

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 19th August, 2014

The House met at 2.30 p.m.

[Hon. Speaker in the Chair]

PRAYERS

PAPERS LAID

Hon. A.B. Duale: Hon. Speaker, I beg to lay the following Papers on the Table today Tuesday, 19th August, 2014:-

The Third Biannual Report on the Status of Alcohol and Drug Control in Kenya prepared pursuant to Section 5(j) of the National Authority for the Campaign Against Alcohol and Drug Abuse Act, 2012 to be referred to the Departmental Committee on Administration and National Security.

The Quarterly Economic and Budgetary Review of the Fourth Quarter, 2013/2014 prepared pursuant to Section 83(5)(a) and (b) of the Public Finance Management Act, 2012 to be referred to the Budget and Appropriations Committee.

The Report of the Auditor-General on the Financial Statements of the School Equipment Production Unit for the year ended 30th June, 2013 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Mombasa Water Supply and Sanitation Company Limited for the year ended 30th June, 2013 and the certificate of the Auditor-General therein.

A Report of the Auditor-General on the Financial Statements of FORD Kenya for the year ended 30th June, 2011 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of the Agano Party for the year ended 30th June, 2012 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Sunset Hotel Limited for the year ended 30th June, 2013 and the certificate of the Auditor-General therein.

Hon. Speaker: The Quarterly Economic and Budgetary Review is to be referred to the Budget and Appropriations Committee as suggested by the Leader of the Majority Party. The Third Biannual Report on the Status of Alcohol and Drug Control in Kenya is accordingly referred to the Departmental Committee on Administration and National Security.

Hon. Langat: Hon. Speaker, I beg to lay the following Paper on the Table today Tuesday, 19th August, 2014:-

The Joint Report of the Departmental Committee on Finance, Planning and Trade and the Committee on Regional Integration on a Petition by former employees of the defunct East African Community on delayed payment of other benefits.

Hon. Abongotum: Hon. Speaker, I beg to lay the following Paper on the Table today Tuesday, 19th August, 2014:-

Report of the Departmental Committee on Administration and National Security on the consideration of the Private Security Regulation Bill, 2014.

Hon. Speaker: Hon. Chepkong'a, do you also have report to lay on the Table?

Hon. Chepkong'a: Hon. Speaker, as you know, today is the last day you had given us to lay the report on the Petition by the Law Society of Kenya on the removal of the Attorney-General. We gave you the report, but we are not sure whether it was approved.

Hon. Speaker: On What date?

Hon. Chepkong'a: Today.

Hon. Speaker: Have you met?

Hon. Chepkong'a: Yes; we met and approved it today at 12.00 p.m.

Hon. Speaker: You approved the report?

Hon. Chepkong'a: Yes.

Hon. Speaker: Then it should be brought.

Hon. Chepkong'a: Hon. Speaker, probably, you can allow me to lay that report on the Table after the Motion under Order No.11 on the Order Paper, so that I try to get it.

Hon. Speaker: Maybe, after the Statements and after we finish with the Motion.

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

REQUESTS FOR STATEMENTS

Hon. Speaker: Hon. Shukran Gure, please, move with speed. Those of you who never came for the *Kamkunji* might want to drag themselves, yet we do not have a lot of time. Move with speed even on the reading.

CAPTURE OF KENYANS BY KDF

Hon. (Ms.) Gure: Thank you, hon. Speaker, for giving me this opportunity. Pursuant to Standing Order No.44(2)(c) I wish to request a Statement from the Chairperson of the Departmental Committee on Administration and National Security regarding the alleged capture of six Kenyan men by the Kenya Defence Forces (KDF) at Aden Santur Border Point in Daadab Constituency.

Hon. Speaker: Yes, hon. Kamama.

Hon. Abongotum: Hon. Speaker, it is a strange situation where Kenyans were captured by the Kenya Defence Forces (KDF). This is a strange scenario.

Hon. Speaker: We do not have a lot of time.

Hon. Abongotum: Hon. Speaker, we will respond in two weeks.

Hon. Speaker: Very well.

CHEATING AND IRREGULARITIES IN KNEC EXAMINATIONS

Hon. Ochieng: Hon. Speaker, I wish to request a Statement from the Chairperson of the Departmental Committee on Education, Research and Technology regarding alleged causes of cheating and irregularities in examinations managed by the Kenya National Examinations Council (KNEC).

Hon. (Ms.) S.W. Chege: Hon. Speaker, I would like the hon. Member to give this Committee two weeks.

Hon. Ochieng: Thank you.

IMPROPER USE OF POLICE AND
KDF UNIFORMS BY CIVILIANS

Hon. Shinali: Hon. Speaker, pursuant to Standing Order No.44(2)(c), I wish to request a Statement from the Chairperson of the Departmental Committee on Administration and National Security regarding improper acquisition and use of clothing resembling or intended to resemble the Police and the KDF uniforms by civilians and private security agencies.

Sections 101 and 279 of the National Police Service Act and the KDF Act respectively outlaw improper use, or donning, of uniforms resembling or intended to resemble those worn by the police and military personnel by persons other than the police or KDF officers. Such clothes have influential---

Hon. Speaker: Hon. Shinali, do you have two Statements? I do not seem to have that Statement. The one I have is to the Departmental Committee on Administration and National Security on increased cases of insecurity in parts of Kakamega and Vihiga counties. It goes on to talk about some people who have been killed while ten were maimed and are recuperating at Mukumu Mission Hospital and Kakamega Level Five Hospital. That is the one I have.

Hon. Shinali: Hon. Speaker, I was informed that, that one would be coming up on Tuesday next week, although I had it.

Hon. Speaker: This is the one I have.

Hon. Shinali: That is the one I have been given but it is a different one. Can I have five minutes to present the one you have?

Hon. Speaker: We are also pressed for time. Why do you not do this one so that Hon. Abongotum can respond? Which one does he have? Just read the one you are reading.

Hon. Shinali: Hon. Speaker, pursuant to Standing Order No.44(2)(c), I wish to request a Statement from the Chairperson of the Departmental Committee on Administration and National Security regarding improper acquisition and use of clothing resembling, or intended to resemble, police and KDF uniforms by civilians and private security agencies.

Hon. Abongotum: Hon. Speaker, we will give a Statement in ten days.

Hon. Speaker: Is that okay Hon. Shinali?

Hon. Shinali: Hon. Speaker, there is a rise in insecurity in former Western Province. I hope this matter will be taken seriously because they are using those police uniforms at night to masquerade as security agents.

STATUS OF ROADS IN UPPERHILL/KIBRA CONSTITUENCY

Hon. Okoth: Hon. Speaker, pursuant to Standing Order No.44(2)(c), I wish to request a Statement from the Chairperson of the Departmental Committee on Transport, Public Works and Housing regarding the status of roads in Upperhill, Kibra Constituency.

Hon. Kamanda: Hon. Speaker, give us two weeks.

Hon. Okoth: That is fine.

STATUS OF SECTION BETWEEN MUMBUNI AND KATHIANI ROAD

Hon. Mbui: Hon. Speaker, pursuant to Standing Order No.44(2)(c), I wish to request a Statement from the Chairperson of the Departmental Committee on Transport, Public Works and Housing regarding the status of the section of road between Mumbuni and Kathiani in Machakos County.

Hon. Kamanda: Hon. Speaker, he should give us ten days.

Hon. Mbui: Much obliged, Hon. Speaker.

POLICE BARRIERS IN MKOGODO AREA

Hon. Lempurkel: Hon. Speaker, pursuant to Standing Order No.44(2)(c), I wish to request a Statement from the Chairperson of the Departmental Committee on Administration and National Security regarding police barriers in Mkogodo area of Laikipia North Constituency.

Hon. Abongotum: Hon. Speaker, this issue of barriers is an old colonial policy, but we will give the Statement in two weeks.

Hon. Lempurkel: Hon. Speaker, according to the Parliamentary calendar, the two weeks will be a recess. This month I asked for a Statement from the same Committee regarding constituency boundaries and realignment of district boundaries, but to date, I have not got any response. I think two weeks is too much.

Hon. Abongotum: Hon. Speaker, we will fast track both because this issue must be investigated. The hon. Member should give us one week.

Hon. Speaker: Very well.

Hon. Lempurkel: One week is okay.

Hon. Speaker: Of course, I may just draw your attention to the fact that if somebody is going to be invited to appear before a committee, they must be given not less than seven days. So, even as we give these commitments, we must appreciate that we must operate within rules.

Hon. Speaker: Yes, hon. Jacob Macharia. He is not there?

Yes, hon. Ronald Tonui.

NON-ISSUANCE OF TITLE DEEDS TO
LAND OWNERS IN BOMET CENTRAL

Hon. Tonui: Thank you, hon. Speaker. I request a Statement from the Chairperson, Departmental Committee on Lands regarding non-issuance of title deeds to land owners in Bomet Central.

Thank you.

Hon. Speaker: Yes, the Chairman, Departmental Committee on Lands.

Hon. Mwiru: Thank you, hon. Speaker. I had left my card somewhere and so I had to borrow one.

I would like the hon. Member to give me 14 days to give a response.

Hon. Tonui: Thank you, hon. Speaker. I believe that is okay. There is an issue which I raised in this House another time and you said that it was being handled administratively. That is with regard to my Bill on *Advalorem* Tax on tea.

Hon. Speaker: Why do we not finish this first? If it is something administrative I think the best thing is for hon. Members to be fair to me also. This is because it is very difficult for me to do administrative work from the Chair.

Hon. Tonui: Hon. Speaker, it is not administrative. I am saying that I sought some guidance from you previously on my Bill, which is currently before the Departmental Committee on Agriculture, Livestock and Co-operatives. That was in March, yet other Bills have already been tabled in this House.

Hon. Speaker: That is administrative. This is because I have no way of knowing just like that, that there is a Bill that you have submitted. If you think that it has taken too long, write to me so that I can find out where it is in the processes.

Hon. Tonui: Hon. Speaker, it is with the Departmental Committee on Agriculture, Livestock and Co-operatives. That Committee has stayed with that Bill for a very long time.

Hon. Speaker: You see that is administrative. Surely, I cannot do administrative work here. Where is the Chairperson? Hon. Tonui, why do you not approach the Chairperson? I am sure that he is approachable.

Hon. Tonui: Hon. Speaker, I have been to that Committee and they are yet to deal with it. I was there more than a month ago. They are yet to deal with that Bill and I thought that it would be better for you to---

Hon. Speaker: No! No! We do not operate that way. That will appear like roadside--- Do an appropriate letter of complaint. Write to the Clerk and it will be brought to my attention.

Hon. Tonui: Thank you. I am guided, hon. Speaker.

Hon. Speaker: Yes, hon. Kangongo Bowen.

ADMISSION OF STUDENTS TO KMTC COURSES

Hon. Bowen: Thank you, hon. Speaker. Pursuant to Standing Order No.44(2)(c), I wish to request a Statement from the Leader of Majority Party regarding the admission of diploma and certificate students to the Kenya Medical Training College (KMTC).

Hon. Speaker, Section 6 of the KMTC Act of 1990 places the duty of admission of students to KMTC on the Academic Board constituted by the Act. However, the Universities Act of 2012 created the Kenya Universities and Colleges Central Placement Board (KUCCPB), which has been selecting students for different courses in universities and colleges, including the KMTC. It has created confusion amongst the students as well as the college management as these are two bodies performing the same function.

Hon. Speaker, in the Statement, the Leader of the Majority should inquire into and report on the measures taken by the Government to end the confusion in admission of students to tertiary institutions. Secondly, he should tell us the role of the KMTC Academic Board in respect to admission of students to certificate and diploma courses in view of the fact that the arrangement provided for by the KMTC Act of 1990 was not repealed by Section 10 of the Universities Act of 2012.

Thank you, hon. Speaker.

Hon. A.B. Duale: Thank you, hon. Speaker. I was looking for this Statement on the Order Paper but I have remembered the Member also dropped the Statement in my office. I will respond to this matter on Thursday, next week because it is very urgent.

The KMTC has its own Act it operates under and now we are told that our students have to go through another body in the Ministry of Education, Science and Technology. So, I will bring an answer because it is very urgent.

Our students have applied to the KMTC but they are being told that they should wait to be selected by a different body. Because the matter is very urgent, I will see whether I can bring an answer earlier than that. That may be on Wednesday next week in the morning.

Hon. Speaker: Hon. Jacob Macharia for the second time.

STATUS OF MOLO-OLENGURUONE/NJORO
MAU SUMMIT ROADS

Hon. Macharia: Thank you, hon. Speaker. Pursuant to Standing Order 442(c), I wish to request a Statement from the Chairperson of the Departmental Committee on Transport, Public Works and Housing regarding the status of Kibunja/Molo/Olenguruone and Njoro/Molo/Mau Summit Roads in Molo Constituency.

Hon. Speaker, good road network is an integral agent of sustainable economic and infrastructural growth in any country. However, the above roads are in a dilapidated state, thus hindering development in the area. The Kibunja/Molo/Olenguruone Road has been under construction since 2009, yet it has not been completed to date.

Further, the Njoro/Molo/Mau Summit Road was constructed in 1970 and has not been rehabilitated despite allocation of funds for routine maintenance in the 2010/2011 Financial Year. The Chairperson should inquire into and report on the expected date of completion of---

Hon. Speaker: What are you doing? Are you reading?

Hon. Macharia: Secondly, the steps the Government has taken to ensure that---

Hon. Speaker: Hon. Kamanda.

Hon. Kamanda: Thank you, hon. Speaker. I will be able to give an answer after two weeks.

Hon. Speaker: That is enough.
Yes, hon. Wanjiku Muhia.

KISII UNIVERSITY UNREST

Hon. (Ms.) Muhia: Thank you, hon. Speaker. On 11th March, this year, I requested a Statement from the Committee on Education, Research and Technology regarding Kisii University unrest. On 11th July, the Committee brought a report to this House recommending that the expelled students be re-admitted but to date the students are still at home. I have gone to the Ministry and talked to the Principal Secretary over the matter but the students are still at home.

So, the Vice-Chancellor and the Ministry have ignored the House ruling. The Committee on Implementation has also not taken up the matter. I seek your guidance as to whether I should request another Statement. What should happen in a scenario where the House rules that students should be recalled to university from their homes, but this does not happen?

Hon. Speaker: I think that is a matter that should be dealt with by the Committee on Implementation. The House has already resolved itself on that matter. Has it not? Who is the Chairperson of the Committee on Implementation? Is it the hon. Soipan? You know if you do not pay attention to what others are saying you will always find yourself lost. You will be always at sea. Now, this is a matter that requires the intervention of your Committee, hon. Soipan.

