Statement?

Hon. Lempurkel: Hon. Deputy Speaker, I would like the Chairman to address the compensation of one person who was killed in that area.

Hon. Lati: Hon. Deputy Speaker, Laikipia is one very unique county in our country. I want to thank hon. Lempurkel for bringing up this issue. I also want to thank the Committee for the steps it took because it is very important and it sets precedent for what Laikipia should be. Laikipia is one county where Africans occupy a very small place and the rest of it is occupied by white ranchers, who are very few. If anybody has the history of Laikipia in mind, this was done in a very bad way. When both Africans and whites went to the Second World War under the British flag, only the whites were compensated and were given an entire county to occupy.

If we go by what the community has come up with, it is a very important precedent. I want to ask the Committee whether there is a way in which it can extend the same thing that was done in Lekiji to many other parts of Laikipia. Many residents of Laikipia, who are black, have been there for centuries, but every year a white person from some part of the world comes up and says that they have bought this land. There is a trend that has been set in Laikipia that is very weird. Everybody who buys land on the ranches is always white. Is there anything discriminatory in our country such that when you sell land, you sell to somebody who is white like you? Why not to a Samburu?

Hon. Deputy Speaker: Is there any other clarification on the same matter, namely, the Statement read by hon. Mwiru? Hon. Halima Duri, is yours on the issue that has just been read?

Hon. (Ms.) Duri: Hon. Deputy Speaker, I would like to know from the Chairman why uniformed Kenya Defence Forces (KDF) officers shot a young man who was looking after his livestock.

Hon. Deputy Speaker: Hon. Halima, I think we have not communicated. I am asking if there is any further clarifications on the Statement read by the Chair of the Committee on Lands. If yours is on a different matter, then you will have to wait for us to finish. I had actually finished requests. I had already said no more requests for today until

Tuesday. We are on responses from the Chair of Committees. Hon. Diriye, is yours a further clarification? He is not here. Hon. Mwiru, just respond to those two.

Hon. Mwiru: Hon. Deputy Speaker, I will begin with the clarification that was sought by hon. Lempurkel on the matter of compensation.

Well, the matter of compensation shall be between the Government and the owner of the land. Therefore, I cannot say I will allow him to be compensated because that is a matter between the owner and the Ministry that is supposed to resettle those people. However, where the Committee will be recalled to guide and maybe give some advice, we shall deal with that as a Committee.

I thank hon. Lelit because what he has done is first of all to congratulate the Committee and I thank him so much for that. That means we are doing some good work. Of course, a precedent has been set because what is supposed to happen in Lekiji may also cascade to other areas of the country. Therefore, it is likely to be a guide towards other areas that have got the same problems. Indeed, we know very soon I am going to bring a Bill on evictions to this House for debate. We also want to put it to public scrutiny so that if we can see where such conflicts are between the owners and the people settled on the farms, it would be better. Evictions should be done in a structured way so that there are no bloody issues like we saw in Ngati Farm in Naivasha.

Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Gethenji, the Chair of the Departmental Committee on Defence and Foreign Relations, what do you have to say?

Hon. Gethenji: Thank you, hon. Deputy Speaker. I actually have three Statements. I had read one about three weeks ago and the hon. Member who requested it was not in the House. I believe for two of the Statements, the hon. Members who requested them are still not in the House. I beg to table the two Statements and respond to one.

Hon. Deputy Speaker: The hon. Member who requested is in the House.

Hon. Gethenji: I am not even sure if he is in the House. This is the Statement asked by Mr. Abdi Ali Aden regarding Kampala International University. I had read this Statement previously.

Hon. Deputy Speaker: So, is the Member who requested it in the House? Who was it, from your notes?

Hon. Gethenji: I do not have the name on my notes, hon. Deputy Speaker.

Hon. Deputy Speaker: Please, hon. Ndungu, you cannot stand to respond to a request that you do not even know who asked it.

Hon. Gethenji: It is hon. Wandayi, hon. Deputy Speaker.

Hon. Deputy Speaker: Okay. So, we really cannot have you reading something that we do not know who you are addressing it to. So, can we shelve the three and you can do it on Tuesday once you have got the name of the person?

Hon. Gethenji: Hon. Deputy Speaker, it is from hon. Wandayi but I can table the Statements.

Hon. Deputy Speaker: You do not have to table. Bring them back on Tuesday and if they are still not in the House, then you can table them.

Hon. Gethenji: Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker: Okay. Hon. Gaichuhie, where are you? That is from which committee?

Hon. Gaichuhie: The Departmental Committee on Finance, Planning and Trade.
Hon. Deputy Speaker: You have started sharing responsibilities in committees.

DELAYED INTRODUCTION OF SCRAP METAL BILL

Hon. Gaichuhie: Hon. Deputy Speaker, on 1st October 2013, hon. John Mbadi, Member for Suba Constituency requested for a Statement from the Chair of the Departmental Committee on Finance, Planning and Trade on the reasons for the delay of the enactment of the Scrap Metal Bill.

The Scrap Metal Bill, 2012 was first presented to Cabinet for approval in January 2013 but it was amongst the Bills that the Cabinet was unable to consider due to time constraints. The Bill was then returned to the Ministry in May 2013 to be aligned and reviewed in accordance with the Executive Order No.2 of 2013 which reduced Government ministries from 42 to 18. In view of the combined functions among the departments of industrialisation enterprise and corporate development, the new Cabinet Secretary and Principal Secretary had to guide on the way forward.

In the month of June 2013, an interdepartmental committee was put in place to review the Bill and advise accordingly. The committee proposed the need to identify additional stakeholders and engage them on specific areas of the Bill. The committee held various meetings which culminated into a stakeholders workshop held in the month of August 2013. The stakeholders included the Kenya Association of Manufactures (KAM) and the association of scrap metal sector. This class of stakeholders was important as they had to agree on the fees payable and registration of scrap metal dealers and penalties chargeable to unlicensed dealers of scrap metal.

Other issues that were addressed include the composition of the Scrap Metal Council among others. In September 2013, the Ministry held a validation workshop and on 17th September the Bill was forwarded to the Attorney-General for drafting. After completion of the above process, the Bill was then submitted to the State Law Office with fresh drafting instructions on 17th September 2013 where we have been informed that the final draft will be submitted back to the Cabinet before the end of October this year. The delay in introduction of the Bill to Parliament therefore has been occasioned by the fact that the Ministry had to review the Bill in house and subject it to stakeholders before forwarding it to the Office of the Attorney-General for forwarding to the Cabinet.

He also requested when the Bill will be introduced for debate. So, once the Scrap Metal Bill, 2013 has been introduced from the State Law Office, it shall then be tabled before the Cabinet for approval and then submitted to the Chairman of the Departmental Committee on Finance, Planning and Trade to table the same on the Floor of the House for debate and consideration.

Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Mbadi.

Hon. Ng'ongo: Thank you, hon. Deputy Speaker. I would like to thank my friend, hon. Gaichuhie and the Committee for the Statement and for taking time to really investigate and dig into the stages that this Bill has gone through. My only concern is, if you listened to hon. Gaichuhie on behalf of the Committee, he mentioned that this Bill actually was ready at one point and it is like the process started again. It is a little bit worrying that this Bill was ready without the stakeholders' involvement, from what he

has said. That is what I deduce but I was very specific because the issue of scrap metal is doing a lot of damage to the economy of this country in terms of destruction of our road signs *et cetera*.

However, hon. Gaichuhie has not clearly spelt out when this Bill will come to the House. Actually, I wanted an indication of timelines because telling me that it will be taken to the Cabinet and then come to the Committee is actually too general because I am not sure how long from now we need to wait for this Bill to be introduced in the House. That is what I specifically expect the Committee through hon. Gaichuhie to address.

Hon. Deputy Speaker: Okay. Hon. Gaichuhie, do you think you have any ability to give timeframes if the Cabinet and other processes are also involved? You can give an indication.

Hon. Gaichuhie: Hon. Deputy Speaker, I think the Bill will be submitted to the Cabinet Secretary before the end of this month. Now, on the process from the Cabinet Secretary to the drafting by the Attorney-General, I will not specifically say how long that will take but the Committee will follow up on the matter once we are sure that the Cabinet has given out the Bill to the Attorney-General so that they do the same within maybe a matter of two weeks. So, I want to say by 15th November, we will not have an answer but an indication as to when the Bill may be on the Floor of the House.

Hon. Deputy Speaker: Okay. So, allow the Committee to do what they can within their power but since this is a Bill coming from the Executive, we cannot be in control of the timelines. Let us have hon. Sabina Chege first and then the Leader of Majority Party.

Hon. (Ms.) S.W. Chege: Thank you, hon. Deputy Speaker. I have two responses. One was requested by hon. Kamande Mwangi and I can see he is in the House. The next one is from hon. David Kangogo Bowen, Member of Parliament for Marakwet East. I am not sure whether he is here.

Hon. Deputy Speaker: If David is not here, you will reserve that one for Tuesday but read the one whose owner is present.

ILLEGAL MANAGEMENT OF SCHOOLS BY BOGS

Hon. (Ms.) S.W.Chege: Thank you, hon. Deputy Speaker. The hon. Kamande Mwangi, Member of Parliament for Maragwa Constituency, requested a Statement from the Chairperson of the Departmental Committee on Education, Research and Technology with regard to illegal management of schools by Boards of Governors (BoGs) whose terms of office have expired.

Hon. Deputy Speaker, the Basic Education Act, 2013, came into effect on 25th January, 2013, thereby repealing the Education Act, Cap. 211, revised in 1980. Section 55 of the Basic Education Act, No.14 of 2013, establishes the board of management for basic education institutions and confers the powers to appoint the board of management members for the basic education institutions to the County Education Board, under Section 56 of the Act.

Hon. Deputy Speaker, previously under the repeal of the Education Act, Cap.211, the Minister in charge of Education was mandated to nominate the board of governors. It is critical to note that the establishment of the County Education Boards was to be preceded by the establishment of the National Education Board.

Section 5 of the Basic Education Board Act, 2013, establishes the National Education Board with the mandate to oversee the establishment of the County Education Board which will act as its agent as per Section 17 (1) and (2). Basically, it is the responsibility of the County Education Board to appoint the boards of management for the basic education institutions in the country.

In the meantime, before the coming to force of the County Education Board, Section 101(2) of the Basic Education Act, 2013, provides for transition period while regulations in force prior to the repeal of the Education Cap.211 remain in force until new regulations are gazetted to guide on the nomination process or are revoked by rules and regulations made under this Act.

Consequently, the affected schools and colleges were directed through a circular to continue using the executive committees of the expired boards or interim management committee for the case of the newly established schools to transact business while awaiting the establishment and inauguration of County Education Boards that will be responsible for appointment of the members of board of management.

Hon. Deputy Speaker, I wish to say that, once the County Education Boards are put in place, those institutions whose boards of management have expired will be required to channel their requests for formal appointment. It is for these reasons that the concerns were communicated to the management of basic education institutions through a circular attached here, by the then Permanent Secretary through the respective County Directors of Education, with copies to District Officers and County Governors on how boards of governors in respective institutions have to operate.

In conclusion, the Cabinet Secretary vide a circular attached here also directed all counties to initiate the process of establishing County Education Boards. Therefore, I wish to clarify those counties that have completed establishing their County Education Boards can go ahead and facilitate the appointment of boards of management for schools whose term has expired, in accordance with Section 56(1) which clarifies that the appointing authority is the County Education Board.

Thank you.

Hon. Mwangi: Thank you, hon. Deputy Speaker. I take this chance to thank the Chair of the Departmental Committee on Education, Research and Technology for having answered my request favourably.

I want to state that these counties are taking too long to initiate programmes, not bearing in mind that they are very key to spearheading this country on matters of education. They should fast-track the process so that we do not take a lot of time asking so many questions.

Thank you.

Hon. Deputy Speaker: Hon. Chair for the Departmental Committee on Education, Research and Technology?

Hon. (Ms.) S.W. Chege: Thank you, hon. Deputy Speaker. That point is noted. I will communicate the same to the Cabinet Secretary so that the process can be fast-tracked.

Thank you, hon. Deputy Speaker.

BUSINESS FOR THE WEEK COMMENCING 22ND TO 24TH OCTOBER 2013

Hon. A.B. Duale: Thank you, hon. Deputy Speaker. Pursuant to Standing Order 44(1) and (2), on behalf of the House Business Committee (HBC), I rise to give the statement regarding the business appearing before the House the week beginning Tuesday, 22nd October, 2013.

