

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 20<sup>th</sup> February, 2014

The House met at 2.30 p.m.

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

### PRAYERS

### PAPERS LAID

**Hon. A.B. Duale:** Hon. Speaker, Sir, I beg to lay the following Papers on the Table:-

The Constituencies Development Fund Regulations, 2014, from the Ministry of Devolution and Planning

The National Construction Authority Regulations, 2014, from the National Construction Authority

The Report of the Auditor-General on the Financial Statements of the National Communication Secretariat for the year ended 30<sup>th</sup> June, 2013

The Report of the Auditor-General on the Financial Statements of Media Council of Kenya for the year ended 30<sup>th</sup> June, 2013

The Report of the Auditor-General on the Financial Statements of the Kenya Investments Authority for the year ended 30<sup>th</sup> June, 2013

The Report of the Auditor-General on the Financial Statements of the National Gender and Equality Commission for the year ended 30<sup>th</sup> June, 2013

The Report of the Auditor-General on the Financial Statements of the Policy Holders Compensation Fund for the year ended 30<sup>th</sup> June, 2013

The Report of the Auditor-General on the Financial Statements of the Judges and Magistrates Vetting Board for the year ended 30<sup>th</sup> June, 2013

The Report of the Auditor-General on the Financial Statements of the National Council for Law Reporting for the year ended 30<sup>th</sup> June, 2013

Thank you, hon. Speaker.

**Hon. Chepkonga:** Hon. Speaker, I beg to lay on the Table the Report of the Departmental Committee on Justice and Legal Affairs on the Constitution of Kenya (Amendment) Bill, 2013

### COMMUNICATION FROM THE CHAIR

COMMITTAL OF CDF/NCA REGULATIONS, 2014

**Hon. Speaker:** Hon. Members, as you all know, the Constituencies Development Fund Regulations should go to the Committee on Delegated Legislation but I would want to suggest that the Committee, which is chaired by hon. Cheptumo, works closely with the Constituencies Development Fund (CDF) Committee, which is chaired by hon. Lessonet. That is for the purposes of convenience and addressing all concerns that hon. Members may have taken to the CDF Committee, so that when they finally bring their Report, it may not have left out some issues.

The National Construction Authority (NCA) Regulations, 2014 are referred to the Committee on Delegated Legislation. Once again, I want to suggest that the Committee works closely with the Committee on Transport, Public Works and Housing in order for the latter Committee, which is, probably, the one that has more information on the matter, to advise the former Committee.

*(Loud consultations)*

**Hon. Speaker:** Could those hon. Members who are walking into the Chamber kindly allow hon. Tim Wanyonyi to follow the proceedings? Do whatever you are doing at the back in low tones, so that hon. Tim Wanyonyi is not disrupted permanently.

Next Order!

## NOTICE OF MOTION

APPROVAL OF APPOINTMENT OF DR. A.I. ALI AND  
MRS. L. MUMELO AS PSC COMMISSIONERS

**Hon. A.B. Duale:** Hon. Speaker, on your behalf, as the Chairman of the Parliamentary Service Commission (PSC), I beg to give notice of the following Motion:-

THAT, pursuant to the provisions of Article 127(1) (d) of the Constitution, this House approves the appointment of hon. (Dr.) Abdulahi Ibrahim Ali and Mrs. Lonah Mumelo to be Members of the Parliamentary Service Commission.

## COMMUNICATION FROM THE CHAIR

TENDERING/CONSTRUCTION OF STANDARD GAUGE RAILWAY

**Hon. Speaker:** Hon. Members, I would like to make the following Communication because of some Order that is coming. Now that the Order "Statements" has been called, I want to convey to you that I have allowed the Chairperson of the Departmental Committee on Transport, Public Works and Housing to respond to the Statement indicated in the Order Paper. The response relates to the tendering and construction of the Standard Gauge Railway. As you are aware, all the Statements that were requested in the last Session lapsed at the end of the Session.

However, I have since received formal representation from the Chairperson and the said Committee, asking me to consider the matter as exception and allow the reply to

be given. Owing to the public interest the matter has raised, and the progress made by the Committee to respond to the issues raised by your colleague, hon. Hezron Awiti, it is my view that the matter is, indeed, exceptional and falls within the matters that the Speaker is allowed to consider under Standing Order No.1. I will, therefore, allow the Chairperson to make the Statement on the findings of his Committee. However, we must all keep within the rules of this House, particularly the provisions of Standing Order No.86, which states as follows:-

“86. No Member shall refer to the substance of the proceedings of a Select Committee before the Committee has made its Report to the House.”

Hon. Members, in this regard, since the matter is also very active before the Public Investments Committee (PIC), I will allow minimal clarifications. When the Chair of the Committee is finally through with his reply, I will allow him to table the Report of the Committee for record purposes.

Proceed, hon. Maina Kamanda.

## STATEMENTS

### TENDERING/CONSTRUCTION OF STANDARD GAUGE RAILWAY

**Hon. Kamanda:** Thank you, hon. Speaker, for giving me this opportunity to---

**Hon. Ng'ongo:** On a point of order, hon. Speaker.

**Hon. Speaker:** What is your point of order, hon. Mbadi?

**Hon. Ng'ongo:** On a point of order, hon. Speaker. I appreciate the Communication from the Chair regarding this matter. I appreciate that the response that is going to come from the Chair, Committee on Transport, Public Works and Housing, is on basis of the Statement that was sought. However, I am a bit disturbed. Of course, we value and respect all the Committees of this House equally. In the event that the Chair of the Committee on Transport, Public Works and Housing gives a report which is going to be tabled here and then the report of the Public Investments Committee (PIC) is subsequently submitted, and there is a difference in opinion regarding the two reports, will this not put this House into some kind of confusion?

I would request that this be considered and this response be deferred until the other Committee finalizes its work and then we, probably, have the two committees harmonize their reports as it happened in the Tenth Parliament when we had two committees investigating the issue of the Mavoko cemetery land. We had two committees with two contrasting reports and then the Speaker ruled that the two committees harmonize their reports. I am just concerned, because it may expose this House to a situation where the public thinks we are not doing our work properly, because we have one Committee bringing a report that is completely different from another one. I am not saying that, that is what is going to happen, but I am just worried that in the event that, that happens then this will put us in a very awkward situation.

**Hon. Speaker:** Fortunately, I am not new to this kind of a situation. I know hon. Mbadi was an active Member in the Tenth Parliament, but he was never in the Ninth and the Eighth or even the Seventh and Sixth Parliaments. If you take some step down memory lane, you will know how the issue of Goldenberg started. It started by way of a

Question here in the House. In the Ninth Parliament, the issue of Anglo Leasing was raised here by hon. Maore as a Question. Responses were given in both cases by Ministers; then subsequently these matters were taken to the Public Accounts Committee (PAC), which tabled its report later after thorough investigations. Therefore, the fact that they have done their work in response to the issue raised by hon. Awiti does not, in any way, prejudice the work done by the Committee on Transport, Public Works and Housing.

I have indicated that minimal clarifications will be allowed, and they will be subject to the provisions of Standing Order No.86, so as to allow a situation in which more detailed discussion on the matter will be allowed when the PIC tables their report. But the House will remain seized of the Statement in response by the Departmental Committee, which is going to lay the Report on the Table. So, I do not think there is any reason to fear, hon. Kamanda.

**Hon. Kamanda:** Hon. Speaker, Sir, I want to say that it is true that we sought your guidance on this matter as stated by hon. Mbadi and you advised as you have stated.

I want to thank you for giving me this opportunity to present the report on investigations into the procurement process for the development of the proposed Mombasa-Nairobi Standard Gauge Railway and other related issues surrounding the development of the railway in line with Standing Order No.216.

On Thursday, 14<sup>th</sup> November, 2013, the Member for Nyali Constituency, hon. Awiti, requested a Statement from the Chairman of the Committee on Transport, Public Works and Housing on the tendering and construction of the Mombasa-Nairobi Standard Gauge Railway. The Member sought to know why the Government single sourced the provision of rolling stocks and awarded the tender to China Bridges and Roads Construction Company. He further asked the Committee to inquire into and report on the following:-

(i) whether the China Road and Bridge Corporation has the capacity to build a railway project and if so, provide evidence of the railway projects undertaken by the company in the last ten years and at what cost;

(ii) whether the China Road and Bridge Corporation has the capacity to provide rolling stock, and if so, provide evidence of the factories where the rolling stock is manufactured;

(iii) clarify on whether the Government undertook due diligence on the capacity of the company to build the railway line and provide rolling stocks;

(iv) state the action that will be taken by the Government in case of culpability in awarding the tender to the China Bridges and Road Company.

Hon. Speaker, on 21<sup>st</sup> November, 2013, the Committee invited the Cabinet Secretary for Transport and Infrastructure to shed light on the issues surrounding the tendering and the construction of the Standard Gauge Railway. Subsequently, on 9<sup>th</sup> January, 2014, the Committee held a sitting and deliberated on the way forward on the Statement sought by the Member for Nyali Constituency, hon. Awiti, following immense public interest the Mombasa-Nairobi Standard Gauge Railway project had attracted. The following are submissions and documentary evidence provided by witnesses.

I would like to respond to the Member as follows: On question number one, the single sourcing of the provision of the rolling stocks award tender, the procurement

contract for the construction of the Standard Gauge Railway provision of rolling stocks is taken into the context of financing of the project. The method of procuring the contract used is provided for in Section 6(1) of the Public Procurement and Disposal Act, 2005, which states that:-

“Where any provision of this Act conflicts with any other obligation of the Republic of Kenya, arising from treaty or other agreement to which Kenya is a party, this Act shall prevail except in the instance of negotiated loans or grants”.

Hon. Speaker, there was also a memo written in April, 2012 which was a Cabinet decision communicated and granted approval for the Government-to-Government arrangement for implementation of the project. The Director-General, Public Procurement and Oversight Authority (PPOA) indicated to the Committee that the procurement entity, that is Kenya Railways Corporation--- The Standard Gauge Railway (SGR) project was a Government-to-Government project, which is to be funded by a negotiated loan; it was, therefore, exempted from the application of the Public Procurement and Disposal Act, 2005, pursuant to Section 61 of the Act.

Hon. Speaker, the Attorney-General also confirmed the position that the procurement entity did comply with the provisions of the Public Procurement and Disposal Act, 2005. The Committee, therefore, found that the procurement entity acted within the law on the single sourcing of the rolling stock and the work of the tender for the China Road and Bridge Corporation. We went through all the documents that were given by the PPOA and the Attorney-General, and we also agreed with him that all the procedures were followed.

Hon. Speaker, on question number two regarding whether the company has the capacity to build a railway project, and if so to provide evidence of a railway project undertaken by the company in the last ten years and at what cost, I wish to respond as follows: The Principal Secretary for the Department of Transport in the Ministry of Transport and Infrastructure confirmed receipt of a letter from the Chinese Embassy recommending CRBC for the Mombasa-Nairobi SGR project. In addition, the Principal Secretary has also produced evidence that the Government of Kenya sent a delegation from Kenya to China from 27<sup>th</sup> October to November 5<sup>th</sup>, 2012 to undertake due diligence on the capacity of CRBC to deliver the Nairobi-Mombasa SGR project.

Hon. Speaker, the due diligence was supposed to ascertain the technical, financial, legal and human resource capacity for CRBC to undertake the implementation of the project. The due diligence report confirmed that CRBC is a government institution of the Republic of China, and it has been in operation in China since 1979. The CRBC is a large scale state-owned foreign trade and economic corporation enterprise that focuses on construction of roads, railways, airports and other transport infrastructure.

Hon. Speaker, it has been confirmed that the CRBC has undertaken several huge railway development projects in China, including Beijing-Shanghai High Speed Railway, which is about 153 kilometres at a cost of US\$2,280 million. Two, it did Harbin-Dalian passenger dedicated railway line, which is 345 kilometres long at a cost of US\$3,460 million. Three, it did Chongqing-Wanzhou Railway line, which is 53.8 kilometres at a cost of US\$373. Four, it did Taiyuan-Zhongwei Railway line, which is 210 kilometres at a cost of US\$950 million.

The Committee, therefore, established that CRBC has the capacity, financial and human, to undertake the implementation of the Mombasa-Nairobi SGR project. The route length of SGR will be 485 kilometres and another one of 124 kilometres for an operation truck. So, the total length will be 609 kilometres.

Hon. Speaker, number three, on whether CRBC has the capacity to provide locomotives which are the engines and the rolling stocks, and if so provide evidence of factories where the rolling stock is manufactured, I wish to respond as follows: The Principal Secretary for the Transport Department of the Ministry of Transport and Infrastructure confirmed to the Committee that during the visit to China the Government delegation visited CRS Ziyang Locomotives Manufacturing Company based in Chengdu and toured the locomotives manufacturing complex. The company will be responsible for manufacturing and supplying the locomotives for the project as per the list of equipment the supplier submitted to Kenya Railways.

The delegation undertook due diligence on CSR Ziyang and confirmed that the company's factories have the capacity to manufacture 500 locomotives annually. The delegation also established that the locomotives specified in the commercial contract, including 5000 HB locomotives, will be used for the high freight haulage for the operation of the SGR.

Hon. Speaker, the Committee established that CRBC has the capacity to provide the required locomotives and rolling stocks; all these things are as a result of the investigation, what we were told and the evidence that we will table. This came from the officers and we went all through the documents, which I will table. That is why the Committee decided to come up with each question with comments of the Committee.

Hon. Speaker, number four on whether the Government did due diligence on the capacity of the company to build the railway line and provide locomotives and---

*(Loud consultations)*

**Hon. Speaker:** Just a moment, hon. Kamanda. There is a Member, hon. Kemei, on a point of order.

**Hon. Kemei:** Thank you, hon. Speaker. I regret to interrupt but the level of consultations, especially on my right side are such that I cannot comprehend what hon. Kamanda is saying.

**Hon. Speaker:** Hon. Members, I think hon. Kemei has a point, especially if you are to his right; also I confirm that the level of consultations is too high. The voices have risen a little too high.

Hon. Kamanda, proceed.

**Hon. Kamanda:** Thank you, hon. Speaker.

Let me then repeat question number four, which is whether the Government undertook due diligence of the capacity of the company to build the railway line and provide locomotives and rolling stocks. I wish to respond as follows: The Government delegation sent to China on the project undertook due diligence on CRBC and confirmed that the company has the capacity to build the Mombasa–Nairobi SGR project.

Hon. Speaker, the delegation had ten people and it is also given in some of the annexes that we are going to give. Similarly, the delegation also did due diligence on the

CRBC and confirmed that the company's factory has the capacity to manufacture locomotives as required.

On what action will be taken by the Government in case of culpability in awarding the tender to the CRBC, I wish to respond as follows: The Principal Secretary in the Department of Transport confirmed to the Committee that the CRBC will be required to submit to the Kenya Railways a performance bond and in the case of poor performance, KR will use the funds to procure another engineering procurement and construction (EPC) contract.

