

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 20th August, 2014

The House met at 2.30 p.m.

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

PRAYERS

MESSAGES

Hon. Speaker: Hon. Members, Standing Order No.41(5) relating to messages requires the Speaker to expeditiously report to the House any message received from the Senate. In this regard, I wish to report that on Thursday, 14th August, 2014, in accordance with the provisions of Article 110(4) of the Constitution, I received four messages from the Senate regarding the passage of the following Bills:-

1. Approval of the County Governments (Amendment) Bill, Senate Bill No.1 of 2014;
2. Approval of the County Governments (Amendment) Bill, Senate Bill No.2 of 2014;
3. Approval of the Political Parties (Amendment) Bill, Senate Bill No.3 of 2014; and,
4. Approval of the Statute Law (Miscellaneous Amendments) Bill, Senate Bill No.6 of 2014.

Hon. Members, the Senate now seeks the concurrence of the National Assembly to the amendments made to the above Bills. I am aware that the Clerk has since circulated copies of the Bills. Indeed, the four Bills are appearing on today's Order Paper for First Readings in accordance with the resolution of the House Business Committee (HBC) of yesterday.

After being read the First Time, the Bills will stand committed to the Departmental Committees on Justice and Legal Affairs, save for the approval of the County Governments (Amendment) Bill, Senate Bill No.1 of 2014, which I refer to the Departmental Committee on Finance, Planning and Trade since it is about physical location of the headquarters of the county governments, which is a subject of planning.

I also direct that before the Bills are scheduled for Second Reading, the two committees engage the Budget and Appropriations Committee of this House with a view to satisfying the requirements of Article 114 of the Constitution regarding Money Bills.

Thank you.

PAPERS LAID

Hon. A.B. Duale: Hon. Speaker, I beg to lay the following Papers on the Table of the House today, Wednesday 20th August, 2014:-

The National Intelligence Service Annual Report for the year ending 30th December, 2013 prepared pursuant to Section 77 of the NSIS Act, 2012.

The Energy Regulatory Commission Annual Report and Financial Statements for the year ended 30th June, 2012.

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

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

The Report of the Auditor-General on the Financial Statements of RIVATEX East Africa Ltd. for the year ended 30th June, 2013 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of the Pyrethrum Board of Kenya for the year ended 30th June, 2013 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Numerical Machining Complex Ltd. for the year ended 30th June, 2013 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Kenya Seed Company Ltd. and its subsidiaries for the year ended 30th June, 2013 and the certificate of the Auditor-General therein.

Hon. Speaker: Very well. The NIS Annual Report for the year ended 31st December, 2013 is to be referred to the Departmental Committee on Defence and Foreign Relations.

Next Order!

INSUFFICIENT TEACHERS IN HOMA BAY TOWN CONSTITUENCY

Hon. Kaluma: Thank you, hon. Speaker. This is a Statement request to the Chairperson, Departmental Committee on Education, Research and Technology regarding staffing levels in public schools in Homa Bay Town Constituency, which I represent.

On average, I have five teachers per primary school while in secondary school they are as few as two. I need urgent attention to this matter.

Hon. Speaker: Very well. I think for the information of the House it is important to know that the hon. Julius Melly has temporarily taken over as the Chair of that Committee in the next few months pending certain biological processes that the Chair maybe experiencing and somebody else is going to deputise him.

(Laughter)

Maybe the hon. Melly can take the opportunity to announce who will be deputising him.

Hon. Melly: Thank you, hon. Speaker for that remark; I want to note that I shall be taking over until the substantive Chair comes back from a short leave. My Deputy Chair in an acting capacity will be Mary Seneta, the Women Representative and Member of Parliament for Kajiado County.

Hon. Speaker: Very well.

Hon. Melly: I think she is coming. Hon. Speaker, I want to point out that we shall respond to this, and we request the Member to come to the Committee in the next two weeks so that he can be briefed. Thank you.

Hon. Speaker: Next two weeks, hon. Kaluma?

Hon. Kaluma: Good enough, hon. Speaker.

Hon. Speaker: Very well. Hon. Robert Mutemi.

RELEASE OF MEDICAL AND ORTHOPEDIC
MATERIALS AND EQUIPMENT

Hon. (Bishop) Mutua: Thank you, hon. Speaker. I wish to request a Statement from the Chairperson of the Departmental Committee on Health concerning the release of medical and orthopedic materials and equipment that were donated to the Association of the Physically Disabled of Kenya by a Dutch organisation in 2011; up to now this equipment is still held at Mombasa Port.

Hon. Speaker: The Chairperson of the Departmental Committee on Health, the hon. Rachel Nyamai or the Vice-Chair, the hon. Pukose. Both being absent, Leader of the Majority Party takes over the mantle.

Hon. A.B. Duale: Hon. Speaker, I was shocked to see the hon. Melly appoint another Member as his Acting Vice-Chair. I can confirm that we do not have a similar situation in the Departmental Committee on Health. The Chair is not on maternity leave neither is the Vice-Chair on paternal leave. They were fit as of yesterday and the answer will be given in three weeks. I will pass the message to the Chair. I am sure they are busy dealing with the Ebola virus, the striking doctors and the crisis in the counties.

Hon. Speaker: Indeed, both of them were very active this morning in the House. Yes, Bishop Mutemi.

Hon. (Bishop) Mutua: Hon. Speaker, I wish it could have been two weeks because this is a case that has been pending since 2011; the equipment was donated to help the disabled people in this country. It is not serving any purpose; instead it is incurring more and more charges at the port. So, this response needs to be speeded up.

Hon. A.B. Duale: It is urgent and I will pass the message to the Chair. We will do it within two weeks.

Hon. Speaker: Very well. I can see that hon. Julius Melly wants to give further information. Let me give you the chance.

Hon. Melly: Hon. Speaker, I want to point out that what the Leader of the Majority Party is alleging is not true because yesterday we went through the proper Standing Orders and the Committee minuted and appointed the Deputy Vice-Chair to be hon. Seneta for four months.

Hon. Speaker: Is it four months or until such time as you are in a position to function properly in the Chamber, or discharge the functions of a Member?

Yes, hon. Christine Ombaka.

RECOVERY OF PUBLIC PROPERTIES
AT THE COAST BY EACC

Hon. (Ms.) Ombaka: Thank you, hon. Speaker. Pursuant to Standing Order No.44(2)(c), I wish to request a Statement from the Chairperson of the Departmental Committee on Justice and Legal Affairs regarding the recovery of public properties at the Coast by the Ethics and Anti-Corruption Commission (EACC) based on court settlements.

Hon. Speaker, the EACC recently recovered public properties at the Coast through negotiated settlements reached upon at the High Court in Mombasa. The cases approving the negotiations were MBSELC/53/2013, MBSELC/55/2013, MBSELC/44/2013, MBSELC/32/2013, MBSELC/84/2013, MBSELC/99/2013 and MBSELC/131/2013.

These properties were comprised of various assets such as land and money. However, the methodology used for the valuation of the said properties is not clear; at the same time the details of specific properties so recovered are not in public domain. It, therefore, becomes essential to obtain more information on the assets recovered.

Hon. Speaker, in the Statement, the Chairperson should inquire into and report on the following:

(i) the amount of property recovered in terms of acreage, total cash recoveries and other application quantitative parameters;

(ii) the valuation---

Hon. Speaker: There is a point of order from hon. John Olago Aluoch .

Hon. Aluoch: On a point of order, hon. Speaker. The issue that is being raised by hon. Ombaka is very valid and serious, but I want to seek your direction. I have the privilege of serving in the Departmental Committee on Justice and Legal Affairs. Is it in order for a member of the Committee to seek a Statement from their Committee?

Hon. Speaker: So, hon. Ombaka sits in the Departmental Committee on Justice and Legal Affairs?

Hon. (Ms.) Ombaka: Yes, I do. I am not supposed to ask?

Hon. Speaker: Now, you could not get this information if you raised it in the Committee, or is there something you are trying to elicit?

Hon. (Ms.) Ombaka: I want to give the Committee ample time to look for answers to these questions; I thought it would be better to raise it formally in the House. I brought it here because I thought this is the best way to approach it.

Hon. Speaker: You know ideally some of the issues you are raising, hon. Ombaka--- For instance, the terms of settlement in each of the said High Court cases--- Even when we used to have Question Time there was a rule against asking something that you could obviously get from some written treaties, or if you just walked to a court and got the information you wanted. You can go to a court and find the terms. The terms are, obviously, contained in each file. The Committee does not have to spend time going to look for that information. Should you have any issues thereafter then that can become a matter for the House to, maybe, express itself on.

Be that as it may, let me hear whether the Committee is in a position to inform the House how long it will take to get this information.

Hon. (Ms.) Ombaka: Can I read the questions first? I have five questions.

Hon. Speaker: No. Do not bother. It is written. Sorry. I think you took advantage of my consultations with the hon. Member to breach our earlier understanding.

(Laughter)

Hon. Speaker: Hon. Members, do not shout in your places and claim to want to solicit a point of order.

Hon. Shill: Hon. Speaker, I would like to ask for direction because I know the rules say that if you are in a certain committee, you cannot ask questions, but the committee itself does not have an answer until they consult the relevant Ministries. I would like you to give direction because there are some questions that we would like to ask some Ministries pertaining to particular constituencies; it becomes very difficult to raise certain issues. It is another way of gagging ourselves when we are representatives of the people.

Hon. Speaker: Do not have the fear that you may be gagging yourself. Do not do so. There is no specific rule against a Member seeking information even from the committee that they sit on. We are in a dispensation that puts us in a unique position. If we the Executive were available to respond, there would be nothing to bar Hon. Ombaka from seeking this information. The only point raised by Hon. Aluoch is that Hon. Ombaka sits on the same committee, and she wants the same committee to go and investigate a matter. Well, there is nothing specifically against that.

As you rightly pointed out, you may be a member of a committee but there is something of special concern to the people you represent that you may want ventilated openly in a plenary session of the House. So, we cannot prevent an hon. Members from seeking information from the committees on which they sit. Indeed, the rules do not bar that specifically.

We will now have the Departmental Committee on Justice and Legal Affairs, the Chairman and Vice-Chairperson. We have only had information and it was reported to me officially. Hon. Melly was handed over officially to me by the Chair of the Committee on Education, Science and Technology. That is the only Chair who has been handed over to me. In their absence, the matter goes to the Leader of the Majority Party.

Hon. A.B. Duale: Hon. Speaker, just as with the other Committees, I can confirm that both the Chair and Vice-Chair of the Departmental Committee on Justice and Legal Affairs are not on any leave, including sabbatical leave. They are around Parliament Buildings. About the matter raised by Hon. Ombaka, I was seeing numbers of plots; that itself tells me that it is a serious matter, as also confirmed by Hon. Aluoch. They must have shared these issues before the drafting of the Statement. He stood up and said the matter Hon. Ombaka was raising was serious. That matter is heavy and we will give the Departmental Committee on Justice and Legal Affairs a period of one month.

In view what my good friend, hon. Aluoch, said, Hon. Ombaka should bring a substantive request. It must be a matter not very far from what is happening in Lamu. They are numbers of plots which were seized and then recovered. For us to give a very

good answer, one month is okay. I will pass the information to the Departmental Committee on Justice and Legal Affairs. Hon. Aluoch, hon. Kaluma and Hon. (Ms.) Kajuju are members of this Committee.

Hon. Speaker: Hon. Members, had I allowed Hon. Ombaka to say everything--- The last bit of this Statement is about the provisions that regulate EACC's powers to conduct mediation, negotiations or entering into settlements with suspects in matters pending in court. That is about information on legal provisions, unless you are saying that they are acting outside of the law; it suggests that you know that the law exists and permits them to do that. It would be against our rules to raise a question that seeks information about a legal provision because we are the ones who make the law. We are not expected to ask: What does that law say? Even if the law was made in 1913, Hon. Obura, you would still be expected to know it, as you rightly do. I can see you are very pensive.

Hon. Aluoch, you had a point.

Hon. Aluoch: Hon. Speaker, I do not want to be the advocate for Hon. Ombaka over the issues she has raised; what I want to raise is different. I think the absence of chairs of committees and their deputies from the House is becoming too regular and it is a cause of concern. This is a very serious matter and I think you need to give us direction on it, and what should be done if both of them are absent and you have not been informed. These are very important positions and they should be taken seriously.

Hon. Speaker: I agree with you; it is a matter of concern that chairs of committees – at least now we have seen two - are absent; our recourse is to the Leader of the Majority Party for the time being. But if the House will be so minded, before you break off in the course of next week, we may be bring certain proposals for you to approve so, that this problem will be a thing of the past.

Hon. (Ms) Ombaka, hon. A.B. Duale suggests a month. Is that all right?

Hon. Ombaka: Hon. Speaker, yes.

Hon. Speaker: Very well.

RECRUITMENT OF CHILDREN INTO TERRORIST/MILITIA GROUPS

Hon. Wekesa: Hon. Speaker, I wish to request a Statement from the Departmental Committee on Administration and National Security regarding the recruitment of children into terrorist and militia groups.

Hon. Abongotum: Hon. Speaker, this is a very serious issue and we need thorough investigations. Of course, I want to announce from where I speak to the youth in Kenya that the promises being given to them that if you kill in the name of religion, then you will be entitled to 77 virgins and a golden house in heaven; the youth must be warned that that is not attainable. What they will face is death and they will go to hell. I want to give this Statement in two weeks.

Hon. Speaker: I thought the Chairperson had already given some response. Did you say they are promised something in heaven? Hon. Wekesa, is that time okay with you?

Hon. Wekesa: Hon. Speaker, two weeks is okay with me.

STATUS OF TRANSPORT NETWORK IN LORIU TURKANA EAST

Hon. Ngikor: Hon. Speaker, I wish to request a Statement from the Chairperson of the Departmental Committee on Transport, Public Works and Housing regarding the transport network in Loriu in Turkana East Constituency.

Presence of road network, bridges and linkages is the key infrastructural for realization of greater economic efficiency; it enables easy movement of people, goods and services. However, Loriu area, with a population of 12,000 people as per the 2009 Census Report, has not benefited from construction of roads and bridges in the past 50 years.

Therefore, they cannot access markets, administrative and health amenities due to lack of bridges across River Kerio, which stretches over a distance of 245 kilometres, from Lokoria to Lake Turkana.

Hon. Speaker: Hon. Members, I take the liberty to allow certain issues to be explained in the manner that I have explained, so that the Member for Turkana East can be understood clearly. If you read the original part of the Statement request, he may not have come out clearly.

Yes, hon. Mahmud.

Hon. (Eng.) Mahamud: Thank you, hon. Speaker. At the risk of bragging, I must say that our Committee's leadership is always in the House. So, we need to be commended by the House.

Hon. Speaker, the hon. Member is asking for transport network in his region. I hope that he means "road network", and not air or sea or some other transport network. We will be able to respond to the request. If the request was for all the networks, it would be a very comprehensive request. So, we will be able to answer in two weeks' time.

Hon. Speaker: What is your reaction, hon. Ngikor?

Hon. Ngikor: Hon. Speaker, two weeks is okay.

Hon. Deputy Speaker: Very well!

Yes, hon. James Opiyo Wandayi.

SETTLEMENT OF COURT AWARDS TO
VICTIMS OF POLITICAL PERSECUTION

Hon. Wandayi: Hon. Speaker, this Statement request is directed to the Chairman of the Justice and Legal Affairs Committee. It concerns the delay in settlement of compensation awarded to victims of torture and political persecution. Specifically, I want to know when the Government intends to settle those claims once and for all.