The HBC met on Tuesday this week at the rise of the House to give priority to the business of the House next week. Next week on Tuesday, the House will consider the Second Reading of the Insurance (Motor Vehicles Third Party Risks) (Amendment) Bill, 2013. Further, in the event consideration of the Second Reading of the Matrimonial Property Bill, 2013 and Election Campaign Financing Bill, 2013, are not concluded today, then it follows that these Bills will also be put on the Order Paper for Tuesday next week.

The House will also consider a party sponsored Motion seeking a resolution of the House regarding the official travels by State and public officers. As hon. Members are aware, pursuant to Standing Order 47(5)(a), a party sponsored Motion takes precedence in the House.

Hon. Deputy Speaker, allow me to reiterate your guidance to the House on Wednesday, 16th October 2013, during the morning sitting. That response to Statements will now be issued on Wednesday morning and Thursday afternoon sittings, while Statements will be requested on Tuesday and Wednesday afternoon.

As a House, we will continue to explore new ideas that will possibly improve service delivery. The Order will now have additional information showing the Statements to be requested and those to be responded to. This information will be contained in a notice paper which will be appended to the Order Paper effective next week. The HBC believes that this new development will enable hon. Members to prepare adequately for Statements.

At this juncture, I wish also to encourage Chairpersons of Committees that where they have difficulties with various Ministries and Departments in having their Statements effectively processed, my office is open to offer any facilitation towards having their concerns addressed.

Hon. Deputy Speaker, I wish to urge Committees through the Chair to adhere to the requirements of Standing Order 127 (4) and (5) that once 20 days have expired after the First Reading of a Bill, the Second Reading of that Bill may commence notwithstanding the laying on the Table of the report of the Committee. This will ensure that Bills are not deferred on the Floor as a result of Committee Chairs not being prepared to move them. However, we encourage Committees to lay Bills on the Table within the time stipulated in Standing Orders.

Further, I wish to remind hon. Members that the Clerk's Office prepares trackers for Bills, Motions, Statements and Petitions. This is aimed at enabling hon. Members track the status of each item aforementioned. The trackers are also available on the Parliamentary Website.

Finally, the HBC will meet on Tuesday, 22nd October, 2013, at the rise of the House to consider business for the rest of the week.

I now wish to lay the Statement on the Table of the House.

Thank you.

(Hon. A.B. Duale laid the document on the Table)

Hon. Deputy Speaker: Thank you, Majority Leader. You can see we have new innovations. We are always trying to make it easier for Members to work. We have heard the complaints made on Statements and Bills that have not been processed. However, you should bear with us; it has always not been smooth but we will keep improving as we move on.

Hon. Chepkong'a, do you want to take us back?

Hon. Chepkong'a: Thank you, hon. Deputy Speaker. I am sorry. It appears like I was sleeping a little bit on the job but I apologise. I have a report of the Departmental Committee on Justice and Legal Affairs on the Matrimonial Property Bill that is on today's Order Paper. On behalf of the Departmental Committee on Justice and Legal Affairs, and pursuant to the provisions of Standing Order No.199, it is my pleasure and duty to table the Report of the Committee.

Thank you, hon. Deputy Speaker.

(Hon. Chepkong'a laid the Report on the Table)

Hon. Deputy Speaker: Hon. Chepkong'a, I want to make it clear not just to you but to all Members. Members have complained severally about not having time to read reports before discussing them in the House. Hon. Members, you have seen us consult on several occasions. However, in the interest of us not wasting taxpayers' money, I want to rule that this will be the last one. Hon. Members, let this be the very last one. We do not want committees to come and ambush the House and say that they want to table a report and debate it right away.

As I have told you hon. Members, without this report, the next Order will not proceed and we will not have business to transact. I believe that it is a short report. You can acquaint yourselves with the contents of that Report as he moves the Bill. I will allow this, but let it be the very last one.

DELAYED PAYMENT OF SALARIES TO SHER KARUTURI FARM EMPLOYEES

Hon. Kihagi: Hon. Deputy Speaker, I can see that we are exiting the Statement Order. On 3rd of this month, I requested a Statement from the Departmental Committee on Labour and Social Welfare regarding the plight of the workers in Karuturi Farm in Naivasha. I have been following this with the Committee and there is no indication that it is pursuing the matter, neither have I been able to have a sitting with hon. Were, who is the Chairman of that Committee.

I wanted to have an undertaking since last week. Karuturi Farm was turned into a battle ground with more than 3,000 workers who are mainly victims of the previous post election violence experienced in Naivasha, and are now housed within the Farm. Their life is endangered. I seek a commitment and direction as to whether the Committee is handling this matter.

Hon. Deputy Speaker: This is a matter that has been raised severally. The Chairman, the Vice-Chair or a Member of the Departmental Committee on Labour and Social Welfare, this Member has been asking about this Statement severally. I want to task the Majority Leader because this Statement has been asked for too many times--- It

is a serious matter as you have heard. It has caused a lot of suffering to the people of that area. Can you undertake to work with that Committee to ensure that the Statement is given?

Hon. A.B. Duale: Hon. Deputy Speaker, these are some of the prices you pay because of some positions in leadership. I will make sure that this Statement is delivered on Wednesday. I will do a write-up to the Speaker and the Clerk. I do not know where hon. Were, or any of his Members are. The Member for Homa Bay County is a serious Member of the Departmental Committee on Labour and Social Welfare. Maybe you can give her a chance, so that she can tell us what has happened to that Statement before I undertake anything in writing.

Hon. Deputy Speaker: The Member for Homa Bay County, are you a Member of the Departmental Committee on Labour and Social Welfare? Yes, hon. Gladys Wanga.

Hon. (Ms.) Nyasuna: Thank you, hon. Deputy Speaker. I am a serious Member of the Departmental Committee on Labour and Social Welfare. As the Majority Leader has said, I undertake to bring this report on Wednesday, next week. We will move with speed.

Hon. Deputy Speaker: Hon. Opiyo, is yours on the same matter? Are you a Member of that Committee?

Hon. Opiyo: Hon. Deputy Speaker, I am not a Member of that Committee. However, earlier in July, I also petitioned that Committee on behalf of dismissed workers of SONY Sugar Company. Up to this time, I have tried to follow the same with that Committee in vain. Probably, when you make a ruling, or when you indulge the Majority Leader, he could also follow up on the same.

Hon. Deputy Speaker: That is okay. I believe that the Majority Leader has heard that. The Departmental Committee on Labour and Social Welfare, you need to do something about Members' complaints about their Statements not being brought to the House.

Hon. Members, before we move to the next Order, I am sure that you are all interested in Order No.9, but we have to dispense with Order No.8. So, if you want us to debate Order No.9, let us have Members in the House when we dispense with the Committee of the whole House.

Let us move on to the next Order.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Hon. Deputy Speaker left the Chair]

IN THE COMMITTEE

*[The Temporary Deputy Chairlady
(Hon. (Ms.) Shebesh) took the Chair]*

THE INSURANCE (AMENDMENT) BILL

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, we are now in the Committee of the whole House to discuss the Insurance (Amendment) Bill, National Assembly Bill No.5 of 2013. I am trying to look for the Chair of the Departmental Committee on Finance, Planning and Trade.

(Loud consultations)

Hon. Members who are leaving the Chamber, please do so quietly. Members are also reminded that after the Committee of the whole House, there will be the Second Reading of the Matrimonial Property Bill, National Assembly Bill No.12 of 2013.

(Clauses 3, 4, 5, 6, 7 and 8 agreed to)

Hon. Members, those who are not interested in the Committee of the whole House, please allow those who are interested, especially the Members of the Departmental Committee on Finance, Planning and Trade to do their work.

(Hon. Simba consulted with some Members)

Hon. Simba Arati, call your colleagues outside, so that you can consult there.

Clause 9

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): There are two proposed amendments to Clause 9. One is by the Chair of the Departmental Committee on Finance, Planning and Trade, hon. Langat and another one is by hon. Kimani Ichung'wah. The amendments are both deletions. Let us start with the Chair of this Departmental Committee.

Hon. Langat: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 9 of the Bill be deleted.

Hon. Temporary Deputy Chairlady, the Bill makes provisions which may be abused. This Clause provides that if you want to own an insurance company, or if you want to manage or control one, the Authority should look at your financial and moral suitability. It is very difficult to know how moral suitability can be measured. We do not have an instrument for measuring the moral suitability of individuals. So, as a Committee, we agreed that while the drafters of the Bill have given some suggestions, we delete it for the time being. We feel that this provision may be abused. We can look at this aspect in the next set of amendments. So, as a Committee, we propose that it should be deleted, subject to further consultations in the future.

Thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): That is clear. I hope that hon. Kimani Ichung'wah is aware that if we pass hon. Langat's amendment, we will be asking him to drop his amendment on this Clause.

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Clause 9 deleted)

Let me make it clear that Clause 9 is deleted, and that hon. Kimani Ichung'wa has dropped his amendment.

(Proposed amendment by hon. Ichung'wah dropped)

Clause 10

Hon. Langat: Hon. Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 10 of the Bill be deleted.

Hon. Temporary Deputy Chairlady, this amendment has been agreed upon at the Committee level.

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Clause 10 deleted)

(Clauses 11, 12, 13, 14 and 15 agreed to)

Clause 16

Hon. Langat: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 16 be deleted and replaced with the following new

clause—

Amendment
to section
197A of
Cap. 487

16. Section 197A of the Insurance Act is amended—

(a) in subsection (2) by deleting paragraph (b);

(b) by deleting the word “Kenya” wherever it appears and substituting therefor the words “a reciprocating East African Community Partner State”.

Hon. Temporary Deputy Chairlady, this is an addition of paragraph (b) to the existing section, which seeks to open up this sector to the East African Community instead of saying “Kenya” because we are going the East African Community way.

(Question of the amendment proposed)

(Question, that the words to be left out be left out)

put and agreed to)

*(Question, that the words to be inserted in
place thereof be inserted, put and agreed to)*

(Clause 16 as amended agreed to)

Clause 17

Hon. Langat: Hon. Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 17 be deleted.

Hon. Temporary Deputy Chairlady, if we were to carry the amendment that is in the Bill, it would put the insurance sector in serious chaos. What this clause says is that anybody who lodges a claim against an insurance company, regardless of whether you have submitted all the required documents or not, will have to be paid within 90 days. So, we agreed to leave out the proposal contained in the Bill and go back to the original position, which is that you will be paid 90 days after submission of the relevant documents. So, we are going back to the original provision.

(Question of the amendment proposed)

*(Question, that the words to be left out, be left out
put and agreed to)*

(Clause 17 deleted)

New Clause 2A

Hon. Langat: Hon. Temporary Deputy Chairlady, I beg to move:-
THAT, the following new clause be inserted immediately after

Clause 2—

Insertion of new section
3AA in Cap. 487.
Assistance in
investigation

2A. The principal Act is amended by inserting the following new section immediately after section 3A—

3AA. (1) The Authority may, where it receives a request from a regulatory body, whether established within or outside Kenya, for assistance in investigating a person specified by the regulatory body who has contravened or is contravening any legal or regulatory requirements which—

(a) are enforced or administered by that regulatory body; or

(b) relate to insurance transactions regulated by that regulatory body, and where it is of the opinion that the request meets the requirements of subsection (3), provide the assistance requested for by

exercising any of its powers under this Act or by providing such other assistance as the Authority may consider necessary.

(2) For the purposes of subsection (1), the provisions of this Act shall, with such modifications as may be necessary, apply and have effect as if the contravention of the legal or regulatory requirement referred to in subsection(1) were an offence under this Act.

(3) A regulatory body which requests assistance under subsection (1) shall demonstrate that—

(a) it is desirable or expedient that the assistance requested should be provided in the interest of the public; or,

(b) the assistance shall assist the regulatory body in the discharge and performance of its functions.

(4) The Authority shall, in deciding whether the requirements under subsection (3) have been satisfied in a particular case, take into account whether the regulatory body shall—

(a) pay the Authority any of the costs and expenses incurred in providing the assistance; and,

(b) be able and willing to provide reciprocal assistance within its jurisdiction in response to a similar request for assistance from Kenya.

(5) Nothing in this section shall be construed as limiting the powers of the Authority to co-operate or co-ordinate with any other regulatory body in the exercise of its powers under this Act, in so far as any such co-operation or co-ordination is not contrary to the objectives of this Act.