Hon. (Ms.) Tuya: Hon. Speaker, I may need your direction on the issue, because it did not emanate from a resolution of this House. As far as I know, it emanated from a request for a statement. If it was not a resolution of the House, then I am not sure it should come to my Committee on Implementation.

Hon. Speaker: It was not a resolution of the House?

Hon. (Ms.) Tuya: It was not.

Hon. Speaker: It was a Statement? Maybe hon. Sabina Chege can confirm.

Hon. (Ms.) S.W. Chege: Thank you, hon. Speaker. Yes, as hon. Soipan has said, it was a request for a Statement that came to my committee and we tabled an answer, the committee's deliberations and recommendations but it was not discussed in this House. We made a recommendation; today we had a meeting with the Principal Secretary (PS) for Education who told us that already they have communicated to the university. He said that when the next semester in the education calendar starts, the students are going to be readmitted to the university.

We also asked him to do an official letter confirming the same commitment from the Ministry. Already the matter is with the Ministry and that was the answer that came to the committee. But it was not a Motion discussed in this House.

Hon. Speaker: Hon. Wanjiku.

Hon. (Ms.) Muhia: Thank you, hon. Speaker. The PS has been giving the same promise without any commitment in writing. Three weeks ago I was in his office and he promised me the same, but to date the students have not received any communication. This was on 11th July. He said the Senate of the university was to sit. If the Senate sits

every month between 11th July and today it ought to have sat. This is just verbal communication; there is commitment whatsoever from the Ministry.

Hon. Speaker: I think, hon. Wanjiku Muhia, if you want that matter to be pursued by the House differently, you need to bring something substantive to the House. This is because I am not going to start doing work of Principal Secretaries (PSs). You know that is how you communicate with them. You use word of mouth, the short messages service (SMSs) and I do not know what else. Now, how do I confirm that there has been that word of mouth? From whose mouth and into whose mouth? It is even very difficult.

Hon. Wanjiku, I think you could actually raise a substantive Motion here if, indeed, the Ministry appears to be dragging its feet. It is an important matter that the House should express itself on. I would advise you go that route since there is no resolution of the House; indeed, move for the adoption of the report which was tabled by the Departmental Committee on Education, Research and Technology; once it is adopted then it will become a resolution of the House. I think you should move for the adoption of that report.

Now, hon. Members, there was a direction that a report be brought to this House today regarding the preparedness of the country in dealing with the Ebola disease outbreak sought by the hon. Connelly Serem. I direct that, that report be presented to the House in tomorrow's morning sitting.

Before we move to the next order hon. Members, I wish to recognise the presence of students and pupils from Manyatta Boys High School, Awendo Constituency, and pupils from Sony Sugar Complex Primary School in the same constituency.

(Applause)

Yes, hon. Chepkong'a. Where is he?

Hon. Members, for the convenience of the House, we will deal with the business appearing as Order No.8 for purposes of bringing a closure to the debate. Thereafter we will proceed to the business appearing as Order No.10, after which we will consider the business appearing as Order No.11; thereafter we will refer to business appearing as No.9 – Committee of the Whole House.

Hon. Linturi: On a point of order, hon. Speaker.

Hon. Speaker: What is your point of order?

Hon. Linturi: Thank you, hon. Speaker. I want to agree with you that the matter at Order No.10 is a very important matter to this House. I am seeking your guidance because we may have a serious problem with numbers; you need to communicate to Members, or chairpersons of committees who continue to ask hon. Members to go for committee meetings when we have this very serious Motion before the House. I have just seen a message calling me for a meeting, and I do not think that it is in order; we really have to dispense with this. Just in case there is any meeting, kindly ask the chairpersons to postpone their meetings and come to the Chamber.

(Applause)

Hon. Speaker: There is already communication that there is to be no committee meetings. I have not authorised any committee meeting sitting until we conclude the business appearing on the Order Paper as Nos.9, 10 and 11.

Next Order!

BILL

Second Reading

THE COUNTY ALLOCATION OF REVENUE BILL

(Hon. A.B. Duale on 14.8.2014)

(Resumption of Debate interrupted on 14.8.2014)

COMMUNICATION FROM THE CHAIR

STATUS OF COUNTY ALLOCATION OF REVENUE BILL

Hon. Speaker: Hon. Members, I wish to give the following Communication.

First timers who are hovering all over, please take your seats. It is advisable that you regularly attend sittings, so that you are able to know how business is transacted; if you are irregular you will always find yourself caught on the wrong side of things.

Hon. Members this Communication relates to the business appearing under Order Nos. 8, 9, 10 and 11. As you are aware, the National Assembly received the county Allocation Revenue Bill 2014 from the Senate and read it a First time in the Assembly on the 7th of August 2014. The Bill is now scheduled for completion of second reading and Committee of the whole House today. When the House embarked on considering this Bill last week, several Members expressed reservations with some of the provisions contained in it and wish to propose amendments. Indeed, my office has received two proposals seeking to amend the County Allocation of Revenue Bill 2014 which has since been circulated.

Hon. Members, the Constitution of Kenya, Article 111(2), confers on the National Assembly two options for considering a special Bill that concerns county Governments, and which originates in the Senate.

Firstly, the House may amend the Bill, this is the most familiar and preferred avenue used in considering and concluding proposed legislation. Secondly, Article 111(2) further empowers the National Assembly to veto a special Bill. The Oxford dictionary defines “veto” as “a constitutional right to reject a decision or proposal made by a law making body”. That same Article, read in conjunction with Standing 151, require any amendment, or veto, to be supported by at least two-thirds of all Members, which translates to 233 Members.

I wish to remind the House that this is a special Bill concerning county governments. Whereas failure by this House to concur with the Senate on ordinary Bills, either in part or entirely, leaves such Bills referred to the mediation committee, this

particular Bill has no such option. Therefore in the unlikely event that the House fails to meet the above mentioned threshold, Article 111(3) of the Constitution, contemplates that the Bill shall be deemed to have been passed in the form adopted by the Senate, and the Speaker shall refer it to the President for assent.

Hon. Members, the second matter relates to the business under order No. 10. This is a special Motion seeking extension by a period not exceeding 9 months from 27th of August 2014 the prescribed period for passage of Bills listed in the Motion. Ample time is definitely required for quality disposal of these Bills. The time now available to this House, being barely nine calendar days, will not suffice for Parliament to competently consider and pass such crucial Bills. I, therefore, find that there are, indeed, exceptional circumstances as contemplated in Article 261(3)(b) of the Constitution to justify the extension. In this regard, may I draw the attention of the Members to Article 261(2) of the Constitution, which provides that for this Motion to be passed, it must also receive the support of at least two-thirds of all Members of the National Assembly.

The third and final issue is in respect of business appearing under Order No. 11, the Constitution of Kenya (Amendment) Bill No.2 of 2013 which was sponsored by hon. Lelelit Lati, MP. This Bill is seeking to amend some constitutional provisions touching on equalization fund established under Article 204 of the Constitution. The Second Reading of this Bill was concluded and it is only awaiting putting of the question, so as to move it to the next stage. The procedure of amending the Constitution through Parliamentary initiative as provided under Article 256(1)(d) envisages that an amendment Bill shall be passed in both second and third readings if it is supported by not less than two-thirds of all the Members of the House.

It is on this premise, or the commonality of prosecuting business appearing under orders Nos. 8, 9, 10 and 11, that the House Business Committee schedules these three matters to be dealt with on the same day. I therefore urge you hon. Members to ensure that you have your cards in readiness for electronic voting at the opportune time.

Having said that, and in order to expedite the consideration of this business, I now direct that we proceed to deal with business appearing under order No. 8, after which we should go to the business appearing under order Nos. 9 and 10; they are arranged accordingly.

I thank you hon. Members.

Hon. Silvester Anami, you have a balance of seven minutes on this Bill before we call upon the Mover to reply.

BILL

Second Reading

COUNTY ALLOCATION OF REVENUE BILL (SENATE BILL NO.13 OF 2014)

(Hon. Musyimi on 14.08.2014)

(Resumption of debate interrupted on 14.08.2014)

Hon. Anami: Thank you, hon. Speaker. When contributing to this Motion, I had highlighted the importance of mechanisms put in place to actualize implementation of revenue allocated to the counties. I had indicated that IFMIS is very important; it is responsible sometimes for a low absorption of resources allocated to the counties. Indeed, we have received reports that indicated there is a lot of wastage and low absorption of resources that are given to the counties. That is why implementation becomes very difficult.

The issue of wastage is crucial and it is important, as we support this Bill, to underline the importance of the work put in by the Auditor- General and the Controller of Budget. Counties have the tendency of transferring cash to wards and other institutions. This money is not accounted for. Accountability is very important. The governors need to be vigilant in the way Members of the County Assemblies are utilizing funds that are allocated to them. Members of County Assemblies are receiving funds in millions. These funds are not accounted for, and the participation of citizens is not guaranteed. It is important that as such funds are given to the Members of County Assemblies, there is supervision and participation of Project Management Committees; there should be involvement of members of the public who are beneficiaries of the projects that they implement, or else we will continue to experience wastage of funds allocated to counties. We know that because of poverty eradication---

(Loud consultations)

Hon. Speaker: Hon. Members, I do not know the cause for the excitement. Yes, Leader of the Majority!

Hon. A.B. Duale: On a point of order, hon. Speaker. I rise under Standing Order No.95. Now that we have debated the County Allocation of Revenue Bill for the third day, would I be in order to ask that the Mover be now called upon to reply?

Hon. Speaker: Hon. Members, does that appear to be the mood of the House?

Hon. Members: Yes!

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

Hon. Speaker: Yes, hon. Mutava Musyimi.

Hon. Musyimi: Hon. Speaker, allow me to thank the hon. Members for their very creative and helpful interventions. Their points have been made. By way of conclusion, mine is just to ask that all the spending agencies – be they the national Government, the National Assembly, the Judiciary, the county governments, or the independent commissions – to be judicious in the use the money that we get. Let use it to help our people.

With those remarks, I beg to move.

(Question put and agreed to)

SPECIAL MOTIONEXTENSION OF CONSTITUTIONAL
LEGISLATION TIMELINE

Hon. Baiya: Hon. Speaker, I beg to move the following Motion:-

THAT, pursuant to the provisions of Article 261(2) of the Constitution, this House resolves to extend the period prescribed for the passage of the Public Service (Values and Principles) Bill (National Assembly Bill No.29 of 2014); the Persons Deprived of Liberty Bill (National Assembly Bill No.30 of 2014); the Environmental Management and Co-ordination (Amendment) Bill (National Assembly Bill No.31 of 2014); and the periods prescribed for enactment of legislation necessary to give effect to Article 47 relating to fair administrative action, Article 50 relating to fair hearing, Article 226 relating to accounts and audit of public entities and Article 227 relating procurement of goods and services of the Constitution for a period by a period of nine months from 27th August, 2014.

With regard to legislations which have constitutional deadlines---

(Loud consultations)

Hon. Speaker: Order! Order, hon. Members! We cannot hear what the Chairman of the Constitution Implementation Oversight Committee CIOC) is saying.

Hon. Baiya: Thank you, hon. Speaker. I am highlighting to the hon. Members the legislations that have a constitutional deadline of 27th August, 2014 as stipulated in Schedule Five of the Constitution of Kenya, 2010. The legislations relate to consumer protection, under Article 46, fair administrative action under Article 47, fair hearing, under Article 50, rights of persons detained or held in custody under Article 51, environment under Article 72, accounts and audit of public entities under Article 226, procurement of goods and services under Article 227, and values and principles of public service under Article 232.

Hon. Speaker, on the status of preparation of legislation with regard to these Bills, through consultation with the Office of the Attorney-General, and the Commission for the Implementation of the Constitution, we have established that the legislation on consumer protection, under Article 46, is already being implemented through the Consumer Protection Act, 2012. The legislation concerning fair administrative action was implemented through the Commission of Administrative Justice Act (Act No.23 of 2011), which established the already functional Commission on Administration of Justice.

With regard to fair hearing required under Article 50, the legislation required relates to legislation providing for protection of the rights and welfare of victims offences. There is a Private Member's Bill – the Victim Protection Bill, 2013 – which is in its final stage. Once passed into law, the Bill will fulfill this requirement well before 27th August, 2014.

Hon. Speaker, regarding the legislation on rights of persons held in custody, under Article 51, a Bill was prepared by the Ministry of the Interior and Co-ordination of

national Government and introduced in this House. It has already gone through First Reading. It is due for Second Reading on 2nd September, 2014 – after the 27th August 2014 constitutional deadline. In the same stage is the legislation relating to environment, under Article 72. A Bill has already gone through the First Reading. It is due for Second Reading around the same time.

Likewise, there is legislation relating to audit of public entities. As on 10th July, 2014 the National Treasury had completed preparation of the draft Bill, which was forwarded to the CIC. It is now being processed before being released to the National Assembly for publication. The same applies to the legislation on procurement of public goods and services. The final Bill relates to the values and principles of public service.

Hon. Speaker, in view of the clear requirements of the Constitution, particularly Article 261(2), we require ample time to be able to process all these Bills. We already have the drafts but due to the extended process of involvement of the Senate with regard to the procedure for enactment of Bills concerning the counties, we require at least nine months for those legislations which will take more time. We are, therefore, urging hon. Members to pass this Motion.

The delay in presenting this legislation emanated from delayed presentation of the draft Bills from the Executive in spite the persistent pressure put on it by the CIC, the Constitution Implementation Oversight Committee (CIOC) as well as this House, through the Speaker, and the Leader of the Majority Party. So, we urge hon. Members to appreciate the fact that the blame for this delay does not emanate from Parliament. It emanates from the Executive's inability to present the Bills to the CIC for processing in good time.

Hon. Speaker, with those remarks, I beg to support and urge the Deputy Minority Leader, hon. Midiwo, to second the Motion.

Hon. Speaker: Yes, hon. Midiwo.

Hon. Speaker: Let us hear from hon. Washington Midiwo. Give him the microphone.

Hon. Midiwo: Thank you, hon. Speaker. I will be very brief.

I rise to second the Motion. This particular Motion does not need a lot of debate. This is basically a procedural Motion.

I only wanted to say one or two things. The first one is to the executive. We are here in our numbers to try and keep the process of implementation of the Constitution alive and kicking. It is only a plus to us, but it is a negative to the people whose responsibility this is. Hon. Members and the public may wish to know that these Bills should have been here. We have had to bring them here since 2010, but most of them are not here yet. Some of the ones we have are even in draft form.