Thank you, hon. Speaker.

Hon. Speaker: I give the Floor to the honourable Chairperson, who has just walked in.

Hon. Chepkong'a: Hon. Speaker, I have not just walked in; I was listening to House proceedings while driving to this House. I heard what hon. Olago Aluoch said; he purported to assume that he has been here more times than me. If he checks the records, he will find that I have been a very regular Member of this House. It is just that I was

caught up in a traffic jam on my way from Industrial Area. Ordinarily, I am always here. I sit all the way, including up to 9.00 p.m., when most of the hon. Members of this House have already retired to their beds.

Hon. Speaker, of course, hon. Wandayi Opiyo is my good friend. We will ensure that he receives a response within three weeks.

Hon. Speaker: Yes, hon. Wandayi.

Hon. Wandayi: Hon. Speaker, I wish he could do so in at most two weeks. Those people are languishing in poverty. Some of them are almost dying, while those who tortured them are wading in opulence. We need some quicker response to this matter.

Hon. Speaker: Are you saying that three weeks is a long time?

Hon. Wandayi: It is, indeed, very long. Those people are almost dying, hon. Speaker.

Hon. Speaker: This has to do with court settlements, does it not?

Hon. Wandayi: Hon. Speaker, they are court settlements, and there are no appeals by the State against those awards.

Hon. Speaker: Who was directed to make the payments?

Hon. Wandayi: It was the Attorney-General, hon. Speaker.

Hon. Speaker: So, it is possible that hon. Chepkong'a can get the information in two weeks' time. Hon. Chepkong'a, is it possible?

Hon. Chepkonga: Hon. Speaker, this is a matter we discussed in our Committee as late as last Monday. Most of the Members of the Committee are aware that we had the Attorney-General. One of the issues was settling all the outstanding claims that have been awarded by courts. We have agreed with the Attorney-General that we will look for a mechanism of ensuring that various Ministries' budgets incorporate all court awards that have not been appealed against, or in respect of which appeals have reached conclusion. So, I take very seriously what hon. Wandayi has said. Three weeks is extremely reasonable, knowing the amount of work that needs to be done to ensure that he receives a sufficient answer that will not take us back and forth.

Thank you, hon. Speaker.

Hon. Speaker: Well, three weeks! There is no---

Hon. Wandayi: Hon. Speaker, I will do with that proposal.

Hon. Speaker: Are you a Member of the Committee, hon. Wandayi?

Hon. Wandayi: No; I am not, hon. Speaker.

Hon. Speaker: Hon. Members, I take this opportunity to acknowledge the presence, within the House's galleries, of pupils from Tanel Primary School in Kipkelion West Constituency, and pupils from Sunrise Academy, Iten, in Keiyo North Constituency.

They are welcome.

Yes, hon. John Walukhe Koyi! If he is not here, let us have hon. Hezron Awiti Bollo.

GRANTING OF AMNESTY TO PRISONERS

Hon. Bollo: Hon. Speaker, pursuant to Standing Order No.44 (2) (c), I would like to request a Statement from the Chairperson of the Departmental Committee on

Administration and National Security. Over the years, a number of prisoners have been granted amnesty under circumstances that were not clear. Prisoners released are going back to crime. I would like to request the Chairperson to give the following information:-

(i) the number of prisoners released under the programme in the last five years; and,

(ii) the number of prisoners who have been jailed for long periods and who have since been provided with amnesty.

Hon. Speaker: Hon. Bollo, I actually think that this Statement request should have been directed to the Justice and Legal Affairs Committee. I also hope that hon. Members familiarise themselves with the provisions of the Constitution. It is not enough to just talk about the Government, because under the current Constitution, there is a committee on prerogative of mercy. We should not be getting information from anybody. Such request must be directed to the appropriate organ of the State. That is why I think the Committee on Justice and Legal Affairs would be best suited to respond to this particular request, although, of course, it is a bit questionable that you---

You said “the Government’s plans to consider amnesty for the prisoners who have been jailed for so long and have since proved fully rehabilitated.” On that last bit, you may have to take an oath and prove that they are fully rehabilitated. You may have to move from one prison to another to see how many are fully rehabilitated, so as to determine that they, indeed, deserve consideration for clemency.

Hon. Kamama, do you want to give a response?

Hon. Abongotum: Hon. Speaker, the Prisons Department is actually under our purview. We are handling this matter, as a Committee. We have also received a petition from the prisoners on this matter. Since the hon. Member wants information going back to five years, we need to give him a comprehensive report. So, we need three weeks to give the Statement.

Thank you, hon. Speaker.

Hon. Speaker: Are three weeks enough, hon. Awiti?

Hon. Bollo: Thank you, hon. Speaker. Please, let it be two weeks. That would be reasonable.

Hon. Kaluma: Hon. Speaker, I am sorry for taking the Chair back. The information sought here relates to legal issues about prisons, and not the administrative matters of a prison that would fall under the Committee that the good Chairperson, hon. Abongotum, chairs.

I would request, really in keeping with the mandate of the Departmental Committees, that this being a legal issue, it goes to the Departmental Committee of Justice and Legal Affairs. Indeed, the consideration around issues like the Power of Mercy and how the determination in question is treated are matters for the Departmental Committee on Justice Legal Affairs.

Hon. Speaker: I fully agree with you. That is why I thought that the Departmental Committee of Justice and Legal Affairs could be the right one to address this matter.

Indeed, this is not an administrative matter. Even if you are going to get the number of people that have been released in the last five years, the issue around the prerogative of the Power of Mercy would fall squarely within the Departmental

Committee on Justice and Legal Affairs. When you talk about plans by the Government to consider amnesty for prisoners that is under the purview of justice.

Hon. Kajuju, you want to say something?

Hon. (Ms) Kajuju: Thank you, hon. Speaker. While I agree on the issues and the concerns that have been raised by the hon. Members, I totally agree with hon. Kaluma that this is a matter that falls within the purview of the Departmental Committee on Justice and Legal Affairs.

I served as a Member of the Power of Mercy Committee. It is a body that is established under Article 133 of the Constitution, and the issues that are dealt with in that Committee are issues that have already been adjudicated upon by courts. The Committee looks at the files and recommends to the President, depending on circumstances of each prisoner, who deserves mercy.

I think at this point, the best committee that is well placed to look at the legal issues, rehabilitation and granting of the mercy, is that on Justice and Legal Affairs.

Thank you, hon. Speaker.

Hon. Speaker: Especially with regard to the second bit, the plans to consider amnesty.

Hon. Chepkong'a, I think you can take up this matter. Let me redirect this request to your committee. I know you have a lot on your hands, but they say choices have consequences. Therefore, now that you are the elected chair of that busy committee---

Hon. Chepkong'a: Thank you, hon. Speaker. Indeed, I note that.

As rightly pointed out by hon. Kajuju, who is a member of Justice and Legal Affairs Committee, under Article 133 of the Constitution--- In fact, the Advisory Committee which includes the Attorney-General and the Cabinet Secretary for correctional services - I am assuming that because the Attorney-General is first mentioned--- Really, this is what this Committee should be doing. Not that we are seeking a contest with hon. Abongotum, my good friend. I would have been happy if we had dealt with it. Because it is a legal issue--- I recognize he is a former DO, and has agreed that we take it up.

Therefore, in three weeks' time, we will give an answer.

Thank you.

Hon. Speaker: Hon. Bollo, let us just agree to the three weeks.

Hon. Bollo: Thank you, hon. Speaker. I have no issue with that. What I need is only the answer.

Hon. Speaker: That is what is important.

Let us hear from hon. Philip Rotino, Member of Parliament for Sigor Constituency.

DISPUTES OVER PARCELS OF LAND ACROSS THE COUNTRY

Hon. Rotino: Thank you very much, hon. Speaker. I wish to request Statement from the Chairperson of the Departmental Committee on Lands regarding disputes on parcels of land across the country, especially among neighbouring communities.

Hon. Speaker, there are disputed parcels of land within Sigor Constituency, Pokot County. They are being claimed by two communities. This statement request came up during the last session and it was not answered. I wish to request the Committee on Lands

to invite me and my colleague from the neighbouring constituency when they will be meeting, so that we can discuss this matter together.

Hon. Speaker: Even as the Chairperson responds, would it not have been easier for you to indicate which that neighbouring constituency is? You have said that the parcel of land is within Sigor Constituency, Pokot County, and is being claimed by residents in the neighbouring constituency. Which is the neighbouring constituency?

Hon. Rotino: Marakwet East of hon. Bowen.

Hon. Speaker: Let us hear from the Departmental Committee on Lands. Hon. Alex Mwiru? If he is not in, let us hear from the Vice-Chair. We can have a response from the Leader of Majority Party on this.

Hon. A.B. Duale: Hon. Alex Mwiru and his Vice-Chair, the King of Kajiado West, or hon. Member for Kajiado West, hon. ole Sekuda are busy with other matters. The answer will be provided in three weeks' time.

Hon. Speaker: It is appreciated that that Committee is involved in some exercises which are on-going. Is that okay, hon. Rotino?

Hon. Rotino: Hon. Speaker, bearing in mind that this Statement was requested during the last session, I wish they could bring it within two weeks.

Hon. Speaker: Hon. Rotino, the Committee is not here because it is busy with other exercises that are on-going. The information will have to be passed to them. Let us just allow the three weeks. I think it is better that way.

Let us hear from hon. Gumbo.

DEMISE OF THE LATE J.H. OUGO

Hon. (Eng) Gumbo: Thank you, hon. Speaker. I wish to bring to the attention of this august House the sad news of the passing on of a former Member of this House, the late hon. Jones Hezekiah Ougo, who hails from Rarieda Constituency.

Hon. Speaker, the late hon. Ougo served as MP for Bondo Constituency between 1974 and 1981 before it was split in 1988 to form what is currently Rarieda and Bondo constituencies.

In 1981 the late hon. Ougo did what would be most unthinkable to most of us today. Indeed, it is something that most of us would find very difficult to do. He voluntarily resigned his seat as MP for Bondo Constituency in a bid to allow the then doyen of multi-democracy in Kenya, the late hon. Jaramogi Oginga Odinga, to make his way back to Parliament.

Unfortunately, the political expediencies of the time, or lack thereof, did not allow this noble wish to come true. It is said that knowledge speaks but wisdom listens. If any hon. Member of this House has ever epitomized that mantra, it was the late hon. Jones Hezekiah Ougo. He did so through his non-confrontational approach to politics, which earned him the Luo phrase '*ling ber nee*', which means, the leader who solves problems without resorting to din and noise.

Hon. Speaker, prior to joining this House, the hon. Ougo served as Principal of Siriba Teachers Training College and Headmaster of several renown schools in Kenya. Some of the leading educators in Kenya today are products of his diligent and wise tutoring.

At the time of his death, he was a respected senior of our great Republic of Kenya and a valuable member of the Luo Council of Elders.

On my behalf and on behalf of all the people of Rarieda, I wish to send my heartfelt condolences to his widow, Alice, his friends and confidante for many years, Mzee Mitura Ang'ina, his children, grand children, friends, relatives and all the people of the greater Bondo that hon. Ougo represented in this House with distinction. May the Almighty God rest his soul in eternal peace.

As I conclude, you will realise that in the House today, there are three of us who come from the greater Bondo Constituency, hon. Oburu Odinga, hon. Ochanda and myself. I would request your indulgence, because hon. Ougo represented the greater Bondo, to allow them, if they are in the House, to also pass their messages of condolence.

Hon. Speaker: At least, I can see hon. Gideon Ochanda. Hon. Oburu Oginga is on the way.

Hon. Ogolla: Hon. Speaker, let me also take this chance to sincerely send condolences of the constituency of Bondo. Bondo Constituency, as it is currently, was part of the bigger Bondo Constituency at the time Mwalimu Hezekiah was the Member of Parliament for the area. We really want to remember him as a person of courage. He was a humble gentleman who has lived a very humble life since 1981 when he resigned from this House. He has been in many development activities in the area regardless of whether he hailed from Asembo, Rarieda or Bondo.

I want to take this chance, as a Member of Parliament from the area that he represented, to send my heartfelt condolences from myself and from the citizens of Bondo Constituency.

As has been mentioned by Eng. Gumbo, the kind of courage that Hezekiah showed was only shown one other time in history by the Member for Fort Hall, hon. Kariuki Njiiri. Circumstances had changed a little bit and the late Jomo Kenyatta had to come to Parliament but was not an elected leader. The area where the former President came from, had a Member of Parliament at that time who was not ready to step down from his position. So, the Member for Fort Hall, Kariuki Njiiri, accepted to step down from his position.

That was the only difference; the late Ougo represented Bondo Constituency at a time when there was a very serious need for the late Jaramoji Oginga Odinga wanted to fit into the political arrangement of the time; the late Hezekiah Ougo decided to resign.

I want to pray that God rests his soul in peace.

Thank you.

Hon. Midiwo: Hon. Speaker, I also want to take this opportunity to send my condolences to the family of Mwalimu Ougo. I learnt of his sickness about a week and a half ago and I had promised myself that I would go and see him at Avenue Hospital in Kisumu. Unfortunately, I never made it to see him, but the few encounters that I had with hon. Ougo left no chance doubt that he was nothing but a humble human being. It is also good to remember that when Ougo Ochieng' was a Member of Parliament for Bondo, at our side of the world life was so difficult that you could not even talk to your family without being listened to by the so called "Special Branch". I was a young person then, but I saw how the Government made our people live. I saw how brave Ougo and his colleagues were; that enabled us to have the freedom that we enjoy today.

My God rest his soul in peace.

Hon. Speaker: Very well. We all join the rest of the family and, indeed, the people he represented in condoling his family.

Hon. Onesmus Njuki.

STATE OF HEALTH FACILITIES IN COUNTIES

Hon. Njuki: On a point of order, hon. Speaker. I know it is your prerogative to give an opportunity for someone to speak. I am kindly asking you to invoke the Standing Order No.1 to allow me to ventilate on an issue that has become very hot at the moment. Article 43(1)(a) of the Constitution states that:-

“(1) Every person has the right—

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

Allow me to say that on Monday, this week, I visited a patient in a district hospital in my constituency. The male ward where people are admitted to receive treatment was infested with flies and lice, what we call in Kiswahili *chawa*, to the extent that they had to use maize combs to scratch themselves. Two to three patients shared a bed. On the same day, there was a cry in Mombasa County concerning the issue of healthcare and the threat by the medical personnel to go on strike. At the moment, the state of healthcare is pathetic. If this House allows this to continue---

(Loud consultations)

Hon. Speaker: Hon. Members, the Member had approached me that he wanted to raise this issue as a matter of concern on a point of order. I think it is important that we hear what it is that he is addressing. Maybe after he finishes, I will give a chance to a few Members to say one or two things about the same issue.

Hon. Njuki: Hon. Speaker, I was talking about the state of healthcare in the health facilities in the counties. I have already given my experience of how I visited a male ward in a hospital in my constituency, which was infested with flies and lice, what we call *chawa* in Kiswahili.

A hospital is a place where we are supposed to go when we are sick. It is not a prison. But our hospitals are worse than prisons. Under the Fourth Schedule, we devolved the health services and governors have an excuse that we have not released money, which we did yesterday.

The services in these facilities are not for free. They collect money from the patients. We cannot miss some little money that hospitals collect to give basic support to the patients as they wait for the money from the national Government. We seriously need to decide whether these health services should remain in the hands of the devolved governments. We are losing our people at a very fast rate. What is gaining at the moment, according to my observation, are private health facilities. Most people have resorted to seeking health services from private hospitals and clinics, which they can hardly afford. They are forced to purchase even basic drugs like pain killers from chemists. There is a thriving business in chemists and private hospitals and our people are dying at a very

high rate. We need to seriously decide what we can do to ensure that this function is returned to the national Government by all means possible.