Hon. Temporary Deputy Chairlady, this proposal seeks to introduce a new Section 3AA to the principal Act, which seeks to give powers to the proposed Insurance Regulatory Authority, so that if there is a request for it to give information to any regulatory body like the Criminal Investigations Department or any other body, it can assist that body. So, the amendment is seeking to give the Authority power to share information whenever necessary.

(Question of the new clause proposed)

(New clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

(Question, that the new clause be read a Second Time, put and agreed to)

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Shabesh): Hon. Members, there is a proposed New Clause 2A by hon. Kimani Ichung’wah. I now direct that it be referred to as “New Clause 2B”.

New Clause 2B

Hon. Ichung’wah: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, the following new Clause 2B be inserted immediately after Clause 2A of the Bill-

Amendment of
section 3E of
Cap 487

2B. The Principal Act is amended in Section 3E-

(i) subsection (1), by-

(a) deleting the words, “in consultation with the Minister” and substituting therefore the words “through an open and competitive process”

(b) deleting the words “or otherwise in writing from time to time”

(ii) by inserting the following paragraphs immediately before paragraph (a) and renumbering the existing paragraph (a), accordingly-

(a) has satisfied all the requirements of Chapter 6 of the Constitution;

(b) holds at least a postgraduate degree in insurance, audit, accounting, finance, actuarial science, business studies or banking;

(c) is a member of a professional body recognized in Kenya;

(iii) by inserting the following new subsection immediately after subsection (4)-

“(5) A person appointed as a Commissioner under subsection (1) shall serve for a term of three years and shall be eligible for re-appointment for a further term of three years;

(6) On the coming into force of this Act, any person who immediately before the commencement of this Act held the office of a Commissioner of the Authority, shall, subject to the provisions of this Act, serve as a Commissioner for the remainder of that person’s term, or for a period of two years, whichever is sooner, and shall not be eligible for a further appointment.

Hon. Temporary Deputy Chairlady, the reasons for these amendments are quite simple in that the principal Act provides that the Commissioner of Insurance, who will also be the Chief Executive of the regulatory Authority of the insurance industry, shall be appointed by the Board, in consultation with the Minister. All I am proposing is that we have a system that is very open and very competitive for everybody across the board. That is my prayer in the amendment – that we have a process that will be open and competitive rather than one that is very subjective.

(Question of the new clause proposed)

(New clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): That is pretty straightforward. I believe that the Committee Chairman has no problem with that amendment.

Yes, hon. Langat.

Hon. Langat: Hon. Temporary Deputy Chairlady, I wish my good friend can say more about this amendment. Down there, there are other issues, which I think he should address.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Ichungw'a, the Order Paper has more details than what you have explained. Please, do not be very economical with information. Put it clear, so that the Committee can walk with you in this amendment.

Hon. Ichung'wah: Hon. Temporary Deputy Chairlady, I am sorry. I thought I would go to part (ii) of the amendment after we have finished with the first part.

In the second part, I am asking that we insert the paragraphs, as contained in the amendment. All I am asking is that in the process of recruiting a Chief Executive Officer for the regulatory Authority, we should ensure that we comply with Chapter Six of the Constitution, in terms of the integrity of the holder of such an office. The second bit touches on the qualifications of the holder of that office. It suggests that one should have all the relevant qualifications to hold such an important office. Of course, there is the question of being a member of a professional body. I have left that open since we are talking about insurance, audit, accounting, finance, actuarial science, business studies or banking. In the last bit we are just saying that person ought to be a member of a recognized professional body in any of those professions recognized in Kenya.

The other bit of the amendment is inserting a new subsection immediately after Subsection (4) as has been put on the Order Paper. Over the years, the IRA was a department within the Ministry of Finance; the holder of this particular office of Commissioner and CEO of IRA has held this position for a long time without any open recruitment being done. In line with what I proposed earlier to have an open and competitive process of recruiting the CEO, I am asking that we also limit the term of such a CEO to two three-year terms – you serve the first three years and then you will be eligible for reappointment for a further term of three years. This caps at a maximum of six years.

The current holder of this position has been there for very many years. I can tell you that I worked in the insurance industry in my earlier years, that is about 11 years or 12 years ago and it is the same person who has been holding that office. Therefore, I am asking that we give other Kenyans an opportunity to be recruited for this office competitively.

On the coming into force of this Act, the person who is currently holding this office can continue holding it until his term expires or for a further period of two years, whichever time is sooner, and will not be eligible for further reappointment considering that for the last 12 years---

I believe I have satisfied the Chairman of this Committee.

Hon. Langat: Hon. Temporary Deputy Chairlady, that is why I said earlier that he talks more about this thing. Now that he has spoken, it is usually said that the devil hides in the detail. I think the devil has eventually come out.

I am not opposing my friend's amendment, but I wish to request him to allow the person who is currently there to, at least, finish the remainder of his term; if it is more than two years he can still finish his term, and then he is not eligible for further appointment after the expiry of the current contract. Really, I ask that we delete all the words after "person's term" starting from "or" up to "whichever is sooner". That way we will give him time to complete his contract. I know he is an old man and we do not want to cut short his term. I want to beg that you accept that I move that amendment.

I beg to move that we delete all the words appearing in subclause (6) of the amendment after the words "person's term" all the way up to "whichever is sooner." So, the whole sentence now reads "On the coming into force of this Act, any person who immediately before the commencement of this Act held the office of the Commissioner of the Authority shall, subject to the provisions of this Act, serve as a Commissioner for the remainder of that person's term and shall not be eligible for further appointment."

That way we remove the two years limitation. I hope my friend will second me in that.

(Question of further amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Ichung'wah you can respond. Having listened to both of you, I am hoping that you are very confident that there is a term that is about to expire, and that there is a term that you are also referring to.

Hon. Ichung'wah: Hon. Temporary Deputy Chairlady, I may not be in the know about when the term ends. All I sought to do was to, at least, ensure that there is continuity in this office. That is why I had opted to give the remainder of the term or two years at least if the term is of five years, you never know. I would concur with the Chairman of the Committee that even deleting the period of two years is still fair. This is because it will still serve the intended purpose of having a transition period. I support the further amendment.

*(Question that the new clause be read a Second Time,
put and agreed to)*

(The new clause was read a Second Time)

*(Question, that the new clause be added to the Bill,
put and agreed to)*

New Clause 3A

Hon. Langat: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, the following new Clause 3A be inserted immediately after Clause 3 of the Bill-
Amendment of

section 3A of
Cap 487

3A. The Insurance Act is amended -

(i) in section 7 by deleting the words “ten thousand shillings” and substituting therefor the words “two hundred thousand shillings”

(ii) by inserting the following subsection (8) immediately after subsection (7)-

(8) For avoidance of doubt, where the Authority, the Commissioner or other authorised persons require an insurer or a licensed person to provide information under this Act-

(i) the Authority, the Commissioner or such authorised persons shall declare to the insurer or a licensed person, the intended purpose of sharing of the information and the persons or institutions intended to receive the information;

(ii) in the case of an insurer, such information shall be provided upon written consent obtained from the Board of such insurer; and,

(iii) if at the expiry of twenty one calendar days, the Board of an insurer has not granted the consent under paragraph (ii), the person from whom the information was required or the licensed person shall provide the information to the Authority.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, note that hon. Ichung’wah has a replica of the amendment by the Chairman of the Committee. Therefore, it will be dropped if the Committee of the whole House carries the amendment of the Chairman, hon. Langat.

Hon. Langat: Hon. Temporary Deputy Chairlady, for the purpose of bringing the House up to speed, this amendment seeks to achieve--- The amendment to Section 7 is about the penalties for not complying with information requirement by the Authority. The Act, as it is today, says that if you do not give information to the Authority, or if you give false information or commit any other malpractice you will be fined a maximum of Kshs10,000. I think times have changed and the entities we are dealing with are huge insurance companies and Kshs10,000 may really encourage them to continue not giving information. It is too cheap a penalty.

We have agreed that we increase this fine to Kshs200,000, so that it acts as deterrent. We still agree that it is still a very low amount, but since we have so many categories of licensed insurance practitioners, it covers all of them.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chairman, just be clear. Did you say Kshs200,000 or Kshs300,000?

Hon. Langat: I said Kshs200,000 as per the Order Paper.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): The Order Paper talks about Kshs300,000.

Hon. Langat: Hon. Temporary Deputy Chairlady, unless there are two Order Papers--- Maybe you are reading Ichung’wah’s, I do not know. Mine has Kshs200,000. For the record, it is Kshs200,000.

The other bit of the amendment is part (ii). From the sector, we are simply saying that where there is a request for information from any licensed insurance practitioner, it should be given, but the Commissioner should also say why one, he is demanding the information and two, if it will be shared with third parties. He should declare which third

parties are those. Insurance is a business. It came to our Committee that some people within the Authority itself might have abused that to get information from one insurance company and leak it to competitors. It is the business of the insurance sector. That is what that amendment seeks to achieve. We are also saying that, that information should be required from the Board, so that whatever information is given, the Board of the insurance company should be aware to avoid a situation where junior staff leaks the information on the pretext of giving it to the Regulatory Authority. Again, we are saying that, that is very good.

Two, we are also saying that if, after 21 days, the Board has not granted the Authority permission to give the information, then the information should be given after the expiry of 21 days, so that we avoid a situation where the Board can delay, so that they do not give the information. That is the import of that amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I want to confirm that I was reading the wrong amendment. It is Kshs200,000.

(Question of the new clause proposed)

(New clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

(Question, that the new clause be read a Second Time, put and agreed to)

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

Hon. Ichung'wah, therefore, your amendment is dropped since we have carried that of the Chair of the Committee.

(Proposed amendment by hon. Ichung'wah dropped)

New Clause 6A

Hon. Ichung'wah: Hon. Temporary Deputy Chair, I beg to move:-

THAT, the following new Clause 6A be inserted immediately after Clause 6 of the Bill-

Amendment
of section 56
of Cap 487

6A. Section 56 of the Principal Act is amended -

(i) in subsection (4) by deleting all the words after the words 'the Companies Act';

(ii) by deleting subsection (5)

(iii) by deleting subsection (7) and substituting therefor the following subsection-

(7) an auditor who fails to comply with any requirement under this section shall be guilty of an offence and liable to a fine not exceeding two hundred thousand shillings.

The reason for moving this amendment is very simple; it is that Section 56 of the Insurance Act, Cap.487, says that:-

“For the purpose of this section, every insurer shall appoint annually an auditor qualified under Section 161 of the Companies Act and approved by the Commissioner”.

All I am seeking to do with the first bit by deleting all the words after “the Companies Act” is to remove the question of auditors being approved by the Commissioner of Insurance. This is principally because in the past the provision has been misused by the Office of the Commissioner of Insurance to coerce insurance companies to procure the services of certain audit firms in this country. I want to leave it to a free market economy for the insurance companies to be able to procure audit services of any qualified audit firms in this country, which have been certified by the Institute of Certified Public Accountants of Kenya as legitimate audit firms that can audit insurance companies, or any other financial corporations. This is the case with all other financial institutions and corporations in this country. So, there is really no need for the Commissioner of Insurance to be the one coercing or directing insurance companies, which are in essence private business enterprises, who should audit their books. Let us leave it open for the insurance companies to select whoever they want to audit their books.

The second bit of the amendment is deletion of subsection (5). It says:-

“If an insurer fails to appoint an approved auditor under Subsection (4) or to fill any vacancy for an auditor which may arise, the Commissioner may appoint an auditor and fix the remuneration to be paid by the insurer to him”.

This is very dangerous and it has been dangerous to many insurance companies. You are giving the Commissioner or the CEO of the Regulatory Authority the powers to not only appoint an auditor for a particular insurance company, but to also fix what remuneration that auditor will be paid. As I pointed out earlier, in a free market economy, you ought to let even the audit firms in this country to competitively bid for jobs within the insurance industry. That is why I pray that this House adopts this deletion.

The last bit on subsection (7) is also in relation to that. It also says:-

“If the auditor of an insurer fails to comply with the requirements of this Act, the Commissioner may remove him from office and appoint another person in his place”.

In essence, you are giving this Commissioner of Insurance such immense powers that he can fire an auditor who has been appointed by a particular insurance company and replace him with another one without due consideration of any process or any competitive business in this country. I want to repeat that we should leave it open for all audit firms to have a fair playing ground. This has been not only an avenue but a superhighway for corruption. All you need to do is have a cartel of certain audit firms conspiring with officers at the Regulatory Authority and all business will end up going to them. I propose that we have the new subsection (7) that an auditor who fails to comply with any requirement under this section shall be guilty of an offence and liable to a fine

not exceeding Kshs200,000. That would be adequate punishment for any auditor who fails to comply with the requirements of the Act.

