

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 13th August, 2014

The House met at 9.30 a.m.

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

PRAYERS

QUORUM

Hon. Deputy Speaker: Can the Division Bell be rung?

(The Division Bell was rung)

Order Members! We are now properly constituted, and may continue with the business of today.

NOTICES OF MOTIONS

TRANSLATION OF LAWS OF KENYA INTO KISWAHILI

Hon. Deputy Speaker: Notices of Motion, hon. Kazungu. Not here? Hon. (Ms.) Lay.

Hon. (Ms.) Lay: Hon. Deputy Speaker, I beg to give notice of the following Motion:-

THAT, aware that Kiswahili is the national as well as official language of the Republic as enshrined in the Constitution; further aware that equality and freedom from discrimination and access to information are fundamental rights; cognizant of the fact that democracy and public participation of the people is a national value and principle of governance as per Article 10 of the Constitution; deeply concerned that a section of Kenyans have a low level of knowledge of their legal rights and laws passed by this House as a result of the existing language barriers; convinced that unless we, as a nation, lay down mechanisms for translating laws passed by Parliament and county assemblies into Kiswahili, most Kenyans will continue being partially aware of the law, this House urges the National Council for Law Reporting to progressively translate the laws of Kenya into Kiswahili.

Thank you Deputy Speaker.

Hon. Deputy Speaker: Thank you, hon. (Dr) Otitchilo.

ESTABLISHMENT OF SELECT COMMITTEE TO INVESTIGATE GMOS

Hon. (Dr.) Otitchilo: Hon. Deputy Speaker, I beg to give notice of the following Motion:-

THAT, aware that the Government banned the importation of genetically modified imports in 2012; further aware that the Ministry of Health which initiated the ban has consistently maintained that Genetically Modified Organisms (GMOs) foods are not safe for human and animal consumption; considering that no tangible evidence on the same has been provided; cognizant of the fact that local and international scientific institutions and stakeholders have consistently endorsed the use of GMO foods as a necessary measure for the present and future food security in the country; concerned that the National Biosafety Authority (NBA) established under the Biosafety Act was not involved in the decision to ban the use of GMO foods in the country; concerned that the country continues to lose millions of shillings monthly in lost business opportunities related to GMO products; further concerned that research on biotechnology and biosafety has stalled, this House resolves to establish a select Committee to comprehensively investigate and inquire into all matters relating to GMOs, consider and review all related research findings, make recommendations and table its report within 90 days and approve the following Members to constitute the Committee:-

1. Hon. (Dr) Wilber Ottichilo, MP – Chairperson
2. Hon. Japheth Kareke Mbiuki, MP
3. Hon. (Ms.) Rachael Amolo Ameso, MP
4. Hon. Barua Ejidius Njogu, MP
5. Hon. (Ms.) Birdi Sunjeev Kour, MP
6. Hon. Bosire Timothy Moseti, MP
7. Hon. Emanikor Joyce Akai, MP
8. Hon. (Eng.) Nicholas Gumbo, MP
9. Hon. (Ms.) Florence Kajuju, MP
10. Hon. (Dr.) Robert Pukose, MP
11. Hon. (Ms.) Cecilia Chelanga Ngetich, MP
12. Hon. Johnson Sakaja MP
13. Hon. (Ms.) Rachel Koki Nyamai MP
14. Hon. Osman Hassan Aden MP
15. Hon. Harrison Garama Kombe, MP
16. Hon. Ferdinand Wanyonyi, MP
17. Hon. Richard Katemi Makenga, MP

Thank you Deputy Speaker.

Hon. Deputy Speaker: Thank you; we then move to the next Order.

STATEMENTS

Deputy Speaker: Hon. Members we will follow the schedule as on the Order Paper. We shall begin by responses; remember today morning is a day for responses to Statements. We shall begin with response by the Chairperson of the Departmental Committee of Transport, Public Works and Housing regarding roads infrastructure network in the country. This was requested by the hon. Member for Narok South, hon. Ole Lemein.

Hon. (Eng.) Mahamud: Hon. Deputy Speaker, the Member of Parliament for Narok South Constituency, hon. Korei Ole Lemein, rose on a point of order and requested a Statement from the Chairperson of the Departmental Committee on Transport, Public Works and Housing regarding development of road infrastructure network in the country. He requested to know the following:-

(a) the number of kilometres of all classified roads in the country and how many kilometers of the same are tarmacked;

(b) provide the constituency/county list of tarmac roads as well as ongoing projects across the country;

(c) plans by the Government to address inequality in the development of roads infrastructure in the country.

I beg to respond as follows.

(a) There are 160,886 kilometres of public road network in the country, of which 13,003 kilometres, which is 8.1 per cent only, are paved/tarmacked and 147,882.2 kilometres are unpaved.

(b) The summary of Kenya's road network distribution by road classes is as follows:-

Roads Classes A, B, C, paved – 7,161 kilometres and unpaved, 6,900 kilometres. The total is 14,000 kilometres. Classes D, E and others – paved 3,500 kilometres and unpaved 130,761 kilometres. The total is 134,226 kilometres.

(c) Urban roads within cities and municipalities, paved is 2,337 kilometres and unpaved 10,211 kilometres. The total is 12,549 kilometres. The total of paved is 13,000 kilometres and unpaved is 147,802 kilometres, giving a grand total of 160,886 kilometres.

The list and details of the total length of paved roads per constituency/county has been submitted by the Ministry as Annex 1 of this report. As for ongoing roads projects across the country, the Ministry wishes to confirm that there are no stalled projects under any roads authority, namely the Kenya Urban Roads Authority, the Kenya Rural Roads Authority and the Kenya National Highways Authority. There was, however, slow progress on works on many of the ongoing road projects during the Financial Year 2013/2014 for delayed payments due to inadequate financing. Contractors were recently paid and are expected to resume normal operations on road works. The pace of implementation of projects with pending bills is expected to pick up as soon as funds are received under the 2014/2015 Financial Year. The list of details of all ongoing projects

has been submitted by the Ministry as Annex II with attachments 1, 2 and 3 for the three road authorities.

The Government is currently exploring alternative means of securing funds towards the expansion of the country's road network. This arrangement is as follows:-

(i) there is increased liaison within Government agencies, road development partners and stakeholders with the aim of increasing funding towards the construction, rehabilitation and maintenance of roads in the country;

(ii) public/private partnerships are also being explored to provide additional financing for the construction of major roads; this will free development funds for other programmes;

(iii) the Ministry has also been holding consultative meetings with the Public Procurement Oversight Authority, and has consequently proposed a review of the threshold for procurement of works;

(iv) the Ministry also continues to use alternative paving techniques like low volume seal, other seals and paving blocks;

(v) the Ministry is also looking at the utilisation of the Equalisation Fund in relation to marginalized areas for construction of roads.

I beg to lay the Statement on the Table.

(Hon. (Eng.) Mahamud laid the document on the Table)

Hon. Deputy Speaker: Hon. Lemein, you get the first chance to make any supplementary point.

Hon. Ole Lemein: Thank you, Deputy Speaker. I take this opportunity to thank the Chair of the Committee and the Members for responding to this Statement request, although it has taken a lot of time.

I was invited to the Committee and I listened to the Cabinet Secretary, the Ministry of Transport and Infrastructure. When you look at the Committee's submissions, it is clear that many constituencies, mostly in Narok, have not been given any attention. The entire Narok County has 197 kilometres of tarmac road, which is the highway. When you look at Emurua Dikir in that county---

Hon. Deputy Speaker: Hon. Lemein, I do not want you to give me too much of the background information. Do you have any other supplementary question, so that we can make progress? There is a whole list of other requests here of Members who want to supplement you.

Hon. Lemein: Hon. Deputy Speaker, having participated and interacted with the Committee and the Ministry, I got satisfied with their response.

Hon. Deputy Speaker: Thank you, hon. Lemein. I wish we could have more of that interaction directly with the Cabinet Secretaries.

Hon. Opiyo Wandayi, is it a supplementary on the same?

Hon. Wandayi: Yes, hon. Deputy Speaker. Mine is short and to the point.

From the response of the Chairman, it is very clear that the road network distribution in the country is skewed in favour of certain areas in the country. What is the Chairman and the Committee intending to do to correct this imbalance, or skewed

situation? This should be the case in the envisaged expansion of road network, so that this country does not continue to witness development in certain parts of the country and undevelopment in other parts of the country.

Hon. Ole Ntutu: Thank you, hon. Deputy Speaker. The Jubilee Government has promised to tarmack 10,000 kilometres in the next ten years. What is the Government doing to take care of the counties that have been left out by previous Governments? Narok is one such county; it has only 197 kilometres of tarmac. When you look at counties like Kiambu and Nakuru, they have 906 and 947 kilometres of tarmac roads respectively. What is the Government doing to make sure that the counties that have been left out like Narok also get tarmacked in their counties?

Hon. Deputy Speaker: Hon. Daniel Maanzo. Members, I hope we are not on the distribution because two Members have already spoken on distribution.

Hon. Maanzo: Hon. Deputy Speaker, I will digress a little bit, and seek a clarification from the Chairman on distribution. Recently, there was a proposal that each constituency will have at least 20 kilometres of a tarmacked road every year. To what extent is the prepared to start on this, and when is it likely to start? This will lead to fair distribution of the tarmac road network in the country.

Hon. Chanzu: Hon. Deputy Speaker, the issue of roads in this country is big. Some areas, for example in the rural areas, are not properly covered. We had the constituency roads funds, and constituencies were getting about Kshs20 million---

Hon. Deputy Speaker: You are not clear, hon. Chanzu.

Hon. Chanzu: Hon. Deputy Speaker, the amount of Kshs20 million that was going to constituencies was helping. As we do the national trunk roads, we can also communicate internally within the constituencies, districts and now the counties. However, that money has been reduced to Kshs13 million per constituency. Could the Chair, maybe, shed light on why that happened when we are supposed to be getting more money for constituency roads?

Hon. Onyura: Thank you, hon. Deputy Speaker. I just want to express concern for what appears to be an extremely slow pace of road works. It is difficult to understand why roads works take so long from the time of commencement. For example, there is a road in my constituency from Ogalo to Bumala, only about 30 kilometres long. It has taken eight years and it is not even half way complete. I do not know whether the problem is with the Ministry, the Government or the contractor. When I try to talk to the contractor, he seems to feel that it is the Government which is not remitting due payments. Could the Committee and maybe, the Ministry address this issue because it is of concern to wananchi in the country?

Thank you.

Hon. Limo: Thank you, hon. Deputy Speaker. I am worried that this report does not contain the details we have been given. I want the Chairman to ask the Ministry to counter-check the report. This is because on the list there is a 23-kilometre long road classified as D/E. That road does not exist! Currently, there is no road classified as Class D/E in my constituency, which is tarmacked. Therefore, they need to counter-check to see if this report is not obsolete.

Hon. Deputy Speaker: Okay, let us hear from hon. Keynan. Hon. Members, as I have said, debate should not be on distribution of road network, or the speed at which they are being done.

Hon. Keynan: Thank you, hon. Deputy Speaker. I stand under Standing Order No. 107(1)(f). I do not know whether the Chairman took a bit of time to interrogate the document he is purporting to present to the House. I want to ask all hon. Members, who have this document to check under Wajir. It is shown that my constituency has six kilometres of tarmac road. The constituency that hon. Elmi represents called Tarbaj has 2.3 kilometres of tarmac road.

Hon. Deputy Speaker, to the best of my recollection, and all that I know, we have never seen an inch of a tarmacked road. Will I be in order to state that it seems that my good friend, hon. Mahamud, who is also a former Permanent Secretary in the same Ministry, has not interrogated the report. It is either this is not his document or he did not have time to interrogate it. I want to urge you to suspend the response to this question, so that hon. Members can interrogate this report; I believe this is falsified information that is meant to mislead hon. Members. If today my people hear that there is a six-kilometre tarmacked road in Eldas---

An hon. Member: Perhaps, it is in his pocket!

Hon. Keynan: It must be in his pocket. It must only exist in the imagination of the Chair, whom I really respect. Even with this misinformation, I do not want to ask that the hon. Member be named; the provisions of Standing Order No. 107(1)(f) require anybody giving the House deliberately falsified information to be named. I do not want Eng. Mahamud to be named. The only possibility is that, he has not had time to interrogate this document. Therefore, I want to plead with you to have the response to this request---

Hon. Deputy Speaker: Hon. Keynan, you surely need not name hon. (Eng.) Mahamud for the information that is second-hand. He has been given the information, and he is also not from the area.

Hon. Keynan: Hon. Eng. Mahamud, I hope you have seen this; I want to refer you to this---

Hon. Deputy Speaker: Hon. Keynan, I think your point has been made.

Hon. Keynan: The question by hon. Lemein has three aspects. The first one is the number of kilometres of all the classified roads in the country and how many of the total is tarmacked. That is the first question. The second aspect requires the Chairman to provide a constituency/county list of tarmacked roads as well as on-going roads projects across the country.

The third aspect is about plans by the Government to address inequality in the development of roads infrastructure in this country. To the best of my knowledge, we have never had even a graveled road in the area I represent.

Therefore, I urge you, hon. Deputy Speaker, that in order to allow the hon. Members to go through this voluminous document, you defer this matter. This is a critical component of the development of the Republic of Kenya. I plead with you. It will also give an opportunity to my good friend, Eng. Mahamud, to familiarize himself with what he is purporting to present to the House; he is not familiar with the document he has given us.

Hon. Deputy Speaker: Okay; I will only rule you out of order on your citing of Standing Order 107(1)(f) for the reason that it is not Eng. Mahamud who is the originator of this information. The hon. Eng. Mahamud could not have given false information when it is not his information.

Hon. Members, I think Keynan's request is in order because roads are in every constituency of this country, but I am not ruling that the response be brought back to the Floor of the House. What I would like to ask the hon. Chair is to call the Cabinet Secretary and invite hon. Members with an interest in this question. The hon. Member who asked the question is quite satisfied with the information given; he said he interrogated the document. The hon. Member indicated that he was satisfied.

Hon. Lemein, you indicated that you were satisfied with the response. Remember you are the originator of the question.

(Loud consultations)

Order hon. Members! I am not saying that the rest of you--- The question was not about the county of Narok only; the question is about the whole country. Therefore, you must thank him for raising a question that is national in nature. It is not localized.

Therefore, I will only say is that the Committee recalls the CS; this is a question in which a lot of hon. Members are interested. Can you invite the CS again to your Committee meeting? The rest of these hon. Members can also interact with the same CS and get their issues sorted out. Can we allow hon. (Eng.) Mahamud to respond to the clarifications that have been sought? I can see the list keeps on growing; we are all going to be talking about our individual situations. We can just generalize. If the Chair is going to invite the CS, then we do not have to continue talking on the same issue and giving our own examples.

Hon. (Eng.) Mahamud: Thank you very much, hon. Deputy Speaker. First of all, let me inform hon. Members that the issue of roads in this country is very important as far as infrastructure is concerned, and the concerns of hon. Members are really justified. There is a lot of inequity in terms of roads distribution in the country. When you look at the whole country with only 14,000 kilometres of tarmacked roads--- In fact, this is something very serious.