Hon. Speaker: Hon. Members, I know this matter is serious, but since we cannot all speak to it, if you allow me, I will give at least, ten Members a chance, and every Member will speak for three minutes. Did you say one? Two minutes. If you do two minutes, then you will have 15 Members speaking. Can we agree on two minutes? It is an important matter that this House needs to ventilate on. It is a matter that touches on everybody. Are we agreed on two minutes?

Hon. Members: Yes.

Hon. Speaker: Every Member speaking, please, prepare to speak for two minutes.

Hon. Shakeer Shabir.

Hon. S.S. Ahmed: Hon. Speaker, this afternoon I had a delegation that came to see me. I have had the honour of being the Chairman of the New Nyanza Provincial General Hospital and I have been in hospital management for nearly 30 years. There is a very drastic problem that we are facing. Tuberculosis drugs in this country--- I think hon. Members should know the first line of TB drugs is also used for HIV; we are running out of the drugs in September. We have no buffer stock left whatsoever. Last year we borrowed from Botswana and this year we are not going to get even one dose from Botswana. TB drugs were to be purchased centrally since devolution has taken place. The county governments have not treated it as a priority. In September, there will be no TB drugs in this country.

These drugs are very important and a drastic action must be taken now. I support my colleague that the TB drugs and first line healthcare, even if in referral hospitals, should be looked at again. We can have it in the central Government. When the central Government had it, there was no shortage of TB drugs but now there are no TB drugs.

Hon. Bunyasi: Hon. Speaker, this is a very important subject; right now, it is highly topical. I would urge the House that as we ventilate on this to think critically about cause and effect. We have had a continuing crisis in the health sector for years, and it has not abated. The fact that people buy drugs when they are in hospital has been known for years and years, at least in the part of the world where I come from, where we have Busia District Hospital and county hospitals.

It is a sad case that people who can barely afford transport to get to hospital should be saddled with the purchase of drugs and other necessities that you must provide to staff. The devolution process has probably just made it worse, but this is a curse that we have been living with for a long time and it needs to be addressed. If we link this entirely to re-centralizing as the solution, I think we shall have missed the boat. Some of the best hospitals have no centre---

Devolution of the small hospitals, where you get quality service, means that they do not report to anybody above them and are well managed. It is the quality of management of those facilities that we need, whether in national hospitals, referral hospitals or the smallest clinics. We should focus on how to improve the quality of healthcare rather than think in terms of re-centralization as the solution. Re-centralization itself will bring nothing to improve management. I understand that this results in

economies of large scale and other advantages in procurement, but there are ways in which you can get these devolved units also procure together.

The Transition Authority (TA), in my view, has missed out greatly by not putting in place adequate arrangements for the management of the transition---

Hon. (Prof.) Nyikal: Hon. Speaker, thank you. It is true that we have a big problem of health in the country now, which has been made worse by the process of devolution. What I have said here many times is that we failed to devolve the way we planned in the Constitution. The TA and the appropriate law have never been applied. One day the governors, the Council of Governors and the President decided to devolve healthcare in a day. It is not possible. The problem we are seeing in healthcare is also in other places, only that in health area players are noisy.

In agriculture, my constituency had a lot of problems when we were trying to distribute fertilizers. There is also a problem in water. So, the basic thing is that we must go back and start to plan devolution. The Constitution itself provides that if there is a problem with a function, it can be moved up and down in accordance with Article 187. The Committee on Health brought a report to this House that was adopted. It indicated what to do when you want to move functions up and down. Where is the Implementation Committee of this House to take up those suggestions and implement them?

In my mind, that is where the problem lies. The complexity of healthcare is such that we cannot rush it. I am not saying that we should remove healthcare from Schedule IV, which provides for devolution of healthcare to county governments, but we must plan how it is done.

Hon. Kigo: Hon. Speaker, if there is anything that is scaring people in this country, it is the way people are suffering. Alongside food, air and water, health is very key. I suggest that it is high time, especially for those of us who control money in this country, organized to have money going to the health sector in the counties and earmarked for medicine and other facilities, otherwise, we will lose our people.

In my constituency, just the other day there was nothing for someone involved in an accident. He died as people watched. The other day a kid died as people watched. What I am thinking is that as a Parliament of representatives of the people, let us do what it takes at the Budget and Appropriations Committee, all Committees and the Speaker to take control of how health is managed in this country. I believe that our people are suffering. They have suffered enough and political interference is becoming expensive for our people. We need to look for a way to save our people from this suffering and remove them from the vicious cycle which is now hurting the voters who voted us in.

Hon. (Dr.) Simiyu: Hon. Speaker, this problem has been pointed out to the House; the Departmental Committee on Health saw this much earlier; indeed, we started our own process of investigating the whole problem and visiting the counties. We wrote a report which this House adopted. If the Committee on Implementation followed it up and did what that Committee Report says, we will solve a lot of these problems. The crux of the matter is that health services devolution was done in a precipitative manner that was not good for healthcare in the country. This problem needs to be ameliorated as per the recommendations of the Committee. You now find hospitals out collecting cost sharing funds, but many county governments put this money into a central kitty, and it is not available to hospital managements to use in running hospitals as they used to do.

Many counties have put that money in a central account, which hospitals managers are unable to access.

The creation of county development boards on which the Member of Parliament will sit will be helpful, because MPs know what is going on in their hospitals. When they sit on that board, they will be able to direct matters in the right direction. Otherwise, the late appointment of hospital boards has also contributed to this. Hospitals have been running without boards. One of the solutions is for the Executive to hurry up and bring the Health Act here; it has been delayed so much that now the national referral hospitals have not yet been defined. Hospitals which should be under the national Government are still under the county governments and are suffering mismanagement, with personnel running away because they are facing a lot of job insecurity.

Hon. Katoo: Thank you, hon. Speaker. Health, together, with water is one of the devolved services. It is 100 per cent devolved and it is a very crucial service. We expected a lot to be done in terms of building new health facilities. Before, it was only the CDF which was used to build new facilities. Now that health services are fully devolved, the county governments should build more health facilities. We have seen in every county government very many ambulances. We expected health services to be a little bit better off with those ambulances.

Drugs whose acquisition and storage are still centralized at the KEMSA should not be an issue. They should employ more personnel because personnel are now recruited at the county level. We have very many health, or medical, personnel who are graduates in the counties, and who do not have jobs. The county governments should absorb them immediately. It should also build new dispensaries, so that health services can be closer to wananchi.

On the threat to strike by medical personnel in the counties, one would like to ask this question, why is it only the staff in the health area who have not been paid? If this House did not pass the County Allocation of Revenue Bill, where did the county governments get money to pay staff from other departments and not the staff in the health sector? We really do not need to take health facilities back to the national Government. We should give it time. This House should try to---

Hon. Speaker: Yes, the Member for Balambala.

Hon. Aden: Thank you, hon. Speaker. I really want to thank the hon. Member who brought this matter to the attention of the House. I want to join him in saying that, indeed, I very strongly believe that it was a terrible mistake to devolve health services. This is one thing that needs to be brought back to the national Government.

I am saying this because this is an issue that has seen hospitals, specifically in the county that I come from – referral hospitals plus all the dispensaries and health centres – completely collapse. Cases which require urgency in terms of attention and were centrally well co-ordinated are now lacking attention. We are hearing now that TB vaccine is out of stock and this is a real threat. This is a disease in this day and age that Kenya should have got rid of.

The vaccination for polio which we used to see being conducted by the Government is no longer being conducted. Indeed, Article 187 of our Constitution allows us to relook at areas we think need to be brought back to the national Government. This is within the law. This issue of tagging people as being anti-devolution when they say that

areas that have failed in the county governments should be brought back to the national Government is not right. Health is one area that we need to bring back to the national Government.

Thank you, hon. Speaker.

Hon. Gichigi: Thank you, hon. Speaker. I would like to blame the Transition Authority (TA), which was given the mandate of midwifing the transition of devolved functions; I think it failed totally.

As we speak, we are heading to a major crisis. We call upon our President to play the leadership role in bringing together all the stakeholders in the health sector. We should have the governors, the Ministry and other stakeholders in this sector coming together and discussing this matter, so that we avert a crisis that is looming. Kenyans will suffer if we continue with the debate on who is supposed to be in charge of what in the health sector.

Hon. Speaker, recently, I went to visit a certain health centre in my place; the challenge I got was that I had done the facility but it was not getting any medicine from the county government. I think we cannot wait any longer. If we joke, we will start driving people to their graves early because of diseases that we can prevent.

I request the leadership of this country to bring together the governors and the Ministry of Health and let them work out a formula for handling the crisis that we have now. This is because if we use the legal process to take back the health functions to the national Government, it might not take us anywhere. It might also take forever. Let us look at these issues soberly. This is not an issue of who has more power than who.

Thank you, hon. Speaker.

Hon. Ng'ongo: Thank you, hon. Speaker. Whereas we can blame the TA for not acting as per the requirement of the Constitution, the Constitution has stipulated a staggered transfer of functions. Apart from that the Constitution recognizes that counties cannot be at the same level of preparedness. Therefore, something should have been done in a way that the counties which were ready would have taken over the functions which they were ready to handle.

Hon. Speaker, you remember that there was a political decision which was made at State House in a summit meeting. The President decided to pass over all the functions to the governors, and this we cannot reverse now. This is because Article 187 says that you can only reverse functions upon an agreement between the governments. So, county governments should accept that the health function should be reverted to the national Government.

However, something strikes. I think there are very many enemies of devolution. Let us face it. If there are problems in our health facilities we should look for a way of fixing them. The solution is not in reverting them to the national Government. You are talking about medicine. There were no medicines before county governments came into place. Our constituents used to go to health facilities and then to chemists to buy Government drugs which had been taken there. Telling us that we get back to the national Government is not a solution. The solution is finding what the problem is and looking for ways of fixing it.

(Applause)

If you tell some of us that you want to take money for health back to the national Government, we will not agree with you. I think we should look for other solutions. To me, the question is, where is the problem? Are we convinced, as a country, that we have allocated enough funds to health facilities?

Take the example of Homa Bay County. I was told that last year's budget was actually done by the TA and the national Government.

Hon. Baiya: Thank you, hon. Speaker. I want to go on record as saying that the blame on the TA is misplaced. This Authority was set up by this House and given a mandate. However, it is on record that before it was given the opportunity to carry out its mandate, during the Summit meeting the governors pressurized the President to effect a blanket transfer of health services. So, they are the best group to blame. They insisted that they were ready for these services, but it turned out that they were only ready to receive resources and not to deliver services.

Hon. Speaker, the way forward as I see it is that even if the services have been devolved, there were certain functions that were very key in establishing the cost of service delivery at the county. That was supposed to be done by the TA; this is with regard to costing of functions and handling of the functions. They were supposed to review the policy and the legal framework; this should have been done jointly by the Ministry, the TA and the county governments. Functions need to be facilitated and be handled expeditiously, so that we can allocate adequate resources for them. We can also establish the gap in terms of capacity of the county governments level to deliver these services.

Thank you.

Hon. Mati: Thank you, hon. Speaker. From the very outset, I would like to assert that this country is headed to a big problem. The governors have taken over and imagined themselves as the colonial governors with big fleets of cars complete with sirens. Even in places where there are no cars and there are only cows and donkeys on the road, they use the sirens.

Hon. Speaker, in my constituency, dispensaries have been closed because there are no doctors and medication. In one case, some donors decided to give medicines to some clinics but there were no doctors to administer the drugs. So, we are headed to a big problem, especially in areas of water, sanitation and health services.

Hon. Speaker, the other question is: Who is actually supposed to supervise the doctors? Is it the *Mheshimiwa* Member of the County Assembly (MCA)? We know most MCAs are Standard VIII and Form II graduates and they would like to exert pressure and show that they are in charge of those medical doctors. That has been a big problem

In marginalized communities such as mine, 90 per cent of my water facilities are down. We basically use boreholes and they have broken down. Mr. Governor is actually in charge of water and sanitation. What happens by September and October when people will not have water anywhere in my constituency? I am already begging the Ministry of Devolution and Planning to help.

Hon. Speaker, lastly, a simple thing like drought relief is not being taken care of. Food has been delivered to the marginalized communities such as my constituency, but the Governor will not make available diesel to just transfer it.

Hon. Speaker: Hon. Limo.

Hon. Limo: Thank you, hon. Speaker. This issue of health is a very serious one and from the outset, there was a big mistake in this country and we are still following the same steps. You have heard governors asking again for devolution of education. The right thing that we should have done - and we are not going to go there unless we take a very serious step - was actually to devolve infrastructure. But that service is actually a policy issue which should have been left to the National Government.

Hon. Speaker, having said that, we have seen the governors behaving like the prodigal son in the Bible. They are asking to be given all the functions in a day. So, when we hear some quarters saying that we are enemies of devolution, it is not true. The Constitution is very clear. The devolution of functions was supposed to be done in three years in phases. It is clear. But the governors have said that they want all of them in one day. Now, the baby is crying. People are not getting the real services they were looking for.

Hon. Speaker, the way out of this is for the governors to own up. The ones that are unable to run the health sector are known now. Some of them are running it well but some are not. So, the way out is for the governors to own up, follow the report of the Departmental Committee on Health in which we recommended that the counties own up and discuss with the Ministry so that they can actually revert back some functions which they cannot run.

Hon. Speaker, if we do not go to the table and discuss these issues seriously, then the problem will persist.

Hon. Speaker: Hon. Gumbo.

Hon. (Eng.) Gumbo: Thank you, hon. Speaker. What is happening in the health sector in Kenya, in my view, may amount to criminal dereliction of duty.

Hon. Speaker, devolution is a good thing. But even a good thing that is done in a bad way becomes a bad thing. Our Constitution is very clear that the right to life is one of the fundamental rights that we must enjoy. But health care in Kenya has become a preserve of the rich. Only those who can afford to access private facilities now can be able to access health care and that is unacceptable.

I think it is the duty of this House to look at the entire environment of devolution in Kenya. It was a good thing that was intended to help our people. But the priorities are upside down. Our people are not getting what they should be getting. Instead, those who are in charge of the counties are engaging in trivial things that only serve their egos and not the people they are supposed to serve.

Hon. Speaker, I have said it before and I am saying it again that it is the duty of this House, together with our sister the Senate, to relook at the entire environment of devolution so that what the intention of devolution was at the time we enacted the Constitution may be achieved, but not what we are seeing now.

I thank you.

Hon. Speaker: Hon. Irea Gideon.

Hon. Irea: Thank you, hon. Speaker. I have no issue with health services staying with the county governments. But the Governors need some speed governors. They need to be controlled.

(Laughter)

The first speed governors they have been given are the County Development Boards (CDBs). We now need to devolve the functions of the Auditor-General so that whatever those people are doing in the counties is monitored. That is because when they come to Nairobi to hold meetings in hotels here, they are spending so much money without first checking whether the audit facilities are running. Therefore, it is this Parliament and us to control the county governments through putting proper measures in their operations.

Hon. Speaker, they are misusing the funds that Kenyans are paying taxes for and it is high time that we put measures, as a House, to control various services being run within the county governments.

Thank you, hon. Speaker.

Hon. Speaker: Andrew Toboso.

Hon. Anyanga: Thank you hon. Speaker. Just to add my voice, I think what we need to understand also is that, as a nation, we have got 47 county governments and each of those county governments are having their own challenges with regard to the implementation of the health services at the county level.