Regarding other issues, the Committee resolved to extend the scope of the mandate to cover other areas that hon. Awiti had not raised in the Statement request. Such issues include the total cost, the CGR and the legality of the tendering process involved. The Committee then developed a programme meeting to take evidence from the witness who would assist the Committee to get to the bottom of this matter. My Committee was able to interview the following officers:- Cabinet Secretary for Transport and Infrastructure, the Principal Secretary in the Department of Transport, Acting Managing Director of the Kenya Railways Corporation (KRC), the Attorney-General of the Republic of Kenya, the Director-General of Public Procurement Oversight Authority (PPOA) and the Cabinet Secretary for National Treasury.

The Committee noted submission by each officer and then sought clarification on specific items. From the information gathered from the witnesses and the documentary evidence they produced, the Committee made the following observations and conclusions on the tendering process for the construction of the Standard Gauge Railway (SGR). What I am reading are the observations by the Committee.

(i) Regarding the procurement process, the Committee did not find any illegality or irregularity in the procurement of this project in the light of the submission and confirmation made by the Attorney-General and the Director-General of the PPOA.

(ii) The Committee observed that due process was followed in the procurement of the SGR project. The Director-General of PPOA confirmed to the Committee that the provisions of the Public Procurement and Disposal Act, 2005 were adhered to, to the letter and the procurement of the EPC contract in this case government to government procurement undertaken herein is in accordance with Section 6(1) of the Public Procurement and Disposal Act, 2005.

(iii) The Attorney-General also confirmed to the Committee that his own Office was and is involved in the procurement process of Mombasa-Nairobi SGR right from the inception of the project. He affirmed that his Office will provide the legal opinion on the financial agreement to enable sealing of the contract between the Government of Kenya and the Government of the People's Republic of China as agreed in the contract.

(iv) The Attorney-General also confirmed that the Government of Kenya has not yet signed any financial agreement, and that the loan from the Exim Bank of China is undergoing internal credit approval, after which the loan document will be submitted to the Kenyan Treasury for perusal and onward transmission to the Attorney-General for his opinion.

Hon. Speaker, regarding the debt sustainability and the loan payment, hon. Members noted that the National Treasury has undertaken debt sustainability analysis to ensure that the SGR loan is sustainable and is within the debt policy parameter. It was

noted that even in 2018, at the end of the construction period, when the repayment of the principal sum will be due, the present value or the public sector debt ratio to the GDP, with the SGR in place, will be 43.8, well below the threshold of 56. The loan will not, therefore, breach the Kenyan debt sustainability threshold.

With regard to the loan repayment, the Committee noted that the Government of the Republic of Kenya has put in place sustainable mechanisms to meet the cost of the loan during their tenure, including a railways development fund, budgetary allocation and traffic guarantee for the SGR.

With regard to the cost of the project, the Committee noted that the cost of the Mombasa-Nairobi SGR has not been fluctuating. The total EPC cost of the project is US\$3.804 billion, which is Kshs327 billion. This is the same figure the Ministry of Transport and Infrastructure provided to the Committee. This is made up of the contract for civil works, which is US\$2.6575 billion, and the contract for supply and installation of facility, locomotive and rolling stock, which is US\$1.146 billion.

The Committee further noted that there will be other costs not yet confirmed, including compulsory land acquisition of 2,253 hectares for the railway corridor, which is estimated to cost Kshs8 billion. Expansion programme for the Embakasi Inland Container Depot is estimated at a cost of Kshs10.6 billion. There will be a facility development and supply of installation of container equipment at Kshs1 billion, and also Kshs3 billion, which will be required for project supervision consultancy.

Regarding the supervision of the project, the KRC is in the process of procuring a consultant to undertake an independent supervision of this project including review, design, construction, supervision and commissioning the project; the consultant will approve and issue a certificate before payments are made to the CRBC.

With regard to documentary evidence by the witnesses, the Committee was generally satisfied with the quality with respect to the production and information therein. On justification of the Mombasa-Nairobi SGR, the Committee asked why we are having this railway line. One of the justifications is that it will enhance transportation capacity, fast track movement of cargo in the country and in the region at a lower cost than is possible with the 16 meter gauge railway and road transport. There will be economic and social benefits, including annual GDP growth at the rate of 1.5 per cent during the construction.

It will reduce congestion at Mombasa Port and, therefore, strategically placing the Port as the preferred facility in the region.

There will be direct job creation of, at least, 60 new jobs per kilometer. That translates to 40,000 new jobs that are going to be created once we start the construction of the railway. There will be another 15,000 jobs for trained officers. So, in total, there will be over 15,000 new jobs once we start the project.

It will promote the training institute as a centre of excellence for the railway skills in the region. Our Railway Training Institute which is in South B will be refurbished. It will be the hub and training centre for East and Central Africa.

The Committee concluded that Kenya, as a country, had to get a sanctuary economically and socially from the construction stage and, subsequently, the operations of the Nairobi-Mombasa Standard Gauge Railway Project.



After going through all these documents and reports that I am going to table, we thought it is good, as a Committee, to also come up with recommendations. They are as follows:-

(i) The Government should proceed with the process of implementing the Mombasa-Nairobi Standard Gauge Railway Project due to the promising benefit that will accrue to the people of Kenya during the construction period and upon the completion of the project.

(ii) The Government of Kenya should fast-track the signing of the financial agreement between Kenya and the Government of the People's Republic of China to enable the commencement of that project. As of now, all those documents are now in China and we hope that, very soon, they are going to be forwarded to the Kenyan Government. That is why the Committee thought we need to tell the Government that, once those documents are here, we need them to be fast-tracked.

(iii) The procurement process of an independent consultancy should be speeded up. We have even talked about the Kshs3 billion that will be used for consultancy and we want Kenya Railways to start that process.

(iv) Negotiations for that railway project started over six years ago in 2008. The Committee is of the view that the negotiations for the Malaba-Nairobi line should start now. That is because if the other one started six years ago, we should start now so that, within two or three years, we can also fast-track the other railway line.

I want to say this: First, I want to thank the leadership in this House, both the Leader of the Minority Party and Leader of the Majority Party. I also want to thank the Members here. I want to say that you gave the best when you nominated hon. Members to serve in this Committee. I want to say, as a Chair that, you gave the best. These are hon. Members of very high integrity. I worked with hon. Members from both sides. There was nothing like CORD or Jubilee. We worked together as a team for the interest of this country. The Report that I am about to table was signed by the entire membership of the Committee – that is 28 hon. Members.

Finally, I also want to thank your Office. You have provided the leadership. The Office of the Clerk also gave us support, although they gave us one Clerk, Mr. Kalama. I want to thank him because he was working almost 24 hours. I know there is a shortage of staff but I want to say that he has done a good job.

The other person that I want to thank with respect to the Standard Railway Gauge - and I cannot miss to mention this - is the former Prime Minister of this country. This is the man who, when we were doing the ground breaking, came to the airport and confirmed that, that project is not about this Government. It is a project that he started with former President hon. Mwai Kibaki and nobody should try to stop it. That is because it was a big problem that time and he would like to see that we are fast-tracking the project and moving on. On that note, I want to thank him because he is also a Kenyan who came out to give his views.

I also want to thank my Committee. There was a lot of lobbying within Members here. I also want to thank the membership of the entire House. Most of them have been asking me about this matter and I have explained to them. Even the few ones who were very vocal, came to consult me too. In line with those consultations, I have been telling them: "This is about the country. This is about the development of this country. It is not

about personal interest.” That is because all the people who came to talk about it were talking about personal interest and not about the development of this country.

On behalf of this Committee and pursuant to Standing Order No.199 (5), it is my pleasant duty to table in this House the full Report of the Departmental Committee on Transport, Public Works and Housing on the Inquiry into the Tendering and Construction of Nairobi-Mombasa Standard Gauge Railway.

Thank you. The documents that I am tabling – and I want to mention it here because they are all here - is a letter from the Cabinet Secretary, Ministry of Transport and Infrastructure on the bilateral agreement between Kenya and Uganda, Memorandum of Understanding (MoU) between Government of Kenya and Exim Bank, MoU between Government of the Republic of China and CRBC, letter from the Embassy of Republic of China, letters from the Attorney-General approving the project, due diligence Report on China Road and Bridge Co-operation, Registration of CRB Office in Kenya, China and Bridge Engineering Company, letters from the Registrar of Companies confirming the changes of the name of CRB, CRB business licence dated 8<sup>th</sup> December 2005, letter from the Office of the President dated 13<sup>th</sup> August 2012, minutes of this Committee and commercial contracts for supply and isolation of the facilities. They are all here.

I want to say that, unlike other reports that have been endorsed by few Members, this Report has been endorsed by the entire membership of my Committee. By doing that, we want to go into history books; in 100 years to come, we will be in history. The Committee on Transport, Public Works and Housing will enter into the history books, that it never blocked the construction of the railway in this country. All of us have said that we want the project to continue.

I now beg to table the Report

*(Hon. Kamanda laid the Report on the Table)*

*(Applause)*

**Hon. Speaker:** Hon. Members, I assume that my earlier guidance is still alive in our memories, so that we can allow some few clarifications. The first one will be from hon. Awiti.

**Hon. Bollo:** Thank you, hon. Speaker. I also thank the Chairman. Since there were two Committees, that is the PIC---

**Hon. Speaker:** Are you seeking a clarification on this Statement? Look at Standing Order No.86; I gave guidance. It is important for people to listen, so that we work within our rules. We have been telling others that they are not living within their own rules. So, we must live within our rules, so that we can set the example to others. So, seek your clarification. Because this Statement is supposed to have come from the Cabinet Secretary, perhaps you could tell the House whether you actually participated at any one time when the Cabinet Secretary appeared before the Committee.

**Hon. Bollo:** Thank you, hon. Speaker. I have received the Statement now and I was attending meetings when the Chairman would call me. However, I would like to request that the Statement be deferred, so that I can go and study it. This is because I participated in its preparation. However, since the PIC is also going to present a

Statement, I will withhold my comments and then make them after the next presentation of PIC. However, the Report was well presented and there was nobody opposing the building of the railway.

There are some areas which have not been covered well and I would like to request the Chairman to look into them. That is the contract for the youth and women. This was not covered well and so we should pursue it.

Secondly, on the NEMA report, there is a big threat to domestic animals. We know Chinese eat animals. How we will protect our animals has not been covered very well. Those are the comments which I would like to make. On the cost, we have seen different costs but we will get clarification on the cost that is accepted.

Hon. Speaker, those are my comments for today.

Thank you.

**Hon. Speaker:** Hon. Awiti, the observations you have made are good. I want to guide hon. Members this way; if it was during the former system, you would have actually asked this question to a Minister who would have been in the House and he would have given you an answer. The reason why there is that opportunity for you to attend a session of the Committee when the Cabinet Secretary and others are present is so that you can ask them questions. If you go there, then there will be no need for you to come and ask your colleague, the Chair of the Committee, questions which you had the opportunity to ask the people who are involved. Nevertheless, did you say that the Chinese are not very good with animals? What did you say? I did not quite hear what you said.

**Hon. Bollo:** Hon. Speaker, I was not summoned for all the meetings; I was only summoned to appear before the Committee for about two minutes. So, I did not get a chance to ask many questions. I think this is also the right time to challenge the Chairman. Because PIC is still going on, there is nothing wrong in asking under which clause women and youth can get contracts. This is because there is no clause on that. There is also nothing wrong in asking this House what protection we have for our animals because there is no clause on that either.

We know very well the behaviour of the Chinese when we involve them with animals. We have to accept that our Government should protect our animals.

**Hon. Speaker:** Hon. Awiti, you have said that we know very well the behaviour of Chinese with animals. Which animals are you talking about and what is that behaviour which we all know? This is because it does not appear that, that knowledge is all over. Maybe, hon. Awiti, you can clarify that. Or, that was said with a light touch? Is it your suggestion hon. Awiti that you would like to withhold your further comments until we get the report from the PIC? Did I get you saying that?

**Hon. Bollo:** Yes, hon. Speaker.

**Hon. Angwenyi:** Thank you, hon. Speaker for giving me a chance to contribute on this---

**Hon. Speaker:** It is not to contribute! This is in response to a Statement and in keeping with your own rules, you can only seek a clarification from the Chairperson. There is no contribution yet.

**Hon. Angwenyi:** Okay. Then I give up on the Statement.

**Hon. (Dr.) Eseli:** Thank you, hon. Speaker. I would like to thank the Chairman of the Departmental Committee on Transport, Public Works and Housing for that very elaborate response to the request for the Statement. I also want to thank him because he has finally realized that the Prime Minister had a very important role in this country.

The Chairman has mentioned in his Report that along the way the Committee also decided to do additional work, which they had not been requested to do by showing how the project will impact on the economy of this country. This was not part of the Statement. I am wondering why they did not find it prudent to also do additional work and undertake a comparative study on the cost of this railway line *vis-à-vis* railway lines in other countries, whether they are dual track or single track, and whether they are electric or locomotive. The Chairman has gone on to say that the Railway Training Institute (RTI) will become a hub for training in East and Central Africa. The Chairman has tabled an agreement with the Ugandan Government, but he has not tabled any other agreement with the other East and Central African countries to the effect that the RTI will be a training hub for East and Central Africa.

Finally, I thought we had gone digital, a mono track locomotive railway is really analogy.

**Hon. Speaker:** Hon. (Dr.) David Eseli has raised some very interesting points and I suspect that if you look at the mandate of the Committee, you will find that what he is saying is that nothing prevents you from executing your mandate under the Standing Orders and investigating the issues that he has raised.

Yes, hon. Kamanda.

**Hon. Kamanda:** Hon. Speaker, I appreciate the comments from the Member. All what he has asked on the comparison between the Ethiopian line and even the one that will be constructed in Uganda is in the report. Their cost is higher than what Kenya is paying. So, the comparison is already in the report. It is only that I had no time to go through the entire report.

**Hon. Ng'ongo:** Hon. Speaker, I want to thank the Chair of the Committee, and my good friend, for such a detailed report and, at least, for giving us the benefit for the first time to read some of the details that we have just been getting through the media and other fora. I just want to seek three quick clarifications. I heard the Chairman say that the Attorney-General has given a clean bill of health to this project, and has indicated that his office was and is still seized of this matter. There has been this concern---

*(Loud consultations)*

The consultations are a bit loud.

**Hon. Speaker:** Members, please, I also want to hear what hon. Mbadi is asking.

**Hon. Ng'ongo:** Hon. Speaker, I just wanted a clarification from the Chair. There has been this concern that the Attorney-General, at one point, and even the Deputy President, also at one point, had raised issues and concerns with this project. In the process of investigation, can the Chair confirm to us whether there were any of these concerns or whether this was factual? Finally, I also wanted to confirm with the Chair whether in his report they looked at the feasibility study and a study on the financial viability of this project, and has he attached the same for our information? There have

been some allegations, or it has been contested widely that this country is even guaranteeing a percentage of business to the financiers of this project. He should also indicate whether it would be possible for us, as a country, to guarantee that percentage. I heard it is about 30 or 35 per cent. I think it is 32 per cent guarantee of the business at the Kenya Ports Authority. This percentage of business is supposed to enable the financiers to recoup their cost. Could he give us a leak detail on that and say if it is attached on the report?

**Hon. Kamanda:** Hon. Speaker, I want to assure hon. Mbadi that one of the annexures is a feasibility study report. So, you can go through it. We have produced over 240 copies as of now. At the time Members will be getting out, if you do not have a copy, pick one from here.

