

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 11th November 2015

The House met at 2.30 p.m.

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

PRAYERS

PETITION

DISPLACEMENT OF YALA SWAMP RESIDENTS

Hon. Speaker: Hon. Members, I wish to convey a petition, being Petition No. 27 of 2015 regarding the displacement of Yala Swamp residents.

Hon. Members, Standing Order No. 225(2)(b) requires that the Speaker reports to the House any petition, other than those presented through a Member. I, therefore, wish to convey to the House that my office is in receipt of a petition regarding the alleged displacement of Yala residents who resided in the Yala Swamp land and riparian area. The Petition is signed by one, Mr. Caleb Omondi Obonyo and over 200 other petitioners. The petitioners allege that Yala residents were displaced from their land by artificial change of the course of River Yala and subsequent development activities of the Lake Basin Development Authority (LBDA) and the Dominion Farms Limited, a private developer.

Hon. Members, the petitioners are, therefore, praying that the National Assembly, through the Departmental Committee on Lands recommends the relocation of the inhabitants to their ancestral land held in trust and expedites individual land tenure arrangements; and intervenes to ascertain the exact lease acreage and land sizes of each of the investing entities in the swamp region.

Hon. Members, pursuant to the provisions of Standing Order No. 227(1), this Petition stands committed to the Departmental Committee on Lands for consideration. The Committee is encouraged to engage the National Land Commission (NLC) and the Ministry of Land, Housing and Urban Settlement with a view to exploring a solution to the issues contained in the Petition.

I thank you.

Hon. Speaker: Hon. Members, it is not at this time when Members are supposed to comment. This is just the presentation stage. I can see that Hon. Ochanda wants to make some comment. It is not at this time. It is when the report of the Committee comes that the Speaker is allowed a maximum of 30 minutes to allow for comments. It is not at this stage. The petitioners have a right to---

Hon. Wandayi: *(Inaudible)*

Hon. Speaker: What is it? Is it a point of order? You must state the Standing Order under which you are rising.

Hon Wandayi: Hon. Speaker, I am not rising to debate the Petition, but just something preliminary because in your ruling---

Hon. Speaker: No! You are the people making mistakes. I have just explained. You cannot now begin to debate the Petition which I have just read out. We do not know the issues that are likely to come up. If you have anything, Hon. Opiyo Wandayi, it would be fair that when the Committee is considering the Petition, you can also go and participate but, at this stage, it would be premature. It would be a bit injurious to petitioners. They may be your constituents but, at this stage, even if it gives you some *bonga* points, it is not now. You will wait for the appropriate hour. You might want to associate yourself with what they are saying but, let them know you have them at heart. It is not at this point.

PAPERS LAID

Hon. A.B. Duale: Hon. Speaker, I beg to lay the following Papers on the Table of the House today Wednesday, 11th November, 2015:-

The Veterinary Surgeons and Veterinary Para-Professional (Veterinary Medicine Directorate) Regulations 2015 and the explanatory Memorandum.

The Reports of the Auditor-General on the Financial Statements of the Constituencies Development Fund (CDF) for the year ended 30th June 2014, and the certificate therein in respect of Turbo Constituency, Kuria East Constituency, Moiben Constituency, Sigor Constituency, Soy Constituency, West Mugirango Constituency, Kapseret Constituency, Butula Constituency, Rabai Constituency, Sotik Constituency, Thika Town Constituency, Molo Constituency, Nakuru Town West Constituency, Kangema Constituency, Kitutu Chache South Constituency, Borabu Constituency, Karachuonyo Constituency, Gilgil Constituency and Bureti Constituency.

Thank you.

Hon. Speaker: Hon. Alex Mwiru, the Chairman of the Departmental Committee on Lands.

Hon. Mwiru: Thank you, Hon. Speaker. I beg to lay the following Papers on the Table of the House today Wednesday, 11th November, 2015:-

The Reports of the Departmental Committee on Lands on:-

(i) Dispute over the ownership of land between Kamae Settlement Scheme residents and Kenyatta University.

(ii) The Petition by Twiga Farm evictees regarding the alleged eviction of over 600 families from their land.

Thank you.

Hon. Speaker: Very well. You are doing a good job. As you can see, there are many more petitions coming to your Committee to deal with those evictions.

Next Order.

NOTICE OF MOTION

DISPLACEMENT OF YALA SWAMP RESIDENTS

Hon. Mwiru: Thank you, Hon. Speaker. I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the Departmental Committee on Lands on the dispute over ownership of land between Kamae Settlement Scheme residents and Kenyatta University laid on the Table of the House today Wednesday, 11th November, 2015.

Thank you.

STATEMENTS

POPE FRANCIS' VISIT TO KENYA

Hon. Speaker: Is it the case Hon. Thomas Mwangi that you want to make some announcement which has something to do with religion?

Hon. Mwangi: Thank you, Hon. Speaker. We have had very many inquiries from Hon. Members of Parliament---

(Loud consultations)

Hon. Speaker: Order, Members! It is fair to listen to the Minority Whip. He has some important announcement for Members.

Hon. Mwangi: We have had very many inquiries from Hon. Members of Parliament about the Papal visit which is supposed to take place from 25th to 27th November, 2015. Members who would wish to attend mass are informed that it will be held on 26th November at the University of Nairobi Grounds at 10.00 a.m. and Members can also go to Gigiri for the meeting which will be graced by the Pope. It is important that each and every Member who wishes to participate is accredited to attend that function.

Hon. Members, we have been given slots and we are not limiting participation to Catholics only. Even non-Catholics are free to attend mass.

Hon. Member: Muslims?

Hon. Mwangi: I said non-Catholics. Non-Catholics include Muslims, Hindus, pagans and every Kenyan, but you have to be accredited. Hon. Members, we have a number of slots. We wish to be orderly and ensure that Hon. Members of Parliament are given adequate space. It is important that we get their names early enough. Let me have their names so that I can give them to our Secretary so that they can be accredited. The earlier the better! It is important so that you do not come at the eleventh hour and start complaining that you have been omitted and yet, you wanted to get that golden opportunity. It is a golden opportunity. It does not occur every day.

I just want to inform my friend, the Leader of the Majority Party that he is equally invited. That may change you and soften your heart on some of these things.

(Laughter)

That is with a light touch my dear brother.

With those remarks, I beg to inform hon. Members. Thank you very much.

Hon. Speaker: I gave Hon. Mwangi an opportunity to make that announcement but, if you want to inform anybody, you inform through the Speaker. We want to encourage orderliness so that I can communicate. If need be, I can communicate to the Leader of the Majority Party. I suppose the message is that everyone is invited. For ease of registration so as to get accreditation,

as Hon. Mwaideghu has announced, we will prepare the list of all Members and place it at the Reception Desk so that any Member desiring to attend for ease of accreditation can go and sign to indicate their desire to be so accredited.

Hon. Speaker: Is that okay with you, Hon. Mwaideghu?

Hon. Mwaideghu: I stand guided, Hon. Speaker. Thank you.

Hon. A.B. Duale: On a point of order.

Hon. Speaker: There is nothing out of order, Leader of the Majority Party. This was just an announcement.

Hon. A.B. Duale: Hon. Speaker, I want to join my colleague in welcoming the Pope. I am not a Catholic, but I want to go on the HANSARD as joining him as a leader in this country in welcoming the Pope. He has said that by touching him and getting an opportunity to attend the mass that will soften my heart. I am sure the Muslim Members will agree with me that if you read the Quran every morning, your heart softens. Every morning, I read the Quran and I know my heart is soft. I want to ask the House that the Pope is coming as the Head the Catholic Church and as the President of the Vatican. It is our obligation that this House goes and receives the Pope. Of course, my invitation will come from State House. The Pope will be there, but I urge Members to go there and liaise with other leaders and receive the Pope.

Thank you.