Hon. Speaker, I will give an example. In my own county of Kakamega, I think the level of service delivery in the health sector is far better than it was when the service was under the Central Government. I think the challenge now is that we have got 47 institutions that do not have similar capacities to devolve a function which, unfortunately, was devolved at the same time.

Therefore I think to add to what my colleagues have said in this House, we need to relook at the whole concept of devolving those functions and go systematically based on the capacity of each county to implement the kind of services that they are supposed to devolve.

Hon. Speaker, but just to add my voice also to the state of most of the public health facilities in this country, I think it is very pathetic. That is not only the rural health facilities but even if we took a walk to Kenyatta National Hospital (KNH) today, which is the biggest public facility in Kenya, you will be shocked at the kind of situation that most of the patients, particularly in the general wards, are actually staying in.

Therefore, when we talk about the health sector not having been given enough attention, it is a fact that for 50 years since Independence, I think this is one of those sectors that were never given enough attention and, therefore, we need to relook at it again. Since health is a basic human right in our Constitution, we need to relook at the kind of structures we need to create so that we do not have a situation where Kenyans are living in pathetic situations.

Hon. Speaker: Hon. Sunjeev Birdi.

Hon. (Ms.) Sunjeev: Thank you very much, hon. Speaker. I would like to put my thoughts to this very important point. I have been listening to my fellow Members of Parliament and I am wondering whether we have a fight between governors and Members of Parliament and devolution and non-devolution. Let us get that straight as a fact.

Hon. Speaker, I also feel that, at the end of the day, sometimes, we get our priorities wrong. That has been mentioned very many times but let me state a fact.

In 1994, the Government approved the Kenya Health Policy Framework which was actually a blueprint for developing and managing health services. That policy was responding to the declining health service sector, the increase of diseases that we have in our country and the rapid population. However, when we look at what happened from 1994 to the present day, we have to see and accept that we went wrong somewhere.

So, whether it is centralization, non-centralization, devolution or non-devolution, as Members of Parliament, we have to get it right and right now. I also feel that the health sector is not the only sector that we are going to go wrong. The other sectors are also going to follow suit. In a matter of a very quick time, we are going to talk about others sectors that are going to go wrong.

Hon. Speaker, with those few words, I want to thank you very much for this opportunity.

Hon. Ogolla: Thank you, hon. Speaker. I want to say that we have had quite a bit of false starts, wherever there have been direct transfers or quick transfers of functions to the counties. But I wanted to draw the attention of the House to a provision of the Constitution that I want to believe, if we are not careful, it is Parliament that is going to be blamed at one time or the other.

I wanted to draw the attention of the House to Article 190 of the Constitution, if others will bother to listen. Article 190(3) of the Constitution says:-

“Parliament shall by legislation provide for the intervention by the National Government if a county government is unable to perform its functions.”

Hon. Speaker, if you would allow me to repeat that, such that we are on one slate, that is the provision of the Constitution for the purposes of intervention. “Parliament shall by legislation”, meaning it is us who have not acted as Members of Parliament. It goes on to say, based on that, the legislation can authorize the National Government to take appropriate steps to ensure that the county governments functions are performed, and in Article 190(4)(b) if necessary, to assume responsibility for the relevant functions.

The whole idea of going back taking some of the functions to the National Government or a lot of suggestions that are coming up in my view, I think, Parliament needs to come up with legislation as it is provided for in the Constitution, that can help us quickly answer some of those problems that we have.

Thank you, hon. Speaker.

Hon. Speaker: Very well. That is sufficient explanation. Hon. Members, I had allocated only thirty minutes and they are over. We must proceed, of course.

Next Order!

BILLS

First Readings

THE COUNTY GOVERNMENT (AMENDMENT) BILL (SENATE BILL NO. 1 OF 2014)

THE COUNTY GOVERNMENTS (AMENDMENT) (NO.2) BILL
(SENATE BILL NO. 2 OF 2014)

POLITICAL PARTIES (AMENDMENT BILL)
(SENATE BILL NO.3 OF 2014)

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL
(SENATE BILL NO. 2 OF 2014)

*(Orders for First Readings read - Read the First Time and
ordered to be referred to the relevant Departmental Committees)*

Hon. Speaker: Just a minute. Hon. Members, those of you who may have come after I have given my Communication relating to those four Bills from the Senate, it is important that the two Departmental Committees to which these Bills will now stand committed to; that is the Justice and Legal Affairs and Finance Planning and Trade, follow my Communication to the effect that in considering those Bills, it is advised that you have meetings with the Budget and Appropriations Committee to see whether or not some of them touch on the provisions of Article 114 of the Constitution, relating to Money Bills and which may depend on what the Budget and Appropriations Committee may decide. That is because the Constitution provides that Parliament will only proceed in accordance with the advice that comes from that Committee. There is a chance that some of them may very well have some implications on Article 114 of the Constitution.

Next Order!

Second Reading

THE PROTECTION AGAINST DOMESTIC VIOLENCE BILL

(Hon. Chepkong'a on 19.8.2014)

(Resumption of Debate interrupted on 19.8.2014)

Hon. Speaker: Hon. Members, the last contributor yesterday was hon. Mbarire. She has a balance of one minute. If she is in the Chamber, she can make use of it. Hon. Mbarire, not being noticed either physically or through the equipment, forfeits her chance to complete her contribution.

The Leader of the Majority Party.

Hon. A.B. Duale: Thank you, hon. Speaker. I waited for this moment to go on record on this Bill, the Protection against Domestic Violence Bill of 2013. This Bill ideally wants to recognize domestic violence in all its forms as unacceptable behavior in society. That position I support. But in a country where we believe in the Almighty God and coming from a background of a political party that believes in family values--- All republican parties believe in family values. Domestic violence of any form should not be entertained and should be a thing of the past. This Bill talks about the interventions which have been provided for in order to reduce and prevent violence in domestic

relationships and to ensure that domestic violence does not occur. There is an effective legal framework to deal with this, and there is a relief for the victims.

Hon. Speaker, if you look at Section three of this Bill - and that is where I read last night and realized that unless the Justice and Legal Affairs Committee and Members of Parliament of this House brings serious amendment to this Bill, I am not going to support it in its current form. I want read what is in this Act or law and I want Members to hear me very keenly. In this Act, violence means the following: Child marriage - I agree with that. Female genital mutilation - already, there is a law we have passed in this House that deals with it. Forced marriage - I agree. Forced wife inheritance - I do not know where it happens in the world. In fact, wife inheritance in the African context, it does not happen by force. It takes place in a time and a situation where you need to take care of the kids of your brother. The essence of inheritance in the African context, or society is to make sure there is a transition of the deceased family in a way. So, there is no forced marriage.

(Loud consultations)

Hon. Speaker, you need to protect me because I have the Floor.

Hon. Speaker: Hon. Members! Hon. Members! The Leader of the Majority Party will be heard in silence and those who have issues can raise them when they get their chance.

Hon. A.B. Duale: Hon. Speaker, I am speaking for many people both inside and outside this House. I have been married for 14 years. I have a very good relationship with my in-laws. Why should this House create a law---

(Loud consultations)

Hon. Speaker: Hon. Members, I will look with disfavour any behaviour that is un-becoming. Let every hon. Member say what they must say. The habit of wanting to answer one another as one contributes to debate is reducing the dignity of this House.

Hon. A.B. Duale: Hon. Speaker, I was going through what “violence” means in this Bill. It says “interference from in-laws”. This is very un-African. In the African context, you must have high regard for your in-laws. Why do you create a law to punish your mother-in-law and your father-in-law? Those are the grandparents of your children. We are talking about the father or the mother of your wife or husband. This particular provision is un-African.

In this Bill, there is something called “widow cleansing”. I do not know what “widow cleansing” means. The Committee must do a Report to this House to explain what “widow cleansing” means. The Bill also talks about damage to property and economic abuse. So, if your husband or your wife asks for an airtime of Kshs200, and you do not have it, it becomes economic abuse. You are taken to court.

Hon. Speaker: What is your point of order, hon. Fatuma Ibrahim?

Hon. (Ms.) F.I. Ali: Hon. Speaker, I am really shocked by the level of ignorance of the Leader of the Majority Party---

(Laughter)

Hon. Speaker: You are totally out of order! I will not sit here and allow people to insult one another! You must withdraw that and apologize!

Hon. (Ms.) F.I. Ali: I withdraw, hon. Speaker.

Hon. Speaker: I told you to withdraw and apologize.

Hon. (Ms.) F.I. Ali: I have withdrawn, hon. Speaker.

Hon. Speaker: Hon. Fatuma, I have directed you to withdraw your remarks and apologize, for the third time!

Hon. (Ms.) F.I. Ali: Hon. Speaker. I withdraw and apologize.

Hon. Speaker: Proceed, Leader of the Majority Party.

Hon. A.B. Duale: Hon. Speaker---

(Loud consultations)

Hon. Speaker: Hon. Members, we must maintain the dignity of the House!

Hon. A.B. Duale: Hon. Speaker, I represent the great people of Garissa. I am sure that there are many other constituencies I represent on this matter, and, more so, in the Rift Valley, Luo Nyanza, North Eastern, Western and Central regions – and particular counties. How do you define “economic” abuse as a form of violence? We do not want to create laws to manage our bedrooms and sitting rooms. We have more serious issues to do with terrorism, food insecurity, the devolved system of government, among others.

In this Bill, violence is defined as “emotional or psychological abuse”. Let me know the emotional bit of it. Of course, people do cry. When you sit with your other half and say good words and that person gets touched and emotionally breaks down, would it be an offence? The Chair of the Committee must address such aspects. There is also the aspect of intimidation. As you carried yourself to your bedroom, you meet your wife and she says: “The way my husband looked at me, that was intimidation.” On that basis, you go to jail.

During the Committee stage of this Bill, we must bring relevant amendments. We want to create a law to deal with those who perpetuate domestic violence. But we must not extend the net to catch innocent people like hon. Duale and hon. Jakoyo, just because the way we look can be intimidating. We might not have the cash and you ask for some economic empowerment. I tell you: “I am chasing my mileage claims in Parliament. Can you give me seven days?” That will take you to jail.

Hon. Speaker, there is something called “verbal abuse”. There are communities in Kenya, depending on---

Hon. Speaker: Hon. Members, you notice that I also have a lot of interest in this Bill.

(Laughter)

Hon. Speaker: That is because it is an important Bill. So, allow everybody to express themselves. So, if somebody says something you do not agree with, do not bother raising a point of order. You will also have an opportunity to give your views.

Hon. A.B. Duale: Hon. Speaker, a nation is defined by the family unit. This Bill concerns the family unit. A nation that does not believe in the values of the family and the family unit does not exist. If you read the Bible and the Quran, you will appreciate that nations which played around with family values were destroyed. We do not want the Kenyan nation to be destroyed. This is a nation which believes in the Almighty God. Some of the things that we want to create through legislation can be solved through our holy scriptures and through our cultural traditions. Is it just because we want to ape the western style of legislation? We should be very careful about how we create laws for the bedroom, the sitting room and the family. We must not play around with family values.

Every community in this country has some very unique characteristics on how to deal with the family. We might think we are making this law to stop domestic violence – which I abhor and which we must fight. But this law might create upheavals in families. I am happy that the great Bishop on the other side of the House is nodding his head. He is a man of God. He understands what we are talking about. We must go and talk to Bishop Mutemi and the many sheikhs who are in this House, so that we can balance between the African traditional cultural norms and our religions.

Hon. Speaker, in conclusion, there is something about stalking and verbal abuse. As the Member for Garissa Township, I will definitely bring a raft of amendments to this Bill. Clause 41 says where a victim of domestic violence suffers personal injuries, domestic to property or financial loss as a result of domestic violence, the court hearing a claim for compensation may award such compensation in respect of the injury or loss incurred.

As much as we want to make this law, we also need to go back and ask ourselves one million questions. Are there other avenues that we can use to reduce and control domestic violence? We want harmony in our families. We do not want to use courts and jails to deal with societal issues. Societal issues must be dealt with elsewhere. In this House, we have one of the most respected elders from the Western Kenya region, namely, hon. Wangamati. I am sure that he is shocked. He must call a *kamukunji*, in consultation with the Bishop, with a view to bringing sanity to this House.

Hon. Speaker, this Bill must be amended. We must bring a lot of practical amendments.

With those remarks, I beg to oppose this Bill in its current form.

Hon. Speaker: Hon. Jakoyo Midiwo, if you are going to speak in your capacity as the Leader of the Minority Party, you have a maximum of 15 minutes.

Hon. Members, these are things you must be familiar with. You know, you are not equal. You are limited to 10 minutes. He is limited to 15 minutes, just like the Leader of the Majority Party.

Hon. Midiwo: Thank you, hon. Speaker, for giving me this chance. The last time hon. Members contributed to a Bill of this nature; we got a lot of ignorant noise and bashing from outside Parliament.

But we have a duty and responsibility to talk and say our minds when we think something is wrong. It would be prudent to tell hon. Members to utilize their time in committees correctly.

Hon. Speaker, this Bill has a few good things in it. But it has majority bad things in it as well. I want to tell you that there may be a few but very grave consequences and

we cannot do a Bill for or against individuals. It would have been good for this Committee--- They still have a chance to come up with things that prevent domestic violence; things that teach our children values.

Hon. Speaker, I would be in support of a Bill in this House which proposes a curriculum change to teach our boys and girls good attitudes and respect for the other gender. We should teach our children good morals. We are not doing that in our schools.

In fact, a lot of things we see on the streets are perpetuated by people who have never been told what is right and what is wrong. But, more so, there are many parts of this country which may have repugnant cultural practices, but may not be as bad as here.

I even want to go further and propose that each county needs to come up with its own Bill on this subject. That is because what happens to men in Nyeri is not what happens to men in Garissa.

(Laughter)

It is true. What happens in Nyeri is not what happens in Gem. I cannot pass a law that will go and hurt the people of Nyamira County; even if those things do not happen there. Therefore, it is important to know the cultural practices of certain counties. I know where this is headed to. This is how you pass a law to correct something small but you hurt something big. We shall not accept that. We should sit down and I am sure our good Speaker will call a *Kamkunji* and we talk over this matter. We will tell you that this cannot carry water where we come from.

If you talk about emotional abuse or psychological abuse--- For example, if you were in your house for a moment and your opposite was in her bad days, you will find that she is not talking to you. Therefore, you would know that you will not take fish that day and she does not care. Would I accuse her for domestic violence?

(Laughter)

This law can go either way. Any man or any woman who is here knows our opposites are quite often in bad moods. You cannot predict them because when you go home--- There are very few days you would find her in good moods and I agree with hon. A.B. Duale - like this one. But on some days, we talk here and I go home tired after having quarreled with hon. A.B. Duale and I want to sleep--- I can be sued for domestic violence.

(Laughter)

When you live with your mate, you should know that you are not twins. The only reason you live together is because you are not even related. That is how you can do those things. That is the only reason.

Hon. Speaker you cannot make a Bill that is fake and somebody can take it to court. You do not know who will be sitting on the bench to try to prosecute you for a crime that you did not even know it existed. Therefore, it is important that if we want to make a law and we want our society to be a society where people respect either gender---

I want to plead with our lady colleagues that we have tried. I have been here when there were no women in this House. Now, we have almost 60 of them and we are all here and the number is increasing. Therefore, you cannot use the numbers we are adding you to hurt us. We cannot allow you to do so. Therefore, it is very important that it is known that we are a Kenyan society; but we are not yet a nation. Any Bill that will destroy the fabric of our nation is one that we cannot accept. This is not America; it is not England. We cannot live like that.