Therefore, we want to extend the period; we want to ask our colleagues to give the Executive more time to forward the Bills. But we want to tell them that even the ones we have passed as Private Members' Bills should be operationalised.

Hon. Speaker, going back to 2012, it took me a couple of years to come up with Consumer Protection Bill, which has met the requirement of Article 46 of the Constitution. The President assented to that Bill in 2012 and up to today, it has never been operationalised, leave alone formation of the body provides for. We want to ask the Executive to work with us for the betterment of the future of our country.

With those remarks, I second.
Thank you.

(Question proposed)

An hon. Member: Put the question so that we can confirm---

Hon. Speaker: Hon. Members, you are telling me to put the question so that you confirm, but, I need to---

(Loud consultations)

Hon. Members, for us to confirm, you are all required or requested to login in your cards. Those who travel without cards can raise their hands wherever they may be.

Hon. Alex Mwiru, hon. Elmi and hon. (Ms.) Shukra, of course--- Those hon. Members without cards, can raise their hands. We want to confirm the number of hon. Members in the House.

Clerk, get us the total number of Members in the House.

Hon. Members, may I now know how many hon. Members do not have cards. Those ones without cards can just stand, so that---

(Loud consultations)

Hon. Members, those hon. Members without cards should stand in their places.

(Several hon. Members stood up in their places)

Hon. Members, I presume those hon. Members without cards are the ones standing. Now, hon. Members, even those with cards are standing! How do we know who has no card and who has it?

Are the hon. Members standing the ones without cards?

Hon. Members, those hon. Members without cards, or whose cards are not working---

An hon. Members: Should be arrested!

Hon. Speaker: No; they are not going to be arrested. I assume that the hon. Members standing are the ones without cards.

(Division in progress)

Hon. Members, resume your seats! Hon. Members, if only we could clear with hon. Sumra quickly. The total number present--- I am aware that there are other hon. Members who have made their way in and may not have been included in the initial figure of 230; that is why we are 236. I confirm that we have over 253 hon. Members present.

(Applause)

Therefore, we form the necessary quorum. It is important because we cannot even put the Question before we have the 233 Members present. It is also important that we hear, even as I put the Question, whether there are those who may be opposed to the Motion, so that we can then go into a Division.

(Question put and agreed to)

(Applause)

Hon. Speaker: Is there anybody claiming a Division? Hon. John Mbadi, do you want to claim a Division?

Hon. Ng'ongo: Hon. Speaker, I just need your guidance. I thought that when it comes to voting on a constitutional amendment, or where we require two-thirds we usually have to vote--- It is not a question of me calling for a Division; we should just go ahead and vote physically, so that we are sure that we have---

Hon. Speaker: You are absolutely right, hon. John Mbadi. The Question has been put. You, again, must log in for 60 seconds. Logging-in starts now for 60 seconds. Vote either for extension of time or against it.

Order, hon. Members! The results of the Division are as follows:-
From electronic voting, the Ayes are 248 and no Nays while for manual votes, the Ayes are 18. That gives us a total of 266 Members.

(Question carried by 266 votes)

AYES: Messrs. S.A. Ali, Midiwo, ole Metito, Kosgey, Lati, ole Kenta, Gethenji and Baiya, Ms. Mwendwa, Messrs. Omondi, Wandayi and Kaluma, Ms. Tuya, Messrs. Mohamed Abbass, Abdinoor, Aden, A.O. Ahmed, Dawood, Farah, Nassir, A.B. Duale, Oyugi, A. Keter, Masadia, Sambu and Dido, Ms. Wahome, Messrs. Letoimaga, Ms. Abdalla, Messrs. Mwadime and Toboso, Ms. Nyokabi, Messrs. Simba, Savula and Shill, Ms. Nyaga, Messrs. Momanyi, Shinali, Washiali, Langat, Mutura, Kitungi, Bett and Bishop Mutua, Ms. Mbarire, Ganya, Gimose, Wamalwa and Nakuleu, Ms. Ombaka, Mr. Omulele, Cpt. Wambugu, Messrs. Serem, Iringo, Anyango, Kazungu, Maanzo, Bowen, Karithi, Kiaraho, Ochieng, Pkosing, Wekesa, Were and Waweru, Ms. Ghati, Dr. Laboso, Messrs. Lagat, Wangwe, Busienei, Kiragu, Ngare and E. Keter, Ms. Mathenge, Mr. Ngeny, Ms. F.I. Ali, Mr. Wanyonyi, Ms. Mutua, Ms. Kajuju, Messrs. Nderitu, Nyenze, Waititu, Odanga, Ogallo, G.W. Omondi, Muchai, Theuri, Kariuki, Irea, Konchella, Mungaro and Ochanda, Ms. Wang'a, Mr. Rai, Ms. Kipchoim, Ms. Duri, Messrs. Kombe, Mwanyoha, Osman, Chepkwony, Saney, Abass, Sane, Mwaura, Kiptanui, Rop and Macharia, Ms. Banticha, Messrs. Gakuya and Mukwe, Dr. Gesami, Mr. Kimaru, Dr. Nyikal, Ms. Teiyaa, Mr. Opiyo, Ms. Mbalu, Messrs. Angwenyi, Olum, Kipyegon, Serut, Waiganjo, Kobado, Ndirangu, Njoroge, Nyaga, Waluke, Sakaja and Mlolwe, Maj-Gen. Nkaissery, Messrs. Gitari, Kiuna, Lekuton, Limo, Lomwa, M'eruaki, Manje, Magwanga, Obiero and Aduma, Ms. Lay, Messrs. Njomo, Melly, Nuh, Kemei, Kajwang', Abongotum, Mbiuki, Obura, Okoth, Keynan, Njuguna, Moi, Bitok and ole Lemein, Ms.

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Korere, Messrs. Aramat and Sang, Ms. Fathia, Mr. Kamanda, Ms. Leshoomo, Messrs. Nyamweya, Muluvi and Lomunokol, Ms. Keraa, Ms. Mbugua, Ms. Seneta, Messrs. Robi, Kyengo, Ng'ongo, Onyura and Kisoi, Ms. Odhiambo-Mabona, Messrs. Linturi, Huka and Mohamed Haji, Eng. Mahamud, Messrs. Cheboi, Injendi, Lessonet, Kuria, Aburi, Mati, Musyimi and Chea, Ms. Ibren, Mr. Ngikor, Eng. Gumbo, Messrs. Barua, Aluoch, Ngunjiri, Njuki, Otuoma, Makau, ole Ntutu, Koinange, Kinyua, Mwangi, Shehe and Rotino, Ms. Kanyua, Mr. Akujah, Ms. Nyamai, Messrs. Letimalo and Otaalo, Ms. Muia, Ms. Wanyonyi, Messrs. Makenga, Tong'i and Mbui, Dr. Pukose, Mr. Tonui, Ms. Mitaru, Ms. Mumo, Messrs. Bunyasi, Koech, Mwaita, Chepkong'a, Gichigi, Arama, Moroto, Isaack, Manga, S.S. Ali, Tiren, Osele, Anami, Ogari, Karani, Mule, Manoti and Murunga, Ms. Sunjeev, Ms. Chebet, Ms. Musyoka, Messrs. Wetangula and Ngahu, Dr. Munyaka, Mr. Wamunyinyi, Ms. Muhia, Mr. Korir, Dr. Ottichilo, Messrs. Cheptumo and Kipkemoi, Ms. Chidzuga, Ms. Kering and Ms. Juma.

THE CONSTITUTION OF KENYA (AMENDMENT) BILL

Hon. Speaker: Hon. Members, the next Order! There are some hon. Members who find it hard to sit. Just to occupy a seat is a problem. The next business is Business appearing as No.11 on the Order Paper. This is for purposes of putting the Question. This is a Bill proposed by hon. Lati on the Equalization Fund. It is a constitutional amendment Bill.

Hon. Members, once again, we will go to electronic voting. We must confirm. Remember on all these Bills on Second and Third Reading, we must confirm that we have the requisite numbers. So, can we log in again? You have 60 seconds for logging in. It is the amendment on the Equalization Fund.

(The Division bell was rung)

Hon. Members, you may vote now!

Hon. Speaker: Hon. Members, I can announce the results of the electronic voting. Those who had to vote manually have chosen to remain in their seats. So, they have not voted one way or the other. However, I have the results.

(Question carried by 250 votes to 7)

AYES: Messrs. Gathenji and S.A. Ali, Ms. Mwendwa, Messrs. Omondi, Wandayi and Kaluma, Ms. Tuya, Messrs. Mohamed Abbass, Abdinoor, Aden, A.O. Ahmed, Dawood, Farah, Nassir, A.B. Duale, Oyugi, A. Keter, Masadia, Sambu and Dido, Ms. Wahome, Messrs. Letoimaga, Midiwo, Mwadime and Toboso, Ms. Nyokabi, Messrs. Simba, Savula and Shill, Ms. Nyaga, Messrs. Momanyi, Shinali, Washiali, Langat, Mulu, Mutura, Kitungi, Bett and Bishop Mutua, Mr. Kinoti, Ms. Mbarire, Ganya, Gimose, Wamalwa and Nakuleu, Ms. Ombaka, Mr. Omulele, Capt. Wambugu, Messrs. Serem, Iringo, Anyango, Maanzo, Bowen, Kiaraho, Ochieng, Pkosing, Wekesa, Were and Waweru, Ms. Ghati, Dr. Laboso, Messrs. Moindi, Lagat, Busienei, Wangwe, Eng. Kiragu, Ngare and E. Keter, Ms. Mathenge, Mr. Ngeny, Ms. F.I. Ali, Mr. Wanyonyi, Ms.

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Mutua, Ms. Kajuju, Messrs. Nderitu, Nyenze, Waititu, Odanga, Ogalo, G.W. Omondi, Muchai, Theuri, Kariuki, Irea, Konchella, Mungaro and Ochanda, Ms. Wangi, Mr. Rai, Ms. Kipchoim, Ms. Duri, Messrs. Kombe, Mwanyoha, Osman, Chepkwony, Saney, Abass, Sane, Ole Metito, Kiptanui, Rop and Macharia, Ms. Banticha, Messrs. Gakuya and Mukwe, Dr. Gesami, Mr. Kimaru, Murgor, Dr. Nyikal, Ms. Wanyama, Ms. Teiyaa, Messrs. Opiyo, Angwenyi, Olum, Kipyegon, Serut, Waiganjo, Kobado, Ndirangu, Njoroge, Nyaga, Sakaja and Mlolwa, Maj-Gen. Nkaissery, Messrs. Gitari, Kiuna, Lekuton, Limo, Lomwa, M'eruaki, Manje, Magwanga, Obiero and Aduma, Ms. Lay, Messrs. Njomo, Melly, Nuh, Kemei, Kajwang', Abongotum, Mbiuki, Obura, Okoth, Keynan, Njuguna, Moi, Bitok and ole Lemein, Ms. Korere, Messrs. Aramat and Sang, Ms. Fathia, Mr. Kamanda, Ms. Leshoomo, Messrs. Nyamweya, Muluvi and Lomunokol, Ms. Keraa, Ms. Mbugua, Ms. Seneta, Messrs. Robi, Lati, Ng'ongo, Onyura and Kisoi, Ms. Odhiambo-Mabona, Messrs. Linturi, Huka and Mohamed Haji, Eng. Mahamud, Sumra, Messrs. Cheboi, Injendi, Lessonet, Kuria, Aburi, Munuve, Musyimi and Chea, Ms. Ibren, Mr. Ngikor, Eng. Gumbo, Messrs. Barua, Aluoch, Ngunjiri, Njuki, Otuoma, Makau, ole Ntutu, Biii, Koinange, Kinyua, Gitau, Mwangi, Shehe and Rotino, Ms. Kanyua, Mr. Akujah, Ms. Nyamai, Ms. Shebesh, Messrs. Letimalo and Otaalo, Ms. Muia, Ms. Wanyonyi, Messrs. Makenga, Tong'i and Mbui, Ole Kenta, Mr. Tonui, Ms. Mitaru, Ms. Mumo, Messrs. Bunyasi, Koech, Mwaita, Chepkong'a, Gichigi, Arama, Moroto, Isaack, Manga, S.S. Ahmed, Tiren, Osele, Anami, Ogari, Karani, Mule, Manoti and Murunga, Ms. Sunjeev, Ms. Chebet, Ms. Musyoka, Messrs. Wetangula and Ngahu, Dr. Munyaka, Mr. Wamunyinyi, Ms. Muhia, Mr. Korir, Dr. Ottichilo, Messrs. Cheptumo, Kipkemoi, Chanzu, Ms. Chidzuga, Ms. Kering and Mr. Ababu.

NOES: Mr. Baiya, Ms. Abdalla, Messrs. Mwaura, Waluke and Maweu, Dr. Pukose and Ms. Juma.

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

Hon. Speaker: Hon. Members, before we proceed to the Committee of the Whole House, I urge you to remember the Communication I made. This is more particularly because there is a proposal for you to place a commencement date to this proposed law. That is because the other House from where it originated failed and/or neglected to place the date of commencement when counties will have access to finances. Therefore, to the extent that it is still an amendment, you will require the 233 of you. So, hon. Members, it is important that you proceed with dispatch to conclude that business.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Hon. Speaker left the Chair]

[Hon. Chairlady took the Chair]

THE COUNTY ALLOCATION OF REVENUE BILL

Hon. Chairlady: Order, hon. Members! We are now in the Committee of the House to consider the County Allocation of Revenue Bill, Senate Bill No.13 of 2014.

Hon. Members, before we start, this is to inform you again that we have two clauses. Remember what we agreed. This will just take five minutes if hon. Members can be patient. Could the Whips do their job? We have two amendments which will require the two-thirds majority in order to pass. That is if they will be passed.

(Clauses 3,4,5,6,7,8,9,10 and 11 agreed to)

Hon. Chairlady: Hon. Members, let us move on to the amendment proposed by hon. Chepkong'a on Clause 12.

Clause 12

THAT, the Bill be amended by deleting Clause 12.

Hon. Chepkong'a: Thank you, hon. Chairlady. I want to move this amendment, but noting that this is a very critical thing, I agree with the tenor of the amendment, but not the procedure. The Senate is seeking to smuggle in an ordinary amendment into a Special Bill which is contained in Article 111 while an ordinary amendment is contained in Article 112.

The amendment of the PFM Act is ordinary. We agree on the tenor of the amendment that we need to bring discipline in the county assemblies. We know that people have even created positions including that of minority where the entire assembly is composed of one party so that they can make money.