(Laughter)

Hon. Speaker: Hon. Members, surely, we cannot debate this.

Hon. Member: On a point of information!

Hon. Speaker: What information? Hon. Mwaideghu has sufficiently made the announcement. I gave him that recognition because I understand that he is the Chairman of the Catholic Members of Parliament. It is fair that Members also know that he holds another position. It is good. That should be spiritually nourishing enough.

Hon. Wakhungu: *(Inaudible)*

Hon. Speaker: Hon. Chris Wamalwa, there is nothing beyond that. Let all Members desiring to be accredited - and the appeal has been to every Member - to go and append their signatures on the list. After that, Hon. Mwaideghu will pick up the matter.

Hon. Kombe: On a point of order.

Hon. Speaker: Hon. Harrison Kombe, what is your intervention?

Hon. Kombe: Thank you, Hon. Speaker. Mine is on the Ministerial Statements, if we are there!

Hon. Speaker: Ministerial?

Hon. Kombe: Yes. In the Order Paper, it is Statements.

Hon. Speaker: Questions which are forwarded to the Cabinet Secretaries (CSs)?

Hon. Kombe: Yes, but this one has taken too long. I am lucky today because the Leader of the Majority Party is here. I am told that it is his office that informs the CS to come and reply. I am told that the Committee had done their work and the report is ready, but I have not had the opportunity to be invited to meet the CS for the reply.

Hon. Speaker: Can I encourage you to approach the Leader of the Majority Party so that he can try to prioritize?

Hon. Kombe: I have tried in vain!

Hon. Speaker: He is here!

Hon. Kombe: Yes, he is there.

Hon. Speaker: Hon. Alfred Keter.

Hon. Alfred Keter: Thank you very much, Hon. Speaker---

Hon. Speaker: Sorry, Hon. Keter, we will come to you. Let us finish this small process of reports from committees. Just stay put. On account of the fact that there is a conference on climate change happening at the Safari Park Hotel, we do know that the Chairperson of the Committee on Environment and Natural Resources and several of the Members are participating. That Committee is exempted from giving an update. So, today, we will hear updates from two committees. The first one is the Departmental Committee on Health. Who is giving the update? Hon. Rachel Nyamai.

Hon. (Ms.) R. K. Nyamai: Thank you, Hon. Speaker. I, hereby, present the business before the Departmental Committee on Health for 2015. I will be emphasising more on matters that are in the process of being handled.

The Departmental Committee on Health deals with matters stated under Standing Order No. 216 and, specifically handles matters---

Hon. Speaker: Hon. (Ms.) Nyamai, for ease of reference, leave that introduction because you only have 10 minutes.

Hon. (Ms.) R.K. Nyamai: Okay. Thank you, Hon. Speaker.

Hon. Speaker: Just state the business that has been referred to you that is pending and the stage at which it is, including petitions and reports.

Hon. (Ms.) R.K. Nyamai: Thank you, Hon. Speaker, for that guidance.

(i) The Traditional Medical Practitioners Bill was committed to the Committee on 3rd June 2014. The Committee considered the Bill pursuant to Standing Order No.217 and tabled its report on 23rd April 2015. The Bill is awaiting Second Reading. The Committee is working on its amendments.

(ii) The In-Vitro Fertilization Bill, 2014 by Hon. Millie Odhiambo was committed to the Committee on 14th October 2014. The Committee considered the Bill pursuant to Standing Order No. 127 and tabled its report on 17th February 2015. The Bill has undergone the Second Reading and is currently awaiting the Committee of the whole House stage.

(iii) The Pharmacy Practitioners Bill, 2014 was committed to the Committee on 14th October 2014. The Committee considered the Bill pursuant to Standing Order No. 127, but the Ministry of Health requested that it be subjected to further stakeholder consultations to avoid conflicts.

(iv) The Health Bill, 2014 was committed to the Committee on 30th April 2015. The Committee considered the Bill pursuant to Standing Order No. 127 and tabled its report on 27th October 2015. The Bill is being debated in the House.

(v) The Health Records and Information Managers Bill, 2015 was committed to the Committee on 17th June 2015. The Committee considered the Bill on 30th September, 2015. The Bill underwent the Second Reading and the Committee is finalizing on amendments.

(vi) The Biomedical Engineers Bill was referred to the Committee on 29th June 2015. The Committee has considered the Bill pursuant to Standing Order No. 127. The report is awaiting adoption by the Committee and it will be tabled as soon as it is adopted.

Hon. Speaker, we received a petition on 9th July 2015 on the alleged mismanagement and misappropriation of funds at Kenya Medical Research Institute (KEMRI) from Dr. Eseli. The

petition is under consideration by the Committee, which is still receiving evidence from various stakeholders, including the Ministry, KEMRI and the petitioners. The report will be tabled as soon as the Committee concludes taking evidence.

The second one is a petition by the Kenya National Union of Nurses on the proposed Health Bill by the Departmental Committee on Health. The petition is under consideration by the Committee. We will be receiving evidence from stakeholders on 12th November 2015. However, the petitioners' prayers have already been addressed as we were considering the Health Bill. We will still be receiving the petitioners tomorrow.

The third petition is by Mr. Solomon Boriungi Burunga on the amendment of the Cancer Prevention and Control Act, 2014. This petition was committed to the Committee on 30th July 2015. The Committee was given 60 days and it considered the petition pursuant to Standing Order No. 227. The report is ready and it is awaiting the adoption by the Committee.

The fourth petition is by Mr. Dennis Githinji, on behalf of university students and graduates of Bachelors, Masters and Doctor of Philosophy degrees in Laboratory Medicine in Kenya, regarding registration and regulation of the practice of degree holders in Medical Laboratories Science and Technology. The petition was committed to the Committee on 26th August 2015. We were given 60 days. The petition is under consideration by the Committee. The petitioner will appear before the Committee on 24th November 2015.

The fifth petition is by Hon. Samuel Ndiritu on proposed amendments to the Health Bill. This petition was committed to the Committee on 28th August, 2015. The petition is under consideration by the Committee and we will be receiving evidence from stakeholders on 12th November 2015. However, the petitioners' prayers were addressed while the Committee was considering the Health Bill.

Hon. Speaker, we have some pending proposals before the Departmental Committee on Health. We have the occupational therapists proposal which proposes registration and licensing of occupational therapists. It was committed to the Committee on 29th July 2015. The Committee has considered the legislative proposal pursuant to Standing Order No. 114(3)(b). The Committee is concluding its report which will be submitted to the House on Thursday, 12th November 2015.

We also have a proposal on the Clinical Officers Bill, 2015 on training, registration and licensing of clinical officers, which was committed to the Committee on 27th July 2015, and we were given 14 days. The Committee has considered the legislative proposal and it will be concluding its report which will be submitted tomorrow, 12th November 2015.

The third proposal is on Pwani National Referral Hospital Bill which was committed to the Committee on 3rd August 2015. We were also given 14 days. The sponsor of the proposed Bill has already requested the Committee to halt its consideration of the proposal until further notice. We also agree that this needs to be halted because it completely goes against the Health Bill that we are working on. We would like to thank the sponsor for withdrawing.

The Committee has also undertaken some foreign travels on the second East African Community Health Ministers and Parliamentarians Forum on Health and Symposium on Reproductive and Maternal Newborn and Child Health which was made from 25th to 27th March 2015. The Report has already been concluded and it will be adopted and tabled in the House.

We also undertook another trip on the Network of Parliamentary Committees on Health which was made on 31st March. The report has already been concluded by the Committee, but it has not been tabled.

Members of the Committee, led by my deputy also attended the 68th World Health Assembly held in Geneva from 18th to 26th May 2015. The report has already been concluded and it is awaiting adoption.

The fourth is the 8th International AIDS Society Conference on HIV Pathogens, Treatments and Prevention which took place from 19th to 22nd July 2015. The Report has already been concluded and we will be adopting it.