Hon. Speaker, I lived in America and when I was there, a Bill was passed. That Bill was not implementable; that, if you look at a nicely dressed woman and if she does not like you looking at her, that is a crime of sexual harassment. Therefore, how are we going to meet women if when we see a good one, it is taken to be sexual harassment?

Hon. Speaker, our children need to reserve that right because it can go either way. Let me tell this House one thing through the Chair. Nowadays, around Nairobi, there are very many women who are liberated and they have a lot of money. But their preference is not old men like us. They are going after our sons.

An hon. Member: Name them!

Hon. Midiwo: I am giving you an example. I am not naming anybody.

(Applause)

Therefore, it comes a time when, as parents, you are offended by that free fall of society. There are some people in society - just because they have money and might - they are doing anything. They know their colleagues have expanded numbers here and they will come and pass a law and you cannot question those things. We cannot agree to that. Some of these things are different from tribe to tribe in this country. Some of the things they are defining here are so different and you cannot leave everything to the interpretation of the court. You cannot!

Hon. Speaker, having glanced through the Bill the other day, I saw even when they want somebody who is accused to be put in confinement until the law enforcement officers come there because there can be an aggressive partner, what about if they were living in a nine by nine and six people are living in that house? Where can there be isolation? Where can you create a place to isolate somebody? We are creating room where we are handing our families to actions of police and the court and we are not telling Kenyans anywhere that, please, respect our values. Let us respect them.

Hon. Speaker, it is even fake to talk about economic abuse. You know and I know that in many cases, people who have money live under a lot of threats. This is country where multiple marriages are even allowed. Therefore, economic abuse could even be trying to support your other family. It can be and it may be legal in your culture.

Hon. Speaker, I want to plead with this House that we use our time correctly. We should all agree that we must protect the rights of a woman and the child. We must protect the sanctity of marriage, but we must do it by not abusing our right to be here. Many a times, when people have made laws, they have always come back to regret. This can go either way. When we are making it, let us do it and keep it at a level where we want to keep our families together and not to break them.

Therefore, in this form, I oppose this Bill.

Hon. (Ms.) Emanikor: Thank you, hon. Speaker. I rise to support this Bill. With all due respect to my two leaders who have spoken, they are welcome to bring their amendments. It is not like this House is fighting. There is a fight between men and women and we need to identify the good things in the Bill. One of the good things is that this Bill protects husbands, wives, children, house-helpers and relatives who live in that house. This Bill recognizes domestic violence as unacceptable and an injustice that needs intervention and redress. It is a good thing. It recognizes domestic violence as a social problem that requires interventions and deterrent mechanisms. Those are the strong points of this Bill that we need to build on. This Bill is anchored on the Kenyan Constitution. It is anchored on the longest Chapter of our Constitution; the Bill of Rights. It is anchored on Article 53 on the rights of the child. These are good things that we need to look at as families that we need to take care of. The Bill provides for special training for police officers on handling domestic violence and family-related feuds.

In the past, and I know in my Turkana County, where we have many cases of domestic violence, most of the times, the police refer victims of domestic violence to the chiefs, who in turn collude with the perpetrators of domestic violence. This Bill gives the victim a right, be it the husband or wife, to choose who to lodge the complaints to, so that we can reduce the number of cases of people being scorned, mocked or being made fun of at the police stations.

I wish to appeal to my colleagues in the House that we should look at the amendments that we want to move, the definitions that we need to make and the various forms of violence in this Bill and see what we can keep and what we can negotiate to remove. The Bill is good and I support it.

Hon. (Ms.) Ghati: Thank you, hon. Speaker. From the outset, I wish to say that I support this Bill. This Bill has the best interest of our families at heart. It is unfortunate that every time we are talking about social issues, it appears in this House that it is a battle of the sexes. This is not a battle of the sexes. It is a battle of correcting where we have had injustices in the past. It is about putting measures and legal frameworks in place that are going to protect our families and our children's families and generations to come. This Bill is looking at violence on a wider scale.

(Loud consultations)

Hon. Speaker: Order, Members! Hon. John Mbadi and company, please, we must hear hon. Denittah Ghati.

Hon. (Ms.) Ghati: Hon. Speaker, I want to mention that we are protecting not only the females in this country, but also the males. It is apparent and common sense that when violence occurs in the House, it is not only violence against women. It is a fact that even in this House, there are distinguished Members in this House who are facing abuse, who are of the opposite gender. It is not that every time we have a Bill that is seeking to correct injustices, we have Members of the opposite gender up in arms. We need to look at the bigger picture. This Bill is looking at violence on a wider scale. Communities that traditionally practice the female genital mutilation, which is outlawed, do not know that it is a form of violence. This has been outlawed in the Constitution and yet, we find

communities in this country that are still practicing female genital mutilation. That is violence. That is a point that I find very strong in this Bill.

There is nothing wrong in this Bill because it is seeking to put up shelters. We should look into issues of ensuring that in each county, we are instituting and coming up with temporary shelters where victims of abuse can stay temporarily. This Bill is seeking to ensure that victims of violence, whether male or female, access psycho-social and legal support. Those are some of the things that traditionally have not been there. Other structures have not been identified, which go very much into helping the victims of violence to recover.

I am looking at this Bill as a Bill that is very exhaustive. It is seeking to protect our homes and children. I want to urge the Members, especially the male Members of this House, because we have a tendency where every time we have a Bill that is looking at social issues or family support, we have male Members who, at all the time – and we know some of them – will obviously be there to shoot down a Bill that is in the best interest of this country. So, I want to urge the Members to look at this Bill from a very objective and sober perspective, so that when we are moving forward, even if we are going to bring amendments, they are amendments that are meant to protect our families. This Bill recognizes the family as the most fundamental unit of the society.

Let us look at this Bill not as a battle of the sexes, but as a way of ensuring that we have the best interest and legal frameworks that are going to help our families move forward.

I support the Bill.

Hon. Speaker: Hon. Gichigi!

Hon. Members: No!

Hon. Speaker: Hon. Members, you are encouraged, when you get into the Chamber, to place your card. That is what I am following with the exception of the leadership. I know who is coming next because you are on top. But do not worry because you are on top.

Hon. Gichigi: Thank you, hon. Speaker, for giving me this opportunity to contribute.

Hon. Speaker: Hon. Members, there will be Members from this side and the other side and Members from both genders.

An hon. Member: Youth?

Hon. Speaker: We do not have youths. There will be persons with disability. Okay, there will also be youth. Proceed!

Hon. Gichigi: Hon. Speaker, they are eating into my time!

Hon. Speaker: Proceed!

Hon. Gichigi: Hon. Speaker, like my colleagues who have spoken before me, when it comes to the Third Reading of this Bill, we are going to pass an amended Bill. This Bill has very good issues. The sections that give support to the victims of domestic violence, we must make sure that we do not lose them. Let us give that victim a haven; somewhere to go and get shelter when things go wrong. We all know what is happening in this society. Family members are murdering each other and grievously harming each other. So, it is important that we ensure that, that support system that is intended to be created by this Bill is kept alive.

I am hoping that the relevant Committee and the people who appear to be very jittery on the issue of this Bill will come up with the necessary amendments. If they do not come up with those amendments, clearly the mood in this House is that this Bill is going to die.

So, let us remove the 75 per cent part of this Bill which is bad and retain the 25 per cent that is actually good.

Hon. Speaker, this House is not the House of Congress of America. This is a Kenyan House. We must make sure that we do not import certain laws from abroad, word for word, thinking that they are going to fit the context of this particular country. Further, it is important that we do not create conflicts of law. What am I saying? There are so many laws that have criminalized female genital mutilation and sexual violence. We have criminal laws that are dealing with this. Let us not, without amending the other laws, add another law that is in conflict with what is already there.

I am hoping that I am going to see an amendment that is going to deal with what is creating domestic violence in this country. Hon. Members, when your kid--- Like now they are on holidays. When we leave them at home, what is it that they are watching? They are watching violence and nudity from morning till they go to sleep. In fact, you have to chase them after about 10.00 p.m. and tell them that those movies are not for kids. So, the truth of the matter is that they end up adopting the violence that they see on TV. They take those fellows and actors as their role models. So, what is wrong? If the kid saw somebody being strangled and the person who did it emerges as a hero, why would they not repeat it when they grow up? That is what is happening. Let us deal with the problems in this particular Bill. What is happening to that child?

When I came to Nairobi for my university education, I met some fellows in the streets. There were children and something was disturbing me. I was asking myself: "The kid we are leaving on the street, when they grow up, what are they going to become? Are they going to become ordinary citizens of this country? What did we do for them?" We could collect them and throw them away from town and within a week or so, they would be back. Those are the people who are giving us serious problems. Those are the issues that this Bill should be addressing. Just forget about calling your in-laws. I am meant to understand that there were serious issues when this matter was before the relevant Committee. Let us not call our in-laws and criminalize the relationships. Let us not criminalize every other thing that is happening in the house. I do not think people get married to become enemies. They get married to become friends. If we have challenges in that relationship, let us not always come up with a law to deal with that particular issue. There are very many things in this country that we cannot create a law for. So, I would suggest to the Committee to remove the criminal aspects in this law and put them where they belong - in the other criminal laws that we have in this country. Leave the supportive system that this legislation attempts to create to give assistance to the victims of domestic violence in this country. So, while I support the 25 per cent, I am saying and I will repeat what others have said - that if the 75 cent that is wrong is not dealt with, I will be shouting the loudest to oppose this Bill.

Hon. Speaker: Hon. Members, for the guidance of the House, it is true that we need to make full use of our Committees. So, even as we debate this Bill, we are obligated to look at the Bill in its original form and as proposed by the Committee. There

is a Committee report. Even as we speak, it is fair to make comments on what the Committee has proposed because if you keep harping on things which the Committee has proposed to amend, it is like we are marking time. So, even as you debate it, make reference to the Report of the Departmental Committee on Justice and Legal Affairs because some of the things that I have seen hon. Members terming as obnoxious, the Committee has expressed itself on them and proposes amendments thereto. This is so that if we are still talking about them, it is like we do not know – and it is your Committee – how much work it has put into this.

An hon. Member: On a point of order!

Hon. Speaker: There cannot be a point of order after I have made my remarks. You are out of order.

Hon. Mulu: Hon. Speaker, thank you for giving me the chance to add my voice to this Bill. From the word go, I want to say that it is very difficult to support this Bill unless amendments are made. But, at the same time, domestic violence is a reality that we are living with. So, when I look at this Bill, there are some good clauses which need to be supported, before I talk about what I cannot support. The whole idea of shelters or safe houses is good, bearing in mind that we have witnessed domestic violence as hon. Members. At the same time, under Clause 8(3), there is a proposal in this Bill that we need to do much in terms of public education and creating awareness on domestic violence. This is very important because it is going to protect or deter in future a situation where people will engage in domestic violence without considering the disadvantages of it.

There is also another clause that is good in this Bill, and it where those who are going to go an extra mile and inform the authorities that certain families are engaging in domestic violence are protected such that they cannot be taken to courts and harassed because they have given the information. That is important. You may realize that your neighbours are suffering but you cannot say so because you do not know whether, after saying it, you will be harassed. Another important clause is the issue of counseling and reconciliation in a situation where domestic violence is evident. We are saying in this Bill that we need to give a chance to counseling and reconciliation where the two are not in agreement. This is the way to go; that other than taking people to court or to shelters, if we can talk to the two parties; the men and women, then it will be easier to resolve those issues. The reason why I am saying this clause is important is because domestic violence has a very negative impact in terms of economic stress to children. It also has very emotional issues to do with children and encouraging counseling and reconciliation will solve this problem.

At the same time, I think there are some very bad clauses in this Bill. I want to start with Clause 6 which gives the police a lot of powers such that they can come to your house and harass you without any warrant. I am imaging a situation where we are having an exchange with my wife and the policeman walks into my house and says we are behaving as if we are likely to engage in domestic violence. On the basis of that, they will take me to the cells and you do not know what will happen after that. They can also come and take your wife and tell her: “You are behaving as if you are almost attacking your husband.” They will go with her until the next morning. Those are very dangerous things. So, those are some of the things that must be removed from this Bill. There is also the

issue of cold war. You know that in domestic matters, it is very difficult to legislate. You might decide by choice that the whole of this week is nil by mouth; you are not talking to each other. So, I do not whether, if you make that decision, you will be taken to court because you are not talking. Sometimes, you want to reflect on the whole issue and see whether you had to talk or not. What we call the “cold war” is not captured in this Bill and we need to capture it here. If you go and you are told that for the next two weeks you cannot enjoy what you paid to enjoy, it becomes very tricky.

Hon. Speaker, in the Kamba culture, there is nothing like sexual harassment when you are dealing with a wife or husband. When you pay the three goats, you are given 100 per cent authority to engage in that act without any question. In a situation where you behave otherwise, your in-laws are likely to take you for granted. That is because the first reason you marry, to us, is what we are calling sexual abuse. There is nothing like “sexual abuse” between a husband and wife. Children come after you have married and you have gone through other things. To us, we cannot term sexual abuse as violence.

I wish we could all go by what the Bible says. Ephesians 5:22 simply says: “Wives, submit to your husbands.” Ephesians 5:25 says: “Husbands, love your wives.” On a serious note, if we get that simple verse in the Bible and adhere to it, we would have done away with domestic violence.

I plead with my colleagues in this House that, other than saying we take people to shelter houses or courts, we should encourage our daughters and sons to adhere to the Bible. I am imagining that the Quran and other religions must be having a verse like that. If we do that, we will help this country.

Hon. Speaker, I think we need to come up with a clause which takes care of cultural exemptions. That is because we all come from different cultures. In some cultures, it is a demonstration of love when you do a bit of beating to your wife.

Hon. Members: Yes!

Hon. Mulu: Hon. Speaker, if you do not do it, you are seen not to love your wife. So, we need some exemption to that to some extent. We need to accommodate culture so that it is a balance between culture and the legal framework.

Hon. Speaker, I want to conclude by saying that if we take care of the issues I have raised in terms of what I think is not good for this country, I will be supporting this Bill. I will be doing that because I am a father of two sons and two daughters. So, I want them to enjoy the marriage institution when they get married.

Thank you, hon. Speaker, for giving me this chance.

Hon. Speaker: Hon. Members, do not waste your time merely because you think that somebody has said something you do not like or agree. You want to pretend that you want to rise on a point of order. You can quote the Quran, the Bible and whatever book. If you practice Hindu, you can quote anything from a shrine in your village.

Proceed, hon. Kajuju.

Hon. (Ms.) Kajuju: Thank you, hon. Speaker. Let me start by honouring the men who are supporting this Bill.

(Applause)

That is because this Bill is good. It is this Eleventh Parliament that has taken the bull by its horns by legislating on marriage or marital issues.

Hon. Speaker, it has been said by the speakers before me that this Bill is legislating for the bedroom. Nothing could be further from the truth because the bedroom is where we enjoy many rights which are enshrined in our Constitution.

However, while we are enjoying these rights in the bedroom, we are also entitled to be protected when they are being abused in the same bedroom that we are supposed to enjoy these rights.

It has been said that this is a law that does not uphold family values. However, when we are talking about domestic issues, we forget that we are not referring to women only. This is a law that refers to a woman, a man, a child and to a larger family that is beyond the nuclear family.

Hon. Mulu has said that he has daughters and most of us here have daughters. We also have mothers. As we legislate on this law, let us not think about the wives whom we subject to cold war. Let us think about our daughters, our sisters and our mothers.

