

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 20th July, 2016

The House met at 2.30 p.m.

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

PRAYERS

PETITION

NON-IMPLEMENTATION OF SCHOOL FEES GUIDELINES IN SECONDARY SCHOOLS

Hon. Kinoti: Thank you, Hon. Temporary Deputy Speaker.

I, the undersigned, on behalf of Upendo Foundation, a Non-Governmental Organisation registered in Kenya and supporting orphaned children, draws the attention of the House to the following:

THAT, the Constitution of Kenya entitles every Kenyan child to free and compulsory basic education and obligates the State and parents to facilitate access to basic education.

THAT, Kenya's Vision 2030 and Sustainable Development Goals (SDG) acknowledge quality education and training as vehicles for accelerating Kenya's quest to become a middle income country.

THAT, vide Sessional Paper No.1 of 2005 the Government commenced implementation of free day secondary education and subsidised fees.

THAT, in 2014 the Cabinet Secretary of Education commissioned a task force led by Dr. Kilemi Mwiria to review the exorbitant fees charged by public secondary schools and recommended realistic unit cost per child.

THAT, the task force recommended Kshs23,973 for day schools, Kshs51,839 for boarding schools and Kshs55,435 for special schools annually.

THAT, many secondary schools continue to charge higher fees despite the recommended and approved fees guidelines and some indicating a 31 per cent variance above the recommended ceiling.

THAT, boards of management in several public secondary schools are abusing Section 29(2)(b) of the Basic Education Act, 2013 by imposing unregulated levies translating to a higher cost of secondary education that needy children are unable to meet.

THAT, efforts to have our grievances addressed by the Ministry of Education, Science and Technology have not yielded satisfactory action.

THAT, the issues made in respect to this Petition are not pending before any court of law, constitutional or legal body.

Therefore, your humble petitioners pray that the National Assembly through the Departmental Committee on Education, Research and Technology:

- i. Ensures that the Cabinet Secretary for Education, Science and Technology strictly implements the right of every child to free and compulsory basic education as mandated in Section 28(1) of the Basic Education Act, 2013.
- ii. Ensures that affordable fee guidelines recommended by Dr. Kilemi Mwiria- led task force of secondary school fees is fully implemented.
- iii. Allocates additional funds to cater for all secondary education related cost to ensure that no child misses out on basic education due to lack of school fees.
- iv. Causes investigations on school boards of management and principals charging fees above the approved guidelines or imposing unlawful levies and recommends appropriate disciplinary measures for those found culpable.
- v. Makes any other orders deemed fit in the circumstances of the petitioners.

Your humble petitioners will ever pray.

Thank you, Hon. Temporary Deputy Speaker.

I am glad to present this Petition on a day the school where I taught, Mbuguriti Primary School is sitting at the Speaker's Gallery. Thank you and God bless.

The Temporary Deputy Speaker (Hon. Cheboi): I will give a few Members who would want to discuss this particular matter as petitioned by Hon. Gatobu. I will look at Members who have placed interventions because I believe those are the ones who want to contribute to it. I will give Hon. Kathuri Murungi, Member for South Imenti.

Hon. Murungi: Thank you, Hon. Temporary Deputy Speaker. I also want to comment on this Petition as presented by colleague and friend Hon. Gatobu and also commend him in regard to this Petition. Some of the problems we get in the secondary schools at the moment are that students are under a lot of pressure because of these regulations which are being implemented right, left and centre. Some of the regulations, especially on fees guidelines are one of the causes that make the students strike. Most of the time the school management wants them to clear the fees so that they can continue with examinations. Sometimes they are sent out of school. Therefore, because of this pressure coming from all corners, these students are unable to bear. Therefore, hon. Temporary Deputy Speaker, Members of Parliament can bear with me that every day and every morning in our offices in our constituencies, there are more than 20 parents--Last week I was on recess and everyday parents were coming kneeling down looking for school fees from the Member of Parliament. This is because guidelines which have been legislated have not been implemented. The taskforce which was led by the able---

The Temporary Deputy Speaker (Hon. Cheboi): You will have to be brief---

Hon. Murungi: So, I was saying the guidelines which were introduced by Dr. Kiremi Mwiria were rushed by the ministry. I do not know if there is a disconnect between the ministry and the school boards of management. I support this Petition and urge the Departmental Committee on Education, Research and Technology to expedite this Petition.

The Temporary Deputy Speaker (Hon. Cheboi): Okay. Hon. Onyura, Member for Butula.

Hon. Onyura: Thank you, hon. Temporary Deputy Speaker. I also rise to support that Petition. This is because the cost of education in this county is really sky rocketing. The effect is that children from poor families and background are not going far in education. We start wondering when we have these task forces. So much money and time is spent on them and then the recommendations are put on shelves and nobody bothers about them.

Hon. Temporary Deputy Speaker, another area that is coming up that is really serious is the issue of registration of new schools. There seems to be a directive from the ministry to stop registering new schools and yet some of them already have children. Some of their primary schools are about to get to Standard Eight and others are up to Form Three and they are being advised to close and send children to other schools. These are some of the things that are really undermining education in this country.

I support.

The Temporary Deputy Speaker (Hon. Cheboi): We will have Hon. Rasso, Member for Saku.

Hon. Dido: Thank you, hon. Temporary Deputy Speaker. I wish to add my voice to this Petition by Hon. Gatobu. This is clearly laid out in Article 19 of the Constitution, Fundamental Rights and Education being part of it. I think the current Cabinet Secretary is doing a good job and Kenyans have seen that. However, the problem in education is, I think there are too many loose ends where the poor in our constituencies are still not going to school. This is because they cannot afford even the basic fees of Kshs.5, 000 or Kshs.7,500. I think something needs to be done. I think it is a good Petition. Parliament must add its voice and also as a House we must objectively contribute to think about fees on education so that all our children whether they are poor or rich access education.

The Temporary Deputy Speaker (Hon. Cheboi): Okay. Hon. ole Kenta Member for Narok North.

Hon. ole Kenta: Thank you, hon. Temporary Deputy Speaker. I also want to support this Petition. In fact, education is a basic human right. More than anything else, for us to uplift the most vulnerable in our societies, education is the gift that we can give them. Whereas, I support the Cabinet Secretary for Education, Research and Technology, I also believe that there is unnecessary and undue interference with educational fields. I think this might have led to escalation of indiscipline in institutions of learning.

The other issue is that, I think the National Government Constituencies Development Fund (NGCDF) has actually tried to bring equality as far as education operations are concerned. I believe we should actually encourage and enforce the same activity of supporting education in counties. This is because the lower education is actually supposed to be supported by the county government. Unfortunately they have actually misused the funds. I think that is something that should actually be followed up.

In conclusion, I believe it is the right of our children and especially the most vulnerable to get basic education and I think that must be enforced.

Thank you, hon. Temporary Deputy Speaker for giving me this opportunity and I think I will welcome them.

The Temporary Deputy Speaker (Hon. Cheboi): Okay. Hon. Kedogo.

Hon. (Ms.) Kedogo: Thank you, hon. Temporary Deputy Speaker. I want to support the Petition and also ask the Government to give the cash transfers in good time. This is because, usually they delay and you find principals sending away those students. What they say as we even talk of free education or free secondary education, I want to ask the Government to be giving that money in good time.

Thank you, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Cheboi): Okay. Hon. Member for Juja.

Hon. Francis Waititu: Thank you, hon. Temporary Deputy Speaker. I wish to add my voice to this Petition because it has affected me in Juja Constituency. Once we give bursaries in

schools, sometimes we even write letters to head teachers telling them that we are going to give the needy students bursaries but you find them still sending students home.

In the areas I represent, some parents are working in coffee farms, some in tea plantations while some are jobless. So, head teachers sit down with parents and agree on funds that the students are supposed to pay but then parents are unable to raise the fees. I live in Juja and when I go around seeing students with uniform going home because the head teachers are not listening to the members of Parliament, it hurts. It is a very good Petition. It is us who are doing that. It is the Jubilee Government doing that. We are trying to make education in primary schools free. We also promise the country that in 2017 we are going to make secondary schools affordable and even free. This is because education is a basic right to any student in this country. It is not that the children from the rich community or rich people will have access to education but even the poor.

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Member for Igembe Central, Hon. Iringo. I note that students from his own constituency are in the Gallery. I will introduce them shortly. Proceed.

Hon. Kubai Iringo: Thank you, hon. Temporary Deputy Speaker for giving me this opportunity to support this Petition by my brother, Hon. Gatobu.

He has put it rightly. We have a problem in the way we implement resolutions or findings which are done by competent bodies in this country and especially as far as education is concerned. For example, like the Kilemi Mweria Report, once it was put given to the president and it was given out to be implemented, some interpreted it opposite because some schools started increasing their fees while others reduced. It became now a fuss which is not very clear. It is important now for the Government that once something has been passed, let it be implemented as per the letter and findings of the experts who did it.

Hon. Temporary Deputy Speaker, this free primary education is a big problem. Like in day schools, we have very many children who are dropping out of these schools because they have no fees. For your information, those children who go to day schools are not those who are not bright rather they go there because they are poor. It is high time the Government looks into it so that no child in a day school will be sent home to go and look for fees.

Finally, there is this issue of free primary education which is based on the number of children in the school. The Ministry of Education, Science and Technology should endeavour to be collecting data early enough immediately Form One students report to school and not use previous years' data. As we talk now, we have all Form One students admitted in school, especially in my constituency. Most of them have not been factored and it means that schools are getting lesser money than they should get.

The Temporary Deputy Speaker (Hon. Cheboi): Well, and on that note I want to introduce students who are seated in the Public Gallery. We have **Mumone AICPA Boarding School, Igembe Central who are ably represented by Hon. Iringo and Burugiti Primary School from Buuri** who are also represented by his immediate neighbour there, Hon. Gatobu. We will proceed to the next Order.

PAPERS LAID

Hon. Katoo: Hon. Temporary Deputy Speaker, I beg to lay the following Papers on the Table of the House, today, Wednesday, 20th July 2016:-

The Public Finance Management (Senate Monitoring and Evaluation Regulations, 2016) and the Explanatory Memorandum.

The Audited Financial Statements and Management Service Report by the Independent Auditor on the Office of the Auditor General for the year ended 30th June 2014.

The Constituencies Development Fund Board Report on Project Proposal Approvals, Disbursement Status and Restrictions Imposed on Constituency Account for the Fourth Quarter of the 2015/16 Financial Year.

Reports of the Auditor-General on the Financial Statements in respect of the following institutions for the year ended 30th June, 2015, and their certificates therein:-

Kenya Ferry Services Limited;

Kenya Investment Authority;

State Department of Commerce and Tourism;

The Constituencies Development Fund- Likoni Constituency;

The Constituencies Development Fund- Embakasi East Constituency;

The Constituencies Development Fund- Galole Constituency;

The Constituencies Development Fund- Kaloleni Constituency;

The Constituencies Development Fund- Voi Constituency;

State Department of Transport (VOTE 1092); and

State Department of Water and Regional Authorities.

The Temporary Deputy Speaker (Hon. Cheboi): Very Well.

Next Order!

STATEMENTS

STATUS OF BUSINESS BEFORE THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY

The Temporary Deputy Speaker (Hon. Cheboi): Well, on that particular one, we have Hon. Dr. Humprey Njuguna who is also the Chairperson of the Committee on Agriculture, Livestock and Cooperatives.

Hon. H.K. Njuguna: Thank you, hon. Temporary Deputy Speaker. I am holding brief for the Chairperson who is hosting the first lady in his constituency and our Vice Chair is held up in the constituency. This is in regard to matters pending before the Departmental Committee on Administration and National Security.

I will start with Petitions. The first Petition is from Hon. Dido, Member of Parliament of Saku Constituency regarding revocation of appointment of Mr. David Mulato as the Chief of D'akabarricha Location, Saku Constituency. The draft Report is awaiting adoption in the Committee.

The second Petition is from Hon. Mathew Lempurkel on behalf of residents of Segera in Laikipia County regarding urgent resolution of abuse, torture and conflict cases. This Petition is under consideration by the Committee. We have held meetings with all the stakeholders. Once it is considered, it will be tabled on the Floor of the house.

We have Petition from Hon. (Ms.) Florence Kajuju, MP. It regards cases of insecurity, boundary conflict, cattle rustling, sexual abuse and loss of life and property. This Petition is under consideration by the Departmental Committee on Administration and National Security.

We have the fourth Petition from Hon. (Ms.) Mbalu, MP regarding the location of Kibwezi East Sub-County headquarters. The Report of this Petition is awaiting tabling on the Floor of the House.

We have a Petition by Hon. Kimani Ichung'wah regarding the alleged emergence of militia groups in Kiambu County. We have had several meetings regarding this Petition. It is under consideration by the Committee.

We have a Petition by Hon. Christopher Nakuleu Doye regarding alleged discrimination of members of the Turkana community in issuance of national identification cards in Laikipia County. It is under consideration by the Committee.

We have another Petition by Ms. Waziri Zubeda regarding illegal and unlawful, corrupt and criminal activities in Kibera slums. This matter is pending before the Committee. It will be considered next week.

We have another Petition by Hon. Timothy Wanyonyi regarding alleged insecurity and injustice meted upon students by the police officers, victimisation and infringement of their right to education. This matter is before the Committee. It is under consideration.

The Bills before the Committee are: The Office of the County Printer (Senate Bill No. 42 of 2014). It is under consideration in the Committee.

The Statute Law (Miscellaneous Amendments) Bill (Senate Bill No. 6 of 2014). The draft Report is pending for adoption.

The County Governments Disaster Management Bill (Senate Bill No. 40 of 2014). It is under consideration.

The County Assemblies Services Bill (Senate Bill No. 27 of 2014). It is under consideration.

The County Bill of Fame Bill (Senate Bill No. 33 of 2014). It is under consideration.

We have one Bill for prepublication scrutiny. It is the proposed Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities (Amendment) Bill 2016 by Hon. Ferdinand Wanyonyi, MP. It is under consideration by the Committee. The Report is being prepared.

Regarding the Reports pending before the Committee for tabling, we have:

The Report on an inspection visit to the Busia and Malaba Border Posts. It is awaiting tabling.

The other is Murang'a County visit on measures the Government is putting in place to address land-based insecurity, alcoholism and drug addiction. It will be tabled on the Floor of the House any time.

Third is on the benchmarking visit to the Kingdom of Morocco on 27th June to 5th July 2015. It will be tabled on the Floor of the House any time from now.

Finally, we have the Report on the 70th Session of the United Nations General Assembly in New York from 21st September to 1st October 2015. It will be tabled on the Floor of the House.