The last one is the benchmarking visit to the People's Republic of China on the Traditional Medical Practitioners Bill, 2014, that was made from 10th to 14th August, 2014. The report has already been concluded and it is waiting to be tabled on the Floor of the House.

I thank you, Hon. Speaker.

Hon. Speaker: I think it is also fair to appreciate that when committees undertake benchmarking visits or conferences, they do as that Committee has done, that is, to file reports for the record and some for the information of the House. Do I see Hon. (Ms.) Millie Odhiambo wanting to say something on this report?

Hon. (Ms.) Odhiambo-Mabona: Hon. Speaker, my concern relates to some issue which I thought you could give guidance on. The Committee has given long reports about the Bills before them. However, in relation to Bills that come before the House, I noted that there has been concern, especially in relation to the Companies Act. There is even suggestion that certain parts of the Companies Act were sneaked in by the House. I know that we are having a new constitutional dispensation and there may be loose ends, especially from the Leader of the Majority Party and the line Ministries. I do not know what they will do so that they give us smooth communication on what the Government policy is. This is so that we do not have pronouncements which seem to suggest that the Executive has control over legislation, like the case we now have of the Companies Act.

Hon. Speaker: Are you suggesting that the Companies Act was not before the Health Committee?

Hon. (Ms.) Odhiambo-Mabona: Hon. Speaker, the Companies Act is not before this Committee, but the Committees are raising issues of pending Bills. A similar case has arisen in relation to the Health Bill. This also happened to my Bill when it came before the Committee. I am talking about the Companies Bill which is now an Act of Parliament.

Mr. Speaker: Is it already an Act of Parliament?

Hon. (Ms.) Odhiambo-Mabona: Yes, it is an Act of Parliament. However, there is an issue that is arising. The Executive is pronouncing itself on the Act saying that Parliament sneaked in provisions which go against policy. That is an issue that borders on what I want to call lack of communication between the Leader of the Majority Party and the Executive side. How does Parliament know what Government policy is? The Executive should not appear to be controlling Parliament. The pronouncement from the Cabinet Secretary (CS) for the National Treasury is that he will be directing Parliament on what we need to do. I have seen it---

Hon. Speaker: Hon. Millie Odhiambo, anybody outside of this Chamber is at liberty to express themselves howsoever, with regard to what we do, how we did it or how we are going to do it. We are part of the governance structure in the Republic. So, if somebody is expressing themselves one way or the other, leave them alone. We do not want to gag anybody. We want to have everybody express themselves freely so that we can criticize them without gagging them. It is a give and take situation. The Bill has already been signed into an Act of Parliament. Is that not so? So, if some CS thinks something, then that is their business. Of course, they are at liberty

to hold whatever views under the sun. However, Parliament, the National Assembly specifically, has already passed the law. If anybody out there is unhappy with it, the only recourse is to challenge it in court using the provisions of Article 165 of the Constitution.

I saw you took active part in the enactment of that legislation, but that is not to say that it is the most perfect. Anybody is at liberty to say they do not think Parliament should have done this and that. If they think it was sneaked in and if “sneaking in” is the language used out there, they should know it is not used in the Chamber here. If that is the language used out there in the streets or wherever, let us just allow them to use that language. As far as we are concerned, the law was passed in the House in the full glare of Kenyans and nothing was “sneaked in”. Those of you who participated in the Committee of the whole House, like yourself, will agree with me that nothing was sneaked in. Everything, as I witnessed, was robustly debated. Many proposals were rejected while others were accepted by the membership of the Committee. As far as I am concerned, there is nothing that was sneaked in. They are at liberty to express themselves one way or the other.

Let us also appreciate that they can comment on what we do just as much as we can comment on what they do and how they do it. Let us live within the democratic values of living and let live so that they should defend our right to do what we do and we should defend their right to do what they do, including holding views that we sneak things through the House, if they think so. However, we cannot fail to do our work because somebody thinks one way or the other about how we do our things.

Is there something else about that report? Let us go to the next progress report by the Departmental Committee on Justice and Legal Affairs.

Hon. Chepkong’a: On a point of order, Hon. Speaker.

Hon. Speaker: What is your point of order?

Hon. Chepkong’a: Hon. Speaker, I rise pursuant to Standing Order No. 83 on the misinformation that may have been conveyed by people outside there. I actually sat through the Committee of the whole House when we passed the amendments during the Third Reading of the Companies Bill, which is now the Companies Act. It is true that the amendment came from the Floor and it was passed in accordance with the Standing Orders and the Constitution. Although some of us vigorously opposed it, we were outnumbered by our colleagues, which is the normal business of this House. So, there was nothing which was sneaked in.

We even gave the Executive power to bring into operation the particular sections of the Act which they may think are desirable to them. So, I do not know why they are not using that power not to bring into operation the sections which they do not like. They do not need to shout because Parliament has already performed its function. They can wait until after six months and then come back to persuade us otherwise.

Hon. Speaker: Absolutely correct. Hon. Nyokabi.

Hon. (Ms.) Kanyua: Hon. Speaker, I wish to give the report of the Departmental Committee on Justice and Legal Affairs on the Bills and petitions that we have done, those that are pending and the legislative proposals.

The Committee has been quite active and has been able to process many Bills. In fact, one of the hopes of this Committee is that the Speaker would have a commendation for a Committee that is active and award a Committee that has processed most of its work.

On the Bills, we have the Parliamentary Service Bill, 2015 which was taken through the First Reading on 29th October 2015. We have advertised the Bill for public participation and the Committee is receiving public comments and memoranda.

The Constitution of Kenya (Amendment) (No. 5) Bill, 2015 went through the First Reading on 14th October 2015. It is under consideration and awaiting the 90 days maturity period.

We also have the Election Laws (Amendment) (No. 2) Bill, 2015. The First Reading of this Bill was done on 14th October 2015 and it is under consideration by the Committee. We have already started looking at the provisions of the Bill in a clause-by-clause analysis.

We have the Statute Law (Miscellaneous Amendments) (No.2) Bill of 2015. The First Reading was done on 7th October 2015. It is under consideration.

The Constitution of Kenya (Amendment) (No. 3) Bill, 2015 was read the First Time on 30th April 2015. It is awaiting Second Reading.

Hon. Speaker, we have the Two-Third Gender Rule Laws (Amendment) Bill, 2015. It went through the First Reading on 30th April 2015. It is also under consideration.

We also have the Constitution of Kenya (Amendment) Bill (No.4), popularly known as the “Duale Bill”. It was read the First Time on 30th July 2015. It is under consideration.

Hon. Speaker, on the Bills relating to the two-thirds gender law matter, the Committee intends to harness all of them and look at all the provisions.

We have the Legal Aid Bill of 2015 read the First Time on 28th July 2015. The Report has been tabled. The Bill is ready for the Committee of the whole House stage. We have laws that relate to courts. The first one is the Magistrates Courts Bill of 2015, read the First Time on 18th August 2015. The Report was tabled and the Bill is on today’s Order Paper for the Committee of the whole House. We also have the High Court (Organisation and Administration) Bill of 2015, which was read the First Time on 19th August 2015. The Report was tabled and the Bill is on today’s Order Paper for the Committee of the whole House. Both of these Bills emanate from the Judiciary and we are ready to look at the various amendments that the Committee has proposed. We also have the Small Claims Court Bill of 2015, which was read the First Time on 19th August 2015. The report was tabled and the Bill is on today’s Order Paper for the Committee of the whole House.

On the last set of the court Bills, we have the Court of Appeal (Organisation and Administration) Bill of 2015, which was read the First Time on 19th August 2015. The report was tabled and the Bill is on today’s Order Paper for the Committee of the whole House. With the completion of the four court Bills, we will move to the Statute Law (Miscellaneous Amendment) Bills.