(Question of the new clause proposed)

(New clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chairman, hon. Ichung'wah has explained the proposal of the new clause. Would you like to comment?

Hon. Langat: Hon. Temporary Deputy Chairlady, in principle, I agree with my good friend. He has done his homework quite well.

However, the power of the regulator to vet auditors is important. If you do not want to be audited, you just collude with some auditor who will give you a favourable report, depending on how much you pay him. With due respect to my professional colleague, while I support the proposal, I would like to request him to tell us what additional precautions he has put in place, so that we can make it more strict for any auditor who misreports the facts, or does not do the job as he is supposed to. The consequences should be prohibitive. I agree that there is a body that is in charge of the auditing profession, namely the Institute of Certified Public Accountants of Kenya. I agree that everybody who has been approved and registered as an auditor should get an opportunity to audit in the insurance sector, but we need to put a proviso that anyone who misreports in the insurance, that should be treated as a crime. I do not know if my friend has anything on that. If not, I still support, but in future we will need to create more strict punishment for any auditor who mishandles the audit process.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chairman, if you read the proposed New Clause 6A by hon. Ichung'wah, in (7) of the new Clause, he suggests that the auditor who fails to comply with any requirements under this section shall be guilty of an offence and liable to a fine not exceeding Kshs200,000. I wonder whether you would want to improve on that to deal with your concerns.

Hon. Langat: Hon. Temporary Deputy Chairlady, I want to request my friend that we further amend it to Kshs1 million, so that it becomes deterrent, now that we have removed the condition which was there for the reasons he has advanced. I will also want him to indulge me and have this as Kshs1 million, so that any auditor who does not comply should pay up to Kshs1 million.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): That is fair; both of you, hon. Ichung'wah and the Chairman, should agree on something fair. The general clause is agreeable.

Hon. Ichung'wah: Hon. Temporary Deputy Chairlady, I am in agreement. All we want to do is to make sure that we are not again preventing the Office of the Regulator from being able to enforce regulations that relate to the audit of insurance companies. Since Section 67(2) of this Act has other provisions that punish auditors who may contravene any of the provisions of the Act in the course of their work as auditors, I am agreeable. I had only been conservative with a figure of Kshs200,000, but even Kshs1

million for an auditor who is working for an insurance company is affordable. I therefore, support that further amendment to Kshs1 million.

Hon. Langat: Hon. Temporary Deputy Chairlady, I beg to move that we replace the words “two hundred thousand” after the word “exceeding” with the words “one million” so that it reads “not exceeding one million shillings”.

(Question of the further amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Regina, do you want to contribute?

Hon. (Ms.) Muia: Hon. Temporary Deputy Chairlady, I do not know whether I would be in order after you have passed the first one? I just wanted to comment on Clause 6(7) about the requirement of an auditor who will not comply with the requirement. I think we should also put a jail term. When one thinks of going to jail he or she will be careful. When they are doing all these transactions money is very easily stolen. When these auditors are dealing with insurance companies they are dealing with huge amounts of money. The penalty should not be that little. The penalty should be a one year jail term or Kshsh1 million fine or both, if they misappropriate money. Thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let me just allow the Mover, Kimani Ichungwah, to give us clarity on that particular issue.

Hon. Ichung’wah: Hon. Temporary Deputy Chairlady, I think the hon. Member’s observation is good but, indeed, as I pointed out under Section 67(2) of the principal Act, there are offences that have been stipulated there, and there is actually a jail term in addition to the penalty. So, the penalty will be in addition to the jail term.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I think that is clear to you hon. Regina. I will, therefore, put the Question.

*(Question, that the new clause be read
a Second Time, put and agreed to)*

(The new clause was read a Second Time)

*(Question, that the new clause be added to
the Bill, put and agreed to)*

New Clause 15A

Hon. Langat: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, the following new Clause 15A be inserted immediately after Clause 15 of the Bill-

Amendment of
Section 180 of
Cap. 487

15A. The principal Act is amended in section 180 by renumbering the existing provision as subsection (1) and adding the following new subsection-

(2) The regulations, subsidiary legislation, or other instrument prescribed under this Act and which has the force of law shall be subject to the provisions of the Statutory Instruments Act, No.23 of 2013.

Hon. Temporary Deputy Chairlady, for the information of the House, what I am just proposing here is that the regulations which are made under this Act should be brought to the House for approval. Again, this is a new trend under the new Constitution. All the legislative power is vested in the House; sometimes we have donated some of our powers, and sometimes they have been abused. I think the House must now protect its legislative power. So, that is under the Statutory Instruments Act, No.23 of 2013.

Again, this is also very good because under the Statutory Instruments Act (No.23 of 2013) it is very clear that if the House for one reason or another delays approval, then after, I think, one month, the instruments have the force of law. So, really it is a very good process.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Yes, hon. Langat. This was an Act brought by hon. Millie Odhiambo in the last Parliament and, therefore, I will propose the Question.

(Question of the new clause proposed)

(New clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

(Question, that the new clause be read a Second Time, put and agreed to)

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

New Clause 18A

Hon. Langat: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, the following new Clause 18A be inserted immediately after Clause 18 of the Bill-

Application
No. 4 of
1995

18A. The principal Act is amended by inserting the following new Section 204A immediately after Section 204-

204A. (1) A dispute between the Authority and an insurer or a dispute between insurers arising from action or intended action of the Authority acting in the exercise of the functions conferred by this Act, shall be resolved by arbitration and the Arbitration Act shall apply.

(2) In dispute between insurers, the Authority shall, in consultation with the insurers, appoint an arbitrator.

(3) In a dispute between the Authority and an insurer or insurers, each party shall appoint one arbitrator.

(4) Nothing in this section prevents a party not satisfied by a settlement arrived at after arbitration to commence an action in court.

Hon. Temporary Deputy Chairlady, we are just providing a disputes resolution mechanism in addition to the existing one of the courts. We are saying they could resolve their issues through arbitration which, in our view, is okay. That is what we are basically saying here.

(Question of the new clause proposed)

(New clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

(Question, that the new clause be read a Second Time, put and agreed to)

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

Clause 2

Hon. Langat: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 2 be amended by deleting the definition of the term “Minister” and substituting therefor the following new definition—

“Minister” means the Cabinet Secretary for the time being responsible for matters relating to finance”.

Hon. Temporary Deputy Chairlady, that is basically because the Act at present talks about “Minister” and we have moved on. We are now under the new Constitution which talks of “Cabinet Secretary”. So, I am simply proposing that we say: “Minister” means the Cabinet Secretary for the time being responsible for matters relating to finance”.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh: That is straightforward. I, therefore, propose the Question.

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

*(Question, that the words to be inserted in place thereof
be inserted, put and agreed to)*

(Clause 2 as amended agreed to)

Clause 1

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): There are also proposed amendments by both hon. Benjamin Langat and hon. Kimani Ichung'wah. Could hon. Benjamin Langat approach the table for consultation?

(Hon. Langat consulted with the Clerk-at-the-Table)

Hon. Langat: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 1 of the Bill be amended by inserting the following words after figure "2013"- "and shall come into operation, or deemed to have come into operation, upon publication in the *Gazette*."

I wish to delete the words "or deemed to have come into operation". This will now read:

"THAT, Clause 1 of the Bill be amended by inserting the following words after the figure "2013"- "and shall come into operation, upon publication in the *Gazette*".

(Question of the amendment proposed)

Hon. Ichung'wah: Hon. Temporary Deputy Chairlady, I totally agree because it removes the ambiguity of "or deemed to have come into operation" and actually comes into operation.

*(Question, that the words to be inserted be
inserted, put and agreed to)*

(Clause 1 as amended agreed to)

(Title agreed to)

Hon. Langat: Hon. Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of the Insurance (Amendment) Bill, National Assembly Bill No.5 of 2013, and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[The Temporary Deputy Speaker (Hon. Cheboi) in the Chair]

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Members, that marks the end of that session that we had. Let us have the Chair reporting.

**REPORT, CONSIDERATION OF REPORT
AND THRID READING**

THE INSURANCE (AMENDMENT) BILL

Hon. Baiya: Hon. Temporary Deputy Speaker, Sir, I beg to report that the Committee of the whole House has considered the Insurance (Amendment) Bill and approved the same with amendments.

Hon. Langat: Hon. Temporary Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said report.

Hon. Ichung'wah seconded.

(Question proposed)

(Question put and agreed to)

Hon. Langat: Hon. Temporary Deputy Speaker, Sir, I beg to move that the Insurance (Amendment) Bill be now read a Third Time.

Hon. Gaichuhie seconded.

(Question proposed)

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Members, let us have a few hon. Members contributing to the Bill before we proceed to put the Question.

Hon. (Ms.) Shebesh: Hon. Temporary Deputy Speaker, Sir, I just felt that it is important for me to say how impressed I am by the Finance, Planning and Trade Committee, especially its Chair. It is important to know when Committees of this House are doing important work and their commitment to duty and ensuring that their amendments cut across the board.

I am also very impressed by hon. Members who bring in their own amendments and add value because of past experience. This is what hon. Kimani Ichung'wah has done today. They may have certain interests or may have information from their constituents. When we have come from the Committee of the whole House it is time for Kenyans to also know that this House does serious work; the serious work that it does never gets recognized. Therefore, let us commend the Chair and members of the Finance, Planning and Trade Committee for the excellent work that they have done.

The Temporary Deputy Speaker (Hon. Cheboi): I think those are sentiments that are shared even by the Speaker himself. I also must commend the Committee of the whole House for also doing some good job.

Hon. Limo: Thank you, hon. Temporary Deputy Speaker. I wish also to record my appreciation to the Committee of Finance, Planning and Trade, of which I am a Member. I have realized that of late, most of the Bills which come with a lot of details are from our Committee.

The other thing which I wish to state is that this Bill we have just passed is very important because insurance is very important in this country as it gives people a lot of peace. The value which has been put into this Bill will ensure that we have very good insurance covers in this country.

Thank you very much.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, first I want to thank the Committee and the House because what we were doing was amending the principal Act, the Insurance Act that already exists. But I do not want to praise the Chair and leave the Committee Members, because it is a collective responsibility. That is why as a Coalition we felt that he was the best man to lead that Committee.

We praise what we have done not only in this Bill, but also in the many finance related Bills that came to the House. We hope that after this we are going to the hot matter of matrimonial and marriage Bills. These Bills will bring most of our hon. Members back to the Chamber. I am sure the Marriage Bill will have serious amendments, even to the title. I want to tell hon. Members that when a Bill comes before the House, you can even change everything, including the title.

Therefore, let us not throw away the Marriage Bill, but change it. If we find it necessary we can change even the title of that Bill.

Thank you, hon. Temporary Deputy Speaker, Sir.

Hon. Ichung'wah: Thank you hon. Temporary Deputy Speaker, Sir. Just in very few words, I want to thank hon. Members of Finance, Planning and Trade Committee. I did appear before this Committee to articulate the issues that I had about the Insurance Industry, and they were not only receptive, but were also very supportive of the amendments that I proposed. I want to say that these amendments go a long way into correcting past mistakes that have been in the insurance industry.

Hon. Temporary Deputy Speaker, insurance is a matter that touches on the lives and property of all Kenyans. Therefore, the Finance, Planning and Trade Committee having adopted these amendments, it has really touched on the lives of many Kenyans and also their property.

Thank you.

Hon. Waititu: Thank you, hon. Temporary Deputy Speaker. I also rise to support the Bill and also congratulate hon. Ichung'wah who did it very well. I was here when he took us through his amendments and I was very happy and impressed because he really took care of insurance and the community of Kenyans as a whole. I really support the Bill and I believe it will go a long way in assisting Kenyans.

I also thank the Chairman of the Finance, Planning and Trade Committee.

Thank you.

Hon. Langat: Thank you very much, hon. Temporary Deputy Speaker. I want to say thanks to the hon. Members who have given some very nice words to my Committee. I want to say thank you very much on behalf of the Committee.

I want also to appreciate the hon. Members of the Committee because we have really worked on many Bills. To the House, I want to say thanks very much.

Thank you.

The Temporary Deputy Speaker (hon. Cheboi): Order! Hon. Keynan, take your seat. We also have another hon. Member. Can you please take your seat quickly? I confirm that we have the numbers to put the Question. I will therefore, proceed and put the question.