Hon. Speaker, laws are not made for tribes. It has been said that in some tribes, we are entitled to enjoy certain abuses like sexual abuse. However, there is no law in Kenya that has been made because it takes into account any tribal inclination. In fact, the Constitution says that any customs or any customary practices that are repugnant to justice and morality and are inconsistent with the Constitution should not be upheld.

So, I beg hon. Members to note that this is not a law that is supposed to take into account our tribal inclinations. This law is not meant to destroy the fabric of society. In contrast, it is supposed to uphold the morality of the society.

Hon. Speaker, if you look at the interpretive section of this law, you will find that it is stated so that it can avoid ambiguity. Most of the definitions in this Bill will assist us to know what exactly violence is and what is not.

Hon. Speaker, as you properly guided this House, if this House looks at the proposed amendments by the Justice and Legal Affairs Committee that are annexed to this Bill, they will know that we had hon. T.J. Kajwang', hon. David Ochieng and hon. Peter Kaluma who came out strongly to propose amendments to this Bill. The Committee agreed with them. That is why there is a report that is annexed to this Bill on the proposed amendments to the Bill.

I will go to the beautiful Sections of this Bill. Under Section 3 of this Bill, we have in the Children's Act the rationale that the best interest of a child must be taken care of. What we have done in this Bill is to borrow what is provided for, for the best interest of the child in the Children's Act and put it in this Bill. That is so that if a child is exposed to violence within a domestic arena, then the best interest of that child must be taken into account through the operationalization of this law.

So, as we speak about domestic violence, we are not making this law because we have many numbers in this House as it was said by an hon. Member and protecting ourselves. I can protect myself without any law but I am talking about the village woman who is in Meru County or who is in the rural area who needs to be protected by law. I am also talking about a woman in Nyeri County as it is being said. That is what we are doing. We are not making a law for ourselves. We are making this law for posterity.

Hon. Speaker, there are very many other provisions that are good in this Bill. One of them is on the issue of protection orders. The circumstances under which protection orders can be granted are very well enumerated in this Bill. These apply across the board. That is both to the man and to the women. So, this is not a law for the woman as it was said before.

There is the establishment of safe houses and shelter for victims. When we talk about a victim, we are not thinking about the woman only. We are thinking about a man and a woman who needs protection. If safe houses are established, they will take care of both genders.

Hon. Speaker, you will find that Section 41 has been challenged thoroughly by the Leader of the Majority Party, hon. Duale, stating that compensation to victims should not be stated in this Bill. However, in accident claims, persons who have suffered through a road accident are awarded damages in a court of law because they have suffered an injury due to a road accident.

Hon. Speaker, what we are saying is that domestic violence is violence that is inflicted upon a person intentionally. So, we are saying if you inflict domestic violence to your spouse who has submitted to you and who loves you according to the book of Ephesians as stated by the hon. Member, then it is only right that you are forced by the law to repay that person damages for the injury that you have caused that person.

Hon. Speaker, so the best thing is to have a law that protects this person and compensates you in the unlikely event that you suffer that injury. Nothing is bad.

Hon. Speaker, in the Penal Code, people are normally charged with robbery with violence. If you are charged with robbery with violence under Section 296(2) of the Criminal Procedure Code and you are found guilty, the court is duty bound to condemn you to death.

Hon. Speaker, nothing in this Bill proposes that if you are found guilty, you are condemned to hang. It is only saying that there is a penalty if you are found guilty for such an offence.

Hon. Speaker, so, if we are able to accommodate the Penal Code and the Criminal Procedure Code, I do not see what is wrong with us now accommodating this Bill that is supposed to protect the very people that we purport to love.

Hon. Speaker, it has also been said that we are trying to legislate on economic abuse. We are not because hon. Midiwo submitted that if you refuse or if you go and give money to your other spouse in a polygamous marriage, then it means that you have failed to provide for the other spouse. However, polygamy is recognized. We just passed a Bill called the Marriage Act.

Hon. Speaker, so, I cannot accuse you for providing for the other spouse if I chose to be in a polygamous marriage. If I want you alone, I will go under the Christian marriage.

Hon. Speaker, therefore, this is a very good Bill. I pray for my brothers to specifically and kindly support. If you do that, then you will be doing it for your children, sisters and mothers and for the lives that are going to be there in future.

Thank you, hon. Speaker. I support this Bill.

Hon. Speaker: Very well. Except, of course, to just make a correction that Section 296(2) which you referred to is not in the Criminal Procedure Code. It is in the

Penal Code Cap.63. That is what you intended to refer to. Hon. Leader of the Minority Party.

Hon. Nyenze: Thank you, hon. Speaker for giving me this chance. I think this is a very important Bill – The Protection against Domestic Bill, National Assembly Bill No.28 of 2013 and I think all of us need to support it and there is a reason for this.

(Applause)

Domestic violence is a serious problem all over this country and we have to address it squarely without beating about the bush. It happens to men and women. It is not specific to one gender and we have to address it squarely. This is a very good Bill and I thank that Departmental Committee on Justice and Legal Affairs because it has taken the challenge to face it squarely.

Hon. Speaker, if there are some small issues which cannot be addressed by the existing legislation, we can always address them. However, what I want to say is that apart from what I have heard about marital rape, because I did not know that there could be marital rape in marriage, all the others are okay.

An hon. Member: What is marital rape? How is it done?

Hon. Nyenze: Marital rape is where there is no consent.

Hon. Speaker, I want to say that children suffer a lot in homes and most of those cases are never reported. Even women suffer everyday and especially rural poor women and it is never reported. If it is reported, it is to the elders and the chiefs and it dies out. That suffering has been going on for a long time and it has to be addressed.

Hon. Speaker, in most African societies, male domination has, sort of, distorted the way we treat women and this Bill comes in place to address those historical and cultural practices that have led those male-dominated African societies to this extent where people suffer in homes in silence.

Hon. Speaker, before I rose to contribute to this Bill, a Member seated next to me, Eng. Gumbo, was telling me that the other day, he had to take a colleague hon. Member of Parliament home because his wife could not open the door for him and yet, this is a National Assembly Member.

(Laughter)

So, we cannot trivialize such an important thing. If a legislator – someone so important has to be driven to his home so that his wife can open the door for him, does that not affect men and women? So, it is something that affects all of us. Let us face it squarely.

Hon. Speaker, I just want to say this: The Government, through various surveys, has put domestic violence at between 44 per cent and 83 per cent. So, it is very common and I would want to say that the Bill in Clause 16 provides that the court may direct the parties to participate in counseling and reconciliation.

Sometimes, as hon. Makali Mulu said, some of those issues deal with our culture and traditions and when you introduce the western kind of law into it, it complicates

things. However, the best way forward would always be through such a mechanism whereby you can bring those parties together to reconcile and so on.

Hon. Speaker, in many African traditions, marriage is not between man and woman alone. It is between communities. We marry from you. You marry from us. We develop a relationship and marriage is not owned by two people. So, it has to be treated squarely, taking into consideration those other underlying issues of culture and tradition.

Hon. Speaker, I also want to say this on marital rape, because that is the only thing that I had a bit of concern about. But it can be addressed. Although hon. Members are saying that it is not there, but I think there can be marital rape if the wife does not consent or the husband does not consent.

Hon. Members: In Europe.

Hon. Nyenze: Not in Europe.

Hon. Members: Where?

Hon. Nyenze: Even let us say---

Hon. (Ms.) Odhiambo-Mabona: *Sema.*

Hon. Nyenze: Thank you, hon. Millie.

(Loud consultations)

Hon. Speaker: Order, hon. Members. Allow the hon. Francis Nyenze to make his point.

Hon. Nyenze: Thank you, hon. Speaker. In African traditions---

An hon. Member: On a point of order, hon. Speaker.

Hon. Speaker: Hon. Member, there is nothing out of order. The hon. Nyenze is expressing his opinion about those mutual consents.

Hon. Nyenze: Hon. Speaker, the line could be very thin between consent and marital rape and this Bill can only address that because as I listened to hon. Makali Mulu saying that there is nothing like that in marriage. However, in modern societies where we have our children, there has to be consent. You cannot rely on tradition to punish your wife or make advances when she is not ready for you.

(Laughter)

You have to talk and agree and it has to be two consenting adults. It is not because you paid some goats or because you bought her a car that you are doing your duty; it has to be through consent. You have to be---

(Loud consultations)

Hon. Speaker: Hon. Members! Hon. Members allow the---

Hon. Nyenze: Hon. Speaker, you can protect me, so that I can make this point because it is very important.

Hon. Speaker: Hon. Members, we agreed that you let everybody say their bit, even if you do not agree. If you do not understand this language he is using about consent, approach him quietly, he will explain.

(Laughter)

Proceed, hon. Nyenze.

Hon. Nyenze: Thank you, hon. Speaker. Most of this domestic violence has been contributed by drunkenness, the use of drugs and also the high cost of living. A friend of mine told me that love is a four letter word. So long as you cannot provide, it will not last, and I thought about it. Love is a four letter word, if you cannot provide you may miss some things.

(Laughter)

So, what I am saying is that the Government can try to reduce the cost of living through reducing VAT. Removing VAT from these goods, so that young men can take them to their families. Their wives will be happy, the men will also be happy so long as they can provide. Domestic violence will reduce. The cost of living is making many families break. Today, if you go to my village you see so many young people; they wake up early in the morning and go to the shopping centres just to sit there. Then you wonder why they do so. It is because it is dry and they have nothing to do. But, in the evening, the children and the wife will require food and they cannot provide. When they go home, they have no food for their families and themselves. They have nothing and still are required to perform their duties. It cannot work. So, it is also good for the Government to try and reduce the cost of living, so that these young people, where there is a lot of domestic violence, can provide adequately for their children. If their children go to school, let them afford good clothes, food and domestic violence will be reduced.

Hon. Speaker, while concluding, I just want to say this, this Bill in Clause 6(5) requires the Inspector-General of Police to ensure development of procedures regarding matters under this Act, for example, training of officers to deal with domestic violence. We do not want police to go to people's homes and police who are not trained to take advantage. They have to be trained. This Bill provides that you can report police officers who do not take action. If you report that you have been violated either by your husband or wife and the police do not take action, this Bill provides that you report him and disciplinary action will be taken against him. So, this is a very good Bill.

Last but not least, there is this inheritance that they are talking about. Inheritance of property, widow, widowers and those kinds of things is something that this Bill captures. The Committee sat and exhaustively looked at these issues. Even as we contribute, it is good to look at what the Committee has suggested. If they did a good job, let us not try to destroy what they have come up with. I think they have come up with a very good piece of work. We should support them and we will protect Kenyans who are suffering in this country.

Hon. Speaker, I want to support this Bill and say that there have been a lot of advocacy groups for women, but the boy-child is under threat today. That is a fact. The boy-child is under threat even in domestic violence and everywhere you go. Even our women legislatures talk of giving sanitary pads to the girls and doing other things for the girl-child, but not boys. The boys have been neglected. Even in advocacy for women

issues, men have been neglected. We, as legislatures, as we support this Bill, we should end domestic violence and also address this issue of boy-child. The boy-child today is an endangered species and once you lose those boys, the society will disappear. So, take charge as we advocate the ending domestic violence and support this Bill. Also, promote the boy-child who is neglected and an endangered animal in this country.

I support, hon. Speaker.

Hon. Speaker: Hon. Jimmy Nuru Ondieki Angwenyi.

(Laughter)

Hon. Angwenyi: Hon. Speaker, I arise to oppose this punitive legislation that wants to go through this House. If you read the Bible or Quran very well, they have taught us how to live in a family. That the wife should listen to her husband and the husband should love the wife the same way Jesus loves the Church. There is no fighting there and to bring up your children properly, they must be disciplined. What is going to happen if you find your children watching pornographic material on television and you switch off that television? Can they accuse you of violence? Imagine your son or daughter taking you to court because you switched off television which you have bought! That is mental torture; it is abuse and violence; that is what they will say.

I believe this House should be involved in matters that can assist the society to grow. As hon. Nyenze has just said, there is more to do with reducing the cost of living in this country and providing jobs for our kids. That would better utilize time for this Parliament than bringing this law. How do you reduce the cost of living by bringing this law? How do you create jobs by bringing this law? What you are doing here---

Hon. Speaker: Hon. Angwenyi, do not address the hon. Leader of Minority Party.

Hon. Angwenyi: Hon. Speaker, what we are doing here is bringing the police to manage our homes. If we have been unable to manage them on the roads, how will you manage them in your own home? They will come there, and if you have married a beautiful girl, they will look at her and instruct her that next time her husband protrudes his eyes - like I normally do - she reports him to them.

(Laughter)

They will put me in a cage and go back to my wife.

Hon. Speaker, why do we want to invite policemen to manage our homes? I come from a polygamous home where my father was an authority and his wives loved him up to the end. He brought us up properly to know our position in life; that you are the man and therefore the head of the home. If you are a woman, you are the keeper of the home and we lived happily. You cannot challenge me on that because I have lived happily for close to 70 years.

It is because there is discipline and love. We should bring Bills here which seek to enhance and promote love within the family unit, so that my child can take the direction that I give him or her as direction that comes out of love; not directions that are punitive.

Hon. Speaker, before this Bill was brought to the Floor of the House, the Committee should have moved around the country to learn the values of our communities. This House represents the entire country. The other day I was sent out of this House when I said that criminalising culture would force people to go underground and do worse things than what they would have done if they were to do the same in the open. I can give the example of the so-called Female Genital Mutilation (FGM)". I can talk for my community. Since they have not been educated to quit that practice voluntarily, they have gone underground. The practice there exists in the ratio of 96 per cent. Instead of taking their children to hospital, they hide them in their rooms. The children can die or suffer some illnesses when they are hidden. If we were to instead use the money that we are using to criminalise some of these cultures to educate those people, they will quit some of the so-called bad practices. The money that we are going to use to recruit policemen, judges and magistrates to try such cases – because they would be many out of a pollution of more than 40 million – that money could be used to enhance love and harmony in our families. What I am saying is that we should follow our religious tenets; Christian and Islamic tenets. There are cultural tenets which have brought this country to this level.

Hon. Speaker, where these laws have been introduced, in the United States of America (USA) – I lived in the USA for eight years – 70 per cent of married people divorce before they die. In Kenya, where we do not have this law, only a maximum of 15 per cent of married people divorce before they die. Do we want to move in that direction, where you marry knowing that you will not survive with that husband or wife all your life? We must protect our cultures and families. Some of the provisions of this Bill already exist in other legislations like the Children Act. Why do we want to repeat them in this Bill? In fact, we should repeal some of those Acts because they are making our families not to run harmoniously.

The Bill also talks of marital rape. We are talking about somebody you persuaded to move from her parents' home to your home. When she moved from her parents' home to your home, that was when she accepted you. Therefore, every time you need that thing, she should accept. Also, when you brought her to your home, you had accepted. You are not going to negotiate every time you want each other. Are you going to sit down and negotiate? Are you going to pay a price for it?

Hon. Speaker, we are not opposing this thing simply because we are men. We have daughters, wives and mothers and we care about them. Let us not enact laws which will destroy our family fabric and destroy the country. These are some of the kind of laws that have allowed some Kenyans to embrace gay practices. Hon. Speaker, just imagine a man looking at you and thinking that you are beautiful because the law allows it!

(Laughter)

Hon. Speaker, this law says that if you are a lady and you look at a handsome man who looks like he is disciplined and well behaved, you cannot smile at him. If you smile at him, he will take you to court because that is deemed to be sexual violence. Some of us who are old, the only thing we can use is our eyes. If you use your eyes to appreciate beauty, you will be taken to court.