On the matter of His Excellency the Deputy President interfering in anything, nobody mentioned the name of the Deputy President anywhere. On the contradiction the Member has talked about, about the Attorney-General and maybe his officers, the Attorney-General personally came and he is the one who confirmed to this Committee that his office had been consulted. He has given all the clearance and we could not have asked him any other thing because he came personally. If somebody else had appeared, maybe one of his junior officers, we could say that maybe there was something. He appeared in person and clarified all the issues and that is why the Committee had to say that as far as it is concerned, we have not seen any problem.

**Hon. (Ms.) R.K. Nyamai:** Thank you, hon. Speaker, for giving me an opportunity to seek a clarification from hon. Kamanda. I wish to thank him, first of all, for a very good presentation, very eloquently presented. I just want to seek two clarifications from the Chair. One, this is a long-term project that is going to affect our people economically and socially. Has the Ministry or even the Committee thought about conducting a kind of a social or health impact assessment of the interaction between these people and our people for a period of four years?

The second one is that this is a long distance railway line, and there are possibilities of accidents. It is important for us to plan in advance. There is a railway line and alongside it there is a road and we are aware of road accidents that have been happening on our roads. Has the Committee envisaged the construction of trauma centres along the railway line just in case accidents happen, so that our country is well prepared? I am asking this because we are investing a lot of money as a country in infrastructure development projects; but we seem to forget the health and the social impact that are likely to come with the development of the projects that are to be undertaken.

**Hon. Kamanda:** Hon. Speaker, in the process of implementing the project, all those things will be looked into. I want to assure the Member that those are the things that the Ministry and the Kenya Railways are working on now. Once the document comes from China and it is executed on this side, those are the things that are going to be looked into, so that socially and economically we are prepared.

**Hon. Nyamweya:** Hon. Speaker, I want to thank the Committee for the report they have given the House. When I go through the report, they have dealt so much on the information given by the Principal Secretary. For example, they have said that the Principal Secretary visited the manufacturing company. Visiting the manufacturing company is not a guarantee to this House that they have the ability to do the project. Two,

the Chairman has given the names of companies which have done this work in China, but there is no attachment to the effect that, that is correct. I have the report with me and I am trying to be convinced whether this is a viable project for this country. When I go through the report, I do not find anywhere where the Committee has attached the report which the Principal Secretary gave to confirm the ability of this company to do the project.

Thirdly, the Chair has also said that the Director-General of procurement informed the Committee that under Section 1 of the Public Procurement and Disposal Act, they are allowed to do this when they are dealing with Government to Government projects. In this contract, the taxpayer is contributing 15 per cent. Already, Kenyans are paying for it. This does not allow the financing to be done under this section because public funds are being used. We taxpayers are contributing to this. When it is 100 per cent, that is when you can use this section to do single sourcing, but in this case, it is not 100 per cent.

Finally, I want to raise the issue of traffic. The Chair has said that there will be traffic. I want us to be very sincere with each other and agree that it is the transporter who decides the mode of transport to use. If a transporter prefers a different mode of transport, are you going to force them to use the railway instead of road, given the time the train takes? How did the Committee arrive at the statement that there is enough traffic? What is the basis?

Finally, this ends in Nairobi, but we know there is a railway line starting in Tanga, through Uganda to Democratic Republic of Congo (DRC), which competes with us. If we are laying a railway which ends in Nairobi, transporters will just be dumping containers here. What we want to do is transfer the port to Nairobi. In the report, did you assess where the traffic terminal will end? You must look at how traffic will be handled, when this new railway line reaches Nairobi.

These are the questions that I want the Committee to look at and explain them to us. Is this the best thing of value and what is the opportunity cost for the money which will be spent? Is it the best thing that this county can do, given other demands that are required? This is our money; we will pay; it is not for free. So, is it the best project for the country to undertake, and will it give us value for money and bring development to this country?

Thank you, hon. Speaker.

**Hon. Speaker:** Yes, hon. Kamanda.

**Hon. Kamanda:** Hon. Speaker, I want to start with the issue of due diligence, because you have talked about the Principal Secretary (PS), who was the leader of delegation. He did not go to China alone; at the time he was Managing Director of Kenya Railways. He was accompanied by officers from officers from the Ministry of Transport and the Treasury; they were 18 in total.

This is not the first time that Kenya was handling this kind of project and sending out delegations for due diligence; this Government has been doing that. We also have to trust Government officers, whom we sent to carry out the jobs. They represent the people and are not retired; they are still working to support this project. I want to tell the hon. Member that the Committee was satisfied with them.

When you go through the report you will find we have addressed all the questions you have asked. We have shown the due diligence done, the people, which companies they visited and what they inspected, all is there. It is only that we do not have time to take you through the report bit by bit.

The other point raised by *mheshimiwa* is on traffic. The Member may have travelled widely. Roads and railways complement one another. There is no way we are going to kill the roads because of railways. This is what I have seen in the developed countries. Railways and roads are there; if we have a good railway line, it will supplement the roads.

The other issue he has raised is about traffic from Mombasa congesting Nairobi. You have heard the recommendation from the Committee. We want the Government to move with speed and fast-track Nairobi-Malaba Rail, so that it does not end in Nairobi. Uganda will take up railway line construction from Malaba to Uganda. All that the hon. Member has asked is in the report; in the annex, there is another big report, which we will provide to all Members.

**Hon. Speaker:** Well, hon. Members, as you may recall, this is a Statement; this is not an occasion for debate. I will just hear one more Member and we proceed on with the rest of the business.

Hon. Manson Nyamweya, you want to raise a point of order. This is a response to a Statement. In fact, the Member who sought it has reserved a lot of his comments, until the other Committee brings its report, so that we can debate both of them.

Yes, hon. Njagagua.

**Hon. Njagagua:** Thank you, hon. Speaker; I just want one or two clarifications from hon. Kamanda. I have listened to him carefully and he stated a fact that his report has been signed by all the 29 Members, unlike other reports.

Is he insinuating that those reports which are not signed by the 29 Members are of lesser value to this house? Having questioned the people who appeared before him and his Committee, are we, as Kenyans, getting value for our money, now that at this time and age of technology, we are doing a diesel-propelled railway line? Will Kenyans get value for their money?

He has said it is a single lane; are we really getting value for money, when we should be having one lane for cargo and another for passengers?

Thank you, hon. Speaker.

**Hon. Speaker:** Well, hon. Maina Kamanda, can respond to the last two, but with regard to your first question, as to whether a report that is not signed by all Committee Members is of lesser value, he needs not respond. This is because the House makes decisions by way of voting; when you vote there is a majority and a minority vote. For a Bill, it will have the full force of law whether it was passed unanimously or by the majority of the House. Hon. Maina Kamanda was just expressing gratitude that the Members of his Committee unanimously passed the report. It does not in any way reduce the weight of a report which is passed by a majority and not unanimously.

Yes, hon. Kamanda.

**Hon. Kamanda:** Thank you, hon. Speaker for emphasizing that point. The issue he has raised about the single lane is true, but they are going to excavate and make sure in

future we can have a double lane. When they are laying the single lane, they will prepare the ground, so that once we have money for another lane it will be done.

**Hon. Speaker:** Next Order! Hon. Nkaissery, what is your point of order.

**Hon. (Maj-Gen.) Nkaissery:** On a point of order, hon. Speaker.

**Hon. Speaker:** Obviously, I recognize hon. Nkaissery, as the Parliament team leader in marathon.

**Hon. (Maj-Gen.) Nkaissery:** Hon. Speaker, last Thursday, I requested a Statement from the Chairperson of the Departmental Committee on Administration and National Security, and he promised to deliver it this afternoon, because it was to be a straight forward matter. I was expecting to get that Statement this afternoon.

**Hon. Speaker:** Hon. Kamama, you wish to say something about that?

**Hon. Abongotum:** Hon. Speaker, indeed, I did promise to issue the Statement today, but I have tried to get in touch with the Office of the Cabinet Secretary and they are pleading that we give them time up to Tuesday next week. I hope to deliver the Statement on Tuesday next week.

**Hon. Speaker:** Hon. Maj-Gen. Nkaissery, obviously hon. Abongotum is helpless in the circumstances.

**Hon. (Maj-Gen.) Nkaissery:** Thank you, hon. Speaker. This is the situation that we are in. If the Government is not in Parliament, we are not able to do our role of oversight. This is really inefficiency and, maybe, they are trying to hide the truth because this is a very straight forward thing. It is about promotions. Why should it take long? He advertised the position of somebody who had already been appointed. The records and files are there!

**Hon. Speaker:** Hon. (Maj-Gen.) Nkaissery, the Chairman cannot respond to your allegation on the hiding because he is not the Government, as you have rightly said.

**Hon. (Maj-Gen.) Nkaissery:** Hon. Speaker, I am not blaming the Chairperson. I am blaming the consumer Ministry. They are the ones who are not prepared to provide answers to the chairmen of committees. Why? Remember, in my Statement, I said that it was deliberate.

**Hon. Speaker:** Hon. Maj-Gen. Nkaissery, do not go back to your Statement. You said you asked for it. You made it very clear.

**Hon. (Maj-Gen.) Nkaissery:** Okay. I can wait until Tuesday.

**Hon. Speaker:** In any event, suppose the Statement comes and there is nothing hidden? Will you “eat” back your words about hiding something?

**Hon. (Maj-Gen.) Nkaissery:** Okay. Let us wait for Tuesday, Sir.

**Hon. Speaker:** Hon. Members, let us hear from the Leader of Majority Party.

#### BUSINESS FOR THE WEEK COMMENCING 25<sup>TH</sup> TO 27<sup>TH</sup> FEBRUARY, 2014

**Hon. A.B. Duale:** Hon. Speaker, pursuant to Standing Order 44(1) and (2), and on behalf of the House Business Committee (HBC), I rise to give the following Statement regarding the business appearing before the House the week beginning Tuesday, 25<sup>th</sup> February, 2014.

Hon. Speaker, the HBC met on Tuesday at the rise of the House to give priority to the business of the House. Being the second week after recess, I wish to appreciate hon.



Members for the energies they have exhibited during the debates and the serious focus on important legislative issues facing our country.

Having mentioned from the outset of the Session that our programme for this Session will be quite a busy one, with important legislative agenda for the Republic, I wish through the Chair, to thank hon. Members for beginning on a good note.

Hon. Speaker, next week, the HBC has approved and lined up various businesses for the House as follows:-

(i) The Recommendation from His Excellency the President on the Insurance (Amendment) Bill, 2013.

(ii) The Motion on the approval of the appointment of two members of the Parliamentary Service Commission, whose Notice of Motion was moved this afternoon. Hon. Members will recall that, that Motion was deferred during the last Session. I wish to call upon hon. Members to participate in this Motion with a clear mind since the two members that this House will approve will be part of the Commission that is charged with the responsibility of looking into matters and welfare of hon. Members as well of that of the staff, to ensure efficient service delivery for Parliament as an institution.

Further, in the event that the Bills listed in the Order Paper today are not concluded, then it follows that they will comprise the business for next week. They include:-

(i) The Kenya Qualification Framework Bill, 2013.

(ii) The Constitution of Kenya (Amendment) Bill No.1, 2013.

The House Business Committee has also approved the Committee of the whole House for the Public Procurement and Disposal (Amendment) Bill, 2013, whose debate was concluded yesterday.

I wish to urge hon. Members who have expressed intentions to move amendments to the Bill to present their proposals to the Legal Department of Parliament in good time. That is because all the proposed amendments must appear on the Order Paper.

The HBC has also given priority for the Second Reading of two very important Bills. These are the County Government (Amendment) Bill, 2013, and the National Flag, Emblems and Names (Amendment) Bill, 2013, all from the Senate.

Hon. Speaker, it is important that we conclude these two very important Bills from our colleagues so that we can return them to the Senate. The two Bills are very important because they will bring order and sanity in the management and conduct of county governments.

I wish to remind hon. Members that the Budget cycle has begun and the Chairperson of the Budget and Appropriations Committee issued a Statement to this House yesterday, outlining the process of the Budget Policy Statement and the timelines for meeting certain demands.

Further, the Budget and Appropriations Committee has been considering the Supplementary Estimates 2013/2014, taking into consideration the views of Departmental Committees. They are expected to lay their reports on the Table of this House next week.

It is worth noting that once the national Government submits to Parliament Supplementary Budgets, this House is expected to expedite the approval of the Estimates by the Budget and Appropriations Committee to pave way for the introduction of the

Appropriation Bill. I, therefore, wish to urge Committees to prioritize issues of the Budget because of their strict deadlines.

Hon. Speaker, the Departmental Committee on Labour and Social Welfare is in the process of conducting the vetting of nominees to the Gender and Equality Commission. On the other hand, the Departmental Committee on Justice and Legal Affairs is also in the process of vetting nominees to the Kenya National Commission on Human Rights. Both reports are expected to be laid on the Table of House next week. Therefore, I wish to urge Chairs of the respective Committees to conclude with their reports on time so that hon. Members can go through and understand the content to enable them conduct informed debate on the issue.

Finally, the HBC will meet on Tuesday, 25<sup>th</sup> February, 2014, at the rise of the House to consider business for the rest of the week.

I now wish to lay the Statement on the Table of the House.

*(Hon. A.B. Duale laid the document on the Table)*

Thank you.

**Hon. Speaker:** I had received indication from hon. (Ms.) Winnie Nyaga Kanini Karimi. Even as you speak, it is fair to also remind hon. Members of the last Statement from the Leader of Majority Party, that the HBC will ordinarily meet on Tuesdays at the rise of the House, which is 6.30 p.m. Hon. Members of the HBC should begin arriving for the meeting by 6.45 p.m. so that we can quickly conclude business. It has been taking us rather too long because, maybe, by the time the House rises, some hon. Members go to other places.

I know there is a popular place within Parliament where hon. Members like visiting. I would like to request that hon. Members do not visit that place before coming to clear the HBC.

The Floor is yours Member for Kirinyaga.

**Hon. (Ms.) W.K. Njuguna:** Thank you, hon. Speaker for giving me this opportunity. Mine is to seek a clarification from the Leader of the Majority Party on the Affirmative Social Development Bill. This Bill has gone through various Committees of this House. It has gone through the Departmental Committee on Labour and Social Welfare and was approved. The Bill is now in the Budget and Appropriations Committee. We are only requesting and pleading that this Bill be brought to the Floor of the House so that hon. Members can give their views. They need to debate that very important Bill. It has really over-stayed in the Budget and Appropriations Committee. It has been there for about six months. We feel that it might be time barred and that is why we are praying that it is brought before this House.

This Bill was together with the one concerning our military and the Public Procurement and Disposal (Amendment) Bill. The two Bills have been debated in this House. We are now requesting that this Bill be brought before this House. We want to assure this House that hon. Members will consider and pass it because it has been refined. We have co-operated with the Chairman of the Budget and Appropriations Committee. Many times, he has requested us to review the Bill and amend various areas. This time we have co-operated---

**Hon. Speaker:** Hon. Winnie, I thought you were trying to seek some clarification. Now you appear to be debating. I know it is a matter that is close to your heart, but, here in the National Assembly, we deal with both the heart and the mind. So, I know the Bill is close to your heart, but let the Leader of Majority Party respond. I am sure he has heard you. I am also sure the people you represent have ably heard you both from the heart and the mind.