We have received petitions, most of which we have processed and we have communicated to the Members, but we have two pending petitions. One is on the alleged non-refunded cash bail by the Marimanti Law Courts raised by Hon. Beatrice Nkatha from Tharaka-Nithi. This petition is under consideration. We need two weeks to get the views of the Judiciary and conclude the report.

On this matter, we also thought that it might not just be the Marimanti Law Court that does not return cash bails. We want to look at the question of whether the Judiciary refunds cash bails as it is, indeed, supposed to under the law.

We have a petition from Hon. Rachael Shebesh, the Member of Parliament for Nairobi County on compensation to the victims and survivors of the 7th August 1998 bomb blast in

Nairobi. The victims and survivors of that bomb blast are asking about compensation. The matter is under consideration. We need two more weeks to get the views of the Attorney-General (AG). We also want to hear the Member, Hon. Rachael Shebesh. We are aware that there was a committee on this issue and some funds were raised. So, we want to get the facts on what exactly happened to the victims and survivors of the 7th August 1998 bomb blast. Both of those petitions will be processed in the next two weeks.

We have received many legislative proposals, most of which have been done and communication done to the Members. On the constitutional amendments, as a Committee, we have been asking that any Member who wants to bring constitutional amendments is clear whether they are trying to change from parliamentary to presidential system and to await a comprehensive review of the Constitution instead of having piecemeal amendments. Most of that communication has been done to the Members. The two legislative proposals that are pending are the Sexual Offences (Amendment) Bill, 2014, by Hon. Florence Mutua and the Anti-Corruption and Economic Crimes (Amendment) Bill of 2015 by Hon. Ababu Namwamba. On the Sexual Offences (Amendment) Bill, the report is awaiting adoption. The Committee has already processed the proposal.

On the Anti-Corruption and Economic Crimes (Amendment) Bill of 2015, the legislative proposal is under consideration. We need more time on this one to get the views of the Director of Public Prosecutions (DPP) and the EACC. Hon. Ababu is seeking to give prosecutorial powers to EACC, a question that needs time in terms of looking at the provisions of the Constitution.

We have the Sessional Paper No.3 on the National Policy and Action Plan on Human Rights. It is in the Order Paper. We have a report pending on the benchmarking trip that the Committee took to Australia and New Zealand.

Thank you, Hon. Speaker. That is the work of the Justice and Legal Affairs Committee.

Hon. Speaker: A very active Committee, indeed. Hon. Gladys Wanga.

Hon. (Ms.) Nyasuna: Thank you, Hon. Speaker. I would like to thank you for introducing this new order. Many times, the public and even Members do not know the status of Bills and which Committees they are in. This is a really commendable move that will help us in telling the public what is happening and even updating ourselves on what is happening. I want to agree with the Vice-Chairperson of the Justice and Legal Affairs Committee that the Committee needs commendation. Surely, they have very good work and a lot of work.

My question is around the constitutional amendment Bills, particularly the two-thirds gender rule, namely the “Duale Bill”. You said that those are going to be consolidated. Without pre-empting debate, we know that we are going to be having sittings on Thursday mornings to debate the Bills with constitutional deadlines. It is our hope that some of these Bills will be subjected to public participation and then dealt with before the end of this Session. That is a commitment that the Committee could give us.

Hon. Speaker: With regard to the point you have raised about public participation, in as much as everybody wants to make their comments out there, the National Assembly, and I can say even the Senate, regularly advertises the businesses appearing before Committees and invites the public to attend and participate or send memoranda. It is unfortunate that in a number of instances, we have noted that the public is not aware. It seems the public does not read newspapers. The requirement is that we advertise in, at least, two newspapers of national circulation.

Hon. Wanga, you are in charge of the Committee on Communication. You may have to consider some other methods which are becoming very popular with Kenyans. Perhaps, it might be an easier way of getting the public to participate. It is only that we do not know whether it would be considered to have been sufficient public participation. We need the public to participate in the work that we do by giving input. They should not just sit out there and say: "These laws have been passed and they do not incorporate our views." Let us get the views. If the views are not taken into account in the passage of the Bills, then people would have legitimate grounds to argue that their views were either ignored or not given sufficient consideration. The public is encouraged to constantly look at what is available and what Parliament is doing and avail themselves at the various opportunities that Parliament makes.

Is it on the same report, Hon. Wamalwa?

Hon. Wakhungu: Thank you, Hon. Speaker. I need some clarification. I heard the Vice-Chairperson mentioning the "Duale Bill". I was wondering which Bill is called the "Duale Bill" yet he has no Bill. I want that clarification because the Leader of the Majority Party has been bringing many Bills here and they are called "Duale". Can she clarify what is this "Duale Bill"?

Hon. Speaker: Hon. Nyokabi, do you want to clarify what you meant?

Hon. (Ms.) Kanyua: Thank you, Hon. Speaker. It is not the Leader of the Majority Party who called it his Bill, it is the women of Kenya who christened it "Duale Bill". Just to be clear, the full title of the Bill is the "Constitution of Kenya (Amendment) Bill, (No.4) of 2015, popularly called the "Duale Bill".

Hon. Speaker: This is important given the announcement made by Hon. Mwachugu about the impending visit and that Bills have been christened. Maybe, Hon. Duale might wish to attend that forum, so that he can be taught how to christen.

(Laughter)

Hon. Midiwo.

Hon. Midiwo: Thank you, Hon. Speaker. I can see that Hon. Duale has become a darling to the women of Kenya. You remember the other day he was saying that he still has three more chances. We want to support him. We want to support the Leader of the Majority Party. We will give him two and Hon. Millie is on your list. I accept as the brother of the bride, because you are my friend. That is with a light touch.

(Laughter)

Hon. Speaker, I just want to bring to your attention and, maybe, to hear the voice of the House - which has you as the father - about the ongoing issue of arrest of journalists. Yesterday, I raised the issue in the House Business Committee (HBC) and also read in the daily newspapers that the Leader of the Majority said that he contacted the authority. I do not know if authorities still need to be contacted to be unlawful.

I am also in the know that additional journalists are being sought today as I speak, in the precincts of Parliament. That aside, the issue of yesterday, this House must make it clear. Having been in this House for a while, I always thought that the CID officers and policemen around us are here to protect us and not to do anything untoward within these precincts. You need to clarify to them because nobody should do anything within these precincts. The precincts mean

Continental House all the way to Harambee House. Nobody can do anything without your permission. It would be nice to exonerate yourself, so that we do not look to be condoning the wrong thing as a House and as a Parliament.

This is very important because when somebody tried to say that the media needed the permission of Committee Chairs to cover some proceedings of Committees, you made a ruling. I do not think it can be criminal one way, after you pronounced that we need not be making laws that offend freedom of speech and freedom of the media. We have compiled. If my friend, Maj-Gen. Nkaissery, needs to do what he is saying publicly he is doing, the public is watching. As a House, we must not support him. Both sides of this House must not support him to break the law. He is our former colleague and defended those rights when he was here. He is obviously out of order, but not under your watch. I would wish to have you just say something about it.

Hon. Speaker: I am assuming that, that may have concluded references to the report by Hon. Nyokabi.

Hon. (Ms.) Kanyua: *(off record)*.

Hon. Speaker: Which clarification?

Hon. (Ms.) Kanyua: Hon. Speaker, I just want to make a quick clarification on the timelines in regard to the comment made by Hon. Gladys Wanga, on the question of the Constitutional (Amendment) Bill. You know that the two-thirds matter goes with the statutory amendments. The Independent Electoral and Boundaries Commission (IEBC) and many other partners in the electoral process have amendments on the election laws. We need to bring to this House a set of amendments relating to election laws generally, so that as early as 2015, we will have cleared and set ourselves on a path of good elections in 2017. So, the two-thirds gender matter together with the many other electoral laws that need to be changed will be brought to this House.