That is the report regarding the status of matters pending before the Committee.

Thank you, Hon. Temporary Deputy Speaker.

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

Hon. Members, it is good you note that what the Hon. Member was basically apprising the House on is the business pending before their Committee.

I would like St. Mary's Gorret Shikoti Secondary School from Lurambi Constituency of Kakamega County ably represented by Hon. Otaalo to feel welcome in the National Assembly.

The next person to apprise us on what is before their Committee is the Chairman of the Departmental Committee on Agriculture, Livestock and Cooperatives.

STATUS OF BUSINESS PENDING BEFORE THE DEPARTMENTAL COMMITTEE
ON AGRICULTURE, LIVESTOCK AND COOPERATIVES

Hon. Nooru: Thank you, Hon. Temporary Deputy Speaker.

I take this opportunity to apprise the House on business pending before the Departmental Committee on Agriculture, Livestock and Cooperatives.

The Committee is currently handling two Petitions, two Bills and two legislative proposals. We have six agenda pending before the Committee.

The Committee has a Petition brought by Hon. Patrick Kamande, MP, on behalf of macadamia farmers from Maragua Constituency regarding the lifting of the ban on sales and export of macadamia nuts. The Committee has considered the Report which is ready. We are going to table it next week.

The second Petition is by Hon. Korir on behalf of the maize growers representative on supply of low quality subsidised fertiliser to the farmers by the National Cereals and Produce Board (NCPB). It was tabled before the Committee on 6th July which is just this month or last week. We are considering it. We have scheduled to meet the Petitioner on 26th July 2016.

The Committee has considered the Potato Bill which is on the Order Paper. We are ready to move it today. The second is the Food Security Bill from the Senate. It is being considered by the Budget and Appropriations Committee. We are of the opinion that this is a money Bill and thus we have to be given a nod by the Budget and Appropriations Committee.

Finally, we have the legislative proposal on the amendment of the Crops Act 2013. It is sponsored by Hon. Irungu Kang'ata, MP and it seeks to provide a guaranteed minimum return to coffee and tea farmers. The Committee met the proposer on Thursday, 16th June 2016. We met the Ministry of Agriculture, Livestock and Fisheries on 19th July 2016. The final Report is going to be submitted to the Speaker for approval on Thursday, 21st July 2016. It is tomorrow.

Finally, on the legislative proposal for livestock marketing and development by Hon. Abdinoor Mohamed, Nominated MP, the Committee is currently looking at it. There is a livestock Bill by the Ministry of Agriculture, Livestock and Fisheries and at the Attorney-General's Chamber. We are trying to look for ways of harmonising the two Bills by the Private Member, Hon. Abdinoor and the one by the Ministry so as to come up with one Bill. We seek the indulgence of the Speaker in the House so that they can be given an extension of time on this legislative proposal.

Thank you, Hon. Temporary Deputy Speaker.

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

Next Order.

BILL

Second Reading

THE COUNTY ASSEMBLIES POWERS AND PRIVILEGES BILL

The Temporary Deputy Speaker (Hon. Cheboi): Yes. I am informed that Hon. Olago will be moving this Bill.

Hon. Aluoch: Thank you, Hon. Temporary Deputy Speaker. On behalf of the Chairman of the Departmental Committee on Justice and Legal Affairs, the Committee in which I have the privilege of serving, I beg to move that the County Assemblies Powers and Privileges Bill (Senate Bill No.14 of 2014) be now read a Second Time.

The Departmental Committee on Justice and Legal Affairs has spent a lot of time looking at how we could actualise the provisions of Article 196(3) of the Constitution. This is the Article that gives the National Assembly the power to enact legislation and actualise that Article so that county assemblies can have the powers and privileges more or less framed along what the National Assembly enjoys.

For Members to understand exactly what this is, I kindly make it clear that this Bill is for an Act of Parliament to give effect to Article 196(3) of the Constitution; to provide for the powers, privileges and immunities of county assemblies, their committees and members; to make provision regulating admittance to and conduct within the precincts of county assemblies; and for connected purposes. This Bill takes into consideration the National Assembly Powers and Privileges Act. In my humble view, debate on this Bill will give Members the chance to look at how we can improve the Act relating to our conduct in the Chambers, particularly looking at the conduct within these Chambers in the recent past and the penalties that the Speaker has had to impose on Members and how we can improve on them. You can remember the week before we went on recess, the Speaker indicated that the time had come for us to look at our Powers and Privileges Act again and look at how the Powers and Privileges Committee can better perform its duties.

The Bill is divided into several parts and I wish to go through them quickly. Part II of the Bill in effect describes the precincts of the county assembly in the same way that our Act describes the precincts of Parliament, whether the assembly is sitting where it is constructed or outside the assembly buildings. Part III describes the privileges and immunities of Members of County Assemblies (MCAs). In my view, recently there are many county assemblies in our country that have not enacted legislation, but the few that have enacted legislation pertaining to privileges and immunities of their Members would understand that those powers and privileges only confine them to their assemblies and not outside the assemblies. When the National Assembly passes this Bill, it is going to have effect throughout the nation.

Clause 8 of the Bill proposes that no civil or criminal proceedings may be instituted in any court or tribunal against an MCA by reason of any matter said in any debate, Petition, Motion or other proceedings of a county assembly. This is meant to give MCAs the freedom to discuss issues freely and not have fear that whatever they say in the chambers may be used against them later on. This is important because the MCAs are supposed to oversee county governments. Many of the MCAs do not have the educational standards equalising those of governors or members of the county executive committees. This will give MCAs the courage to speak freely about any matters before them.

Part IV of this Bill talks to breach of privileges. It is established for each county assembly a committee known as the Committee on Powers and Privileges. The powers and privileges of this Committee are framed along what applies in the National Assembly and the Senate. Any breach of what is stipulated in this Bill will be dealt with by the committee of the county assembly. This is going to give the county assemblies the powers to administer these rules and

enforce proper conduct in the assemblies without referring to either the Speaker of the assembly or anybody else.

Part V of the Bill gives the county assemblies the power to summon witnesses. Clause 18(1) of the Bill reads as follows:-

“A county assembly or its committees may invite or summon any person to appear before it for the purposes of giving evidence or providing any information, paper, book, record or document in the possession of that person and in this respect a county assembly and its committees shall have the same powers as the High Court as specified under Article 195 of the Constitution.”

This means that committees of county assemblies will be able to summon witnesses in the same way that Committees of this House summon witnesses. In the event that a committee of a county assembly will be dealing with a recalcitrant person who declines to appear before the committee, the committee will be able to deal with that person the same way the High Court can do. I know the issue that comes to the minds of Members now as we give committees of county assemblies the powers of the High Court is: Do MCAs have the capacity to deal with issues the same way a judge would? In my view, we must answer that question in the affirmative because if we were to say that MCAs do not have the capacity we would then be demeaning them. I believe MCAs in this country are men and women of dignity and experience who would know how to handle powers given by law.

Part VI deals with publications and broadcast. This provides immunity to county assemblies to keep documents of confidentiality and not to have them published until they are ready to have them published. In effect, this gives the county assemblies the powers to handle documents and information freely. That again would encourage useful and robust debate.

I want to draw attention to Part VII of this Bill, which deals with enforcement. Clause 26(1)(a) says that:

“A person shall not insult, assault, threaten, use abusive language, obstruct, molest or use any other language against a member during proceedings being within or leaving the premises of the county assembly or endeavour to compel any member by force, insult or menace to declare himself or herself in favour of or against any proposition or matter pending or expected to be brought before a county assembly or any of its committee.”

Why is this necessary? This clause is borne out of experience in our country where we had members of the then county and municipal councils fighting physically in the chambers. This will stop any member from enforcing his or her liking on another member by force, insult or abuses. Again, this provision will give freedom to MCAs to conduct themselves and to debate as robustly as they can without fear of being molested by any person being either a member or from outside the membership of the assembly.

By and large, this Bill is meant not just for the National Assembly to actualise the provisions of the Constitution but it is also meant to streamline the operations of the chambers in the county assemblies. It is important as it is going to let our county assemblies become true instruments of invocation and implementation of county governments.

With those few remarks, I beg to move and ask the Leader of the Minority Chief Whip to kindly second the Bill.

The Temporary Deputy Speaker (Hon. Cheboi): I am not so sure that you have correctly described the person I can see standing because we have the Deputy Whip of the Minority Party. He is seated next to you.

Before he contributes and seconds, let me introduce three schools. In the Speaker's Gallery, we have Kamanau Primary School from Sigor Constituency represented by Hon. Rotino.

We have two schools in the Public Gallery; Kimbo Githurai Primary School and Ndiini Primary School, both from Ruiru Constituency, which is represented by Hon. Esther Gathogo.

Hon. (Ms.) Gathogo: On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Cheboi): What is it Hon. Gathogo? Is there anything out of order?

Hon. (Ms.) Gathogo: Thank you, Hon. Temporary Deputy Speaker. There is nothing wrong. I am just excited to see my children in the Public Gallery. I want to say hallo to them and send them to their parents to say hallo to them. I am so much excited.

(Laughter)

The Temporary Deputy Speaker (Hon. Cheboi): Order, Hon. Gathogo! It is obviously understood when a mother gets excited over her children. However, as you know, Hon. Gathogo, and you are now a very serious member of this House, we will not play to the Gallery. You cannot send greetings through this particular forum. We can use other forums. In fact, the best forum for you, Hon. Gathogo, is to, after a few minutes, step out and meet your constituents out there and send the greetings to their parents. However, in Parliament it may not happen.

What is it Member for Kisumu West? I thought you had finalised.

Hon. Aluoch: Hon. Temporary Deputy Speaker, for avoidance of doubt, I want to say that this Bill is being seconded by the Leader of the Minority Chief Whip, Hon. Washington Jakoyo Midiwo.

The Temporary Deputy Speaker (Hon. Cheboi): You have actually repeated what you stated a few minutes ago. Maybe, as Hon. Midiwo seconds, he will introduce himself better. By the way, he is not doing it as the Deputy Leader of the Minority Party.

Hon. Midiwo: Thank you, Hon. Temporary Deputy Speaker. I second but I am the Deputy Leader of the Minority Party. The Leader of the Minority Party is sitting right in front of me. You know it is time for confusion.

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Midiwo, I think today there is unnecessary excitement in this House. I see your Leader of the Minority Party. I do not know whether he is waving at the Speaker or raising his hand in affirmation that he is the boss. However, proceed.

Hon. Midiwo: You know the Leader of the Majority Party is excited that his deputy wants to talk about order and the deputy is excited that the Temporary Chair of the Powers and Privileges Committee is on the Chair.

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Midiwo, I will also confirm that you are also in the mix in terms of excitement. You have just introduced him as the Leader of the Majority Party, which he is not.

Anyway, proceed.

Hon. Midiwo: Hon. Temporary Deputy Speaker, look at the numbers. I thought majority is a numerical expression. Those people are absent. Forgive us for being happy that you are there, and that Hon. Esther Gathogo got "*bonga* points". It is important. She loves that kind of thing. She is a good lady. I remember another time she offered to strip on camera.

(Laughter)

She is a good lady.

Hon. (Ms.) Gathogo: On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Cheboi): What is it, Hon. Gathogo? Please, let us not go that direction because you know your kids are up here.

Hon. (Ms.) Gathogo: Hon. Temporary Deputy Speaker, I just want to correct Hon. Midiwo that the topic is not Hon. Esther Gathogo. However, I thank you because my children can see that I am very active in Parliament.

Thank you very much. God bless you.

(Laughter)

Hon. Midiwo: That is the profile I was trying to give you. So, I am not out of order. I rise to second.

In the last one week, you have been chairing a Committee that I was sitting in that was dealing with issues of Hon. Members' privileges. How happy am I to read this Senate Bill that somebody has taken a lot of time to do good work on! A lot of the things we have been discussing are already in here. This is good. The issue of members' privileges be they members of county assemblies, the National Assembly or the Senate, is a big issue.

This Bill talks about the definition of the word "precincts." Even the courts have wrongly defined what "precincts of Parliament" means. They have defined it as to mean only inside the Chamber.

Hon. Temporary Deputy Speaker, you remember the Gor Sungu case. I am happy that this is going to clarify the things uttered around Parliament so that the sanctity of Parliament is upheld in law and is not left to interpretation of a court or anybody else. It is even amazing that somebody would say that "precincts" can just be a Chamber without the boundaries or Parliament without the boundaries.

This makes it very clear. The Bill defines "precincts" as the chambers in which the proceedings of the country assembly are conducted, including the galleries, the lobbies and the chambers, and all the parts of the buildings in which the chambers are situated, including the entrances, forecourts, yards, gardens, enclosures or open spaces apparent thereto.

This is good. It further defines "precincts of parliament" as including committee rooms and other meeting places provided or used for the county assembly's purposes.

Right now if you go to where the assemblies are, they are regular places. This definition is going to help. All I hope is that elected and nominated leaders, be they at the national or county levels, also understand that when you have such privileges, you must behave differently and that the law expects you to behave differently. That is addressed in this Bill.

There is clarification which this House will have to address itself to as regards to security officers. This Bill says that an officer of a national security organ may, with permission and authority of the Speaker, enter upon or remain in the precincts of a county assembly for the purposes of performing any function of that national security organ. What I have a problem with, which must be looked at, is where it says such officer "may perform any other function within the precincts of the county assembly." Hon. Temporary Deputy Speaker, you cannot let security officers perform any other function. We will be seeking to amend the Bill to remove that provision because it negates every other thing that the Speaker has permitted them to do. That

would be committing assembly members to “any other thing” that is undefined. We cannot make such a vague law unless the Senate explains to us what that may mean.

As it is, it is not a good thing. What we are seeing around is that somebody can take you to court, the process serving and that people in the county assembly can chase others with mischief. This Bill outlaws such activities within the precincts of Parliament. This is because they may have to do with things which are personal and have nothing to do with duties in the assemblies. That has also been clarified. This Assembly and the Committee that you temporarily chair must recommend the issue of picketing. This Bill states that various assemblies shall allocate areas where people can petition or picket the Assembly. We have had problems with our Assembly. Sometimes you come here at 2 p.m., and you get some people who have been paid by some Non-Governmental Organisations (NGOs) to barricade the entrance. It is like they are going to war. They do not picket in a way as to petition but picket to stop the process and proceedings of Parliament. This will help because we will decide where you will give us information, for example at Kenyatta International Conference (KICC) because we even have offices there. We will not allow people to blow trumpets at the entrance of Parliament as if it was the end of the world. That creates insecurity. Security matters are important and this Parliament must look at this issue. We will not allow drunk people who have been paid to be disorderly around the august House and the assemblies. This Bill seeks to address this as we seek to address other security challenges.