**Hon. (Ms.) W. K. Njuguna:** Thank you for your support, hon. Speaker. I thank God that it is going to be considered favourably.

**Hon. A.B. Duale:** Hon. Speaker, the Affirmative Social Development Bill is as important as many other Bills that come to this House. This Bill is with the Budget and Appropriations Committee for the single reason that it is a money Bill. The Chairman of that Committee has to get concurrence of the Cabinet Secretary for the National Treasury. However, I want to inform my good colleagues that the Chairman of the Budget and Appropriations Committee has said that he has now talked to the Cabinet Secretary and they have agreed. It will leave that Committee and head to my Office or the Speaker's Office, where it will be approved, printed and then brought before this House.

I want to kill the notion that, that is a very important Bill. Bills, especially those that do not have elements of money, come before this House very fast. I am sure that other Bills are as important as this particular one. Whether or not this Bill comes to the House, we must get some little allocation for our sisters from the counties.

Thank you.

*(An hon. Member clapped his hands)*

**Hon. Speaker:** Hon. Members, do not clap. Who is that?

*(Laughter)*

Is it hon. (Ms.) Gladys Wanga who is trying to clap? It cannot be so.

Hon. Members, now that the assurance has been given by the Leader of Majority Party there is no need for debating. The Bill will still come to the House and I am sure we will deal with it now exclusively from the mind. So, hon. Winnie, you will now change gear; move from the heart because you have got an assurance. Let us deal with it from our intellectual capacities.

Hon. Ochieng, what is out of order?

**Hon. Ochieng:** Hon. Speaker, everything is in order. However, I rise under Standing Order No.83 and Standing Order No.212. I belong to a Committee called the Committee on Regional Integration. The Committee is established under our Standing Order No.212. It says thereunder:-

“Committee on Regional Integration shall enhance the role and involvement of the House in intensification and development of the integration process in the East African Community (EAC) and the greater African region.”

Hon. Speaker, we have now been in this Parliament close to a year. What has been happening - and this can be confirmed by the Chairperson of the Committee, hon. (Ms.) Kajuju - is that matters of regional integration very squarely fall under this

Committee. As we speak, there is a meeting that is going on in Kampala and our President is there, yet the Committee is not participating. This is not the first time this is happening. We have had events in the country and outside the country that touch at the core of integration. Personally as Member of Parliament for Ugenya I went to this Committee because before I came to Parliament I used to work for the East African Community. I thought my expertise could be used in that regard. However, for the last nine months, anything that has come to this Assembly concerning this Committee is not brought before the Committee. It is taken elsewhere and I am told, mostly, to the Departmental Committee on Finance, Planning and Trade.

This is the first time this Committee is in Parliament and I would like you to make a ruling on it. We would like to know:-

- (i) which matters then should come to our Committee; and
- (ii) if an EAC Summit is not a process for integration, what is it?

It is now ten months and we have not been participating. We do not have information and yet, our major role is supposed to enhance regional integration. I just request you to make a ruling on this and, probably--- At the Committee level, we have tried to talk to the Clerk and the Chairperson of the Committee, but we have not got any response yet. Could you, please, assist in this regard? Thank you so much.

**Hon. Speaker:** Hon. David Ochieng and hon. (Ms.) Kajuju do not--- I think it will be unfair for you to come and lament here. You have all the powers. Indeed, do I need to remind you about Article 125 of the Constitution? If you cannot invite, summon and compel the attendance of even the Cabinet Secretary to come and canvass the issues that you have raised before your Committee, hon. Ochieng--- Maybe, you could be reporting to the House to dissolve yourselves so that we put other Members in that Committee! Surely, it is your Committee which should be aware that there is this or the other happening within the EAC and if, for whatever reason, something is being done behind your back and you know in terms of the Standing Orders the mandate given to yourselves, then you should be the first ones to summon that Cabinet Secretary or whoever is responsible. The Constitution is behind you. The entire House, I am sure, will be behind you.

So, hon. Ochieng, through your able Chairperson, hon. (Ms.) Florence Kajuju, can you move with speed and address the issues you have just raised with the Cabinet Secretary in charge of that docket? Unless you are reporting as a Committee that you have found it difficult and you want the entire plenary to help you--- Have you found it difficult to do what you are supposed to do? Hon. Kajuju, you are the Chairperson of that Committee. He is your member. What is your response?

**Hon. (Ms.) Kajuju:** Thank you, hon. Speaker. I appreciate entirely the comments and concerns raised by my very able member hon. Ochieng. But I think, hon. Speaker, that the truth must be told at some point. This is a Committee which we appreciate was formed by the Eleventh Parliament and so, this is the first time it has come into operation. There are times correspondence has come to the relevant offices but, instead of that correspondence being channeled to the relevant Committee, I think persons choose to forget that there is a Committee on Regional Integration. I have had to go and fish out some correspondences from various places.

Hon. Speaker, I know that this is a Select Committee and that is why we were told also that we could not vet the Principal Secretary for East African Affairs. I then forced myself into the vetting process through the Departmental Committee on Defence and Foreign Relations. However, this is just a concern that Members are expressing and I think it is right for Members to express a concern that they have in the Committee.

It is worth to note that you are the boss in this Chamber. So, we are just talking to you as your children. But we have the capacity and the capability to force our way into situations that might not even be very interesting or comfortable to persons who are working within this institution. So, that is an issue that has been raised. We are going to sit down - I believe with the management of this establishment - and sort it out, even if it means summoning persons, which we have done. We have summoned the East African Affairs, Commerce and Tourism Cabinet Secretary. She has undertaken to rectify situations that were not comfortable with us but we are waiting to see if that will be done.

Hon. Speaker, another point is that we have raised issues of conflicts between roles of committees. Actually, I have raised that with my Chair in the Liaison Committee and we formed a small sub-committee that is looking at issues of conflict of roles and mandates between committees. That is because there have been situations where we have had to share roles with the Departmental Committee on Finance, Trade and Planning and the Departmental Committee on Defence and Foreign Relations. We understand those situations will keep on recurring. However, when correspondence come that belong to the Committee on Regional Integration, then we expect that correspondence must be channeled to the right committee without necessarily people raising issues as to why it has not come to the right committee.

Thank you, hon. Speaker.

**Hon. Speaker:** Very well.

**Hon. Kinoti:** On a point of order, hon. Speaker.

**Hon. Speaker:** There is none. No more of that. Indeed, what the two of you have raised are purely administrative matters. You cannot rise on a point of order when I am responding, hon. Gatobu, merely because you are vertically challenged.

*(Laughter)*

I can still see you notwithstanding that fact. So, at the appropriate time, you will be given a chance to say your bit. But let me say this: Hon. Kajuju and hon. David Ochieng, the issues you have raised are administrative and, as hon. Kajuju has said, you want to raise it with the administration. That is the proper route. Should there be difficulties, let us know. It is true that, given the unique nature of that Committee, there will be overlaps because there will be matters to do with finance which fall within the East African region. There will also be matters to do with foreign relations within the East African region. I thought that was raised. For me, I think it is not a difficult thing to resolve. But I think you have raised a fundamental point that things are happening within the East African region - and especially the Summit - and I have not seen any representation from your Committee.

I have seen requests for permission to travel. I think Members are beginning to apply Article 103(1)(b) of the Constitution correctly. Do not notify me that you are

travelling, you seek permission. What if you notify me and I have not given permission? The law says: "Seek permission", and not to notify me that you are travelling. If you notify me I will also indicate: "Noted, but permission not granted."

*(Laughter)*

So, I will note that I have not given the permission. So, that day will be counted as day on which you are absent among the eight days or the eight sittings.

However, I want to say that hon. Ochieng and hon. Kajuju, please, move with speed. Sit with the Clerk of the National Assembly and the Director of Committees to try and discuss the issues which you have raised. First of all, do not invite hon. Jimmy Gethenji. I can see he wants to say something but this is not the time. Do not invite the hon. Benjamin Langat because I would want you to discuss exclusively matters to do with your Committee on Regional Integration.

Hon. Ken Okoth, please, there is no time for debate. We have not even started business. I know the people of Kibra would want to know why it is that you are behaving in a particular way but, please, I will give you a chance when we begin real business and not this one. You are not going to assist me in doing administrative work, hon. Okoth. Please, let us do business. Hon. Kajuju, I really want to advise that you go with the hon. David Ochieng and meet with the Clerk and the Director of Committees to discuss that matter. It is of concern to me also. Can we go to the next business?

*(Loud consultations)*

Hon. Members, please give hon. Katoo ole Metito a chance. Listen to him. This might be helpful to some of you who might soon find themselves in some quandary of sorts.

## MOTION

### APPOINTMENT OF MEMBERS TO THE POWERS AND PRIVILEGES COMMITTEE

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

THAT, pursuant to the provisions of section 10 of the National Assembly (Powers and Privileges Act) and Standing Order 172(3), this House approves the appointment of the following Members to the Committee of Privileges:-

1. The Hon. Kimani Ichungwah, M.P.
2. The Hon. Joyce Emanikor Akai, M.P.
3. The Hon. Jamleck Kamau, M.P.
4. The Hon. Peter Shehe, M.P.
5. The Hon. Barchelei Kipruto, M.P.
6. The Hon. James Murgor, M.P.
7. The Hon. Bedzimba Rashid Juma, M.P.
8. The Hon. Simon Ogari, M.P.

9. The Hon. Zulekha Juma Hassan, M.P.

10. The Hon. James Onyango Koyoo, M.P.

Hon. Speaker, it is very important that Members listen to this because this Committee is established, as I have said, in accordance with the National Assembly Powers and Privileges Act, Cap.6 and I just want to bring to the attention of the Members one section here and it is Clause 10(1). It is on Committee on Privileges which says:-

“There shall be established a committee to be known as the Committee of Privileges consisting of the Speaker and ten other Members of the Assembly under the chairmanship of the Speaker.”

Hon. Speaker, if Members also see Standing Order No.191, it says:

“Committees shall enjoy and exercise all the powers and privileges bestowed on Parliament by the Constitution and statute, including the power to summon witnesses, receive evidence and to request for and receive papers and documents from the Government and the public.”

Hon. Speaker, the reason why I am bringing the attention of Members to that is in order to explain some of the functions of this Committee and they are as follows: It is this Committee through the Act that decides the privileges of Members, the privileges of the witnesses, a matter of removal of a Member for failure to attend eight sittings in a session without the permission of the Speaker as required under Article 103 of the Constitution and Standing Order No.258 of our own Standing Orders.

Another function is to adjudicate on issues that concern the conduct and behavior of members and also very importantly, this is the Committee that decides when some Government organs like the Ethics and Anti-Corruption Commission (EACC), the police and others will require the declaration of assets and liabilities of members under the Public Officers Ethics Act.

Hon. Members, therefore, I also want hon. Members to know this because as we have said before, the old Constitution used to say that you miss eight consecutive sittings but now it is just eight sittings in a Session. It is good to let hon. Members know what this means because this Committee, as I said earlier, is established under an Act of Parliament; the National Assembly Powers and Privileges Act. I just want to bring hon. Members to be aware of some sections of this Act like Clause 9 on code of conduct which says that the Speaker may, from time to time as he deems expedient, issue directions in the form of a code of conduct regulating the conduct of members of the Assembly whilst within the precincts of the Assembly other than the Chamber. So, it does not just deal with conduct of Members in the Chamber but also in the precincts of the Assembly. It is also good to know that this Committee can really bite.

If you look at Clause 10(4), it says that the Committee of Privileges shall, either of its own motion or as a result of a complaint made by any person, inquire into any alleged breach by any member of the Assembly of the code of conduct issued under section 9, or into any conduct of any member of the Assembly within the precincts of the Assembly (other than the Chamber) which is alleged to have been intended or likely to reflect adversely on the dignity or integrity of the Assembly or the member thereof, or to be contrary to the best interests of the Assembly or the members thereof. In Clause 7 it says that any disciplinary action such as is referred to in subsection (6) may include suspension from the service of the Assembly. But if you read it with Standing Order

No.110 on how long a Member can be suspended by this Committee, it says: “101(1) If any Member is suspended under Standing Order 108 (Member may be suspended after being named) the suspension on the first occasion shall be for four sitting days including the day of suspension; on the second occasion during the same Session for eight sitting days---” If you are suspended for eight sitting days, then Article 103 of the Constitution will come into effect; you will just have to lose your seat. So this is a very important thing and we need to take it seriously.

Finally, this House yesterday was discussing the issue of the Legislature versus the Judiciary. It is good to note that in Clause 12 of this Act, it says no proceedings or decision of the Assembly or the Committee of Privileges acting in accordance with this Act shall be questioned in any court. So, I just want as I move to urge hon. Members that we pass this Motion and request them that at all times we should try to uphold the dignity of this House in the best interest we can.

Hon. Speaker, with those few remarks, I beg to move and request the Leader of the Majority Party to second.

**Hon. A.B. Duale:** Hon. Speaker, on the outset, this is the same Committee that was formed on the First Session of the House and per the Standing Orders just like the House Business Committee (HBC), we are mandated to bring it back for approval of the House. Members of this Committee were asking me the whole of the last Session how come we had not had a session. I told them that this Committee is to deal with you hon. Members; those who misbehave at the lounge, in the bar, in the Chamber, in the offices and I am sure beginning the Second Session, they will have a client. The clients will be very many. So this is a very important Committee and it is chaired by the Speaker. Today we want to make it very categorical that when you enjoy certain privileges as a Member of the Eleventh Parliament, those privileges are not cast in stone. Those privileges have limits. Those privileges must portray the stature of an hon. Member: That, the environment that you live in and in the Chamber, you must at all times depict that image of an hon. Member. This is because we are a role model tool society. We are not like the Judiciary where the corrupt go and hide in the name of court orders. It is okay. We are not like the Judiciary where Parliament impeaches a governor and the court says that yes he has stolen public resources, devolved funds meant for healthcare and everything but he can continue. We want to deviate from that; that leadership is about Chapter Six. It is about Article 10 of the Constitution; values. So I am happy that the Majority Whip has said that if you misbehave here and you appear before this Committee, please do not go and look for a court order. So do not follow Wambora’s style. If you misbehave at the Chamber or at the bar, the corridors or within the precincts of Parliament and this Committee chaired by the Speaker gives you a serious penalty, you will not have the chance and privilege to appear before the Judiciary. The courts have been barred. So when you live here, you live as a family and a member of the family. I am sure that we did not have an incident but I can say that the First Session was a learning process. You must not offend your colleagues in the precincts of Parliament. You must respect their privacy and privileges.

I want to urge my colleagues that this Committee is very important. I am sure that the ten men and women plus the Speaker are up to the task.

With those few remarks, I beg to second.