A question has arisen which we are not very sure how to answer, namely the question of the number of days that the Supreme Court has to address a presidential petition. The judges have come to the Justice and Legal Affairs Committee and said that the period given in the Constitution might need to be looked at. They said that in many other jurisdictions, you might need 21 or 30 days to conclude a presidential petition properly. That is a question that this House will be looking at. In terms of timeline - and we will be asking for your guidance - we need to complete the election laws this part of the year, so that by the time we are going for recess in December, the Electoral laws are done covering all the matters on elections.

Hon. Speaker: Hon. Members, the issue raised by Hon. Midiwo is obviously of great moment because of the reports that went through and were brought to my attention. The correct position is that no arrests may be effected within the precincts of Parliament and the precincts of Parliament are clearly defined in the House rules. They include even the offices of Members. No arrests may be effected without leave of the Speaker.

(Applause)

Even if anybody claims or alleges that an offence has been committed within, it is still not open to the police to walk into the precincts of Parliament and effect any arrest. That must be made abundantly clear to the police and any other person from whom they may be taking instructions. Article 118 of the Constitution provides for public participation. Public participation, as we have practised it since the adoption of the new Constitution, includes the

presence of the media. If any occasion arises that requires that the Committee sits *in camera*, then an appropriate decision is made.

If decisions or questions are addressed in public and then published, they cannot form the subject of secret communication. I am in the process of getting to the root cause of that problem. I am getting a write up from the Clerk's Department on what happened. That is why I do not want to pre-empt any report that may come, but preliminarily, what I have is that a lot of communication happened in the public - in the open. It is, therefore, not possible that we can have public participation on one hand, the freedom of the media and then we are also saying that what the media has heard in a Committee cannot be published.

(Applause)

On the other hand, the Members of the Committee are precluded from going to discuss what they have discussed in the Committee until they file a report in the House. The media are at liberty. Just like they go to court, sit there, listen to evidence being given and cross examination, but the judges do not move out of there to go for television shows to try and explain: "Even if you saw this and that question being reported and that witnesses wink or blink, it is not a serious matter". The media is at liberty. They are even at liberty to say that a witness was asked a question and almost collapsed. That is their business. It is not the judge's. That is not coming from the judge.

If the media are present, like I am sure they are even now, and they see us either collapsing, smiling or dozing, they are at liberty to report that. We cannot gag the media from making those remarks. Remember, they inform and entertain and occasionally educate. We cannot gag the media by saying that we are in a committee. They are at liberty to say how they saw Hon. Gumbo make his point, how he strained to make the point and how he made Hon. Duale sweat. That is their business. The Committee, on the other hand, will table their reports. They may include the sweating or not sweating, but if they do, it is on their own volition and not because the media had already reported that there was some sweating, blinking, winking or whispering.

I just want to make this point very clear: Let us observe our rules. Let the media go and report whatever it is that they heard in the Committees, but let us wait until the reports are tabled. That is because you need to adopt the Report as Committee Members so that when you bring it here, it is the report of the Committee. Even if you also want to say that you saw somebody smiling at the witness, you are at liberty to say so. However, do not move from the Committee and appear in some television show and explain that even if you saw it this way, this is not what was intended. Do not go to do that because it will be in breach of our own Standing Orders. The media are at liberty to say whatever they wish about what they saw, provided that they report factually. That is the only requirement. When they are not factual, you the members of the various Committees are at liberty to raise the issue even here on the Floor of the plenary or in the Committee and seek that the particular media house reports correctly or corrects whatever was not factual. That is within the norms of democratic governance. Therefore, the point raised by Hon. Midiwo is a valid one; that we will not entertain that and if it happens, we will deal with it in accordance with the law as we know how.

Thank you very much. Hon. Keter.

POINT OF ORDER

FAILURE TO MEET THRESHOLD FOR IMPEACHMENT MOTION

Hon. Alfred Keter: Thank you, Hon. Speaker. I rise to seek clarification on a matter that touches on a proposed Motion that I was intending to bring to this House. It touches on the removal of one Cabinet Secretary (CS), Anne Waiguru. I do not want to revisit your Communication but I want to understand the extent to which it affects my Motion. This is because by the time you gave a Communication on 22nd October, 2015 to set standards on how we should handle future cases of Special Motions like mine; I had already submitted my Motion to the Clerk's Office. The same day you gave your Communication, I received a letter in the morning from your office which said:-

“I refer to your Notice of Motion for the removal of Ms. Anne Waiguru as the Cabinet Secretary for Devolution and Planning under Article 152 of the Constitution. After a preliminary review of your Notice of Motion as required by Standing Order No. 47(1), take note that eight Members have invoked the provisions of Standing Order No. 66(4) and subsequently written withdrawing their signatures in support of the Motion. Consequently, the support of the Motion falls short of the threshold required under Article 152(6) of the Constitution and Standing Order No. 61(c).”

Hon. Speaker, you stated very clearly in your Communication that there is no room or provision for a Member who has appended his signature to support a Motion to say he is changing his mind and he wants to withdraw his signature. That is from your own Communication. However, my Motion went through a scenario where Members were allowed to withdraw their signatures. I really want to understand if your Communication touches on just the substance of my Motion or the whole procedure that I need to use so that I ensure that, that Motion is before this House. This Motion falls under Special Motions but there is another category that is coming up. It is becoming a Special Motion out of Special Motions. I am facing challenges at the moment and Kenyans are waiting. You have to understand the background that many other institutions like the Ethics and Anti-Corruption Commission (EACC) and the Criminal Investigation Department (CID) have already failed Kenyans in ensuring that we check on these issues that touch on corruption. This is the only House that has the confidence of Kenyans in ensuring that we check on issues of corruption. We have to really take this issue with the seriousness that it deserves. So, I seek your clarification.

Thank you so much.

Hon. Speaker: For avoidance of doubt and strictly keeping in observing Standing Order No. 83, I allowed Hon. Keter to make his point. There is no need of me being addressed by any other person. What I want to do is to revisit my ruling to explain that Special Motions, as defined under Standing Order No. 61, include motions contemplated in Articles 145, 150, 152 and 251 of the Constitution, as clearly explained in my Communication of 22nd October, 2015.

At the preamble of my Communication, I indicated clearly that issues have arisen and my office has received numerous communications and enquiries as to the thresholds that we require to fulfil in order to bring Special Motions of the nature contemplated in those four articles. It is fair to appreciate that Standing Order No. 66 merely talks of a Motion by the Member and signed in support by a quarter of the Members of the Assembly. It also says that a Motion, under

Standing Order No. 66 (1), is considered in similar way as provided for in Standing Order No. 64 on the removal of the President by way of impeachment.

Again, a clear reading of Standing Order No. 64 would also show you that in dealing with a Motion of that nature, the Speaker is required to observe the provisions of Standing Order No. 47. For avoidance of doubt, Standing Order No. 47(2) reads as follows:-

“Before giving notice of Motion, the Member shall deliver to the Clerk a copy of the proposed Motion in writing and signed by the Member, and the Clerk shall submit the proposed Motion to the Speaker.”

Up to that point it is still a proposed Motion. Standing Order No. 47(3) reads:

“If the Speaker is of the opinion that any proposed Motion -

(a) is one which infringes, or the debate on which is likely to infringe, any of these Standing Orders, the Speaker may direct either that the Motion is inadmissible, or that notice of it cannot be given without such alteration as the Speaker may approve or that the motion be referred to the relevant committee of the Assembly, pursuant to article 114(2) of the Constitution.”

Up to that point, if the Speaker is of the view that it would infringe on the Standing Orders, the Speaker may do either of the two, that is, direct that it is admissible or direct that amendments should be made.