Hon. Chairlady: Order, hon. Chair! So that the Members are also with you, could you explain what this amendment it very briefly? Read it out.

Hon. Chepkong'a: Hon. Chairlady, I was bringing this amendment with a lot of gusto because we need to bring a lot of discipline to the Senate. We do not want this smuggling business into Bills and denying us our role to enact laws in accordance with Article 95(3) of the Constitution. But since it is a very important amendment, I withdraw my proposed amendment.

Thank you.

Hon. Chairlady: Well, hon. Chepkong'a has withdrawn his amendment but I will allow the point of order by hon. Jakoyo.

Hon. Midiwo: Thank you, hon. Chairlady. Let me thank hon. Chepkong'a whom I find to be truthful. We agreed on the way forward. We wanted to say that the Senate, whenever they want to do something that noble, needs to consult. I think wrong is wrong whether it is in the Senate or in the National Assembly. So, we want to plead with them that, as we seek to control what happens in our county assemblies and county governments, we do it when people have agreed. This will ensure that the House does not feel muzzled or being forced in a way.

Hon. Chairlady, there are enough Members in this House to overturn what they did, except we think it is good for the country. However, let them be forewarned that, in future, it will be a different story.

Thank you.

Hon. Chairlady: Yes, hon. Gichigi. But remember, hon. Members that this amendment has been withdrawn. Just one or two of you will ventilate.

Hon. Gichigi: Hon. Chairlady, I seek the Chair's direction and a ruling to the effect that any inclusion of a proposed amendment which in its nature is of an ordinary Bill in a Special Bill does not make it a Special Bill and a vote can be made in this House to the effect that it is an ordinary Bill and does not require a two-thirds majority as per Article 261.

Hon. Kajwang': Hon. Chairlady, the hon. Chepkong'a has withdrawn his amendment but I must express my frustration by the manner adopted both by the person who has withdrawn the amendment and the leadership that has forced him to withdraw the amendment.

Hon. Chairlady, allow us to ventilate on this. This is the National Assembly of the Republic of Kenya. We were here in a *kamukunji*. If the leaders thought that there was something which is good for Kenyans in amending a simple Act for which we have not had the basis of investigating and debating, we should have heard them in the *kamukunji* and they would have convinced us that it is in the interest of Kenyans that that amendment is withdrawn. This is because from where I sit and from Ruaraka, that amendment was the best thing for *Ruarakans*. When you amend the Public Finance Management (PFM) Act and Members do not have a say in that amendment and you give us what lawyers call *fait accompli*, how then can we discharge our duty under Article 95?

So, I appreciate that it has been withdrawn but I must express my frustration at how the leadership has gone about creating a situation where that amendment has been withdrawn.

Thank you, hon. Chairlady.

Hon. Chairlady: Okay. The hon. Leader of the Majority Party.

Hon. A.B. Duale: Hon. Chairlady, the amendment belongs to the Chair of the Departmental Committee on Justice and Legal Affairs and it now belongs to the House. As per the Standing Orders, individual Members can withdraw amendments on the Floor whether you have been coerced by your wife or even your girlfriend. Forget about the leadership but even by your own girlfriend, if she feels that it not in her interest.

(Laughter)

Hon. Members: We do not have girlfriends. On a point of order---

Hon. A.B. Duale: Okay. Even if you do not have them!

Hon. Chairlady: Okay, hon. Members. Today has been a very special day.

Hon. A. B. Duale: Hon. Chairlady, I withdraw the words "girlfriend" and "wife" but I can say that even if you are coerced by hon. Kaluma--- Hon. Kaluma is my good friend. I do not know why I talked about girlfriends. At least, I do not have one.

Hon. Chairlady: I think the Leader of the Majority Party already withdrew that. So, let us proceed.

Hon. A.B. Duale: Hon. Chairlady, what I am saying is that the amendment - and that is the gist of the matter - contravenes the PFM Act, Section 6 and it also denies the National Assembly the power of legislation. However, the Member has looked at both sides. Is it important to curb and bring a ceiling to county governments? We want to move a step forward and even bring a ceiling to the excessive usage of public resources by governors and that is the function of this House.

So, I think we have agreed but I am sure the Senate is watching us even if they are on recess. They must not and they are outside the PFM Act, Section 6. They cannot amend the PFM Act using the county allocation. That is the message the National Assembly wants to send but for now, we want to support it.

Hon. Chairlady: Okay. Thank you. Grace Kiptui.

Hon. (Ms.) Kiptui: Thank you, hon. Chairlady for giving me this opportunity. Despite the fact that hon. Chepkong'a has withdrawn his amendment, I want to state a fact! Even for the rest of us Members it is not funny that whenever you want to express anything, you use women as an example. It erodes our dignity. We better look for other words. It hurts when women are used as examples.

Hon. Chairlady: It is not in order. The hon. Opiyo Wandayi.

(Loud consultations)

Hon. Chairlady: Order, hon. Members. The consultations are too high.

Hon. Wandayi: Hon. Chairlady, I want to express my disgust at the sudden withdrawal of that amendment proposal by the hon. Chair. Even though it is in order---

(Hon. Members started leaving the Chamber)

Hon. Chairlady: Now, Members are beginning to leave the Chamber. Hon. Whips, do your job now.

Hon. Wandayi: Hon. Chairlady, even though it is in order to have semblance of order in the county governments, by withdrawing that amendment, we have basically given the Senate a *carte blanche* to be able to very casually change the PFM Act with very serious ramifications.

Hon. Chairlady, with a very heavy heart, I must express my disgust at what has happened but, ultimately, we must not be seen to be muzzling the county governments. Thank you.

Hon. Chairlady: Hon. Members, you can see what is already happening and we need our two-thirds. So, can you, please, allow me to go on? Hon. Members, please, feel sufficiently represented by those who have spoken because they have given you both sides.

Hon. Members, then allow me to put the Question.

(Hon. Chepkong'a's amendment to Clause 12 withdrawn)

(Clause 12 agreed to)

(Clause 13 agreed to)

(Schedules agreed to)

(Clause 2 agreed to)

Clause 1

Hon. Chairlady: Hon. Members, the hon. Musyimi has an amendment to this clause.

Hon. Musyimi: Hon. Chairlady, I am much obliged. I beg to move:-

THAT, the Bill be amended in Clause 1 by inserting the words “and shall come into operation upon publication” immediately after the figure “2014”

This is to bring the commencement date after publication of this Bill. This Bill does not have a commencement date. As the hon. Members will know, Article 116(1) of the Constitution says and I will quote:-

“A Bill passed by Parliament and assented to by the President shall be published in the *Gazette* as an Act of Parliament within seven days after assent.”

Clause 116(2) states and I quote:-

“Subject to Clause (3), an Act of Parliament comes into force on the fourteenth day after its publication in the *Gazette*, unless the Act stipulates a different date or time at which it will come into force.”

Hon. Chairlady, if we do not put in a commencement date, I want to tell the hon. Members that this Act will not come into operation once assented to for another two weeks at the very least from the day of assenting. This will mean that the county governments---

(Loud consultations)

Hon. Chairlady: Order, hon. Members. This is a very important contribution that hon. Musyimi is making in this Assembly.

Hon. Musyimi: It will mean that the county governments will not have access to funding. Now, I can only imagine that the Senate, perhaps, failed to put a commencement date. Maybe, they were a bit tired because of all the impeachments. I do not want to imagine that it was deliberate dereliction of duty. I do not want to imagine it was neglect of a deliberate nature and so, I think we want to exercise our understanding and put in today a commencement date.

I beg to move and request the indefatigable, inscrutable and tireless Member for the great people of Gem, the hon. Jakoyo Midiwo, to second.

(Laughter)

Hon. Chairlady: Hon. Jakoyo, allow me to propose and then you can speak one word on it. That is because it is a Committee of the Whole House and we do not need---

When we are in Committee of the Whole House, a Motion is not seconded. We do not need a seconder for a Motion in a Committee of the Whole House.

(Question of the amendment proposed)

Hon. Midiwo: I thank you Chair. I do not have much to say because I had been asked to second. I only want to say that tonight, our Speaker needs to rush this thing to the President so that the governors who keep on pointing fingers at us for faults which are not of our own making can stop doing so. If this is what is going to unlock the funds, this Parliament has moved the country forward and we can only thank ourselves. I think today we have earned our dues. Thank you.

Hon. Maanzo: Hon. Chairlady, though the Chairman has indicated, ordinarily, in Acts of Law, the commencement date is fixed as a date. Are we in order to leave that section without fixing a date, so that it can't read 19th of such and such a date? We have to include a date.

Hon. Chairlady: I am sorry hon. Maanzo, I do not know whether your hand is interfering. What you are asking us is not clear.

Hon. Maanzo: Hon. Chairlady, what I am trying to say is that the date must be fixed by ourselves so that it is indicated it should commence at a certain date.

Hon. Chairlady: No. The practice that has been adopted upon publication is the correct one. The Constitution can be cited. Hon. Kaluma will you help us with moving this process forward? Please give him the microphone.

Hon. Kaluma: Hon. Chairlady, I want to remind the House that the famous Donde Act was killed merely on account of the commencement date. I want to urge my colleagues that if we are tying the date to the event, publication may delay. Let us put it immediately upon assent, and then we move forward that way. But the publication at the Government Printer may delay again for two weeks and the governors and counties do not have money. We put it immediately upon assent.

Hon. Chairlady: Order hon. Members! According to the Constitution Article 116(2), subject to Clause 3, an Act of Parliament comes into force on the 14th day after its publication in the gazette unless the Act stipulates a different date or time at which it will come into force. So, let us follow that. Publication is the key word. Let us not split hairs over that constitutional requirement. Hon. Members this particular amendment will also require our electronic vote. So, can we just dispense of this amendment so that we can move on

Hon. Chairlady: But for confirmation hon. Members, we want to confirm the Ayes that we have just said electronically. The people at the top guide us on how we want to proceed. Can you display the question? It is question No. 4. You have the notes with you. Display the question. Hon. Mbadi, we will allow you to say those words for all of us to hear.

Hon. Ng'ongo: Thank you hon. Chairlady. I was just wondering why the screen is not coming and we want to vote. I was wondering whether Independent Electoral and Boundaries Commission has entered this room because they are notorious for rigging even the obvious.

Hon. Chairlaldy: I think it is just the typing that is taking a little while, but in the meantime maybe hon. Members can--- Okay, that is done, that Clause 1 be amended as proposed by hon. Musyimi. Hon. Members now remove your cards and log in afresh. This is a new vote. We are aware about those without cards. Remember we already have the record of 261 hon. Members being in the Chamber. Now they have reduced to 210 hon. Members. I think there are some who have not logged in. Please, you should be logged in now. The number is now going up. Members, we do not have the required numbers. Can the Members without cards come to the front here? We will only ring the division bell if it is necessary. Who is helping us with Members without cards? It appears there are still some Members who have not logged in because we are at 220 now. So, there is still some Members who have not logged in.

What has happened to the screen again? These hon. Members here do not look like they will give us our quorum. Can the Whips confirm that everybody is in the Chamber? Hon. Members it is strange, I do not think anybody has left. Where have our numbers gone to? Okay, they are coming back. Now we are fine including the ones behind here.

Hon. Members, can you vote now? We only are confirming your numbers. Not yet? Okay, hon. Members. Vote now!

(Hon. Members started voting)

Hon. Members, those of you who have not voted have 14 seconds more to do so. The numbers do not seem to be tallying.

Hon. Members, I have to order the Quorum Bell to be rung because the numbers do not tally. There are hon. Members who have left their cards in the system but they have not voted. Please, be aware that if we do not pass this Motion, it will still pass but we will not have contributed with our commencement date, which is the difference that we have added. So, we have to do this again and get it right. Can the Whips make sure that there is nobody out there who has left their cards in the system?

So, could the Bell be rung?

(The Division Bell was rung)

Hon. Members, as the Bell rings, please, remember how crucial the passage of this Bill is for our counties. We cannot repeat the exercise. If we fail to pass it, that is the end of it. We were doing very well. I do not know at what point the lapse came in. For those who have voted "No", it simply means that you have really voted against our addition – which is the commencement date. That is what your negative vote will mean.

Order! Order, hon. Members! Order, hon. Wario! Hon. Chachu and hon. Elmi, please, let us get seated. Let us get it right this time round because we have the numbers. Please, be seated.

(Hon. Members resumed their seats)

Hon. Members, just to confirm the number, I would like to ask you now to remove your cards and log in afresh. Everybody should remove his or her card and login afresh. Let our officers there assist us see the screen.

Hon. Members, before we vote, those without cards should come to the front. Please, come right now.

We have eight seconds for the rest to vote. For those who do not have cards---

Just hold on before you start voting. Let us see how many hon. Members have no cards. Can we see hon. Members without cards?

Please, display the question and allow hon. Members to login. Are you putting the question for the countdown for hon. Members to vote?

Okay, hon. Members, you can vote now.

(Voting in progress)

Okay. Hon. Members, the electronic voting has ended.

DIVISION

(Question put and the House is divided)

(Question carried by 250 votes to zero)

The result for electronic voting is 240 hon. Members. There are no “Noes”. The manual voting 10 hon. Members. The total result is 250 hon. Members for “Ayes”.

Therefore, the “Ayes” have it.