*(Hon. (Ms.) Mbarire stood up in her place)*

**Hon. Speaker:** Hon. (Ms.) Mbarire, you are not aware of what is happening in the Chamber.

*(Question proposed)*

**Hon. King'ola:** Hon. Speaker, thank you for giving me this chance. I stand to support this Motion. On the outset, I want to say that I was against this Constitution and it is has now come to this House to haunt all of us. Kenyans and particularly the human rights activities are using all ways and means to remove these hon. Members. I hope this Committee is going to look into matters that affect this House. It is high time that we realize that this is an arm of government. For once I want to support the Leader of Majority Party. He has really been supporting this Parliament. All Kenyans can now see where the Judiciary is taking this country.

Hon. Speaker, I am one of the Members who faced an election petition in this country. If you looked at the votes margin that I had when we went to court, if anything happened, I could have lost the seat because of the Judiciary. Many Members in this House went through the same. It is high time we made real legislation so that this House can be respected by Kenyans. I hope this Committee will look into matters that might affect its membership. You know there is witch-hunting. Even to mention the Salaries and Remuneration Commission (SRC)--- Today, I was very happy with the Chairman of the Committee on Budget and Appropriations. When we saw the SRC asking for 170 million to do a conference to talk about the wage bill, that is promoting again the debate on MPs' salaries. We have become the enemy of the State. I think we need to stand on our feet and support you. I urge all Members that it is a high time we formed a public relations department of this House. Everybody is bashing us and we have very little response apart from you, hon. Speaker. You have been speaking so hard and defending this House. I hope Ichung'wah and his group are going to do justice to this House. I support the Motion hon. Speaker.

Thank you.

*(Laughter)*

**Hon. Speaker:** Hon. Augustino Neto

**Hon. Oyugo:** Thank you hon. Speaker. I rise to support this particular Motion. It is, indeed, useful to have a Powers and Privileges Committee. But if you see the statute that establishes the Powers and Privileges Committee, it is one that is hopefully supposed to protect Members as opposed to just only punishing them. The object of this particular Act is to protect the fundamental freedoms and freedoms of speech of Members of Parliament as well as, of course, ensuring that they conduct their affairs in a more applicable manner. You know for a fact that the courts of law have granted a couple of damages. I have in mind hon. Gor Sungu, a former Member for Kisumu Town, who was slapped with a lot of money as damages in court because of things he said within the

precincts of Parliament. I think those are things that fall within the very ambit of the Powers and Privileges Committee. If at all the fundamental freedoms and things we speak in the House, in the committees of the House and things we believe are fair comments in terms of helping committees of the House progress and move fast, these are the things that ought to be protected by the Powers and Privileges Committee. That way, the Members sitting in the Powers and Privileges Committee should not only think that it is a disciplinary tool for Members who actually will go errant.

Hon. Speaker, the second thing I would like to speak to is on Article 103(b) of the Constitution, I really think this is one article that needs urgent amendment. The circumstances where Members, sometimes skip sessions--- Ordinarily, the last Constitution was very well worded, "eight consecutive sessions". Of course, a Member of Parliament has no business missing eight consecutive sessions. But a Session of Parliament running for close to a year, sometimes, it becomes a little bit tricky for Members not to skip sessions. Of course, hon. Speaker is going to be very generous in giving us permission to attend to constituency and other businesses, but I really think that the wording of Section 103(b) of the Constitution needs to be thought through and looked at.

Hon. Speaker, the other thing is that if you look at Section 9 of the Act from which the Powers and Privileges Committee emanates from, the Code of Conduct that it refers to, in my humble opinion, is in need of urgent review. That is because, as you can see, it is legislation that was done in 1966. In 1966 legislation, the standards of decorum and the standards that were then hoped to be of Members of Parliament are quite different from today's expectations. So, I appreciate the Powers and Privileges Committee but some of the sections that we are talking about need to be reviewed. A conduct that was supposed to be deplorable in 1966 might not be deplorable in 2014. I really think it is true and it is good to have a Powers and Privileges Committee, but again, there is need to have a re-definition in terms of the code of conduct.

Lastly, hon. Speaker, on Section 12 I really think that whereas we did not want to subject the decisions of the Powers and Privileges Committee to any court of law, I think, of course, you believe in the principle of natural justice. I really believe that there ought to be another parity arm or some sort of recourse where, for example, a Member could look for reasons of review. You have noticed how debate, sometimes, go on in this House. It is not that we intend to be emotional or unruly, but there are moments when things get out of hand and because of the spur and heat of the moment, some Members might really engage in untoward behavior which is unbecoming of Parliament. But there ought to be a measure of review so that people can have recourse so that, at least, either to feel sorry or to recompense and to get back to their normal self without necessarily being subjected to the various sanctions of the Powers and Privileges Committee.

With those few remarks, I would like to support the composition of this Committee. Thank you very much.

**Hon. Speaker:** Well spoken but it is also important to observe that, yes, the Act was made in 1966 but, in its present form, it purports to carry some title "Revised in 2012." When you look at the latest revised version of it, one really wonders what was revised; if anything at all. That is because those provisions that you have rightly pointed out and the penalties even for witnesses who ignore--- I am not alluding to anything but

witnesses who ignore to attend to summons issued by committees of the House, or witnesses who come and behave in a funny way - and I am not saying that I have seen anything. All these are alive to you. The penalties that are available herein do not reflect the reality of 2014 and, therefore, as a House, hon. Neto, I am sure you are at liberty to even propose now, a proper revision of the Act because, indeed, it needs to keep in touch with modernity.

Hon. Members, this is just a formation of a committee and I do not think it should be the subject of a major debate. But let us hear from the Chairperson of the Committee on Education, Research and Technology. I see your name or it was being cleverer than--- Okay. Then the other one is hon. Gikaria. Was it about this one?

**Hon. Gikaria:** It was something else but I still ---

**Hon. Speaker:** If it is something else, let us give the ones who want to contribute to this one. Hon. Grace Kipchoim.

**Hon. Gikaria:** Hon. Speaker, I wanted to talk about the issue of judges.

**Hon. Speaker:** Okay. It is not so much about the judges, surely. All right, make your contribution

**Hon. Gikaria:** Thank you hon. Speaker, I rise to support the composition of the Committee. But, of course, as it was said yesterday - and hon. ole Metito and Neto have just explained - it is very dangerous for us. If you are thrown out for four days and another four days you are out of this Parliament, it is high time that we should also start thinking--- We do not want to be in your office all the time seeking permission to away from this House and be in our constituencies. I think it is also important for us to talk about what has been happening in line with what hon. ole Metito has just read about the powers that this Committee has and what the judges are doing. Yesterday, we had an opportunity to have a small meeting with another department - a small agency. We were just telling them how they no longer have respect to Members of Parliament. We are really waiting for the pecking order thing to be brought to the Floor of the House. I think we are so far that even ordinary policemen no longer have respect for Members of Parliament. I have a colleague here who, just because her driver did a small mistake of making a U-turn in some avenue and *Mheshimiwa* there was going to attend a very serious meeting in his region on security, they were taken back ten kilometers just because of a mistake of a driver. If policemen can start behaving like that, and we already know the direction that the judges are taking, we are going to have a lot of problems. I totally agree with you, hon. Speaker, we are going to be gagged. We will not be able to do some of the things that we are supposed to do in this House. It is important for us, as much as we review the Powers and Privileges Act, the Committee that we are going to approve, to deal with issues that have happened, but we need to conduct ourselves with decorum. I saw something happening here the other day and I just wished I was back to the municipal council where we used to be councillors and doing a lot of bad things. I do not want to see that thing happening in this House. It is unfortunate that we should start looking for chairs to break the arms and throwing them to the Leader of Majority Party and Leader of Minority Party here. I think it is important for us to behave well because this is a House that needs respect. If we cannot respect ourselves, then the judges, policemen and everybody out there will do what they are just doing.

Thank you hon. Speaker, I support.

**Hon. Speaker:** Hon. Gikaria has just said that he wishes that it was a municipality and then I am seeing a Member behind him raising her hand up. You know the rules of the House. When I see the card of hon. Francis Nyenze, the Leader of Minority Party on the screen, obviously, he takes precedence over all of you.

**Hon. Nyenze:** Thank you, hon. Speaker for reminding hon. Members that some people deserve first priority as leaders. I will not take a lot of time.

I rise to support this Motion because this Committee is renewed every year like the House Business Committee. These are Members who were in an existing Committee and the composition is not bad. However, on the privileges and the role that they play for the Members, I just want to remind Members that this is an honourable House and the people who work in it are hon. Members of Parliament. We should carry ourselves with that at the back of our minds, we first respect ourselves and we behave reasonably so that we are respected.

The Member who has spoken before me has said that a policeman caught a driver of a Member of Parliament making a U-turn at the wrong place. I just want to say that it is wrong for a Member of Parliament, even if he or she is going to attend an important meeting to break the law because we all have to obey the law. You will be respected if you obey the law. So, I appeal to Members of Parliament that while we have this Committee of Powers and Privileges, we should carry ourselves with decorum.

I have seen as we queue to enter Parliament because the gate is narrow some drivers with Members of Parliament in cars crisscross. They find you in the queue but they want to enter before you. Hon. Speaker, it hurts. So, we should learn to respect ourselves, other people and that is how we will earn respect. I am happy that there has not been bad incident like fighting although there was a time when the Mace was nearly taken away.

Of late, I have seen that there is a lot of decorum, respect and I had predicted that after the First Session of Parliament. This is because Members find their position. Instead of voting along party lines and getting instructions from somewhere, they start voting with their conscience. They also start realizing where they belong. They start working with conscience knowing that they were elected by members of their constituencies. That is why these days there is balanced voting on any Motion or business that requires voting. Sometimes Jubilee can lose with their tyranny of numbers and sometimes CORD loses and that is democracy. That is what I foresaw.

Hon. Speaker, I do not know whether this is how we have behaved in the past, but there is something that saddens me very much. This is the judicial interference in the work of Parliament. There is separation of power and the Senate and the National Assembly have never interfered with the judicial system. We have also never interfered with the Executive and nobody should dictate what business we transact or how our calendar should be and what we do. This is because we know our mandate is to legislate, represent our people and play oversight role on the Government so that we hold it to account. What does it mean, when the Senate follows due diligence, a governor is impeached by the Members of the County Assembly (MCAs) of Embu and is reinstated by a court? Our dignity has been eroded and the courts are fighting Parliament.

I just want to say that if we take that route, the losers will be the Judiciary. This is because budgets are made by Parliament. If we go that route, this country will come to a

halt and there is nothing that will work because they will be denied money by either House. Let them reconsider that position. In future, let the Judiciary not interfere with the running of Parliament. They should never dictate to us because we have never dictated to them.

*(Applause)*

On this issue, the National Assembly supports the Senate 100 per cent and there is no doubt about that. This is because we cannot allow governors to squander resources which are meant to benefit poor people. You can see the largesse, the opulence---

**Hon. Chepkonga:** On a point of order, hon. Speaker. I rise pursuant to Standing Order No.95. Of course, as you know, I have a lot of respect for the Leader of the overwhelming Minority. He is a very good friend of mine and he is speaking a lot of sense particularly when he touched on the Judiciary as he has spoken. However, because of relevance in accordance with Standing Order Nos.107 and 95 and because he appears to be in total agreement with this list that there has not been any change, hon. Speaker, would I be in order to request you to call the Mover to reply? This is because we have agreed unanimously. Considering the serious business that is ahead of us which most of the Members, including hon. Mbadi who has issues with marriage and he has been talking to me about canvassing---

*(Laughter)*

It is not that he has a bad marriage; he has a good marriage. Could I be in order to request you, hon. Speaker to call the Mover to reply?

**Hon. Ng'ongo:** On a point of order, hon. Speaker.

**Hon. Speaker:** Hon. Chepkonga was on a point of order.

Yes, hon. Nyenze.

**Hon. Nyenze:** Thank you, hon. Speaker. It is good when you have an educated Speaker who understands these things. You move with speed and overlook. I have a lot of respect for hon. Chepkonga but people did not hear what he said because he is very tall and these things are not adjustable.

*(Laughter)*

I want to say that this is very important. Hon. Members never heard what he said. I want to remind him that I am the Minority Leader and not overwhelming Minority. So, we have more governments than Jubilee.

*(Laughter)*

Hon. Speaker, I support.

**Hon. Ng'ongo:** Thank you, hon. Speaker. I had two points of order. First of all, hon. Chepkonga has cast very serious aspersions on my character because at no time have

I discussed with him anything to do with marriage or any issue to do with the family. This is because I have a very strong, solid, firm and stable, non-quarrelsome marriage which has lasted for over ten years. I expect it to last forever. I am married to a very beautiful African wife.

So, hon. Chepkonga---

*(Loud consultations)*

**Hon. Speaker:** Order! Order! That was a light moment from hon. Mbadi.

Can you now go on, hon. Mbadi?

**Hon. Ng'ongo:** Hon. Speaker, on a serious note, I would not ordinarily interrupt my Leader of the Minority Party but he has made a very serious allegation – that we are 100 per cent united in supporting the Senate. I do not remember ever taking a vote in this House in support of the Senate in their issues with the governors. If you asked me, I would say that the Senate is reaping exactly what they sowed.

The Senate went to court over small issues with the National Assembly. If the governors are going to court, they should also put up with that decision. We must also accept that the decision that they took has now come back to haunt them. So, I have not agreed. I am not supporting the Senate on this matter. I cannot remember ever taking a vote on the matter. Therefore, the Leader of Minority Party is not factual. So, he is out of order.

**Hon. Speaker:** Hon. Mbadi, fortunately, he has concluded his contribution. So, your point of order cannot be addressed.

Hon. Members, so that we can go to serious business, let me just put the Question. Indeed, what hon. Chepkonga was alluding to was the businesses that follows, which include the Law Society of Kenya Bill, and the Marriage Bill.

*(Question put and agreed to)*

Next Order!

## BILLS

### *Second Readings*

#### THE LAW SOCIETY OF KENYA BILL, 2013

**Hon. Speaker:** Hon. Members, the information available is that debate on this Bill has been concluded. What remained was putting the Question. Therefore, I will put the Question right away.

*(Question put and agreed to)*

*(The Bill was read a Second Time and committed to a Committee of the*

*whole House tomorrow)*

THE MARRIAGE BILL

*(Hon. Chepkonga on 18.2.2014)*

*(Resumption of Debate interrupted on 18.2.2014)*

**Hon. Speaker:** Hon. Members, the available information is that hon. David Gikaria, Member for Nakuru Town East, has a balance of eight minutes.

Please, proceed.

**Hon. Gikaria:** Hon. Speaker, we heard what the Chairperson of the Justice and Legal Affairs said. He elaborated on what is included in the Bill. We appreciate the collapse of the so many Bills into a single Bill. One of the things that were there is customary law, which has been qualified. It is now recognised in terms of even the dowry that is being paid although one of the hon. Members said that paying dowry is like purchasing a wife. I want to believe that the customary law, which now qualifies in the Marriage Bill, is something we need to appreciate.

*[Hon. Speaker left the Chair]*

*[Hon. Deputy Speaker took the Chair]*

Secondly, the minimum marriage age has been set out. Of course, some cultures have been misusing this aspect. In this Bill, the minimum marriage age has been set out. This stops the cultures that have had an opportunity of “selling off” their daughters and denying them an opportunity to be educated. This trend will come to an end. It is important that the Bill has now given a certain limit, as indicated therein, to qualify for marriage, which of course must be consented and be between members of the opposite sex.