“(b) If the Speaker is of the opinion that any proposed Motion is contrary to the Constitution or an Act of Parliament, without expressly proposing appropriate amendment to the Constitution or the Act of Parliament, the Speaker may direct either that---

(c) If the Speaker is of the opinion that any proposed Motion is too long---

Let us be absolutely clear that it is in the opinion of the Speaker. These are your Standing Orders. If you are not happy about them Hon. Members, you are at liberty to propose amendments or deletion. If it is too long, the Speaker can still direct that it is inadmissible or that it can be amended.

“(d) If the Speaker is of the opinion that any proposed Motion is framed in terms which are inconsistent with the dignity of the House,” he can direct that it is inadmissible or it should be amended as the Speaker directs.

“(e) If the Speaker is of the opinion that any proposed Motion contains or implies allegations which the Speaker is not satisfied that the Mover can substantiate---” Again, it is the Speaker to be satisfied.

Hon. Members, remember it is fair as we go to say whatever we say on television shows, to say that we are not happy about this. These are your own Standing Orders. If the Speaker is not satisfied that you can substantiate what you are alleging, he can direct that it is inadmissible or you go and amend it in a particular way, to make it admissible, in the opinion of the Speaker.

Therefore, Hon. Members, because this is a copy of our Standing Orders, I do not know whether I am expected to go and look for some other practice outside Standing Orders, except common usages, precedents, customs and traditions. You must comply with those.

My communication is premised on the Speaker’s authority in Standing Order No.1, where certain procedural matters are not expressly provided for. The Speaker is mandated to use precedents, traditions, customs and usages even from other jurisdictions, as long as they are

consistent with usages, traditions and customs of this country. Such communication must be understood in that context.

The net effect of that Communication is reduced into six points which are as follows:-

(i) The allegation of gross violation requires that the charges as framed must disclose a gross violation of the Constitution or any other written law.

(ii) The charges or grounds relied on must state with precision the Articles or even Sub-articles of the Constitution or provisions of any other written law that have been alleged to have been grossly violated.

(iii) The Notice must show a nexus between the person proposed to be removed from office and the alleged gross violations of the Constitution or any other written law.

(Applause)

(iv) The averments are to be accompanied by necessary evidence, including annexes and sworn testimonies, in respect of the allegations. This will enable the Speaker to make determination of compliance of the notice in terms of Subsection (iii) and (iv).

(v) The signatures are collected after the intended Motion has complied with (i), (ii) and (iii).

(vi) Number of signatures is clearly stated just, one quarter of the membership of the assembly.

Once the Speaker makes the ruling, it must remain and it is binding. Unfortunately, there is no appeal. It is good to remind ourselves; the appeal is available, if you could amend these Standing Orders. There is an avenue that the Standing Orders can be amended by you. This is the beauty about these current Standing Orders, unlike the previous ones which could not be amended until at the tail-end of the term of Parliament. They are amendable by ourselves, as we have done during this Parliament. You can propose so that the proposal does not have to satisfy the Speaker. However, if it has to satisfy the Speaker, which is the current situation, you must live with it.

I want to assure Hon. Alfred Keter, as a true democrat, I will protect your right to say what you may wish to say, including saying that you are not free to say it; if you want to say that you are being gagged from saying it. I will defend your right to say what you want to say, including expressing your views about the Speaker.

It is your right. Just like I have said, others have a right to express views about this House and they have done that. Do not have any fears. There will be no reprisals, but the procedure to be followed is as I have directed.

That is the long and short about this matter. Thank you

(Applause)

Hon. Wandayi: On a point of order, Hon. Speaker.

Hon. Speaker: There is no point of order on this. Not on this!

Next Order! There cannot be a point of order on the ruling of a Speaker. Never! It has never happened.

(Loud consultations)

Hon. Members, if it is about this one you will be grossly out of order and, consequences will follow.

Hon. Wandayi: Hon. Speaker, I have a different point to raise!

Hon. Speaker: Is it about this?

Hon. Wandayi: No, but it is about--- (*Inaudible*)

Hon. Speaker: What? No relation. Anyway, you cannot have debate on a ruling of the Speaker. It does not happen. Your two terms in this Parliament must surely tell you that.

Next Order.

PROCEDURAL MOTIONS

APPROVAL OF MORNING SITTINGS

Hon. (Dr.) Shaban: Hon. Speaker, I beg to move the following Procedural Motion:-

THAT, pursuant to the provisions of Standing Order No. 30(3) (b), this House resolves to hold Sittings on Thursdays Morning commencing at 9.30 a.m. to 1.00 p.m. as follows:-

- (i) Thursday, 12th November, 2015;
- (ii) Thursday, 19th November, 2015;
- (iii) Thursday, 26th November, 2015; and
- (iv) Thursday, 3rd December, 2015.

Hon. Speaker, because of the enormity of the business before the House, I propose that we have morning sittings on Thursdays of 12th, 19th, 26th November and 3rd December 2015.

To begin with, this House has numerous Bills with constitutional timelines which the House extended by one year on 28th August.

(Loud consultations)

Hon. Speaker: Order! Order, Hon. Members!

(Loud consultations)

Hon. Speaker: Order, Members! If you want to consult, you can do it. That is your right. However, you must allow business to proceed.

Proceed, Hon. (Ms.) Shaban.

Hon. (Dr.) Shaban: Hon. Speaker, to begin with this House has numerous Bills with constitutional timelines which the House extended by one year to 28th August, 2016. It is, therefore, important that the House should go an extra mile to reduce the backlog of these Bills which are at various stages before the House.

These Bills are:-

- (1) The Protection of Traditional Knowledge and Traditional Cultural Expressions Bill, 2015. That is Article 11(3) of our Constitution.
- (2) The Agreements on National Resources Bill, 2015
- (3) The Forest Bill, 2015

- (4) The Community Land Bill, 2015
- (5) The Physical Planning Bill, 2015
- (6) The Minimum and Maximum Land Holding Acreage Bill, 2015
- (7) The Investigation and Historical Land Injustices Bill, 2015
- (8) The Land Use Bill. That is Article 66 of Constitution 2010
- (9) The Evictions Bill, 2015
- (10) The Energy Bill, 2015
- (11) The Petroleum Exploration and Production Bill, 2015
- (12) The Bill on Representation of Marginalised Groups, 2015
- (13) The Two-Thirds Gender Principle Bill, 2015
- (14) The Seeds and Plants Varieties (Amendment) Bill, 2015
- (15) The Organisation and Administration of Appeal. That is Article 165(1) of the Constitution;
- (16) The Small Claims Court Bill, 2015
- (17) The Organisation and Administration of Appeal. That is Article 164 of the Constitution;
- (18) The Contempt of Court Bill, 2014.

Hon. Speaker, it is also important for the House to consider the National Government Constituencies Development Fund Bill of 2015, before the long recess that will start from December, 2015 to February, 2016.

The House Business Committee is also envisaged to schedule the Senate Bills for debate because they have been pending for long before the House. There is need for them to be given priority.

Among the Senate Bills are:-

- (1) The Public Finance Management (Amendment) Bill, 2014
- (2) The National Honours (Amendment) Bill, 2014
- (3) The Government Proceedings (Amendment) Bill, 2014
- (4) The Persons with Disabilities (Amendment) Bill, 2014
- (5) The County Assembly Powers and Privileges Bill, 2014
- (6) The National Youth Service (Amendment) Bill, 2014
- (7) The National Police Service (Amendment) Bill
- (8) The Public Fundraising Appeals Bill
- (9) The Food Security Bill and many others.

I propose the morning sittings for four Thursdays on 12th, 19th and 26th November and 3rd December, 2015 to complete the business that is scheduled.

I beg to move and ask Hon. A.B. Duale, the Leader of the Majority Party, to second.