I think the question asked by the hon. Member is what the Ministry is trying to answer. I do agree with my colleague, hon. Keynan, that there is no tarmac road either in Eldas or Wajir East. There is an airport in Wajir, which has got some tarmac. Maybe, that is what somebody has referred to. There is an airport in Tarbaj; it is not even in that place. I do agree with him. I think a document like this one covering the whole country could have more errors. That could be an error I have not seen.

I have said that I want to go to the question raised by my colleague. It is true that the development of roads--- I agreed that the list here is very much skewed. Having worked in the Ministry I know that over the years it has been trying to do the same roads which were tarmacked many years back. In fact, very few roads have been tarmacked because the tarmac the Ministry has been repairing tarmac roads which were done three decades ago.

I think the Ministry is now making an attempt under the current programme, in which they are talking about the--- In the programme, they are trying to spread road

works to various parts of the country. But this list is totally skewed. I agree there is total inequality.

In the last part of the response, the Ministry has tried to address that inequality. As we are aware, there are 10,000 kilometres of planned road works under a programme which has been advertised by the Ministry this year. Those 10,000 kilometres will actually add to the 14,000 kilometres and make it almost 24,000 kilometres of tarmacked roads. That will actually be a big leap, as far as we are concerned.

In some constituencies, of course--- It is true that trunk roads pass through Narok County; these are Class A1 roads. In many constituencies, in some parts of the country, road network is good. Of course, I know that in parts of Lower Eastern and central Kenya there is inequality.

With regard to the question asked by hon. Chanzu concerning the Fuel Levy money, that is the money we collect from the Fuel Levy--- When we had 210 constituencies we were able to give something more than Kshs20 million; now that money is divided among all constituencies equally; that is why we are getting between Kshs13 million and Kshs15 million.

With regard to the slow pace of road works, it is true that a lot of roads works have been awarded without enough budget allocations. Because of that projects have been very slow. The Department of Roads will actually try to overcome that through the annuity programme. This slow pace will then be a thing of the past. I apologise to Members that the product of the Ministry has some errors.

I have taken advice that the Cabinet Secretary needs to come over and have a discussion with the Members and he sheds more light on the question being raised. I know that all is not well in the road sector. Everybody in this country requires that "black gold". Where I come from we do not have a single tarmac road. Hon. Keynan is complaining, but if there is anybody to complain I should be the one. This is our country; let us work together and see how we can develop it. We shall put the Ministry to task. We will tell them that the response that they gave us was not satisfactory. We need to agree on the modalities of how to invite the Cabinet Secretary. I think we will agree on that one with the hon. Member.

Our Committee and the Committee on Implementation engaged the Ministry on the 20-kilometre road issue. We hope that part of that 20 kilometre will be within the annuity programme. We realized that having 20 kilometres of tarmac per constituency will need a budget of over Kshs500 billion. So, we will achieve that when we implement the annuity programme of 10,000 kilometres.

Hon. Deputy Speaker: Hon. Members, we are not going to get into the discussion of this matter. I know everybody has an interest in roads. Every constituency cannot claim to have perfect roads. So, let the Chairman of the Committee give an undertaking on whether he is going to invite the CS next week, so that Members can come to your Committee and prosecute this matter.

Hon. Ng'ongo: Hon. Deputy Speaker, this is the Committee that this House has given a responsibility to follow UP road issues; therefore, they cannot tell us of hoping and hoping. Even with the faulty document, my constituency is indicated as zero tarmac road. We cannot continue suffering when the Committee we have given a task is telling us that it is hoping. The Committee needs to tell us when this 20 kilometre programme is

going to take off. If the Committee is incompetent, it should tell us that it is incompetent, so that we replace its members with others. This is not something to hope about. If the Government is talking about 2,000 kilometres they should tell us when constituencies like mine, which have zero tarmac, are going to have at least 20 kilometres done. It should not be history!

Hon. Deputy Speaker: Order, hon. Mbadi! Your point has been made!

Hon. Gikaria: Hon. Deputy Speaker, I am the Vice-Chairman of the Implementation Committee. It is on record that my Committee brought a report here regarding the 20 kilometres issue and how it is going to be implemented. Members should endeavour to go to the room where they can get that information. The information stipulates clearly how in the next three years the 20 kilometres issue will be implemented. If my constituency has so many kilometers of tarmac road--- In Nakuru, we have been given a provision for five kilometres in three years. The other bit is taken to the other constituencies which have nothing. Hon. Members need to get reports and read them. They are available here in Parliament. The Government has taken action and has indicated constituency by constituency how this policy will be implemented. It has provided for three categories, namely those that have nothing, those that have something and those with so much.

Hon. Deputy Speaker: Hon. Mahamud, the onus is on your Committee. These Members really want to know what the status is. When are you calling the Cabinet Secretary? Publicise it well, so that Members can come and interact with the Cabinet Secretary. You cannot talk of the incompetence of a Committee. The Committee is composed of legislators like yourselves. They are not the implementers. They are not the Executive, and so they cannot give an undertaking which they cannot carry through.

Hon. (Eng.) Mahamud: Hon. Deputy Speaker, first of all let me tell the Members that I am one of them. The Committee is part of you; it is in parliament. We are not the Executive. In fact, the answers that we are giving you are what the Ministry gives us. What is required of us is to bring the Cabinet Secretary here to explain. We cannot give an undertaking on behalf of the Ministry ourselves. We will ask the Cabinet Secretary to appear in two weeks time. I am not sure if we will be able to do it in this Chamber.

Hon. Deputy Speaker: Yes; if it is necessary to call everybody.

Hon. (Eng.) Mahamud: We will call him and ask that he answers the same question in front of everybody here. The information, of course, is available. I know roads cannot be done overnight. I know there are a lot of problems. However, it is our country and we will have to fight for our rights.

Hon. Deputy Speaker: Before we move from that question, we have some good guests from Turkana that is Lodwar Boys High School. This is the only national school in Turkana County. You are welcome to the National Assembly.

(Applause)

We also have Lubua Primary School from Igembe North. You are welcome to the National Assembly.

(Applause)

We also have students from Butula Boys High School in Butula Constituency. You are welcome to the National Assembly.

(Applause)

We now move to the Statement by the Chairperson of the Departmental Committee on Health. This was a Statement sought by the hon. Member for Nyeri Town.

Hon. (Dr.) Pukose: Hon. Deputy Speaker, this was a question that was asked by hon. Esther Murugi Mathenge, Member of Parliament for Nyeri Town Constituency. She wanted specific clarifications on the terms under which an X-Ray machine was given to Mathari Mission Hospital, measures that the Government has put in place to ensure that patients in Nyeri General Hospital continue accessing X-Ray services, and the policy guidelines on Government donation of equipment to private hospitals, yet numerous public health facilities are in dire need of this equipment.

I sought a Statement which was signed by the Cabinet Secretary, Ministry of Health.

(Several hon. Members stood up)

Hon. Deputy Speaker: Hon. Members, please observe your Standing Orders with regard to the Member on the Floor and the Speaker.

Hon. (Dr. Pukose): Hon. Deputy Speaker, the Cabinet Secretary, Ministry of Health, gave this Statement, and I will read it out.

The transfer of the X-Ray equipment to Mathari Mission Hospital was in the knowledge that the hospital offers quality and reliable health services to residents of its catchment area without profit considerations. Taking into account this premise, the only condition given for transferring---

Hon. Deputy Speaker: Hon. Pukose, first of all, is hon. Esther Mathenge in the House?

Hon. (Dr. Pukose): Yes, she is in the House.

The only condition given for transferring the equipment to the hospital was that Mathari Mission Hospital will undertake repairs before the equipment was given. The repairs were done and this mission hospital met the cost of the repairs of the equipment. The Radiation Protection Board was able to assess the equipment and clear it as safe for use. This was before it was given to Mathari Mission Hospital.

It is also worth-noting that the equipment was previously serving the people of Nyeri and transferring it to Mathari Mission Hospital translated into continued service to the same population.

The second issue was the measures that the Government has put in place to ensure that---

(Loud consultations)

Hon. Deputy Speaker: Order, hon. Members! Really, the consultations are too loud. Those who are moving to their Committee meetings should do so silently.

Hon. (Dr.) Pukose: Hon. Deputy Speaker, the second issue was the measures that the Government has put in place to ensure that patients from Nyeri General Hospital continue accessing x-ray services. I want to state that the provision of x-ray services at Nyeri General Hospital is still going on. This has now been taken over by the county government. It entails provision and maintenance of specialized equipment and deployment of qualified manpower to operate the equipment.

We can confirm that there is sufficient radiology equipment to provide X-Ray services to patients in Nyeri General Hospital. The equipment includes three general x-ray units, a mammography unit, ultra-sound equipment and a CT scanner. Further, the hospital is among those that will benefit from the equipment leasing project funded by the national Government. However, we are informed that the hospital is facing a challenge in availing manpower to operate the available equipment. It is the responsibility of the county government to employ manpower.

On the policy guidelines the Government used to donate equipment to private hospitals, yet numerous public health facilities are in dire need of these equipment, first and foremost, we wish to clarify that Mathari Mission Hospital is not a private hospital. As its name suggests, it is a faith-based facility which differs significantly from private hospitals as it is non-profit making institution.

Similarly, we wish to clarify that x-ray services are only rendered in hospitals and not in health centres. This is because the services require certain competencies and linkages which can only be present in a hospital set-up.

Having made these clarifications, we wish to draw the attention of the hon. Member to Chapter Four of the Constitution of Kenya, 2010, Section 43 which is on economic and social rights. It states as follows:-

“(1) Every person has the right—

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

(2) A person shall not be denied emergency medical treatment.”

From this extract from the Bill of Rights, it is clear that the State has a constitutional responsibility to provide health services to all Kenyans. Partnering with faith-based organizations is one of the ways through which the State provides the above rights to the citizenry. Currently, the Ministry is in the final stage of preparation of a health policy, which is aligned to the Constitution. The policy will clarify linkages and partnerships with faith-based organizations.

In the meantime, we wish to inform the Member for Nyeri Town Constituency that faith-based organizations complement health services provided by the Government by offering quality services on a not-for-profit platform. Based on this understanding, the Ministry has all along viewed faith-based organizations as partners in delivery of health services.

(Loud consultations)

Hon. Deputy Speaker: Order, hon. Members! Consultations are too loud. You know the rules. Hon. Members, there are enough rooms around for you to go and carry on with your discussions.

Hon. (Dr.) Pukose: The Ministry has supported them in many ways, including seconding staff to them.

*(Hon. (Ms.) Gathogo stood between
the Deputy Speaker and hon. (Dr.) Pukose)*

Hon. Deputy Speaker: Hon. Esther Gathogo, you are standing between the Chair and the Member on the Floor. Please use a different route to get to where you need to be.

Hon. (Dr.) Pukose: Thank you, hon. Deputy Speaker. I want to say that the Ministry has all along viewed faith-based organizations as partners in delivery of health services and supported them in many ways including seconding staff to them and supplying ambulances, medicines and other medical supplies to them.

Hon. Deputy Speaker, this question had been asked by hon. Esther Murugi last year and we had an answer by 6th December. When the House adjourned, she took it upon herself to, again, based on the concerns of her constituents, raise the matter. We have now given her the answer and we are sorry for the delay.

Hon. (Ms.) Mathenge: Thank you, hon. Deputy Speaker. I would really have loved to have been invited by the Committee, so that I interrogated the Ministry of Health personnel. Unfortunately, I was not.

I have a few clarifications that I would like to seek. First of all, when they say that Mathari Mission Hospital is a non-profit making institution, I would like to understand what is profit-making. This is because this hospital charges much more than the amount that is charged in a public hospital. So, I do not know what non-profit making is. Is it that when you charge more you are non-profit making just because of your name?

The second clarification is, even if there is equipment in this hospital, as the Vice-Chair has said, this hospital has no personnel. So, what comes first? Is it the cow or the calf? I do not think the Ministry of Health is taking health matters as seriously as it should be.

The other clarification on non-profit making aspect is, if you go to Mathari Mission Hospital today and incur a bill of Kshs500, you will not leave the hospital until it is fully paid. I do not know what they mean when they say that it is a non-profit making hospital.

Thank you, hon. Deputy Speaker.

Hon. Letimalo: Thank you, hon. Deputy Speaker. When the Vice-Chairman was giving his Statement, he said that Mathari Mission Hospital cannot qualify to be a private hospital because it is not a profit-making institution. I completely agree with him because we have very many mission hospitals that provide services without making any profit. If the Government recognizes the support that mission hospitals give to local communities, why is it that they give them selected services like seconding to them medical officers and drugs. They are not treating them like other Government hospitals that provide services to local communities.

Thank you, hon. Deputy Speaker.

Hon. (Ms.) Kinyua: Thank you, hon. Deputy Speaker. My concerns are two. First, this hospital's catchment area is regional; that is from Isiolo, Meru and parts of Kirinyaga and Murang'a. Did they consider the fact that we needed the "redundant"

equipment in a similar hospital in those other areas? For example, people travel all the way from Karatina to Mathari because there is no operator at the Nyeri Provincial General Hospital.

The second one is that realising the role of this mission hospital in our midst and the need to do a complete audit of the services that are provided within any area, what is the Ministry doing to ensure that personnel are adequate for the services needed by the citizens?

Thank you, hon. Temporary Deputy Speaker.

Hon. Deputy Speaker: Rachel Nyamai, is this a clarification? At this point you are an ordinary Member.

Hon. (Ms.) (Dr.) Nyamai: No, hon. Deputy Speaker. I have not pressed the intervention button.

Hon. Deputy Speaker: Okay. It is showing on my screen.

Chris Wamalwa, is this for this one or the next one?

Hon. (Dr.) Wakhungu: The previous one.

Hon. Deputy Speaker: Okay. Ali Rasso.

Hon. Dido: Thank you very much, hon. Temporary Deputy Speaker. I also wish to seek a clarification from the Chair. What is happening is that we are cannibalising the old district hospitals, which are supposed to be level four hospitals. The question which has been asked by hon. Murugi is: How do you cannibalise an existing hospital that should actually serve as a referral hospital in a county for its equipment to be moved to a mission hospital? What effort is the Government making to ensure that actually that hospital is manned, and its equipment is retained as opposed to cannibalising the hospital?

Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker: Okay. Can we get the response from hon. Pukose?

Hon. (Dr.) Pukose: Thank you, hon. Deputy Speaker; I thank the hon. Members for raising these questions. I will begin with the last one by hon. Rasso on cannibalisation of the facilities. I think that has not occurred because what we are talking of is equipment that was already defective; from the list that we have read, Nyeri Provincial General Hospital has three x-ray machines that are working. It even has a mammography machine, CT scan machine and ultra-sound machines. So, this x-ray machine was defective and it was repaired by Mathari Mission Hospital when they requested it; the radiology board assessed it after it was repaired and confirmed that it was in an operational condition.

