

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 17th November, 2016

The House met at 2.30 p.m.

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

PRAYERS

COMMUNICATION FROM THE CHAIR

Hon. Speaker: That communication will be coming later.

MESSAGES

PASSAGE OF BILLS BY SENATE

Hon. Speaker: Hon. Members, Standing Order 41 relating to Messages requires the Speaker to expeditiously report to the House any Messages received from the Senate. In this regard, I wish to report that on Tuesday, 15th November, 2016, I received four Messages from the Senate regarding the passage of:

- (i) The Petition to County Assemblies (Procedure) Bill (Senate Bill No. 35 of 2014);
- (ii) The Employment (Amendment) Bill (Senate Bill No. 1 of 2015);
- (iii) The County Outdoor Advertising Control Bill (Senate Bill No. 11 of 2015); and,
- (iv) The County Library Services Bill (Senate Bill No. 6 of 2015).

The Bills were passed by the Senate on Tuesday 8th November, 2016 with amendments. The Senate now seeks the concurrence of the National Assembly on the Bills in accordance with Article 110 of the Constitution .

Hon. Members, I am aware that the Clerk has since circulated copies of the Bills to Members. After being read a First Time pursuant to Standing Order 143, the Bills will stand committed to the following Departmental Committees for consideration:-

S/No.	Bill	Departmental Committee
(1)	The Petition to County Assemblies (Procedure) Bill (Senate Bill No. 35 of 2014)	Justice and Legal Affairs
(2)	The Employment (Amendment) Bill (Senate Bill No. 1 of 2015) and the County Library Services Bill (Senate Bill No. 6 of 2015)	Labour and Social Welfare
(3)	The County Outdoor Advertising Control Bill (Senate Bill No. 11 of 2015)	Finance, Planning and Trade

Hon. Members, I also direct that, before commencement of the Second Reading of the Bills, the Budget and Appropriations Committee submits to the House its recommendations pursuant to Article 114 of the Constitution relating to money Bills.

I thank you.

PETITION

CONSTRUCTION OF ROAD TO LINK KALOKOL TO TURKANA NORTH SUB-COUNTY

Hon. Speaker: Before we get to the Chairperson, the Member for Turkana North who was late yesterday having sought intervention and having seen his face when he approached me, is now allowed to present the Petition on behalf of his constituents.

Hon. Nakuleu: Thank you, Hon. Speaker. I beg to present a public Petition by the residents of Turkana North Constituency regarding the construction of a bridge between Kalokol and Turkana North Sub-County via Nakiria River.

I, the undersigned, on behalf of the concerned residents of Turkana North Constituency draw the attention of the House to the following:

THAT, the road network and bridge linkages are essential infrastructural facilitators of economic growth, investment and improvement of the livelihoods in any region;

THAT, Turkana region is a key source of salty fish that is supplied to factories in Kalokol for onward transportation to markets in Lodwar, Kisumu, Nairobi and in the neighbouring countries of Uganda and Democratic Republic of Congo;

THAT, the region has failed to reach its economic potential due to dilapidated road infrastructure and lack of bridges for its economic resources;

THAT, the situation worsened during the *El-Nino* rains that saw River Nakiria burst its banks, changed its course and destroyed all the roads in the region thus rendering them impassable. It also swept away the only bridge that linked Kalokol Town to Kataboi Center and the rest of the region.

THAT, transport between Kalokol Town and Kataboi center of Turkana North has been paralyzed and the economic livelihoods of residents, who heavily rely on fishing have been affected due to the inability to access fish markets and coolers;

THAT, lack of bridges, coupled with the impassable roads occasioned huge economic losses to the Turkana fishing folks since they cannot quickly access markets or cooling plants in Kalokol for their perishable fish catches;

THAT, despite the situation, qualifying to benefit from emergency funds that the Government had set aside to mitigate adverse effects of *El-Nino* rains, efforts have not been initiated by the Government to rebuild the bridge or restore the roads infrastructure in the region;

THAT, efforts to have the roads situation in Turkana North addressed by the Government have not yielded fruits;

THAT, the matter in respect of which this Petition is raised is not pending before any court of law or any constitutional body;

Therefore, your humble Petitioners pray that the National Assembly, through the Departmental Committee on Transport, Public Works and Housing:

- (i) Intervenes through the Ministry of Transport, Infrastructure and Housing by having the road linking Kalokol to Turkana North Sub-County via Kataboi Town urgently redesigned and rebuilt so as to improve transport in the region;

- (ii) Ensures that a new permanent bridge that can withstand the sporadic splash floods that are common in the region is constructed with a view to facilitating efficient and fast transport of goods, persons and services between the two regions; and,
- (iii) Make any other order or orders it may deem suitable in addressing the plight of the residents of Turkana North.

And your humble Petitioners will forever pray.

Hon. Speaker: Member for Kathiani

Hon. Mbui: Thank you, Hon. Speaker. I rise to support this Petition by my colleague, Hon. Nakuleu. The issue of infrastructure being destroyed during rainy season is a problem that is affecting a big portion of this country. I see similarities between the problems his people are facing and the ones that my people are facing. I also presented a Petition through this House, and it went to the Committee and then to the Ministry. This morning, I had an occasion to meet the Committee and the Ministry officials. It was so shocking. After I presented my Petition the first time, I was told that my road will be done by December, 2014. Three years later, nothing has been done. When I went there today, I was told it will be done by April 2017. By the time we concluded the discussion, the answer I was getting was that the work will be done by 2022, when I will be vying as the President or Vice President behind Kalonzo Musyoka.

(Applause)

It is important that these issues are taken seriously and the Ministry needs to up its game when it comes to dealing with infrastructure in this country.

I thank you, Hon. Speaker, for giving me this opportunity.

Hon. Speaker: Sorry, did you say that there is somebody who will be a President in 2032? Is it 2032 or 2052?

(Laughter)

Hon. Mbui: 2022, Hon. Speaker.

Hon. Speaker: I see. Well. Nevertheless, the issue is on dilapidated road infrastructure in Turkana North. Maybe, those who will become Presidents in 2052 can deal with the matter of flies. Member for Turkana South.

Hon. Ekomwa: Thank you, Hon. Speaker, for giving me this opportunity. I stand to support the Petition of Hon. Nakuleu concerning the infrastructure between Turkana Central and Turkana North Constituency. Two weeks ago, we had a by-election at Kalokol. It was very difficult for us to connect from Kalokol to Turkana North. Even when we were in danger of facing bullets, it was difficult for us as we were seeking to rescue some people. It was very difficult because where we were shot at near the river, we wanted to escape. There were so many jerricans which---

Hon. Speaker: Did you say you were shot or shot at? Were you actually shot?

Hon. Ekomwa: Hon. Speaker, the two apply. The person who was shooting had the intention of shooting at us. But he missed at a close range.

Hon. Speaker, sincerely speaking, the infrastructure along that region requires urgent intervention. Residents of those areas walk long distances to access services. You will find women traveling long distances carrying water and children because of poor infrastructure. In that area, traders do not have vehicles. A few of them have Probox cars. A Probox cannot pass

through such a road and yet, we expect them to improve their businesses. We are therefore calling upon the Government to take it as a serious issue. We have agreed with the residents that, as the representative of the people, if we cannot improve that infrastructure, there is no way the residents can trust us as their representatives. There is no way they can trust the Government. So, we are calling upon our Government to do something because we have trust that it will listen to us. It should not listen to other people. It should listen to us because we belong to it. When you are there, Hon. Speaker, we have confidence in you. I know you will follow up that issue through specific departments to ensure that we have bridges. Hon. Speaker, you saw me the other time crossing the river without clothes. It is because there is no bridge. For how long will I be crossing that river to deliver services to my people?

Hon. Speaker: Very well about that bridge.

Hon. Ekomwa: It was very true. This is urgent.

Hon. Speaker: Member for Kwanza.

Hon. F.K. Wanyonyi: Hon. Speaker, I just want to take this opportunity to support my brother Nakuleu. Recently, I was in Turkana for the by-election that he has mentioned. Something must be done urgently in that area. The distance between Lodwar and Kalokol is about 65 kilometres and yet, it takes almost four hours to travel that distance. There is a need to urgently attend to road infrastructure in Turkana. When you are driving in Turkana, you realize that, once upon a time, some of those roads used to be tarmacked. I want to support the Petitioner and ask the Government to take this matter seriously and build bridges and repair roads in Turkana. It is not even in Kenya. When you go there, you see you are outside---

Hon. Speaker: Hon. Wanyonyi. Now that you are saying that you expected the Speaker to take up the matter, you are arrogating unto me functions which are not bestowed on me by the Constitution.

Hon. F.K. Wanyonyi: Hon. Speaker, I did not say you take up. I am saying that the Ministry should take it up urgently and assist our brothers in Lodwar. The roads are impassable. I want to agree with the petitioners.

Hon. Speaker: Very well. Could we have a final comment from Dr. Pukose?

Hon. (Dr.) Pukose: Thank you, Hon. Speaker. I want to take this opportunity to support Hon. Nakuleu for bringing this Petition. I know very well that it is a major bridge in the area. In his Petition, one of the issues he has raised is about fishing in the area. Fish is becoming a perishable commodity. Fish is being destroyed because of poor infrastructure. For a long time, communities living within that area and the neighbouring communities have been involved in cattle rustling. If that bridge is built, I am sure it will assist the people in that area in terms of changing their lifestyle. They could start eating fish and doing fish farming. That way, cattle rustling will be addressed.

This is something that the Committee on Transport, Housing and Public Works and the Budget and Appropriations Committee should take keen note of. Funds should be allocated so that the bridge that links Kalokol and that place Hon. Nakuleu has mentioned can be built. It will ease transport within that area. I am also making an appeal to the County Government of Turkana to do something before the next Budget so that the bridge can be used by the people of that area.

Thank you.

Hon. Speaker: Very well. The Petition is committed to the Departmental Committee on Transport, Housing and Public Works. We know that the Committee does thorough work on petitions.

The Vice-Chairperson of the Departmental Committee on Finance, Planning and Trade, very briefly, apprise the House on the status of various petitions before your Committee.