Thirdly, the time, the place and the procedure of celebrating a marriage have been set out. Initially, we used to have marriages celebrated anywhere and at any time but this Bill has given suggestions as to the time. Instead of having marriages celebrated at midnight and others happening anywhere in this world, the time has been set out. Of course, the place must be registered. The ministers who are supposed to solemnise marriages have been indicated.

Hon. Deputy Speaker, fourthly, is the notice. I go to the Catholic Church. They always give a notice three times, which I think is important. As the Chairman had indicated earlier, even on the day of the marriage, the parties will be given another opportunity by being asked whether there is anything that can stop the marriage. The aspect of giving notice is important, so that anybody who has any query or anybody who has doubt as regards any marriage can have an opportunity to look through the notices and question a marriage in respect of which notice has been given.

Matrimonial disputes have always been bringing a lot of issues amongst various communities. Every day, we see such cases within our home areas and neighbourhood.

Matrimonial disputes have been taken care of in the Bill. It is important that both spouses respect their marriage. If by any chance there is going to be a divorce, there is a mechanism of handling the dispute.

Of course, the Bill provides for maintenance of spouses. I want to reiterate that this is not only in respect of wives but also husbands. People are fond of thinking that it is just the husbands who have property. Of course, there are some unions where you find that the wife has more property than the husband. So, the maintenance aspect does not only fall on the wife's part. It can also fall on the husband, of course not bringing on board the aspect of the children.

Lastly, this Bill has brought on board and taken care of different religions, cultures and beliefs. Customary, Christian, Islamic and Hindu marriages have been recognized; this is important because not everybody is from the same religion and culture. This Bill has taken care of all the different religious groupings, cultures and beliefs. With this Bill, we are going to have stable families; the Jubilee Government in their manifesto have indicated that a sound family will eventually lead to a sound country. If we have sound families in our midst, then this country is going to prosper.

With those few remarks, I support.

**Hon. Deputy Speaker:** Hon. Kathuri Murungi.

**Hon. Murungi:** Thank you, hon. Deputy Speaker, for giving me this chance, to contribute to this important Bill. On the outset I support it, noting that family institutions are very important in this universe. This Bill clearly describes all types of marriages and how to go about them, the notices and witnesses needed.

On the customary marriages, I have an issue with Clause 44(4), which states that when a husband wants to get another wife, he has to get consent from the other wife or wives. Those who go for customary marriages and a lady accepts it, then it means that she is ready to get up to 10 co-wives. So, the aspect of notifying her should be reconsidered. Most of the people who go for a second or third wife may have their own reservations or reasons. For them to seek consent from the first wife, definitely, I do not think there is anyone who can give that type of consent. I suggest that maybe we can reconsider this section during the Committee Stage, so that this is changed. I support the Bill.

**Hon. Deputy Speaker:** Yes, hon. Millie Odhiambo.

**Hon. (Ms.) Odhiambo-Mabona:** Thank you, hon. Deputy Speaker for giving me this opportunity. I support the Bill and before I came here, for many years I practised as a lawyer in family law. If I were to leave Parliament, I am qualified for a practising certificate; so, I would still go and practise family law, which gives me a lot of money, and I would still have time to serve the people of Mbita. That is one of the reasons why I support.

One of the challenges that I faced when I was practising was that we have so many pieces of legislation that deal with marriage. When I would be appearing before the Kadhis Court, it meant that I had to look for the law that specially deals with Islamic marriages, including the Quran and others. Consolidating them under one piece of legislation makes it easier for us to deal as practising lawyers.

I know there are many Members who may want to contribute to this. There are a few misconceptions that I have heard from Members in relation to this law. Largely, it is



not creating any new legal regime. A lot of the things that are here are already contained in law. What it is bringing is a sense of order and purpose in law. There are a few things I would suggest; I may not mention all of them, because I will be bringing appropriate amendments to change them.

One is the definition of “cohabitation”; we need to be very clear about the timeframe. Whereas, we want to protect women, when I was practising there were women whom sometimes were not very honest about their situation. If we want to protect the marriage institution, I know Christians have complained cohabitation is unchristian. Even if it is unchristian, we are developing different marriage systems here, the Hindu, Islamic, Christian and others.

We have a new category that affects many young people. This is where people stay together, especially in urban areas, and do not pay dowry or get marriage certificates. You find that some of them stay for even seven years, and people take them as husbands and wives. What I would suggest is that we bring in an amendment to put in clear number of years that will define a marriage as opposed to a girlfriend and boyfriend staying together.

The other issue I have is the definition of “dowry” as contained here, because it is very un-african. It states “dowry shall be given in consideration of” this is a term in contract law that is used when you are purchasing goods and services. A marriage is not a contractual obligation; it is a social issue. Whereas everybody has a right to pay dowry and have dowry paid for them, if they so wish, it should not be seen as a purchase of a human being. When you use the words “in consideration of”, it appears that we are suggesting that women should be purchased, and if it is in the Indian set-up, then it is the man who would be purchased.

Because of that connotation, I actually refused to be paid for any dowry even though I have been married for seven years. This is because I am not worth any money. On the issue of definition of “monogamous marriage”, it presupposes that all marriages begin as non-monogamous and then they are converted. I suggest that we introduce various amendments that would tighten it, because there are marriages that begin as monogamous, and if the man or woman want to change it, even though women are not given that leeway--- There are marriages that can be potentially polygamous, but we cannot start on a premise where we think that we define “polygamous marriages” on the presumption that they were all non-monogamous.

Another issue I will raise, which I was discussing informally with some Members of Parliament, is polygamy. I noticed that some of the Members were apprehensive and were saying if they are already married under the Christian system, then they are precluded from marrying under a customary system. This law should be clear on the operative date, so that if you are married under monogamous system and then you have married another wife, then you may be precluded--- Under the law which exists now, you would be committing a crime called bigamy, which is punishable by five years.

Marriage under the Constitution is a voluntary union. For example, when one is getting into marriage, and they do not want to share their husband, they need to be informed what they are getting into. One should not get into a marriage where two days later, they are told there is another wife. It should be a choice; those who want many other co-wives should get into customary marriages. Those who want monogamous

marriages like me, should leave my husband and I alone; if one comes, let me deal with them perpendicularly.

*(Laughter)*

With those few remarks, I will be bringing my appropriate amendments. I do support and thank the Mover.

**Hon. Deputy Speaker:** Yes, hon. Joseph M'eruaki.

**Hon. M'uthari:** Thank you, hon. Deputy Speaker. I rise to support this Bill because in many ways, it is trying to define the institution of marriage which is very important especially on the part of the definition of age, and the types of marriages. I think this clarification is important. Marriage is a difficult institution which is treated in many ways. But all in all, it is important to have clarity in terms of the law and how this has to be carried out. People are given choices in this particular Bill; in the sense that they can decide on what form of marriage to take. Those who want to be in 'multi-party' or in 'single party' that is monogamy or polygamy; it gives people choices.

With those remarks, I support the Bill.

Thank you.

**Hon. (Ms.) Kiptui:** Thank you, hon. Deputy Speaker, for the opportunity. I rise to support this Bill because it will bring sanity to the institution of marriage which has caused a lot of stress in the society.

Hon. Deputy Speaker, this idea of re-arranging various laws that cover marriage and putting them together; I believe will go a long way in bringing harmony. It is going to remove ambiguous clauses that existed there before and give people freedom to choose whom they want to share their life with on earth.

I also support the Bill because when it comes to disputes, there is a very clear channel of solving the said issues. Unfortunately, in Africa where we are and where we belong, initially polygamous marriages were accepted. Once we opted to adopt the colonial laws, it was indicated that there had to be monogamous marriage. Kenyan men should feel happy that they have a choice to either live a monogamous marriage or a polygamous marriage.

Hon. Deputy Speaker, once this Bill is passed, I will pray that our people are educated on the same so that we cut down on the stresses that marriage brings. We have seen so many people hang themselves and others kill children simply because of marital stress.

With those remarks, I support the Bill.

**Hon. Njuki:** Thank you, hon. Deputy Speaker, for not only according me the opportunity and the privilege to use the Dispatch Box because I lost my card to thugs.

From the outset, I want to thank the committee that came up with this Bill because it actually touches all the families and communities. I want to start by noting with appreciation that marriage has been defined in the Bill as a voluntary union of a man and a woman, either in a polygamous or a monogamous marriage. There are some areas and communities where we have had serious problems of forced marriages and mostly this happens to underage girls. It is unfortunate that men have not been able to distinguish the difference between the chronological age and the human anatomy or the physical

appearance of the young ones. Sometimes they see big bodies and the capability to give birth and want to get married to those girls very fast. I am happy that this Bill makes this a crime. Those people who have been going for very young children will actually be put into check.

Hon. Deputy Speaker, in biology, there is what is called pedigree. That is normally brought about by in-breeding or inter-breeding. When people belonging to the same line of genealogy or genes inter-marry, we normally have a problem of getting low pedigree or, in other words, we get people who do not have very good qualities in terms of the genetic makeup.

In Section 10, this Bill addresses this issue because it prohibits marriage to cousins, grandmother and fathers. Of course, this is in a Christian marriage. I believe before one gets involved, it is very important that they will be checking to ensure that they are not related in any way.

Hon. Deputy Speaker, on the issue of the qualification of the officers and especially the pastors and the reverends who normally celebrate a marriage or unite a marriage; this has been a very hot issue in Kenya. We have a diversity of religions. At the moment, if you have a church pastor, a reverend or bishop who may not be authentic, this Bill actually articulates clearly that to be able to unite or officiate wedding, you must get a licence from the registrar. Therefore, this Bill will check those pastors who unite couples without a licence.

Hon. Deputy Speaker, a person who maliciously or fraudulently objects to a marriage will not be entertained. This has been a very common phenomenon in Kenya. As you grow up, you date several people but finally decide to marry one of them. It then happens that after you have spent so much money planning your wedding, somebody stands up from nowhere and stops the wedding without valid reasons, purporting that you had promised to marry them or you had children with them. This Bill is addressing this issue and it should be very clear that if you want to stop a wedding, you should make sure you have, at least, Kshs1 million in the bank and you should be ready to spend five years in jail because of giving false information.

However, I have concern on two parts of this Bill; in Section 66(1) on customary marriage and Section 4 on civil marriage. Parties may petition in court for separation or dissolution of marriage, only if they have been cohabiting for, at least, three years. It means that if you have been married in a customary way, you cannot raise any objection unless after three years. It means that you can be abused and you can have issues, but you may not be able to object until maybe five years are over. This could put a bit of strain on the people who may opt for this form of marriage.

Lastly, I note that in Section 73 a marriage that has not been consummated since its celebration can be dissolved. In the event that somebody denies, how can that be proved because it is a bit hard for you, as it is just a question of having circumstantial evidence. It may be important for us to put it more clearly when it comes to the Third Reading.

Finally, it is the same case with presumed pregnancy before marriage. Sometimes we have ladies who trap men. When you want to get married to a certain man and you have already accidentally got pregnant with another one, you may want to fake the pregnancy and eventually get married to this man. However, if this is ground for

dissolution of marriage then it should be clearly proven through DNA tests so that we do not have issues.

I support the Bill.

**Hon. (Ms.) Ghati:** Hon. Deputy Speaker, I rise to support this Bill. I want to declare today that I am also one of the Members who will soon be tying the knot. Since I will be tying the knot, this Bill has come at the right time. It is giving me and many other people in this country, and especially our children and our children's children an opportunity to decide the destiny of their unions.

This Bill recognizes the various forms of marriages. It gives us the option to make choices. We know that definitely choices have consequences. This Bill recognizes Christian marriages. It is clear that within the Christian union we are getting into strictly monogamous unions. It also recognizes customary unions which have the potential rights to polygamous unions. To me, this Bill is in good taste. It is a Bill that is seeking to protect marriages. It gives us options and choices. I look at this Bill as an opportunity for so many young people in this country who get into unions of comfort; what we call "come-we-stay" marriages or cohabitation. If this Bill can actually recognize such unions--- If you look at the cost of living in this country, it is too high. Young people, even those in the universities can decide to stay together if they believe they love each other. Those unions usually, I was in university, end up in marriages. So, this Bill is giving us easy options where we do not have to go through a lot of problems trying to look for dowry and all those things.

This Bill for me is very timely. We have very few lawyers who practise family law in this country. I look at it as an opportunity where our children's children are going to find it very easy to get into unions called marriages. This is a Bill that is saving our children. It is a Bill that has the interest of our children's children at heart.

We have been having marriages since time immemorial. These marriages have for a long time been based on the British way of marriage. We have been using the 1902 Marriage Act of the Britons. We have been saying, "I do" which is the British way of doing things. We are dynamic. Marriages are dynamic and this country is dynamic too. For us to have a Bill that has been revised by Kenyans gives us autonomy to define our own destiny. For the young people who want to get married, they should know what they are saying "I do" to. Very many people go to churches to say, "I do", but they do not know that they are saying, "I do" to the ideologies of the Britons, that is, the Marriage Act of 1902 that we have been using in this country. This Bill presents us with an opportunity for us to understand what we are saying, "I do" to.

With those few remarks, I wish to support this Bill.

**Hon. ole Ntutu:** Thank you, hon. Deputy Speaker, for giving me this opportunity to also contribute to this Bill. However, while I do that, I would also like to congratulate my colleague from Migori as she prepares to tie the knot. I tell her, "Welcome to the club"

I support this Bill because I think it has come at the right time. I also want to thank the Attorney-General for thinking that it is appropriate to bring all these pieces of legislation together. This is what we used to call in business school a one-stop shop. In this regard, this is where all the marriages, be they Christian or customary can be dealt with. Since Independence, the marriage institution has not been taken very seriously in

this country. It is time for us to define who we are as a country. This is because the institution called marriage is the most important institution on earth. The smallest unit of a country is the family and then you go to the village, division, location, district, county and then country. If this institution is not strengthened and defined in law, we will end up having problems that we are having in our country.

Hon. Deputy Speaker, middlemen in the corridors of justice took advantage of innocent Kenyans because they know of the complexities of these various laws. That is why you normally see many families in courts. It is because they do not know which law to use. However, now, it has been defined and we all know whether you belong to a Christian marriage or Islamic marriage or the customary one.

The one thing I am happy about is Part II of this Bill. Here this law defines the minimum age of marriage. You realize that in our country we have so many communities. In the pastoralist communities people take advantage of the young girls. This law will actually curtail them from marrying young girls. I think early marriages will be a thing of the past. I want to urge my colleagues to now use this law, once we pass it, in our respective constituencies. We have to ensure that it is implemented and acted upon so that we save our young girls so that they can also become Members of this House one day.

When you look at the issue of customary rights which is normally very ambiguous, people from the pastoralist communities know that customary laws have never been defined. I am a happy man today because this piece of legislation has now defined how to go about these customary laws. In this particular piece of legislation, this has been defined. The Bill also provides for registration of marriages. We will now have them in our database. With the new technology, we can now tell who is married and who is not.