AYES: Messrs. S.A. Ali, Midiwo, ole Metito, K.K. Kinyanjui, Lempurkel, Lati, ole Kenta, Gethenji and Baiya, Omondi, Wandayi and Kaluma; Ms. Tuya; Messrs. Abdinoor, Aden, A.O. Ahmed, Dawood, Farah, Nassir, A.B. Duale, Oyugi, Alfred Keter, Sambu and Dido; Ms. Wahome; Mr. Lentoimaga; Ms. Abdalla; Messrs. Mwadime, Toboso; Ms. Gethecha; Mr. Simba; Ms. Nyaga; Messrs. Shinali, Washiali, Langat, Mbai, Mutura, Kitungi, Bett; Bishop Mutua; Mr. Kinoti; Ms. Mbarire; Messrs. Ganya, Geni and Gimose; (Dr.) Wakhungu; Mr. Nakuleu; Ms. Ombaka; Mr. Omulele; Cpt. Wambugu, Messrs. Iringo, Anyango, Kazungu, Maanzo, Bowen, Karithi, Kiaraho, Ochieng, Pkosing, Wekesa, Were and Waweru, Lagat, Businei; Eng. Kiragu; Eng. Ngare; Mr. Eric Keter; Ms. Gathogo, Ms. Mathenge; Mr. Ngeny; Ms. F.I. Ali; Mr. Wanyonyi; Ms. Mutua, Ms. Kajuju; Messrs. Kilonzo, Nderitu, Waititu, Outa, Odanga, Ogalo, G.W. Omondi, Muchai, Theuri, Irea, Konchella, Mungaro and Ochanda, Rai; Ms. Kipchoim; Messrs. Chea, Kombe, Mwanyoha and Osman; Ms. Chepkwony, Ms. Sambili; Messrs. Saney, Abass, Sane, Mustafa, Kang’ata, Kiptanui and Rop; Ms. Banticha; Mr. Mukwe; Dr. Gesami; Messrs. Kimaru and Murgor; Dr. Nyikal; Mr. Kamau; Ms. Wanyama, Ms. Teiyaa; Mr. Opiyo; Ms. Mbalu, Messrs. Olum, Kipyegon, Serut, Waiganjo, Kobado, Nakara, Ndirangu, Njoroge, Nyaga, Waluke, Sakaja and Mlolwe; Maj-Gen. Nkaissery, Messrs. Gitari, Kiuna, Lekuton, Limo, Lomwa, M’eruaki, Manje, Magwanga and Aduma; Ms. Lay, Messrs. Njomo, Melly, Nuh, Kemei, Kajwang’, Abongotum, Obura, Okoth, Keynan, Njuguna, Moi, Bitok and ole Lemein; Ms. Korere; Messrs. Aramat,

Sang, Kamanda, Mulu, Muluvi and Lomunokol; Ms. Keraa, Ms. Mbugua, Ms. Seneta; Messrs. Robi, Kyengo, Ng'ongo, Onyura and Kisoi; Ms. Odhiambo-Mabona; Messrs. Linturi, Huka and Mohamed Haji, Eng. Mahamud, Messrs. Ole Sakuda, Cheboi, Injendi, Lessonet, Kuria, Mati, Musyimi and Ngikor; Eng. Gumbo; Messrs. Barua, Aluoch, Shimbwa, Ngunjiri, Njuki, Otuoma, Makau, ole Ntutu, Bii, Koinange, Kinyua, Gitau, Mwangi, Shehe and Rotino; Ms. Kanyua; Mr. Akujah; Ms. Nyamai; Ms. Shebesh; Ms. Bedzimba, Ms. Muia, Ms. Nyeris, Ms. Wanyonyi; Messrs. Otaalo, Makenga, and Mbui; Dr. Pukose; Mr. Tonui; Ms. Mitaru, Ms. Mumo, Messrs. Bunyasi, Koech, Mwaita, Chepkong'a, Gichigi, Moroto, Isaack, Manga, S.S. Ali, Tiren, Osele, Ogari, Karani, Mule, Manoti and Kariuki; Ms. Sunjeev, Ms. Chebet, Ms. Musyoka; Messrs. Wetangula and Ngahu; Dr. Munyaka; Ms. Muhia; Dr. Ottichilo; Messrs. Chanzu, Cheptumo, Korir, Kipkemoi and Opo; Ms. Chidzuga, Ms. Kering, Ms. Juma and Dr. Laboso.

Noes: Nil

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

(Clause 1as amended agreed to)

(Title agreed to)

Hon. Chairlady: Can the Mover move the report?

Hon. Musyimi: Hon. Chairlady, I beg to move that the Committee doth report to the House its consideration of the County Allocation of Revenue Bill, Senate Bill No.13 of 2014 and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[Hon. Speaker in the Chair]

REPORT AND THIRD READING

THE COUNTY ALLOCATION OF REVENUE BILL

Hon. (Dr.) Laboso: Hon. Speaker, I beg to report that the Committee of the Whole House has considered the County Allocation of Revenue Bill, Senate Bill No.13 of 2014 and approved the same with amendments.

Hon. Musyimi: Hon. Speaker, I beg to move that the House doth agree with the Committee in the said Report.

Hon. Kamau: Seconded.

(Question proposed)

(Question put and agreed to)

Hon. Musyimi: Thank you, hon. Speaker. I beg to move that the County Allocation of Revenue Bill, Senate Bill no.13 of 2014, be now read a Third Time.

I also request hon. Kamau to second.

Hon. Kamau: Seconded.

(Question proposed)

(Question put and agreed to)

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

Hon. Chepkong'a: Thank you, hon. Speaker. Earlier in the afternoon I had requested the deferral of laying of the Paper on the Table and you had granted me permission. Would I be in order if I laid the Report of the Committee?

Hon. Speaker: Yes.

PAPER LAID

Hon. Chepkong'a: Hon. Speaker, I beg to lay the following Paper on the Table today Tuesday 19th August, 2014:-

Report of the Departmental Committee on Justice and Legal Affairs on the Petition for Removal from Office of the Attorney-General of the Republic of Kenya.

Hon. Speaker, this Report is laid pursuant to Standing Order No.227 which merely requires that the Committee lays the Report and thereafter be transmitted to the Law Society of Kenya which was the Petitioner.

Second Reading

THE PROTECTION AGAINST DOMESTIC VIOLENCE BILL

Hon. Chepkong'a: Hon. Speaker, I beg to move that the Protection Against Domestic Violence Bill, 2013 be read a Second Time.

This is a very important Bill. The Committee had time to deliberate on this matter. We have received sufficient memoranda from the public as required by the Constitution. We have considered those memoranda that were received from members of the public. As a Committee, we are proposing to make several amendments which we will move in the Third Reading. For purposes of Second Reading I would like us to highlight the Bill generally.

This Bill seeks to recognize that domestic violence in all its forms, whether perpetrated within or without a domestic or dwelling house is unacceptable behavior. It also provides for the intervention of courts to reduce and prevent violence in domestic relations. It ensures that where domestic violence occurs, there is effective legal

protection and relief for victims who may suffer such violence in the hands of persons who are assumed to be guardians, parents or protectors of such persons.

The Bill also provides for the protection and relief of victims of domestic violence. As you know, previously, there has never been relief for persons who have been abused in domestic dwellings or domestic relationships. This Bill now seeks to provide for such relief and compensation. If a spouse, child or any of the dependants in a domestic dwelling place or domestic relationship is in any way violated by the person expected to protect them, the courts will now have a remedy of providing for compensation to such persons who have been violated.

The Bill defines what domestic violence is so that it is not assumed that anything is domestic violence, say, when you abuse somebody or have a quarrel with somebody that, that amounts to domestic violence. The Bill seeks to provide for interpretation of what domestic violence is so that it is not assumed that domestic violence is what everybody assumes or imagine it is. It also seeks to define what domestic relationships are. Every Tom, Dick and Harry may not claim that they are in a domestic relationship. This Bill defines a person who is in a domestic relationship. It mentions, in particular, a spouse, a child, or a person who is a dependant of the person who is living with such a person.

Part II of the Bill gives powers to the police officers in ensuring that domestic violence is curbed in our country. It gives powers to police officers to ensure that they implement orders of the court and, in particular, to protect those persons that have obtained orders against persons who have been violating the rights of such persons.

It also provides that any person who has been in a domestic relationship with another person may apply to court. It gives powers to persons who suspect that there are individuals in a domestic relationship who are violating the rights of a person to now go to court and seek protection for such persons.

This Part II also provides for the application of a protection order by a child or a person who is unable, by reason of physical infirmity or mental issues, through a parent or guardian or a Children Officer or the Director of Children Services or a police officer to apply for a protection order against a respondent who is abusing a person who is in a domestic relationship. It also empowers the courts to issue protection orders if it is satisfied that the respondent or a person who is in a domestic relationship has used domestic violence as defined by this Act against any applicant or a child or a member of the family or both, and that order is necessary for the protection of the applicant or a child or a person who is a dependant.

Part II further sets out the standards and contents of a protection order which bar the respondent from engaging in any conduct constituting domestic violence. Previously, it was difficult for the courts to grant protection orders particularly against respondents that are in a domestic relationship, particularly spouses. Many a times, they force victims out of the domestic dwellings or houses and such persons then become vagrants from their own homes. What this law provides is for the courts to issue an order against the respondent living with any other person inside that house to prevent that person from interfering with the applicant or the person who is being protected by the courts. Although they may be living in the same house, the respondent will be required not to visit such a person who is protected in a particular room. This person will be restricted to

particular rooms only in the house so that they do not interfere with the persons who are protected by the court. It has been very difficult for the courts to issue such orders. For the respondents who have been abusing their spouses or children, their days are numbered when this Bill is passed here. Let me just mention that this is a Bill that does not touch county governments. Although it is applicable in our constituencies, it does not touch the county governments.

Part III of this Bill provides for procedure to be applied by the courts in issuing a protection order against any respondent who has been found culpable of committing domestic violence against persons that they are living together in a dwelling place or in a domestic relationship. It also provides that persons other than the parties, the advocates and witnesses and officers of the court who are expected to be present in any court of law when a matter is brought by any party, whether an applicant, a parent, a guardian or an interested party--- It provides for persons who are expected to be in court so that when proceedings of the nature of domestic violence are brought in a court of law, the members of the public who possibly may be interested to witness those cases are excluded. That is because the nature of domestic violence in itself is very intrusive to the rights of the victims and so, they need to be protected from intrusion from members of the public so that the privacy and the rights of those victims are protected. As we know, any victim is very vulnerable when such proceedings are being conducted in court. It bars members of the public from participating in proceedings of a domestic nature when domestic violence cases are brought in court.

Hon. Speaker, the other important thing this Bill seeks to bring out is that it imposes restrictions on the reporting of proceedings under this Act. As you know, ordinarily, proceedings are supposed to be reported. They are supposed to be open to the public. They are not supposed to be used as precedents in other cases. This law seeks to retract evidence that is adduced in court so that only the important particulars excluding the names of the persons who are involved in those proceedings so that they are protected from being exposed particularly by media houses and, more importantly, by broadcasters. It will be a sad situation if the TVs carry pictures of persons who have been violated and have appeared in court. So, this Bill seeks to protect the rights of those persons and to exclude media houses whenever it is necessary or whenever the court deems to be necessary to exclude persons who are not of any particular interest in that particular case. The court is also empowered, for the first time, to award compensation to victims of domestic violence. Previously, it has been difficult for courts to award damages to persons who have been violated. But this law now will provide for compensation where the courts find that the respondent has used domestic violence against any victim and it has been proved so in a court of law. This Bill also creates offences of the nature of domestic violence. It also makes it illegal and creates offences against persons who make false statements and swear false affidavits so that they can obtain protection orders against certain persons who are malicious.

I would like to assure members of the public who have, in the recent past, been demonstrating that this particular Bill has been decapitated to the extent that it has been watered down so as not to be meaningful that, that is not true. What the Committee did - and in the proposed amendments that we will be moving in the Third Stage - is to ensure that this Bill is strengthened and made to be in consonance with our Constitution and all

the other laws. In particular, the Civil Procedure and Criminal Procedure laws will be applied in this Act. What we did was to remove the provisions of the Civil Procedure and the Criminal Procedure from this Act because the two Acts are created to apply to all legislations that is passed by this House. So, it is completely unnecessary to reproduce the Civil Procedure and Criminal Procedure Acts in this Bill. It just burdens the Bill. It makes it untidy and so what we did was to remove those provisions that were unnecessary in the Bill and that are found in other statutes.

So, I beg to move the Bill and request my very good friend, hon. Oyugi, to second.

Hon. Oyugi: Hon. Speaker, I rise to second this Bill. This Bill has seen several lives and I am happy that today, at least, we start the debate on it to give it effect. This Bill is of primary importance because it does several things. One, it gives support to several provisions of the Constitution. One such provision is Article 29(c) which prohibits any persons to be subjected to any form of violence, from either public or private persons. The same is in Article 59 of the Constitution which talks about the security of the person. Article 53(1) of the Constitution is about the rights of children. They should be protected from abuse, neglect and such other forms of ill treatment. So, apart from just being one of those Bills that is supposed to be protecting the family and rights to family as under Article 45 of the Constitution, this Bill is important because it gives effects to several provisions of the Constitution to the extent that it helps in protection and prevention of violence to the person.

The second thing I would like to say in seconding this Bill is that it is an interesting Bill because it provides for temporary houses of shelter. There are moments when families - like all families - will be having small problems. But you will find a man or a woman - depending on who the victim of the particular violence would be - sometimes rendered homeless for some time. They do not know what to do or where to take the children. This Bill provides for the creation of shelter houses; simple houses or havens where families or people who find themselves in this situation can find safety for some time.

The third aspect of this Bill, which is important, is Section 16. This anticipates that families who are having problems in relationships can be subject to reconciliation and counseling. There are moments when couples fight and the reasons they do so is, perhaps, they are trying to understand each other or the relationship is fairly new. But this Bill anticipates that it is not always criminal. The grudges or fights could be for reasons that are beyond the couples and so, the Bill then anticipates that the couples can agree to subject themselves to some sort of reconciliation and counseling. This is a very interesting aspect of the Bill.

Something that the Chairperson has spoken to – and which I want to highlight - is the particular interesting nature of this Bill. It is what one would call *quasi-criminal/quasi-civil* to the extent that, for the first time in Section 41, the Bill anticipates the fact that you are able to be compensated for injury that has been instigated upon you in the process of domestic violence. It has always been very difficult to get compensation that is ordinarily criminal. But this Bill anticipates that, for the first time, for example, victims of domestic violence who are injured could get compensation. This Bill is important because it protects men, women and children. We know for a fact that the

nature of families right now is that not any particular cadre is subject to violence. Children in relationships; men in relationships and women in relationships suffer violence. Therefore, there is need to have a regime that protects all and sundry. In fact, that is why the preamble of this Bill becomes very useful; that it is one that is to provide protection of a spouse and any children or other dependent persons and to provide for matters connected therewith. You will appreciate that in the traditional African society, sometimes men live with their sisters-in-laws or sisters-in-law live with men but, sometimes, girls gang up with their sisters and beat up the men thoroughly. So, it is important to have a regime where men who are subjected to this sort of thing also find protection. I really think that living with relatives is something that is interesting for us men from western Kenya and coast. These men ought to take this particular Bill seriously. This is for their protection.

Hon. Speaker, there are a couple of things that I want to raise. Of course, the hon. Chair has alluded to them. There are a couple of things that perhaps members of the public might not have been happy with. There are also a couple of deletions that the Departmental Committee on Justice and Legal Affairs--- Some of the deletions could have been erroneous. For instance, increasing the purview of who becomes subject to the Bill. This is because the purview needs to be expanded to include various cadres that the African family is subjected to. Perhaps, that is one thing that we will be looking at when we get back to the Committee of the whole House. The Departmental Committee on Justice and Legal Affairs can deliberate on this. There are some exclusions that we have made erroneously or because we had not understood properly. However, I think it will not be too late to bring them at the Third Reading. In fact, one such is that this law ought to be useful to couples who are separated.