STATEMENT

PETITIONS PENDING BEFORE THE COMMITTEE ON FINANCE, PLANNING AND TRADE

Hon. Gaichuhie: Thank you, Hon. Speaker. The Departmental Committee on Finance, Planning and Trade has received a total of 21 petitions from 2013 to date. During the same period---

Hon. Speaker: Sorry, Hon. Gaichuhie. Maybe you could raise your voice a bit.

Hon. Gaichuhie: I am saying that we have received a total of 21 petitions to date and we have already looked into nine. We are scheduled to table four reports on Tuesday 22nd November 2016. I can only refer to two petitions that we have concluded because they are many. One is the Petition to amend Article 231(4) of the Constitution---

Hon. Speaker: You do not have to go to details. You said you have considered all of them?

Hon. Gaichuhie: We have received 21 and we have already tabled nine reports. We have four that we will table on Tuesday. We are looking into the others. That is why we want to seek an extension of, at least, 30 days so that we can complete the other eight that are pending in our Committee.

Hon. Speaker: Move the Motion seeking leave for extension on Tuesday as you table the reports on those other petitions.

Hon. Gaichuhie: All right. Thank you very much.

PAPERS LAID

Hon. Speaker: Leader of the Majority Party.

Hon. A.B. Duale: Hon. Speaker, I beg to lay the following Papers on the Table of the House:

Quarterly Economic and Budgetary Review Report for the First Quarter, Financial Year 2016/2017 for the period ending 30th September 2016.

The Report of the Auditor-General on the Financial Statements in respect of the following institutions for the year ended 30th June 2016, and the certificates therein:

1. The Central Bank of Kenya;
2. Kenya Power and Lighting Company Ltd; and,
3. Kenya Electricity Generating Company.

The Report of the Auditor-General on the Financial Statements of the Constituency Development Fund in respect of Makadara Constituency for the year ended 30th June 2015, and the certificate therein.

Thank you.

Hon. Speaker: The Quarterly Economic and Budgetary Review Report for the First Quarter of the Financial Year 2016/2017 is referred to the Budget and Appropriations Committee, and it should liaise with the appropriate committees.

Next is the Vice-Chairperson of the Departmental Committee on Energy, Communication and Information, Hon. Kiptanui.

Hon. Kiptanui: Thank you, Hon. Speaker. I beg to lay the following Papers on the Table of the House today:

The Report of the Departmental Committee on Energy, Communication and Information on:

- (i) Its consideration of the President's Reservations to the Energy Bill, 2015;
- (ii) Its consideration of the President's Reservation to the Petroleum (Exploration, Development and Production) Bill, 2015, and,
- (iii) The Visit to the Moi University Digital Services Assembly in Eldoret.

Thank you.

Hon. Speaker: Next Order.

STATEMENTS

BUSINESS FOR THE WEEK COMMENCING 22ND TO 24TH NOVEMBER, 2016

Hon. A.B. Duale: Pursuant to the provisions of Standing Order No. 44(2)(a), on behalf of the House Business Committee, I rise to give the following Statement regarding the business appearing before the House for the week beginning Tuesday, 22nd November 2016:

The House Business Committee met on Tuesday this week at the rise of the House to give priority to business for consideration. On Tuesday next week, the House will consider the Committee of the whole House for the following Bills:

- (i) The Insurance (Amendment) Bill, (2016);
- (ii) The President's Reservations to the Energy Bill, (2015); and,
- (iii) The President's Reservations to the Petroleum (Exploration, Development and Production) Bill, (2015).

Hon. Speaker, the House will also consider the following Bills at Second Reading:

- (i) The National Youth Service Bill (Senate Bill No.26 of 2014);
- (ii) The Persons with Disabilities (Amendment) Bill (Senate Bill No.24 of 2014);
- (iii) The National Honours (Amendment) Bill (Senate Bill No.16 of 2014);
- (iv) The National Flag, Emblems and Names (Amendment) Bill (Senate Bill No.2 of 2013); and,
- (v) The Penal Code (Amendment) Bill, 2016.

In the same week, the House Business Committee has scheduled several committee reports for debate as follows:

- (i) The Report of the Departmental Committee on Environment and Natural Resources on the Investigation into Wildlife Poaching in Kenya;
- (ii) The Report of the Departmental Committee on Administration and National Security on Investigation into the Garissa University College Terrorist Attack; and,
- (iii) The Report of the Departmental Committee on Agriculture, Livestock and Co-operatives on the Inquiry into the Importation of Fertiliser by the Ministry of Agriculture, Livestock and Fisheries through the National Cereals and Produce Board.

The East African Legislative Assembly (EALA) Members will be holding their sessions in the country this coming week. In this regard, there will be no Cabinet Secretaries appearing before Committees to answer questions as is the practice.

Finally, the House Business Committee will reconvene on Tuesday, 22nd November 2016 at the rise of the House to consider business for the coming week.

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

Hon. Speaker: The Chairperson of the Select Committee on the National Government Constituencies Development Fund (NG-CDF) to apprise the House on the status of business pending before the Committee.

DISBURSEMENT OF NATIONAL GOVERNMENT
CONSTITUENCIES DEVELOPMENT FUND

Hon. Lessonet: Hon. Speaker, I stand to apprise the House on the National Government Constituencies Development Fund (NG-CDF). Specifically, it is to apprise the House on the Kshs25 billion which is available to constituencies in this Financial Year 2016/2017. The National Treasury has disbursed Kshs15 billion to the National Government Constituencies Development Fund Board (NG-CDFB).

The Board, to date, has reviewed and approved project proposals for 172 constituencies, that is as at 15th November 2016. For another 72 constituencies, the Board is in the process of reviewing their project proposals. That leaves us with 48 constituencies which are yet to submit their project proposals. I wish that such constituencies can bring their project proposals before the end of this financial year - the 48 constituencies.

The National Government Constituencies Development Fund Board has disbursed 50 per cent to 42 constituencies. Those 42 constituencies are those which were very quick in bringing their project proposals and whose project proposals were approved by the Board two weeks ago. So, 50 per cent of the allocation, which is Kshs40,800,000, has been disbursed to those 42 constituencies. A total of 248 constituencies have each received amounts equivalent to their emergency allocation.

That is the brief I want to give to the House. I do not know if the House has time. I am willing to read the names of those constituencies.

Hon. Members: No.

Hon. Lessonet: If it is not the pleasure of the House that I read, I beg to table this Report. I thank you, Hon. Speaker.

Hon. Speaker: I hope those 48 constituencies that have not submitted their project proposals know themselves, I believe. Even if you may be in the category that has already become former courtesy of certain arrangements in the villages, the projects are for the benefit of constituents. Please, hurry up and make sure the proposals are received before the Board.

(Hon. Lessonet laid the document on the Table)

Next Order.

MOTIONS

APPOINTMENT OF THE CHAIRPERSON OF NACADA

THAT, this House adopts the Report of the Departmental Committee on Administration and National Security on the Vetting of the nominee for

appointment to the position of Chairperson of the Board of the National Authority for the Campaign Against Alcohol and Drug Abuse (NACADA), laid on the Table of the House on Tuesday, November 15, 2016, and pursuant to the provisions of Section 6(1)(a) of the NACADA, Act, 2012 and Standing Order No. 45, approves the appointment of Lt. Col. (Rtd) Julius Ayub Githiri as Chairperson of the Board of the National Authority for the Campaign Against Alcohol and Drug Abuse.

(Hon. Abongotum on 16.11.2016)

(Debate concluded on 16.11.2016 – Afternoon Sitting)

Hon. Speaker: Order Members! Debate on this Motion was concluded yesterday. What remained was to put the Question.

(Question put and agreed to)

REPORT ON THE PARLIAMENTARY SERVICE
(SENATE MONITORING AND EVALUATION)
(PROCEDURES FOR MANAGEMENT OF FUNDS)
REGULATIONS, 2016

THAT, this House considers the Report of the Committee on Delegated Legislation on the Parliamentary Service (Senate Monitoring and Evaluation) (Procedure for Management of Funds) Regulations, 2016, laid on the Table of the House on Thursday, October 27, 2016, and pursuant to the provisions of sections 18 & 19 of the Statutory Instruments Act, 2013 and Standing Order No. 210(4)(b), resolves to annul the Regulations entirely.

(Hon. Cheptumo on 16.11.2016)

(Debate concluded on 16.11.2016 – Afternoon Sitting)

Hon. Speaker: Order Members! In order to be able to follow what is happening, just look at the Order Paper so that you know and it becomes much easier.

Again, debate on this Motion was concluded yesterday. What remains is for me to put the Question.

Hon. Members: Ayees!

Hon. Speaker: What is this? Member for Ugunja, it is a bit---

Hon. Wandayi: It is not me.

Hon. Speaker: It is not you! Eh?

(Laughter)

The Member for Ugunja is a very disciplined Member.

(Applause)

(Question put and agreed to)

(Members stood up)

Hon. Speaker: Order Members! The Members who are on their feet claiming for a division have been counted and found to be only 12 and have fallen short of the number required. You may resume your seats.

(Laughter)

Next Order.

STATUS OF IMPLEMENTATION OF PHASE I AND II
OF THE STANDARD GAUGE RAILWAY

THAT, this House adopts the Report of Departmental Committee on Transport, Works and Housing on the inquiry into the status of implementation of Phase I and II of the Standard Gauge Railway(SGR), laid on the Table of the House on Tuesday, October 4, 2016.

(Hon. Kamanda on 16.11.2016)

(Debate concluded on 16.11.2016 – Afternoon Sitting)

Hon. Speaker: Order Members, the Member for Kandara if you could take your seat or remain frozen.

Again, if you look at the Order Paper, debate was concluded and what remains is for me to put the Question.

(Question put and agreed to)

Next Order!

BILL

Second Reading

THE CONTEMPT OF COURT BILL

Hon. A.B Duale: Hon. Speaker, I beg to move that the Contempt of Court Bill 2016 be now read a Second Time.

Hon. Speaker, this Bill seeks to define “contempt of court” and to limit the power of the court to punish for contempt. This is a very important Bill.

Hon. Speaker: Hon. Members, I can see there are many of you, who have issues related to 8th August, 2017 but even if you must go and attend to them, please do so in silence so that others who want to deal with the business can transact it in peace.