Hon. Deputy Speaker, the other issue was whether faith-based organisations are non-profit making organisations. The cost of healthcare in many mission hospitals is between what the Government charges and what private entities charge. They are subsidised by being given staff, medicines, ambulances and, at times, even by being bailed out by the Government, so that they offer services at a reduced cost.

On the issue why they are not able to release a patient without the patient clearing all the money, I think that is an administrative issue. It has nothing to do with a Government policy. As we have said, the Ministry of Health is working on a policy on how we can partner with faith-based organisations. So, once the policy comes here and

we have it approved then we will have guidelines on how the engagement between the Government and the faith-based organisations is going to be managed.

In as far as the issue of personnel is concerned; I think that is a challenge. What we need to realise is that health has been devolved. Healthcare is now under the county governments. So, it is the responsibility of the County Government of Nyeri to employ staff that they need for the operationalisation of CT scans, x-rays, ultra-sounds and so on. It is also their responsibility to make sure that *wananchi* access services which are not available.

The National Government is also in the process of leasing equipment to 94 hospitals within the country. This is at the procurement stage and it is a matter of time before the rest of the hospitals are able to access equipment; although there are challenges in terms of whether equipment should be capital operationalised or capital leased, operationalisation leasing and other challenges.

On why there are selective services in other places as asked by hon. Letimalo, the Government gives them the services that they have requested. They might be having deficiency in terms of clinical officers, nurses and other officers. So, they will only ask to be supplemented with what the Government is able to take care of; as I have said from the Statement given by the Cabinet Secretary (CS) we are preparing a policy. So, those issues will be clarified with time.

Thank you.

Hon. Deputy Speaker: Okay. Thank you. Esther Murugi, are you on a point of order?

Hon. (Ms.) Mathenge: Hon. Deputy Speaker, I just wanted to advise the Chair that this x-ray machine was actually functioning; it was only given as a donation to the hospital. So, it was not non-functional.

Hon. Deputy Speaker: Hon. Chair, I think the problem is what Esther talked about at the beginning. She stated that you did not invite her at the time the CS, or whoever was answering your question, was there. Really, it solves a lot of problems when, instead of you answering on behalf of the Government, they answer on their own behalf. In future, please, once you are given a question make sure that when you are responding to it you invite its owner so as to reduce the questions asked on the Floor.

Hon. Members, the next one is by the hon. Chris Wamalwa; it was directed to the Departmental Committee on Labour and Social Welfare. Yes, hon. David Were, my former classmate.

An hon. Member: Where?

REMOVAL OF MR. ATWOLI/MS MUGO
FROM THE BOARD OF TRUSTEES OF NSSF

Hon. Were: Thank you, hon. Deputy Speaker. We can find out that one later.

A Statement was requested by hon. Chris Wamalwa on the removal from the board of trustees of the National Social Security Fund (NSSF) of Mr. Atwoli and Ms. Mugo, but this matter is in court. So, I am wondering whether you can give guidance on how to deal with it; I believe the matter is right now *sub judice*.

Hon. Deputy Speaker: Is it alive in court at the moment? Hon. Member, I have just been informed about what our Standing Orders say on *sub judice* matters. If you look at Standing Order No.89 (4), it says:

“A Member alleging that a matter is *sub judice* shall provide evidence to show that paragraphs (2) and (3) are applicable.”

Are you able to provide us with evidence that this matter is, indeed, alive in court? Even if you cannot do it right now, can you tell us when you can provide that evidence, and we suspend this issue for now?

Hon. Were: Hon. Deputy Speaker, I was requesting that maybe we move to the next Statement and then I make this document available to you to peruse. We can deal with the next Statement and then I wait for the next chance.

Hon. Deputy Speaker: All right. Maybe we can handle the next Statement as we sort out this matter.

Hon. Wakhungu: On a point of order, hon. Deputy Speaker.

Hon. Deputy Speaker: Proceed.

Hon. Wakhungu: Thank you, hon. Deputy Speaker. I have raised this issue and it is not the first time that we are discussing this matter of *sub judice*. I raised this issue earlier before the matter came to court and hon. Muturi was on the Chair; the hon. Chairman of the Departmental Committee on Labour and Social Welfare has already given me the response, and I have with me. So, by way of background information, we requested this matter before it went to court, and he has already given me the Statement. I was ready to seek clarifications. The issue of this matter being *sub judice* does not arise.

Hon. Deputy Speaker: Hon. Chris, just allow for consultations to take place as we handle the last Statement. We have not said we have left it. We have said we want to consult, so that we are sure that we are not breaching any Standing Order, or interfering with anything that is before a court.

As we all consult on this one allow the Chair of the Departmental Committee on Health to prosecute the question that was raised by the hon. Member for Rongai, hon. Raymond Moi. Can that be going on as we deal with this matter?

Hon. (Ms.) R.K. Nyamai: Thank you Deputy Speaker. Hon. Raymond Moi, Member of Parliament for Rongai Constituency sought a Statement concerning the proposed construction of a hospital in Salgaa, Nakuru County.

Hon. Deputy Speaker: Please first confirm if the hon. Moi is in the House.

Hon. (Ms.) R.K. Nyamai: Yes. hon. Moi is in the House.

The hon. Member sought the following information:- reasons why the Government has not started the construction despite the availability of land; two, plans, if any, to commence construction of the hospital to reduce the suffering of the residents of Salgaa.

Hon. Deputy Speaker, in response to the first matter, the proposed construction of Rongai Trauma Hospital was conceptualized in 2004 following the directive of the then President of Kenya that a specialist hospital be put up in Salgaa, Rongai area, to help in management of victims of numerous road accidents that occur in the area. In 2006, Plot No. /Rongai/Rongai Block 2/69 measuring six acres was acquired for this purpose with financing from Rongai Constituency Development Fund Committee. During the 2007/2008 financial year, the Ministry of Health fenced the plot; thereafter the Ministry

tried to obtain special funding from the Treasury for this project as a national priority, but funds were not availed. During round table discussions with the Arab development partners at the Laico Regency in October 2011, the Arab representatives were taken through the proposed hospital and Arab Bank for Economic Development in Africa (BADEA) and OFID expressed willingness to fund it. Further discussions ensued between the partners and the Government, leading to commencement of the project in November 2013, when the Ministry advertised for expression of interest for consultancy services. Implementation of this project is based on the terms of a loan agreement signed between the Government of Kenya and the Arab Bank for Economic Development in Africa. Under the provisions of this loan agreement, a consortium of local and Arab consultants is supposed to provide consultancy services, which include review of existing project documentation, and preparation of tender documents. A tendering process has been on-going to identify local and Arab firms to pair up for the purpose of jointly tendering for consultancy services, as required under the terms of the loan; there is an approved short list of ten local companies and Arab firms to tender for consultancy services of 25th May 2014. The names of the firms were formally forwarded to the Ministry by the National Treasury, on 10th of July as per an attached copy, which I have here; I will table it. The Tender document, that is the request for proposals for provision of consultancy services, has just been circulated to the shortlisted bidders.

The second question is on plans, if any, to commence construction of the hospital to reduce the suffering of the residents of Salgaa. It is expected that tendering for construction work will take place by the end of 2014; this will be after the consultants have reviewed the existing project documentation and prepared tender documents. The Actual construction works are expected to commence in the first quarter of 2015/2016 financial year.

Thank you Deputy Speaker.

Hon. Deputy Speaker: Hon. Raymond Moi, you get the first chance to seek a clarification.

Hon. Moi: Thank you hon. Speaker for this opportunity. I would like to thank the Chairperson for Departmental Committee on Health for the detailed and positive response to our request. Salgaa-Eldoret Road has for a long time become a menace both to motorists not only in Rongai but also to anybody travelling to Eldoret, Kisumu or to the western part of Kenya. I would like the National Treasury and the Ministry of Health--- I hope the response that construction will begin in 2015/2016--- If it is done then, there is nothing more to say, just to be grateful to the National Treasury and the Ministry of Health.

Thank you very much Deputy Speaker.

Hon. Deputy Speaker: Hon. Michael Onyura, are you on a clarification?

Hon. Onyura: Thank you Deputy Speaker. I want to thank you for recognizing Butula Boys High School, who are in the Speakers Gallery and are from my Constituency. I heard you acknowledging your schoolmate. Yours, sincerely here, is an old boy of this great school. The illustrious Member for Ugenya is also an old boy of this school.

(Applause)

I also thank the Government for upgrading Butula Boys High School to a National School.

Coming to clarification, I would like to urge that this is a very important project. Those of us who use that road have lost many friends, relatives and constituents on that road. What we know is, if there was a facility nearby that could offer quick attention to accident victims--- I think we are likely to save many more lives. I really wish to thank hon. Moi for bringing up this issue; let it be speeded up. It is a very important project and it will save many lives. It is not fair to the former President who gave the order--- a presidential order should not be just ignored by bureaucrats who are taking their time, procrastinating and wasting time. I think it will be good if it is given priority.

Hon. Gikaria: Just to indicate that from what the Chair has just said--- You can see how the Constituency Development Fund has been of importance to the constituencies; it bought a six-acre piece of land. In addition to what the Chair has just said, I think it is also important for the Ministry of Transport and Infrastructure and the National Transport Safety Authority to take charge of that road. It is sad that despite even having an hospital--- It is just not good for us to have an hospital without the safety authority taking charge of the road, so that we are able to reduce the number of accidents in Salgaa. It is very sad that every other day we get an accident, yet this can be controlled. On top of what the Chair has said, it is also important for the National Transport and Safety Authority to be able to take charge and be able to reduce accidents; they can be reduced and we avoid congesting hospitals.

Thank you, hon. Speaker.

Hon. Keter: Thank you Deputy Speaker. My concern is on presidential directives. Often we are given some directives by the President, but it is very shameful that it takes ten years before a directive, like this one on Salgaa is implemented. I would like the Chair to particularly clarify--- I am sure this is not the only issue that arises in this country. We may have other issues where the President of this country is engaged. Can he make sure that when all directives are given, they are implemented as soon as possible and not after ten years?

Thank you.

Hon. Nyumu: This morning there was a serious accident at a road, where there is a bridge and flyovers. As my friend, hon. Gikaria, was speaking, I think it is very important that even as we look at the safety measures on the roads, there is need for us to actually insist on the use of the flyovers by the pedestrians; we are losing lives unnecessarily in this particular way when the Government has spent a lot of money on flyovers. The Ministry should also look at how we can strengthen awareness in use of flyovers.

Hon. Deputy Speaker: Yes, who is on a point of order?

Hon. Wambugu: Hon. Deputy Speaker, there has been very many accidents on that road, including Mombasa Road. The issue of building trauma hospitals has been talked about in this House for a long time and nothing has been coming up. To cater for that, what emergency measures is the Government putting in place, especially along Mombasa-Nairobi and Nairobi-Nakuru-Malaba highways to take care of those accidents? Does the Government have any plans to establish an emergency airlift unit to survey

those roads so that, in case there are accidents, victims can be airlifted immediately to Nairobi?

Hon. Kaluma: On a point of order, hon. Deputy Speaker. I wish to seek clarification on whether there is a Government policy or position on the establishment of Level 5 Hospitals across the country? In the entire Homa Bay County, there is no Level 5 Hospital and our people are suffering in Kisii. In Migori County, there is no Level 5 Hospital. I fear when it is said that, that is coming out of a Presidential Directive because some parts of this country like ours, where presidents will take too long to come, we do not want to wait for those directives. We want to hear a public policy position on how we are going to have those important facilities.

Hon. Deputy Speaker: Hon. Pukose, let us address ourselves to those concerns and then proceed. What is so pressing, hon. Member? You are also seeking a clarification? I thought you are the one answering. You have exchanged positions now. It is now the Chair who is asking. I am sorry, hon. Pukose. Now, you are an ordinary Member. Please, that is so as not to confuse me by exchanging the roles of the Chair. Hon. Dawood, you have put your hand up. Let us wait for each person to be given their turn. I have given hon. Pukose for now, who is an ordinary Member. You are good at sharing responsibilities but it confuses the Chair.

Hon. (Dr.) Pukose: Hon., Deputy Speaker, I want to thank hon. Moi for bringing this very important Statement. The person who had brought a Petition should be ashamed that the Member has brought an issue of national importance. The clarification that I wanted to seek is: What is the estimated cost of that project?

Hon. Deputy Speaker: Hon. Member, do you have your card with you?

Hon. Dawood: Hon. Deputy Speaker, the clarification that I require from the Chairperson of the Committee on Health is that the Level 5 hospitals that she is talking about all over the country do not have any ICU facilities and blood transfusion units. So, it would not make sense having Level 5 Hospitals without those facilities. Many accident cases need ICU facilities together with blood transfusion units. The Deputy Chairperson of the Committee on Health cannot question his own Committee on the Floor of the House. That is un-procedural. He should do it in the Committee and not on the Floor of this House.

Hon. Deputy Speaker: I am just wondering where the Members who have been raising points of order are. Kamoti Mwamkale, you are going to allow him because you do not have a card yourself. You must be using somebody else's card and not your own. Let hon. Mwamkale speak because he has not spoken for a while.

Hon. Mwamkale: Hon. Deputy Speaker, I rise to seek a clarification from the Chair. We have constituencies along Mombasa-Nairobi road where we have black spots that are very notorious. For example, in Rabai, we have a black spot at Bonje, Rabai and Kaloleni. Does the Government have any plans to construct Level 5 hospitals in those constituencies that are accident-prone? Could the Chair tell us whether the Government has plans to put up Level 5 hospitals in accident-prone areas? I am told even Voi is a black spot. What plans does the Government have to put up Level 5 hospitals?

Hon. Opiyo: Hon. Deputy Speaker, I want to thank hon. Moi for bringing this issue to the House. What is the Ministry of Transport doing about the black spot around Salgaa and, indeed, in other parts of the country? The Kisii-Migori Highway is one of the

worst roads when it comes to accidents. It is a very narrow road which was built over 50 years ago and it has not been expanded since. What is the Government doing to ensure that there is safety on that road, instead of building hospitals and preparing for accidents to occur? They know that accidents are definitely going to occur. The Chairperson should give this House the plan that the Government has to expand those roads, given that we have motorbikes which were initially not intended to use those roads when they were constructed.

Hon. Deputy Speaker: Okay. I am not sure whether the Chairperson of the Committee on Health can give that undertaking. But can we now get your responses to the ones that you are able to answer?

Hon. (Ms.) R.K. Nyamai: Hon. Deputy Speaker, I will attempt to respond to those that lay within the health docket. For those that I do not have a response, I will also indicate so. The matter that has been raised by hon. Moi is of concern, not only to the people of Rongai and the Salgaa area, but it is a matter of road safety in all our roads, especially in areas where we have black spots, which have already been identified. I feel that hon. Moi simply appreciated that the response was good, in good time and the project is going to be implemented.

Hon. Onyura has asked why it has taken ten years if it was a Presidential or an Executive order. Yes, this is a very important project that should have been implemented even with our own funds. I appreciate that it has taken too long and it is a matter that we should take up with our Ministry, even as they tell us that it will be implemented in the 2015/2016 Financial Year, so that we can show them the importance of the project. Hon. Gikaria also asked what the National Safety Transport Authority is doing to ensure that safety measures are put in black spots. The issue of trauma centres being established in areas where we have serious development projects, including our railways, has been discussed with the Parliamentary Committee on Health.