I am happy because I have seen our orderlies have listened to our cries and instructions from the House Business Committee (HBC). Hon. Temporary Deputy Speaker, allow me to address Members: You cannot walk into the Chamber with guns. Yesterday, I saw Members arguing with orderlies when they wanted to pat you to see if you are carrying anything. I have seen a few Members carelessly walking in here with ammunitions. This is not a war zone. The Powers and Privileges Act that this one mirrors does not allow anybody to come into the Chamber with guns. The Parliamentary Service Commission (PSC) must explain to us why at our point of entry, we have boys and girls from the National Youth Service (NYS) frisking our police officers. There is no one who is trained in security from NYS. That is exposing Members. Last week at the gate, they told my police officer to leave the car. It is like somebody is planning to kill Members of Parliament (MPs) when you tell their policemen, who are with them to leave the car. Who employed NYS to frisk MPs? We have State provided security. Around Parliament, we have the National Intelligence Service (NIS), the regular police, Criminal Investigation Department (CID), and the General Service Unit (GSU). Why would Parliament go out of its way to create insecurity? I heard their remuneration is causing a problem because they are being remunerated better than the police officers. We must deal with this issue. We cannot create insecurity around the august House.

(Hon. Wamunyinyi consulted loudly)

Hon. Temporary Deputy Speaker, please protect me from Hon. Wamunyinyi.

As I conclude, Clause 17 of this Bill goes a long way to tell us how we can resolve a scenario like the one we resolved yesterday of Hon. Opiyo Wandayi. It is good because we tabled our report without debate. However, we noted that as the numbers of Members increase and the age decreases, there are going to be many cases of misbehaviour during debate or during our presence here. It is good to put stringent measures in place so that people do not misbehave outside the provisions of Standing Orders.

This Bill addresses Articles 10 and 47 of the Constitution. It allows a Member to appeal but it also allows stiffer penalties where fines can be imposed. It allows many things which are not addressed in our Standing Order No. 111, which seems so far, unless amended, to violate principles of natural justice. We must copy this.

I want to thank you for steering us to a conclusion of that matter which was pending for four months. As we call our next meeting, next week as agreed, we should look at this proposal because somebody did very good work for a good orderly conduct of business of the assemblies. It includes fines and deals with every scenario except where it is provided for in the Constitution.

I second. I want to plead with us that to those whom much is given, a lot is expected. If we think that way as representatives of the people, then our country will be better.

Thank you, Hon. Temporary Deputy Speaker.

(Question proposed)

The Temporary Deputy Speaker (Hon. Cheboi): I will follow the list as it is. I will start with the Member for Kiminini.

Hon. Wakhungu: Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill. I was wondering why the Senate took long to bring this Bill here. It has been long overdue; no wonder we have had chaos in the county assemblies. Article 117 of the Constitution provides for freedom of speech and debates in Parliament, the Senate and the National Assembly. At the county levels, we have county assemblies which play oversight and representation roles. When it comes to oversight, we must provide immunity against civil or criminal proceedings. This Bill has been long overdue and it is going to allow Members of County Assemblies (MCAs) to debate without fear or favour.

This Bill has heavily been borrowed from Article 125 of the Constitution, which clearly stipulates that a House of Parliament or a Committee has powers to summon anybody anywhere for purposes of evidence and information. As we speak, when you go to the Senate, they have been summoning governors but they have not been appearing. We know that a lot of funds have been devolved. A lot of misappropriation is taking place. Corruption has also been devolved. It is indeed important to understand that when it comes to matters of the county, the buck stops with the governors. If they are summoned it is because these Committees enjoy powers like those of the High Court. If in one way or the other a governor does not appear before a Committee of the Senate, summons must be given. We are calling upon the Senate to move with speed and summon the particular governors who have refused to appear before its Public Account Committee (PAC). Having powers like those of the High Court will help us. We have some criminals who take off to overseas, but who are still summoned. It is important to move with speed. The county assemblies must now enjoy the full force to help them conduct their business in an orderly manner without fear or favour.

As we move on, the Committee on Powers and Privileges has to be put in place. This is a wonderful idea. We have seen chaos in the proceedings of some county assemblies. In Makueni County, we recently saw people shooting at each other. We saw the same in the Kisumu County Assembly. I have seen such chaos in Trans Nzoia County. We have seen this in Nyeri County too. The lives of county assembly members should not be the same as the lives of the former councillors. Councillors were there for representation but Members of the County Assemblies (MCAs) are required to legislate and do oversight. If at all they are given powers like those of the High Court, it is our assumption that they will not abuse them.

Hon. Temporary Deputy Speaker, I listened keenly when my friend was moving this Bill. He mentioned Article 195. I want to put it correctly. He is a senior lawyer. He mentioned Article 195 yet it is supposed to be Article 125, which talks about evidence of power. You can check the HANSARD. I think it is important that we do those corrections. As we move on, the Powers and Privileges Committee needs to be flexible. We have seen what happened with Hon. Wandayi's case. As this issue is cascaded down, it is important that it is checked on a case scenario. When it comes to misconduct, it varies. It is important that whatever is provided for in the Powers and Privileges Committee, there must be some level of flexibility. I am also happy to note that in this Bill there is a provision to appeal. It is, therefore, important for Hon. Members, if they are affected one way or the other; they are now being provided with room for appeal. We must exhaust that mechanism without using any other strategy. County assemblies play a very critical role. They legislate like the National Assembly. This Bill is long overdue. That is why I am calling upon my colleagues to move with speed and support it. It has been benchmarked and borrowed from the National Assembly and the Senate.

With those remarks, I support the Bill.

The Temporary Deputy Speaker (Hon. Cheboi): Let us have Hon. Joyce Akai.

Hon. (Ms.) Emanikor: Thank you, Hon. Temporary Deputy Speaker, for giving me this chance. I rise to support this Bill, which gives the county legislative assemblies the freedom to discuss issues without fear. The Bill protects them from being sued as they discharge their duties. It provides them with the necessary immunity. This Bill empowers the Committee on Powers and Privileges of the county assemblies to deal with issues of breaching of privileges, disciplinary issues, and independence of the county assembly leaderships. There have been many cases in the county assemblies where MCA have either verbally or physically abused each other within the precincts of the county assemblies. Some have even abused their Speakers without much action being taken against them. I am happy that this Bill explains what "precincts" are; where Members are supposed to maintain honourable character that befits them. This includes committee halls even when you are outside the county. For instance, in case they go to Mombasa, the halls that are used for holding committee meetings by committees of parliament and county assemblies are precincts. In the case of Turkana County, where they even cross the border to Uganda for their committee meetings--- I am aware of a meeting of a committee of the Turkana County Assembly that was held in Moroto, Uganda, recently.

I keep asking myself whether the MCAs really know and appreciate the weight of the powers that they have. They have subjected themselves to intimidation and being compromised by the Executive. They have become complacent in terms of making decisions and are influenced by the Executive. This Bill will help maintain the discipline that is required of MCAs.

With those remarks, I support the Bill.

The Temporary Deputy Speaker (Hon. Cheboi): Let us hear the Member for Kiharu.

Hon. Kangáta: Thank you, Hon. Temporary Deputy Speaker. I rise to support the County Assembly Powers and Privileges Bill for several reasons.

Firstly, we need to empower our county assemblies to enable them to summon people. Secondly, we need to encourage and give powers to the county assemblies in terms of giving them the privilege they need, so that any communication and discussions they undertake during their plenary and committee sessions can be privileged and protected. The only issue that we need to look at in this Bill is whether once we grant these powers to the county assemblies, they will have powers to summon the governors. I would imagine the set up at the National Assembly

is similar to the set up envisaged at the county level. It would be somehow weird if for instance we were to summon the President directly to appear before a committee of this House. Regarding powers of the National Assembly and the Senate to summon the President, the Constitution is silent. It does not say that you cannot summon the President or the Deputy President. Surely, it will be wrong for us to do so. We need to give some respect to those two key institutions.

The question that now comes up is whether we should grant the county assemblies express powers to summon the governors. I belong to a school of thought that a governor should not be subjected to summons by the county assembly. The county assembly has the powers to summon the County Executive Committee (CEC) members in the manner we summon the Cabinet Secretaries (CS) at the national Government level. Therefore, I would be proposing that the Mover of this Bill exempt governors from being summoned by the county assemblies. I say so because I would imagine that the powers that we are granting the county assemblies may be used to pursue political vendetta. In any event, governors are always being summoned by the Senate. Governors can always be summoned by the National Assembly. In order to ensure that the seat of governor is insulated from abuse of these powers, we need to give that exemption and allow governors to be accountable to the county assembly through their CECs, as we do with the CSs in the National Assembly.

The other area I would urge that we look at is the impact of Judiciary at county government operations. When you look at the history of our devolved units for the last three years, you will realise that so many court orders have been issued when matters are pending before the county assembly.

I understand that we have a separate Bill which is proposing to amend the Constitution to address that issue, but there is nothing wrong for us to have a provision in this Bill which will somehow whittle down or protect the assemblies from that constant interference by the Judiciary. That is the only way they can perform their duties in a free and fair manner without fearing being summoned so that we have a situation where, if you have a complaint against the county assembly, we should await the outcome of that decision. We should await that regulation once it is passed, but we allow the county assembly to have that freedom to operate without fear of court orders and injunctions.

Another aspect that I would be asking is for us to relook at this issue of county assemblies and their operations regarding motions. It has never been settled even here as to the legal effect of motions or resolutions once they have been passed by an assembly. I say that because about 30 or 40 per cent of our work does not entail making of laws *per se*. It entails passing resolutions and the adoption of reports and motions of committee. Therefore, we need to decide the legal effect of a resolution or a motion which is not drafted in form of a new law, but has been passed. Does that mean for instance that if it is directed against a County Executive Committee (CEC), the CEC must adhere to that resolution? Must a parastatal adhere to that resolution?

In that regard, this Bill is one of the areas we can use to decide that jurisprudential question. It is a very crucial jurisprudential question as to when you pass a motion, what is the legal effect of that? Must the receiving party adhere to it or not? I have seen in some counties where for instance, we have vetting of executive officers. You come, you vet an executive officer, the county assembly rejects the report but then nothing happens. The governor proceeds to appoint that person to a certain position. This proposed law, in my opinion, should be crafted in such a manner that we give teeth to the county assembly where a report can lead to initiation of impeachment proceedings. Two, we can, for instance, add a clause saying once a report has

been adopted by a county assembly, it must be adhered to or an explanation must be given to the assembly as to the effect of that.

Once a petition has been brought before a county assembly, we also need to set out the powers, the effect and the jurisdiction of the assembly, once it is discussing things like petitions which are brought before the assembly. Otherwise, we are going to reduce our assemblies to talking entities which cannot impact on *wananchi*. On the other hand, you must also pay respect to other organs of the assembly.

We would not want a situation where we are giving so much power to the assembly and, therefore, whittling down other branches of those governments like the executive of the counties.

With those few remarks, I support. It is a very good Bill, but we need to look at those few issues and see what we can do.

Thank you.

The Temporary Deputy Speaker (Hon. Cheboi): Very well. I am giving a chance to the Member for Sirisia. As he proceeds to speak to this, I want to recognise pupils from Kariguini Primary School, Kandara Constituency, Murang'a County and Muti-O-Nthunguri Primary School from Buuri Constituency in Meru.

Proceed Hon. Waluke.

Hon. Koyi: Not on this.

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Waluke is not interested. I will give Member for Bondo an opportunity.

Hon. Ogolla: Thank you, Hon. Temporary Deputy Speaker. One thing that is unfortunate is that our county assemblies have operated for the last four years without this kind of guidance. It is really unfortunate. A point has now come up that part of the reasons why some of our things have not happened very well is because of how we managed the transition largely from the old order to the new order, where we now have county governments and the national Government. The way we have handled the transition is not good. While many things were happening elsewhere, a lot did not happen with the county assemblies.

What the county assemblies did, partly with some secondment from this national Parliament, was just picking staff, procedures and materials from the national Parliament to the county assemblies. So, this is coming at a time that I want to believe some effort must be put in place to see to it that county assemblies see themselves in an environment that is different from what councillors used to have. They have a mandate that is big and similar to what we have at the national level.

County assemblies are a miniature of our national Parliament in terms of what they practise, their procedures and how records and reporting are done. While this is supposed to be so, county assemblies have had challenges largely because of lack of capacity and clear effort to have them in that kind of an arrangement. So, we have miniature parliaments which are supposed to be a *replica* of what we do, but they are minus very many things including what is now coming up at this point in time.

This Bill is going to enhance participation of members in the county assemblies by building enough confidence and trust. Many Members have been operating in a situation they are not very clear. They are not too sure. I want to believe that this Bill is now going to create a situation where there is some confidence in place. Anytime one acts out of good amounts of confidence, they normally add value in terms of what they do.

The other thing that I want to bring out is that the provisions in this Bill are very close and it appears that they guided the Committee on Privileges when they were handling the

Wandayi issue. I remember the words from you when you were the Chair of that Committee in this House giving us a report yesterday. It was very good and there are indications that the Committee also had a glimpse of what this Bill now provides. There is an extent at which you can mete out certain punishment to the Member himself, rather than extending it to the constituents. This was good.

It is true that our Constitution, if one bothers to be very keen, is a very litigious material. It allows all manner of rights like the right of representation, right of picketing and so on. At the same time, it allows Parliament to come up with its own ways and procedures of how to conduct its business. When that comes up, Parliament comes up with something like what we have in our Standing Order No.111. Definitely, conflict arises. Someone must be in this House to represent people throughout the life of Parliament. This Bill is a plus and it indicates that we have to do something with regard to the Powers and Privileges Committee of this House. Those are some of the things we had talked about, including changes to our Standing Orders. It is a very good Bill.

Secondly, three challenges abound which need to be looked at very keenly. One was partly mentioned by the Mover in terms of the capacity of the Members of the County Assembly (MCAs). Placing them as people who are equivalent to a High Court judge is something that must be looked at. Comparing the image of the county assembly with the High Court based on what we know is something that must be looked at. The other thing that needs to be looked at is the relationship between the county assembly and the Senate, particularly when it comes to summoning people for appearances, whether it is a governor or a committee member. This is something that needs to be looked at. There is still a gap in how those assemblies relate with the mandate of the Senate. Those two institutions may end up duplicating their roles. Assemblies can end up summoning certain individuals or certain members of the society and then the same summons are done by the Senate. Harmony needs to be built around how the summons by the county assemblies and the Senate are done.