Hon. A.B Duale: Thank you, Hon. Speaker. This Bill seeks to define what should be legitimately prohibited by the court, to clarify the role regarding disclosure of source and to impose procedural norms of fairness in contempt process.

We must know what “contempt of court” is. This is a matter which has not been defined. This Bill touches on a number of key sectors and even touches on the Bill of Rights. To what extent can you exercise the Bill of Rights? The Judiciary, under the current definition of contempt of court, can sometimes infringe on the rights of the citizens as enshrined in the Constitution. So, in Kenya, what amounts to contempt has been subjected to different interpretations by our courts. This has had a fearful impact on the public. It has even created fear among journalists or citizens who voice their opinion on a particular judgement of the court when they feel otherwise. So, the judgement of a particular court will be cited for contempt. A judge can claim; “You said that outside court and that amounts to contempt.”

Hon. Speaker, contempt of court has a significant impact on journalism in the form of restrictions on court reporting. The courts as we see them today and the Judiciary under a new dispensation must open up its corridors and proceedings to the public. Under the contempt of court process in our country, journalists who have been assigned to report on what is going on in the corridors of justice have had their fair share of serious problems. That is why this Bill, through this House, can define the boundaries, levels, interpretations and definitions of what constitutes a contempt of court.

Freedom of conscience, expression, assembly association and political participation are coherent elements of the type of society that has been contemplated in the Constitution. That freedom also underlines the importance of public scrutiny of the process of governance and, in particular, the administration of justice.

Hon. Speaker, the administration of justice must also be ready for public scrutiny through reporting by journalists. Looking at this whole concept, the International Human Rights Law has mentioned that when balancing the rights of free speech with the principle of the authority of the Judiciary, the question that begs should be whether the prohibition is necessary in a democratic society.

It means the international law experts have argued on how to balance the principle of free speech and reporting from the corridors of justice with that of upholding the independence of the Judiciary. How do we create a balance?

On this, the Kenyan law has hitherto resulted in a killing of freedom of speech, expressions and information on matters of public interest. A number of issues on matters of public interest have been gagged by the courts and raised issues on citizens on how that discussion can take place. So, as we agree that there are times when the contempt of court can be imposed, what are the limits? Can we define it? So, this House can define and this is the role of the Legislature. Contempt of court often referred as to “contempt” in Kenya is the offence of being disobedient or disrespectful towards a court of law and its officers in the form of a behavior that opposes or defies their authority.

Contempt of court refers to actions which impede the ability of the court to perform its functions. It manifests itself in a willful behavior that is illegal because it does not obey or respect the rules of the court.

There are certain times when the free media and citizens want to exercise their conscience; free expression, assembly, association and a political participation and the matter is in court. The citizens cannot express themselves because they are told the judge or the magistrate will impose contempt of court on that institution or that individual. What precipitated this Bill is this: Does the interpretation of the contempt of court exclude the right of that judge or anybody within the Judiciary? Can the House and the Legislature define that contempt of court?

Our finding of being in contempt of court may result from failure to obey a lawful order of a court or showing disrespect to the judge, disruption of proceedings through bad behaviour, publication of material or non-disclosure of material which, in doing so, is deemed likely to jeopardize a fair trial. Contempt of court is when you interfere with trial proceedings, show some disrespect to the judge, disobey a lawful order of the courts or produce a publication of a material or disclosure of a prohibited material. We have no problem with that. That is what other jurisdictions see as a contempt of court.

You can walk into a court of law and you feel you want to report on that matter and you have no clear guidance on up to what level you can report. That is because there is a blanket rule of contempt of court on journalists who report on that. So, this is one of the Bills that the Legislature must grapple with and say: "At what level can a court say that you have acted in contempt of court? You are fined for being in contempt of court as a result of this and that."

The law of contempt is essentially concerned with interference with the administration of justice and, therefore, justice in itself that is flouted by contempt of court and not an individual court or judge who is attempting to administer. So, the contempt of court is flouted on the institution and not on the individual judge or the individual court.

Contempt takes two forms - criminal contempt and civil contempt. Civil contempt involves acts of omission such as disobeying the direction of a court. When the court gives direction to a particular litigant or to an institution, that acts of omission by disobeying the direction given to a person by the court constitutes civil contempt. Criminal contempt includes anything that could be called disturbance such as repeatedly talking out of the terms, bringing forth previous banned evidence or harassment of any other party in the court room. So, it is well defined. Where you create disturbance and harassment of either a witness or any other person in the courtroom, that is criminal contempt. That is in the definition that is given by other jurisdictions. Whether we borrow from them or not, it is different. If I go to the Bill itself, Part I deals with preliminary matters.

Clause 3 sets out the objectives of the Bill which are to uphold the dignity and authority of the court. So, we are still upholding the dignity and authority of the court. However, we do not want the court to abuse the powers given to it under an independent Judiciary and to fish out every now and then the journalists and citizens in the guise of contempt of court. It ensures compliance with the direction of the court, the observance and the respect of the due process of law, preserves the effective and the impartial system of justice and maintains public confidence in the administration of justice.

Clause 4 is where we start with how to define the contempt of court. It defines what contempt of court constitutes. Part II of the Bill sets out the jurisdictions of the courts in punishing contempt of court and provides for the institution of proceedings. So, Part II deals with the jurisdictions of the court in terms of punishing when you are in contempt of court.

Part III of the Bill specifies the defences to contempt of court and this includes failure to comment made in good faith. If you make a fair comment in good faith of a matter before the court or the publication of a fair and accurate input--- If a journalist makes an analysis of the

proceedings in court for public consumption, that is also given in Part III. It can become a defence to contempt of court proceedings where the journalist feels that he would do a fair and accurate publication or a story of a proceeding in court. A true declaration made in good faith is allowed. If a member of the public makes a declaration in good faith, that does not constitute a contempt of court.

A publication of a fair and relevant observation made in the administration capacity by any authority in the course of the official functions can be used as a defence. Lawyers, litigant and witnesses, if they make a fair and relevant observation during the proceedings, that can be a defence for that litigant lawyer, witness or that member of the public. It can be a defence to contempt of court, but the Bill provides for contempt of court proceedings. It provides for High Court to punish for contempt in subordinate courts and sets out the procedure where the contempt is in a superior court. So, that part also deals with the definition and procedure in which a contempt of court will be disposed of either in the High Court or in a superior court.

Clause 35 of the Bill sets out various offences and penalties. They include being involved in assaulting, intimidating and insulting a judge. It is not for the judge to decide. A judge can say you are intimidating or you have insulted him or her. It is the discretion of the judge to decide the penalty. So, the penalties are set out in Part V. If a judge says you have intimidated or you are insulting, then we would put the penalties that I know. He or she would not just say: "Because you insulted me, I will fine you Kshs2 million and six months in jail."

Part V deals with various offences and penalties. A judicial officer or a witness during a proceeding is a witness and a judicial officer or a lawyer during proceedings. We have cases where judges have chased away lawyers or witnesses from their courtrooms saying they are insulting, intimidating or assaulting.

Hon. Speaker, if any judicial officer, witness, litigant or any citizen - including journalists - who their daily work is in the corridors of justice fall victim where a judge says they have done this or that, the kinds of penalties and offences are well documented. If a judge accuses a litigant or a member of the public of attempting to influence a witness, disobeying an order or direction of a court or dismissing a servant because he has no evidence on behalf of a party or a judicial process, this Bill in Clause 5 sets out various offences and penalties that can be used against any person as far as contempt of court is concerned.

Part VI contains miscellaneous provisions. It gives courts power to revise an order made by a judicial officer and review it on its own. The schedule specifies the times. It is a small Bill and it is good for the country because of the fundamental principles found in the Bill of Rights where citizens, journalists or any member of the public can enjoy the freedoms of conscience, expression, assembly, association and political participation which are inherent in our Constitution and, at the same time, avoid contempt of court.

I ask Hon. Cheptumo to second.

Hon. Speaker: Hon. Cheptumo.

Hon. Cheptumo: Thank you Hon. Speaker. I wish to second this Bill by saying that the Constitution guarantees the Kenyan people the freedom of expression and association. Those freedoms are necessary for Kenyans to express their will in whatever issues they have. The principle of contempt of court has been in some occasions used by the courts to deny Kenyans freedom of expression. In some cases, some Kenyans have not been able to express their opinion in certain areas because of fear of the principle of contempt of court. This law, in my considered opinion, is now going to set the record clear so that any Kenyan, when faced with a situation of whether he is guilty of contempt of court or not, shall have the principles set out.

Part III of this Bill, particularly Section 4, defines what contempt of court includes. This is the first time - and I am saying this as a lawyer - that the concept of contempt of court has been defined. The ambiguity which used to exist in this principle is clarified, whether one is facing contempt of court or civil proceedings or in criminal contempt. It is now defined under Section 4. I like this because we are now able to distinguish and know what contempt of court in civil and criminal proceedings is all about.

More importantly, is the defences that one can raise when he or she is accused of contempt of court. Section 9(a) all the way to (j) outlines very clearly the defences that can be raised in a situation where he or she is accused of contempt of court.

I support this Bill because the ambiguity which we have always suffered under that principle is clarified in this Bill. Even this House, as you are aware, has been gagged and told not to debate this or that because we will be in contempt of court. So, this Bill comes forth to make it clear to the Kenyan people, this House and to you, Hon. Speaker and Members of this House, so that nobody fears when you are supposed to make a comment on issues because you will have been told the aspects which constitute criminal or civil contempt.

Section 8 says:

“Proceedings for contempt of court shall not be instituted except by or with the consent of the Director of Public Prosecutions or on a motion of a court having jurisdiction to deal with criminal contempt of court.”

This is a good departure from what used to happen. Before proceedings of criminal contempt are instituted, the Director of Public Prosecutions will have satisfied himself that, that can constitute criminal contempt of court in criminal cases.

I support the Bill and as a House, we should do so. I am proud that I am part of this 11th Parliament that is able to clarify some of the areas of our laws which have not been clear, so that Kenyans can enjoy to the fullest the provisions of our Constitution on freedom of expression. They can say what they have to say not being fearful that they will be cited for contempt of court even in cases where they are not liable. It is a principle which has been misused. Even a judge sitting in a court of law can actually use this principle to deny Kenyans their freedom to express their ideas in cases pending either in court or which are perceived to be pending in court.