Hon. A.B. Duale: Hon. Speaker, as I second, this is a very small matter. We are going on recess as per our calendar on 4th December 2015. We will go for the long recess until 8th February 2016. The many constitutional Bills which touch on county governments will go to the Senate. We also anticipate that when the two Houses finish mediation process--- That is why we felt that the National Assembly can deal with all those Bills. In the worst case scenario, we can go up to the Second Reading of all those Bills so that when we come back in February, we will deal with the Committee of the whole House. It is a small matter. This is a Procedural Motion.

I beg to second.

(Question proposed)

(Question put and agreed to)

Hon. Speaker: Let us move on to the next Order.

LIMITATION OF DEBATE ON SESSIONAL PAPERS

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

Hon. A.B. Duale: Hon. Speaker, I beg to move the following Procedural Motion:-

THAT, pursuant to the provisions of Standing Order No. 97(1) and notwithstanding the resolution of the House of 11th February, 2015 regarding limitation of time in debates, this House resolves to limit each speech in a debate on any Sessional Paper during the current part of the Session in the following manner: - A maximum of sixty (60) minutes, with not more than ten (10) minutes for the Mover in moving and five (5) minutes for any other Member speaking, including the Leader of the Majority Party and the Leader of the Minority Party and that five (5) minutes before the expiry of the time, the Mover shall be called upon to reply; and further that priority in speaking shall be accorded to the Leader of the Majority Party and the Leader of the Minority Party, in that Order.

This will give a maximum of one hour of debate on Sessional Papers. Therefore, in making sure that the time we have in this House is efficiently and adequately utilised, we will allow a Sessional Paper to be debated within one hour. This will enable us to do more business. Sessional Papers are very critical for the management of the Executive.

This is a Procedural Motion. I will ask Hon. Katoo ole Metito to second.

Hon. Speaker: Yes, Hon. Metito.

Hon. Katoo: Thank you, Hon. Speaker. I rise to second this Procedural Motion. Sessional Papers are very important. They originate from the Executive. They are the source documents for policy formulation. The Jubilee Administration would like to formulate many policies that will implement the manifesto they presented during the election time. Therefore, it will be very good to fast-track this policy document as quickly as possible.

Arising from the passage of the Procedural Motion under Order No.8, we are now going to have, from yesterday up to 3rd December when this House will go for the long recess, 16 sitting days doing the Bills that have constitutional timelines together with Sessional Papers. It will be very good to shorten the debate to a maximum of one hour per Sessional Paper so that we can cover as much ground as possible. For that reason, I beg to second.

(Question proposed)

(Question put and agreed to)

Hon. Speaker: Let us move on to the next Order.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[The Speaker (Hon. Muturi) left the Chair]

IN THE COMMITTEE

*[The Temporary Deputy Chairman
(Hon. Cheboi) took the Chair]*

THE MAGISTRATES' COURTS BILL

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, we are now in the Committee of the whole House. We will be dealing with the Magistrates' Courts Bill. We have a very busy afternoon and so we will move pretty fast.

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

Clause 7

Hon. (Ms.) Kanyua: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 7 of the Bill be amended in—

- (a) subclause (1)(a) by deleting the word “seven” and substituting therefor the word “twenty”;
- (b) subclause (1)(b) by deleting the word “five” and substituting therefor the word “fifteen”;
- (c) subclause (1)(c) by deleting the word “four” and substituting therefor the word “ten”;
- (d) subclause (1)(d) by deleting the word “three” and substituting therefor the word “seven”;
- (e) subclause (1)(e) by deleting the word “two” and substituting therefor the word “five”;
- (f) subclause (3) by deleting paragraph (e) and substituting therefor the following paragraph—

“(e) matters affecting status, and in particular the status of widows and children including guardianship, custody, adoption and legitimacy; and”

Under Clause 7 of the Bill, which is on the jurisdiction of the Magistrates' Courts, the Committee looked at this matter at length. It is the considered view of the Committee that the pecuniary jurisdiction of the Magistrates' Courts needs to be amended as follows:

Under Sub-Clause 1(a) of the Bill, by deleting the words “seven” and substituting therefor the word “twenty”. The Chief Magistrates' Court would then have the pecuniary jurisdiction of Kshs.20 million.

Under Sub-Clause 7(1)(b) of the Bill, deleting the word “five million” and substituting therefor the word “fifteen” would mean that the Senior Principal Magistrate would have the jurisdiction of Kshs.15 million.

Under Sub-Clause 1(c) of the Bill, deleting the word “four” and substituting therefor the word “ten” would mean that the Principal Magistrate would have the jurisdiction of Kshs.10 million.

Under Sub-Clause 1(d) of the Bill, deleting the word “three” and substituting therefor the word “seven” would mean a Senior Resident Magistrate would have the jurisdiction of Kshs.7 million.

Under Sub-Clause 1(e) of the Bill, deleting the word “two” and substituting therefor the word “five” would mean that a Resident Magistrate would have the jurisdiction of Kshs.5 million.

Under Sub-Clause 3 of the Bill, we have a final amendment under Sub-Clause 3(f) by deleting the paragraph and substituting therefor the following paragraph;

“(e) matters affecting status, and in particular the status of widows and children including guardianship, custody, adoption and legitimacy; and” others that is covered in Section 7.

Hon. Temporary Deputy Chairman, those are the proposals of the Committee in terms of the amendment to this particular clause.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give the opportunity to the Member for Meru.

Hon. (Ms.) Kajuju: Thank you, Hon. Temporary Deputy Chairman. I am a Member of this Committee. We looked at the various issues affecting our administration of justice especially within the subordinate courts. One issue that has been upheld in the Civil Procedure Code and the Constitution is access to justice. Most of the time, we have been speaking about the geographical jurisdiction of courts without thinking about the pecuniary jurisdiction of the courts. It is important that as much as we are trying to devolve the courts to the counties and the sub-counties, we must ensure that the presiding magistrates in those courts have the capacity to entertain the matters that are placed before them.

Litigants do not have to travel long distances and yet the magistrates who are presiding over these courts have the capacity; they have gone to school and are able to preside over the Magistrates’ Courts.

I support this amendment.

The Temporary Deputy Chairman (Hon. Cheboi): The Member for Kaloleni, do you want to speak to this one?

Hon. Chea: Yes, Hon. Temporary Deputy Chairman. I would like to support the Committee’s amendments. The figures that were initially in the Bill were too low. Considering the fact that this Parliament discussed the Small Claims Courts Bill, we now have to take these figures of Kshs10 million to Kshs15 million to the Magistrates’ Courts. Most stations in this country are manned by Resident Magistrates’ Courts. We require these good figures in terms of pecuniary jurisdiction so that parties can easily access justice.

I support.

The Temporary Deputy Chairman (Hon. Cheboi): Very well.

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

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

(Clause 7 as amended agreed to)

(Clause 8 agreed to)

Clause 9

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended by deleting clause 9 and substituting therefor the following clause—

Claims in
employment, labour
relations claims; land
and environment
cases.
Cap. 12A

9. A magistrate's court shall—

(a) in the exercise of the jurisdiction conferred upon it by section 26 of the Environment and Land Court Act and subject to the pecuniary limits under section 7(1), hear and determine claims relating to—

(i) environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;

(ii) compulsory acquisition of land;

(iii) land administration and management;

(iv) public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and

(v) environment and land generally;

(b) in the exercise of the jurisdiction conferred upon it by section 29 of the Industrial Court Act, 2011 and subject to the pecuniary limits under section 7(1), hear and determine claims relating to employment and labor relations

No. 20 of 2011.

Hon. Temporary Deputy Chairman, we are seeking to allow Magistrates' Courts to determine claims that relate to employment, labour relations, environment and land matters that are subject to the limitation as has already been approved under Clause 7.

Previously, the Magistrates' Courts were not entertaining issues concerning employment and land. We are now giving them jurisdiction subject to their pecuniary limitations.

Thank you, Hon. Temporary Deputy Chairman.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I can see Hon. Nyokabi wants to contribute to this.