In this Bill, matrimonial disputes and proceedings have been defined. It is clear that if you divorce for one reason or another you now are in a position to know the procedure to be followed. This will bring sanity in our institution of marriage.

With those few remarks I support. For those of you who have issues, please, bring them in the Third Reading stage so that we do away with the things that we do not need and we make this law very strict.

Hon. Deputy Speaker, I support and thank you for the opportunity.

**Hon. Deputy Speaker:** Majority Chief Whip.

**Hon. Katoo:** Thank you, hon. Deputy Speaker. I also rise to support this Bill. I will not dwell much on it since a lot has been said. However, this piece of legislation has got a lot of things that really were long overdue. First of all, there is the issue of consolidating all the acts as they are right now. My colleagues have mentioned and I think there are about seven acts that relate to the institution of marriage in our current statute. This Bill is trying to consolidate all of them into one legislative framework. I think the current scattered pieces of legislation have really occasioned a lot of complicity, unpredictability and also inefficiencies to various stakeholders. These are some of the reasons why, as my colleagues have said, we are finding many members of families in courts. Therefore, there is need to make it very clear and simple as proposed in this Bill for all the stakeholders to be able to understand and to follow it. By this I mean the

parties concerned and this is very well defined in the Memorandum of Objects and Reasons in this Bill.

Hon. Deputy Speaker, it is also good to note that this Bill forms part of the very foundation, as everybody has said, of our family unit. It is always good to say that a country is strong as a family.

Hon. Deputy Speaker, as clearly defined in Article 45(1) of our Constitution, the place of the family is well acknowledged in the Kenyan society and it provides that:

“The family is the natural and fundamental unit of society and the necessary basis for social order, and shall enjoy the recognition and protection of the State.”

So, maybe even some of the reasons why we are seeing some social disorder in so many instances is because of lack of a foundation which is called a family.

Hon. Deputy Speaker, therefore, I also want to agree with my colleagues that family and marriage matters undoubtedly go into the heart of majority, if not all, of the adult population. Therefore, if you look at some of the clauses of this proposed Bill like that important one which contains the definition of marriage in Part II, the General Provisions, Clause 3 says:

“Marriage is the voluntary union of a man and a woman whether in a monogamous or polygamous union and registered in accordance with this Act.”

Hon. Deputy Speaker, this really brings us to the fact that, that definition of marriage being a union between a man and a woman has really made it very clear and is in conformity with our Constitution. I am afraid to say this might disappoint those who hope that the same sex marriages will one day be legalised in this country. In the last two weeks in our neighbouring country Uganda, a Bill was passed in their Parliament and President Museveni was determined to assent to it. However, you heard the President of the United States of America (USA), Obama telling the President of Uganda not to assent to that Bill about homosexuals or homosexuality. I also saw that some Members of this House were advocating for the need to mobilise the country to oppose the issues of homosexuality. I think this Bill will put the facts straight because it clearly says: “Marriage is a union between a man and a woman.” So, there will be no marriage between people of the same sex.

Hon. Deputy Speaker, the Bill very expressly recognises marriages in different ways, like even the customary marriage and the African traditional practice of payment of dowry. Dowry has been very well defined in Clause 2 of this Bill. I heard my colleague, hon. Millie Odhiambo, saying it does not need to look like somebody is being purchased but if you look at the preliminary, Clause 2 says:

“dowry” means any token of stock, goods, monies or other property given or promised in consideration of an intended marriage.”

If you go up to Part XI of the Bill, it deals with what is promised in marriage. It says: “Except as provided in this section, a promise by a person to marry another person is not binding.” So, when we go to the Third Reading the Committee needs to streamline that area. The fact that this Bill recognises dowry as payment of a token and is sufficient proof of customary marriage is good.

Hon. Deputy Speaker, under Part V of the Bill, in the African setting it is a reality that polygamy is as old as humanity. The current legal framework that we inherited from our colonial era neither provides an answer nor acknowledges that fact. However, this

proposed Bill as it stands now provides only for monogamous marriages and also polygamy, under the customary marriage.

I want to bring the House to the attention of Clause 42(1) which says:

“A marriage under this Part shall be celebrated in accordance with the customs of the communities of one or both of the parties to the intended marriage.”

I think this needs to be made clear in the Third Reading because of the issue of the customs of the communities of one or both. Suppose there is no consensus between the parties on which custom to use? Is it the custom of the lady or man? I had actually raised it with the Chairman of the Committee and he saw sense in it because it might bring confusion on that. However, again on the same part, I am happy about Clause 44(d) where Members have been raising concern on the issue of notifying your first wife or wives that you want to bring another wife. If you read the Committee Report, they have recommended deletion of that section. I know they will do it at the right stage.

Hon. Deputy Speaker, however, I want to say that as somebody had said, one of the pillars of the Jubilee Manifesto is unity and this is meant to promote the tenets of the family values. So, I am sure it also goes in line with what the Jubilee team had promised Kenyans, that they will ensure that tenets of the family values are fully adhered to. Therefore, I also want to express my support in this and say it is good to have a strong family unit. This is a great opportunity for this House to go on record as the only House in the history of this country to have a great opportunity to ensure that protection of the important institution is made very clear. Therefore, I beg to support.

**Hon. Deputy Speaker:** Hon. James Nyikal.

**Hon. (Prof). Nyikal:** Thank you, hon. Deputy Speaker, for giving me this opportunity. The family unit is the basic unit of a nation and as other Members have said, if we do not have a strong unit at that level, we have all the problems in the society. Many of the problems of integrity, probably, we could solve at that level. The basis of that unit is marriage. If the marriage is proper and well defined, then it will lead to a strong family unit.

I am happy that this Bill has come, and I support it, because it is one of the Bills that have been coming here. We have just passed the Matrimonial Property Bill and we are now on the Marriage Bill. There is the Family Protection Bill that is to come. The three Bills, when passed, will strengthen the institution of marriage that this country needs a lot. Prior to this Bill, as many Members have said, there have been very many Acts on marriage. To a large extent, there was no clear definition of marriage because people would switch from one to another depending on the advantages they sought to get. But with all these Bills put together, the definition of marriage is now clear. Because of lack of definition before, many partners suffered, particularly ladies. These ladies are our daughters and sisters. With this law coming into place, we are getting into a better area of protection.

I like this Bill and I support it because as another Member has said, it is clearly in line with the Constitution in terms of definition of marriage as between a man and a woman. There is international clamour to go against the biological context of marriage. Maybe I am old fashioned but I have never seen the purpose of marriage to some extent even unions, if no off springs will come out of them. I think that is what God intended. I believe in God. It is important that, that is put in place. It also recognizes the institution

of polygamy in traditional marriages, but I support the need to inform the spouses that one is intending to get into polygamy. Maybe the issue of seeking consent may be a bit too much, but I do not think it is fair that somebody just wakes up in the morning and finds that they are now in a polygamous marriage, even if it was potentially so at the time it was conceived.

So, that is important. In reality, people say that traditionally nobody informed their spouses when they were getting married, but I know in our tradition, you were expected to inform your wife and give reasons why you think you should get another spouse. I can see hon. Wanga agreeing with me that this is the truth. So, this recognizes that and agrees with that. I also support this law because it gives equal status to partners in a marriage. For many years, partners have suffered and to large extent, women and now, it is coming to men. Some people, because of their economic or physical might, subdue others in marriage. This Bill recognizes that. The flexibility in this Bill is important because marriages that are conducted outside the country, which are in line with our Constitution and our law, are also automatically recognized in this Bill.

It is important that we have clear dispute resolution mechanisms and again, this Bill has put it very clearly. I like the definition of marriage, ease of registration and the clear definition of who celebrates a marriage. However, there are a few areas like nullification of marriage on the ground that it has not been consummated. Clause 73 says that a partner to a marriage may petition the court to annul the marriage on the ground that the marriage has not been consummated since its celebration. Surely, there has to be a time limit to that. You cannot get married today and tomorrow you run to court and say: "Since we celebrated the marriage, we have not consummated it." We need to look at that.

Also, in Clause 66, where it says that a marriage is irrevocably broken down if a spouse has been sentenced to a term of imprisonment for life or for a term of more than seven years. These are issues that should be left to people. There are people who persevere and wait for their spouses even for seven years and there is always opportunity that they may come back. So, that should not be put in law. That can lead to abuse.

With that, I support this Bill.

**Hon. (Ms.) Mathenge:** Thank you, hon. Deputy Speaker. I am sure hon. Nyikal is very happy because we initiated these family Bills, but unfortunately, the then Cabinet thought it was not the right time. I am happy the Eleventh Parliament is going to approve the three family Bills. Our contention that time and which is still our contention is that we want to transform our society. How do we do this? We can only transform our society by seeking to uphold family values, teaching values like integrity, justice and equality. Those can only be learnt at the family level.

So, I feel happy that what I initiated in 2009 is actually coming to fruition. That time, one of the issues that were big in the then Cabinet was the age of marriage. I had a very difficult time trying to justify why I wanted the age of marriage to be 18 years. I told the Cabinet then that in the animal world, the only animal that does not protect its young is man because it wants to defile and marry somebody who is below 18 years old. Those are children. What the hell are you doing with a child who is nine years old as your wife? That child cannot produce, cook or even feed you. So, I am very happy that they have captured this very well.



The other issue that we had an issue with then and has been captured is cohabitation. We were saying that you should not take somebody's daughter or son and let them stay with you and then after ten years after using them, you just discard them like toilet paper. If you stay with them, you have an obligation to marry them, make them man and wife. We were even saying that even the two years that were being proposed was too long. We wanted it to be that if you take my daughter, after six months, you have to marry her. So, I am very happy that this Bill has come. I do not have to belabor the point. I think I have debated these points with the stakeholders. Again, like somebody said, I think it was hon. Katoo who mentioned the Marriage Bill of 1902 which was a colonial Marriage Bill. When the late President Kenyatta asked the Parliament of 1967 to sit down and amend it, I do not know why the men then, who were the majority in Parliament, felt like they were being invaded. They were not being invaded. In fact, this Bill protects both men and women who are in that union.

I really want to thank everybody who has supported this Bill. I feel that something that I started so many years ago is finally coming to an end. I will not even go further because today I will go home a happy girl knowing that the family Bills have become a reality to this country.

**Hon. (Ms.) Mbarire:** Thank you, hon. Deputy Speaker. I rise here this evening to support this very important Bill that is before us. I will not belabor the point that the family unit is very critical for the strength and sustainability of a country, a community and anything social. For that reason, it is very important that we provide a supportive legal framework that can ensure the existence of that family unit and ensure a healthy family.

As I stand here, I am really happy and I want to begin by congratulating hon. Murugi Mathenge whom we worked with very closely as Women Parliamentarians in the last Parliament as we tried to see how we can have the Family Protection Bill, the Domestic Violence Bill, the Marriage Bill and the Family Property Bill. I can share in her excitement today as we see this become a reality.

Hon. Deputy Speaker, I also want to say that I am really excited because listening to the Members and especially our male colleagues, I can only hear voices of support for this very important Bill. I want to say that we have come a long way as Parliament just to watch Members of Parliament support such important Bills without raising trivial issues that become an obstacle to important issues of society. So, I really want to thank all Members who have spoken and supported this Bill, men and women alike. I think we owe it to this nation to finally place before this country a legal framework that will give the family protection from many challenges, whether internal or external.

Hon. Murugi Mathenge has said that there were efforts to bring forth a Marriage Bill or a legal framework for families. It started all the way from 1967 when Mzee Jomo Kenyatta established a taskforce to look into the matter. The people who were there at that time tell us that it never came to fruition. About three attempts were made to bring a Bill on the Floor of the House and they were not successful.

After 1967, the next attempt was actually in 1993 when the then Speaker formed a special task force to review laws relating to women. From 1993 that report was brought to public domain in 1999 and again nothing was done about it. However, they

recommended to enact laws that will protect the family unit but it still never saw the light of day.

In 2007, we saw a Marriage Bill that was spearheaded by the Kenya Law Reform Commission (KLRC) and again nothing happened. In the last Parliament, hon. Murugi Mathenge undertook that again when she was the Minister for Gender and it did not work. Really, it calls upon us in the Eleventh Parliament to make this law a reality so that we can protect marriages.

Hon. Deputy Speaker, today there is a very high rate of divorce and the reason why divorce rate is that high is because people enter into family union with expectations which are not met. One of the biggest challenge of the family union or the family unit is that we have refused to recognize that monogamy and polygamy are here to stay. Therefore, we want, through this Bill to make one know what they are getting themselves into. If you enter into a Christian Marriage, you need to know that you have entered into a monogamous union from day one and you must stay there.

If on the other hand you go through a customary marriage, which I am happy is now being given the same legal status as the Christian Marriage, unlike before where being married through customary rites was seen like you are in a second hand marriage, you must know that you are in a potentially polygamous marriage. Therefore, should a third party join you a day, two days, a year or ten years later, then it should not be a shocker to you. I think it is good when we enter into these unions with the expectations and know what it is you are really getting yourself into.

There is also a very important issue that is killing marriages today, that is the issue of property. I am happy that finally we have come to the recognition that it is actually possible to come up with prenuptial agreements before marriages. That will be on exactly what your role will be towards the children that you bring forth and the property that you may have had before marriage and you feel that you do not want to lose it. You can come up with an agreement so that, that does not become an issue in the course of your marriage.

Hon. Deputy Speaker, we are also protecting children who are 18 years and below from getting married when they are still defined as children. I am happy to hear the Member from Narok support this because we know that it is a real issue in many communities in Kenya. We are having children as young as 9 or 12 years old getting married. Now we can protect them through this law.

I am happy that we are finally consolidating all these legal statutes that have been holding different laws concerning marriage. Now, we can have one statute that can be followed by everybody; one that is more understood based on our current economic, social and cultural situation and one that recognizes that we are an African country that has certain realities like polygamy. That is very important.

I pray that with this law we will be able to protect marriages. We will also be able to protect the people in these marriages, whether women or men. We will also protect the children that are conceived in these marriages. I would like to urge this Parliament to pass this Bill as soon as possible so that we can protect our families and country. I believe that this is a great day for all those who are in marriage unions and all those that intend to get into marriage unions like my sister from Kuria, so that all of us can be happy in our families, communities and the nation as a whole.

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

**Hon. Angatia:** Thank you, hon. Deputy Speaker. From the outset, I would like to state clearly that I support the Marriage Bill. Being a son of a pastor from Lugari, I will say why I support this Bill.

First, the customary marriage is the greatest beneficiary of this modern Bill at this particular time in this country. This Bill gives great honour to the founding father of this nation, Mzee Jomo Kenyatta, because you know the President of this Republic is a son originating from a polygamous family. The other great son of this nation originating from a polygamous family is Cardinal Maurice Otunga. The other son is Barack Obama who is the President of the United States of America. So, this Parliament is making history by modernizing or collapsing several statutes into one that will help resolve issues regarding polygamous marriage and recognize this marriage in the modern statute.

Today, I have been in somebody's home trying to solve a problem related to marriage. It is a family that is divorcing and it is related to me. I told them that today I will stand in Parliament and give my contribution on the Marriage Bill. The problem was about sharing of assets because the husband wants to marry a second wife.