I appeal to my colleagues that this is a good law and let us pass it. It is going to benefit all of us - you included - because it is going to clarify areas that have not been very clear in our legal system.

Thank you, Hon. Speaker. I second.

(Question proposed)

(Hon. Anyango stood up in his place)

Hon. Speaker: Member for Luanda.

Hon. Omulele: Thank you very much, Hon. Speaker, for giving me this opportunity to speak to this very important Bill. At the outset, this is a Bill that is long overdue since the time Kenya gained Independence from the British or the UK in 1963. We have had situations in our courts where matters have arisen that amount to situations that are contemplated in this Bill to be contemptuous of either the presiding officers of those courts or the proceedings of those courts. We have not had a codified approach to dealing with these matters. I want to thank the Mover for having brought this Bill at this time because, for the first time, we will have a codified way to

approach matters of contempt of court. The courts have attempted to deal with situations of contempt and we have had diversified ways of dealing with these matters. In some situations, punishments have been so diverse and they have amounted to an encroachment of the constitutional safeguards of the people who have been faced with situations of contempt of court. It is very good that now we have a very clear definition of what contempt of court is. We also have a very clear definition of what the offence of contempt encapsulates. It is also very good that we have a very clear definition of what defences one may want to use when faced or accused of being contemptuous of court proceedings.

Hon. Speaker, this Bill is overdue. Previously, when an advocate or any party to proceedings has had a need to bring proceedings of contempt against a person who has wilfully disobeyed court orders, one has had to seek leave of the High Court to commence those proceedings. That has been under the Judicature Act Section 5 thereof. One has had to file those other proceedings outside the real proceedings of contempt. One has had to pass through another way before he could bring contempt of court proceedings. In this situation, under this Act, we will have a very clear definition of the procedural actions that one will take when he alleges or feels that a party is contemptuous of court proceedings or a court order.

It is also good that the subordinate courts have been given powers to deal with contempt on the face of the court. The contempt on the face of the court has been defined as such situations where a person insults, disobeys or openly disrupts the proceedings of the subordinate courts. Every other civil contempt, where people disobey court orders or refuse to respond to summons or when they have been summoned, they do not obey clear directions of the court, it has been defined how they shall be dealt with. They shall be dealt with by the High Court. It is a very good thing.

Kenyans, who are the consumers of the judicial process in this country, will know where they are placed when it comes to matters of contempt of court. They will also know how to behave and which behaviour in those judicial processes would amount to contempt of court. It has not been clear to Kenyans exactly what behaviour would amount to contempt of court. When they have been cited for contempt of court, the punishment and penalties have not been clear as to what they would be such that this has been left to individual judicial officers and judges who have, sometimes, gone overboard to extremely punish, so that the whole idea of punishment in contempt proceedings has amounted to an abuse of the process itself.

I wish to support this Bill and urge my brothers and sisters to support it so that we have a clear law on this. With those few remarks, I support the Bill.

Hon. Speaker: Let us have the Member for Saku.

Hon. Dido: Thank you very much, Hon. Speaker, for giving me this opportunity. I rise to support this Bill. This is a very important Bill. This Bill is indicative of the progressive nature of our Constitution and lawmaking. This Bill sheds new light on what has always appeared to be foreign to us as we approach our courts because our people appear before courts with fear and intimidation. There is also the strange aura of courts, not just to the ordinary public, but also to the media that is supposed to inform, educate and publicize things - whether they are good or bad - for the consumption of the general public.

This Bill peels off the mask on what contempt of court has always been about. This Bill operationalises the Constitution of Kenya 2010, particularly in the Bill of Rights. In Article 20 of the Constitution under the Bill of Rights, it applies to all laws and binds all State organs and all persons. This also brings to the fore that our courts are part of those institutions that must respect, obey and believe in the Bill of Rights.

Article 23 of our Constitution is on the authority of courts to uphold and enforce the Bill of Rights. This, therefore, is indicative that our courts are at the forefront in ensuring that the rights of individuals are respected. The purpose of the Bill of Rights is to provide social justice. In this particular case, as we go to the Third Reading Stage of the Contempt of Court Bill, we must avoid contradiction on the part of this Bill.

I invite you to read Clause 10 of this Bill on the strict liability rule. In this Act, the strict liability rule means the rule of law whereby conduct may be treated as contempt of court as tending to interfere with the course of justice in particular legal proceedings regardless of intent to do so. In Clause 13 on defence of innocent publications or distribution, a person is not guilty of contempt of court under the strict liability rule if that person has published any matter which interferes or tends to interfere with or obstructs or intends to obstruct the course of justice in connection with any civil or criminal proceedings pending at any time of publication, if at that time, that person has no reasonable grounds to believe that the proceedings were pending.

Hon. Speaker, if you compare Clauses 10 and 13, and as we make this law, we must ensure that there is no contradiction between any parts of this Bill. While reading this Bill, I noticed that it is a delicate balance. It is a question of the chicken and the egg. It says that a person is not guilty of contempt of court for publishing any fair comment on the merits of any case which has been heard and determined. How often are those comments in newspapers fair and innocent? When do they become contempt of court? Sometimes we leave those comments to be interpreted by individuals.

I have serious concerns on Clause 19 on the use of recording devices. In this day and age, in an open court and as long as the court does not sit in camera, the court proceedings should be recorded. Otherwise, it is an infringement on the right to access to information and the Bill of Rights. We must be careful on that part. I am also glad they have captured sources of information. When a witness feels that they should not divulge information to the court that does not constitute contempt of court.

I know Kenyans are happy with this Bill because it defines the offences that constitute contempt of court. These include threatening and intimidating the judicial officer or the judge, wilfully without lawful excuse disobeys and causes obstructions or disturbances in the course of a judicial proceeding. Interference with the court of justice constitutes contempt of court. This Bill gives us a position where we feel that as we develop this understanding, we are clear about the offences that constitute contempt of court, particularly politicians who make innocent comments on the happenings of the court or media operators who report court proceedings.

With those few remarks, I support.

Hon. Speaker: Member for Kanduyi.

Hon. Wamunyinyi: Thank you, Hon. Speaker for giving me the opportunity to contribute to this important Bill. The Bill seeks to define contempt of court and limit the power of the court to punish contempt. One of the worst cases that one can ever face in court is contempt because the complainant is the court. You will have offended the court, which will listen to your case. You will be at the mercy of the court. It will be awkward to appear before the officer you have disregarded and sometimes it is difficult to obtain justice. This Bill is timely because it gives the approach of dealing with cases of contempt of court. In many cases, contempt of court emanate from orders given by the court. I have seen a case where an injunction is obtained pending a hearing which takes about three to five years to be concluded even when one has been stopped from undertaking an important development. They say justice delayed is justice denied. Sometimes people end up doing things that are seen as disrespectful to courts

when that is not the case. I am happy the offences that constitute contempt of court have been clearly outlined in this Bill. The administration of this case has also been made clear.

In Kenya, matters pending in courts take a long time to be concluded. Recently, I saw in newspapers cases that have been pending in court since 1960s, for example, cases of the families of Mbiu Koinange and Charles Njonjo. Why should a case remain pending in court for all that time without being disposed of? There must be something wrong. I am happy to learn that the new Chief Justice is re-organising and restructuring the Judiciary to ensure that service delivery is effective and efficient.

I feel that the issue of cases of contempt of court going before the complainant court should have been looked into. If a lower court is the complainant, a higher court should hear the case. If it is the High Court, a different judge should hear the case. If you are the complainant, it is only fair that another person hears the case. It is only fair if the Judiciary is strengthened to ensure that there is fair administration of justice and people are served without delay.

Some of the things we find difficult and which need to be looked into involve Article 23 of the Constitution regarding the Bill of Rights as cited by my colleagues. It is not necessarily contempt of court, but even in some cases where one is charged in court, when they relate to public affairs and activities, it amounts to interfering with one's rights. So, clearly, there has to be a separation and the court should help us to ensure that the Bill of Rights is not interfered with.

People's rights is one of the strong points in a democracy and this can only be assured when courts ensure that while they administer criminal charges, they balance to ensure that no party feels that their rights have been violated.

I wish to support this Bill and urge colleagues to do the same so that we can move and pass it and ensure that people who have suffered in the past under unclear circumstances do not have to go through this again. One time I was accused of contempt of court and I survived narrowly, yet I did not commit it. I hope this does not happen to any Kenyan.

With those few remarks, I wish to thank you for giving me the opportunity to support the Bill.

Hon. Speaker: Member for Kipipiri.

Hon. Gichigi: Thank you, Hon. Speaker, for giving me this chance. I also wish to support the enactment of this Bill. This animal called "contempt of court" has been mysterious and many people do not understand what it is and how to deal with it. Previously, we did not have a clear law on contempt of court and we have been relying on precedents and common law from the United Kingdom. If this Bill is passed, people will have a point of reference instead of the mumble jumble of court decisions in the past.

I am happy that "contempt" is defined in this Bill, but we also need to refine the Bill a bit. I have had a look at Clause 6, which says: it is contempt of court if somebody:

"assaults, threatens, intimidates or wilfully insults a judicial officer ...or in going to or returning from the court to whom any relevant proceedings relate."

We would want to restrict contempt of court to be within the court precincts such that if people meet out there with judicial officers and, maybe, an altercation happens that, perhaps, does not relate to the matter that is going on in court and somebody should not be subjected to contempt of court.

Clause 6(b) says: "wilfully interrupts or obstructs the proceedings of a subordinate court." Even that needs to be amended so that it refers to a court that is actually sitting. If it is

interpreted widely or liberally, it can mean that even a person who is not within court is interrupting the proceedings of that particular court.

I am also happy that this provision is clear that if a person disobeys a court order because he did not know and that it is not wilful, that person is not subjected to contempt of court. The other issue that needs to be dealt with, and I think I will move an amendment, is when it comes to contempt of court in the presence of the judge or during proceedings and there is this business of courts simply sentencing a person, fining him or jailing him. That person should be given a chance to be heard. In all circumstances, because contempt of court is in nature a criminal proceeding, even if somebody did something in the presence of a magistrate or a judge, before such a person is sentenced, they should be given a chance to be heard. It is also important that the judge cools his or her tempers before making that particular decision. This is because if sentencing is done at the heat of the moment, then, obviously, there can be a problem of temperament. I suggest that we put a provision that requires a magistrate or a judge to give the contemnor a chance to defend himself or herself and also record proper proceedings.