In the upcoming Bill which will be brought as a Government Bill, we have what is called Health Impact Assessment (HIA), where we would like to ensure that for every development project, be it a road or a railway, we put into our minds those who will use the railways and the good roads. They are human beings and accidents are bound to happen. Therefore, this is a matter that will be taken up by the Cabinet Secretary (CS). I hope that it is going to be followed.

Hon. Eric Keter also asked about the presidential directives, which are not being implemented. I would like also to link that to what hon. Kalamu had asked; whether there is a policy for implementation.

Hon. Deputy Speaker, I am not aware of any policy on the implementation of presidential directives. I would not want to make a comment on it. But I would like to say that for a presidential directive to be given, it means that there is a danger. For example, the matter of Salgaa black spot. I am also concerned and we will follow up with the CS to ensure that, that particular one, which falls under the Ministry of Health, is implemented. We will also address other places which are black spots. We need to take measures to ensure that trauma matters are addressed.

Hon. Captain Wambugu asked what we are doing to ensure that we have emergence measures for all infrastructure development projects. I think it has been

responded. Hon. Members had earlier asked that we do not just think about roads, getting oil and all that, without asking what could be the health impact.

Hon. Deputy Speaker, I am also aware that we have issues in the oil exploration areas in northern Kenya where we are being told that there are certain diseases that are being related to drilling. There are some health effects and that is happening. This will be addressed by the Health Impact Assessment (HIA) which I have just mentioned.

Hon. (Dr.) Pukose has asked a question and I appreciate what hon. Dawood has said. I know that he should not be asking me this question. We should handle it at the Committee level. But I appreciate that the cost of that project should have been indicated in this statement. Once I get to know the cost, then we will also respond to that.

There is also a matter raised by hon. Dawood about the fact that, we do not have ICUs and other equipment. I think that will be addressed by a national Government project which is going on. Already, to happen and which has already been funded where we have equipment of Level 4 and Level 5 health facilities in the country. I believe that most of our health facilities will have the most needed equipment for handling emergencies.

Hon. Deputy Speaker, another question has been asked by the hon. Member about having Level 5 hospitals in every county. I would not like to make a commitment, but it is ideal if we had those hospitals in every county. I would also like to say that it is the responsibility of this House. The Constitution does not define a referral hospital. Therefore, it is our responsibility, if we feel that we need to have Level 5 hospitals in every county. We should then make Level 5 hospitals referral hospitals and ensure that every county in this country has one.

As a Chair of the Departmental Committee on Health, I really look forward to that because Kenyans are suffering. Level 5 hospitals have not been properly funded and we can see what is happening in the country. The health sector is in a crisis. Therefore, I look forward to a time when this House will make a decision on defining what a referral hospital is because it is not defined in the Constitution.

Thank you very much, hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Members, I think we have prosecuted this matter enough. Allow us to move to the next one.

Hon. Members, on the question of hon. Wakhungu; I said that we were doing a bit of consultations. The Statement which is no.224 of 2014 was requested on 23rd July, 2014.

We have before us a Court Order in respect of Case No.2013 of 2014, in the Industrial Court of Kenya, between one, COTU, two Mr. Francis Atwoli, three, the Cabinet Secretary (CS) Ministry of Labour and four, the Attorney-General, which is dated 21st July, 2014.

Therefore, hon. Members, you can see even as the request was being made, this matter was already before court. It is, therefore, my finding that this matter is active in terms of Standing Order No. 89 (3) (c). It is only fair that you allow the court process to proceed and then we can deal with the matter later on.

Thank you. Let us move to the next order.

Hon. Wakhungu: On a point of order, hon. Deputy Speaker.

Hon. Deputy Speaker: Order, hon. Wakhungu, we have dispensed of that matter.

BILL

First Reading

THE CENTRAL BANK (AMENDMENT) BILL

(Order for the First Reading read – Read the First Time and ordered to be referred to the relevant Departmental Committee)

Hon. (Dr.) Otichilo, you seem to have a proposal. Is it for the limitation of the Bill?

PROCEDURAL MOTION

LIMITATION OF DEBATE ON BILLS

Hon. (Dr.) Otichilo: Thank you, hon. Deputy Speaker. I rise on a point of order to move a Procedural Motion to limit debate on two Bills that are just about to be discussed.

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

THAT, pursuant to the provisions of Standing Order 97, this House resolves that:-

(i) Debate on the Order of Precedence Bill, National Assembly Bill No.11 of 2014 be limited as follows:-

A maximum of one hour and thirty minutes, with five minutes for each hon. Member and ten minutes for the Leaders of Majority and Minority Parties and five minutes for the Mover in replying.

(ii) Debate on the Children (Amendment) Bill, National Assembly, Bill No.18 of 2014, be limited as follows:-

A maximum of one and thirty minutes, with five minutes for each hon. Member contributing and ten minutes for the Leaders of Majority and Minority Parties and fifteen minutes for the Mover, in moving and five minutes in replying.

Hon. Deputy Speaker, you would realize we have so many Private Members' Bills and Motions which have been pending for many months. If we have to speed up this process, we need to reduce the time for discussion.

Therefore, this Procedural Motion aims to achieve what I have just stated.

Thank you.

Hon. Deputy Speaker: Do you have a Seconder?

Hon. Keynan seconded.

Hon. Deputy Speaker: Okay. Hon. Keynan has seconded.

(Question proposed)

Are hon. Members willing to talk on that or shall we dispense of it?

Hon. Members: Let us dispense of it.

Hon. Deputy Speaker: We can dispense of it.

(Question put and agreed to)

Hon. Members, therefore, it shall be.

BILLS

Second Reading

THE ORDER OF PRECEDENCE BILL

(Hon. Keynan on 30.7.2014)

(Resumption of Debate Interrupted on 30.7.2014)

Hon. Deputy Speaker: Hon. Members, this is now free. It had been moved and seconded. Hon. Ole Ntutu.

Hon. ole Ntutu: Hon. Deputy Speaker, I would like to support this Bill. I want to thank my good friend hon. Keynan for bringing this Bill. Since we promulgated our new Constitution and the counties came into being, we have realized confusion with regard to titles. I think this Bill will bring order in this country. I remember that when hon. Uhuru Kenyatta was elected as the President of Kenya and we went to the Stadium, I was shocked to see Members of Parliament seated very far from where the President and the Deputy President were. This will maintain order and decorum in our national functions and also during social engagement by the Government.

[Hon. Deputy Speaker left the Chair]

*[The Temporary Deputy Speaker
(Hon. Kajwang') took the Chair]*

I totally agree with the way the Bill has delineated the President, the Deputy President, the Speakers of Parliament and then the Chief Justice. I will bring some amendment because I think there are some issues to do with the Governor and Members of Parliament. With all due respect to my colleagues, I think the Governor must come before the Member of Parliament. It does not matter how you look at it. A person who has been elected by seven or six constituencies is definitely higher than a person who has been elected by only one constituency. As much as we want to have this in-fighting between the governors and Members of Parliament, we need to realize that we are making laws that will govern this country in future. I will bring that amendment personally so that we have the Governor coming before the Member of Parliament and then the rest will follow.

During State functions, we have seen our good friends from the county assemblies going in front instead of giving room to Members of Parliament and Senators up there. I think this Bill will bring order so that we move forward as a country.

With regard to the use of the national flag, we are used to the old Constitution which provided for our Cabinet Ministers to fly flags. It used to be good. But after we allowed devolution, there seems to be an urge by everybody to use the flag. This is not good. We need to allow some offices that are supposed to have the national flag. I agree with the Bill that the President, Deputy President, the Speakers of Parliament and the Chief Justice fly the flags. I think we should include the Cabinet Secretaries there because it is a practice all over the world. This is something that we will discuss when we get to the Third Reading. Those are the only people that I feel should fly our national flag.

Hon. Temporary Deputy Speaker, with regard to titles, with due respect to our governors, their use of the title “His Excellency” is taking matters too far. We should just call them governors. The same thing applies to their wives. We should not call them “Excellencies”. One day, I attended a function and I was really confused because I thought the First Lady was coming. I was, however, told that the Governor’s wife was seated up there and I was shocked. So, I think this will bring some order.

Hon. Lentoimaga: Thank you, hon. Temporary Deputy Speaker. I would like to thank my brother Keynan for bringing this Bill here. It is so timely. I will move an amendment to go hon. ole Ntutu’s way. On the issue of the governor, his status may be below the Leader of the Majority Party in that order and then followed by Members of Parliament.

With regard to the issue of ambassadors and high commissioners, the appointing authority of those two is the President. The recommendations are obviously made by the cabinet secretaries and principal secretaries. I would like to bring amendments to make provision that ambassadors and high commissioners---

The Temporary Deputy Speaker (Hon. Kajwang’): There is a cry for information. Do you want some information?

Hon. Lentoimaga: It is okay for as long as it does not eat into my minutes.

Hon. Keynan: Thank you for allowing me to give you information. You remember that I appeared before the Committee where you are the Vice-Chairman. I am sure that the amendments that hon. ole Ntutu has alluded to have all been captured. The Chairman, I think, has already signed and those things have already been taken care of. Therefore, you do not need to bring the amendments. I thought I should remind you because we canvassed and the amendments will come. The issue of the governor has already been addressed.

Hon. Lentoimaga: Hon. Temporary Deputy Speaker, it was an omission because on the Floor here, the amendment is not there. I wish to thank him so much. The other issue is that MCAs are not mentioned here. They are mentioned in the Constitution. On the issue of the flag, I want to stress that the President, the Deputy President, the Chief Justice and High Commissioners can fly it. The county governors can make their own flags at the county level.

Thank you, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Kajwang’): The Member for Samburu North, we are not discussing the flag but we are discussing the order of precedence.

Hon. Lentoimaga: It is in the Bill.

The Temporary Deputy Speaker (Hon. Kajwang’): Thank you. Where are we?

Hon. Members: We are on Clause 5.

The Temporary Deputy Speaker (Hon. Kajwang’): Well. You need to debate whether that is consistent with the Bill. Yes, the Member for Chuka/Igambang’ombe! Is that the small area that you represent? It has a long name like that.

Hon. Njuki: Hon. Temporary Deputy Speaker, I think I will have the privilege of giving you tuition on how to pronounce the name of my constituency.

The Temporary Deputy Speaker (Hon. Kajwang’): Please help me.

Hon. Njuki: Hon. Temporary Deputy Speaker, it is Chuka-Igambang’ombe Constituency. “Igambang’ombe” is one word and it has got a very good meaning. You may want to know what it means but you can see me later on. I can look for you.

First and foremost, I would like, with your permission, to recognize the presence of Kirege Primary School from my constituency. The students are seated in the Gallery.

I would like to thank the owner of this Bill, hon. Adan Keynan, who brought a similar Bill in the previous Session. Even as we contribute to this Bill, I would like to know what happened with the National Symbols and Emblems Bill which was signed into law by the President. That is because even after the Bill was signed into law, we still have governors today who fly flags in the counties and nothing has happened to them. So, even as we discuss the Bill, it is important to insist that people have to follow the law.

I remember that, that Bill came back to this House so that we can include the Cabinet Secretaries in the list of those who are authorized to fly the national flag. However, some of the governors are still flying the national flag and that should be looked into.

Hon. Temporary Deputy Speaker, order or being organized is something that has been there for a long time. That is both in humanity and in animals. That is because even in the animal kingdom, we have order. We also have order in the traditional families. What is happening at the moment is total confusion because Kenyans love functions very much. Sometimes, functions come to a standstill simply because somebody has been called to speak before the other person who he or she thinks is a junior. I am saying that without reference. That anarchy can continue like that and we may have total mess in functions at one time.

I remember two months ago when we attended a function on a Sunday in a church in Murang’a County. At one point, the function came to a standstill because there was confusion between the Governor and the Senator as to who should invite the Deputy President to speak. The Senator insisted that he is the Deputy Speaker in the Senate while the Governor felt that he was the Governor of that county. So, there was a five-minute delay of silence. People were looking at each other and wondering who should speak first. The Deputy Governor took over and did what he did. To avoid such embarrassment to our people and even to us as leaders, it is important that we have order.

If you look at that list, it will not do a lot of justice when we put the Cabinet Secretary and the Principal Secretary below the former President, the Vice-President and the Prime Minister. If those people are serving in the current Government and look at

their role, we may have to bring them up. Those are some of the amendments we are looking into.

Hon. Temporary Deputy Speaker, the word “honourable” has been misused very much so that, at the moment, it is a whitewash and does not have any meaning. If you go to the county assemblies, you will find that every person who is employed there calls himself or herself “honourable”. That includes the cleaners and the messengers. You will find stickers on their cars reading “Hon. CS for Roads, National Disaster and Hon. Ward Administrator.” All of them call themselves “honourables”. When a Mheshimiwa is called, there is confusion even in the meetings as to who is supposed to be referred by that title. So, this Bill will bring order. Definitely, we will have a situation where we will function as people who display leadership qualities.

However, I will move an amendment because we always have exceptional cases depending on scenarios---

The Temporary Deputy Speaker (Hon. Kajwang’): Thank you. The Member for Eldas, I am just looking at your Bill. I am expressing myself without pronouncing myself on it. You may want to consider the title or long title because you have several things you are discussing here. You are discussing order of precedence in Part One as a separate or distinct part. You are also discussing the issue of flags as a distinct issue. Although they are joined together but, as a drafting advice, it is also another section of what you are discussing.

Title is another section of what you are discussing. So, you may want to re-look at your long title at the Committee stage and see whether you can, with the advice of the legal people, say order of precedence, flags and titles even in the short title. This will ensure that you do not confuse several things which can easily be in different statutes in one Bill. However, that is just an advice without pronouncing myself. You will get a chance to speak about this.

Hon. Keynan: Hon. Temporary Deputy Speaker, I stand guided. That has already been addressed. We are aware that the National Flag and Emblems Act has already been assented to by His Excellency the President. Therefore, it is already law.

Therefore, Section 5 will be amended. That is something that we have discussed with the departmental committees on Administration and National Security and Justice and Legal Affairs. The title will be proper.

The Temporary Deputy Speaker (Hon. Kajwang’): That is what was disturbing me. I know that the flags now rest in another legislation.

Hon. Keynan: That issue was still pending when the Bill was published. That has already been done. I am sure that the amendments that will be brought by the Departmental Committee on Justice and Legal Affairs will bring out that clarity.

The Temporary Deputy Speaker (Hon. Kajwang’): I think that is good information to bring to Members.

Hon. Keynan: Just for information, hon. Temporary Deputy Speaker, so that Members also understand, there are some Members who have been raising the issue of Members of County Assemblies (MCAs). I think that is already taken care of. Clause 6(2) says that a person other than the persons listed above who uses the listed titles--- If your name is not there and you uses any of the titles--- Obviously, MCAs are not mentioned. Of course, you understand the other jurisdictional issues between the two

Houses. As it is, it takes care of the aspect of the MCAs. Once this Bill is passed, the only people who will be allowed to use those titles are the people who have been listed under Clause 6. I think the list is clear.