Otherwise, I support this Bill as it is at the moment.

The Temporary Deputy Speaker (Hon. Cheboi): We have been very lucky today to have quite a number of schools, both in the Speaker's Gallery and Public Gallery, on educational tours to Parliament. We have Doldol Primary School from Laikipia County in Laikipia North Constituency. That is the constituency of the former Speaker of the National Assembly, Hon. Kaparo. The constituency is now represented by Hon. Lempurkel. There is one other Member who comes from that constituency and that is Hon. Paulata Korere. They should feel welcome.

I will give an opportunity to the Member for Murang'a. She is also lucky today that there are pupils from her vast constituency.

Hon. (Ms.) S.W. Chege: Thank you, Hon. Temporary Deputy Speaker. I appreciate the House for allowing our children to come here and have a first-hand experience of the National Assembly. At this juncture, I also want to recognize the presence of Kariguini Primary School from Kandara Constituency which is also in my county. As I welcome them to this big House---

The Temporary Deputy Speaker (Hon. Cheboi): I have already done the welcoming and the introductions. Just contribute to the Bill.

Hon. (Ms.) S.W. Chege: Hon. Temporary Deputy Speaker, I am the Chair of the Departmental Committee on Education, Research and Technology. I have been bitten by the excitement bug over the presence of these children. When some of us were being brought up, we did not have a chance to come to Parliament. Even as we talk about privileges, I would like to sincerely thank this House for allowing young children to access Parliament to see how we do

things here. I hope they are going to learn. As they go back home, allow me to send them with greetings to the people of Murang'a County.

The Temporary Deputy Speaker (Hon. Cheboi): That had been ruled on before, Hon. Member for Murang'a. You can meet them outside the Chamber to send greetings back home. It will be easier and I am sure they will be even happier. Will you proceed to contribute or have you finalized your contribution? Proceed.

Hon. (Ms.) S.W. Chege: Thank you, Hon. Temporary Deputy Speaker. Allow me to contribute towards the County Assembly Powers and Privileges Bill.

From the outset, I support this Bill. It is important that Members of any House, whether it is the Senate, the National Assembly or the county assembly, have procedures and their own privileges. Our county assemblies have come from far. Some of them did not even have a place to conduct their sittings. Some of them did not even have proper regulations. Looking at the Order Paper, I can see the Senate has finally realized its mandate of helping and overseeing the counties. Looking at how our counties are run, most of them do not even have guidance on how they are supposed to transact their business. Passing the Powers and Privileges Bill is a way forward to allow them to exercise their mandate. They represent the smallest devolved function, which is the ward. They have a very clear role of representing *Wanjiku* at the lowest level.

The Senate needs to give more support to the county assemblies, oversee and advise them. They should not just look at how the governors are spending money, which is also a very big elephant in the room. They should also empower the Members of the County Assemblies (MCAs) to realize their powers and potential and to know how they are supposed to transact business. Counties no longer function the way they used to before when we had councilors. The MCAs have a big role in making sure that the devolved funds reach the grassroots.

I support the Bill. I want to reiterate that I thank the Senate for finally waking up and grasping what their role is with regard to the county assemblies.

The Temporary Deputy Speaker (Hon. Cheboi): I will now give a chance to Hon. Korere.

Hon. (Ms.) Korere: Thank you, Hon. Temporary Deputy Speaker. I also want to join my friend Hon. Sabina Chege in saying that it is great when we have children all the way from the desert of Doldol coming to the National Assembly.

With regard to the privileges of the county assemblies, every new concept takes time to get off its knees. For a very long time, since the inception of county assemblies in 2013, we have been treated to quite some drama by the county assemblies. It is time we had properly trained people so that even as they enjoy the privileges, they also do not abuse them. I want to join in supporting the stand that county assemblies should have those privileges and they should be well utilized.

The Temporary Deputy Speaker (Hon. Cheboi): Let us have Hon. Rotino.

Hon. Rotino: Thank you very much, Hon. Temporary Deputy Speaker for giving me the opportunity to add my voice to the privileges that our county assemblies are supposed to enjoy.

The first thing we should ask ourselves is why we need those privileges. Why do the assemblies need those privileges? We oversee and take care of the things of the nation while county assemblies oversee the county assemblies. They oversee the counties. They have to be given the opportunity and privileges to do that with all the freedom and powers that come with it. They are supposed to enjoy the powers of the High Court. What powers does the High court enjoy? They enjoy the coverage and protection to administer their duties very well. As my colleagues have said, many times, we have seen the behaviour in our county assemblies. These

privileges have been long overdue. We need to have passed this Bill a long ago so that we protect our county assemblies. We should also conduct seminars and educate the MCAs. Many of the MCAs still behave like the old councillors. They still do the things that councillors did. They should realize that the assemblies have a special duty to oversee county executives who are people with powers.

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

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

Hon. Temporary Deputy Speaker, they need this protection to administer their wards well. If they have to summon officers, they must have the powers to do so. I feel that these privileges are long overdue. We are supposed to have passed this Bill a long time ago. I do not know why it delayed in the Senate so much. It was not brought on time.

With those few remarks, I beg to support.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Member for Balambala.

Hon. Aden: Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to contribute to this very important Bill.

At the outset, I want to say that our county assemblies are important structures in the devolved system, which resulted from the enactment of our new Constitution in 2010. Kenyans decided to adopt a devolved system of Government. This means Kenyans wanted certain powers to be given to the county assemblies across the country, so that they can enjoy their lives and citizenry better than before.

This is one of the very important Bills which anchor the county assemblies as an integral part of the law-making organs within the country. I agree with my colleagues that this Bill should have come to the National Assembly much earlier. The Bill will give the county assemblies an opportunity to create powers and privileges committees. In so doing, they will manage the conduct of MCAs within their respective assemblies. Instead of each county assembly making its own form of legislation, we have a national one which encompasses the entire 47 counties across the country. This piece of legislation gives meaning to the manner in which affairs are managed at the county level.

Part V of the Bill is very important. It gives the county assemblies powers to summon witnesses. We have seen time and again the members of the County Executive Committee (CECs) in various county governments intimidating the county assemblies. The county assemblies have no formal ways of summoning the CECs to appear before them, failure to which there would be consequences to be faced. For the first time, once this Bill is enacted, the county assemblies will have powers to call with authority each and every person whom they wish to speak to, be they members of the public or county government officials, for purposes of accountability and oversight as they conduct their work. This Bill gives them the powers of the High Court, meaning that anybody who lies before a sitting of a county assembly will be liable to the offence of lying under oath.

One of the admirations I have for this Bill is that it ensures that MCAs are protected such that whatever they say in the course of doing their work cannot be used against them in court or for criminal charges. That includes what they speak or write with regard to their work. The

Speakers, Chairs of committees and the leaders of the majority parties and leaders of the minority parties in the county assemblies are also protected. This is very important. All of them are given the protection of law so that they are not intimidated either by the governor or a member of the CEC, who consider himself to be sitting in a very important docket. The Speakers of the county assemblies know that once this Bill becomes law, they will have the full power of law to do their work without fear or favour, and ensure that the results of their work is enacted into proper laws.

The clerks and the members of staff of the county assemblies, who are often forgotten, are also protected. Some clerks are intimidated and told that if they say certain things, they will be taken to court because they are the clerks of a certain committee and they wrote a report. The clerks are protected under this law. Indeed, there is great admiration in this piece of legislation. Passing it will ensure that our counties become more able to manage their affairs without fear.

The other issue I want to talk about is the issue of broadcasting and powers to handle information freely. In Garissa County, the county assembly demanded for information from a certain member of the CEC, and he was not willing to give it. The county assembly was left helpless because this law was not in place. With this law in place, the county assemblies will be empowered and any information within them will be considered confidential and not easily accessed until the time when they so wish to make it public.

Protection of members as they do their work is also another important thing. As we give all these privileges to the MCAs and their leadership, it is very important for them to ensure that they do their work professionally and with decorum. We have seen people fighting across the 47 counties. We have also had our low moments in this House at some point, but it is incomparable to what happens in the county assemblies across the country. This is an important piece of legislation which will empower the MCAs and help them to do their work better in plenary as well as through their committees. They need to pull up their socks too and ensure that they do their work with decorum, so that the county assemblies meet the objectives which Kenyans intended, which is to legislate at the local levels for the betterment of their lives.

With those few remarks, I support.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): The Majority Party Whip.

Hon. Katoo: Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to contribute to this Bill.

I agree with my colleagues who have spoken earlier that this Bill is long overdue. This is one of the Bills which are supposed to streamline and regulate the proceedings of the county assemblies in their endeavour to regulate or legislate and oversee the county affairs. I appreciate that the Senate has come up with this Bill for all the 47 counties. If it was left for each county assembly to come up with its own powers and privileges law, we would have had very diverse versions of this Bill in the way they regulate their business.

It is good that the county assembly affairs are conducted in a way that has a lot of decorum and discipline in it. It should be done in a way which is very different from the previous county councils. Such a Bill is meant to instil discipline not only to strangers within the precincts of the county assemblies, but also amongst the MCAs. The Bill proposes penalties and punishments for those who will go against the code of discipline in the conduct of their proceedings, especially both in the assemblies and the committees of the assemblies.

Hon. Temporary Deputy Speaker, it is also meant to streamline the procedures of summoning public and civil servants. And here comes the point that was raised by Hon. Kang'ata, whether county assemblies can summon the governors in their duty of oversight. I

agree with him that summoning of governors should be left as the preserve of Parliament - that is the Senate and National Assembly. Initially, when the Senate started summoning governors, they moved to court. They said that they could not appear before the Senate. What would have happened if a governor would have been summoned by the county assembly? Thanks to the Judiciary that made a decision that went the Senate way. They now appear before the Senate Committees. But, I believe that for the smooth running of the county affairs, they should not be summoned by the county assembly. They can be accountable to county assemblies through the executives in the county and other public officers like chief officers and the like.

With this Bill, the Senate should move to streamline and make the standing orders of the county assemblies uniform. Now that we have this Bill and standing orders are generated from it, they should also move a step further and come up with a template of standing orders for all county assemblies so that the affairs in each county assembly are conducted in the same way and not in a haphazard way. Our Senate should come up with one booklet that is uniform for all the 47 counties with regard to standing orders.

This Bill has more to do with members of the county assemblies themselves more than the strangers. Therefore, it will even regulate the behavioural temperament in the house and committee proceedings to avoid instances that have been cited before by my colleagues, and that were happening during the time of the county councils. Hon. Member should really be guided by this Bill and stop being emotional and personal in the affairs of the house and of the committees.

I picked some clauses in this Bill that need to be re-looked at by the Committee of this House, particularly when we go to the Committee of the whole House. One of them is Clause 4 which says that an officer of the national security organ may, with permission and authority of the speaker of the county assembly, perform any other function within the precincts of the county assembly. This is a security organ. First of all, security is not devolved and I doubt if they can be under the direction of the county speaker. There was much insecurity in what happened previously in Makueni County Assembly within the precincts of the county assembly. To some extent, it was a violation of some security aspects. That happened before this Bill was in place.

If you allow speakers of the county assemblies to direct national security organs in the county to perform any duty within the precincts of the county assembly, it will be wrong. "Any duty" is a bit ambiguous. There needs to be clarity on what they can do and what they cannot.

Clause 32 of this Bill – and I hope the relevant Committee is taking notes - says that a person commits an offence if the person speaks words defamatory of a county assembly, its committees or its proceedings. I do not agree with that because it is dictatorial. We are in an era of transparency and openness where we should allow criticism. We see almost on a daily basis headlines in our media that Parliament is corrupt. This would stop expressions of such views to be made if this Bill goes through. Such a clause that really limits anyone to speak any defamatory--- Defamatory is even relative. It actually depends on what one is expressing. We should not gag the public from expressing their feelings and views with respect to institutions that are elected by the public themselves.

If you look at Clauses 10 and 11 and to some extent Clause 12 of this Bill, Clause 10 says that no proceedings or decisions of a county assembly---

(Several Hon. Members consulted loudly)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Order, Members! We need to listen to the Hon. Member who is making his presentation.

Hon. Katoo: Thank you, Hon. Temporary Deputy Speaker. It is really important that we be attentive. The Secunder of the Bill is really following.

I am talking about Clause 10. I am picking clauses that I have reservations with. Clause 10 says that no proceedings or decision of a county assembly or committees of powers and privileges acting in accordance with this Act shall be questioned in any court. I do not think that, that is really fair. I fully agree with Hon. Kaluma's Bill that was to amend the Constitution to stop the Judiciary from interfering with matters before any House or any Committee of the House. But after the House has done its part, anyone can move to court to question that decision. Therefore saying that nobody should take any decision made by that House to court is not fair.

Clauses 11 and 12 give immunity from legal proceeding on whatever is said in the House or committees. We should also not misuse the privilege that is given by adversely mentioning someone who cannot defend himself/herself before the House or by knowingly expressing malice because of having that privilege. There should be limitation of that privilege.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): I add you one minute.

Hon. Katoo: Thank you, Hon. Temporary Deputy Speaker. I conclude by saying that we should not abuse this privilege; I mean the elected leaders both in the national and county assemblies. We should not knowingly express malice on an individual who cannot express or defend himself/herself before those institutions. We should have a limitation and we should be accountable and answerable as much as we enjoy the privilege on what we say so that we do not destroy the society.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): The next one on my request list is Member for Ndhiwa. Now that I was almost "caught by his eye", I will go to Hon. Member for Ol Jorok and then come back to you.

Hon. Waiganjo: Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to debate this very important Bill. Our county assemblies are new entities in the devolved system of governance. In the devolved system of governance, it is the county assemblies that are the first point of call by the members of the public. It is the county assemblies that formulate the law that is applicable to the counties. It is the county assemblies that oversee the governance of our county governments. This is a very crucial role. Their mode of operation in counties and the roles of making laws at that level require a Bill that will not only cushion them from litigation, but also ensure their privileges are well secured. Increasingly, it is becoming very clear we need very visionary members in our county assemblies. It makes a lot of sense to urge Kenyans and professionals to contest for positions in the county assemblies. It is at that point at the county assemblies where they will make very important laws.

County assemblies being new entities do not have precedents where they will make sure that the laws they make are in consonance with the Constitution. We want to see county assemblies that are well protected, privileged, remunerated and with research facilities.