Hon. Speaker, you will understand that most domestic violence occurs when couples are separated. This is because men or women still hope that the relationship should be going steady. However, they will be finding reasons to either quarrel or subject their spouses to domestic violence. That was a deletion that the Committee made but we will be requesting to include it at the Committee stage.

Section 6 of this Bill speaks to the duties of police officers. More often than not when women or men go and report cases of domestic violence, if you are a man, they will ask you why you are leaving your wife to beat you up. If you are a woman, they will subject you to very offensive questions. This Bill now creates duties on the part of police officers and what is required of them. It actually gives the person who has reported remedy. There is a procedure you can follow to get remedy in line with the Police Act and the various Acts that deal with police officers. This will ensure that domestic violence is brought to its proper place. This will also ensure that when you are subject of a domestic violence, it does not mean that you are wayward in anyway. There are reasons that are irreconcilable within the family or the relationship.

Hon. Speaker, another aspect of the Bill which is important is Section 10 that gives protection orders. However, it also shows the number of people who can apply for protection orders. We know of families, couples and people who have died and yet their friends or families knew that they were being subjected to domestic violence. They did nothing simply because there were no proper parties in those cases. So, this Bill enlarges the purview of those who could apply for protection orders for the various members of

the society so that we will be having very few cases of people who are victims of domestic violence and did not find recourse.

I will be making several other inclusions at the Committee stage of the House. However, I really think that this is a Bill that is timely and has taken too long to be debated. I also think that it is a Bill that is very important because it touches on the cardinal unit of the society which is the family unit.

Hon. Speaker, I request my colleagues to debate this Bill soberly, have inclusions and support it so that we can make it law.

With those many remarks, I second the Bill.

Thank you.

(Question proposed)

Hon. (Ms.) Kanyua: Thank you, hon. Speaker. I am truly happy that the House is able to debate the Bill on Protection Against Domestic Violence today. Indeed, this is a Bill that has been long coming. We are glad that the Eleventh National Assembly is able to debate. This is really commendable for our country. I appreciate that we have come to the stage at which we have come. I am happy as the Vice-Chair of the Departmental Committee on Justice and Legal Affairs that the Committee spent a lot of time. If we have ever had a tussle in terms of a Bill, this is one Bill that has exercised the minds of the Member of this Committee. I have seen people remove jackets, ties, seen women remove shoes and eventually we have come to a compromise.

One of the best compromises that the Committee has come to is that this Bill comes to the Floor after the Marriage Bill and the Matrimonial Property Bill. In cleaning the Bill, the Committee has decided to make a choice that members of our country need to get into proper marital relationships so that they can be availed of the protection against domestic violence. We will be asking, as we pass this Bill, that men and women of our country contract their marriages properly. After they have done that, then those marriages must be free of violence so that we can move forward as a country.

Hon. Speaker, as has been said by the Mover, the Bill protects men, women, children and young people. The Bill basically protects everybody that needs protection as far as domestic violence is concerned. The statistics have been very sad. We are aware of women who have been unable to go to work as a consequence of domestic violence. We are also aware of – speaking as somebody from Nyeri County – men who have been unable to go to the farm because of domestic violence problems. So, as we pass this Bill, we are aware of the economic strain that this causes; that in a country where hospitals are barely minimal in terms of access to healthcare, you have people on the queue in a hospital not because they have diabetes or cancer but because they spent the whole night fighting. We are saying that, that is wrong. We cannot continue to have people in our hospitals whose only sickness is domestic violence. That is costing the country economically. So, the way to put a stop is to deter that conduct. Parliament intends to deter that conduct by making it clear to everybody in our society that domestic violence is no longer acceptable.

In my own county; Nyeri, we have really suffered. Some of us are unmarried not because we are not good women but because the rumour has gone out there that if you

want to marry a woman from Nyeri, you first buy a helmet. After that, you join *Maendeleo ya Wanaume* and then you also leave some money for the media so that when you are beaten they can report this. We want to put a stop to all those stories.

Hon. Speaker, we indeed have very good women in Nyeri who stay married and do not beat their husbands. If any of those women are available then this Bill will also take care of them and stop any violence in our families. In the Committee, we had very interesting discussions on African families. It was really regrettable that we have men in our society who think that it is African to beat your wife. There is nothing African about that. Our African cultures actually protected their women. The reason why we are here 1000 years after the discovery of man is because Africa protected women. In fact, in most African communities, it is the mother that speaks. It is a matriarchal society. So, it will be very wrong in debating this Bill to impute that it has foreign elements or aspects. There is nothing African about beating wives in this continent. It is purely criminal and that is what this Bill will be doing. It will be putting criminals where they need to be put. Husbands are not criminals. Husbands are good men who speak to their wives when there is a problem and they do not use violence. There must be no time that a husband feels the need to express himself through violence. That is what this Bill will be saying. It says that you can express yourself but not through violence.

The Bill is covered under Article 45 on the family protection. Again, the country has chosen to develop from the family unit; that the basic unit of society is a family. For that family to then be a proper basic unit of our society, it must be violence free. So, this Bill will ensure that the families that we have that are the basic units of the society; that our societies cannot develop until the family develops, that family will develop and become progressive when it has no violence. When we have children who go to school up to Form Four or university and they have not witnessed violence; that is the best thing.

Hon. Speaker, it has been confirmed that children who grow up in families with violence are very susceptible to being violent themselves; that they are susceptible to extending that violence beyond the family confines. We have said before that there are laws on assault around violence outside the home but it was important that Parliament passes another law that says even in a safe place like a home, there can be no violence; that, indeed, our homes and spaces can be very safe and can be violence free. The Bill has been pending for a long time and it is just as well that we are debating it today with a view to passing it. We are really looking at having a Bill that protects our families.

Hon. Speaker, as I wind up, allow me to reflect on the Bible that says we are fearfully and wonderfully created. That is all of us. If there is something wrong about violence, it is distorting what God had intended. God intends that all of us live in dignity. The good Lord after creating Adam said that this person cannot live alone. In fact, those of us advocating for women rights have argued that had God created the woman first he might have said; "this one can live alone". But after creating man, God said; "this one cannot live alone". He cannot lead alone; he needs a companion. So, God created a companion for Adam and after creating the companion, He was happy with his work. He was smiling and left that family in the Garden of Eden to live happily ever after.

Violence is not part of that story. Even after Eve had misled Adam to take the fruit, at no time did Adam strike Eve. That is not in the Bible. Adam just told God that Eve misled him but he never said he would proceed to beat Eve for misleading him, as

many of our African and Kenyan men say nowadays. If you do not know how to make good tea, you are given a first warning. If you repeat the mistake a second time, you are given second and last warning. After that, you no longer receive any more warnings. I think that is wrong. We must live like Adam and Eve happily and peacefully. The Bill that protects families against domestic violence is actually going to ensure that we live up to that accord.

In Article 29 of the Constitution, we have protection against degrading and inhuman treatment. This Bill will allow us to conform to those provisions of the Constitution.

Hon. Speaker, I beg to support the Bill and really urge the House to pass it so that we can have violence-free homes in our country. Thank you.

Hon. Speaker: Hon. Gumbo.

Hon. (Eng.) Gumbo: Hon. Speaker, I thank you for giving me the opportunity to contribute to this Bill and I am also happy that I am contributing just after hon. Nyokabi has made her contribution.

Hon. Speaker, a lot of times we tend to focus more on the violence as coming from men to women but the truth is that a lot of men especially in the urban centres suffer in the hands of their spouses. I think when I look at this Bill that is one area that, in my very humble view, tends to be overlooked. If you read it, the silent theme seems to be that violence only flows from men to women.

Hon. Speaker, that is not true. I have had occasion to witness serious suffering by men and most times we have to say the truth when we speak here. When it happens that the man of the House for some reason is not able to economically provide for that household, for reasons that are probably beyond him, a lot of times those men suffer a great deal.

Hon. Speaker, one of the incidents that I remember very vividly was sometimes in the year 2000 when I visited a friend in Savannah Estate. Where we come from, on weekends, we dress like ordinary peasants because truly we are peasants at heart. So, I walked into this friend's house dressed in my tyre sandal shoes and faded jeans and as is customary for us, he asked his good wife; "Could you kindly prepare some porridge for him?"

Hon. Speaker, I still remember the unprintable words that came from the bedroom to date. It is 14 years later but I still remember them. I was so pricked that I decided that this is something that we have to deal with immediately. Luckily, there was a supermarket nearby and I realised my friend was being mistreated and humiliated in my presence because the spouse thought he was useless and so all the people he associated with were also equally useless.

Hon. Speaker, so, I decided to correct that impression and I went to the nearby supermarket, loaded my boot with everything that I could buy and when we reappeared, we blocked the doorway with the shopping. All of a sudden, the attitude changed and I was welcomed and asked if I could come in for a cup of tea.

(Laughter)

Hon. Speaker, these forms of latent violence are there and we cannot deny it; it is extreme. Of course, in my culture for example, we understand that it is expected culturally that the man should be the provider and most of the times we try but woe unto you if the roles changed.

Hon. Speaker, I think as we debate this Bill and reach the Committee Stage we really need copious supplies of amendments to reflect the dynamism and the contemporary nature of violence that we have known. This is something that keeps changing. That is why many times I have looked at how Mr. Njoka of *Maendeleo ya Wanaume* goes about his business. This is somebody who is recognising a real problem in our society today.

Hon. Speaker, I remember sometimes in 1994, I was a very young engineer. I had just started my engineering practice and I was sent by one of my clients to go to Gatundu to look at the Standard Chartered Bank there; to check the electrical works. We came back very late at night. My friend insisted at about 11 O'clock that I had to drop him in his house in Buru Buru. So, I was wondering why it must be so. I offered to give him a taxi but he said no, please drop me.

Hon. Speaker, when we went to Buru Buru we could see clearly that there were lights in the bedroom but we were standing out there. He was knocking and then unprintables came out from there. I had to say I was also there because this was a family which was known to me. The following day my friend confessed to me that if I had not gone with him to the house, he would have been beaten. These are things that are going on in our society.

So, hon. Speaker, domestic violence is a reality but to try to make it look sexist, as if it only happens to women, it is wrong. There are also some very soft kinds of violence. For example, in our houses a lot of our female spouses like to follow the Mexican soaps. You go home and want to also watch another programme and the remote is in their hands and this brings friction. These are the realities of our times and there are people who have been denied some important things just because they wanted to change the channels so that the Mexican soaps cannot be watched.

(Laughter)

Hon. Speaker, so these forms of soft violence are there. So, much as I appreciate the work that the Committee has done I think it is very important for them to also look at what really constitutes domestic violence. I will tell you. In my community, for example, culturally we do not do male circumcision but there are times when members from my community get involved with ladies from other communities, where circumcision is valid. When they are forced to do something which is uncultural, is that not really a latent form of violence?

(Laughter)

I am not here disclosing whether I am there or here but I am only saying that this is a very wide topic and the Committee needs to appreciate the dynamism and sometimes the diverse cultures. I remember there was a time we were debating Female Genital

Mutilation (FGM) here and a Member was thrown out -I think it was hon. Jimmy Angwenyi. You realise that Chapter 11 of our Constitution recognises people's culture. Today, whether we like it or not, there are our sisters and womenfolk in this country who would not feel that they are complete women unless they undergo FGM. This is the reality. So, with due respect to the Committee, let us not focus. I know for a fact that women suffer a lot. This spreads across every culture in this country but the truth is that men suffer equally.

Hon. Speaker, there are also what I would call "latent" forms of violence. For instance, issues to do with cyber terrorism. These are things which subject people to violence. Whether we like it or not, they are a reality. Therefore, as we go to the Committee stage, I would want us to allow for provisions that recognise the dynamism of domestic violence and the fact that sometimes what might look like violence in one part of the country may not necessarily be violence in another part of the country. That is the reality.

In so far as providing the structural foundation for addressing this problem is concerned, I speak here as a husband and as a father who has daughters. I also have sons but I would not want a situation where either my daughters or my sons one day later in their lives get subjected to one form of violence or the other merely because their predisposition as either male or female makes it "unacceptable" to undergo that kind of violence.

Therefore, I thank the Committee for looking at psychological violence and other forms of trauma which may not necessarily be physical forms of violence. I would want that, as we go into the Committee stage, we make it very vibrant. We cannot provide for all forms of violence because some keep on emerging all the time but let us provide an environment that allows for dynamism. What might be acceptable in 2014 might not necessarily be acceptable in 2014.

With those remarks, I support but I will be proposing amendments during the Committee stage.

Hon. Speaker: Yes, hon. Waiganjo!

Hon. Waiganjo: Thank you, hon. Speaker, for giving me an opportunity to support this very progressive Bill.

However, even as I support the Bill, I would want us to be a bit conscious on the approach we are giving to this Bill because some of the provisions contained in this Bill are prone to abuse. Those are the provisions we should be looking at during the Committee of the whole House and propose appropriate amendments. Otherwise, the Bill seeks to address the provisions of the Constitution, particularly Article 45, on family and protection. It just gives a legal framework to enforce such protection, particularly in the changed circumstances of what we would call a "family".

The family is not the traditional family of a man and a woman and their children. We have other arrangements which constitute a union. We have foster children and step children. We have adoptions. We have people who live with their relatives within their dwelling houses. It is important for that matter to give protection to some of the people who live with us in our dwelling houses.

Hon. Speaker, of particular interest is the definition of "domestic violence" as provided in Clause 3(2). This Clause defines domestic violence as "violence against that

person, or threat of violence or of imminent danger to that person, by any other person with whom that person is, or has been in a domestic relationship.” This definition is important and it cannot be looked in the absence of what the Bill defines as domestic relationship.

The Bill defines a person with whom you are in a domestic relationship as a person to whom you are married or one to whom you have previously been married to and with whom you are living in the same household. Of course, “family” is also defined widely in this Bill. In order for you to know who this Bill comes to rein in, you only have to look at what is defined as “violence” or “abuse” in this Bill. You will appreciate that this Bill comes to rein in child abusers, husband bashers, wife barterers, female genital mutilators, virginity testers, widow cleansers and stockers. Perhaps, it seeks to do even much more. If you want to know who can violate this Bill, you only have to look at domestic relationships. Who is defined as who in a domestic relationship? People who can violate this Bill are jilted lovers, divorced spouses when they want to hit back at each other; gold diggers who may want to get something out of you; general haters, wife snatchers and husband snatchers.