The Temporary Deputy Speaker (Hon. Kajwang’): Thank you. That guides Members sufficiently because I saw a Member here struggling with Clause 5. As you look at the Bill, you may have to appreciate the fact that Clause 5 has been taken care of in another legislation. It will be easy to clean it when it comes to the Committee stage.

However, the Member for Eldas, what I heard hon. Members to be saying is that they would have been happier to see where the MCAs fall in Clause 4. But that is a point of debate which you will take. You will have time to come to this because you will reply. Just keep notes on this.

Hon. Gikaria: Thank you, hon. Temporary Deputy Speaker. I would like to thank hon. Adan Keynan for bringing this Bill.

First of all, about the hierarchy, first and foremost, this should not be seen as a war against the Governors. That is because every time a Member rises, he or she talks about a Governor and uses the words “His Excellency.” I think that is misplaced. We do not want to be seen as if we are fighting the Governors. But it is just a general rule that we should have the name of “His Excellency” only left to the President.

Hon. Temporary Deputy Speaker, of course, I am a member of the Federation of Kenya Football (FKF). I will bring a Motion address the football status of this country. However, they are calling its Chairman “President”. Even at the village level, they are calling a chairman of a small committee “His Excellency” of a certain welfare association.

So, it is important for us to think, in the Third Reading, how we can even stop other sports disciplines, especially in football and hockey, from calling their chairmen “presidents”. Sometimes, it is a little bit confusing for a young person in a stadium when Mr. Nyamweya is referred to as “President” and everybody becomes scared. So, I think it is important for us to address that.

Hon. Temporary Deputy Speaker, secondly, of course, Clause 3 has put it very clearly that this does not impute succession. Hon. Adan Keynan, in this case the Deputy President will succeed the President in 20--- *Hiyo ingine ikikuja*. So, I think it is true that it does not impute succession. But I think in this case, it is so obvious. But it will wait for 2022 when it comes so that we can be able to see, as you have put it very clearly. It is true. We do not want to say that it does imputes succession but if in case it happens, I think he will not be breaching any law as it is said.

You have rightly directed about the flags but it is also very unfortunate. I was talking to somebody yesterday and he actually confirmed that the Governor of Murang’a is flying the flag after we have already passed a law in this House. So, we are also asking the Inspector-General (IG) and his team to take cognizance of the laws which are passed in this House and take action against the people who are flouting this because yesterday it was very sad to know that somebody is still flying the flag.

Hon. Temporary Deputy Speaker, about the penalties for state officers and the public, this is something that we really need to address. Yesterday, as we were discussing who is culpable, is it the driver or the governor? So, when you say “a person” should we quantify that to be the governor or the driver? That is because if the two of them are in

the vehicle and an offence has been committed, who do we charge? Is it the driver or the governor himself? I know for sure what hon. Kamama was telling us is true. When I was a Mayor, when I left the car, the first thing my driver used to do was to remove the flag. But when I came back, it was placed on the car. So, the flag is just a sign that the governor or the mayor was in the car. So, it is important for us to address that. Hon. Keynan should be specific. Is it the driver, governor or the security personnel who are doing that?

Hon. Temporary Deputy Speaker, lastly, I want to touch on Clause 7, which is miscellaneous as regards other persons. I am taking into consideration that we are in a public rally and somebody wakes up and calls the governor “His Excellency”. Of course, he becomes culpable. I think this is something that we really need to address. Most of those people have done that and in any meeting at the lower level, they are calling the governor “His Excellency”. So, again, if we are going to charge that person between Kshs1 million and Kshs2 million and the 12 months, I think we need to be a little bit considerate. Of course, ignorance has no defence in law but, at the same time, we need to recognize that Kenyans voted for the new Constitution. I am told that it is no longer new but, at the same time, we placed the governors in those offices. So, it is up to us to think how we should be able to deal with that. The Governors were claiming that the---

The Temporary Deputy Speaker (Hon. Kajwang’): Yes, Members. You see five minutes is a short time. So, two points should just be enough for five minutes. Okay. Member for Suna East.

(Hon. Nuh cleared his throat)

The Temporary Deputy Speaker (Hon. Kajwang’): Why should you make those sounds? Are you preparing to deliver a big debate to this?

Hon. Nuh: No, hon. Temporary Deputy Chair. You know I had the privilege of sitting next to a former Minister for Sports, Culture and Social Services and he is really agonizing how he lost that title of “Minister”. So, I was laughing next to him.

Hon. Temporary Deputy Speaker, I would like to thank hon. Keynan for bringing this Bill. This Bill is very important and it creates law and order in our country, especially on how people should relate and behave in functions. Having said that, I think it is timely because when you look at the disorderly manner in the way things are being handled in this country, it necessitates having this kind of Bill in place so that Kenyans can know how to move around.

Hon. Temporary Deputy Speaker, I am also happy that the owner of the Bill has pronounced himself here that he has taken care of the governor’s positions. I was also worried about that. Placing governors under that level looks very low to me. However, I do not see why even the title “His Excellency” needs to be misused the way it is being misused in this country.

Hon. Temporary Deputy Speaker, where we have borrowed that jurisdiction from in America, where we have a presidential system, even the President is called “The President of the Republic of America”. You never hear President Obama being called “His Excellency the President or Commander-in-Chief”. That is African mentality. Africans have a serious problem with titles. You know even in villages, somebody wants

to be called chairman, *Jakom* and what not. That is an African way of doing things. Where we borrowed this system, you will hear governors being called “governor so-and-so. You will never hear “His Excellency the Governor of Texas or His Excellency the Governor of Florida”. So, this African mentality of being obsessed with titles is very bad. It is a very bad culture. We need to disregard that and be comfortable with our names.

Hon. Temporary Deputy Speaker, I am worried about this Bill. If you use a title that you are not entitled to, you will be fined Kshs1 million or Kshs2 million. There are elders in churches who call themselves “ministers of a church”. Sam Nyamweya is a president of FKF. So, I do not know what they are going to do. I do not know whether he will continue to be called the president of the National Olympic Committee of Kenya (NOCK). So, I am seeing many people losing their titles in this country when this Bill is enacted.

I remember one time being told that a Minister for Sports and Culture in this country went to Los Angeles for a sports event and---

The Temporary Deputy Speaker (Hon. Kajwang’): I am sure you are not referring to your colleague.

Hon. Nuh: No. It was a long time ago. At that time, Otuoma was still in school. It was in the 1970s. I am told he went to Los Angeles and said in a sports event that: “I am the Minister for Sports from Kenya.” They asked him: “From which church because Ministers are from churches? We are not dealing here with church matters. This is a sports forum.”

(Laughter)

Hon. Temporary Deputy Speaker, so, we need to be serious. Let us not be obsessed with titles. Let us be comfortable with our names “Mr.” and also your profession, if you are a doctor or professor. The obsession of being called so-and-so is really very bad. It is an African situation.

The Temporary Deputy Speaker (Hon. Kajwang’): That is all right but I also hope that you are not disparaging African culture. I mean if it turns out that that is an African way of doing things, I hope you are not saying that what is African is also inimical to our systems.

Hon. Nuh: Hon. Temporary Deputy Speaker, it is African but we must discard the bad African culture. We need to remain with the good ones only.

Hon. Temporary Deputy Speaker, having said that, the other thing is about sirens. When you walk around this city or highways, you will hear noises from every corner when a cabinet secretary is passing. It sounds *chwi chwi chwi*. Then another one there *chwi chwi chwi*. You will think that people are dead in this country or there is a disaster in this country. You may think that there are hundreds of ambulances taking people to hospitals.

So, we do not need to have those kinds of sirens. You need to have one car and you will move. You will reach where you are going. Why do you despise the other Kenyans who are in the jam with you and you want to---

(Technical hitch)

Temporary Deputy Speaker (Hon. Kajwang’): I interacted with you. I could have given you.

Hon. Nuh: Now, sirens should be allowed for only the former Presidents, the former Vice-Presidents, the former Deputy Presidents and the former Prime Minister. Those should be the only ones who should be allowed to use sirens in this country. Those are very senior people in this country who are used to those kinds of lives. But those people who have just been appointed the other day, eti Minister! Atembee na mguu. Ahsante sana.

(Laughter)

The Temporary Deputy Speaker (Hon. Kajwang’): Alright, Member for Samburu West. I understand that you have a differing opinion and I want to hear the divergent view. That is because everybody has been supporting another refreshing view, which is on the other side.

Hon. Lati: Thank you hon. Temporary Deputy Speaker. You will add a minute. I respect the honorable Member but I think I am torn between supporting this Bill and opposing it because I am not sure whether it is appropriate to have this kind of Bill having a legal standing – a legal framework for this order of business. I think we are mixing things up here. If you look at all modern democracies that are there, there is a presidential succession which usually has a legal standing. There is a legal framework to provide for a presidential succession. But the order of precedence in all modern democracies is simply a ceremonial protocol. You cannot have in a legal framework with a legal standing. The reason for that is that in all those democracies, there is the core equal separation of powers using the different arms of government that is the judiciary, parliament and the executive. In cases of presidential succession, those things are provided because those are times of crisis. But in normal circumstances, when you place the Chief Justice in an order lower than Presidents or Parliament rather than the President, it takes away that core equal separation of powers. It will tell, in a way, that Parliament is below the President. So, I think there is a reason why all those democracies embraced a way of not making a legal framework for order of precedence. It is simply a ceremonial protocol so that the law does not provide. But, usually, they write in some way that the President speaks and---. But be it as it may, as we stand now, and I think I will oppose it for that reason. I do not think we need to legalize such a thing. Be it as it may, if you look at the Bill, it puts Speakers of Parliament--- You know there is a lot of borrowing though without a legal standing between presidential succession and order of protocols in those modern democracies. If you look at the US, for example, it borrows from the presidential succession, where the President comes first, the Vice-President and the third person in line. It does not talk of Parliament and there are two Houses of Parliament. It talks of the Speaker of the House which is similar to the National Assembly. The Speaker of the Senate comes fourth. If we borrow the US democracy, we must also borrow from all the other items that are in that democracy. If you look at the US order of succession and protocol, it is after the Vice President. It is John Boehner who is the Speaker who comes---

The Temporary Deputy Speaker (Hon. Kajwang’): Could it be true because the House is elected when the Senate is appointed.

Hon. Lati: No! I think the similarities between the Kenya National Assembly and the Senate are the same. The Senate in the US is representing regions and states just as the Senate in Kenya, which is supposed to represent the counties. That is why you have an equal number of senators across the US. The smallest State has a senator. The biggest State is California. The senators represent the States. All the States are equal. If you look at the establishment of the House of Representatives in the US, it was supposed to represent the people. That is why they have proportional representation. They always have fixed number of seats and they have this thing called gerrymandering. When one State’s population goes up, the number of seats moves to that place. New York at one point had the highest number of seats. But the highest number of seats is now in California because California now has a bigger population. So, the House was established to represent the people and the Senate was established to represent the regions.

The Pennsylvanian Conference was very clear on that. In fact, at the beginning, there was no Senate in the US. The Senate only came afterwards after the federalists complained of having somebody to represent their States. But, at the beginning, everybody agreed to have the House similar to the National Assembly and it represents the proportionate of the people. They represent the people. We can talk about a lot of things about the Senate and the National Assembly in Kenya. I always feel like they lose their meaning of what they are supposed to represent. They are supposed to represent the regions. As I said, be that as it may, even if we were to go this way, we must clearly state what Parliament is. If we were to borrow from the US, the National Speaker of the Parliament comes ahead of the Senator. John Boehner is ahead of Patrick Lee and there is a reason for that. If you look at the governors in all those protocols, though not legal---

The Temporary Deputy Speaker (Hon. Kajwang’): You are a dissenting voice. But can you deliver it immediately. Can I see your intervention button? Because you are a dissenting voice, I need to give you---

Hon. Lati: So, there are two things that this Bill is missing. One, is the visiting Heads of State. In the US, in that protocol, the visiting Heads of State usually come immediately after the President. If the President of Uganda were to be here, I think he comes ahead of our Deputy President next to the President. The other thing is the governors of the states where functions are taking place. That is very specific where functions are taking place. Governors usually come ahead of Members of Parliament and Senate. That is because there is a reason for that. I think we will look at amendments for that, but the whole Bill should not have a legal framework. It should be a protocol.

The Temporary Deputy Speaker (Hon. Kajwang’): Members, one of the issues you need to take from the contributions from the Member is: He has not termed it so, but I perceive it to be a constitutional issue that, whereas the Constitution assumes or proceeds from the presumption that all Arms of Government are equal, this legislation will have the effect that some arms of Government to be of a higher precedence than the rest. That is an issue you want to convince Members when you rise to respond, whether this Bill will be unconstitutional to that extent.

Hon. Kiso: On a point of order, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Kajwang’): No, that does not invite a point of order. Member for Mbooni, you have been on an intervention for a long time. What is out of order, please?

Hon. Kiso: Sorry, hon. Temporary Deputy Speaker. I think it was accidental. I wanted to contribute to this Bill.

The Temporary Deputy Speaker (Hon. Kajwang’): So, why do you not just hold your horse so that you can get your opportunity to contribute?

Hon. Kiso: With your permission because you have already given me time. Give me two minutes.

The Temporary Deputy Speaker (Hon. Kajwang’): Well, no! I recognized you because you were on intervention. But you will still get your opportunity.

Hon. Kiso: I stand guided, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Kajwang’): Member for Aldai, I understand you do not have your card. Is there a good reason why you do not have your card?

Hon. Serem: I misplaced it.

The Temporary Deputy Speaker (Hon. Kajwang’): That does not sound like a good reason! You need to find out how to replace it. Alright, you will have the Floor from the Dispatch Box. Just proceed to the Dispatch Box in a short while. Do not fiddle with those things. Just in a short while, you will have the volume. There you go!

Hon. Serem: Thank you, hon. Temporary Deputy Speaker. Let me first thank the Mover of this Motion, hon. Keynan, for this wonderful piece of legislation.

First, on the issues of titles, I will bring an amendment where we mention the former President, the former Prime Minister and the former Vice-President. It is not a crime to lose elections. To punish the former President and the former Prime Minister to come after the Member of Parliament, I think, is wrong. It should be immediately after the Deputy President. But we can have the former President and the former Prime Minister come after the Deputy President. It will bring order because people will feel so uncomfortable coming after a young man. Assume we have hon. Gatobu who is only 26 and the President coming after him. It does not augur well for this nation.

The other issue that I feel we should look into is this: It does not make any sense that whenever we have a function, the title “His Excellency” is being mentioned. We were tired of a situation where we had the title “*Mtukufu Rais*”, “*Aliyekuwa rais*” and the rest. So, if that will give us order and decorum whenever we have our functions, it would make a lot of sense. I hope all hon. Members in this House will support this Bill and bring their amendments so that all of us can appreciate this order when we are out there.