We also want assemblies that will rein in rogue governance. As it is, governors have become demi-gods in their counties. You will find some governors who will not want to listen to the county assemblies. Instead, you find governors who want to buy off the Members of County Assemblies (MCAs) mainly because they want them to pass their budgets. The budgets they want passed are not well thought out. They also want to dismiss the role of county assemblies in matters oversight. The MCAs raise issues on the spending of county funds and discharge of serious laws. For instance, you know the Constitution has devolved very crucial functions to the counties. Social and justice rights, for instance, and basic rights like water and health are roles

that have now gone down to the counties. We want MCAs who are well equipped and who can debate without fear of litigation and threats to their roles.

When you talk about health as a devolved function, we are saying we want MCAs who will do proper budgets for the health care of their people. If we do not have MCAs who are cushioned against vagaries of the debates, you will then find that governors will even unnecessarily put money on health budgets. They may not put the money to do that. For instance, we know that our health centres and dispensaries do not have drugs and medicine and yet, there is a budget for that purpose every year. You wonder. Is it that there is no MCA who is able to rein in on a governor, oversee and make sure that whatever was budgeted for has gone to that function? We want county assemblies and MCAs who will be able not only to give quality debates, but also give a very thorough oversight against the County Executive Committees (CEC) within the county level.

This Bill is coming a little late in the day. It is also good it has come at this time as we progress to the next elections. The people who now want to contest for positions of the county assemblies will know. If they look at this law, they will see that the role of the MCA is not a joke. It is a legislative function and there is a law that covers them properly. When members of the county assemblies sit in a county assembly committee for a particular role, they are supposed to be like the Members of the National Assembly sitting in Committees. So, they are equal to the High Court. They need powers to summon. They need County Executive Committee Members (CECMs) to appear before them. This is a law that also gives them the strength and a reference point. That is so that whoever they summon---

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Member for Ol Jorok, I see there is something. Hon. Mwaura, is it an intervention? Is it now or it was before?

Hon. Mwaura: *Off-record.*

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Okay. I cannot see from far. Carry on, Hon. Waiganjo.

Hon. Waiganjo: Thank you very much. I was submitting that when the members of the county assemblies sit in their committees, they should know those committees are like this plenary. They also need to know that those committees have powers of the High Court and that they can summon members of the executive to come before them and make their submissions.

Without this law, it is becoming increasingly difficult for the operations of MCAs because they do not have a guide. They do not have a legal framework like we do. This is a law that is crucial. It is very important we pass it. It has very clear and good provisions. When we are doing the kind of job that we do, there are chances that members of the public would take issue of a debate of the plenary of the county assembly. They may decide to take legal action against a specific MCA and take him or her to court. That is quite disruptive. When you are doing public duty and debating, you know an assembly is a house of debate. You cannot be restricted on what you say because of fear of litigation. You can be limited in the manner you conduct yourself in that specific assembly, but you cannot be gagged by the fear of litigation.

It is an important Bill. It does not mean that MCAs can run rogue or commit criminal offences and not attract criminal charges. What it does is to cushion them against the liability when they are conducting the functions of the MCAs. For instance, if an MCA commits a crime like robbery, they cannot rely on the County Assemblies Powers and Privileges Bill. It is just like the way we do it here. But, they cannot be arrested within the precincts of the assembly.

We are trying to have a clear separation of powers as they enjoy the powers bestowed upon them by the Constitution. With this piece of legislation, they will operate in a very good

environment. Members of the public will also appreciate and realise that those MCAs are playing a law-making function. More than ever before, we have assemblies that not only lack capacity to pass legislation that resonates with the county functions and environment, but also make laws which are not researched.

As we debate the Elections (Amendment) Act, we need to raise the bar a little to make sure the quality of the MCAs is such that the laws they make, make a lot of sense and are in compliance with the Constitution.

Hon. Temporary Deputy Speaker, I support this Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Let me have the Member for Ndhiwa, and then Hon. Johana Kipyegon.

Hon. Oyugi: Thank you, Hon. Temporary Deputy Speaker. I am happy I am speaking after my boss, Hon. Member for Ol Jorok. He sets a very good tone for me to pick from. Let us appreciate that the county assemblies are very important units within the Constitution of Kenya 2010.

County governments take charge of all devolution units and devolved functions. Some of them are good, important and cardinal in the realisation of various rights under the Constitution.

One of the fundamental rights is under Article 43 of the Constitution. It is the right to economic and social rights. It is a key function of the county assemblies. Everything else, be they civic and political rights, are pegged on and geared on the rights in Article 43. It means the capacity of the county assemblies ought to be such strong that whatever legislation comes under them are things that give life to the various provisions in the Constitution.

Having said that, it simply shows that the county assemblies ought to be treated with a bit more seriousness. Let me start by saying that the person who did this draft Bill did not do a lot of very good justice. We debated a Bill called the Senate and the National Assembly Powers and Privileges Bill. It is cut and paste legislation. I think the person who drafted this Bill did a Melanie Trump on Michelle Obama's speech plagiarism. You have to do justifiable issues by trying to be original in terms of drafting legislation. Whereas the Bill gives very important provisions, it also has provisions that are very unconstitutional.

Clause 7 of this Bill speaks to the fact that the county assembly speaker can, for example, designate spaces for picketing and demonstrations. That goes counter to Article 37 of the Constitution. Article 24 of the Constitution says that fundamental freedoms and rights are not absolute, but the manner of limiting rights cannot be the manner that Clause 7(4) of this Bill provides. You cannot limit the fundamental right to picket under Article 37 in such a cavalier manner that takes away the core content of the right. The person who drafted this Bill ought to have taken into consideration that it is possible, for example, to protect the privileges of Members of County Assemblies (MCAs) in the same manner of protecting Members of the National Assembly, but you cannot do that by taking away the core content of the right to picket, which provides that I can picket where I want and how I want so long as I pass the message I want to pass.

There is something that I do not understand. The drafter in Clause 9 says something very dangerous. I do not understand what he wants to say in this clause. Article 193 of the Constitution gives academic qualifications or otherwise. In Clause 9, the drafter tries to limit Article 193 of the Constitution by subjecting it to several other things, unless it is subject to review. I have never seen this in my life of drafting. If you permit me, Article 193(2) of the Constitution reads as follows:-

“A person is disqualified from being elected a member of a county assembly if the person—

- a. is a State officer or other public officer, other than a member of the county assembly;
- b. has, at any time within the five years immediately before the date of the election, held office as a member of the Independent Electoral and Boundaries Commission;
- c. has not been a citizen of Kenya for at least the ten years preceding the date of election;
- d. is of unsound mind;
- e. is an un-discharged bankrupt;
- f. is serving a prison sentence of at least six months; or,
- g. has been found, in accordance with any law, to have misused or abused a State office or to have contravened Chapter Six.”

However, the drafter wants us to subject that provision on disqualification for election to Article 194(1) of the Constitution that reads totally different. Clause 9 of the Bill reads that:-

“Where a member is found to have contravened Article 193(2) of the Constitution, the decision shall not have effect for purposes of Article 194(1)(g) of the Constitution until all possibility of appeal or review of the relevant decision or sentence has been exhausted.”

They want to subject that to review. How do you subject a constitutional provision to review using the provisions of an Act like this? I think what the person was trying to do was to graduate the manner in which, for example, MCAs become qualified for office. But you cannot do that within the meaning and provisions of legislation. I think that is cavalier and pretty dangerous.

There is a beautiful principle which is what the person does in Clause 15 of the Bill on the breach of powers of county assemblies. I think that is fine in terms of making sure that the speaker has powers to enforce certain things that happen in the county assembly.

There is another very dangerous provision in Clause 18 of this Bill. Article 125 of the Constitution gives the National Assembly and the Senate powers of the High Court. In the cut-and-paste legislation, this person thinks that you can lift the exact provision of Article 125 of the Constitution and paste it on the legislation. I think this is pretty dangerous. It is true the county assemblies need powers. It is true we have said they are fairly very important. But to think that Article 125 of the Constitution can just be placed in this Bill in the manner it is done is pretty absurd. You cannot proceed this way. Even though you want to impress people, I think there is a better way of impressing MCAs, who we have agreed are important people. Article 195 of the Constitution talks about the county assemblies being the level in which we exercise sovereignty. I think the MCAs ought not to just have simple powers, but they should have adequate powers to make sure they are able to ensure that the units of devolution are protected.

Clause 25 of the Bill is again a very dangerous provision. It is good for Members of Parliament to try and exercise their legislative powers within the meaning of the Constitution, but you cannot just copy everything up to someone's name. We have debated this matter before when we considered the Parliamentary Powers and Privileges Bill. Clause 25 speaks to denying the power to broadcast what goes on in the county assemblies. There is nothing we do here that is private. You know once or twice, the Speaker is able to request journalists to withdraw from the Chamber when we want to discuss something in camera. You cannot limit the right of access

to information under Article 35 of the Constitution. Members of the public ought to know what goes on in the various county assemblies. In fact, the person writes in Clause 25(3) that:-

“The right of access to information under Article 35 and freedom of the media under Article 34 of the Constitution shall be limited as specified under this section—

- (a) for the purposes of facilitating the immunities of the Houses and the committees of a county assembly;
- (b) for facilitating the freedom of speech and debate as set out in Article 117 of the Constitution.”

That is very reckless. You cannot allow a lawmaker to engage in this kind of recklessness. Like I said before, Article 24 of the Constitution speaks to how you can limit fundamental freedoms. You cannot limit it by taking away the core content of that right. This clause is very dangerous. There are several other such provisions and I am happy the Whip of the Majority Party spoke to some of them.

Clause 28 speaks to criminal offences that one can commit. There is already legislation that deals with this sort of thing. In a roundabout way, the drafter tries to add more criminal offences which already exist elsewhere. I think that does not really make a lot of sense.

Someone already spoke to Clause 32 with regard to defamation. Everyone can say anything they want to say about anybody so long as they can defend it.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): You have one minute.

Hon. Oyugi: Thank you very much, Hon. Temporary Deputy Speaker. I will summarize. If I do not want to be discussed, then I have no business being in public office. The moment you step into public office, you allow yourself to be subject to all manner of inquiry and people can say anything else about you, so long as they can prove it. The law of libel and defamation already exists and so, it is not proper to re-legislate.

Lastly, the reason I was telling you this is a very interesting Bill is this: Look at the way the person tries to copy all Clause 38 in this legislation. Whereas it is possible and important to make sure that the county assemblies have powers and privileges because they are an important organ in devolution and in terms of exercising sovereignty, I think we can do better. We shall improve this Bill by deleting the clauses that are unconstitutional. We shall also give the MCAs more power so that they can exercise their functions.

Hon. Temporary Deputy Speaker, thank you for the time.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Johanna Kipyegon.

Hon. Kipyegon: Thank you, Hon. Temporary Deputy Speaker, for allowing me to also contribute to this Senate Bill. I wish to also voice my appreciation to the Senate for trying to put in place procedures and privileges which are supposed to be used by county assemblies in order to carry their activities without interference. Other than a few issues here and there which, of course, we will look at when the Bill comes to amendment stage, I would want to say that county assemblies, just like the National Assembly, must also be guarded by law because they deal with matters which affect the nation, although at the county level.

The powers and privileges accorded to Members of the National Assembly and the Senate must be extended to the county assemblies because they also legislate, oversee and represent people. Therefore, they need powers and privileges like we do. They also need immunities, especially when they conduct their business in the precincts of the county assemblies. The only problem is that most of the premises of the county assemblies are not properly defined because, maybe, they have not been built or they occupy some spaces where it

is hard to determine the precincts of the county assembly. I believe with this law, somebody must ensure those people have a place to do legislation and representation.

There is also the issue of interference by the courts. I am happy this Bill is also addressing that particular issue so that the MCAs can do whatever they are supposed to do within the law and within their powers. However, I do not agree with the fact that the courts should not question whatever comes out of the county assemblies. County assemblies, just like the National Assembly and the Senate, legislate. But all the legislation is subject to interpretation by the courts. Therefore, anybody can move to court to seek legal interpretation in terms of whether the particular law that has been enacted contravenes the Constitution. As you know, Article 1 of the Constitution states that any other law that contravenes the Constitution, be it customary or statutory, is null and void. Any member of the public can go to court to claim the interpretation of any particular law that has been made by either the county assemblies or the national Parliament.

Therefore, the particular provisions of this Bill seeking to deny the courts the opportunity to interpret laws that are made by the county assemblies should be deleted. We can only agree on a situation where we will not allow the court to interfere with the proceedings of the county assemblies, just like this House or any other House of parliament cannot interfere with what is going on in court until the conclusion of the particular matter. We will only allow the courts to deal with the matter after its conclusion.

The Bill also provides for areas where people are supposed to be picketing. The Constitution is very clear. People have the right to picket and demonstrate, but the Constitution does not give them the right to picket anywhere, even inside the precincts of Parliament. Members of the public, Senators, Members of the National Assembly and MCAs must understand that if you really want to picket, there are some areas where you are supposed to picket. In this House, we need to be very respectable. You cannot start a fight in this House or demonstrate. Just like we would want members of the public to be disciplined and carry themselves with decorum, MCAs and Members of the National Assembly must also carry themselves with decorum. If people were to be carted to do demonstrations in particular areas, we also must show respect to the laws we are putting in place.

Another issue is that of respect to the House. There is a part which I tend to believe is also very important in this particular Bill – the provision that any member who assaults or insults another member must face the consequences. We have had situations where members fight. After the passage of this Bill, MCAs should know that they have immunity, and that they are now hon. members like they used to know. The problem is that, sometimes, they carry themselves in a way that is belittling the positions they hold. People fight on the streets and in the county assemblies. They break maces and the chairs and beat the speakers and the leaders of the majority party. The MCAs should also believe in themselves. They should know that they are hon. members and, therefore, they will be punished for contravening the law.

This will help to change the situation. It is absurd that most of the MCAs behave like former members of county and municipal councils where people used to fight and fighting used to be the order of the day. MCAs should learn that this is a new institution. It is anchored in the new Constitution and members have the same powers as members of the National Assembly. Therefore, they must carry themselves with decorum.

There is also the issue of civil and criminal procedures in court. We agree that while in the precincts of this Assembly or any other assembly, we should also have immunity so that we

cannot just be arrested or be treated like anybody else with a criminal case, especially when we are within the precincts of the Assembly.

There is also the question of powers and privileges. We have all come from a situation where a member who had faced the disciplinary committee and had been suspended from this House went to court and the court saw that they should interfere with whatever proceedings took place in this House. To strike a balance, we must also ensure that if the Speakers of the Senate, National Assembly or county assemblies issue a suspension, there must be a limit to those suspensions so that a member may not be suspended for more than three or six months. We should also have a limit of suspension so that people should not feel aggrieved because of representation in those particular houses.