Sometimes, we see situations in court where because, maybe, a phone has rang, the magistrate or judge just says that that person should be put inside the cells without giving him or her a chance to explain why his or her phone was ringing in court.

The other issue that needs to be dealt with is the situation where judges should not commit people to prison in situations where a person is not able to comply with the court order that has been issued. There are certain provisions in this Bill that appear to protect the dignity of the court without considering the rights of the person cited for contempt. My proposal would be that if somebody did not intend to cause harm, lower the dignity of the court or injure the reputation of the judicial officer and that it just happened accidentally, that person should not be cited for contempt.

There is this tendency to commit Accounting Officers of Ministries to jail because, maybe, the Ministry has failed to pay against a certain decree or judgement. The poor Principle Secretary (PS) or any other Accounting Officer is not the one who is supposed to pay that money from his pocket. If the Government, for example, fails to provide the money to pay for those judgements and then this Government officer is put in jail, sometimes, I think it is not a fair provision and we need to take care of that. That before such action is taken, that person should be given a chance and sanctions should be visited on the Government in terms of, perhaps, attachment rather than a situation where a person who is innocent is sentenced to jail.

The other thing is that courts should not issue orders that put the person intended to obey them in very difficult circumstances. For example, if you have fired your watchman and then the court says that you must reinstate such a person, how do you live with such a person? If you fail to comply with that court order, you are put in jail. We are asking the courts to also be reasonable and look at the wider picture such that they do not visit injustice on people who, otherwise, are innocent.

I support this Bill, but I tell the Judiciary not to use this law to glorify themselves for personal ends or because of their temperaments.

Hon. Speaker: Member for Githunguri.

Hon. Baiya: Thank you, Hon. Speaker. I also rise to support this Bill. As has been observed by some of the speakers who have spoken before me, this Bill attempts to consolidate the laws on contempt under one statute. It is a marked improvement from the old laws of contempt. For instance, it seeks to amend Section 5 of the Judicature Act, Cap. 8 of the Laws of Kenya. That old law invoked the law of contempt of the High Court of Justice in England to the

Kenyan jurisdiction. The problem is that this approach to legislation by making reference to legislation in England does not take into account development of the law in the other jurisdictions. It is also not based on local jurisprudence, which we should basically be trying to develop. This made the law of contempt very complicated.

It is true that courts would give very conflicting decisions. The fears were real that courts sought to use the law of contempt to over-protect themselves. We have notable cases showing that courts were mainly gagging opinions that were critical to them. In particular, we have the famous Court of Appeal Case where a journalist was sentenced to jail and yet on the substance of allegations, whether there was element of contempt, there was a substantial measure of truth. In fact, that was the feeling of many people. Therefore, to allow a situation where citizen's legitimate criticism of the court is criminalised is to be incompatible with a society that seeks to uphold justice, democracy and the rule of law. I have seen that various provisions of the Bill, indeed, recognise that the overriding objective of the Bill is to protect and preserve the process of administration of justice, dignity of the court and in a manner that also upholds all the other democratic rights of the citizens. It safeguards against the attempt to gag fair and legitimate criticism even of the conduct of judicial officers, which conduct may be found wanting.

The process has also been fairly simplified. Indeed, it still recognises the old principles of punishment for contempt. Most importantly, it invokes clear provisions of the Constitution such as Article 47 on the right to fair administrative procedure. It, therefore, safeguards against some of the abuses we have witnessed in terms of perceived or alleged contempt of court. Some magistrates unleash their powers upon citizens, sometimes innocent ones, leading to a situation where the court is seen as an instrument of coercion and oppression. This law is in keeping with the spirit of the new Constitution, which envisages that the power exercised by the Judiciary ultimately belongs to the people and should be exercised on their behalf and in accordance with the principles set out in the Constitution and the various laws. The judicial officer should not be seen to be venting any anger while acting in terms of exercising the power to punish for contempt. Indeed, the overriding concern is protection of the administration of justice, respect for the court system and ultimately clear demonstration that the conduct of the court is to enforce the rule of law in a democratic society.

In view of this, I can see that there are some proposals that we will possibly require to review. This Bill is going through the First Reading. I am sure the law will be referred to the relevant Departmental Committee, which I believe is the Departmental Committee on Justice and Legal Affairs. Some of the draconian proposals on punishment should be reviewed in order for them to balance with the other constitutional rights granted to the Kenyan people. I am sure we shall look at this and, if need be, possibly, even bring the right amendment at the appropriate stage. When it comes to punishment, there is clear need for certainty and some balance, be it in criminal or civil contempt. The idea is not to inflict cruel consequences on the person accused of having committed contempt. Yet, again, it should be seen to be enhancing respect for the law and ensure that ultimately there is compliance. It is not about merely being seen to unleash punishment that in some cases has been noted to be completely incongruent with the offence alleged to have been committed.

In this respect, it is quite clear that a second look by the National Assembly at the legislative proposal suggested, especially with regard to punishment, should be done to make sure that these punishments match the gravity of the offence. For instance, with regard to defences, indeed, the principle of strict liability is not a defence, namely, that you did not know you were in contempt. Whereas that may not be a defence, there is no reason as to why it should

not be a factor when it comes to passing of sentence. For somebody who clearly demonstrates that he is guilty by virtue of strict liability, but turned out not to have been intentionally contemptuous, really, there is no reason for punishing them in the same measure as somebody who engages in an act of contempt that deliberately inhibits justice.

Hon. Speaker: Member for Kajiado North?

Hon. Manje: Thank you, Hon. Speaker, for giving me this chance to support this Contempt of Court Bill. It is the first time in the country that we are putting this common law of contempt of court in writing, so that it can clarify the handicap that has been there.

It is good to note that this Bill will clarify what constitutes contempt of court and what does not. It is a good Bill that will give clarity to what was not there. It also provides how court orders will be enforced and that will increase the capacity for administration of justice in this country. Initially, the application of it entirely depended on the past ruling of cases. This will be handy in strengthening our legal systems.

But it has a caveat. In most cases, you will find that some of these court orders will be there to defeat justice. It is high time Kenyans realised that we have to submit to the rule of law because the opposite is not good. It has been developed over years. It has been known that it is good when you obey, respect and submit to the rule of law as opposed to the opposite because the opposite is anarchy and it is not good for development.

Given the situations that we sometimes find in courts where cases proceed for many years and the basis for the delay is not well explained, you are likely to find some people absconding going to court. That might not translate to contempt of court, but at times, people reach a situation where they feel that justice is not being applied.

It should also be noted that for this law to be of benefit, the people applying it like judges should be forthright and apply it accordingly. You can have a very good Act, but the people implementing it might have some problems. That is why we sometimes have a lot of problems in our country.

I support this Bill.

Hon. Speaker: Hon. Wangamati.

Hon. Wangamati: Thank you, Hon. Speaker, for giving me this chance that I may also comment on this important Bill. It allays some fears that many of our people have with contempt of court. I have lived a little longer and I have seen that when somebody is summoned to appear in court for contempt of court, he even thinks of running away from Kenya to Uganda. You know this, Hon. Speaker because you have been there. He goes there and lives there for a while, but today, this Bill seeks to look into that. Our people can rest assured that if the court takes it the way it is, our people will have confidence in our courts. Even if they say it is contempt of court, you can go and explain and state why it has been like that.

Many Members have talked about it. The lawyers have talked about it. I can see Hon. Kaluma preparing to talk about the issue in detail. However, there is one thing which disturbs us in courts. When a crime has been committed against someone, we have always had the police representing us in court and they prosecute on our behalf. When they go to court, they meet lawyers. The lawyers just play their own knowledge on it and cases normally end up dismissed or they go like that. I do not know what the Government is doing because we are becoming a little bit more elite in this country. This should also be looked into. Otherwise, I am quite happy with the Bill. It will give us some break, so that we can start having confidence in our courts.

With those few remarks, I support.

Hon. Speaker: Member for Gatanga Constituency.

Hon. (Dr.) H.K. Njuguna: Thank you, Hon. Speaker. I want to echo the feelings of Members who have spoken before me in supporting this Bill. The issue of contempt of court has been an enigma in this country. Many people have suffered perhaps because of lack of proper interpretation of what constitutes contempt of court. To the extent that this Bill attempts to define contempt of court, what instances one can be punished by the courts for it and the defence one can put up in the face of such proceedings, I support this Bill. I take note of Clause 3 of the Bill that tends to define the objects of the Bill.

We basically live in a society where we uphold the rule of law. Upholding the rule of law will mean upholding the dignity and the authority of courts, compliance with the directions of the court, respect for the due process of court and maintaining confidence in the administration of justice. These are some of the objects the Bill puts forward as the principal objects that it seeks to promote.

To that extent, I support the Bill because the whole concept of the rule of law is upholding order in society. If we cannot respect the court process or respect court orders, the rule of law will not prevail in such circumstances. Clause 3 tends to uphold the fact that we must uphold the rule of law at all times.

If you go to Clause 4, it defines what contempt of court will constitute in this Bill. When one looks at Clause 4(a), contempt of court for civil matters will mean wilful disobedience. This is a situation where the court has given orders, direction or decree, but one chooses to wilfully disobey. That means you are doing it intentionally. In such cases, therefore, that is contempt. When one looks at Clause 4(b) on what constitutes criminal contempt, the Bill is very clear. In such cases, there must be publication in words spoken, written or signs. The key word here is publication. This is where one has done some publication. This is perhaps equivalent to what we call defamation.