Why do I talk of wife snatchers? Looking at the role of police officers, you will appreciate that police officers have been given sweeping powers. We need to be very careful. Part II, Clause 6(3) says:

“A police officer may without a warrant, arrest and prefer charges against any person who (a) the police officer reasonably suspects to have assaulted or threatened to assault a family member.”

We are giving a policeman the judgement of suspicion. What we are saying is that an amorous policeman can come to your house and arrest you, without even a complaint because he suspects that you are abusing your wife. He can take you to a police station, deny you bail, run back to your house, get your wife and pretend that he is taking her to a safe shelter, enjoy the facilities, return your wife in the morning and release you without preferring any charges against you.

(Laughter)

Therefore, as we debate this Bill, we have to be very careful on whom we are giving powers because powers can be abused. However, the Bill is generally good because it provides for the procedure that one can use to obtain protection orders. As you read newspapers every day, you see headlines like “*Man hacks wife, turns knife to self*”. In some cases we read that a man has completely mutilated or completely destroyed an entire family. So, it is an important Bill because it provides that anybody can apply for protection orders. Everybody has been given a *locus standi* by this Bill to apply for protection orders on one’s own behalf and on behalf of any other person.

Particularly where children are concerned, you can apply for protection orders even without the consent of the child. Therefore, persons who can be an applicant’s representative include a social worker, an employer of the applicant, a guardian of a child or a guardian appointed by court; a relative, a neighbour or a fellow employee of the applicant, et cetera. What the members of the public need to know is that if they know of a neighbour who abuses his children, or of a neighbour who barterers his wife or vice-

versa, they can take responsibility because this Bill gives them a *locus standi*. One can go to court and apply for protection orders for such children.

Hon. Speaker, this Bill talks about shelter. We need to clearly understand what kind of shelters we are talking about. We need to be clear in our minds as to where such shelters will be. The Bill provides that the governors should work with their executive committees to provide such shelters, and that such shelters should be run in a manner that is in compliance with the Constitution. So, we should debate a little more on what we mean by such shelters. Of course, we must be very practical. When you live in the same house with somebody else and then apply for a protection order to bar the other person from entering your room, are you being practical? It is important to ask such questions. Of course, there are people who live in such circumstances; where a husband and wife do not talk to each other. They live in the same dwelling. The husband lives in one bedroom and the wife lives in the next bedroom. They have separate car parking. They live with children in that house, but what fraction is that? It is a small fraction of reasonable people who can hold back and live in that understanding.

However, there are people who, if you do not separate them, you will be inviting murder. Why are we saying that this Bill can be used by gold diggers? On the basis of this Bill, a man can even chase you out of your house. If your wife gets a protection order against you, you will have no business going into that house.

The manner of enforcement of a protection order is that, if you go to the house--- This Bill operates in the regime of criminal procedure. Therefore, you find that it is no longer a civil situation.

If you have a matter of this nature in court, the provisions of the Civil Procedure Code must apply. But again, it is criminal. If you breach an order, you are supposed to be charged with a criminal offence before court. Therefore, even as we pass this Bill, we need to very thoroughly look into some of its provisions and propose amendments.

With those remarks, I beg to support with amendments.

The Temporary Deputy Speaker (Hon. Kajwang’): Yes, hon. (Ms.) Millie Odhiambo!

Hon. (Ms.) Odhiambo-Mabona: Thank you, hon. Temporary Deputy Speaker for giving me this opportunity.

I rise to support this Bill. Indeed, I am very happy that we are discussing this Bill today.

Hon. Temporary Deputy Speaker, some of us have been on this area for many years. I have worked in this area for very many years while we tried to bring this Bill before the House. Therefore, I am indeed happy and I hope hon. Members will pass it without watering it down too much. I have seen some of the proposed amendments by the Committee. I would encourage the Committee to drop some of the amendments that would make the Bill not conform in substance to what the drafters of the Constitution intended when they made the provisions that hon. Priscilla Nyokabi and hon. Neto referred to.

Hon. Temporary Deputy Speaker, I worked with the Federation of Women Lawyers. I was once the chairperson of the Coalition on Violence against Women. I was also the founder of The Cradle - The Children’s Foundation. For many years, I dealt with a lot of cases of domestic violence. I even buried some of my clients who were killed as

a consequence of domestic violence. Therefore, this is not a theoretical issue but a real issue.

Even when we are talking about the statistics, I was actually traumatised when I encountered these cases. I grew up as a child of a single parent; having lost my father very early. Therefore, I did not know about the role of fathers in homes for a long time. I married very late because of horrors that I was witnessing and dealing with; those cases which were coming to FIDA. I know a lot of people would tell you that these are exceptional cases that come. They are not exceptional cases if you look at the number of women that line up in organisations like FIDA that deal with cases of domestic violence.

I know it is not just a woman's issue alone, there are also men who are battered and because of cultural issues, very many men do not want to talk about it. That is why I am happy and, indeed, it is amazing that at this point in the year 2014, we can stand here and talk very openly about it. The House is not in any acrimonious set up. We can talk sensibly to each other and I am very happy.

When I first dealt with a very serious case of domestic violence, which was of a Maasai lady called Agnes Syonkai Risa--- I am happy, if we can pass this Bill it would be a very good honour to her. She is a sister to the Director of Public Prosecution (DPP). When I first dealt with that case, it hit international news. I was interviewed by international media almost four times or, five international media organizations interviewed me per day; CNN and BBC. People came from all over the world and the reason was that a woman went and reported that her husband beat her.

Hon. Temporary Deputy Speaker, the year 2014 is not that outrageous that women can report that they have been beaten by their husbands and that men can report that they have been beaten by their wives. We have Maendeleo ya Wanaume. Therefore, indeed, we have progressed a lot over the years. That is why I am happy.

The case I am referring to even found itself at international human rights course book. When I went to New York University, I was told to look at the case I handled. I am very happy that we are discussing this issue.

Hon. Temporary Deputy Speaker, one of the things that I would want to suggest in terms of proposed amendments by the Committee--- I would encourage my friend, hon. David, to let the Chairman listen because I know the Committee has proposed certain amendments. For those who have dealt with the issue of domestic violence, there is something called the wheel of violence. In that wheel, you will find aspects of emotional, psychological and economic violence. Therefore, let us not trivialize those issues.

There is a very prominent Kenyan personality whose House we were called to. It was very difficult because even when we were trying to intervene we could not access the house because this man had the protection of the State and he had a gun. For years he kept his wife locked up in a house. She was a white woman. We had to get a court order to break into that house to get the woman out. If you could hear the things that happen behind closed doors, it is amazing.

There was a woman who came to see me when I was in FIDA and I thought she was a very old woman. After years of counselling, she turned out to be even much younger than me. Even if she went to the kiosk to buy vegetables and she came back to the house, the husband would not beat her, but would take a torch and look at her private

parts to see whether between the house and the kiosk somebody had slept with her. The husband used to even insert bottle tops inside her private parts.

When we are talking about issues of domestic violence, it is not a feminist issue. I have no history of domestic violence, yet I saw it from the cases I had seen. I am talking here speaking of my own parents. Anyway, my father died when I was too young and if he beat my mother, I have no clue. But from what I have observed, this is an issue that we must take very seriously.

There are some people who will just give you nil by mouth. We are very good at that as women. We will not beat the men but we will just give them nil by mouth. That is emotional violence. That is why I want to encourage the Committee, before we think of amending the Bill and removing issues like emotional violence, we need to know that that sort of violence may be worse than even physical violence. What some people do is that you find people like me, as an hon. Member, earning my salary of what Kenyans say is a million and I cannot touch a cent of it. I give it all to my husband and then he asks me; "How much money do you want for salt?" Then he gives Kshs20.00; and he asks me again, "How much money do you want for *unga*?" Then he gives me Kshs200.000. That is a form of violence. This is because God intended us to be free.

Therefore, I would like to encourage the Committee that, even as we are thinking of bringing amendments to the Bill, let us not water down this Bill very substantially. I noticed when we were talking earlier; we did not include this Bill as part of the constitutional Bills. You have seen how hon. Members are referring to this Bill. I was very privileged to be one of the people who drafted this Bill. If you look at the language, we talked about private and public spaces. Part of my thesis in university in New York was making the private public and indeed, when that found its way into the Constitution, a lot of us had an influence in it.

Hon. Speaker, behind our private spaces we must respect each other; especially for the sake of children. We have children who come from dysfunctional homes and they are the ones who become robbers and do all the terrible things in this society because they come from homes that are violent. I am very glad that hon. (Ms.) Kanyua referred us to the Bible. Unfortunately, she has left. Today, I was about to call her bishop Nyokabi. In the same spirit, since she has made us get that spiritual mood, I want to encourage our men here that the Bible tells us as women, that we must submit to our husbands. I would want to encourage all the women in this House that they must submit to their husbands for those of them who are married.

Hon. (Ms.) Lay: How can we do that?

Hon. (Ms.) Odhiambo-Mabona: I have heard hon. (Ms.) Joyce Lay asking how we are expected to do that. It is biblical, as a Christian, you must submit to your husbands.

An hon. Member: How about husbands?

Hon. (Ms.) Odhiambo-Mabona: I want to tell men that the Bible tells you to love your wives even as Christ loved the Church. How did Christ love the Church? Christ died for the Church on the cross. You men were able to die for us in the cross. We will submit until we become mittens. We will submit until we die. Also if you read Corinthians 13, it tells you that love is patient and love is kind; love does not keep a record of wrongs. Hon. Speaker, love endures. So, my brothers here, if you loved us that

much, we would be very wonderful women. So, in the same spirit, please support the Protection Against Domestic Violence Bill. Because of the short time, I am unable to propose certain amendments. I beg to support.

Hon. Speaker: Hon. Pukose! Now I extend love.

(Laughter)

Hon. (Dr.) Pukose: Thank you, hon. Speaker. I know Millie knows that we love her and we love our women and we are patient and we are kind. However, the issue is quantifying issues of emotional love or emotional violence. How do you quantify this? When the Committee proposes to make amendments on that, I think it is in the right order because we do not want this Bill which is meant for the good of the family to be injected with activism that will derail the good spirit.

Hon. Speaker, speaking to men out there and more so men in rural Kenya and considering the backgrounds where some of us have worked, we have seen children with what we call battered child syndrome coming to hospital having been beaten for just a trivial issue such as loss of Kshs10 or Kshs20 and those kind of things. There are cases where a mother has left behind a child and the husband marries another woman. The child is then mistreated. He is denied food and is even beaten. He is made a domestic worker. This is very unjust and inhuman. One time I was watching a movie with my young son. In this movie, one of the children is asked to kneel down so that one of the men can sit on his back to feed. This young man in my house told me, "Daddy that is child abuse". This is what we want to prevent. We must act responsibly and take care of those who are under our care. That is what this Bill tries to address. We have seen cases in our African tradition where once a man has paid dowry, he thinks that the wife is his property and therefore he have mistreat her; she becomes a beast of burden. She has to go and fetch firewood, cook in the house and fetch water. All these things, in my view, amount to elements of domestic violence because we subject her to what is beyond humanly possible. When food is not ready the man beats her up and yet the man had gone to a drinking spree. The man wants food and yet he did not leave money behind with the wife.

Our men need to understand that times of beating our women are no longer there. Times have changed. A woman is equally important just like you. To our women in Nyeri and other places where we witness domestic violence against men--- Hon. Nyokabi said that men should no longer buy helmets. I think this is a bigger helmet that will protect men. They should not fear performing their duties as expected of them. We need to look at this Bill not like a way of gagging persons; rather we should look at it like a moral setting. It is like a Bible which teaches us good things. It teaches us to love our neighbours just as we love ourselves. It tells us to be submissive and patient just as Christ loved the church. So, in other words, laws are made for man so that we are able to live in a society that is of equal opportunities, privileges, protection and rights.

This law empowers police officers. They must act responsibly. More often, when somebody goes to report to the police about violence meted upon him or her, it is important that the police officers act within their reasonable limit and within the law in order to provide for the enforcement of this law without fear or favour. This Bill marks a

new dawn for this country. I have operated on patients who have penetrating abdominal injuries, penetrating chest injuries as a result of domestic injuries. We have seen all manner of violence. We have seen others being done what we call “bobbit”. There was a lady who, out of domestic violence, used a kitchen knife to cut the private parts of his husband. So, when you say “bobbit” many Kenyans understand what it means. This has been witnessed in many places. We have seen all forms of injuries inflicted on various victims as a result of domestic violence. Many institutions have documentation on domestic violence in terms of how often they arise. Unfortunately, this time round the health sector is in crisis. This law, then, comes timeously because it does not only prevent, but also offers us an opportunity to supplement on health care for this country.

Hon. Speaker, with those few remarks, I support this Bill.

Hon. Speaker: Hon. Kajwang’.

Hon. Kajwang’: Hon. Speaker, I thank you for giving me an opportunity to contribute to this Bill. Speaking after eloquent speakers like hon. Ng’ongo who wants us to go to the cross for the ladies, perhaps, I may not do justice but I want to try to mention just a few things because I intend to be very brief.

I want to talk for the people that I represent. I represent an electoral area that is politely said to be low cost neighbourhood; the Korogocho Slum, Mathare Valley and what you call Kariandundu and Gurukola. Those are names that you will not be conversant with until you face life squarely. Looking at this Bill, one gets the impression that it is a Bill whose time has come and needs to be supported. But I have been anxiously asking myself whether it targets the real problems in society that bring about the violence that we are talking about. I imagine that there is need for a legislative proposal such as this that is special to the issue that is able to arrest the problem in a specialized manner. It should be designed in a specialized manner with the kind of support that it needs in cases such as this and in the kind of society that we live in but it appears elitist. It appears urbanite. I am thinking about the person in Korogocho; the man, woman, several children, orphans and widows; some of whom sleep in a house, 16 of them, that is a ten by ten if they are lucky. The number of the people living in the house alone in itself is violence. It is not only violence to privacy but it is also violence to the spouse and the children. I am thinking of the conditions and the environment that they live through and whether a Bill that is designed in a penal way; whose narrative comprises “the police shall” “the court shall” and then penal consequences, protection system and so forth, is in itself a Bill that meets the desire of the people of this country. I know that there is a group of people in their thousands who are elite and urbanite that this will be a prescription. But for the thousands of many people, people called the slum dwellers, the people who are in the rural areas, are we thinking about the entire country? To what extent is this legislative proposal going to be appreciated by the people who make the law? Article 45 is good to operationalise because it speaks about the family and all of us resound to it because we are from some family. However, I want to suggest to you that if it was left to me to make decisions, I would want to operationalise Article 43 before I even operationalise Article 45 because Article 43 says:

“Every person has a right –

- (a) to the highest attainable standard of health, which includes the right to health care services, including reproductive health care;

- (b) to accessible and adequate housing, and to reasonable standards of sanitation,
- (c) to be free from hunger, and to have adequate food and acceptable quality;
- (d) to clean and safe water in adequate quantities;
- (e) to social security; and
- (f) to education.