I also appreciate the part on the immunity to the speaker and the leaders of the majority party and that of the leader of the minority party in the county assemblies. Access to information is a fundamental right. Every citizen of this country has a right to access information. When you deny people the right to access information, you are contravening the Constitution. This Bill must be amended so that people can access information. The only thing that may be allowed is if that information has not gone through all the stages that it is supposed to go through, either in committees or in the plenary of the House. That information may not be leaked to the Press or anywhere. I agree with that because, sometimes, we have some important issues which are still under investigation or being dealt with in this House. Some people always like to leak it to the Press and address the media on those matters, hence, pre-empt the conclusion and make the issue which is being handled in both Houses or at the committee level insolvent. This particular provision is quite important but it should not contravene the part of access to information.

After the conclusion of this debate, I think anybody should seek an interpretation from the courts before it is implemented so that we do not go the way of Hon. Wandayi, where after the passage of some punitive measures, somebody went to court and the court interpreted either way. Therefore, for those people who like going to court, I thought it is prudent for them to seek the court's interpretation of this particular Bill before it is implemented in the counties so that we do not go back and forth over it.

Conclusively, I would also wish to have live television broadcasts in the county assemblies, like what we have in the Senate and the National Assembly. If it is not television broadcasts, it should be radio broadcasts by the particular counties so that members of the public can know how their county---

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Your time is over. I give the Floor to Hon. Isaac Mwaura.

Hon. Mwaura: Thank you very much, Hon. Temporary Deputy Speaker. I rise to make my contributions concerning this Bill. Of late, in my national duties, I have been travelling across the counties. I have been to various counties, the last one being Tana River, where I was privileged to visit their County Assembly. Previously, I was in Nyeri, where I was also caught up in their local politics. Kenyans have been witnessing a lot of acrimony, especially between the county assemblies and various governors. In fact, in certain instances, you can see a clear dichotomy between the way county assemblies are run and the way those regions are administered. One begs to ask the question: How is it that there may not be that consistency in terms of how matters are conducted? Obviously, the issue is about leadership. It is also about the quality of persons elected to such offices. If you go round the country, you will see that many county assemblies have been moulded in the image of the National Assembly.

In Tana River County, they told me that they were building their own “Continental House” to have offices for Members of the County Assembly (MCAs). However, they have replicated the mistake of Continental House where Members of Parliament (MPs) share the same offices with their Personal Assistants (PAs) and secretaries. I thought they would have been a bit more innovative.

Having said so, in all matters, the issue of county assemblies is basically like small MPs. They are just like us but their jurisdiction is at the county level. We expect that they would exude confidence and carry themselves in a certain manner. Sometimes, when you are introduced to a Leader of the Majority Party, you wonder whether they would be the equivalent of Hon. Aden Duale in the National Assembly. When you look at the members of the Speaker’s Panel and of various Committees, then you really wonder whether they have the same latitude because at the same time, they will tell you that they are just a rubber stamp and, sometimes, they cannot execute and prosecute their mandates as enshrined and envisaged in the various statutes and, more primarily, the supreme law which is the Constitution.

This Bill can never be timelier because it seeks to ensure that members of the county assemblies have powers and privileges similar to the ones that the National Assembly and the Senate enjoy. However, as the National Assembly, we have not been very good role models in that regard. We have behaved in a manner likely to suggest that we have an extraction from people who may have been occupants of municipal and county councils. A very good example was on 18th December 2014, when this House degenerated into chaos. It was a sight to behold. I think we only rival South Africa with the likes of Julius Malema. More recently, we had a fiasco similar to that during the State of the Nation Address and consequently, it looks like this House is being ridiculed by the decisions of the court. We must not encourage anarchy and despondency when it comes to matters of the House. However, the premium is not just to Members, but also lies in the House leadership at the National Assembly, Senate or the county assembly, which must be seen to be impartial and make rulings not out of whims and mere declarations. We have even witnessed that on the Floor of the House where, sometimes, the person on the Chair makes a decision that is outrightly unacceptable. These are some of the things that make Members, either of the National Assembly and in this case of the county assemblies to react in a certain manner when there is an injustice. As someone said, you may not legislate character. County assemblies have to establish themselves since they are the first county assemblies in this dispensation so that they can have traditions and norms. It goes without say that it is important to ensure that in our own dealings, and this is for the owners of Kenya because they are the interviewers, that the people they elect into office are persons of integrity in relation to Chapter 6 of the Constitution.

I am amazed at the fact that in this country and, maybe, in other places around the world, there are two forms of State; a formal state governed by the Constitution, has the rule of law and has certain procedures, and the informal state which has the big man syndrome. Such an informal state means that certain members of the society will not be subjected to the same rules and regulations. Be that as it may, therefore, you will find such Motions on the Floor of the House of various county assemblies. When Members feel that they are legislating and making pronouncements in futility, then they become agitated. This law is critical because it establishes certain norms, privileges and powers as the name suggests. More principally, we want to ensure that the dignity of county assemblies is maintained.

Looking at the issue of summoning members of the County Executive Committees (CECs), we heard that there are CECs who have no powers. There is a law that is coming up on

public appointments for county assemblies. We should give security of tenure to the equivalence of Cabinet Secretaries (CSs) at the county levels and some kind of roles primarily so that they are not just clerks of governors. That way, they can competently appear before various Committees of the county assemblies and answer questions. We have heard stories of people who have no control of their budgets and those who can be dropped and changed at will. It is okay because they serve at the pleasure of the governors, but that also weakens the supervisory role of the county assemblies. It also weakens the powers and privileges enshrined or envisaged in this law. We should be role models for the county assemblies. We should have some kind of mentorship programme with MCAs because as time goes by, they are the members who are going to populate this House and they are going to rise above echelons of politics and Government. We must ensure that we have a sustainable legislative culture that would ensure that our people get the right laws, policies and pronouncements from the august Houses.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Next on my request list is the Member for Likuyani, Hon. Enoch Kibunguchy.

Hon. (Dr.) Kibunguchy: Thank you, Hon. Temporary Deputy Speaker. I would like to talk about three or four areas of this Bill.

The Constitution has given the national Government and the counties very specific roles. Most of the roles given to the counties are “bread and butter roles,” those that touch on the common *mwananchi* on the ground; Agriculture, water, health and roads; issues that *wananchi* face on a daily basis.

I believe that the wisdom behind devolution was not that we are only going to rely on the national Government to allocate 15 per cent to the counties, but was to see how particular counties were going to exploit available natural resources in their areas to develop two things.

Firstly, to generate money to the county and secondly and more importantly, to generate jobs for our youths. Unfortunately, this has not been very well actualized mainly because the county governments, as we chose to name them in 2013, through the Members of the County Assemblies (MCAs), did not know their roles. This Bill is going to let them know what their roles are. I would like them from then onwards to be able to generate legislation that can look at how the counties can generate revenue and create jobs.

Coming to the Bill, many of my colleagues in this House have talked about capacity building. Most members of the county assemblies do not have capacity. I remember the Chief Officer in my county of Kakamega said that out of the 87 MCAs, only 10 speak English. He was talking of speaking English, not being able to legislate. I cannot fault the people who voted for them. As we headed for the last elections, most Kenyans did not know what the offices of the government, MCA and senator were all about. People voted but they did not know anything about them. Now that we have lived through devolution for the last three years and a few months, people know that even at the county level, we are dealing with hon. members who are supposed to legislate on matters affecting them, represent them and oversee the Executive. Therefore, this Bill should give them the impetus and strength or courage to effectively oversee the Executive. As many people have said, and as many people know, governors in this country have become like small gods in their counties. They are people who cannot stand criticism or oversight or whatever.

What they have done affect two things: One, they have perfected the strategy of intimidation. The MCAs do not know the power they wield over the governors. They do not have a law that gives them powers. Therefore, they succumb to the governors’ intimidation. I can just give you an example. In my county of Kakamega, whenever you talk to the nominated MCAs,

they say that they must sing the song of the governor or else he will deregister them from the assembly. That is not true but because they do not know their privileges or powers, they have fallen for that prank. That is part of intimidation.

The other aspect is where the governors use coercion or outright “buying” of MCAs. The governors do whatever they want and whatever they feel they should do. They are the final word in the counties. That is absolutely wrong.

As I conclude, let me laud the Senate for coming up with this Bill. I would like to make an appeal to all Kenyans. Let us make sure that during the next elections we elect MCAs who have the capacity to perform their duties effectively, in terms of education. We should elect people who have the capacity in the various fields, so that they can legislate on matters that affect the people. They should be people who can stand up to the governors and ensure that our people enjoy the fruits of devolution.

With those few remarks, I support this Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Next is the Member for Muhoroni, Hon. Onyango Oyoo.

Hon. Oyoo: Thank you very much, Hon. Temporary Deputy Speaker, for finally giving me an opportunity to at least contribute to this important Bill although a lot of the areas I wanted to cover have been sufficiently covered by my colleagues.

This is an opportune moment for this House to legislate and ensure that this Bill becomes law. The county governments are a creation of our new constitutional dispensation but the people came to terms with the low calibre of MCAs they have elected rather too late. Most of the MCAs thought that they were going to be councillors. It is now dawning on them that they are our colleagues – Member of Parliament in the county governments. They have the power to legislate but the parameters to govern their legislative power must be done for them, which will be guided by this Bill once it becomes law. The governors need a lot of supervision but with MCAs who are unaware of their rights and roles, in terms of summoning County Executive Committee members to answer to audit queries, that function has suffered. I believe that this law will go a long way to guide the MCAs on how they ought to discharge their duties as well as on the requirements for legislation.

We have MCAs who are not aware of the parameters or legislative duties they are supposed to discharge. For a long time, most of them thought that they were supposed to oversee Members of Parliament – a matter which caused a lot of friction in the county assemblies and in the various constituencies. Most of the MCAs are local council materials. Once this law comes in to being, I will want the governors to immediately ensure that instead of spending so much money taking the MCAs for expensive retreats outside the country, a replica of the school of governance in Kenya should be done. The governors can pool resources and establish a training institute like school of governors, where MCAs can be trained by very qualified resource persons from within and without with immediate effect, so that they know what is required of them.

Members of County Assemblies should also be willing to learn. Although many of them are not willing to learn, we have serious debaters in the county assemblies. Just like in Parliament, we have MCAs who may not be lawyers or PhD holders but who are serious debaters. Some of them have taken Bills to their assemblies, and those Bills have successfully been debated and passed. I am grateful that even the county governments have what it takes. The only thing that we need is the law. In passing this law, we need to look at it, read it and ensure that it is in tandem with the requirements of the county assemblies and more so the legislations they require to bring them in line with the National Assembly. That will ensure that

the county assemblies perform duties similar to those of the National Parliament rather than have the Senate summoning governors even on flimsy issues that can be tackled by the MCAs to conclusion. That will be history once we empower MCAs. Parliament is being resistant or repulsive to court rulings on certain issues. I believe that of the three arms of the Government – the Executive, the Legislature and the Judiciary – the Judiciary has done better, especially with the polarization that is evident in this Parliament as a result of the divide between the Jubilee and the CORD coalitions and the existence of tyranny of numbers. I have seen their performance, which is open to everybody. With the divide in this Parliament between Jubilee and CORD and the so-called tyranny of numbers, we have seen and it is open to everybody, that we have lost some of the opportunities to correct some imbalances in law and in practice by the Government. There are things that would have helped us as Members of Parliament or the country for that matter.

Members then should not find the opportunity to jump at the Judiciary because given the role and performance of the three noble arms of Government, it is the Judiciary that has stood out to remedy certain instances where the country would have gone at a loss. We have laws here that have carried the day because of the imbalance created by so-called tyranny of numbers. If it were not for the legislation or outrageous and atrocious legislation, we would have passed and we would be hurting. It would come to hurt us because bad laws also reverberate. They come back to haunt the authors and promoters like Njonjo lived to regret the laws that he pushed through.

I believe that we should not be cagey about the court rulings. We should support and allow them. With those few remarks, I support.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Member for Kericho County, Hon. Hellen Chepkwony.

Hon. (Ms.) Chepkwony: Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to talk about the County Assemblies Powers and Privileges Bill which has come to the Floor.

I want to support this Bill because as we speak, the roles of the county assemblies have not been specified. By that, we found that most of the counties were dictated by the governors. The Members of County Assemblies (MCAs) did not know their roles so the governors overruled them. Whatever they were doing were overturned by the governors. That is why as we speak now, we are seeing that many counties are facing so many financial challenges because the county assemblies have no powers over the governors but in the real sense, constitutionally, we know that they are the oversight bodies of the counties.

As I speak, I want to inform this House that most of the activities which are being run by the country are just at the county level. That being at the county level, it must be manned properly by the county governments. In any way, if the county government fails, the whole country will fail. I want to thank the Senate for bringing up this Bill so that the mandates of the county assemblies are specified in the right way and the MCAs will know their roles. For example, we see the challenges facing the hospitals in the counties. We are seeing so many strikes. We find that the reason all this is happening is probably because of very low budgetary allocation that are given to the Ministries of Health at the county level because the executive could not direct or show the county assemblies how they should budget for the hospitals.

By that, you find that there is no medicine in the hospitals. It is not that there is no money in the hospitals, it is because of the mismanagement where nobody knows what roles the county

assemblies can do. They do not know that the budget approvals by the county assemblies are very important.

This Bill will bring sanity to the counties and powers to the assemblies so that they manage the Executive who are messing up with the financial status of the counties. As I speak, we find that because of the Executive having so many powers, there are projects in the counties where they are exaggerated for example, building of roads because the Executive controls the budget. You find that the budgets which are put on the roads are so exaggerated that very few roads are being done yet they have enough finances to run various ministries.

This Bill will help the county assemblies know their roles. For example, in the Ministry of Agriculture, Livestock and Fisheries, some county assemblies do not know the roles and the powers they have in legislating about what is happening in various departments for example the tea industry, sugar industry or coffee industry. You find that the county assemblies do not know that that is purely their roles. By bringing this Bill, it will show that the county assembly responsibilities are clearly stated and they are able to manage.

As of their education, we know most of the county assemblies came from the local authorities which were then municipal councils, town councils and county councils. You see now, they will be controlled because they used to fight so much but we have seen few counties doing the same thing. By bringing up the issue of qualifications, it will now show the leadership and the making of legislation will become very easy for the counties. We know that they came from the local authorities but because they did know their roles and powers, that is why they are continuing fighting in the county assemblies.

We also know that MCAs in some other counties were not even free to oppose the governor because they knew the powers of the governor. They knew the governor was so powerful that whatever he said they had to say “yes” to it. With this new Bill, I hope the governors will be tamed by the county assemblies. We are happy. We can now see the work of the Senate because it had been blaming the governors without coming up with any solution to deal with affairs of the county assemblies. But with this Bill, we see that the senators are trying to oversee the governors.