Clause 10 is about strict liability. In this Bill, strict liability is defined as where there is a publication. So, whether intentional or otherwise, you are strictly liable. The question of strict liability in criminal matters in terms of contempt is defined. Clause 9 is on defence to matters of contempt of court and it is very clear. It talks of fair comment. This is where, perhaps, you have commented fairly on matters before the court. We are giving a human face to the judicial process. This is where, perhaps, there is a matter before the court and you make a fair comment. So, Clause 9 defines what constitutes a fair comment in the judicial orders. In such a case, if you are accused of contempt of court, then you can bring out all those issues listed here under Clause 9 on what can constitute a fair comment. In the past, a lot of people have suffered before the court on what could be termed as fair comments. The Bill is clear because it allows you to make comments that will appear fair without being criticised. We must give the judicial process a human face such that people are allowed to make fair comments. If we are making fair comments on matters before Parliament or even the Executive, then the Judiciary should accept the fact that the same can apply to them. There are narratives of what would constitute a fair comment in this Bill and I find them credible.

I have looked at Clause 10 which is on strict liability. I concur with Hon. Gichigi that when one is accused of strict liability, where whether you made your comments intentionally or otherwise, you are liable in law. There are also times when you could be accused of strict liability and yet it was not intentional. In such instances, should you suffer the same fate as those who made their comments intentionally? As Hon. Gichigi put it, in this case, one was not aware. In a case of strict liability, perhaps, there should be a lesser sentence. However, to the extent that this Bill demystifies the issue of contempt of court and goes ahead to define it, I support it.

Hon. Speaker: Let us have the Member for Mvita.

Hon. Nassir: Thank you, Hon. Speaker. I wish to do more research on the Bill and that is why I removed my card.

Hon. Speaker: I see. Could we then hear Hon. Kaluma?

Hon. Kaluma: Thank you, Hon. Speaker. Among our national values and principles of governance is the rule of law. If we take time and read Article 10 of the Constitution, we will notice that. An element of the rule of law is that all Kenyans, whatever their station in life, are subject to the due process of the law as administered by our courts of law. This is so that whether it is Hon. Kaluma or the people I represent in Homa Bay, if we are at fault with the law, we are subject to the courts and the decisions that courts make.

This Contempt of Court Bill will join the list of the very many good Bills that the 11th Parliament is going into history as the Parliament which has had courage to bring up. The law of contempt of court in Kenya is still dependant on the law in England. The substantive law on contempt is something anybody seeking to research on law has to go through several pieces of legislation, to an extent that for legal practitioners, you do not know ultimately where to put your hand when you have a situation of contempt.

You could refer to the Judicature Act that this Bill seeks to repeal. A mere Section 5 has been treated as a substantive law. Section 5 of the Judicature Act refers you to the procedure regarding contempt of law, which currently is Order 52 of the English Supreme Court Practice Rules. Therefore, in terms of our treatment of this law, we are still going to England. You have contempt of injunctions being provided for under Order 40 of the same procedure rules, but again, in terms of injunctions only. A realm of contempt which has not been treated properly is what this Bill is seeking to deal with. I am talking about contempt in the face of the court, that is, contempt *in facie curiae* or the area of criminal content. For once, this law seeks to be one-stop legislation for all matters dealing with contempt, whether it is contempt of a court order in the nature of civil contempt or contempt by the fact that you have insulted the authority of the courts or you have undermined the court in the course of its proceedings. We have had cases where accused persons even throw faeces at courts of law and yet the courts do not know how to deal with them. So, you have a situation in which a judicial officer is being abused in the course of proceedings. There are cases where a magistrate is attacked in his or her person, but essentially, because of want of clarity on matters to do with contempt we have had difficulties dealing with that.

Hon. Speaker, we are legislating the entire law on contempt. There has been a bit of clarity even though we go through several pieces of legislation in the area of contempt committed by individual persons. However, it has not been clear how you treat contempt by companies or bodies corporate. In such cases, do you go for the Accounting Officer, the PS or do you go for the CS in charge of the Ministry that is engaging in an act we consider contemptuous? What is the procedure? For once, this Bill is making it clear. Where you have a parastatal or a Government institution being contemptuous of court process, this Bill makes it clear how you would process that matter. The Bill tells you that you will first give notice. It goes ahead to propose a period, which I would like to request the Departmental Committee on Justice and Legal Affairs to substantially reduce. This is because to require a party against whom a Government agency is committing contempt to give a whole 90 day period before he can move court for leave to actionise an action for contempt, is deliberately very long. For once, it is being made clear to you that in that situation where it is a Government institution in contempt, then,

you go for the Accounting Officer. There is a notice you issue to the Attorney-General and to the Accounting Officer of the agency of Government concerned.

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

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

Where other companies are involved, whether private or public, then there is no way you can commit a company to jail. So, for such inanimate bodies, the law is making it clear that you will go for the officers of the company, say, the director of the company who is to blame for that action in contempt. The punishments for criminal contempt are put at very lenient level recognising that while you can deal with contempt *in facie curiae* like where you assault a judicial officer in the course of proceedings, the judicial officer can intervene and deal with it straight away. Remember, it also states that it is up to a maximum fine of Kshs200,000. This means that the judicial officer, depending on the extent of aberration, can even put it at Kshs10,000 or zero money and leave it at the level of a caution. So, there is a lot of latitude being given in terms of this law.

There is the procedure for contempt, more so, contempt *in facie curiae*, contempt in the face of the court or criminal contempt. If I were to call a judicial officer “stupid” in the course of proceedings, whether as an advocate or a party, or if I were just to get into the emotions of the parties as an advocate of a party and assault a judicial officer, how am I to be dealt with? One thing that this Bill says which is very nice is that there would be full salutation with the court to the doctrine of being subjected to due process and then, most importantly, Article 47. Fair administrative action will come into play so that it can be processed.

The judicial officer, if it is a subordinate court, this Bill says a very good thing, that you may be thrown into custody for even half a day and the judicial officer has the power to undertake revisions. You can be called back. If you have a challenge, you can go to the High Court and it can intervene in the matter by way of revision in the manner we approach our criminal processes. But in terms of the High Court contempt in the face of the court, the Bill provides also a very beautiful thing that the High Court will have power to review, so that instead of appealing in those grave cases, you can go back to the judicial officer and request the very judicial officer or the very judge of the High Court to have a second look at the decision. If satisfactorily convinced, he or she can either find that there was no contempt or reduce the punishment for it. For once, we have a Bill that is going to assist the legal practice realm and the rule of law implementation in our country in a very big way.

We passed various pieces of legislation on the matter of the organisation and administration of the court systems in the country. The Members will remember that we passed the Magistrates’ Courts (Organization and Administration) Act, the High Court (Organisation and Administration) Act and the Court of Appeal (Organisation and Administration) Act a short while ago. We had a lot of agony and Hon. Kang’ata will confirm as to whether within the context of those pieces of legislation, we have to create provisions in terms of contempt. We ended up with a situation in which for each level or type of court, we are creating provisions in terms of contempt. I have, therefore, proposed in our Committee, and I hope the Committee will

process some amendments at the Third Reading, to collapse all those laws. So that in terms of contempt, this is the only material we will constantly refer to.

I urge the Members of this House that in keeping with several firsts that we have had as the 11th Parliament, to process this Bill through. We have taken a lot of time as Members of the Departmental Committee on Justice and Legal Affairs looking at this Bill. I can assure the Members that leaving aside a few semantical and typographical issues over which we need a bit of clarity, this is the best piece of legislation.

As I end, because I can see I am already being flagged in terms of time, let me thank the process through which this Bill went. Sitting in the Justice and Legal Affairs Committee, this is the best draft Bill we have had being tabled in this Parliament. It covers so much. The language is simple, the clarity is very good and it is comprehensive.

The Temporary Deputy Speaker (Hon. Shebesh): Hon. Kaluma, I think you have done very well. I now give the Floor to the Member for Vihiga, Hon. Chanzu.

Hon. Chanzu: Thank you, Hon. Temporary Deputy Speaker for the opportunity to support the Contempt of Court Bill, National Assembly, Bill. No.32 of 2016.

The most important thing in whatever we are doing now is to consider the stage we have reached as a nation. It has taken us since 1963 up to now, which is over 50 years since we got Independence. Previously, we have relied on laws that were made from other jurisdictions, which were amended to suit our situation. However, as we develop, even if you look at our Constitution, it allows for openness and quite a lot of things. It is important that we get to a level where people can understand and predict the consequences of their actions. It is important for us to predict the consequences of our actions.

I heard one of my colleagues talking about ignorance. All this time, I have understood that ignorance is no defence in law. I do not know whether that position has changed. The best way is to try as much as possible to make the citizens aware of the consequences of their actions. That is the reason why we have this law, so that people can know what is likely to happen in case they act in certain ways. If they are in contempt of court, they should know the consequences. When they know, it is easier for them to act in a more organised way. Awareness is very important.

We have talked about civic education in various matters including the Constitution. A lot of money was spent on civic education, but even up to today, people do not understand the Constitution. If you look at the Chapters in the Constitution one by one, particularly the Bill of rights which is very simple, many Kenyans do not know their rights. This is because civic education was done in the right way. The idea of groups of NGOs taking money, going to major towns, gathering a few people, taking their views and filing them is just like opinion polls. A number of opinion polls are done in this country, but we are never asked for our views. You will find it written that many people were surveyed and sometimes you wonder who they talk to. These laws that we are bringing are the kinds of reforms that we agitated for, even those who were fighting for the second liberation of Kenya. They fought for reforms to have transparency, openness and people can know the consequences of their actions. It is important for people to know the consequences of their actions.

The other aspect that is important is the involvement of the Director of Public Prosecutions (DPP) in improving the extent of the contempt. That is important because it should not just be discretionary that a court or somebody feels that there has been contempt of court and action is brought against somebody. It should not be discretionary. It should be where somebody in a responsible office like the DPP is given the mandate and has officers who can look into the

matter. They should delve into the matter and see if there is contempt, the extent of the contempt and the intention. The involvement of the DPP is a very important aspect.

The Constitution talks about freedom of expression. Again, it should not just be freedoms which can eventually have negative effects. It should be freedoms which are positive and the expression that people are supposed to make should be towards the well-being of the nation as a whole. So, the freedom of expression should not be freedom for people to say whatever they want to say. That is also very important. The office of the DPP must be involved in the issue of prove of contempt, so that there is adequate proof that that is what was intended. It also goes a long way in the democratisation process that we have been yearning for as a nation.

With those few comments, I support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Thank you, Hon. Member. I now give the Floor to the Member for Gichugu, Hon. Barua.