(Question put and agreed to)

(The Bill was accordingly read the Third Time and passed)

BILL

THE MATRIMONIAL PROPERTY BILL

Hon. Chepkong'a: Thank you, hon. Temporary Deputy Speaker.

I beg to move that the Matrimonial Property Bill, 2013 be now read a Second Time.

The Departmental Committee on Justice and legal Affairs did present its Report to the House today. We had more than three sittings to consider this Bill. This is a very important Bill in the lives of very many Kenyans if not all of them. This Bill is being promulgated pursuant to Article 95 of the Constitution in which the National Assembly is required to, among other things, enact legislation.

Secondly, it is a requirement of the National Assembly that it deliberates on and resolves issues of concern to the people. This is one of the Bills that touch on the concerns of very many Kenyans. As you know, there has been a lot of litigation with regard to the matrimonial property in this country for many years without a clear and unequivocal position being taken by the National Assembly.

Hon. Temporary Deputy Speaker, this Bill will rest all suits that have been based on foreign jurisdictions, for instance the Married Women Property Act of England, which we have used for many years to arbitrate over issues that touch on matrimonial properties whenever there has been a divorce.

This Bill does not concern county governments. There have been some allegations that this Bill may concern county governments. Marriage is not a county government business; it is a national Government business because it touches on the lives of all Kenyans from Lokichoggio to Mombasa, and from Ssesse Island to Moyale and Mandera. This Bill will not occasion any additional expenditure of public funds because it only deals with properties owned by spouses. It does not deal with properties owned by the Government or county governments.

This Bill seeks to deal with the matrimonial property disputes in Kenya in the likely event that there is a breakdown in marriage and people need to sort themselves out in a court of law. It provides for the rights and responsibilities of spouses in relation to matrimonial properties that they own or they have acquired jointly. It makes it easy for the courts to anticipate what will happen in the event that they disagree. They can say with certainty how much each spouse will inherit from the matrimonial home.

Hon. Temporary Deputy Speaker, it is also clear in this Bill that the Islamic faith believers shall be governed by Islamic law in all matters relating to matrimonial property.

So, with respect to the Islamic faith, this does not apply; muslims are covered by islamic jurisprudence.

We have made several amendments to this Bill, so that we can make it relevant and contextualize the Kenyan situation. As the Chair knows, there has been a lot of contention as to which properties belong to who, particularly in cases of those spouses who come to marriage with properties from outside. This Bill now gives opportunities to those people who are courting to enter into agreements as provided in Clause 6(3) before they enter into marriage. They should say which properties belong to which party. That is written in the form of an agreement that is thereafter kept, so that in the event of a dispute it is known who owns which property. Secondly, you know many of us have girls and we are attached to them. When we marry off our girls, we give them inheritance. We do not want the inheritance to be part of the matrimonial properties that will be shared in the event that they disagree. We want our girls to walk away with what we have given them. That has been made very clear in this Bill.

We were given very good situations as we were discussing in the Committee. We were given situations by certain Members that referred to some disputes. For example, a lady was cheated to get married to a man and she was asked to take a loan to build a house which was then registered in the name of the man. The man thereafter brought in another lady who lives in the matrimonial home and the other woman was chased from that home because it was registered in the name of the husband. There was nothing the lady could do other than to go back to where she had come from and she went without anything. That is a very sad situation which should not happen. This Bill addresses that situation.

You will see in the Bill that whatever you have contributed in marriage will be given to you in the event of a divorce. That is set out very clearly under Clause 7.

Hon. Temporary Deputy Speaker, the Bill also gives an opportunity to spouses in the event that they disagree in marriage and one is claiming that a property is his or hers; they can go to court and the court will decide who owns which property in the matrimonial home. So, the Bill gives an opportunity to spouses to make it clear that he or she brought this property and the court will declare it to be his or hers.

It has also been stated very clearly in this Bill that all properties owned jointly by spouses are assumed to belong to both spouses. The Bill states clearly that it is a rebuttable presumption; it is not absolute, so that in the event that you have a disagreement, you can adduce evidence to say that you brought in, or you contributed to acquisition of property.

Most spouses are in a situation in which one spouse leaves a credit card with the other spouse. When he comes back he finds that the spouse has incurred a bill of Kshs1 million. This Bill is very clear. If you incur a bill not for the benefit of the marriage, the other spouse will not be held responsible for the repayment of that loan; he will not be held liable. We want to bring order to homes because few disputes are brought about by expenditure that is incurred in a manner that is not beneficial to the marriage. That applies to both men and women. So, this Bill is very specific to the Kenyan situation. It is targeted to the Kenyan context; we are doing away with the English Law which has been used for many years.

The courts have not known how to contextualize the English Law in our Kenyan situation. As you know among the Maasai, and I can see hon. (Maj-Gen.) Nkaissery is

walking away, it is assumed that there is no woman who owns anything. However, this Bill gives women rights to property including owning cows. I can see that he has walked out because he does not want to give out cows. However, this Bill makes it very clear as to who owns what.

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Chepkong'a, do not talk about the Members who are walking out. Just prosecute your case. You are doing very well.

Hon. Chepkong'a: Hon. Temporary Deputy Speaker, I am not insinuating anything. This is a very clear and straightforward Bill.

We have also made proposals to amend Clause 14, so that it is clear that it is not necessarily matrimonial property but property within marriages. There are a number of consequential amendments that we have proposed as a result of aligning this Bill to our Kenyan culture and traditions, so that it is contextualized. We are not applying the English Law anymore.

Hon. Temporary Deputy Speaker, Sir, I beg to move that this Bill be now read a Second Time.

Thank you. With your permission, I request hon. Kajuju to second this Bill.

Hon. (Ms.) Kajuju: Thank you, hon. Temporary Deputy Speaker, Sir. I second The Matrimonial Property Bill. In seconding it, I would like to take note of the fact that the National Assembly has noted that since time immemorial there have been very many matrimonial disputes which were settled under the Married Women Property Act of 1882. Those are the laws that we inherited from our forefathers.

This House has the capacity now to rectify the situation and domesticate a law that can apply to our people, so that we have homegrown laws instead of having laws that have been practised for such a long time and have not been domesticated.

Hon. Temporary Deputy Speaker, Sir, if you look at Clause 2 of the Bill, you will find that it defines every term that is used in the Bill.

Regarding most of the statutes that we have in Kenya today, there has been some conflicts because there has not been clear definition of the terms that have been used in those statutes. However, this particular Bill, under Clause 2, defines what contribution in a marriage is. Especially, when it comes to non-monetary contribution, the courts are not able to quantify exactly what non-monetary contribution is. In this Bill, non-monetary contribution has been defined. I would like to cite as an example, the issue of companionship. This is also being considered as contribution. If I may inform the House, this includes provision of conjugal rights. So, where a partner provides conjugal rights, it is regarded as part of the contribution in a marriage.

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Kajuju, I did not want to interrupt you but I am curious about what you have just said. Who will get the benefits because I thought when there is something called "conjugal rights", it benefits both parties. How do you share it out?

Proceed, anyway.

(Laughter)

Hon. (Ms.) Kajuju: Hon. Temporary Deputy Speaker, "companionship" has a very wide meaning. Part of what partners do in a marriage is provision of conjugal rights.

You are aware that under the Civil Procedure Act, you can actually move to court and seek for an order for restitution of conjugal rights when they have been denied by either party. So, according to my reading of the law, “companionship” is part of the conjugal rights that are provided by either party of the marriage.

The Temporary Deputy Speaker (Hon. Cheboi): So, you are saying that it is the denial that is contributed, and not the---

Proceed, anyway. I think you are doing well.

Hon. (Ms.) Kajuju: Thank you, hon. Temporary Deputy Speaker.

The other definition that I would beg hon. Members to appreciate is on domestic work and management of the matrimonial home. In our present-day society, most married women do not have gainful employment. So, they would be left at home to take care of their children and the man when he gets home. The woman of the house would remove the man’s coat and serve him food. That is all management. Therefore, in defining “contribution”, this Bill has included the management of the husband when he gets home.

The Bill also defines family business. We have seen conflicts, especially when partners have had to separate. Therefore, each of them pulls aside the little property that they have managed to acquire. Of great importance is the definition of “matrimonial home”. At times there has been conflict between the parties of the marriage regarding the matrimonial home. If a property has been leased, some people may not regard it as matrimonial home. Matrimonial home is the premises that the man has given to the family to live in as their home. So, whether it is owned jointly or owned severally or owned separately or it is leased, as long as the parties occupy and utilise that premises, then it will be regarded as the matrimonial home in the event of a dispute.

Hon. Temporary Deputy Speaker, of course, we have the natural meaning of “spouse”, which means “husband and wife”. Another very important provision in this Bill is Clause 3, which provides that in the case of Muslims, marriage disputes will be governed by Islamic law. Therefore, for those who profess to the Islamic faith, disposition of matters regarding any property acquired in the course of marriage will be governed by Islamic law. So, there is no dispute between the Christian faith and the Islamic faith *vis-a-vis* the law in as far as matrimonial property is concerned.

According to this Bill, a married woman shall have equal rights to property as the man. Once you acquire and administer property together, it is taken to mean that you have equal rights over the property and, therefore, any person can move and seek for declaration of their rights in the event of a dispute.

Hon. Temporary Deputy Speaker, I pray that my brothers will read Clause 5. Any property that is acquired before marriage by either party, that property shall be regarded as belonging to the party that had acquired it. This provision, therefore, preserves the rights of a party before marriage. In this Bill, there is also provision for prenuptial agreement.

So, if you have a property and you intend to enter into a marriage relationship, you can enter into a prenuptial agreement. That is an agreement between the parties getting into marriage, in which each party declares the property he or she owns. The agreement will provide that the property that each party owns will remain his or her property even after entering into the marriage contract.

This is a good provision because even after marriage, if a party acquires property within that marriage, he or she can seek to have that property as a separate property within the marriage. This gives partners in a marriage a free hand to acquire property separately from the property that we call “matrimonial property”.

Hon. Temporary Deputy Speaker, the Bill also addresses the issue of polygamous marriages and how to deal with the property acquired in such union. If a man and the first wife acquired property before he takes another wife, the property that was acquired within the first union between the first wife and him will be taken to belong to the first wife and him.

So, if the man decides to get another wife and he acquires property with her, the property acquired thereafter with the other wife is regarded to belong to the other wife and the man. So, there is a leeway that ensures that a man is not necessarily stopped from entering into another union. If you decide to get another wife, this law does not stop you from owning property with that other partner.

In this Bill, there is also the issue of improvement of property. If a man had a parcel of land and he gets married, and he improves this property with the wife; the contribution in terms of the development of that property will be taken to be for both parties. If it was just a parcel of land that was not developed, and you develop it jointly, it will mean that the other party to the marriage has acquired a beneficial interest in that property. So, this is a good Bill since it seeks to duly protect the interests of the parties to a marriage.

Hon. Temporary Deputy Speaker, this law will also apply in a customary marriage when there is dispute relating to divorce or dissolution of marriage. In the event that the parties to a marriage want to dissolve the marriage, the interest in the matrimonial property can be protected before the parties enter into either legal dispute or resolution of the situation. In my life as an advocate, I have come across situations where families have been evicted from their matrimonial homes because the man or the woman had taken a mortgage against the property and failed to repay the loan or he or she dealt with the property in a manner that does not befit the status of the union.

Hon. Temporary Deputy Speaker, this Matrimonial Property Act protects the matrimonial home as defined such that either spouse cannot seek mortgage of a matrimonial home or lease the matrimonial home without the written and informed consent of both spouses. The rationale of this provision is to protect the family. We know the family unit is a sensitive institution. It would be extremely unfair for one of the spouses to go out and get mortgage or lease out property which is a matrimonial home. This is why the consent is necessary to enable the parties live in harmony.

The other provision is that the Chief Justice has the capacity to make regulations under Section 18. The Civil Procedure Act under Section 81 allows the Chief Justice to make rules and regulations that determine the practice or procedure under this Act. The importance of that provision is that where there--- Not everything can be put into a Bill or an Act. There are some regulations, for example, how a case should be taken to court, the process to be followed, the court in which the matter will be filed and so on. Those rules, according to this Bill can be written by the Chief Justice under Section 81 of the Civil Procedure Act to give effect to the Matrimonial Property Bill.

Also, upon this Bill coming into effect, the Married Women Property Act of 1882 will now cease to operate in the laws of the land. It is my humble submission that this is a

good Bill. I seek that the House supports it. It is high time we moved to the next level. I, therefore, second this Bill.