Hon. (Ms.) Kanyua: Thank you, Hon. Temporary Deputy Chairman. The Committee spent a lot of time looking at Clause 9. It is, indeed, the Committee's view that the Magistrates' Courts should have jurisdiction on matters of environment and land.

With regard to the pecuniary jurisdiction we have set above, I am happy that Hon. Ochieng has come in because he had some contestations on questions of language. He was wondering whether we could have tightened it a little bit more by giving this jurisdiction to the Magistrates' Courts in matters that relate to the environment and land, matters that relate to human rights and matters that relate to the Employment and Labour Relations Act. However, for the purposes of our record, because the HANSARD is used in the interpretation of the Act, what we are saying as a Committee and as a House is that the Magistrates' Courts have jurisdiction on matters of environment and land, human rights, employment and labour relations as far as their pecuniary jurisdiction is concerned. We can get into matters of interpretation later on or in the course of implementation. Now that Hon. Ochieng is here, he can make his point better on the language that he would have preferred as far as that clause is concerned.

Thank you, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): Well, I want to give the chance to Hon. Ochieng but, of course, I am not being guided by what you have just said that he wants to give us a certain language which he would prefer to be used. I will only give him an opportunity to contribute to this because I have nothing before me which we are supposed to consider. So, I will give you an opportunity to contribute to it. If it is a question of changing the language or anything else, well, you know the motions. Proceed.

Hon. Ochieng: Hon. Temporary Deputy Chairman, I am sorry that this happened the way it did. I will be consulting with the Chair of the Committee to accept, through his good office, that we recommit this clause so that we are able to bring this proposed text through the normal procedure.

The idea, like Hon. Nyokabi has said, is that the current text of the clause concerned is contradictory in a way. It does not bring out the meaning we need. This is borne out of consultations with stakeholders in this particular area. They thought that probably we needed to firm it up and make it clearer. If you allow, I will consult with the Chair and then we can bring it up.

The Temporary Deputy Chairman (Hon. Cheboi): As you consult with the Chair, what I do not understand Hon. Ochieng is whether you want to amend this particular bit or--- This is because if it is the question of language honestly---

Hon. Ochieng: Hon. Temporary Deputy Chairman, that is to amend it by providing a redraft of that particular clause.

The Temporary Deputy Chairman (Hon. Cheboi): Is it not better if you were to discuss it with the Hon. Chair who can move an amendment to his?

Hon. Ochieng: Hon. Temporary Deputy Chairman, we have discussed that and we are still doing that.

The Temporary Deputy Chairman (Hon. Cheboi): You see time is not on our side. I am actually going to proceed in the normal manner. Therefore, it means---

Hon. Ochieng: That is why I was proposing that once we discuss with him we can request for a recommital of the same.

The Temporary Deputy Chairman (Hon. Cheboi): Maybe you will proceed because in any case if there will be a recommital on it anyway, that can be done whether we would have

moved an amendment or not. So, we will proceed and if there will be any need for that recommittal, you know the motions.

Hon. Ochieng: Thank you very much. I stand guided.

The Temporary Deputy Chairman (Hon. Cheboi): I can see there are a number of Members who want to speak.

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

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

(Clause 9 as amended agreed to)

Clause 10

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended by deleting Clause 10 and substituting therefor the following clause—

- Contempt of Court.
10. (1) Subject to the provisions of any other law, the Court shall have power to punish for contempt.
- (2) A person who, in the face of the Court—
- (a) assaults, threatens, intimidates, or insults a magistrate, court administrator, judicial officer, or a witness, during a sitting or attendance in Court, or in going to or returning from the Court;
 - (b) interrupts or obstructs the proceedings of the Court; or
 - (c) without lawful excuse disobeys an order or direction of the Court in the course of the hearing of a proceeding, commits an offence.
- (3) In the case of civil proceedings, the willful disobedience of any judgment, decree, direction, order, or other process of a court or willful breach of an undertaking given to a court constitutes contempt of court.
- (4) In the case of criminal proceedings, the publication, whether by words, spoken or written, by signs, visible representation, or otherwise, of any matters or the doing of any other act which—
- (a) scandalizes or tends to scandalize, or lowers or tends to lower the judicial authority or dignity of the court
 - (b) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or
 - (c) Interferes or tends to interfere with, or obstructs or

tends to obstruct the administration of justice, constitutes contempt of court.

(5) A police officer, with or without the assistance of any other person, may, by order of a judge of the Court, take into custody and detain a person who commits an offence under subsection (2) until the rising of the Court.

(6) The Court may sentence a person who commits an offence under subsection (1) to imprisonment for a term not exceeding five days, or a fine not exceeding one hundred thousand shillings, or both.

(7) A person may appeal against an order of the Court made by way of punishment for contempt of court as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the Court.

(8) The Chief Justice may make Rules to regulate procedures relating to contempt of court.

This is to allow the court to punish for contempt of court and harmonise the definition of “contempt of court” with the definition that is found in the other Bills already before this House that we will be discussing later on. That is the High Court Bill and the Court of Appeal (Organisation and Administration) Bill, 2015. We are seeking to align all these Bills so that there is consistency.

Thank you.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will, again, give two Members a chance starting with the Hon. Member for Kitui Central. The Member for Kitui Central, do you want to speak to this clause?

Hon. Mulu: Thank you, Hon. Temporary Deputy Chairman. I intended to speak on Clause 9 and not this one.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. Then let us have the Member for Mbita; the gracious lady from Mbita.

QUORUM

Hon. (Ms.) Odhiambo-Mabona: Thank you, Hon. Temporary Deputy Chairman. Mine is on a point of order. We have no quorum.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. So, I want to confirm if we have quorum. Let me consult the Clerk.

*(The Temporary Deputy Chairman (Hon. Cheboi) consulted
the Clerks-at-the Table)*

Well, we obviously, do not have quorum. Therefore, I order the Quorum Bell to be rung for 10 minutes.

(The Quorum Bell was rung)

The Temporary Deputy Chairman (Hon. Cheboi): As the Bell is ringing, I order the Serjeant-at-Arms not to allow any Member to leave because that is against the rules of the House. Two Members have left. The only Members who are allowed to leave are those going out to look for Members to form quorum. They are the Whips.

(Hon. (Ms.) Odhiambo-Mabona stood up in her place)

If Hon. Millie Odhiambo leaves the House, I will sanction her. That is not going to be allowed.

Hon. Millie Odhiambo, you are the one who informed the Chair that there was no Quorum. You cannot do that and then leave the Chamber. If you do that I will take punitive steps against you. That will not be allowed. As a Member of this House, you cannot raise the issue of lack of Quorum and then leave. You will not be allowed to shout from where you are.

Hon. (Ms.) Odhiambo-Mabona: I am not leaving the House, Hon. Temporary Deputy Chairman. I am standing in the House.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Shaban, you will not go out. We are close to raising the Quorum. Let us wait for a few more Members and then we will proceed.

The Quorum Bell will ring for three more minutes.

(The Quorum Bell was rung for three more minutes)

Order, Hon. Members! We have not raised the requisite quorum. It means, therefore, we will not proceed.

(The House resumed)

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

THE MAGISTRATES' COURTS BILL

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Yes, Hon. Chairperson.

Hon. Cheboi: Hon. Temporary Deputy Speaker, we were at the Committee of the whole House dealing with the Magistrates' Courts Bill, National Assembly Bill No.40 of 2015. At that point, a Member raised an issue that there was no quorum. Indeed, it was confirmed that there was no quorum. We rang the Bell for 10 minutes and we could not raise quorum.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, pursuant to Standing Order No.35(d)(3), we will then adjourn the House.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, the time being 4.32 p.m., this House stands adjourned until Thursday, 12th November 2015, at 9.30 a.m.

The House rose at 4.32 p.m.