With those few remarks, I beg to oppose.

Hon. Speaker: Yes, hon. (Dr.) Nyikal!

Hon. (Prof.) Nyikal: Thank you, hon. Speaker, for giving me this opportunity. Having looked at the Committee's proposals, having gone through the Bill and having experienced the many things that I have experienced in life, I support this Bill.

Hon. Speaker, this is one of the three Bills that we have had which we think will stabilise the family unit in this country: The Marriage Bill and the Matrimonial Bill, which we passed; and this particular Bill. The consultations on this Bill have been the longest that I have seen. They started way back in 2005. The Bill came to Parliament, from where it was returned to the Ministry. It went to the Commission for the Implementation of the Constitution (CIC). There have been consultations with communities. In my view, all that these three Bills are seeking to do is stabilising the family.

I want to tell this House how I realised what domestic violence is. I first realised it when I was looking after children. I would have babies between six months and one year who are not gaining weight, and I could not find the reason. Every test would be done but we could not find the reason until I realised that if there is disharmony and quarrelling in the house, a child will not grow. This really surprised me. I was very surprised when I heard people wondering what emotional violence is. You live with a child and when you get home and when the child looks at you, all you do is say: "Do not look at me". If you do that consistently for a time, that child grows so timid that when somebody gets to the house, the child starts shaking. The development of such a child cannot go on.

Hon. Speaker, we look at ourselves and say that we are strong men. However strong we are, if we live with women who nag us, we cannot sleep at night. They deny you what you said you paid for, or they give it in such a way that says "*maliza ninataka kulala.*"

(Laughter)

I prefer to be desired before I give because then I enjoy the participation of the other side. I have attended cases where the only reason as to why the man said they wanted to quit the marriage was because they were not enjoying those things, and that even when they were given it was done in such a way that they would as well have refused. We are just talking of emotional and psychological things. If you live in such a place, will you perform in Parliament? Even businesses have suffered because men are harassed.

An hon. Member: And women also!

Hon. (Prof.) Nyikal: Even women are being harassed. So, the development of an individual, be it a man or a woman, to a large extent, depends on harmony in the house.

The problem I am seeing in this Bill is that most of us are looking at it as if all the ills that it is seeking to address are actually ills that are visited on women. Therefore, the interpretation in their minds is that this Bill is for women, because most of the ills we are talking about are visited on women. Thinking of it the other way round, there are men who are also suffering. So, I do not think we should look at this Bill in terms of a man and woman. Look at the children and the elderly people. That is where the word

“domestic” comes from. The bedroom is a very small bit of this Bill. It should not occupy us so much.

When we talk about economic harassment, we must be realistic. I want to take it from the young men now that there are married women who are richer and sometimes older than them; they are literally enslaved. I can tell you, even you guys here, you cannot take that young man out of that place. They cry there and they are molested, but they do not come out. One woman said in a case I know, that: “Go and see him there. Have I tied him with a rope?” Another woman told the mother who was going to take her son away: “You can make all the noise you want and you can go with him, but tomorrow he will come back to me.” Those are men! Therefore, we have to look at this Bill much deeper.

Hon. Speaker, I do realize that there are certain areas in the villages--- In fact, the area we have problems with is actually on the definition of “violence”. The area we are having in mind is the soft one. At this level, I do not think we should confine ourselves to physical violence. In any case, most of us who are educated do not even beat women or men any more. You inflict on them that nil by mouth. You do not talk for a month; and those are the issues. You may find that it is difficult to legislate about this, but really, if you will go to court, there are ways it can be handled.

But, instead of putting that in the criminal court, we are putting it in this special law which can look at it. The issue of domestic violence is a reality. The problem many times is that we look at this as domestic problem that is between a man and his wife; children and their parents and what do you want us to do? Because of that, the law is very lax and reluctant and does not take care of it.

Hon. Speaker, I have heard of children who come with black marks all over their bodies as if they had small box. Where does that come from? Cigarette butts are put on children to burn them! You all know that children, either adopted or step children have actually been murdered so that women can continue to be loved. You have read these things on newspapers. These are the things we are talking about.

Hon. Speaker, many people die. Every day you hear that somebody shot his wife, children and then shot himself. Have we gone to the background of why that is happening?

An hon. Member: Poverty!

Hon. (Prof.) Nyikal: It cannot be just poverty. In many cases, they are well to do families. That is violence! How are we going to address that if we do not put anything in the law?

We have known where a woman has killed all her five children and then killed herself. Men have done the same. These are the issues we want to address. Leave the usual and ordinary things. I am not a lawyer, but I know law is not made for the ordinary people who often follow the law. What they do daily actually conforms within the law because this is not madness created and written down. It is from the living of the people. Therefore, I support this Bill. I know there are certain areas that need amendment like saying that police can arrest one without a warrant of arrest. I think we should amend that and it has been addressed.

Hon. Speaker, the definition of “marriage relationship” includes people who are divorced, separated or estranged. Do you realize that sometimes when a woman is

divorced, or the other way round, and the other spouse is married, the other one keeps making phone calls to them at night? What does your husband think if you are married and your former husband keeps making phone calls to you? You will be divorced! But he is doing it purposely to harass the family and you. Therefore, do you not think that this issue should not be considered in law?

With regard to children, who will report when a child is suffering? The provision that somebody else can report is good. If you look at the people we have been told are teachers---

(Loud consultations)

Hon. Sakaja: Thank you, hon. Speaker. A few weeks ago, I saw a story that brought tears to my eyes. There was a young student in Nairobi who had gone to school but one of the neighbours came to school and said that the boy was playing at his house the previous day and took his phone. This was a Standard Six child. The child's mother was called to school and in the process told the child, "*Ni sawa*, but you will see when you come home." When the boy went home, the mother closed all doors, tied his hands, poured kerosene on his hands and lit them. I think some of you saw that story. That child was taken to hospital and he could not write. He cannot use his hands again. When we were taking that child to hospital, the mobile phone was found in the neighbour's house.

I am shocked to hear hon. Members saying that issues of domestic violence differ from tribe to tribe. I challenge any hon. Member to tell me in which tribe in this country violence is acceptable. In which religion or county is that acceptable? That is why and for other many other reasons, I want to say that I fully and reservedly support this Bill.

Hon. Speaker, I would like to really appeal to my colleagues, especially the male colleagues. Whenever we see a Bill such as this, our default position is that it is them versus us. In many cases, this does not need to take positions. This is one of those Bills where we must be very objective. The domestic setting affects everybody. It affects husbands, wives, children and grandparents. For us to provide that we want to have domestic settings that are conducive for the well being of everyone in society, is the noblest thing to do.

Hon. Speaker, the strength of a country and the respect of an institution such as this Parliament is not in the strength of our military or economy; it is in what those who are in positions do; those who are in leadership can do to take care of the vulnerable and those who cannot speak for themselves. I know and understand that many hon. Members are saying that things should be natural and we do not need to legislate. Many of you are coming from very normal settings. But take a drive in Nairobi and go to the slums. The amount of violence in the slums is overwhelming. The self esteem of the children who are coming from such places because of the frustrations and the violence is shocking.

In the United States of America, a survey was done and found that those who confessed to have grown up in very violent settings are many and it provides a ripple effect. That is why I want to say that let us look at this Bill objectively.

Let us look at it proactively and pragmatically and say, yes, there are issues that need to be looked at, but a blanket disposal of such legislation, honestly, what do Kenyans who are suffering see? If you drive three kilometres, west of where we are and stop at the Nairobi Women's Hospital, even a man like Jimmy Angwenyi, my good friend, will shed a tear. You will cry because the vulnerable in our society are not being protected. This

Bill provides for the registration of safe houses, so that we can even legislate and say, if a place meets certain standards, those who cannot even go back and be taken care of as we invoke the other systems within our culture to bring back harmony in those houses, this Bill is, indeed, very necessary. I know Members have noted that there are other pieces of legislation that provide similar provisions, but the fact that this Bill has been approved and has come here means that some issues are not sufficiently stated once. We need to emphasise and re-emphasise. I want to appeal to the men colleagues, please, stand up and be counted.

Secondly, shun the propaganda about this Bill. There are certain things I am hearing which are not in this Bill. There is nothing about marital rape in this Bill. I am a Christian and 1 Corinthians 7:14 tells me that, that does not exist. It says that wife, your body belongs to your husband and husband, your body belongs to your wife. Do not deny one another. I have a Bible here. I am prepared. Hon. Nyenze was misquoting the Bible. The 1 Corinthians 7, verse 4 says:-

“The wife does not have authority over her own body, but the husband does. Likewise, the husband does not have authority over his own body, but the wife does. Do not deprive one another except with consent for a time, so that you may give yourself to fasting and prayer”.

Not headaches, but fasting and prayer.

“...and come together again, so that Satan does not tempt you because of your lack of self control”.

I know this House is sovereign and it expresses the sovereign will of the people, but we cannot amend the Bible. That is why I am sure and I have gone through the Bill, there is no such provision. I would like to see us as the men standing strong. It does not make you weak as a man if you stand in support of such legislation that protects the vulnerable. You come out stronger because that person who you think is just your wife is someone's daughter. Your wife is somebody's mother; your child's mother. We have seen in certain counties men bear the brunt. There is a man I met yesterday---

Hon. Member: Hon. Nyokabi!

Hon. Sakaja: Hon. Nyokabi is very peaceful, please do not mention her. The man's face looks like a baseball because it has been cut and stitched repeatedly. That man is tormented. Why can we not think also on how to protect the men and the boy-child from such abuse? One of the beautiful things about this Bill is that it defines what that setting is. I know many are saying that we should just provide for the husband and the wife, but even if you look at it in an economic perspective, the generation we are raising as young people - and hon. Speaker at some point you noted that there are no youths in this Parliament, but there are youths in this Parliament.

Article 97(c) says that there are Members nominated to represent the youth. I am a youth. I am very young, but despite being young, I have a very beautiful wife from the Taita Taveta County and two children. I cannot imagine somebody abusing my wife or my children, whether it is in school, but more so in my house. If it is a house girl, and many of you leave your children with your house girls, if your house girl abuses your children, and some abuse them sexually, it is this Bill that will provide protection because that is a domestic setting. My time is up, but I would like to appeal to the Members who are progressively thinking, sober up like hon. Mbadi. I know even hon. Jimmy will be

convinced to fully stand up and be counted. Stand up for the vulnerable; the women, men and children of this country.

I support.

(Hon. Members raised their hands)

Hon. Speaker: Hon. Members, please, do not just keep raising your hands. I am following how you came. You are raising your hands as though you were ahead of hon. John Mbadi.

Proceed, hon. Mbadi.

Hon. Ng'ongo: Hon. Speaker, before I proceed, I just wanted to correct some impression that may have been created when hon. Nyenze spoke about hon. Gumbo and told some story about a colleague Member of Parliament who sought help from him. All eyes were looking at me given my relationship with hon. Gumbo and the fact that I am married to his sister. They thought probably I am the one. I want to declare that I am not the one.

(Laughter)

As a matter of fact, I live in a very harmonious way with my wife. First of all, I wanted to share with my colleagues this story. I was just correcting an impression. If hon. Gumbo could allow me to proceed---

Hon. (Eng.) Gumbo: On a point of order, hon. Speaker.

Hon. Speaker: It had better be a point of order. Let us hear it.

Hon. (Eng.) Gumbo: On a point of order, hon. Speaker. Is hon. Mbadi in order to take that line of argument when we know that in the world where we live, a rumour is not confirmed until it is denied?

Hon. Speaker: There is nothing out of order about that now.

Hon. Ng'ongo: Thank you, hon. Speaker. I will let the matter rest there and proceed. I just wanted to share with my colleagues that last week, I had a very bad experience of a lady who is less than 30 years old and who lives less than a kilometre from my home. She has been going to the area chief many times to report that she is being abused. Last week, unfortunately, the husband murdered her and the body lay there for more than one day because the man's mother was away and the man had to travel all the way to where she was to tell her that the daughter-in-law was missing, only for her to come home and find the body lying there lifeless.

If Clause 6 of this Bill was law, probably that woman would still be alive. The body would not be lying in the morgue as it is today. So, some of these things are real. As a matter of fact, if we were following religious principles as contained in the Bible, the Quran and all other religious books or if we were morally upright, there would be no need for legislation. Legislation becomes necessary when we cannot live as God or Allah wanted us to live.

I request that the House Business Committee places this Bill before the Committee of the whole House next week, so that most of us can get an opportunity to read it. From what I have heard, the latter contributions have become a little more

informed, than the previous ones. I see people acting out of emotions, making comments which are not in this Bill.

The Bill talks about sexual offences as defined in Sexual Offences Act of 2006. So, there is really nothing new. I heard hon. Midiwo ask what would be termed as economic abuse. The Bill defines “economic abuse” as follows:-

“The unreasonable deprivation of economic or financial resources to which an applicant is entitled or which the applicant requires, including household necessities, medical expenses, school fees, rent and mortgage expenses or other similar expenses; and the denial to the applicant of the right to seek employment or engage in any income-generating activity”.

I have seen cases where even politicians like ourselves, during campaign, go back to look for their wives, whom they had separated from many years ago just to show that they are married, or vice versa. They campaign and get into office, and the moment they get into office, most of them either marry a second wife or elope with other women and deny these women economic support. They forget that these women fought so hard to place them in office.

Hon. Speaker, it is something that should not be allowed. This must be corrected. As some of my colleagues said, this thing is not even about women. We also know of so many cases where men are abused in marriages or by close family members. That needs to be corrected. There was a question about what is emotional, verbal or psychological abuse. Again, this is defined in the Constitution and in this Bill. It is a pattern of degrading or humiliating conduct towards the applicant including but not limited to, repeated insults, ridicule or name calling and repeated threats to cause emotional pain. Many times some people even say they would rather be beaten than go through the silent and cold treatment that you are subjected to by a spouse. I wanted to appeal to everyone; my male colleagues and female colleagues in equal measure that this is a bill that we need to support fully.

I have looked at some of the amendments that are proposed by the Committee and I am a bit disappointed that the Vice-Chairperson of that Committee is someone I respect so much but she could allow the Committee to come up with recommendations that are watering down this Bill to a level that I feel we are going to mutilate this Bill for no reason. The proposal to remove the entire Clause 8, which states:-

“The Cabinet Secretary shall, in consultation with county executives, develop the necessary policy to facilitate the establishment by county executives of appropriate mechanisms to provide temporary emergency shelters or safe houses--” is sad. Something needs to be done at the rural level, down to the grassroots. You cannot just leave this thing at the national level. Every county must take action to safeguard and protect. It is reported many times in the media where children are subjected to abuse; women are subjected to abuse and men are subjected to unnecessary abuse. We need to allow some amendments but not amendments that are going to alter and completely change the architecture of this Bill. For example, that same clause 8(3), the policy referred to in (1) shall among other things address public education and awareness. The lady I am talking about, if she was aware of what she could do in the event the chief did not act; if she knew she could rush to some NGOs which are protecting the rights of the marginalised; if she knew she could go to a police officer and have that husband arrested, she would still

be alive. A lot of problems that we see with domestic violence are as a result of lack of information. Therefore, if you are saying that we should not do public education, that someone should not take responsibility for that, I do not think that is right.

Hon. Speaker, Clause 9 is on information on offences involving domestic violence. There are many cases and in the interest of time, I want to be fast on this one. You find your neighbour is constantly abusing his wife or husband; abusing children but because you think it is not your responsibility, you keep quiet about it. In the event you realise that one of your neighbours or somebody you have access to is abusing a spouse or someone he or she lives with, you have the legal mandate and responsibility to report that case to the relevant authority and action can be taken. I am happy that even a caveat is put. There is a provision that if you give false information, then action will be taken against you.