In future, I hope we shall not be summoning the governors to come and tell us how they have used their finances. This Bill is very important to our counties and to our people on the ground because these people at the county assembly are the ones manning our people on the ground. It is like a nursery school child where you have to mould the child when she is still very young so that she can be better student when she comes to upper classes.

We need the county assemblies to be moulded in the right way. We want to thank the Senate for bringing this Bill so that we can mould our counties in the right direction. There will be no complaints of money because we are putting a lot of money to the counties. By that, we need this money to be utilised in the right manner. Without proper legislation, we cannot do anything at the counties. With this Bill, it is going to help us to see that the counties are well managed and well planned for the future generation.

With those few remarks, I want to support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): I can see we have some requests. Members, let us not start repeating ourselves. Next on my request list for your preparation is the Member for Seme followed by Hon. Nicholas Gumbo and then Hon. Abbas Mohammed, the Member for Wajir East, in that order. Let me also get your expressions, Hon. Members, if those who have requested would like to contribute to this Bill or the other one. Let me know before we call the Mover to reply.

Hon. (Dr.) Nyikal: Thank you, Hon. Temporary Deputy Speaker for giving me the opportunity to contribute to this Bill. This Bill is extremely important as it brings into effect Article 196(3) of the Constitution. I am surprised that this Bill has come so late in the day. It means that county assemblies have actually been operating without any protection whatsoever. It means that a policeman could have walked in during their proceedings and arrested any of them and nothing would have been wrong because there was no law. Therefore, this Bill should have been amongst the laws to be passed within the first year. We should not even have opened the county assemblies without this law in place. It was relegated in place of other Bills which were to be done within five years. That was an oversight at the time of Constitution-making.

I support this Bill because of its clarity. First, it clearly defines the “precincts of Parliament” and has taken into consideration all the areas within Parliament where Members can be, including accommodation. I was just wondering what type of accommodation there is in Parliament, but it refers to offices. It has even gone ahead to include, as should be expected, other areas outside the physical precincts of Parliament where meetings can be held, so that wherever a meeting is held, that then becomes the precincts of Parliament. The powers and privileges apply there as well.

Part III clearly highlights the areas and the privileges we are talking about. Clause 8 of the Bill states that no civil or criminal proceedings may be instituted in any court or tribunal for what members have said within the precincts of Parliament. Clause 9 states that a member who is found to have contravened Article 193(2) of the Constitution, the decision shall not have effect for the purposes of Article 194(1)(g) of the Constitution on removal. I do not see why we needed to bring that one in, but it is still a good protection. Clause 10 is something we should look at because it states that no proceedings or decisions of a county assembly or the Committee of Power and Privileges acting in accordance with this Act shall be questioned in any court. We can include proceedings, but including decisions will probably take the matter too far. Also, I do not know why it is being confined to one Committee. This should be extended to all Committees of the county assemblies. Those are the areas that we will really have to look at.

Clause 12(2) states that no civil suits shall be commenced against the Speaker or the Leader of the Majority Party, Leader of the Minority Party, chairperson of a committee for any act done or ordered by them in the discharge of the functions of their office. There should be limitations to that. We should add the phrase “within the limitations of the Constitution and other laws”. If we make it that broad, then we can easily get into problems. Those powers and protections will enable MCAs to operate freely and express themselves and do all they need to do in the course of their duties.

I also support this Bill when it comes to Clause 17 because it addresses what we have gone through in the case of Hon. Opiyo Wandayi where Standing Order No.111 did not give a range of penalties. I like this because it gives us a whole range of what can be done depending on how serious the misdemeanour is decided to be. That would have taken us a long way. However, on the same, Clause 17(3)(h) is on vacation of seat pursuant to Articles 75(2) (b) and 194(1)(c) of the Constitution. Article 75 relates to actions that are demeaning to the office. That may be useful because people can perform certain actions even outside that are really demeaning to their office, but would that lead them to vacate their office. In other arms of Government, this is already in place. It is something good, but we need to qualify it. It can also be subject to abuse.

It also recommends fines touching on members’ salaries. This penalty should just be left as fines. I do not see why we should relate fines to the members’ salary. We should remove that. If you are fined, you pay the fine. Somebody is thinking of attaching people’s salaries to things

that you have done or said in the Chamber for the MCAs. I do not think that is proper. I am afraid that if you allow it, sooner or later, somebody may want to amend our Standing Orders and introduce it here. That bit is something we need to look at.

Clause 22(3) gives power to the county assemblies to propose and effect the removal of county public officers on grounds of their refusal to produce documents when they are ordered to do so. That is appropriate. As we have indicated, the Bill gives the assembly powers similar to those of the High Court. One would really have to look at the circumstances. Some of these are good, but we may have to look at the flipside on whether they can actually cause us problems.

I support this Bill because it also looks at the other side. The conduct of MCAs with reference should be mirrored here. It would be criminal to compel or induce a member to action or miss activities or discussions that are going on in the assembly. If members can be induced to miss sittings so that they bring into effect some desired decisions, it would be good if that is looked at. If it can be proved, it would be something important. The Bill also looks at the issue of lobbying and it says that it is improper and sanctions can be brought against an MCA for soliciting, receiving a fee, compensation, reward, a favour or consideration for supporting or opposing a matter that is under discussion. That is extremely important because that is in the area of lobbying. As much as lobbying is acceptable, there should be limits within which lobbying can take place. The same clause also says that it would be improper to solicit the same for making a presentation of a Bill, Motion or amendments. It will be terrible if lobbyists induce MCAs to table Motions, amend Bills and amend acts just because they have been lobbied and they have received favours. This Bill has touched very important areas. As I said earlier, we should not have opened the county assemblies without the County Assemblies Powers and Privileges Act in place.

With those few remarks, I support.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Gumbo, Chairperson of the Public Accounts Committee (PAC).

Hon. (Eng.) Gumbo: Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to contribute to the County Assemblies Powers and Privileges Bill, 2014. As it has been explained by the speakers before me, particularly my neighbour, Member for Seme, it should have been enacted earlier. I belong to the school of thought which believes that as much as our positions may grant us certain powers and privileges, they must be exercised in line with commensurate responsibilities. Exercising powers and privileges alone is not enough. After removing the words “county assemblies”, this Bill to some extent is similar to the National Assembly Powers and Privileges Act. I am concerned about what clearly is an exercise in plagiarism. The National Assembly and the county assemblies have similar roles at different levels, but they are not identical. Therefore, to remove the words, “National Assembly” and replace with “county assemblies”, in the National Assembly Powers and Privileges Act shows a bit of laziness in law making. I believe the originating House could have done a better job other than looking for National Assembly Powers and Privileges Act and specific provisions of the Constitution and plugging them in.

The definition of the precincts of the county assembly is too broad. As it stands now, some county assemblies are sitting in areas where some are sharing a building. The Bill says that even if the county assembly is sharing a building, then it becomes the precincts of the county assembly. I believe that description is far too wide. It is important to make amendments at the Committee of the whole House to bring exclusions. We have six different areas which are identified as the precincts of the National Assembly. The definition of the precincts of the county

assemblies in the Bill is a misnomer. For example, for argument sake, suppose a county assembly is housed within these big malls which are coming up, do you then consider the entire mall to be the precincts of the county assembly? Do those privileges then apply?

I have a particular concern with the provision of Clause 10 of this Bill which says that no proceedings or decisions of a county assembly or Powers and Privileges Committee acting in accordance with this Act shall be questioned in any court of law. What if those proceedings or decisions of a county assembly or the Powers and Privileges Committee acting in accordance with this law are injurious to other persons? We have seen this before. I do not speak in a way to demean MCAs, but we have seen excessive recklessness in the discharge of their duties. What if these provisions used reinforce recklessness into the decisions those county assemblies make? If that recklessness touch the character of a person and injure a person at a personal level, are we saying then that this provision will protect them? This provision clearly contravenes several Articles of the Constitution because it makes those who make such a decision to be above the law. The running theme in our Constitution is that no one is above the law. I will move amendments at the Committee of the whole House to delete that provision of this Act.

Even the Holy Bible says that to those whom much is given, much is expected. At the moment, we are in the process of looking at Election Laws (Amendment) Act, which has put a very high threshold of education requirements. I agree education is not the only requirement for one to be a legislator or a representative of the people. We are hypocritical when we demand of others standards which we are not willing to live by. All members of the County Executive Committees (CECs) are required to be degree holders. I know for a fact that in the county assembly of the county I come from, there are members of that assembly who can hardly scroll a signature. Most of them use thumbprints to signify agreement. What right would such a person then have to demand certain education standards from a member they are interviewing? Are we then not applying different standards for different people? What is the qualification if elected Members like us say the fact that you have gone through the process of subjecting yourself to the vision of the electorate, it is a form of sanitisation? We know the processes that went into nominating some MCAs. The key consideration for most of them was loyalty, how much contribution they have made to their respective political parties, or how much they have been doing some odd jobs for those power givers and takers. Is that enough qualification to make those fellows sit in a committee which is demanding certain standards which they are not willing to live by?

These privileges are good, but their latent implication is that they have elevated the bar on who qualifies to be a MCA. I know we have had arguments here, including with my good friend, the Leader of the Majority Party, on the standards of education required for MCAs. If we pass this law the way it is, then definitely, it will trigger a re-examination of the qualifications that one needs to have to become a MCA. The roles of the MCAs are good. They are provided for in our supreme law. We cannot wish them away. As we go to the Committee of the whole House, let us ask ourselves the implications of this Bill with regard to the overall roles of the MCAs, be it oversight, legislation or representation. Are we not raising the bar? If we raise the bar in the powers and privileges we give them, should we also raise the bar in the kind of responsibilities we expect from them?

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Member for Wajir East.

Hon. Mohamed Abass: Thank you, Hon. Temporary for giving me the opportunity. I beg to support the Bill. It is timely, however, it has taken too long to come to this House to be

debated. We needed it to come very early. As a result of delaying it, a lot of water has gone under the bridge and we now have chaotic county assemblies in the country.

The devolved functions in the county assemblies have a lot of teething problems. The Senate should have taken the earliest time to mould the county assemblies because this is a new function and most of our Members are not well informed. They are new and most of them are not well educated. The Senate should have taken the earliest chance to have some of their sessions in some of the counties. They should have gone to the county assemblies to debate so that members of the county assemblies can learn from them. However, this Bill has taken too long. It will guide the county assemblies and give them privileges.

As a result of teething problems, most county assemblies do not understand their legislative and oversight role. Because half of the county assemblies have nominated members - almost 50 per cent - and most of them (*inaudible*) school, most of the time, they are easily influenced by the county executive where they have even been threatened to be recalled back by their respective parties if they fail to support any executive request in Bills and Motions.

As a result of the poor understanding of the members of the county assemblies, some of our county assemblies are yet to pass even one single Bill to date. Four years down the line most of them have not passed a Bill. One of the things that this Bill does is give immunity to MCAs so that they exercise their legislative responsibilities and oversight. You will see instances where county assemblies summon a CEC and he fails to come. At times they rush to court and they are influenced by governors. The county assemblies have become toothless bulldogs. With this Bill in place county assemblies will be able to exercise and summon respective CSs to answer whatever is required from them.

There have been chaotic debates and fights in the county assemblies. They evolved from the previous county councils. It is high time the county assemblies grew from the chaotic kind of debates and come to maturity stage. They should forget the teething problems because they have been there for the last four years. They still need to be guided and be moulded for the county assemblies to be functional and deliver on their responsibilities.

Most of the county assemblies are housed in private premises that are not well protected. At times, the public just come to the assemblies without any control. Other times when members are debating or having a Motion against the executive, they are influenced even by the elders. Because they live midst the public and the people who elected them, sometimes governors send elders to influence the decision of the assembly. That has led to many Motions and Bills not to go through the assembly.

One other thing that is happening in this country is that everybody is running to court. When there is a small issue to be discussed, the county assemblies and guests run to courts. It is high time the Committee came up with modalities to work together so that the courts can allow MCAs and Members of Parliament to debate freely.

We also need to have a standard of education for the MCAs. That is so that people who are supposed to legislate, and bring Bills and laws have a certain standard enabling them to comprehend things, debate freely and make laws and by-laws for the respective counties. That is why people need the services.

At the national level we will probably be making laws. However, there are specific issues that affect the people at the county level. If the people do not understand how to legislate, we will not go far.

It is high time the assemblies are moulded. I advise the Senate to take their role to attend the county assembly debates. Some of the sessions of the Senate should be held at different

places of the country so that the county assemblies' young men and ladies can learn from them and catch up very fast. The Senate has a few people who can be moved from place to place without much ado.

That is where we have missed the point. We need to guide and mould our assemblies so that they can be enabled. The assemblies are controlling billions of shillings which are going down the drain. It is being misappropriated. They are not able to control it. The National Assembly should have teeth to bite and make laws to guide the county assemblies which should summon the governors. That is why we need to have strong county assemblies. We can only achieve that when we have MCAs who are well informed, educated and free from the influence of the Executive.

With those few remarks, I support.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Richard Tong'i. Are you on this or the other? Hon. John Waluke, are you on the same? Let us have the Member. The next one will be the Member for Nakuru Town East and the other one will be the Hon. Member for Sirisia.

You do not need to use your 10 minutes because I can see the Mover is in the House ready to reply.

Hon. Tong'i: Thank you, Hon. Temporary Deputy Speaker for the opportunity to contribute to this good Bill. It is meant to bring or introduce uniformity in our counties and its management. As it is, we have systems and laws that are different from one county to the other, yet we have one indivisible country called Kenya. All of us must work so hard to ensure that it has standards which will be duplicated in every part of the country. In a way, these Bills try to introduce that uniformity. It will achieve a lot.

However, there are challenges which we must address. The introduction of county governments has had its challenges. Most of the MCAs who won to become members of the assemblies most of them were not prepared for the challenges. All of us in the country did not know what it takes or what it entailed to have an MCA. We imagined that it was a former councillor the way we knew them.