Hon. Temporary Deputy Speaker, on the issue of using the sirens all over the place, it does not make sense that someone would sleep until 9.00 a.m. and feel that he should be in the office in five or ten minutes. All Kenyans are equal and nobody should be given preference in terms of using our highways. All those Kenyans pay taxes. If you are late, stay on the line. Wait for others and wait for your time instead of jumping the queue to get to your office. It is wrong and if this Bill goes through, it will bring a lot of order.

The main thing I am concerned about--- I hope hon. Members who have been elected would use their positions for the sake of the nation, instead of glorifying titles. I would feel comfortable if anybody would call me Mr. Serem, MP for Aldai and not even having the title “honourable”. That is because I want to be a servant of my constituents and not to be glorified so that I can feel so high. So, if this Bill goes through as I believe it will go through, the issue of having a “small god” or a “mini-president” in the counties will disappear. If all of us who are moving around in our constituencies will realize that, then the problem will come to an end. There will be no “small gods” all over glorifying their names and titles instead of serving the citizens who gave them those positions.

Thank you.

The Temporary Deputy Speaker (Hon. Kajwang’): Thank you!

Hon. Limo: Hon. Temporary Deputy Speaker, I rise to say some things about this Bill. If you look at this Bill, what we need to appreciate is that we are in a young democracy. Otherwise, this Bill would not be necessary if we were in a mature democracy like hon. Lati has stated. We really do not need a law to give us order. But the reality is different because we must recognize that we are in Africa. If we do not create order, it will cause chaos. There is a precedence which has been set during some functions in this country, where around five minutes were spent trying to determine who should speak first. That is just an example. We have had difficult situations so many times and so, we must recognize that we are Africans and we are in Kenya. We are, therefore, developing our democracy slowly by slowly. In any case, we need to just put things in order and so, I support this Bill with a few amendments.

The Member of Parliament will come below the governor. I want to urge this House that, as we make laws, let us make them for the future. Even if we do not agree with the governor, we have to see the reality that the governor should--- Even when you look at the remuneration of governors, it is higher than that of Members of Parliament and that is a reality. In fact, the governor speaks for a bigger population than Members of Parliament. This is the reality. Let us agree and put the governor ahead of Members of Parliament.

Secondly, all retired people – former – should never come ahead of people who are serving in the Government. All the former servants should come below the chairpersons of commissions so that we also recognize the people who are serving. They should come ahead of those who have retired. When you retire, you do not need to be worried about who speaks first. I also want to say that we must address the issue of using the title Cabinet Secretaries. Cabinet Secretaries historically used to be elected through the general elections. Now that they are appointed, we cannot explain why they should use the name “honourable”. The Cabinet Secretaries and county executives should just go by their names, except those Cabinet Secretaries who had served in the National Assembly. As we speak now, we only have three hon. Members - hon. (Ms.) Ngilu, hon. Balala and hon. Kambi.

I want to end by saying that we should bring an amendment to this Bill to show who is entitled to use a siren. In this country, anytime you are in a queue, you hear so many noises from all over and wonder whether they are ambulances or what. Anybody will just pick a siren and put it on his or her vehicle. Therefore, I propose that we enact those rules to bring order. We do not have to care about the names that we are given. My

name is Mr. Limo and I do not care whatever other name I am called. But we just have to put those titles so that it brings order to this country. I am also worried that you find presidents everywhere. Even in the village, you will find presidents of clubs and, therefore, this Bill will bring order. I do not want to add a lot of things. Let us support this Bill and make it see the light of the day.

The Temporary Deputy Speaker (Hon. Kajwang’): Hon. Members, this Bill is interestingly very popular. Whereas it is an important piece of legislation, there are others that are ahead of us that are equally important. You know that you passed a resolution that we are capping it to one hour and, therefore, the Mover must reply at 11.52 a.m., which is just about three minutes away. I am seeing 18 requests and they are voices of the gender. Ladies are also there. There are also dissenting views. I see hon. (Ms.) Kanyua, for example, has a dissenting view and there are 18 of them. Hon. Njagagua also has a dissenting view. Is it possible that those views can be harnessed in the report that will come from the Committee and then, when it comes for Third Reading, we are able to see where to put it? I want to plead with you that even though I see the requests are many, we want to call the Mover to reply. But as you do that, hon. Keynan, hon. Members, please, applaud the presence of children from Kirege Primary School from Chuka/Igambang’ombe Constituency. They are in the Speaker’s Gallery.

(Applause)

So, following the order of the Resolution of the House, I, therefore, order that the Mover be called upon to reply.

Hon. Keynan: Hon. Temporary Deputy Speaker, before I make my closing remarks, I want to donate one minute to hon. (Ms.) Wahome.

The Temporary Deputy Speaker (Hon. Kajwang’): Unfortunately, when the House has resolved then the Standing Orders do not allow you to donate. You now do not have that chance.

Hon. Keynan: Okay. Thank you, hon. Temporary Deputy Speaker. I want to take this opportunity to thank hon. Members who have earnestly contributed to this very important Bill. I want to make it clear from the outset that what hon. Lati said - he has a lot of experience in the American case - is absolutely not true because I know he has lived in the United States of America (USA) for quite some time.

I want to say that in monarchies, it is done through constitutionally determined *modus oparendi*. That is slightly different from what is applicable actually in a presidential system like ours. There are quite a number of countries that have enacted this law and one of them is Poland.

In the United Kingdom (UK) there is a law like this, the other countries are Nigeria, Malaysia, Indonesia and others. Quite a number of countries have this law. The effect of this law is that we are under a new constitutional dispensation and this has brought about a lot of confusion. Therefore, the essence of this law is to bring about order and institutional respect in the way we manage public activities.

Therefore, I know that this Bill was published before the House passed the Bill on the National Flag, Emblems and Names (Amendment) Bill, 2013. The section that refers to the flag, which has been discussed by the Committee on Administration and National

Security will be deleted because this is already a substantive law that His Excellency the President assented to. That has already been addressed and therefore; it will not be an issue under this order.

Secondly, in terms of the Order of Precedence, there will be some changes. One, you will realize that the issue of ambassadors and high commissioners was placed in a wrong place and that has already been taken care of. There was an issue where the High Court judges will be placed and that has already been addressed.

There was the issue of the governors and hon. Members which has already been addressed. It is one of the issues that somebody has raised. I am sure once hon. Members get an opportunity to go through the amendments; there are rafts of amendments proposed by the relevant Committee. I am sure hon. Wahome is a Member of that Committee. Some of the issues which hon. Members have raised had already been taken care of, including the title. Therefore, the Bill will be called "The Order of Precedence and Titles Bill" which will address both issues. I am glad that, as a lawyer, you have already alluded to this point.

The only thing that I was saying is that, at times, for those of us who have been here for quite some time, when you have a chair who understands the subject; it becomes so tempting for the chair to actually participate in the debate. That was the bit I was stopping you from addressing. But what you have raised makes a lot of sense and I am sure that will be taken care of.

The other bit is the issue of where the Members of County Assemblies (MCAs) are. I want to say that the issue of MCAs has already been addressed here. We have two Houses and this is not a Bill that concerns the counties. That issue has already been addressed. If you look at Section 6(2), it says that anybody outside who has been listed and who uses the titles prescribed under this Act--- The MCAs will not be part of the individuals mentioned under this Act, after the passage of this Bill. It will be illegal for an MCA to call himself or herself an hon. Member or any other entity. Therefore, that has already been taken care of because I saw hon. Members wanted to know where that applies. Therefore, that has been taken care of and we do not need to bring an amendment to the Bill.

Hon. Temporary Deputy Speaker, generally, in any civilized democracy there are a number of sources of law. The first source of law is the Constitution. Anything that is not clear in the Constitution should be clear in the statutes. If something is not clearly spelt out in the statutes, you go to the subsidiary laws; and if something is not clear in the subsidiary laws, you go to traditions and customs. If it is not captured by customs and traditions, then you look at the precedent. If something is not clear, again you look at the Presidential Orders. Therefore, if this legislation is enacted, I can assure hon. Members--- Right now we have serious challenges.

The Temporary Deputy Speaker (Hon. Kajwang'): They are great people of Ruaraka!

Hon. Keynan: Okay, the great people of Ruaraka. If there was a national function in Nairobi; I am sure you will know the challenges you are likely to face. Where there is the President, the governor and all other elected leaders, I am sure you might not even fit as an elected representative of the people of Ruaraka. What this Bill intends to do is to cure that so that it is clear where everyone is supposed to be placed in any national

function. Therefore, let us not accept that. We are legislating for posterity, orderliness, the rule of law and we are legislating for the people of the Republic of Kenya.

Hon. Temporary Deputy Speaker, to be elected is the most difficult job one can ever seek. Therefore, we need to look at politics from both sides; the pleasures and the pressures. Sometimes the pressures are more, so do not shy or do not be cowed----

The Temporary Deputy Speaker (Hon. Kajwang’): Your time is coming down.

Hon. Keynan: I have two more minutes, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Kajwang’): Maybe, one minute.

Hon. Keynan: Therefore, what I want to say is that you will see eventually that this Bill is going to contribute to the adherence of the rule of law and the proper democratic governance of the Republic of Kenya. This is especially the case when each State officer or public officer will be placed somewhere that is consistent with his or her role.

Therefore, I want to appeal to you that this is consistent. We have subjected it to all constitutional mechanisms; the Law Reform Commission, the Law Society of Kenya and our own legal team. All those bodies have looked at it and in every aspect, it is constitutional. Of course, I accept and I want to say as my final remarks that there are many opinions as there are lawyers. I am sure as seasoned lawyer, you might not agree with hon. Kaluma, or equally you might have different interpretation. That notwithstanding, it meets every aspect of our Constitution.

Therefore, I want to thank you. We will bring amendments. The relevant Committee has looked at all those amendments, taking into account all the issues that you have raised. I am sure that when those amendments are brought by hon. Abongotum’s-led Committee, every hon. Member will appreciate every aspect of this Bill.

I want to say thank you for your great contributions. I am sure that will inform and clearly enrich eventually what we are likely to adopt.

The Temporary Deputy Speaker (Hon. Kajwang’): You know that this Chair has no view about the matter. You are the debaters. But for the record, which Departmental Committee is harnessing all these amendments?

Hon. Keynan: The Departmental Committee on Administration and National Security that is led by hon. Abongotum.

The Temporary Deputy Speaker (Hon. Kajwang’): Alright, because you are the sponsor of the Bill, and because this is a Private Members’ Bill, try to see if you can give leadership, in consultation with the Chair. This will make sure that as many hon. Members as possible who have whatever amendments they want to make or whatever information they want to give you, have an opportunity. They will also know how to give that information before we come to the Third Reading or the Committee stage.

Hon. Keynan: Thank you, hon. Temporary Deputy Speaker. I will do that.

The Temporary Deputy Speaker (Hon. Kajwang’): I order, therefore, that the Order of Precedence Bill, 2014, appears in the subsequent Order Paper, for the purpose of voting. I suppose that at 2.30 p.m. or such other time that will be convenient, so that we can take a vote on it.

Next Order.

Second Reading

THE CHILDREN (AMENDMENT) BILL

Hon. Kaluma: Thank you, hon. Temporary Deputy Speaker. I beg to move that the Children (Amendment) Bill, National Assembly No.18, of 2014 be read a Second Time.

This is a great day for me as a person with a background on human rights law; possibly it is the greatest day. I say so because I am standing on the Floor of this august Assembly of the nation to speak for those Kenyans who have rights in our Bill of Rights, but because of age they cannot speak to assert those rights.

On 27th August, 2010, the people of this country gave themselves a great Constitution. Hon. Members will remember that the Constitution has been blessed nearly by everybody in the world. It is not just because of the entire document. Perhaps, when you look at the Constitution, the part of our Constitution that everybody has celebrated is the part dealing with the Bill of rights. It is very detailed and treats all sections of our society.

If you look at Chapter Four of the Constitution which deals with the Bill of Rights, the entire Article 53 of the Constitution is dedicated to the rights of the child. This is important for hon. Members, the entire Article 53, once in the history of this country is being dedicated only to this section of our society called the child. In that Article 53 there are two salient and important issues. One of them is that the best interest of the child shall be of paramount importance. That is the greatest ideal borrowed from international conventions and all laws and traditions across the world. The best interest of the child in all matters concerning a child will be one issue of paramount consideration.

The next ideal that is salient when you look at Article 53 of the Constitution deals with the manner in which a child should be taken care of and protected, of course, having taken the idea that the best interest of the child is of paramount importance. Permit me to refer to Article 53(1)(e). What the people of Kenya said concerning their children is as follows: That every child has the right to parental care and protection which includes equal responsibility---

The Temporary Deputy Speaker (Hon. Kajwang’): Just a minute. There is a caucus behind you. Could you, please, just between your colleagues because we do not like images going out there with Members looking at some side of the Chamber.

Hon. Kaluma: Hon. Temporary Deputy Speaker, if you look at Article 53(1)(e), the people of Kenya said this of their children: That every child has a right to parental care and protection which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not. In some traditions and cultures of our country you have heard some people say, “*Kitendo chaweza kuwa haramu lakini hakuna mwanaharamu*”. By dint of this provision we are putting all children at par. We are saying that these rights embodied in the Bill of Rights in Article 53 will vest in all children, whether their parents were in marriage when the child was born or whether they are not. We are bringing that parity. This brings me to my concern and, therefore, the Bill.

I needed to indicate to the House that when this Bill was published a lot of media reports not so well informed came about that there could be self interest and this and that. May I clarify that this is possibly one of the first Private Members' Bill to be put through the system of Parliament for publication. I gave this Bill to Parliament as early as May, 2013. Of course, our systems go through pre-publication and other processes and that is why it was delayed.

Looking at the beautiful provisions in our Constitution against the Children Act, I personally, sued in my own name in 2010 and those who care to do research will tell you that in 2010 there is Case No.224, George Peter Kaluma vs. the Attorney-General. I looked at the beautiful Constitution and the Children Act as it was and I went to court to say that time had come to ensure that the inconsistencies that we have in the Children Act against our Constitution needed to be addressed. Luckily, I would be elected to this great House by the great people of Homa Bay Town Constituency before the matter was concluded in the constitutional court of Kenya sitting at Milimani. So, we took the opportunity to deal with them. What are we dealing with?

Hon. Temporary Deputy Speaker, I will now take the House to the specific amendments that I am seeking to bring to the Bill. I am only bringing the constitutional stipulations which are prescribed in Article 53 to the Children Act. What that act does, look at Section 24(1) and (2) of the Act. Those provisions assert the same constitutional provisions for children born of married parentage. For such children, they have a right to care and protection from their parents. When you go to Sub-section (3) and other provisions that we seek to delete, they seek to deal with children whose parents are not married. It says thus: "For children born of unmarried parents, the responsibility shall vest in the mother". The father only attains responsibility if the father goes to court and gets an order granting the father parental responsibility to provide, care and protect the child. That is discrimination because we have one law, our Constitution saying that all children are equal whether or not their parents are the same. We now have an Act of Parliament saying that the children of a married parentage will be treated in the manner that the Constitution prescribes and the children whose parents are not married – remember the issue of marriage is not the issue for a child – the father will not be responsible for care and protection and will not hold parental responsibility unless that father goes to the Children's Court and gets a court order directing that he be responsible for those particular issues relating to the child.