So, with those few remarks, I want to support this Bill and urge that some of the amendments may not be attractive to me.

Thank you.

Hon. (Ms.) Muhia: Hon. Speaker, I want to start by saying that today is a great day where we have the only Bill that is discussed in a bipartisan approach. Having said that, I am disappointed that the House leadership had set a very bad mood but gentlemen and gentle ladies, hon. Members of this House are bringing facts. I would encourage hon. Members to support their contributions with facts. It is very bad for hon. Members to point out obvious omissions in the Bill that the Committee could not detect. It is not portraying a good picture of hon. Members.

I want to quote some good parts of this Bill and second hon. Ng'ongo that some of the clauses meant to be deleted should be retained. For instance, all the speakers ahead of me have spoken of the shelters and I also recommend that shelters are good. Hon. Angwenyi has said that this Bill needs to bring good morals. When we have shelters in our society where victims can go, I imagine that there will be counselors there to help them.

Two months ago, we read in the newspapers about a case in Nakuru where a boy of five years was sexually harassed severally by a house help. When the case came up before the magistrate, there was somber mood in the court room. So, this Bill is not about women; it is about men, women, boys and girls. I do not want to say it is a bad thing but I want to discourage the leadership of this House, in future, from treating such Bills casually; like they are gender-based. Violence is real. The Bill has an article on emotional abuse. When some hon. Members criticize and ask what is emotional or economic abuse, even babies who breastfeed can suffer emotionally because milk cannot be generated. I even heard some men say that when they are emotionally abused, they cannot ejaculate. So, emotional abuse is for both genders.

Hon. Speaker: Hon. Members, you need to have some little bit of decorum. This is honourable House, be guided, please.

Hon. (Ms.) Muhia: Hon. Speaker, I stand guided but what I want to mean is that even men cannot perform when they are emotionally abused. This emotional abuse can be from either party. When we speak of economic abuse, we know of cases where even working women deny men fare to go and look for a job. We know of cases where wives

in the house are denied money to buy food. So, when an hon. Member says that he cannot understand what is economic abuse, literally speaking, it is an argument that is misplaced.

I want to commend this Committee. It has done a great job. We are all aware of many lives that have been lost, especially in slums, estates or villages where houses are close together. We know that we have had families fighting at night but because no one is responsible, no one has reported. It is only after death that someone says they wished they had reported. There was no legal framework to guide any person to go and report.

The issue of the police is a good thing. We do not want to condemn our police. We are here as this House to improve the status of any organisation. So, if our police have not been performing, time has come for them to be trained well and given responsibilities. If we are going to give the police responsibilities concerning families, this is a great move. It is encouraging that our policemen and policewomen can also be trusted. We are going to start seeing the trust from there so that when we find them on the road, we can trust them.

Hon. Speaker, we know of couples who have divorced or separated and do not live in peace. You will find the former family members bothering a woman or a man who has been married in the second marriage. This happens even in the political arena. We know of couples who were married and divorced but because of jealous or malice, you will find the former husband or wife going to spoil the campaigns for the people they separated with many years ago. This Bill is putting legal framework that this is no longer allowed.

I want to speak about the boy-child. As much as women look like they are only advocating for the girl-child - particularly the County Women Representatives have been advocating for money so that they can promote boy-child mentorship. The boy-child mentorship is in the regulations that we are about to bring. The boy-child has been denied all the rights on the fact that a boy or a man is imagined to be capable of running his life. However, from what we see in the media or other experience that we come across, we know that boys could even be more victims than girls. We have even seen men who have been beaten and their face cut. These men do not have self-esteem to come and report these cases. This is because when one loses self-esteem he or she cannot continue with his or her life as expected.

Hon. Speaker, this Bill is about the family and not about husband or wife. It is also not about counties. This is not a potato law that we can make in Nyandarua County. So, we cannot say that we make it for this or that county nor can we say that we make it for this or that community. A law is a law and it should guard the whole country.

I, therefore, wish to say that domestic violence is real and we should not turn back. I want to encourage the Committee and discourage these amendments because they are too many and they will water down the whole Bill.

Hon. Speaker, I rise to support.

Hon. (Bishop) Mutua: Thank you, hon. Speaker for giving me the opportunity to speak about this very important Bill. I would like to say that violence in the family is violence everywhere. That means that this Bill is seeking to address a very important issue. We all agree that domestic violence is something we need to tame, prevent and stop. We cannot debate about that.

Hon. Speaker, this Bill signals a change of attitude of spouses towards each other and towards the neighbour. Unless there is an attitude change; the way husbands look at their wives and vice versa we will continue to have a problem. As a clergyman, I know I am supposed to say that we only need to read the Bible. It is true that we would be all right if we follow the Bible. This is because Jesus gave us a new commandment; that we love one another. However, we have never lived to that standard.

Therefore, I have five issues that I would like to raise in this Bill. We need to amend them and then pass them.

One thing that we cannot say is that this Bill should pass the way it is. If we do that we will not be doing good work, just the same way we addressed the issue of the Marriage Bill. We seem to be in two camps. There is the camp of men versus the camp of the ladies. That is not the way we should look at this Bill.

Hon. Speaker, we should look at this Bill as Members of Parliament who are responsible and who are doing a service to this country for posterity. We should not look at where the Bill is coming from. We should look at the contents of the Bill and its contents are made in such a way that some areas need to be amended. Of course, one area has already been highlighted where the police were given permission to arrest people when they think they are likely to cause breach of peace. That reminded me of the old days when innocent people could be arrested and accused to be behaving in a manner likely to cause breach of peace. We cannot allow that one.

That must go and when that has gone, we must also address the issue related to family violence. This family violence issue is not limited to man and wife. It is not only limited to the children. Even within the children themselves within their relationships, there is a problem. You remember that the first domestic violence that was ever recorded in a home setting was of Cain and Abel. Those were not just husband and wife. So, this Bill should address itself also to that kind of violence where brothers to brothers also extend violence. So, to me, this is an opportunity for us to deliberate on the sources of violence within a domestic set up.

Hon. Speaker, I have come across so many cases and I can tell you for sure the issues that are being addressed here are real. There is no question about it. I have come across all these cases. People have been abused in all these many ways but the question I am asking myself is: Are we able to regulate love? No, we cannot. So, this Bill should seek to enhance reconciliation, restoration of good domestic relationships. That is one area that this Bill does not come out very strongly on and we need to strengthen it. This Bill, first and foremost, should seek to reconcile and restore good domestic relationships across the board. If this Bill does that then it will be more preventive than punitive.

Hon. Speaker, one of the mistakes that we can do is to pass a Bill that enhances punitive measures at the expense of reconciliation and restoration of relationships within the family set up. That will be catastrophic. That will be a terrible way to go. So, this Bill needs to be improved by removing those very wordy sections because there are sections that are too loaded and wordy that you actually wonder what they mean.

I tend to believe that we can improve this Bill to a level where all of us will feel very safe with it because none of us would like to live with violence. We do not want to see our children, men and women traumatised by violence. However, the way to address that scenario is that all of us as a House become sober, non-emotional and to know that

there is no celebration for one part of the legislators. If this Bill goes through, let women not celebrate because if they do so then it means that it was a Bill against men. If this Bill fails, let men also not celebrate because it will mean we were just fighting to defeat women. This is not the essence of this Bill. This Bill is supposed to bring the family together and let us reason together as both members of the same family.

If this Bill can be combed through with a toothpick, I am sure that we will come with the best Bill that we have ever passed in the Eleventh Parliament. The violence that we are experiencing in Kenya does not happen on the streets. It starts way back at the family level. Children who have lived through domestic violence, and who know nothing about love or counseling or how to bear with another person are the ones who go out on the streets and commit brutal murders. So, this Bill is an opportunity for us to begin inculcating some kind of values and principles in our children.

So, in my view, this Bill gives us an opportunity to address issues of family values, relationship and cement good discipline within the family set up. Good discipline does not begin with you; it begins with me. It begins with each one of us. When we begin to practise it, we begin to forgive. We begin to bear with one another. We begin to respond to issues in a non-violent way. We then begin to become role models. Therefore, this is a wonderful Bill, if it can be just amended in those few areas that appear to be targeting a certain section of the society for punishment.

Hon. Speaker, this Bill has one very interesting thing for me. It does not allow men to become negligent, which is a very good thing. I agree with that kind of approach because even the Bible that I preach says that any man who does not provide for his family is worse than an infidel, and has been denied the faith (Timothy 1:58). So, this Bill demands that spouses play their roles respectfully. I know that the issue of sex within marriage is an old one but let me ask a question: If somebody is there with you and he denies you your marital rights, is that person really enjoying your company? That person is not enjoying your company. So, you need to realise that it takes mutual---

Hon. Speaker: Hon. Members, be paying attention to the lights.

Yes, hon. Benson Mutura!

Hon. Kangara: Thank you, hon. Speaker. I rise to oppose the Bill. I am a Member of the Committee.

The reason as to why I am opposing the Bill is not that I support domestic violence. If anything, I condemn it fully. I am more concerned about the process of bringing Bills to this House. We should not be legislating in vain. During our Committee sittings, I raised the issue of public participation in dealing with Bills, especially those which touch on family matters. I saw a few memoranda from very established entities. I saw one from FIDA and another one from the Women Empowerment. However, looking at the way we are legislating on the issue of marriage, it is like we are trying to introduce activism in our homes – which is very dangerous.

On the issue of marriage, especially the Marriage Bill, which we handled as a Committee, we solicited views from established religious organisations. When this Bill was brought to our Committee, it was never taken to the religious institutions, which were key. So, I read mischief right from the start. I was left wondering why we did not seek the opinion of religious institutions. Further to that, in terms of domestic violence, such abuse is a ground for divorce. Nobody should stay in an abuse marriage. So, we

should not over-legislate and say that taking somebody to court will sustain a marriage. If anything, when you take your spouse to court, it means that you have reached irreconcilable differences, which you cannot handle.

In our marriages, we have dispute resolution mechanisms which we normally follow and they are working. Why should we bring courts in this other institution? Our Chief Justice is on record saying that we should not be taking all matters to court because our courts are already overburdened. They have so much to deal with. He said that we can even seek the services of witchdoctors. I think we should not take that route. I saw some beautiful ladies three weeks ago demonstrating outside Parliament gate and most of them happen to come from my constituency. They had brought a petition on domestic violence. Most of them are not even married and when we were discussing with them casually, I asked what they meant by domestic violence. They were candid enough to say that they came here because they were paid to come and do whatever they wanted to do.

There is another issue in this Bill which I believe is also unconstitutional and very dangerous, especially to us politicians. If you look at Clause 6(3) it says:

“A police officer may without a warrant, arrest and prefer charges against any person”.

I believe that is in the Constitution. If I can read Clause 6(3)(c) it says “...is committing a breach of the peace or the police officer reasonably suspects is likely to commit a breach of the peace”. If you give the police this powers, we know how police behave in this country. This is ground for abuse. We cannot allow police to come and legislate on our issues.

Hon. Speaker, Sir, there is another issue. The good people of Makadara, if you look at this area that we say we can take these matters to court--- Unfortunately, in our Committee 19 Members are lawyers and they think going to court is an easy affair. It is not. Us, laymen, fear those courts, be it you being the accuser or the accused. We should shun courts in whatever form and look for mechanisms for resolving some of these disputes.

I am not opposing this Bill because it is bad but there are other legislations that cater for this. We should not duplicate what is already there in other legislations. If it is domestic violence, it is catered for under the Penal Code. Child abuse is well provided for in the Children Act. So, we should not over legislate on matters which are very vague, especially on issues like emotional violence and economic violence. It is very hard to define some of those things. So, I am asking hon. Women Representative, we love them but as a family, that is our key. This is what has made this country to be where we are. We should respect those institutions because they are working. We should not over legislate.

Thank you, hon. Speaker.

Hon. Onyura: Thank you, hon. Speaker. From the outset, in principle, I support this Bill because it is addressing a key and sensitive area. The Bill is of general application from the way I have been reading the definitions. It is not narrowing down necessarily to the women. Even in its definition, it is talking about violence against a spouse. It says to provide for the protection and relief of victims of domestic violence; to provide for the protection of a spouse and any children or dependent persons. We should not look at it as something that is against men and is particularly for women. It should apply in a family setting.

If you look through the whole Bill, you will realise that it is trying to address a special setting. It is true that we have laws that can deal with other forms of violence. If we are talking about political violence or just violence on the streets or violence at a football match or in places like Kasarani, those can be addressed by the Penal Code. This Bill is recognising that this is a special setting that needs its own special provision.

This Bill is trying to have a setting that can enable us as families to solve our issues in an orderly and civilized way. It is talking of protection against victims. It is encouraging a peaceful way of resolving issues within the family. I want to concede and accept that this will require wide consultations. It should be allowed to be debated by Kenyans as widely as possible. I realise that, perhaps, there are certain sensitivities that may need to be taken into account. This could be religious and cultural sensitivities. There could be certain unique community considerations that may need to be taken into account when we are doing the final cleaning up of this Bill.

If we allow wide debate and participation within the population in the country, that should come out and fears and suspicions that may be arising can be taken care of through participation and discussion and debate by the different stakeholders. We should get the views of the churches and different communities. Again, there could be certain specific things that may offend some communities. In the final analysis, there is need to have a clear framework and a legal and administrative framework in which to address matters of violence. This could be violence against children and other players in the domestic setting. We have, for example, domestic staff, house helps, polygamous settings and cases of abuse of step children. Many funny cases have come up that we read about in the Press or we just observe in our communities.

This Bill also encourages reporting of cases that may come to the attention of any good law-abiding citizen who observes or notices cases of abuse. This Bill protects them and also encourages them to go and report. It protects disclosure of such a witness or somebody reporting.

It protects disclosure of such a witness or somebody reporting not to regret should there be fatal consequences or very grievous consequences of domestic abuse because they will have had an opportunity to do something about it. The fact that they can do anonymously and the matter be followed up, is quite a good Bill that will address that concern.

Hon. Speaker, the Bill is not simply talking about rushing to court. The way I have read this Bill is not saying that when there is a case of violence, you quickly rush to court to go and seek redress. In fact, it encourages some ways of prevention. If you look at Clause 8(2), it encourages development of a policy and it should address issues that will assist to solve some of these issues before people rush to court. The policy referred to should also include matters of public education and awareness on issues relating to that. My take on this is that it is also seeking to look at what could be root causes of violence and how this can be addressed because this is very important. If we can address the causes, then I am sure even cases that will end up in court will be very few. We may be insensitive to this kind of a Bill because a majority of us did not suffer this kind of abuse. That is why we are here. If we had gone through what we have seen other people go through even as we were growing up, maybe by now we would have ended up in the streets or dropped out of school a long time ago. So, this Bill is not just urging everybody that whenever there is a slight indication of violence you rush to court. It is providing

mechanisms for trying to mitigate even that violence and creating awareness with policies that will make a family setting peaceful with a good environment to socialise and bring up our children.

With those remarks, I support. The few amendments that will come because I have reservation about arresting people without an arrest warrant, we will support them. But in principle, I find this to be a very good and timely Bill. So I support.

ADJOURNMENT

Hon. Speaker: Hon. Members, it is time to interrupt the business of the House today. The House stands adjourned until tomorrow, Thursday, 21st August, 2014, at 2.30 p.m.

The House rose at 6.30 p.m.