Hon. Barua: Thank you, Hon. Temporary Deputy Speaker for this opportunity to make my contribution to the Contempt of Court Bill, 2016. I will make my contribution not from a legal point of view, but from a layman's point of view. I find it necessary to make my views on this Bill because the issue of contempt of court to many Kenyans is quite important. One of the aspects of this Bill, and what it is intended to achieve, is public confidence in the administration of justice as administered by the courts. This is very important and that is why I rise to support the Bill.

I have a concern which is shared by many Kenyans because of the way courts have been administering justice. The court procedures have remained unknown to a large population of Kenya. By so doing, most Kenyans have deliberately kept away from courts and they only go to court only when they cannot avoid it. A case in hand is in Embu where a grandmother of 85 years was put behind bars because of contempt of court. I am very much convinced that this grandmother did not understand what contempt of court was and so, she did not understand why she was serving a jail term.

This Bill is important because from the way it is framed, it makes it very clear what contempt of court is. It is going to increase access to courts by those seeking justice without fear. One of the issues is that for criminal contempt, there must be a publication. It is from the publication, in whatever form, that a judge or a magistrate can decide whether criminal contempt exists or not. My concern here is that this publication does not bring into place the fear that may run counter to the freedom of press and freedom of expression. I hope the clause which talks about publication will not be used to gag the media and limit the freedom of expression.

Who decides on what is fair comment? It is the same magistrate or judge. This is one of the areas that I would like us to look into, so that we can have parameters to decide what is a fair comment as defence and not have a judge or a magistrate decide that whatever somebody has put up as defence is a fair comment or not and finds himself behind bars.

I support this Bill. It is important for the courts and the judicial system to establish a close relationship with the public. Kenyans have become fearful of the application of justice to the legal enforcement mechanisms. It is high time the court systems establish a relationship with the people they are supposed to serve. This is also experienced in the police system. For many years, Kenyans have been afraid of the police. Through community policing, a relationship and bond is slowly being established and the Kenyan population is getting friendlier to the police as days go by.

Finally, one of the issues that some people abuse is that whenever there is a development that is supposed to take place, interested parties, however remote they may be, use the courts to

get injunctions. I would like us to look into this, so that court processes are not abused to stop development projects in this nation. A case in hand is in my constituency where over the years, we have been trying to get a site for a technical training institute which is supposed to serve the entire Kirinyaga County. But any time there is an attempt to start the process, a busy body goes to court and says that he has an interest in it. It is as easy as that because the court just issues an injunction and if one goes against, it is treated as contempt of court.

I would like to stop there and ask the courts to have, in their judgement, public interest first as opposed to individual interest when it comes to initiatives of the larger community benefit.

With those few remarks, I support this Bill. It is in order because after it is assented into law, Kenyans will know the borders of contempt of court and lack of it.

I support.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to the Member for Suba, Hon. Mbadi.

Hon. Ng'ongo: Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to contribute to the Contempt of Court Bill of 2016. My understanding and that of many is that the court or judicial system of any country is meant to check the State organs and other bodies, which if not, would not act in the best interest of the citizenry of that country. Respect for courts is mandatory if a democracy is to function. I want to remind ourselves what happened in the United States of America in 2000. If the Americans had not respected the verdict of the courts of the election of Gorge W. Bush Junior, America would have degenerated to chaos. The same happened in this country in 2013 and were it not for the respect of courts, this country would have gone back to what we saw in 2007. Therefore, citizens of a country must respect the court system.

This Bill on contempt of court talks about upholding the dignity and authority of the courts and respecting them. In whatever decisions they make, no matter how much we disagree with them, it is mandatory to respect the court system. We should not undermine it.

However, there have been grey areas. We must admit that it has not been very clear to us what constitutes contempt of court. I am happy today that if this Bill is passed into law, it will come out clearly to explain exactly what it is meant by contempt of court. I see that the Bill has defined what is civil and criminal contempt. More fundamentally and in line with the provisions of Articles 33, 34 and 35 of the Constitution on freedoms of expression and other freedoms that are enjoyed by the people of Kenya which include freedom of the media and access to information, there is a lacuna in the sense that it was not very clear to us where contempt of court starts and where freedom of expression, freedom of the media and other freedoms that we enjoy as a people, end. So, clearly, this Bill attempts to define defence to contempt of court so that courts would not insist that one is in contempt of court even when they have just fulfilled their civic duty as citizens who are protected by the Bill of Rights and the freedom of expression.

I am happy this Bill is defining the process of defence to contempt of court if it is proved to the satisfaction of the courts. Of course, I am not worried about the court proving because you must have someone to prove that you have acted in good faith. It is, of course, their jurisdiction to prove that you have acted in good faith.

It is the single responsibility of the court to interpret the law. If this is subjected to court's interpretation, there is really nothing wrong. We expect our judicial officers to exercise their authority in a manner that reflects the dignity of the judicial system. If it is a fair comment on the general working of the court made in good faith in the public interest and in temperate language,

then that is not contempt of court. Many times people have spoken on matters of national interest and you are told that you are mentioning a matter that is before court and, therefore, it is contempt of court. I am happy that we are now legislating to define that if I have made a fair comment that is in the best interests of the people of Kenya, then that will not be construed to mean that I am in contempt of court. Therefore, I will not fear that I will be subjected to punishment.

Clause 14(1) states that a person is not guilty of contempt of court for publishing a fair and accurate report of a judicial proceeding held in open court if the report is published in good faith. I have mentioned that our Constitution is robust. We have a Constitution that protects the bill of rights comparable to none globally. Therefore, we must be very careful when we exercise or apply this law on contempt of court. I am happy that we are making it easy for the media to report on the court proceedings because Kenyans are interested in knowing and following the proceedings of the court, especially on cases like those on corruption. We would want to see and follow when those cases are being transacted so that Kenyans, in their own minds through layman's interpretation, which is usually very accurate, determine who is guilty and we are able to judge whether our judicial system has reformed. Many times we complain about our judicial system being corrupt, but if they are exposed to scrutiny by the public in the same way that Parliament and Parliamentary Committees are subjected to public scrutiny, you get the baying of the public such that even those who would want to circumvent and defeat the course of justice will find it very difficult. You will have to exercise your powers with restraint and in accordance with the law.

There are provisions that probably need clarity and to be looked into properly. For instance, Clause 20 states that a person is not guilty of contempt of court for refusing to disclose the source of information contained in a publication for which the person is responsible, unless it is established to the satisfaction of the court that such disclosure is necessary in the interest of justice, national security or for the prevention of disorder crime. At the face of it, I have no problem with such a provision but, once bitten twice shy. A number of times, provisions like protecting national security have previously been abused by people who, for other reasons, would want to subject you to unnecessary frustration, not because you have done anything which will compromise national security, but ordinarily they do this because they are protecting the interests of a few individuals, more so those who occupy some senior offices in Government. Unless we come out clearly to define what it is that would be regarded as compromising national security, you will find the same law enforcers abusing or rather misusing very well intentioned provisions in law to punish innocent people and cause them untold misery.

This is a very good step towards coming out clearly on what is contempt of court; whether it is civil or criminal and it is clearly defined. It is also coming out that the punishment is now defined. If you are involved in contempt of court, then the punishment is prescribed. More importantly, I am happy with the provisions on how you can defend yourself or what is not considered as contempt of court. As a legislator who stands here to protect the interests of Kenyans, I am more concerned about how I protect the interests of that person who may find himself on the wrong side of the law because of misinterpretation of contempt of court. As they say, it is better to release criminals than to jail an innocent person.

In my view, we need to be more particular and more concerned with protecting the freedoms that we enjoy as a country.

I support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I will now give the Floor to the Member for Nakuru Town East, Hon. Gikaria.

Hon. Gikaria: Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to comment on this very important legislation. My colleagues who spoke earlier regarding the misuse of the aspect of contempt of court said that the courts have been misusing their jurisdiction and the powers that have been bestowed upon them regarding this aspect. I want to thank the 11th Parliament for legislating on a very important Bill. At the same time, it is important for us to point out that we should respect the decisions of a court. If we do not respect decisions which come from courts, then the end result will be anarchy. This country will be ungovernable. At the same time, as Parliament, we have come up with a legislation that will protect the interests of the public and those people who will be charged with this. It is important for us to really take it into consideration.

I will start with some of the worrying sections of this Bill. It is important for us to look at them. One of them is Clause 19 on the use of recording devices. Clause 19(1)(a) says very clearly that subject to subsection (4), it is contempt of court to record proceeding except with the leave of the court. An innocent Kenyan would walk into a court room with his mobile phone and record proceedings. As the Bill says, you need to get leave of the court to do that. The same law does not indicate what process you need to go through if you want to get leave of court and be allowed to record the proceedings. It is also dangerous because this is an era, and I agree with my brother Hon. Mbadi, where everybody is supposed to be privy to information within Parliament, in the court rooms or in our Committees. It is important for the public to get this information. Clause 19(1)(b) states that it is contempt of court to publish a recording of legal proceedings made by means of any such instrument, or any recording derived directly or indirectly from it, by playing it in the hearing of the public or any section of the public, or disposes of it or any recording so derived, with a view to such publication. These are some of the things we want to look into.

Clause 18 is on discussion of public affairs. This is important. Some of these comments are made in public forums where you openly discuss issues. This Bill indicates that matters of public interest that are discussed in public cafes or in public forums should not be included as contempt of court. It is important for us because it gives some precautions.

Clause 16 of the Bill talks about complaints against the presiding officer. It protects one that if you make an honest and factual complaint against a presiding officer, then you are not charged. If you criticise any court officer be it a judge, a prosecutor or the investigating officer, then they might use that as contempt of court.

Clause 15 of the Bill talks about fair criticisms of the Judicial Act but not contempt of court. The other day when the position of the Chief Justice fell vacant, people were asked to apply. The Judicial Service Commission (JSC) shortlisted individuals they believed were qualified and needed to go for an interview. One of those people who were not shortlisted went to court and Justice Odunga gave a ruling that everybody who had applied must be interviewed. If you comment about that decision by Justice Odunga in a public forum, then that is a fair criticism. If there were 200 applicants, then that would have been too much. On Tuesday, I saw a long list of 748 applicants for positions of commissioners of the Independent Electoral and Boundaries Commission (IEBC). If one of the applicants uses the judgment by Justice Odunga, then we will be forced to interview over 700 applicants. It is important for us to look at the fair criticisms of a judicial Act.