The other thing that you will see as an option being prescribed in this provision is that as against going to court, a biological father of a child whose mother that father is not married to will only have responsibility to provide for that child. This is discrimination against the child. If that biological father enters into what the Act calls, "parental responsibility agreement with the mother"--- You go to the mother and you agree on how to take care of your child even if you are willing; and it has to be in writing.

Sections 26 and 27 of the Act that I am seeking to repeal talk about the form and manner in which that parental responsibility agreement is enforced. What am I saying? The rights that we have in the Constitution vest in all children. When you say that a biological father, even if willing must do a parental responsibility agreement or must get a court order to provide for the child, really, you are limiting the enjoyment of the rights of a child to care and protection from both biological parents as already prescribed in the

Constitution at Article 53(1)(e). I urge my honourable colleagues to look at those provisions and find that, that is not constitutional and it is inconsistent with the aspirations of the people of Kenya in the Constitution. That violates the rights of the child.

When this Bill was published so many people came saying that biological fathers are now going to take custody of the children. That is not the intention of this Bill and it cannot be the intention of this Bill. The issue of custody of the child or rather matters concerning the interest of the child are matters left to the court to determine on the constitutional ideal which is already set and which I have already spoken to taking into account the circumstances of the matter and of course the best interest of the child as the paramount consideration.

It is not the interest of the father nor is it the interest of the mother. I dare say that we have very many children. In fact, previously our law was calling such children illegitimate children. We had legitimate and illegitimate children. The usage of those bad terms has been stopped in law and practice. We are civilized people. We are saying that a child does not apply to be born but a child finds himself there. Therefore, a child should be protected.

Hon. Temporary Deputy Speaker, I seek the support of the Members and urge that we look at this matter very objectively. If hon. Members look at the proposed new Section 24(3), they will find that I am taking the language of the Constitution word for word and putting it there so that nobody says that now there is equal responsibility. In any event, we are giving the children the leeway, and provided they remain your biological parents---

The Temporary Deputy Speaker (Hon. Kajwang’): The Member for Homa Bay, you are doing very well. You have done a lot of good. Your time is ending. Just wind up.

Hon. Kaluma: Hon. Temporary Deputy Speaker, in fact, I am just winding up. So, I request all Members of the House to look at this Bill very objectively; we anchor the rights of the child. We should avail these rights to all children as required by the Constitution and we cease the provisions of the Children Act which limit the enjoyment of these fundamental rights and freedoms embodied in our Constitution.

Hon. Temporary Deputy Speaker, with those many remarks, I beg to move and request the indomitable hon. Member for the great Kiharu Constituency to second.

The Temporary Deputy Speaker (Hon. Kajwang’): Thank you for your clarity and dexterity. I think you have done well to the Bill.

Hon. Kang’ata: Thank you, hon. Temporary Deputy Speaker. You cannot affirm the antecedent and then you deny the consequent. That adage simply means that you cannot jump on the fire but when you start burning you start complaining.

I say that in respect to the way I see our children being treated in this country. We have a society where we tend to neglect our children. When those children grow up in dysfunctional families we start complaining that we have rampant crime or our children are taking drugs. It has everything to do with how we treat our children. I feel very disheartened when we have a situation where you have to go to a court of law to start compelling a man or a woman to take care of a child; which child was brought in this world not through an application. That child was not involved when those two people were meeting in a romance. But that child is now in this world and a mother or a father

has to go to court to seek an order for maintenance. It is the greatest inhumanity, in my own opinion that we visit against other humans. This is particularly taking into account how children are very tender and innocent.

I have looked at the proposed amendments and they are very important. First, they want to align the Children Act with the Constitution. Why and how? If you look at Article 27 of the Constitution relating to the issue of discrimination and the Article which deals with the rights of the child, you will find that they give all children equal rights, whether the parents were married or not. However, this Act has a problem because it tends to create two sets of rights. These are rights which accrue to a child who has been born out marriage and a child who has been born out of wedlock. So, one of the objectives of this Bill is to do away with that discrimination.

Hon. Temporary Deputy Speaker, we all know that the Children Act is restricted to the issue of children. The issue of marriage should never at any moment arise when it comes to children. In any event, a child is not involved when it comes to the issue of marriage. A child is a child notwithstanding whether the parents were married or not. So, the question to hon. Members is this: What are the practical implications of the proposed amendments once enacted?

On the part of the child, he or she will benefit this way. The child will get custody or any rights accruing out of being born, notwithstanding whether that child was born out of marriage or extra-marital sex or something like that. Presently and according to this law, preference tends to be given to children who have been born in a marriage set up. Therefore, the interest of the children will be enhanced because they will get equal benefit. That is number one.

On the part of men, what is the practical benefit? We have seen situations where women have taken advantage of the fact that this Act gives them the first responsibility. They have, therefore, resorted to blackmailing men. When you get a child, you go to court where you get an order for maintenance of that child. Because you have the automatic right of being the first parent of both, you are now the one receiving cash. When the father, for instance, makes an application to have the child transferred to him, he will be told by the court "No". This is because the first parental responsibility is bestowed upon the mother. So, we have situations where men have been exploited. Therefore, this one will bring equality.

On the other hand on the part of women, this is now the best situation---

The Temporary Deputy Speaker (Hon. Kajwang'): Given the spirit and valour, you will have some more for the debate. What did I hear you to be saying?

Hon. Kang'ata: Give me a few minutes.

The Temporary Deputy Speaker (Hon. Kajwang'): Well, I will give you only one minute and not few minutes. The reason is that you have resolved as a House to reduce your contribution time.

Hon. Kang'ata: Hon. Temporary Deputy Speaker, the point on the part of women is that they will not put a lot of effort to compel men to support them. Strictly speaking, if you have a child with unmarried man and you have not been staying with that man for more than 12 months, that man may as well refuse responsibility and you may not have leeway to force him to support that child. This Bill will make it

compulsory. That is whether you are married or not notwithstanding any other factor, everyone has an equal responsibility to that child.

Hon. Temporary Deputy Speaker, I beg to support the Bill.

The Temporary Deputy Speaker (Hon. Kajwang’): I gave you that minute because I have never seen you as spirited as you are today. You have done very well to second the Bill.

(Applause)

(Question proposed)

Hon. Wetangula: Thank you, hon. Temporary Deputy Speaker. From the outset, I would like to register my support for this Bill because many a times we have had parents who sire children but do not take responsibility. By bringing this amendment, it is going to give a child equal right of access to both parents and both parents taking equal responsibility for the child.

Hon. Temporary Deputy Speaker, it takes two to tango. So, if a child is born in this world it means there were two people responsible for that child. So, when one parent runs away and leaves the responsibility of bringing up that child to the other one it makes nonsense of the parental care. This is what we are emphasising as a society that family values must be paramount. The child’s rights are paramount as the Mover of this Bill had said earlier on.

Hon. Temporary Deputy Speaker, I support this because I know very well that many times we find single mothers. I represent an urban constituency and in this constituency I meet so many mothers – the so-called single mothers. When you talk about the whereabouts of the father, the father only comes in to benefit from his other responsibility but he does not take responsibility to bring up that child. The child’s responsibility is solely left to the mother. So, you find most of these mothers are so disadvantaged and most of them are just house wives or they do not have any stable income.

Hon. Temporary Deputy Speaker, when we amend this Act we are going to make sure that equal responsibility and access is for both parents. Sometimes we also blame mothers because at times they become very harsh and refuse to give the fathers the rights to access the child maybe because something went wrong along the way. However, here we are saying the child’s right is paramount. We are not going to deny the child responsibility or access to both parents because the parents differed.

Hon. Temporary Deputy Speaker, I know very well that while we are amending this Act we must also look at the other side because many times we have seen men become victims of being harassed by mothers who claim that they sired children with them and ran away. However, sometimes it might not be the right thing but what we are saying is that once this has been identified then both parents must take responsibility. I support this because I am the champion of the rights of a child. A child must be given both parental care and must always know both parents from infancy onwards.

Hon. Temporary Deputy Speaker, I beg to support this Bill and thank you.

The Temporary Deputy Speaker (Hon. Kajwang’): The hon. Member for Nyeri.

Hon. (Ms.) Kanyua: Thank you, hon. Temporary Deputy Speaker. Let me start by saying that I want to give qualified support to this Bill. I want to qualify my support because I have listened to the Mover and read Article 53 on the rights of the child. So, I am aware of the best interest of the child and also about the letter and spirit of the law.

The letter and spirit of the Constitution is to protect all our children. I offer qualified support because of the question of equal responsibility on the part of mothers and fathers in our country. As we speak right now, and noting that we are in a patriarchal society, in our country and in most of our cultures children belong to the father. The surname that we take is our fathers’ and the reason we do that is because of the economies of our country.

Hon. Temporary Deputy Speaker, as we speak right now, men and women in our country do not have the same earning capacity. We, as women representatives, are very worried about the implications of this law when it talks about equal protection. I am hoping that the Member for Homa Bay is not saying that when a Member of Parliament gets a child with a woman of low means such as a housewife, hawker or business lady they will each be expected to put on the table Kshs.70,000, because that is indeed what “equal” means. We are hoping that the judges who will interpret this law will do justice. We want all children, whether born in or out of wedlock to be treated equally by the law. If that is what we mean, then it is fine. If “equal” means that the mother and father protect children equally, then that argument is going to be wrong. So, as Caucus 47 and Kenya Women Parliamentary Association (KEWOPA) we are going to look at this Bill with experts. We are going to look at it carefully because if it is going to require women of our country; poor women to be subjected to equal responsibility, then it is not going to pass the test of law. However, if it means equal in terms of children born in or out of wedlock, it is fine.

Hon. Temporary Deputy Speaker, as far as it stands right now, we have the seven-year rule; that children below the age of seven years are best left with the mothers. All children below the age of seven years, in our law, for purposes of breastfeeding and early child development are left with their mothers. We hope that, that law will not be interfered with and only in very extreme circumstances can the father be allowed to live with the children.

Hon. Temporary Deputy Speaker, as I wind up my contribution on this, I also hope that the House will take time to look at other child protection measures. Indeed, as a country we need to look at how we are taking care of our children. If there is a class of citizens we have not paid much attention to, it is actually the children. So, the hon. Member for Homa Bay, hon. Kaluma, while we applaud this initiative in terms of protecting children, we also hope that other measures of protecting children will be brought to the House.

We have increasingly witnessed cases of child sexual abuse. We still need laws that protect children against that and this equal protection of children should increasingly make sure that our children grow up in safe homes and grow up well.

So, with the qualified support, I beg to support the Bill and pray that the amendments do not cause upheaval in our society. The KEWOPA members will look at

the amendments carefully to ensure that children are well taken care of. We do not want to risk the lives of children. Thank you, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Kajwang’): Member for Suba.

Hon. Ng’ongo: Thank you, hon. Temporary Deputy Speaker. I am looking at this proposed amendment. Even though the intention is good and it is in line with the provisions and requirements of Article 53 of the Constitution--- The Mover or promoter of the Bill is very right in citing Article 53(1)(e) that states:

“Every child has the right to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not.”

For us to do justice to children of this country and for their welfare, I thought the Mover would have thought of a more comprehensive look at this particular Act to capture all aspects and facets of child protection. This is because even when you talk of equal responsibility, what do you really mean in terms of protection? This is because there are some responsibilities that the mother gives to the child which cannot be quantified in monetary terms.

So, when you talk of “equal responsibility” it should not just be about money. We should look at the child being breastfed by the mother. He is taken care of. In fact, the person who dresses the child is the mother. Now, when you talk of “equal responsibility” and without defining it, then I find it very difficult because it is going to be a problem interpreting this responsibility.

I would urge that the committee that is going to look at this Bill goes a step further and even defines “responsibility” and includes some of the functions that mothers offer to children which fathers do not.

Hon. Temporary Deputy Speaker, you know when it comes to issues of marriage and child rights it also goes a long way to include even the culture. If you go to my community and tell them that because we have a shared responsibility my child will grow with the mother, it is going to cause a problem. We are not just legislating for elites; we are also legislating for those people in the villages who are still held by their cultures, which some people may call retrogressive.

Like hon. Nyokabi said, I am called John Mbadi Ng’ongo. My mother is not Ng’ongo but my father is and my father’s name forms part of my name automatically, out of culture and belief.

So, if now we are going to share responsibility, does it mean that my name is going to be John Mbandi Yambo Ng’ongo? We need to define and understand really what we are trying to do, so that we do not just legislate pay slip. My view as I wind up because time is not on our side is that, I would urge that as we look into this Bill we really need to look at it from the perspective of what it is that we are calling responsibility. What is it that mothers and fathers contribute? What would we be required to contribute in terms of equality? Does it mean that now if it is equal, I also need to look for breast milk to feed my born child or am I going to also look for pampers? One night my wife will ensure that the child is warm and dressed well and then the following night it is supposed to be me. We need to be very clear what this equality is all about. I am sure as a matter of fact, truth be told, there is no way we would provide equally to children. We can never. In fact, the attachment of the child to the

mother is such that it can never be equaled by any one. The child, for nine months, fed through the mother's blood. That is something you cannot take away even though later on, because of our culture we end up taking fathers' names.

With those many remarks, I do not know whether I am also offering qualified support to the Bill. I expect the Committee to bring clear definitions and amendments that will be in line with the responsibilities that we are talking about.

The Temporary Deputy Speaker (Hon. Kajwang'): That was very graphic. That was extremely graphic. Member for Kibwezi, what is out of order?

Hon. (Ms.) Mbalu: As I support the Bill, I would like to seek your indulgence on the intention of the Mover, hon. Kaluma, pursuant to Standing Order No.90. He has not declared his interest. Does he have interest in all the children? He should declare interest.

(Laughter)

The Temporary Deputy Speaker (Hon. Kajwang'): Members, do not get unduly excited. Well, the Member rising to ask whether the Member is in order not to declare his interest, Standing Order No.90 reads as follows:-

"A Member who wishes to speak on any matter in which the Member has a personal interest shall first declare that interest. Personal interests will include pecuniary interest, proprietary interest, personal relationships and business relationships."

Before I am able to make a ruling on this, looking at sub-section (1), the Member rising on the point of order must give some iota of evidence that the Member who wishes to speak on that matter has a personal interest. Then if by way of evidence or otherwise, the House is seized with the information that the Member should have declared his Personal interest, then the Speaker will enforce that Standing Order and make that Member declare his personal interest. I rule, therefore, that the Member asking that Member to declare interest must first of all give some amount of evidence that the Member has a personal interest by which therefore the House can enforce it.

Hon. (Ms.) Mbalu: There was media publication and I am sitting next to the Member for Homa Bay who claims to be very handsome.

The Temporary Deputy Speaker (Hon. Kajwang'): Order! Order! I will respect and protect all Members. It will be very difficult for you to go on the line of publication outside there, unless you are able to table them and we can see their veracity. I need to protect Members from publication out there that may be true or not. I order, therefore, that the Member, when you will have got that evidence, please, bring it and we will order that Member to declare his interest.