If you look at the kind of budget the MCAs are controlling, it is more or less the same as of the Member of Parliament. In some instances and projects, they have more money than an MP. The MCAs control a lot of money from road levies to the budget they have for doing roads. Because we have not put in place the good Bills to support oversight, those monies are being wasted and misused. We still think in the old way where an MP was seen to be everything else and the MCA is still seen as a councillor, the kind of money they have been in charge of notwithstanding. Therefore, it is important that we build the capacity in terms of laws, training, structures and environment because all of us are a function of the environment. We can only do so much depending on the environment under which we work. The infrastructure that we have in most counties is so rudimental that it is not possible for Members of County Assemblies (MCAs) to perform effectively as expected of them and yet these are people who control billions of money which hitherto was never part of their business. Because of that kind of money, most of them are mesmerised, confused and are doing all sorts of things. There is a lot of money and they have not been prepared enough to handle that kind of resources. This has made the governors to behave as small gods. Our governors take the advantage of the inability of oversight on the part of some of the MCAs to squander, for lack of a better word, the resources which have been entrusted to the county governments. If my county is anything to go by, the unpaid bills are so big. You wonder because the way the government works is that they budget and give contracts

based on the money available. So, the question is: If the contracts were given on the basis of the monies that the county governments had, what happened to that money? Why is it that the county governments have so much unpaid bills? It clearly goes to tell us that the level of MCAs or the kind of oversight at the county levels is not good enough and is not going to help our country.

If you look at what is going on in the country today, there is a lot of burning of schools and all the MCAs and all the leadership of the county governments do is pass the buck. For example, in Kisii County we have experienced burning of a lot of schools. Notwithstanding the fact that we have one of the best Cabinet Secretaries in the country in the name of my brother Fred Matiang'i, all the county government has embarked on is to malign his name and make him look so bad and make the issue of burning schools look like a Kisii issue. That goes a long way to tell us that sometimes our county governments miss their priorities and focus their energies and efforts on non-issues. We should all team up and condemn in the strongest terms possible the burning of schools. I do not think it is the time to pass the buck. I do not think it is the duty of the county government to look for excuses to justify what is going on.

We need to support this Bill. We need to build the capacity of our county governments, right from the MCA to the members of the county executive committees, to the directors and even to the governors and deputy governors. More often than not, they are fighting over issues which do not really add value to the county governments or enrich the vision that Kenyans had when we established the county governments. We believed by having the county governments, services would be offered to our people more easily than it had been in the past when we were doing it from Nairobi.

The county governments collect a lot of money. We can excuse them for some teething challenges. At the initial stages, we would understand that they had teething challenges. But you cannot have teething challenges from year one until the end of eternity. There has to be an end to those challenges. We cannot keep on blaming the systems as the reason why we have not been able to achieve the targets. The question one would want to ask is: What happened to the monies we used to collect in the market centres? We still do it; actually, we have enhanced the collections. Where does that money go to? What happened to the budgets?

Do our MCAs have the capacity to oversee those resources? The uniform answer that we get in almost the whole country is that we were not prepared for this but we have to start somewhere. I am grateful that we have started. This Bill should have come much earlier. Probably, we should have had it before we started the county governments because then we would have mitigated the kind of challenges we have experienced as a country. Our people have lost resources and opportunities. Even the hiring of employees at the county level is not done well. If today the friends of the governor wake up and say they want to have some opportunities in the county, they simply create them and people are employed. There is no system which guarantees fairness in recruitment at the county level. I think that is not fair; it is not right. That is not the vision that the framers of the Constitution had in mind when they were drafting the Constitution. We wanted services which are fair, transparent and affordable. Fairness should be felt so that everybody else can enjoy and say this is where we wanted to be.

Having said that, I also want to acknowledge the small good things which have happened. However, we need to do a lot more as Government and Parliament. We need to lead by example because we have sometimes failed by engaging ourselves in things which have not enhanced the image of the country. They say "monkey see monkey do." We are doing things which we are

saying they should not be done at the county level. That becomes a negative approach of selling ourselves.

With those remarks, I support.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Let us have the member for Nakuru Town East, Hon. Gikaria. He will be followed by Hon. John Waluke and then the Mover will reply.

Hon. Gikaria: Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. I thank you for the afternoon session.

The Bill has a Bill status form from the Senate. It was first read in the Senate on 11th December 2014. It is coming to the National Assembly almost two or three years down the line. It is a very important Bill. This is one of the Bills that the Senate ought to have considered right from the start so that it could have been here early. In fact, many happenings in the counties are as a result of the fact that we did not have any legislation that was going to help us to assist in having proper deliberations in the county assemblies. The MCAs of my county assembly have fought more than 16 times. The speaker is also not in control. She does a lot of things without following the due process. If this Bill becomes an Act of Parliament, it is going to assist us so much to bring sanity in our assemblies.

In my county assembly of Nakuru, MCAs have changed committees so many times. That happens every time an MCA is not in agreement with the speaker. Where I am a chairman of a committee, I am removed from the membership of that committee and placed elsewhere. That automatically means that I am no longer the chairman of that committee. It is so sad. This is done out of one of the sections that I have said where you are induced to do something or vote in a certain way so that you can retain your position, which is unacceptable. Once this Bill becomes law, that is going to change.

I am a member of the Committee on Implementation of the Constitution (CIOC). The Senate has 12 Bills with a constitutional deadline. These Bills are supposed to be passed by 27th August 2016. The Senate is just sitting and not doing anything yet they want to do unnecessary business that is not under their mandate.

It is unfortunate that the Senate is going on recess next week and will come back after six weeks yet there are 12 constitutional Bills before them. You can imagine the aftermath of not passing those constitutional Bills. We passed those Bills more than a year ago and after pushing the deadline to one year, after two months, all those Bills left the National Assembly to the Senate. They have not yet been debated. I think Senators are concentrating on how they can be governors. They have seen that governors are stealing a lot of money and they now want to be like them. I will be very brief regarding this Bill.

I want to start with defamation against the county assemblies. It is important to do publication with factual material. It also states that when you make a defamatory publication, you are fined Kshs500,000 or two years in prison and yet our Constitution allows for freedom of the Press. We need to look at that particular issue when it comes to Third Reading where we will propose amendments to try and stop that. The ills that are affecting our county assemblies is because nothing is reported. Misappropriation and misuse of public funds is never reported and they are always hiding behind the reason that they are giving us false information. This is not acceptable. We should allow the Press at the county level to relay live proceedings. In Nakuru County, there is a Public Gallery which is outside the assembly and when they do not want anyone to follow the proceedings, they just switch off the television, and you are not allowed to

sit at the assembly chambers because that is where they deliberate. Our county assemblies should make it mandatory to have Public Galleries where people come to follow the proceedings.

I would also like to talk about prohibited acts by Members. I think this might be misused. If an assembly decides to send me away like it happened to Hon. Wandayi, then it can. That is a shortcoming of our Standing Orders. I totally agree with Hon. (Dr.) Nyikal that we need to expand the provisions of punishment and not only this one that sends one away for the rest of the Session. In my opinion, I think that is a little bit on the higher side because my constituents will suffer from my failure to represent them. We should look for a way to limit those powers under Article 26 of the Bill. If the county assembly decides my fate, then others might misuse that to fight me politically.

Regarding the determination of a breach of a privilege, Clause 17(3)(e) of the Bill allows the assembly to remove you from a position given by your party. It states that part of what an assembly can do is the removal or suspension for a specified period of the member from any county assembly position enjoyed by the member.

It is not the assembly that gave me that position; it is my party. Now an assembly cannot withdraw that. If I am a chairman of a certain committee, it is my party that gave me that position. An assembly cannot purport to take a responsibility that is not theirs and remove me.

Hon. Temporary Deputy Speaker, you are in the Speaker's Panel and if we decide to remove you from there tomorrow, it is not proper because it is your party which proposed your inclusion in that panel. We will have gone overboard under the privileges that have been bestowed on you. I think it is important to allow the political party that gave you that position to do that. It is something that we need to look at.

Hon. Temporary Deputy Speaker, these are some of the issues that we needed to check. We cannot allow anybody to go beyond their mandate. If you look at Clause 15, it talks of the powers. It says that a quorum of the Powers and Privileges Committee is one-third, including the Speaker. Your Chair is the Speaker and in the absence of the Speaker, the Deputy Speaker will take over. It says "including the Speaker." If the Speaker is not there, there is no quorum for whatever reason. We need to look at what is said in the Standing Orders. It is good to note that if I am taken before the Powers and Privileges Committee, it must give the Committee results within 14 days.

The immunities which have been mentioned for MCAs are something that we need to countercheck because they might be misused. The power of freedom of speech has an end as per the Constitution.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Well spoken! Your time is over, Member for Nakuru East. There was a point of information from what you had raised. Also note that the House did congratulate the Senate for the constitutional Bills that were passed to the National Assembly. Those Bills are now with the relevant Departmental Committees. What you are talking about is important.

The last person to speak on this Bill today is the Member for Sirisia, Hon. Waluke, and then I will call upon the Mover to reply.

Hon. Koyi: Thank you very much, Hon. Temporary Deputy Speaker, for giving me a chance to contribute.

This is a very important Bill to this country. The governors have taken advantage because the MCAs do not know what they should be doing. In many counties, the governors have been misusing money. They have been stealing with the knowledge that the MCAs did not have laws like the one we are debating.

I am asking myself, and I believe other hon. Members are asking themselves, too, where this Bill has been all this time. If it was read the First Time in 2014, why did it not come to this House for discussion so that it could get presidential assent? Did the Senators sit on it intentionally? The Constitution gives powers to the county governments to execute their mandates. We have many problems in many counties because this law has not been in place.

There are very few counties in this country where you can pass and see the work done. Many of the counties have been hiding in the constituencies. If an area Member of Parliament implements or executes work in the constituency, governors take advantage and say that they have done the work though they have not been working. They have just been taking away the resources and even the collections that they have been collecting. The governors have been keeping the big chunk of the money collected in their pockets preparing for the coming general elections. It is now time for the MCAs to take this chance after the Bill is passed and assented to by the President to have powers to check and execute their mandate in every constituency so that this country can move forward.

To add on that, indeed, the Government has given a lot of money to the county governments but they cannot account for the money. It is three years down the line since this devolution took place. This is the fourth year and we cannot see a lot done by the county governments. I stand to support this Bill although it has delayed but it is better than never. We should pass it so that we know why the governors have been misusing money.

I support. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): I now call upon the Deputy Leader of the Minority Party to reply on behalf of the Mover.

Hon. Midiwo: Thank you, Hon. Temporary Deputy Speaker. Let me thank everybody who has contributed to this Bill which from the outset we said it is a good Bill. A few issues have been raised. I hope the Committee will help especially in regard to the issues raised by Hon. Katoo ole Metito on Clause 10 of the Bill which makes it possible for someone to go to court. The word “decision” needs to be deleted from Clause 10. It is good that it came out in the debate. Just to refresh the memory of the Members, Hon. Kaluma brought a Bill that barred the courts from interfering with matters before the House. This seems to go many steps to say that the courts cannot interfere with decisions of the House. That renders the courts useless. That can be cleaned up as we send this back to the Senate.

Another issue which was raised was the fact that the MCAs need not have powers of the High Court. I want to plead with Members to look at that clause in a very positive light. Even if you said they should have the powers of magistrates, what makes sense is for them to have the power of the High Court. I have explained to a couple of Members who raised it that corruption in the counties is fuelled by the inability of the assemblies to summon the county executives. These executives seem to think that the governor is enough. That particular anomaly has made the governors to be the procurement officers because they are the people in charge of the operations of the county. This means that they cannot be questioned by Members of the County Assemblies, the people who should question them according to the Constitution. I want to plead with Members that that needs to be there.

Immediately this Bill passes, governors will be responsive to the needs of the people because their officers will fear aiding them in the common thievery that is happening today. We have that power. We can invite you and if you do not come, you need to be summoned and then it becomes criminal if you do not appear. That is the power we have here. That power allows the National Assembly or the Senate exercise its constitutional mandate appropriately.

An issue has been raised about Clause 32 (a). Clause 32 (a) as drafted will bring problems and should not pass. It says that a person commits an offence if he publishes any false or scandalous libel on a county assembly, its committees or its proceedings. That will be tantamount to gagging the media. That does not belong here. The media is at a stage in this country where they are doing a good job. There is already an Act which the Media Council of Kenya (MCK) went to court on about personal defamation and libel.

We need to leave it so that the media can absorb that. We need not pass anything that tells the media that there is no reason to cover assemblies. After all, the service that they are offering us helps the political profile of the assembly and highlights the shortfalls that the assemblies at the local and national level go through.

A lot has been said and you have seen the importance of this. We need to moderate the things which border on making assemblies supernatural. I want to repeat and I agree with many Members that in this House, sanctions must apply when we transgress. As this country moves forward, we need to make the constituencies larger, sooner or later. The method of electing us will bring younger and very emotional Members to this House. We will have proper sanctions where if you do something wrong in the proceedings of this House, you will face some consequences. The National Assembly ought to allow those recommendations.

Hon. Temporary Deputy Speaker, we have been sitting in the Powers and Privileges Committee in the last few days. We will make stringent recommendations like it happens in England. There is a case we have looked at. We will still look at it further like it happens in Germany. In Germany, if you do anything like what is in our Standing Order No. 111, which was used against Hon. Wandayi, they fine you not less than \$1,000 and you lose other privileges. In our case, we have recommended one or two months' salary loss if do you do some things.

I said here earlier that we must deter disorder in this country. There is disorder in the schools today because there are no penalties. That is why kids seem to enjoy burning their own property, and get away with it. It is sad because these people will grow up to be our Members of Parliament, policemen, teachers, and we cannot let it go. This debate which is going on about unrest in schools must be looked at. The cartels in the education sector are going after the Cabinet Secretary (CS) for Education, Science and Technology, Mr. Matiang'i. Why is it happening in some regions? It is rumoured that some schools in those regions had already paid in advance for the upcoming exams, and they did not prepare the students. That is why they are inciting them to do something because they have not been teaching them. They were planning to give them ready exams.

The CS, Mr. Matiang'i, has stepped on the wrong feet, especially by putting Prof. Magoha as the head of the Kenya National Examinations Council (KNEC). He has annoyed and got rid of the exam cartels. I wish that the debate had more time, so that we say Mr. Matiang'i must be protected. If you do not have a disciplinarian, you cannot have discipline. We cannot have some of our kids buying exams. This issue of discipline must be handled whether it is the MCAs or Members of the National Assembly. We must move from where we are to the next level. We must inculcate discipline in our system.

I thank you, Hon. Temporary Deputy Speaker. I beg to reply.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, I am not in a position to put the Question on the County Assemblies Powers and Privileges Bill (Senate Bill

No. 14 of 2014). I, therefore, direct that the Question be put in the next appropriate sitting as it will be directed by the House Business Committee (HBC).

Hon. Members, the time being 6.30 pm, the House stands adjourned until Thursday, 21st July 2016, at 2.30 pm.

The House rose at 6.30 p.m.