(Question proposed)

The Temporary Deputy Speaker (Hon. Cheboi): Let us have hon. Dr. Naomi Shaban to have the first shot.

Hon. (Dr.) Shaban: Thank you very much hon. Temporary Deputy Speaker for giving me this opportunity to contribute to this very important Bill which once it becomes law can sort out the mess that we have in this country. More often than not in a polygamous arrangement, the first wife has always been the one who has suffered. We have had destitute families. The first wife is the one who would come in when the husband has nothing. They work together. She makes him comfortable. He makes some money and they acquire some property. They suffer together, but once he has arrived he does so alone and he leaves the wife behind. Once they bring in somebody else, the first wife can even be thrown out. This has happened to so many families. As a result, we end up having court cases and destitute families in situations where women have worked very hard to assist their spouses to be where they are.

I do agree that time has come for us to put this thing in the past. This Matrimonial Property Bill, once it goes through, it is going to stabilize our families and make sure that our families are going to realize what they have sought over the years. It is important that the constitutional requirement of Article 45 on equality of matrimonial property has got to be observed. In a polygamous setup where there is a first, second or third wife, usually when a new wife comes in they take precedence and they become important. They are prioritized over the other ones. I cannot say much more because to me this Bill is what we need and we need it like yesterday.

I thank you.

Hon. (Ms.) F.I. Ali: Thank you, hon. Temporary Deputy Speaker. I want to fully support this Bill. I really consider this Bill highly. I am a member of this Committee and I have interacted with the discussions and deliberations on this Bill. I consider this Matrimonial Property Bill, 2013 very progressive in terms of mitigating and strengthening distribution of matrimonial property and other assets.

This Bill recognizes the contribution of both spouses and particularly women's traditional areas like home management, child care, farm work including protecting the assets of the family. Historically these were areas that never received any recognition. I am happy today that the efforts of women who have contributed greatly to protection of property and assets of their families are now recognized.

Historically in Kenya over 50 per cent of women, in fact, over 70 per cent are not working, but they are building in the resources of their men. They have been suffering and most times they have been disinherited some of them ending up in serious circumstances. This Bill will protect this kind of scenario. That is why I consider it progressive.

This Bill recognizes the contribution of both the husband and wife. It will nurture and promote hard work between both spouses. If you are not benefitting from a property or asset, you are likely not to invest heavily in it. However, because this Bill recognizes the contribution of both spouses, I believe it will nurture and reward hard work and families will be richer because of working hard. Although this Bill might not benefit Muslim spouses, it is a general law which might allow any spouse of any religion to

benefit. We need to open that opportunity in the Bill to allow any aggrieved group to benefit from this general provision.

Hon. Temporary Deputy Speaker, this Bill recognizes the contribution and hard work of all spouses. It is my feeling that it will reduce the escalating levels of separations and divorces and everybody will look forward to protect their matrimonial property because they are both recognized and the efforts are rewarded. I consider this Bill very progressive. I also believe that the hon. Members here are also progressive. It is my humble request that they support this Bill so that it protects matrimonial property of all families. This will benefit even the children. It will reduce the number of vulnerable persons who have been disinherited, particularly women who now live in the slums. They will be able to protect the property of their families and no one will disinherit or exclude them from benefiting from the property left behind by their spouses.

Hon. Temporary Deputy Speaker, I fully support this Bill and it is my humble wish to see it go through in this House. Thank you.

The Temporary Deputy Speaker (Hon. Cheboi): Well, let us hear from hon. Mukuru Muchai.

Hon. Muchai: Hon. Temporary Deputy Speaker, Sir, I rise in support of this Bill. I would like to observe that it seeks to bring sanity during the subsistence of marriage and gives proper direction as what would happen in the unfortunate event that a marriage comes to an end. However, even as much as I would like to support it, I would like to make an observation that it is silent on some aspects of marriage that are critically important and need to be addressed by the Bill.

This Bill assumes that all is well while both spouses are alive. It does not envisage a situation where marriage can be entered into, children brought forth, but thereafter one spouse passes on. Let me cite the example of a wife passing on and leaving young children, then the man decides to remarry and the children do not get along with their father's wife. Much as we would like to bring harmony in the ownership of property, we have witnessed cases where children who have been left by their mother and their father decided to remarry being subjected to frustrations and eventually being deprived of their right of inheritance of their father's property. I would like to observe that this Bill is completely silent in very delicate situations such as the one I have given an example of, which I believe should rightly be factored into the Bill.

As much as the Bill has come to the Floor of the House, there is need to re-examine some of its clauses, so that it can address situations beyond two spouses who are living together in marriage and address situations like where one spouse passes on.

(Hon. Chepkong 'a consulted with hon. (Ms.) Kajuju)

Hon. Ganya: On a point of order, hon. Temporary Deputy Speaker, Sir. Is it in order for the Chairperson of the Committee to engage in discussion when the speaker on the Floor is making a very critical contribution to this Bill, that of inadequacy that we need to deal with in terms of enhancing the Bill to be a better one? Is he in order not to listen to the Member?

The Temporary Deputy Speaker (Hon. Cheboi): He is obviously out of order, hon. Ganya, I agree with you. Unfortunately, it is the Mover and the Seconder who are engaging in a discussion. I hope they have been engaging in something that adds value to

the Matrimonial Property Bill. I know the Chairman of that Committee, obviously, might have been engaging in something very constructive.

Hon. Chepkong'a: Hon. Temporary Deputy Speaker, Sir, the reason why we are consulting with hon. Kajuju is precisely concerning matters that the Member on the Floor has raised. He has raised very fundamental issues. He did raise the issue with me privately and so, I was very concerned as to how we can accommodate it.

Hon. Chepkong'a: Order, hon. Chepkong'a! You know that this Bill will spill over to the next sitting. Take a lot of notes now and you can have your private session with hon. Kajuju later in the day.

Proceed, hon. Muchai. But I am sure it was a fruitful discussion.

Hon. Muchai: Hon. Temporary Deputy Speaker, Sir, I would like to thank the Member for observing that the Mover of the Bill was not quite attentive to my contribution. I am glad also to note that the Mover of the Bill was consulting over the same matters that I had privately raised with him earlier on.

This area is very critical and important and ought to be provided for in this Bill before it is finally enacted into law. I would urge the Mover to consider bringing in amendments factoring in situations such as the one that I have described and any other situation that is not envisaged in this Bill at this point in time. Otherwise, subject to the contribution that I have made, I support the Bill.

The Temporary Deputy Speaker (Hon. Cheboi): Let us have hon. Ng'eno. I must state that you have been on top of the requests but I deliberately refused to give you a chance because you walked out for quite some time and I thought that you left the card there.

Proceed.

Hon. Kipyegon: Thank you, hon. Temporary Deputy Speaker, Sir. I thought you were going to reprimand me since I have some serious interest in this particular Bill as you know me. Anyway, thank you.

I wish to support this Bill especially so because I am a Member of the Committee on Justice and Legal Affairs. Other than that, I also want to make some serious contributions based on the pertinent issues which this Bill has raised.

I must say that the institution of marriage had not been taken seriously for a long time. This Bill will come in handy to look at several issues which our marriages have been going through. This Bill is coming at a time when I am also preparing to enter into this particular institution and I felt that maybe it will be very prudent to have a concrete law that governs the institution of marriage. I support the Bill because I know---

The Temporary Deputy Speaker (Hon. Cheboi): Is it possible, hon. Ng'eno, that the fact that this Bill had not been introduced is probably what scared you from entering into that institution? But proceed.

Hon. Kipyegon: Hon. Temporary Deputy Speaker, Sir, this could have been one of the reasons which scared me. Our marriage institutions had not been laid on a serious foundation and maybe some of us were still waiting for the time, not only for this Matrimonial Property Bill, but we were also anticipating the Marriage Bill which will institutionalize marriage and put it into the right perspective and govern it. I will be very grateful and happy if this Bill is passed and supported by the Members, so that when I will also be entering into that particular institution, I will be entering on a firm foundation.

I would like to contribute on some few clauses which I found to be pertinent and important, especially Clause 5 which---

The Temporary Deputy Speaker (Hon. Cheboi): Order! That is totally out of order, hon. Lelelit. You have just done something that should not be done again.

Hon. Kipyegon: Hon. Temporary Deputy Speaker, I stand to be guided. I would want to say that when we talk about matrimonial properties, sometimes we inherit most of the properties from our parents. How will we identify between the acquired and the inherited property? This Bill has addressed that particular issue so that people who enter into marriages do not just claim property.

Hon. Temporary Deputy Speaker, I would also like to say that I like the part that defines the properties that are held in trust. You know many people hold properties in trust. They hold them on behalf of the young ones or other people. It is unfortunate that when some marriages come to an end, some people would want to claim ownership of even those properties which are held in trust. I believe this particular Bill will address that issue.

There is also the issue of division of properties where each and every spouse in the marriage will have an equal share of the properties which are acquired during the course of the marriage. We come from areas where in most of the cases people just wake up in the morning and chase away their wives and they assume that, that is the end of it. I think this particular Bill will tie families together so that people can know that you cannot just wake up in the morning and chase away your wife or beat her and then assume she is gone; then you get married to another one. This Bill will address that situation and make people understand that the moment you enter into a marriage, it is a serious engagement and you have to understand that if you want to dissolve it, it will be very expensive.

So, hon. Temporary Deputy Speaker, I support this Bill because I know it is going to take care of homes which sometimes get into problems because of the man realising that probably he has stayed with the wife for a long time. He realizes the wife is now old and maybe he wants to take "*mpango wa kando*". This Bill will address those situations.

Hon. Temporary Deputy Speaker, another aspect which this Bill has addressed is in cases where some women are more educated than men and men fear marrying them. In other cases, some women are so rich and men fear marrying them. They think by marrying them they become mere tools. This Bill addresses such situations. Spouses need to understand what marriages entail so that no one should be taken for granted.

Hon. Temporary Deputy Speaker, some areas in this particular Bill address the question of second wives who enter into already existing marriages after taking advantage of a bad situation. This Bill addresses that situation so that people who come into marriage at later stages do not disadvantage the person who has worked hard to stabilise the family; people who even acquire property in the course of the marriage. So, this Bill actually will address those disparities.

Hon. Temporary Deputy Speaker, another issue is the question of liabilities. A spouse may engage in activities which later on become a liability. In most of the cases, men will take loans to buy parcels of land somewhere and then marry a second wife. In the event of default, banks chase after all matrimonial properties thereby leaving the first wife in trouble. I think this particular Bill addresses that issue correctly. It says that any liability incurred by a spouse individually should not affect the marriage. I think that particular area has been addressed.

Hon. Temporary Deputy Speaker, lastly, is the question of customary law. Most of us are worried that we are making marriages look Western. We are forgetting about our customary law. This particular Bill also looks at the customary marriage, especially when it comes to divorce.

Hon. Temporary Deputy Speaker, we know our backgrounds. We know how people undertake divorce in our traditions. This Bill addresses the worry that maybe we are westernising our marriages and making them look different from the ones we had. So, I would want to support this Bill because it looks at the customary law when it comes to the question of divorce. Otherwise, I support this Bill and I believe it is going to lay a serious foundation and especially to my future as I am preparing to enter into this institution. Thank you very much.

(Laughter)

The Temporary Deputy Speaker (Hon. Cheboi): Good luck in your future endeavours. Let us have hon. Chachu Ganya.

Hon. Ganya: Thank you very much, hon. Temporary Deputy Speaker. From the outset, I want to support this Matrimonial Property Bill of 2013. A strong nation is built by people and families with strong family values. Strong family values ensure that we have families and communities which eventually form what we call a nation.

First of all, this Bill enables us to operationalise Article 45(4) of our Constitution. I was lucky enough to be one of the 26 Members of Parliament who negotiated our Constitution. As we were negotiating the kind of governance structure, representation and the Bill of Rights we should have as a nation in the Constitution, there was one issue we negotiated in Naivasha – Article 45 of our Constitution on marriage.

*[The Temporary Deputy Speaker
(Hon. Cheboi) left the Chair]*

*[The Temporary Deputy Speaker
(Hon. (Ms.) Shebesh) took the Chair]*

Mr. Temporary Deputy Speaker, in the draft we had in Naivasha, it basically stated that whatever property the family owns, if there is a divorce they have to share it on half-half basis.