I pleaded with him to wait until we pass this law, so that we can have a proper sharing formula. This law states clearly that the first wife shall be the greatest beneficiary. So, I advised her to relax because she will be the greatest beneficiary after we pass this law.

*(Laughter)*

Thirdly, we have had many cases related to marital problems. Let me sound a warning to men: be cautious because a one night stand is a promise that can lead you to trouble. You will have to pay the damages because you promised. That is what the law says. There are many cases pending in court in this country as a result of skewed laws in relation to marriage but this one will give a clear-cut adjudication process on how those cases should move forward.

You find that someone has not even proven that a child she is claiming to be yours is indeed yours. There is no DNA test that has been carried out or anything to prove but just because she knows that you have some assets somewhere or you inherited some assets from your parents, she will insist that the child is yours. This law will help to protect your first wife from the subsequent wife that you will marry in future.

Finally, I will seek to move an amendment in the area relating to refusal to honour a promise in a case where you have not courted for many months. There must be limit on the courtship. You can court for a day, two days or three days and then she says that you promised. It will not benefit her in any way. She should substantiate where the benefit is to suffice the damages.

With those remarks, I beg to support the Bill.

**Hon. Deputy Speaker:** Yes, Member for Nyamira County.

**Hon. (Ms.) Chae:** Thank you, hon. Deputy Speaker, for giving me the opportunity. It has been a long wait but I am now a happy woman.

Hon. Deputy Speaker, all has been said but I also want to add one thing. As we try to strengthen and tighten our marriage structure in the country, which is actually coming

since we have accepted to do it; I also feel that after the passage of this Bill, we need to empower people or create awareness for everybody to know what it entails to get married, so that once one chooses to get married, he can stay in the marriage comfortably and enjoy what one went to look for in marriage. If we do that, the problems that we are talking about will not be there because the Bill is very clear. It is a choice that one is going to make. If during courtship I accept that we are going to do customary marriage, I will know that another woman will join the marriage. So, people will be conscious of that fact. If I want a Christian marriage, I will have to say so to my man at that time. I will also assist my daughter to make the right choice. I will advise her that if she goes one way, it will be good for her and that if she goes the other way, she will eventually have a co-wife.

So, it will also depend on what I like. If we come from traditional families, and we intend to do things in the traditional way, it will be okay. Therefore, with the passage of this Bill, we will be assured that things will be done in the right way. As our Majority Whip said, gay marriages are not allowed by our Constitution. According to Article 45(2), marriage is allowed between persons of the opposite sex – between a man and a woman.

There is something I am worried about. Clause 57 says that the Cabinet Secretary may, in consultation with the relevant stakeholders, make regulations for registration of any other type of marriage not provided for under this Act. I was wondering what kind of marriage is implied by this provision. It would actually be against the Constitution to allow any other kind of marriage.

I would, therefore, like to call upon my colleagues to support this Bill and pass it so that we can be of age in terms of restructuring marriage in this country, knowing that marriage is the foundation of everything. If there is peace and harmony in our marriages, we will talk about development and unity for our nation.

With those remarks, I beg to support.

**Hon. Speaker:** Yes, hon. Ali Rasso, Member for Saku.

**Hon. Dido:** Thank you, hon. Deputy Speaker, for giving me this opportunity. On the outset, I would like to say that I support this Bill. I am persuaded to support this Bill for many reasons but first and foremost, as a Parliamentary Select Committee, we visited Kilifi sometime in November, 2013. At a public forum, a gentleman stood up and said that nowadays Parliament debates marriage matters in a pedestrian manner. He actually emphasised the importance of us, legislators, thinking through marriage matters when they come to the House. To reassure that gentleman wherever he is, I want to add my voice to the contributions of hon. Members. First and foremost, the meaning of marriage in this Bill has been finally defined. I am also persuaded to point out the fact that as Africans, we believe that alien cultures should not be sneaked into our Constitution. Let me say unequivocally about same sex marriages in response to what the hon. Member who just spoke before me talked about. In terms of prohibited marriages, when the time comes, some of us will suggest amendments, so that our stand can be clear.

The good thing about this Bill is that it has clearly laid out things such as void marriage, which was not captured in any marriage-related statute before. What I would like to quickly comment on is arrangement to live apart. These are some of the natural things that we may not foresee in marriages. If they happen, it is important to say from

the outset that marriage is built to last rather than say that it is something that can go wrong. So, some amendments may also be necessary in that regard.

I would like to take caution on the issue of cohabitation. With the kind of Marriage Bill that we are enacting into law, the men of this world should be persuaded to get married rather than cohabit so that families can be safe, particularly in terms of placing children in the right perspective in the family set up.

Another thing I would like to talk about is determination of objection. It has been clearly pointed out in this Bill that the importance of determination of objection is to curtail abuse, which has been happening in some marriages. We have had cases of people objecting to marriages whose preparations were at the final stage. The Islamic law relating to marriage has, to an extent, been clear and moderate. However, in this Bill, there are some areas which need to be flushed out so that it is in conformity or is as close as possible to the Christian marriage.

The grounds for annulment in this particular case, especially under Section 73, I think we should be extremely cautious, if one party wants to walk out of the marriage. Our courts, being what they are, it is very easy for that particular system to be corrupted and marriage to be annulled before due process of trying to bring the parties together is achieved.

With regard to the issue of dowry, as an African man in his right mind, I think I do subscribe to the payment of dowry; but not payment in terms of purchase, but in terms of building the family linkage from the wife's side to the husband's side.

Finally, we have to be very careful on the effects of a promise to marry, which is covered in Section 76. We must take into consideration the age. Youngsters at the university might promise their mates that they are ready to marry them, yet in the real sense they are not because they are still growing up.

With those remarks, I beg to support.

**Hon. (Ms.) Ombaka:** Thank you, hon. Deputy Speaker, for giving me this opportunity. My contribution to this Bill is that, first of all, marriage is a reflection of society. If marriages break, it means the society is breaking. Therefore, this Bill comes at a time when there are so many divorces. This Bill is going to save many marriages. I think this is a very good Bill which has come at the right time when families are in trouble.

Hon. Deputy Speaker, the good thing about this Bill and the reason why I support it is that it recognizes all forms of marriages and it legalizes them. One should have a certificate to be considered married. When you go through this Bill, you will see that certificates are required and these are useful documents when dissolution of marriage takes place.

The most important thing for me here, as an educationist and somebody who has fought so hard to have the girl-child go to school, is the indication that early marriage below the age of 18 years is a criminal offence. This happens every day and we see so many girls drop out of school. They cannot complete their education and a lot of them get into marriages that are not sustainable. Even when they get married at the age of 18 years, majority of them go back to their homes and say it did not work. This Bill is going to safeguard or protect girls from early marriages and the girl-child is likely to complete her education and get married at the right time when her health will be even better. When a

girl gets married when she is below the age of 18 years and starts having children, even the medical personnel, including Prof. Nyikal here will tell you that the life of that girl will be in danger. To me, this is a wonderful legislation that protects the girl-child.

The last point that is also very attractive in this Bill is the dissolution of a marriage. We are told today that there is too much violence in marriage to the extent that couples kill one another and to the extent that the children also die. Many a time we have been told that when marriages become too violent, it is important that you leave because you do not know when you will die in it. Most of us have been trained that when you notice that marriage is too violent, your life is threatened. The law now recognizes the grounds for divorce or dissolution, like adultery, cruelty, domestic violence and desertion from one partner.

Therefore, the ground for divorce is for a good reason that your health is important. One of the grounds which are very difficult to prove always is adultery. That is very difficult to prove, but it is good that it is there because then, in the society we are living today, where we have diseases that come because of adultery, we will protect many families.

With those remarks, I support this Bill and it is a good thing for women as well.

Thank you.

**Hon. (Ms.) Muia:** Thank you, hon. Deputy Speaker, for giving me this opportunity to contribute to this Bill.

**Hon. Deputy Speaker:** Order, hon. Member! Had you spoken on the Marriage Bill?

**Hon. (Ms.) Muia:** Hon. Deputy Speaker, the last time I spoke to the Bill I was opposing it, I want to support it now.

**Hon. Deputy Speaker:** Order! Order, hon. Member, you cannot speak twice on the same Bill. Therefore, we will give this chance to hon. Abdikadir Omar Aden.

**Hon. (Ms.) Muia:** Hon. Deputy Speaker, the rest of hon. Members---

**Hon. Deputy Speaker:** Hon. (Ms.) Muia, once you have spoken on a Bill, you cannot speak on the same one again, unless it is a different Bill that we are talking about. But once you have spoken on it, unless you are on a point of order, which you are not, it is not allowed.

**Hon. Aden:** Thank you, hon. Deputy Speaker. I stand to support this very important Bill. On the outset, the definition given to the institution of marriage, being a voluntary union between a man and a woman is the first strength of this particular Bill. I want to say that because our Constitution is very clear, we are a nation that believes in God. This is in our Constitution.

In the books that we believe in, both the Quran and the Bible, particularly the Quran-- Indeed, I can speak about the Quran, which is in agreement with this particular Bill. It says that marriage can only be between a man and woman. This is a very important aspect of this particular Bill.

Hon. Deputy Speaker, the institution of marriage, as has been discussed by my colleagues before me, is in a lot of trouble. It is in trouble because there have not been adequate laws that have been put in place to protect it.

This Bill today, indeed, recognizes all the faiths that live in this country. I am very proud and I must say that indeed, even though it was in the previous laws, Islamic

marriage has been very uniquely acknowledged in this Bill. The Kadhis have been given a chance to administer these particular marriages in all levels, even at village levels and ensure that these institutions are registered.

Hon. Deputy Speaker, I do not need to say much about this Bill, other than say that it recognizes marriages that are customary, of religious nature and it takes the issue of consent of the person in marriage. In some cultures, there is a problem of forced marriages, where daughters are forced to be married. This is not allowed under this particular Bill, and it is certainly not allowed in many religions of this country. I am very happy that we have now put in place a law that indeed, saves our children and our young ones from forced marriages. This is an important strength of this Bill.

I want to say that this law should be supported by all the Members. This is because this law directly or indirectly says no to gayism. There cannot be marriage of the same sex. This is very clear and for any person who may want to put conditions on Kenya to accept or bring about a law that might allow marriage between people of the same sex, I would like to warn you and tell you that, indeed, that is not allowed and the law we are passing today says that gayism is not allowed in this country. I urge our colleagues in the neighboring countries who are struggling very much to ensure that, that kind of law that is anti-gay comes into existence, should do so without any fear at all.

I support this very important Bill.

**Hon. (Ms.) Nyasuna:** Thank you, hon. Deputy Speaker, for giving me this opportunity to add my voice to this very important Bill.

As African community, it is only the family that we have to boast about. When you compare Africa to the western world, a lot of times we say that we might not have anything else, but we have family values. That is very important. This law comes in to strengthen the family. Although we cannot say that we will guarantee happy families because of this law, because people will still have to work on their marriages, but at least this law comes in to consolidate all the statutes that have existed.

I am happy that Clause 10 of this Bill actually prohibits incest. We have had many instances and challenges with regard to incest. What I think we should consider adding to the list of those that are prohibited-- Apart from cousins, grandchildren and great grandchildren, I will be proposing at the Committee Stage that we also add explicitly step children. I see here "people adopted", but sometimes you have not adopted children legally, but you are married to their mother or father. So, to engage with them should be indicated in this law as part of those that are prohibited under incest.

I see that promise to marry is not binding, but this should not really be permission for us to just promise people, say, giving them promise number one, promise number two and promise number three that we will marry them and then end up disillusioning them. So, we should not take advantage of this law to keep disillusioning men and women by giving empty promises. Hon. Nyikal spoke, and I supported him, about the right to be given notice when an additional spouse is coming. Having been born in a polygamous family, I know that what made polygamous families work in the old age was really the fact that it was a settled agreement that we are going to have a second wife coming. The first wife would agree and so when the second or third person comes, there was already general consensus. The kind of wars we see presently is because people just go out there and women do not even know that they have co-wives. They end up learning of this after

the spouse is dead. This kind of thing just creates tension. I would have wished for consent, but I know that might be a little bit more difficult. However, we will be looking at it at the Committee Stage. Information is the bare minimum that you can do to somebody that you have lived with and, probably, sired children for you.

Hon. Deputy Speaker, with regard to presumption of marriage and the whole issue of cohabitation, it is proposed that if you cohabit for three years it will be presumed that you are married. This period should actually have been shorter. By the time you have stayed with someone, say, for a whole year what are you doing if you are not married? I think we will be willing to go with three years, but we need to ensure that this is taken care of.

I am also glad that we have dissolution of customary marriages defined in this law. As has been discussed and particularly for customary marriages, many felt that they are stuck within the union because there is really no legal basis. Now that is well defined. The issue of age of marriage cannot be overemphasized. It is very important. If you are living with anybody who is under the age of 18 years, then know that is a prohibited union under this law.

Hon. Deputy Speaker, I beg to support.

**Hon. Kimaru:** Thank you, hon. Deputy Speaker. I stand to support this particular Bill more importantly because of raising the age of consent or what is commonly referred to as the marriageable age. I support this particular provision especially because of the girls. Many of them have found themselves in marriage having not even tried to exploit their potential in life. In this age and time when we talk about the potential of any human being, it has to do a lot with the kind of education that they get. Many of the girls who are married at the age of 13 years and below are never given the opportunity to explore their potential. In a way, they are condemned to eternal disadvantage. They will never be able to rise above those poverty levels that they found themselves in. This is not fair given that we have free education where children should go to school and exploit their potential to the maximum.

I have had instance to see girls who come from poor background, unfortunately a couple of them I had even opted to sponsor to attend school, but I blame myself at times because whereas we paid fees for them, we did not bother to find out where they were coming from. Are they provided for in other ways? You would find such girls, even after you have offered to pay fees for them, getting married because they do not have food and other protections that are supposed to be there. Some unscrupulous pests will land on these poor children, make them their wives and actually make them lose forever the opportunity to prove their potential.

Secondly, I think that the provision on cohabitation to make it legally binding and that the parties involved after cohabiting are married, the three year provision is necessary. Again, this is because of the pest, but this time not the men. There are those who would want to get into short-term arrangements and then claim the benefits of a marriage. So, men should also be protected in that manner.

I have seen us make legislation even on matrimonial properties but a lot of concentration has been on the rights of women. I am afraid that men might be on the receiving end after so many legislations have been made – they will not be provided for. In most cases, we try to protect women and forget that men are also vulnerable. Where



we come from they are being battered day in, day out. So, it is not a one sided thing. Even when we talked about matrimonial property there was a lot of emphasis on the wives and so on. If you have accumulated wealth together, I know this is not Matrimonial Property Bill, if the wife has equal share, the man should equally have an equal share. He should be treated equally in law.

We also see provisions on refusal to honor promises. I do not know how much value a promissory note has---

### ADJOURNMENT

**Hon. Deputy Speaker:** Order, hon. Member! Hon. Members, it is now time to adjourn the business of the House. The hon. Member will have a balance of five minutes when this Bill next comes on the Order Paper.

This House, therefore, stands adjourned until Tuesday, 25<sup>th</sup> February, 2014 at 2.30 p.m.

The House rose at 6.30 p.m.