I think that the issues that lead to this type of violence that we are speaking of today are deeper than a system which is penal in nature. Even the Article before it on labour relations, Article 41 which responds very closely to the people I represent says every worker has the right to fair remuneration, reasonable working conditions, to form, join or participate in activities and so forth; so that my people are able to go to Industrial Area and turn on the wheel for the industrialists. This allows the GDP to rise so that when they come home they have enough to pay their rent, bring food on the table and also reduce stress and the low self esteem that is associated with violence. They will also reduce cases of orphans and widows that we witness in these parts of the world.

We should ask ourselves after looking at the Bill, how do we enforce it? One is in Clause 6. It says that it will be enforced through a police system; that the police officer to whom the complaint is made will have the obligation to counsel these people or tell them how to access medical facilities, shelter and so forth. How do you get these policemen to do this kind of thing if they are not trained? How can this Bill do these things if it does not propose a fund which can be used to train these police officers to offer the kind of protection that they are supposed to offer in the Bill? Did the drafter think about how the police are helping the tourism industry? There are specialized or diplomat police who are trained to deal with issues such as those.

Hon. Speaker, we have the court which is said to be one of first class. In Nairobi, the court of first class is either in Milimani or in Kibera. It takes about Kshs170 at the minimum for a person from the electoral area that I represent to get there and yet the monthly rent for this person is Kshs150. He is unable to afford that rent because he cannot get it. So, how will he benefit from this Bill by going to Kibera or Milimani to access those courts? This Bill would have thought of how to decentralize the court systems to every electoral area or district so that *wananchi* can access courts more easily even if we say that we are going to enforce domestic violence through the court system.

However, more telling is the fact that you look at the Bill and the narrative seems to be penal in nature. It seems to suggest that either our penal system is failing or that we need to review our Penal Code. This is because everything that is here is captured in the Penal Code. The question is; why do we need another legislation to duplicate what is already in the law? Should we not look at what it is that the Criminal Procedure or the Penal Code has failed to do? This is because if we are going to intervene in every case by drafting another proposal without taking stock of how that legislation is affecting us, this Parliament will be keeping a lot of legislation on the shelves. This may not be useful.

Hon. Speaker, it is a way to start and I must support it. However, I think there is need to be thinking around it. There is need to develop a socio-economic policy to deal with areas such as the places I represent and the rural areas to understand where these problems are. After that policy is developed we can come with legislation like this. This

is because I fear that this Bill is before us without a Government policy or Sessional Paper to explain it.

With those remarks, I want to support the Bill.

Hon. (Ms.) Sunjeev: Thank you very much, hon. Speaker for giving me this very valuable time to add my thoughts and support to this Bill. I could not help but think this afternoon that some of the Kenyans who might be watching us on television might think that they are watching a super opera. This is because some of the stories that have been narrated by hon. Members of Parliament are things that happen in reality and are depicted on television. That is the reality. As much as we try and hide from the situation, the fact of the matter is that in domestic violence, there is a victim and the person on the other side who victimizes the victim.

Ideally, there is one party who cannot say much. This is because he or she lives in fear. By this time of the evening as many Members of Parliament have put their thoughts on the table, I feel and hope that I do not repeat myself too much. So, I will try and say something very loudly and clearly to everybody; that the Domestic Violence Bill is neither a woman's Bill nor a man's Bill. I am going to say very loudly and clearly to everybody that the Protection Against Domestic Violence Bill is not a woman's Bill. It is also not a man's Bill. It is our Bill and one thing that we fail to see is that domestic violence can happen to a man or woman but we not only live in fear but also in shame. This is because we feel that if somebody finds out something about us or we cannot stand up against somebody who has committed violence, to me that brings shame to me.

Hon. Speaker, so, I am very glad that this Bill is going to give some leeway and some sort of legislation ahead for these people who suffer in silence. Well, I am not a lawyer or advocate by profession but I was very impressed by some of the stories that hon. Millie brought on the table because this is reality.

Hon. Speaker, I would also like to say that this Bill comes at the right time because it is about time that we brought up our children in a modern environment and secure environment where both parents can live with each other in harmony. It absolutely makes no sense when children cannot sleep at night and, therefore, cannot perform in school well during the day because of hearing their parents fighting at night.

So, I think this Bill is actually going to bring a solution in as far as domestic violence in the family is concerned because the family unit is actually a safe, humble and Godly unit for us.

Hon. Speaker, I would also like to say that I believe that Kenya is a religious, multi-racial and multi-cultural country. At this juncture, I would also like to point out the case of the young lady called Sarika who is engaged to a young Bukusu boyfriend. I am citing that case because for the last two-and-a-half weeks we as parliamentarians and as a society have been discussing about inter-racial marriages and their effects. Many times I have heard of domestic violence that takes place in inter-racial marriages and what we fail to see is the love that these two people might have for each other. In fact, it is not them who create domestic violence but the people, society and community around them who do not support the couples to live in peace and harmony. So, in one way I would like to commend the people who take this first step and cross the barrier to reach out to other people and cultures.

Hon. Speaker, I would also like to say that the inclusion of counsellors is very important. We have said that the inclusion of police officers is not right. It is not the right moment to include police officers but what we need to ask ourselves is: Who are we comparing ourselves to? In countries like the United Kingdom (UK) they have a system where the victim is looked after properly. You can go to hospital or perhaps visit a counsellor or a private doctor. What we lack here is a secure system where the victim can be checked and where he or she can open up their hearts.

Hon. Speaker, I would like to cite a small example. In Malawi, they have brought legislation that changes people's attitude to domestic violence. I would also like to add that this Bill is very timely. Article 45(2) says that every adult has a right to marry a person of the opposite sex, based on free consent. I always feel that human beings take undue advantage of people who are in their families. This is because free consent means consent inclusive of the whole family unit. So, with that I would like to commend hon. Nyokabi and the whole team for bringing up this Bill. I must say that I feel very proud to be part of the 11th Parliament which is making such a bold step to introduce the Protection Against Domestic Violence Bill in the House. Thank you very much.

Hon. Speaker: Hon. Christine Ombaka

Hon. (Ms.) Ombaka: Thank you very much for giving me this opportunity to contribute to this Bill. First, I am a Member of Justice and Legal Affairs Committee and we have gone through this Bill. I want to say that this is a good Bill that comes at the right time because every single day there is a family that has been killed; there is a Member of the family that has been murdered and there are so many deaths, so many killings going on at the family level. This Bill intends to protect Members of the family and to strengthen the family as a unit in society. I think it moves towards protecting the entire family so that we do not have too many divorces, too many people killed or any harm caused to any member of the family.

The definitions are very good because first of all, they touch on certain harmful cultural practices such as Female Genital Mutilation (FGM). FGM could be a crime in a family set up. There is also wife cleansing, wife inheritance, early marriages, and these have been harmful cultural practices that have been very difficult to wipe out in our society. They are very sensitive anyway because they are part and parcel of a culture. When they are put in law like this one, or into a Bill that becomes law later, then these problems that have been there for many years will be dealt with. Secondly it is important to realize that the effect of domestic violence is not only on children but on everybody in that family. This Bill is gender sensitive. It takes care of everybody in that family including old grandmothers and grandfathers. Nobody thinks about protection against grannies simply because they are too old. People kill them and they have no respect for them. Again we see that there is too much violence targeting old people within a family. This is going to protect everybody irrespective of their age or gender. So, to me, this is the greatest Bill that is coming at a time when the society is at war with each other and families are breaking up. One of the sections in the Marriage Bill says that divorce is allowed when there is too much violence in a family. That Marriage Bill protects the marriage. It simply says that when there is too much violence, where there is a likelihood of somebody being killed, then the spouse can separate. I do not support separation because I do not believe in breaking a family but that is part of the law that protects the

family. Divorce is allowed when violence is too much and somebody is likely to be killed in that family. Many times we talk about domestic violence. People think about women as the ones who are victims. Nobody thinks that men can be victims; boys are victims, grandfathers or an uncle can be victims. This Bill gives you that expansion. It gives you a host of people who are within the family who need that protection.

Domestic violence is one area that police officers have never taken seriously. That is why when you report a case; they do not want to take it up. They simply say that it is domestic and they do not want to get involved. They say it is a private matter. But this time they are going to be trained to deal with domestic violence; they are going to be sensitized on how to deal with it. They are going to be experts in dealing with domestic violence. I support this because the entire system that protects the family is going to be involved.

Hon. Speaker, providing shelter is good because many children who are violated tend to escape to the streets. They tend to just wonder about, not knowing where to go. This time round, there is going to be some shelter, which will provide them with very good protection. Food, medical care and counselling will be provided. So, one sees that the issue of protection is actually being addressed in this Bill. That is why I am strongly supporting it. I want to support it vehemently because the family system is going to stay strong. The family system will be able to deal with cases of violence. That way, we will be reducing families in many families.

With those remarks, I beg to support.

Hon. Speaker: Yes, hon. Mbarire!

Hon. (Ms.) Mbarire: Thank you, hon. Speaker, for giving me an opportunity to speak to this important Bill and add my voice in supporting it.

Before I begin to bring my issues, I wish to say something about some of the comments that I heard earlier on. Irrespective of whether violence is meted out against a woman or a man who lives in Mathare slums or a man or woman who lives Lavington, it is still violence. Therefore, domestic violence knows no class. Domestic violence cuts across all the social classes, including the rich, the poor, the young, the old, men and women, and boys or girls. Therefore, as we begin to debate this Bill, it is important for us to focus on the real issues of domestic violence.

First of all, we need to appreciate the fact that the definition of “domestic violence” as we knew it in the past is very narrow. It was defined as “inflicting of physical injury by one household member to another household member.” This definition did not recognise other forms of domestic violence such as physical, sexual, psychological and economic forms of violence. So, this particular Bill seeks to broaden the definition of “domestic violence”, so that we can begin to ask ourselves what other forms of violence exist and appreciate them.

Hon. Speaker, I know that there are challenges. There are people who are asking: “How would you measure emotional violence?” You do not have to be with a spouse who hits you physically. You can be with a spouse who totally harasses you emotionally. He could be one who hurls insults at you every day, makes you cry all night long, and makes you go to work feeling very unhappy. For me, that is emotional turmoil. It is emotional violence. It is only the victim who can express that feeling to the people she

reports to. It cannot come from somebody else wanting to understand how you feel. It is only you who knows how you feel.

So, I hope that on some of the proposals mentioned by hon. Millie Odhiambo earlier; of seeking to water down this Bill by doing away with some of these provisions purportedly because we do not know what “emotional violence” or “psychological violence” is because we do not know how to measure them, I hope the Committee will re-think of introducing such amendments. We want a Bill which recognises all these challenges.

Hon. Speaker, this particular Bill helps us to complete the entire spectrum of the family laws that we have been wanting to push through this House. We have already pushed through the Marriage Bill and the Matrimonial Property Bill. We have the Protection Against Domestic Violence Bill, 2013, which completes the spectrum of family laws. I am sure we shall protect the family which is recognized by the Constitution in Article 45 (1), as the fundamental unit of society and the necessary basis for social order. The sub-Article goes further to say that the State must do everything it can to protect the family and to ensure that the family stays in peace.

Hon. Speaker, we want a Bill that will recognize domestic violence and all its forms without watering it down and appreciate that this is unlawful behavior. We also want a Bill that will look into the provisions or interventions that will ensure that we are able to protect victims of domestic violence. We should be able to offer them the necessary support in order to overcome that violence. But we also want a Bill that deters would-be domestic violence agents; people who propagate it so that we do not have any form of domestic violence happening in the families. We want our children to grow up in peaceful families .

Hon. Speaker, over the past few years, we have seen increased cases of domestic violence that actually affects men. The challenge that men have is that they cannot talk about it. This is because the society expects men to be very strong and not to go through any form of violence at home. A man who is battered or abused by his wife is seen to be a weak person.

This Bill seeks to give that man a voice and to protect him. We want to protect the boy-child who nowadays is going through a lot of physical and emotional abuse. This is not a Bill that just looks at the women and the girl-child; but a Bill for men and women, girls and boys. It is for all of us.

Hon. Speaker, from what I have heard this whole afternoon, from various hon. Members who have spoken before me, I am happy because there seems to be real need for this Bill. There is support across the board. I am very appreciative of the fact that we have finally seen the rationale and objective of this Bill. We are dealing with these matters that were seen to be sensitive, anti-cultural and were thrown out through the window even before we had time to debate them. I am very encouraged by what I am hearing from all hon. Members; especially our male colleagues. I am happy that we finally have representatives of the people who take care of all the interests of those they represent in this House.

I urge all hon. Members to continue supporting this Bill and make sure that we do not water it down so that it can be a Bill that protects everybody. That way we can be remembered for having made it possible, since 1999 when it first found its way to the

Floor of this House. Let me also say that, indeed, we have challenges that people may not know. Governments spend a lot of money trying to deal with victims of domestic violence. If you went to Kenyatta National Hospital, or even to Level 5 hospitals, you would find many people being treated of injuries caused by domestic violence. Therefore, we must look at the economic consequences of domestic violence and seek to prevent them from increasing.

We also must say no to all cultural practices that are harmful and detrimental to the health of the people of this country. We must also move forward to promote human rights that have been covered by a big chapter in our Constitution. That chapter is seen as the best chapter of human rights in any constitution in Africa. We are the example and, therefore, we must seek to protect the rights of everybody in this Bill and ensure that all Kenyans feel protected in marriage and out of marriage.

Hon. Speaker, I was very happy to hear hon. (Ms.) Millie Odhiambo-Mabona quoting the Bible; that we must submit to our husbands. The same Bible goes further to say that husbands must love their wives as Christ loved the Church---

ADJOURNMENT

Hon. Speaker: Order, hon. Members! It is now time to interrupt the business of the House. Hon. (Ms.) Mbarire will have one minute tomorrow when the business on this Bill resumes.

Therefore, this House stands adjourned until tomorrow, Wednesday 20th August, 2014, at 9.30 a.m.

House rose at 6.30 p.m.