Hon. Chepkong'a: On a point of order, hon. Temporary Deputy Speaker. I realise that hon. Chachu Ganya has not noticed that there has been a change of guard. So, he is making reference to Mr. Speaker and I am sure he can see that you are Madam Speaker. So, maybe he needs to amend his language.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I am sure he has now noticed. Hon. Chachu, go ahead.

Hon. Ganya: Hon. Temporary Deputy Speaker, I stand guided by my brother. When we were in Naivasha, this is one issue that we negotiated as hon. Members of Parliament. Eventually, unlike the draft we had which basically stated that at the time of divorce we should share whatever we have half-half, we said whatever you had owned before that marriage is yours. This Bill goes with the spirit and letter of the Constitution.

It even goes further to ensure that even in polygamous marriages, if a man decides to have two or three wives, the right of the first wife is well safeguarded. It is important because we know what in our society we normally do when we embark on polygamous marriage.

This Bill ensures that our daughters have the right to inherit whatever their family owns. In our culture, we have always discriminated our daughters in favour of our sons. It is wrong and immoral. With our Bill of rights, it ensures that our daughters and sons are equal in every aspect. This is a very important Bill and I think it is really good that it has gone this far.

This Bill ensures that we become responsible parents or families. In the past, it has been easy to have come-we-stay kind of marriages, courtships and unnecessary divorces and polygamous marriages when it is unnecessary just because the man feels so. But this time round, this Bill ensures that there are responsibilities which go with it. Because of that, we will be more responsible as families knowing that there will be responsibilities that somebody has to undertake if he decides to divorce or even wants to be polygamous in his marriage.

Hon. Temporary Deputy Speaker, in that sense it gives incentives for families to stay together and to sort out their issues instead of easy options, which is normally a divorce or separation. This ensures that we will build a stronger nation with stronger family values which are fabrics of any viable and strong society.

With those remarks, I beg to support the Bill.

Hon. (Ms.) Kanyua: Thank you, hon. Temporary Deputy Speaker. I also rise to support the Bill. I serve in the Departmental Committee on Justice and Legal Affairs. We had a lot of conversation around the aspects of the Bill. But as I rise to support this Bill, I also rise as somebody who is trying to practise law in this country.

Hon. Temporary Deputy Speaker, in our courts we have been using the Married Women Property Act of England of 1882 on matters of divorce. Judge after judge and court after court have complaints. With a Parliament that has been here since Independence, it is time to give the Kenyan people a law like this so that they do not have to refer to the Married Women Property Act of England. The sad part is that in England they do not even use that law. So, we have been using a law which the original owners have since stopped using. It is time that even as we practise family values and as we hope and pray that our marriages will live and survive until death do us part, we are prepared because not everybody is a Christian and not every marriage really is blessed to stay until the end.

At the point that a marriage does turn sour, there is a law that parties can resort to share the matrimonial properties that they have acquired within the existence of that marriage. This is good law and this is a law that will help our country. Again, these are the sort of laws that we want to pass early on in the term of an assembly. These particular laws, together with the Marriage Bill that will be coming after this, are going to define the 11th Parliament as the Parliament that has been able to bring into this country laws that shape our marriages in line with Article 45 of the Constitution.

Hon. Temporary Deputy Speaker, a law that helps our marriages to keep together and for parties to never resort to violence, but use legal means to share what they have acquired within the matrimonial period, is what we want.

I support this Bill because the matrimonial home is to be left to the wife and children. In our context and in our African culture, the matrimonial home is a very sanctified home. It is the home where the family sets up. Even as we look at marriages and as we look at going forward; I think it is good that the law does recognize the very value of a matrimonial home. Also the very value of keeping children in a life that they have been used to; of keeping them in schools that they have been going to and a life that they have been accustomed to. Therefore, the matrimonial home does receive its special contribution and special consideration as the Matrimonial Property Act is being passed and is being discussed by this House.

The other thing that has come in with this Bill is the recognition of domestic labour by women of this country. We do have many women out there in this country working and tilling the land, cultivating and pulling their weight in terms of building the economy. Our women are hardworking; no doubt. Women from Nyeri County that I represent and women in many other counties in this country do work and work day and night.

Hon. Temporary Deputy Speaker, the domestic labour has not been recognized in our laws. It is not until the Matrimonial Property Act that this House is going to pass in the Bill that we are discussing that we do get recognition that domestic labour is just as important as any other work that we do in the daily life of Kenyans. It is important to be a banker, lawyer, but domestic labour is also important. In terms of matrimonial property and contribution, domestic labour does rank and matter and, therefore, our women can continue to serve the men as they work. They can continue to serve in the homes with complete knowledge and awareness that, that work is not in vain. That no woman will be told that the 20 years that you spent in this marriage are not worth anything in terms of property.

Hon. Temporary Deputy Speaker, we are guided by the courts and the court was actually a little mean in the case of Echaria where Mr. Echaria, who was an ambassador and his wife left the country. Mrs. Echaria left her work here in Kenya – she was a lawyer – and went off to serve with the ambassador for many years. She was a very good ambassadorial wife; she did her wifely duties, but when it came to sharing property, the Court of Appeal decided that her contribution was only 25 per cent. Although she had given up her own job as a lawyer in this country to go and serve with the husband, the Court of Appeal did not think that her contribution was enough to guarantee her equal share in the marriage. So, as we pass this Bill, we are alive to such cases and they have been many.

Hon. Temporary Deputy Speaker, in the Kivuitu decision, the court was good and it had given fifty-fifty share; that the wife who stays at home and makes sure that the Member of Parliament is well served is just an important role in this country as being a Member. So, from the Kivuitu decision we had come to Echaria decision with 25 per cent and the court was saying, in the most benevolent way, they could only assess the contribution of that wife as 25 per cent.

Until today, this Parliament, by allowing enactment of the Matrimonial Property Bill, can allow the women of this country to rest and participate in their marriage with full knowledge that both parties are equal; that the man is equal and the wife is indeed, equal. So, I am very happy to support this Bill.

Hon. Temporary Deputy Speaker, lastly, I will also be looking to an amendment to the matters of Islamic marriages. It is, indeed, true that Islamic Law protects women and that is recognized under Section 3 of the Bill. A person who professes the Islamic faith shall be governed by Islamic Law in all matters relating to matrimonial property. I think it is going to be important to provide the word “may” so that there is a window that even Muslim women can choose to be protected within the laws of this country. But by and large, if the Islamic Law serves them well, all is well, they can stay within Islamic Law and the law already recognizes that. But using the word “shall” is a little bit too binding. I think the word there should be “may”. So, we will be moving an amendment that Muslims can use the Islamic Law, where it serves them well. And, if they do want to use our laws, then that window should be opened.

I beg to support. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Yes, hon. Makali Mulu.

Hon. Mulu: Thank you, hon. Temporary Deputy Speaker. I also rise to support the Bill. As it has been said by hon. Members, this is actually a very progressive Bill and has many advantages to our families.

However, even as I support this Bill, there are a number of things that I would like to bring forward because they will arise during the implementation of this Bill, in case it is passed and it becomes an Act of Parliament. I have realized that we might pass this Bill, it becomes an Act of Parliament and then implementation becomes a challenge because some of the things are not clear.

I want to start with Clause 2 where we are talking about what really informs the word “contribution”. I can see we are talking about domestic work, caring for the children and companionship. What I would like us to think as we enact this Bill is if we want to value the contribution in terms of companionship--- For example, I have bought a piece of land, I am the one who is working, is earning a salary but it gets to a level where we are divorcing and we are saying that this land needs to be shared half-half. My wife could be a housewife but you want to bring in the aspect of companionship and taking care of children. How do we do the valuation of that? To me, that is critical because if we do not get it right, we will have a law where we have challenges when it comes to implementation.

If you look at Clause 12(3), you will find that it says that a spouse shall not during the subsistence of the marriage be evicted from the matrimonial home by or at the instance of the other spouse except by order of court. This is good but we need to take note that these days a number of wives or husbands have actually been killed because they live in the same house and yet they have disagreements. This is where you disagree in the way you want to do your things and you insist on staying in that house. One is killed by either being shot or being stabbed. We want to create a situation where people will be forced to live in the same house when they do not agree. That is why I agree with the clause that says that you cannot mortgage a house or matrimonial property. However, the idea of forcing people to live in the same compound or home when they are not agreeing could be an issue. We should think about the wording of that clause.

Hon. Chepkong’a: On a point of information, hon. Temporary Deputy Speaker. Maybe, the Member has not read our Report with respect to division of property in the event of a divorce so that he takes into account what is contribution.

We have amended Clause 7 of the Bill to provide that the apportionment will be equal share irrespective of what one has contributed. The amendment we are proposing says that the apportionment will be according to the contribution the spouse has made. So, the court will have to value the contribution that you have made together as stated in the interpretation part.

With regard to whether you can force two people to stay in a marriage, that is dealt with in the Marriage Bill which will be coming later on.

Thank you, hon. Temporary Deputy Speaker.

Hon. Mulu: Thank you, hon. Temporary Deputy Speaker. I appreciate that information. As it was indicated by the Deputy Speaker earlier in the day, this Report was submitted to this House today and some of us have not had a chance to look at it. However, I thank the Chairman for informing me. The clause also says that during the distribution of matrimonial property between and amongst spouses the customary law of the community in question shall---

Here we are enacting a law which we are saying is very progressive and at the same time we are sneaking customary law into it. To me, these are some of the areas which could cause problems in terms of implementation. This is because customary law is very strong where I come from and it is a matter of saying that we have a small provision to use customary law and then we ruin this good law. This is an area we may need to do what hon. Pricilla was proposing. Instead of saying "shall", we should use the word "may" so that we give room, otherwise customary law will take over and we may not be able to achieve what we intend to achieve.

Hon. Temporary Deputy Speaker, lastly, there are some communities in this country where women marry women. This is not what we talk about here in Nairobi. This is allowed by our customs. This is a situation where you find a lady has been married for many years, she has not managed to get boys, all the daughters are married and then she wants to get another lady who will actually succeed the family. You will have the lady married, she will come to the family, she will get children and life will continue. It might not be possible to legislate for everybody but I think that is another area just like when we said that the first wife has passed on, she has left behind children and the wife who comes after does not cope with the children. For purposes of protecting the children, we need to do something as it has been agreed.

How do we handle a situation where a woman marries another woman? This is a union like any other union and it is allowed in some communities. That is another area we should think about as we move forward. We should think of an amendment. I would like to say that this Bill is progressive---

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): There is a point of information from hon. Pricilla Nyokabi. I suspect that she will inform you just like the Chair did on the proposed amendments. I just want to make it clear to the Chair and his Committee that if those amendments had come earlier, we would not need many clarifications to be made. However, I will indulge you on the clarifications where you have already proposed amendments.

Hon. (Ms.) Kanyua: Hon. Temporary Deputy Speaker, the point of information is that, indeed, it is a constitutional matter on the marriages that are accepted in this country. You have to marry a member of the opposite sex. That matter did raise a lot of attention and indeed, took a lot of attention during the constitution-making process. In

essence, you cannot have a marriage between two women. That is completely unconstitutional. It is not only illegal but it is also unconstitutional. If you look at Article 45, around which the Matrimonial Property Act is anchored, the marriage has to be of adults who are above 18 years of the opposite sex. That is the point of information.

Thank you.

Hon. Mulu: Thank you, hon. Temporary Deputy Speaker. I like that piece of information, but the reality of the matter is that--- When I talk about a woman marrying another woman, it is not in the real sense a man marries a woman. The lady will marry another woman but in terms of who takes care of that family, it could be a relative of the old lady. So, it is not really a marriage in the real sense. However, the fact of the matter is that any time you go to that home and you ask the husband of that lady, you will be shown the old lady because that is the one who pays the dowry and all the other things that come with marriage. However, this also falls under our customs and I do not know how we will handle it. This is an important aspect about marriage because out of that marriage children will be born, they will grow up and marry and even as we share the property, we should think about them. You cannot really ignore these children because they also want to benefit from that marriage.

Thank you, hon. Temporary Deputy Speaker. I support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Thank you. I think we have all heard about customary unions between two women. I think the Chair and the Members of the Departmental Committee on Justice and Legal Affairs are being challenged to ensure that, that customary marriage, if it is unconstitutional is declared so or you put safeguards to the same. The Committee should consider the hon. Member's contribution. I can see the Chair wants to respond to that matter before I give another Member a chance to contribute.