Let us proceed. Hon. Mbadi that is not an issue to take too far. I have made a ruling by the way. So, unless you want to disturb the Speaker's ruling, that becomes the ruling for now.

Hon. Ng'ongo: Hon. Temporary Deputy Speaker, I am not really challenging the Speaker's ruling, but there is a distinction between mere media reports and facts that are there in public covered by the media.

The Temporary Deputy Speaker (Hon. Kajwang'): I will cut you short because you want to have more time. There are facts which are out there in the public domain.

They must be published facts, they could be in libraries or in edited or printed books, but you cannot come with a sensational report from out there and expect that we will take it as an official report on a fact.

Hon. Ng'ongo: Hon. Temporary Deputy Speaker, the person rising under Standing Order No.90 is not in my view, required to provide any evidence. It is

--

The Temporary Deputy Speaker (Hon. Kajwang'): That bit involves disturbing the Speaker's ruling. You may not like the ruling, but that ruling is in force. Member for Mbeere North, you are on a point of order?

Hon. Njagagua: Hon. Temporary Deputy Speaker, I am on two issues. One is a point of order and the other is---

The Temporary Deputy Speaker (Hon. Kajwang'): Can we listen to the point of order because that is why we have recognised you?

Hon. Njagagua: Hon. Temporary Deputy Speaker, you have properly put it that we cannot go by one---

(Loud consultations)

The Temporary Deputy Speaker (Hon. Kajwang'): Order! We are getting a lot of communication from this side. Can you just bring down your voices?

Hon. Njagagua: Thank you, hon. Temporary Deputy Speaker for protecting me. You have stated very clearly that this Parliament should not go by newspaper cuttings or some matter raised in a sensational newspaper. I do not believe that this qualifies for House proceedings, but that ruling or any court proceedings have not been brought before you. So, hon. Kaluma is not barred by the issue of personal interest. In any event, and with a lot of respect to all the Members of Parliament, other than a few of them who are not married, all of us have interest because we have children.

The Temporary Deputy Speaker (Hon. Kajwang'): I suppose so. Let us not magnify this beyond what it was meant for. Member for Shinyalu, you have the opportunity.

Hon. Anami: Thank you, hon. Temporary Deputy Speaker. I would like to support this amendment Bill.

Hon. Kaluma: Hon. Temporary Deputy Speaker---

The Temporary Deputy Speaker (Hon. Kajwang'): Member for Homa Bay Town, you may make the issue worse than it is. So, just keep your calm. Member for Shinyalu, proceed.

Hon. Anami: This Bill is very important for us as Kenyans. Indeed, our Constitution reserved the entire Article 53 to the rights of children. It also alludes to parentage. Children are the best gift that nature gives to humanity and the society as a whole. We should not take matters of children so casually. There is no society that does not have a systematic and sustainable framework of taking care of their children, whether it is an animal society or a human society. It is only fair therefore, for the Kenyan society to embrace Article 53 of the Constitution and not only leave the responsibility of parentage to mothers and fathers, but extend it to the larger society.

It is only fair, therefore, as a Kenyan society to embrace Article 53 of the Constitution. We should not only leave the responsibility of parentage to mother and father, but extend it to the larger society. Indeed, our cultures have taken care of that. Our cultures know what the father and mother should do and we have lived to that. But because of the changing socio-economic dynamics, we find ourselves on the wrong side of the systems.

Hon. Temporary Deputy Speaker, we have orphaned children and we have to attend to these children because they have no mother or father. Some of them get orphaned from the time they are born. We have to embrace cultural norms and practices that take care of such children. We should do that by incorporating the same in our legislation.

We have specialized children who are born out of crime; others are born out of incest or rape. These children have to be taken care of and we have to embrace these systems in the legislative process so that we cater for everybody. For instance, the issue of street children is alarming and therefore, we cannot take this matter lightly and even reduce them to personal concerns. In this respect, I would like to support this Bill and invite hon. Members to take these amendments seriously, especially this time when we are applying Agenda Four of the National Dialogue.

We have the issue of poverty in this country. Poverty is the greatest enemy of parentage. In Shinyalu Constituency - you may have heard this issue in the media today - a mother of five children offered to sell two of them; and this happened only yesterday but one. We might take this matter lightly, but she has five children and she cannot take care of them. That is why she took the two children to the market. We cannot take this matter lightly; we need a serious intervention through implementation of the Children Act and through effective implementation of our Constitution, especially Article 53.

Hon. Temporary Deputy Speaker, the cost of education is alarming and we have a lot of school dropouts. This will worsen the situation of employment and self-sustainability. We need to take this amendment seriously so that children are taken care of from birth through their childhood. We need to address the issue of children's rights seriously and at all levels.

The Temporary Deputy Speaker (Hon. Kajwang'): Thank you. Let us hear from the hon. Member for Kajiado East.

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

The Temporary Deputy Speaker (Hon. Kajwang'): I note presently that now you are hon. Member for Kajiado East. I think the people of Kajiado East will be happy that now you are representing them properly.

Thank you. Proceed.

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

The Temporary Deputy Speaker (Hon. Kajwang'): Just a minute. Would you just pardon me? We have a lot of children who are visiting us today. I think this is the day that they should have all come. This is the day that we are discussing issues concerning them.

In the Speaker's Gallery, there are children from Our Lady of Mercy, Ibara Girls Boarding School. I suppose they are in the Gallery. There are also children from

Chepseon Complex Primary School in Kipkelion East Constituency. I am informed by the hon. Member from Kipkelion that this school was the best in Kenya Certificate of Primary Education (KCPE) in Kericho County. I have no confirmation about it, but I am told that that is the situation.

Hon. Members, just give them applause so that they feel welcome.

(Applause)

Alright proceed, hon. Member for Kajiado East. I am sorry, I took a little of your time.

Hon. (Ms.) Tobiko: Okay. Thank you, hon. Temporary Deputy Speaker. I thank you for this opportunity because this is a Bill that is of interest to all of us, being parents and being really guardians of many children, even those in our constituencies. We would wish to see the best interest of the child taken care of even through legislative measures.

Whereas I have no problem with Article 53 of the Constitution being lifted and harmonized with the Children Act, and hoping that the intention of the Mover is good and in the best interest of the child, the proposed amendments by hon. Kaluma have come before the Departmental Committee on Labour and Social Welfare.

The Temporary Deputy Speaker (Hon. Kajwang’): Are you the Chairperson of that Committee?

Hon. (Ms.) Tobiko: No, I am not, but I am a member. It is still being discussed by the Committee and we have engaged hon. Kaluma. The various views that have come up and concerns, it is good that we express them on the Floor.

It is good that this House will always do laws for posterity. It is even better when you do a law that is not necessarily targeted at your own interests. It should be a law that can even be applied on the other side; not necessarily on you, but on all others and that it should not be harmful to anybody.

When hon. Kaluma says that this is not an issue about custody and he is also talking about equal responsibility of the parents, he seems to be running away from the financial support to the children. I wonder what he is talking about. At infancy and when the child is of minority age, it is the responsibility of the mother to take care of that child. It is the responsibility of the mother to breastfeed and take care of the pregnancy and bring it to term. It is her responsibility to spend sleepless time checking the child’s temperature and so on. All this time the father is not there; I am talking of a situation where it is not a marriage set up and it is the mother who is with this child. Quantifying equal responsibility will mean that our courts will have to do a lot to quantify that and do justice to the mother who is taking care of the child. The only way for the father to come in and take care of the child is, of course, by providing. I am talking about financial support, education--- I know emotional support can also be provided for, but hon. Kaluma needs to come out well to say what he exactly means by “equal responsibility”. This is because already, seemingly, the mother has the lion’s share of taking care of the child right from infancy until maybe an age that the law may need to define properly when the child can make their own choice of where they want to be and which parent they want to stay with.

As it is now, it is good that this House protects the child and also the women of this country because they are carrying the lion's share of the burden by taking care of the children from infancy to the majority age. As one hon. Member mentioned, we also want to take care of all other children even those who are in the streets, those who are from not very able families and many others.

The Temporary Deputy Speaker (Hon. Kajwang'): Thank you.

Hon. Momanyi: On a point of order, hon. Temporary Deputy Speaker. I also rise to support---

The Temporary Deputy Speaker (Hon. Kajwang'): No, I have recognized you because I saw you were on intervention.

Hon. Momanyi: Yes, because I somehow support hon. Kaluma's Bill. The most important thing is that I wanted to recognize the pupils from Lady of Mercy Ibara Boarding School which comes from my constituency. It is among the best boarding schools.

Hon. S.S. Ahmed: That is out of order!

Hon. Momanyi: Hon. Temporary Deputy Speaker, save me from hon. Shakeel.

Hon. Temporary Deputy Speaker, I take this opportunity to recognize and appreciate the presence of the pupils from my constituency. I have said that it is one of the best boarding schools that I have in the constituency. I thank you for the indulgence so that I can recognize and appreciate the presence of the pupils from my constituency.

Thank you, hon. Temporary Deputy Speaker.

Hon. S.S. Ahmed: On a point of order, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Kajwang'): The Member for Kisumu East, you do not have to rise. I suppose I understand where you are coming from. The Speaker's Office is developing a communication on how uniformly it will be to recognize those who are visiting us in the Gallery. We follow the Commonwealth practice which is a salutation from the Speaker's Chair and not necessarily from the Members. This will also ensure that Members do not use that opportunity to market their visitors because that may not be fair or be a question of fact. However, I want to recognize the Member for Borabu and the visiting guests for honouring us by coming to visit us. I think let us leave it at that.

Hon. Angatia: Thank you, hon. Temporary Deputy Speaker. I would like to support the amendment Bill which has been brought to the House but with the following conditions. First, we are aligning this Act to Article 53 of the current Constitution.

At the Committee stage, they should quantify what this responsibility is. In this world, men are believed to be economically more stable than women. They say that women are housewives and they sit in the house. When you talk about responsibility, how do you want to share the buying of food, the provision of shelter and the provision of education when the man is advantaged and the lady is less advantaged?

Secondly, men have to take responsibility for their deeds.

(Applause)

Many street children are not enjoying the Bill of Rights as provided for under Article 53 of the current Constitution. If you know that you are a man and you have sired a street

child and you are disobeying this Constitution, you have to face the law. We should carry out DNA tests on all these street children so that we can know their parents; we arrest them and arraign them in courts because they are abdicating their responsibility.

(Applause)

When a man is proposing to marry, he promises a lady that he will take care of her and will do this and that for her. But once she is in the house and she is pregnant, he starts ignoring her. He only takes her for Lamaze classes when she conceives the first and last born children and ignores the middle kids.

I would like, when this Bill goes to the Committee stage, we identify those issues and quantify them. We should say that the mother has carried the child for nine months; can you take this one as a shared responsibility? As a man, you should provide a house.

Secondly, we have been talking about registration of births and deaths. The Attorney-General's Office has changed the law these days. I do not know whether that law passed in this House or not. If you go and register to get a birth certificate today, you are not allowed to include your surname. Like my daughter was not registered as "Zola Pendo Savula". They just wrote "Zola Pendo" because her dad exists. This will create confusion.

At the Registrar of Births, they should include the surname of the father so that the father can be known and can take responsibility. If you just say you register the two names and you do not include the father's name you are giving a leeway to that parent to ignore his responsibility under Article 53. I want the Attorney-General today or the Director of Public Prosecution (DPP), once we pass this law, to ensure that DNA tests are carried out on street children and we arrest their parents immediately because of not taking responsibility.

Thank you, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Kajwang'): Member for Mbeere North, you are next on line but you only have four minutes. Use them wisely?

Hon. Njagagua: Thank you, hon. Temporary Deputy Speaker for giving me this chance.

I will speak from the point of a practising legal practitioner. I have seen occasions where the law is very clear that the interest in this matter is that of the child. That is the paramount interest in all these pieces of legislation. While at it we must also again appreciate that at times we have seen some parents rush to these courts. Basically, one could be on a fishing expedition and two, and with a lot of respect to some of them, on a gold fishing expedition, like gold diggers. You will find a situation where even a well off spouse goes to court for maintenance of that child. You will find a lady asking for maintenance sum of Kshs90,000 per month and then you wonder what you are supposed to do as a man. Is this money going to be given to the child or who is it going to be given to?

Hon. Temporary Deputy Speaker, you find that more often than not some ladies use children as bait to get upkeep from men. I support this piece of legislation because it is going to provide for equal responsibility from both parents. You remember when we used to practice, you would find grown up men crying at the children's court because

they are hit with huge electricity bills and other requirements. You wonder whether a child of six years would require to be maintained with a sum of Kshs90,000 or Kshs100,000.

So, hon. Temporary Deputy Speaker, I support this legislation by Kaluma, but at the end of the day we must appreciate that this legislation is in the best interest of the child. We must again not allow people to misuse their parental responsibility. They must not gain from the fact that they are parents. It is in the interest of this child that we must protect his or her rights. That is covered under Article 53 of our Constitution.

So, hon. Temporary Deputy Speaker, where somebody assumes parental responsibility, especially where two grownups come to live together as man and wife and a child is born, they must provide the child with full rights. They must continue taking care of this child.

Hon. Temporary Deputy Speaker, I must also hasten to add that---

The Temporary Deputy Speaker (Hon. Kajwang’): Before you go to the next point, would this not be the right time that you may want to transfer that to next time this business appears on the Order Paper?

Hon. Njagagua: I would appreciate your guidance, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Kajwang’): Then we will have two minutes of your time when this matter is listed on the Order Paper. Obviously, this is a matter of interest. I see the Member for Muhoroni on the line. Next I see the Member for Thika Town. Next I see the Member for Dagoretti North. Next I see the Member for Kisumu East and Member for Kajiado. Hon. Wahome, do you have an intervention?

Hon. (Ms.) Wahome: Yes, hon. Temporary Deputy Speaker. I hope the screen is not reading “The Member for Thika Town” because I have raised this issue.

The Temporary Deputy Speaker (Hon. Kajwang’): Yes. That is what it is reading. It is reading: “Alice Wahome, Member for Thika Town”.

Hon. (Ms.) Wahome: Hon. Temporary Deputy Speaker, I have raised this issue again. I have visited the technical team up there and I have demanded a correction of this. Since we came to this House, all my debates have been attributed to the Member of Parliament for Thika Town and I think it is atrocious. It is actually criminal and I demand that you direct that a correction be done immediately. An apology for the people for Kandara should be issued because the Member for Thika Town is not even in this House.

The Temporary Deputy Speaker (Hon. Kajwang’): Thank you. I feel you. Just resume your seat.

Hon. (Ms.) Wahome: You know hon. Temporary Deputy Speaker why you need to feel me is because you have raised it before and it has not been done. So, all my air time has been lost since I came here. I think the HANSARD---

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Kajwang’): Order! I, therefore, direct the Clerk-at-the-Table to investigate the circumstances under which this Member is listed as Member for Thika Town and ensure that there is an immediate correction and give the Member the communication that it has been done so that we can have some order here.

The time being 1.03 p.m., this House stands adjourned until this afternoon at 2.30 p.m.

The House rose at 1.03 p.m.