Hon. Chepkong'a: Hon. Temporary Deputy Speaker, it is true. Even in my own ethnic group, there are old women who "marry" young women but the relationship in this case is not in the sense of gay and lesbian relationships. It does not happen that way. Clause 11 deals with the issue of customary marriages. So, in the event that such a thing happens, we should refer to the customs of the particular ethnic group. It is addressed in there.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Yes, Member for Githunguri, hon. Peter Njoroge Baiya.

Hon. Baiya: Thank you, hon. Temporary Deputy Speaker, for giving me a chance to also contribute. I rise to support the Bill.

I would like to support my colleagues who have spoken before me on the law relating to marriage and matrimonial property. We have allowed a situation to exist in the country, where the law has remained very vague and hazy. Such law is a feature of constitutionalism. It is depictive of a country which really upholds the rule of law, and which is committed to legislate to make the law simple and clear on matters relating to governance of marriage and matrimonial property.

The law we are making will be applicable whenever parties to a marriage fall into a dispute. It will help them to sort themselves out with regard to properties that may affect their marriage. Looking at what the law was in this country before, there was a lot of uncertainty. We were relying on laws borrowed from many centuries back in England. It has all along been assumed that the circumstances relating to marriage are static

whereas even in England, they have developed their law to take care of changing circumstances. Our country has mainly been relying on old laws in statute books of a foreign country, which was itself static.

The situation in the country has been helped by the courts attempting to borrow principles of legislation, which they have used to interpret situations where disputes arise. One of the consequences of this approach is that we have left it to the judges to make the law whereas, under our Constitution, it is Parliament which is supposed to make laws. Judges make such laws as they try to interpret the principles of legislation and fairness, which at times become extended. It is also difficult to maintain consistency. Worse still, there is no publicity of such laws. Most Kenyans do not know of their existence.

Consequently, only a few elite women in the cities get to know about such laws. Once we enact this law, it will be understood and known to all Kenyans that such-and-such are the rights of married men and women. We are also seeking to simplify this law. We are stating clearly what will happen to what you have come into the marriage with, be it the man or the woman. Do you have a right to keep it? We are seeking to answer such questions in this Bill.

It is very important that the law makes it clear what your respective rights are. If you are a man you do not lose the right to acquire property merely because you have come into a marriage. It should not happen, indeed. This is because that would be unconstitutional and it will be in violation of the rights of a Kenyan. More importantly, it will be against the marriage as an institution if you make it punitive for somebody to suffer certain consequences relating to property merely because somebody has entered into a marriage. The same goes for the women.

In the same way, we have seen a lot of injustices arising as a result of uncertainties within our law. Besides the cases being cited, I have seen cases where a lady in my constituency, a teacher, got a loan from her employer and bought property. The property was about to be mortgaged but she saved the marriage. Eventually it ended up being in the husband's name. When, however, it comes to disputes relating to marriage, she has no means to prove that she has made a contribution merely because the property is registered in the husband's name.

Madam Temporary Deputy Speaker, the law as it is now, we are going to make sure that such conflicts do not arise even if the property is registered in the name of the man or woman. The other one could go to court and seek to prove her contribution in the past, either monetary or otherwise.

This principle of contribution has also been debated within our courts and has borrowed a lot from the other jurisdictions. The basic principles are very clear and they do not render themselves of any confusion. If you are living with a spouse and she has made a contribution it may be that by supporting your children it is giving you the full opportunity to invest in properties. In the event there are any disputes, for heaven's sake it should not be allowed for any of the spouses by virtue of legislation to punish the other. Usually, when there is a conflict the parties try to use that conflict to settle scores against the other. This law is going to make sure that the settling of scores between spouses is not permitted. This has given the tools through which the judges will be able to come up with innovative solutions to ensure that justice is delivered.

A country can only be as strong as the kind of families it is able to support. This law is going to make sure that the rights of respective spouses in marriages are

crystallized, clear, predictable and certain. If somebody wants to get in marriage, they will be sure of the consequences. There will be very few surprises. That is what will make parties come into serious relationships and foster long-lasting relationships that will motivate them to do their best. It is the society that suffers as a whole when there are these uncertainties and not just the women. This law is meant to strengthen our families and relationships. It is an important law. Nevertheless, it is capable of being improved. At the Committee level we have looked at some of these things and we will bring some amendments to ensure that the law is refined so that we give the country a Bill that will foster relationships between spouses.

Hon. (Dr.) Nyikal: Thank you, hon. Temporary Deputy Speaker, for giving me the opportunity to contribute to this Bill. I rise to support it.

Hon. (Ms.) Sunjeev: On a point of order, hon. Temporary Deputy Speaker. Looking at the mood of the House, I feel that some of us would like to make an input within the next 10 minutes. Would I be in order to ask that you reduce the time of the speakers to maybe two minutes?

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Members, we do not have too many people making requests and we could probably limit our presentations, so that we can see whether we can have the remaining four Members who have made requests to speak.

Hon. (Dr.) Nyikal: Thank you, hon. Temporary Deputy Speaker. The most important aspect of this Bill is the duo protection. Most often, it has been assumed that when we have a Bill such as this one, then we are just protecting women. We must realise that the situation is changing in the country and we are getting to a stage where even men are going to need protection, as somebody had indicated earlier. The definition of a spouse in this Bill protects both parties.

This Bill is important in stabilizing marriages which is the most important institution for national development and setting the national character. Again, the marriage institution protects children. So, in my view, this Bill is not only protecting women, but the family and to a larger extent, the children and the nation at large. I am extremely happy with the recognition of the contribution of women. For a long time, it has been assumed that housewives make no contribution. This Bill recognises the domestic work and child care, which to a large extent is extremely important. We must be aware of the fact that in reality, internationally, the issue of unpaid labour for women is coming up. This Bill recognises what has been referred to as unpaid labour for women.

The Bill also recognises the property that is acquired before marriage and protects it unless by agreement. Many times, parents have been scared of giving properties to their daughters because there is fear that once they get into marriage, the property becomes solely the property of the men. Nobody knows what would happen should the marriage fail and then the girl loses the property completely. The definition of matrimonial home is very protective as I said and many times, many men have mistreated women. Even if one is buying property or contributing money for the construction or purchase of a house, the contribution of the women is always big that sometimes without them, the purchase of the property would not have been realised. When it comes to separation, women literally go without anything yet this is a place they have been living in and children have been raised there. They can just be chased away. That can no longer take place.

Therefore, this Bill comes at an appropriate time together with the Marriage Bill and the Family Protection Bill. This Bill goes a long way in protecting marriages. It is also important that the Bill also looks at the cultural values. Although a Member was concerned that the word “shall” makes it difficult, Clause 11 goes on to say that it must be in line with the Constitution. It is important that it protects the family property from being disposed of without the consent of one of the spouses. We are all aware of situations where families have been living in a house or a farm for a long time and suddenly they realise that the property was sold a long time ago and they can be evicted.

I also like the idea that if one spouse gets into liability without the consent or knowledge of the other, the other spouse gets protected. This is because once again people get into loans and mortgages and the spouse is not aware at all and suddenly again they are being evicted.

Hon. Temporary Deputy Speaker, the fact that there is provision that you can get into negotiation before marriage as regards property, I think is a very big test of people’s sincerity when they are getting into marriage. It gives provision to know that this partner I am getting into marriage with; is it really because of the issue of property or we have a deeper relationship that can outlast many other ways? Without a law like this, there can be a lot of pretence. People get into marriages but they are targeting their spouse’s property. It clearly provides for handling of polygamous marriages. Now, since the word “polygamy” is not defined, where do we put polyandry? We know that that exists and we have had cases of people talking about it. How are we going to do that? Maybe it does not exist now but these are things that can come in the future and we can look at it.

Hon. Temporary Deputy Speaker, all the same there are some sections that are not clear and I think those will be dealt with. Sections 6(c) and (d) are not clear on what they are really indicating, but I will say as one hon. Member said that this Bill does not take into consideration the welfare of children. When we are looking at property and we call it matrimonial property, I think it is important to look at a way of protecting children. Once we alienate the property and say it belongs to one spouse it is important to know that if a marriage is breaking, where are the children and when we are alienating property how do they get protected? I think that needs to be looked at.

Hon. Temporary Deputy Speaker, with that, I beg to support.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Sunjeev.

Hon. (Ms.) Sunjeev: Thank you, hon. Temporary Deputy Speaker. I know I have very little time but I will try to make it as brief as possible so that people can understand. This is not a dog Bill. It is not a cat Bill. It is a human being Bill. It is a man’s Bill. It is a woman’s Bill. They get together in matrimony. When you look at this Bill, it talks about matrimonial property. Matrimony is a situation where two people are joined together in marriage. Property that is acquired in the course of marriage has caused wars in this world. So, when you put marriage and property together, it becomes a big issue. That is what this Bill is looking into.

Hon. Temporary Deputy Speaker, I appreciate what the other hon. Members have said, but I would like the Chairman to address some issue. Section 36 of the Marriage Bill says if a lady does not have kids upon her marriage and her husband dies she is entitled to property. I know he is a bit busy right now but I think I will speak to him later about this. Other than that, hon. Temporary Deputy Speaker, I thank you for this time and I thank everybody who has listened to this. I do not think men and women of our

country understand this Bill properly. If they want to understand it, they should read it. I am sure all of them will stand in support of this Bill. Thank you. I support.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Benson Kangara.

Hon. Kangara: Thank you, hon. Temporary Deputy Speaker. Although I know we are short of time, but from the outset I want to support the Bill. I am a member of the Departmental Committee on Justice and Legal Affairs. We have looked at the Bill and it is a good one. Having said so, there are issues having looked at the memorandum that we have already received---

The Temporary Deputy Speaker (Hon.) (Ms.) Shebesh): Hon. Member, please raise your voice a bit.

Hon. Kangara: Hon. Temporary Deputy Speaker, I appreciate the agony that women in this country have been going through while dealing with matters of matrimonial property. Where I come from---

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I am sorry, hon. Benson, I am going to interrupt you. There is a point of order from hon. Jude Njomo.

Hon. Njomo: Thank you, hon. Temporary Deputy Speaker. As a matter of procedure, looking at the time, would I be in order to move that the Mover be now called upon to reply?

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): It is at the discretion of the House to do so. So, I will ask what the mood of the House is.

(Question, that the Mover be called upon to reply, put and agreed to)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, I will extend this sitting by three minutes.

Hon. Benson, I will give you just one minute to complete your contribution. I will then extend the sitting by three minutes to allow the Mover to reply.

Hon. Kangara: Thank you, hon. Temporary Deputy Speaker. I was saying that I feel the agony and pain that Kenyan women have been going through while dealing with the issue of matrimonial disputes but where I come from, men are also going through the same agony. Some of them have even been battered and thrown out of their matrimonial properties. This Bill provides for a win-win situation for both parties to a marriage. So, it is a good Bill. Needless to say, the law we are making will only apply in a worst case scenario. Otherwise, spouses are supposed to keep their promises and to be faithful to each other all the time.

This Bill envisages that each party to a marriage will work hard and acquire his or her own property, and that he or she will be open to the other party. There are serious incidents that have happened in this country, especially mysterious murders; and an accusing finger has always been pointed at one of the spouses---

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Benson, I gave you one minute because we have extended the sitting to allow the Mover to reply.

Can the Chairperson of the Committee reply? Please, remember that we have three minutes only.

Hon. Chepkong'a: Thank you, hon. Temporary Deputy Speaker. I just want to give one minute to the Member for Laikipia and one minute to hon. Gikaria.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Committee Chairman, you cannot donate time when the House has resolved to extend the sitting to allow you to reply. So, I am giving you, as the Chairman of the Committee, only three minutes to reply, after which I will close business for today.

Hon. Chepkong'a: Thank you, hon. Temporary Deputy Speaker. I would like to thank the hon. Members who have contributed to this Bill. They have spoken into the hearts of Kenyans. This has been a very relevant contribution to assist the family unit in staying together and helping those family units that have collapsed. I would also like to thank the Members of the Committee who have worked tirelessly to ensure that the various amendments were put in place.

With those remarks, I beg to reply.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, the Question will be put in the next sitting because of the Standing Orders provision that allows us to only put the Question when we have the requisite number of Members in the House.

(Putting of the Question deferred)

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, as we come to the end of business today, I would like to seize the opportunity to wish you a pleasant Mashujaa Day.

Hon. Members, it is now time to interrupt our business. Therefore, the House stands adjourned until Tuesday, 22nd October, 2013, at 2.30 p.m.

The House rose 6.33 p.m.