This Bill says that the criminal contempt has to get consent from the Director of Public Prosecutions (DPP). In the past, courts have used that to get back at other people unfairly. It is important to get a view from the DPP regarding a criminal contempt. The provisions under that clause are very clear.

Under Clause 7 of the Bill, the defence for contempt has also been clearly outlined including defence for innocent publication. We should also seal loopholes so that it is not misused. Under Clause 13 of the Bill, they are saying that you might not know that there is a life case going on and you do a publication about it. You can use that as a defence. If we allow that to continue, people will use that as a scapegoat to do contempt of court but get out of it by indicating that they were not aware that the case was going on.

Clause 7 of the Bill indicates that the Chief justice can give the rules and procedures of a contempt case. It further says that he will give appeals and limitations of appeals. That is dangerous because the CJ can gag that one cannot appeal against a contempt case. We should look at those limitations and bring some amendments in the Third Reading. We should not give the CJ a lot of powers that he might interfere with the due process of the law.

With those few remarks, I support.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Member for Mbita.

Hon. (Ms.) Odhiambo-Mabona: Thank you, Hon. Temporary Deputy Speaker. I wish to support the Bill. This Bill is a good piece of legislation in consolidating provisions on contempt but it would have been good practice to have some level of legislative coherence. It would have made more sense if all the consolidated pieces in terms of contempt were contained in the Judicature Act. This Parliament is doing a good job but we tend to over-legislate. In the end, we will be giving lawyers more difficult tasks. Contempt covers a lot in terms of substance but it is a by-product of proceedings. In my view, it would make sense if contempt was covered under the Judicature Act instead of having it as a standalone piece of legislation.

It is not that we do not have laws on contempt but it is just that they are sprung all over. It is a good advocacy because our own Government has been very notorious in contempt of court: The court gives very clear decisions and the Government disobeys. We need very stringent provisions where there is contempt by the Government. For instance, in civil procedures, we go after the Authority to Incur Expenditure (AIE) holders who are usually the Principal Secretaries (PSs). We need to zero in on them especially when it comes to criminal contempt. I have a few concerns with some of the provisions and I am glad that the Member for Nakuru just raised them when we were sharing quietly with Hon. Ababu. Under Clause 19 of the Bill, there is a practice that has always obtained. It has never made sense to me even when I was practising especially when we are moving towards a more open society why lawyers would not wish the public to be informed about what goes on in court. The provision under Clause 19 is unconstitutional. It limits the freedom of speech and information. As lawyers, we must learn to be open. When I was practising, I was a bit off. I consider myself way ahead of my time because I sometimes say things that are seen as very outlandish but after two years, everybody follows them. For instance, when I started practising, it was unheard of for women to go to courts in trouser pants. I was chased out of court when I went into court with them. Our courts should be more progressive. We should not necessarily say that we are copying America because they showed us very recently that they have very little we can emulate as African countries. It is time for the African countries to be the trailblazers. Let us start good processes that America and other nations can follow.

I think one of those processes is to loosen up our courts and make them friendlier. I know there is a lot that has been done towards making them friendlier but one way in terms of making our courts friendly is that we need to be open in terms of the process of the court itself. Let us demystify the court process. Part of it is looking at some very technical terminologies. I was talking to the people of Mbita and I told them that sometimes when Jubilee is difficult, we filibuster. I tell them that Jubilee is not very smart. By the time you discover that I am filibustering, all I am doing is wasting your time. As a lawyer why do I say “filibuster”. Just say I am wasting your time. Those are the kind of things that we need to stop as lawyers. Let us demystify the law and make it easier for people.

One of the things that I would want to raise as a concern for me is--- Sometimes, I have seen that when I raise some of these issues, they sound very simple but I have been proven right. I cannot remember the law that came here. I think it was the law on vetting of magistrates and judges. There was just one word like the one I am going to raise here that talked about temperament. I pushed for the deletion of that word. I remember even very senior lawyers like my good friend, Senator James Orengo, and the late Mutula Kilonzo were on record as saying: “No! No! No! We need temperate judges.” It was used to purge extremely good judges like Justice Ang’awa. The reason she was removed from the court was because of her temperament. This is a woman who was incorruptible yet we have left corrupt people in that court merely because Justice Ang’wa goes to court and she looks like she has a mood. If you compare mood against corruption, I would rather have a person with a mood any day. The most Justice Ang’awa would do is tell you that she could not see you because your earrings were big or other very irrelevant things. I could go out and remove my earrings and she could hear me. However, I cannot change a corrupt judge. Those are the people we need out of our courts.

Clause 6 says that every subordinate court shall have power to punish for contempt of court on the face of the court in any case where a person assaults, threatens or intimidates. Assaulting is very clear because we even have a law that talks about assault or threatening but what is “intimidate”? If I go to court and sit at the back and, maybe, I glare at you without blinking, I could be intimidating. So, what is contempt? Some of us who have been in civil society are very good at that. I will just go and sit right in front of the judge if I think you are going to make a decision which is inimical to my right as a woman and we just sit the four of us. I remember one time when I was in the Coalition on Violence Against Women. We went to court wearing T-shirts and we just looked at the judge. The judge told us that we were intimidating him. If such a thing happened, would we be declared to be in contempt of the court? So, such provisions should not be in the law.

However, I want to say on the same line that I like the provision: “or wilfully incites a judicial officer or a witness during a sitting or attendance in a court.” The reason why I like that is if we were to compare it to what Miguna Miguna did, assuming what Miguna Miguna did in *Jeff Koinage Live* yesterday were in court, then I think Miguna Miguna would be in contempt of court. Even Jeff Koinange himself would be in contempt of court for abusing women and women sexuality like women invented sex. In fact, I wrote today in my *Facebook* that I love sex, I enjoy sex and I have sex. I think what Kenyans need to do now is start talking about sex like it is a normal thing. Let us stop making women feel guilty of sex like we invented it. Every time a woman wants to run for office we talk about sex. What is this about sex like we are inventors of sex? If we have invented it, can they give us permission to take it back where we got it from? We cannot allow men to be dealing with women like they think we created sex. If they have a problem, let them pray and tell God to remove sex but we will not sit here and let people

intimidate people like Passaris merely because she says she wants to vie for the position of governor. She is not in my party. If it were not for the issue of parties, I would have told all the women to vote for Passaris on that basis alone so that men stop joking with us. We are the majority.

My annoyance has made me lose time. I also have an issue with Clause 9, especially on the issue of fair comment and even the issue that I have raised under Clause 9 (b) on the issue of temperate language. What is temperate language? Like now I have talked about sex. Somebody will tell you: "That is not a God fearing woman." You are worse than me. Maybe your heart is black. You hate Luos and Kikuyus and because I have talked about sex, you are telling me my language is temperate. I do not hate Kikuyus or any other tribe but you think my language is temperate. Let all people repent and go to heaven and leave women alone.

I support the Bill

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Thank you, Hon. Millie. I now give the Floor to the Member for Laikipia East, Hon. Kimaru.

Hon. Kimaru: Thank you, Hon. Temporary Deputy Speaker. I would like to chip in on this particular Bill. It is an important Bill because if we do not obey court orders, that would be the perfect recipe for chaos and anarchy. Our courts come in to adjudicate disputes of government and private citizens. If orders by the court are not respected, then that would be a bad thing. It is important to punish such disobedience through an Act of Parliament, which I am sure it shall become. Most of the recommendations in the Bill are good. They make the contempt of court proceedings more orderly and systematic so that those who are in court can, at least, get fair hearing and justice, if that happens.

I have been a victim of proceedings against contempt of court. This has happened in one particular case. The case is not moving but you find that several contempt of court proceedings have been instituted within the same court. It is one suit, four contempt of court proceedings and none of them goes anywhere. They are just malicious and are motivated by things that are really not legal. In one instance, even lawyers swore a false affidavit, moved all the way from a Nyeri court to Justice Lenaola's court and swore a false affidavit as to whether I had obeyed a court order or not. Eventually the matter was thrown out. There was a court order in Nyeri which the lawyer did not divulge to the court in Nairobi. However, eventually, that came out. Unfortunately, this is one person who is also seeking a high office – the chairmanship of the Independent Electoral and Boundaries Commission (IEBC). I think at the opportune time if they ever make it to the list that is going to be nominated, I think we will face them there. It is a lady but I will not say who it is for the time being.

When I looked at the Bill on contempt of court, I saw one particular part that talks about contempt of court being tried by a superior court. In this case, that would tend to be the High Court. However, I think matters contempt, even if they happened in a Magistrate's Court, the magistrate who is presiding would be more familiar with the facts. This magistrate has heard the case, has given the orders and knows the circumstances. It will be a waste of time if contempt that occurred in a Magistrate's Court is taken to the High Court. The High Court would, probably, be far removed from where the particular offence took place. In our case, in Nanyuki, the only High Courts were in Meru, Nyeri, Nakuru or Embu. When you move these cases there and make them pile up, I do not think it serves the interest of justice to move the cases and take them to far-flung places to be heard. The Magistrates' Courts are near people. Actually, the bulk of cases are heard there. If there is contempt of court, I do not see any reason why that contempt should be tried in a different court at a higher level. As we continue to look at this Bill, maybe at

the Committee of the whole House stage, I think there will be need to make amendments so that even the Magistrates' Courts can indeed try contempt of court.

What I would have a problem with, and I do not know how to approach it but eventually before we get to Committee of the whole House stage, is where contempt involves something to do with a judge; presumed insult or contemptuous behaviour towards a presiding judge or magistrate. Would it be fair where the judge is a party to those proceedings for him to preside? Would it be fair for him to preside over his own case? In a case where a judge is involved, maybe somebody is accused of contemptuous action against a judge, would it not be fair for another judge to hear it? But in all other forms of contempt, probably the presiding judge should be able to go through with that.

Again, when we talk of people commenting about cases, I heard it a long time ago when Paul Muite and other lawyers, and I think those were some of the cases about the second liberation, were dealing with them. They clearly came out of a court proceeding and declared that proceeding a travesty of justice and nothing much happened. And that was the truth. The court process was a sham, and for them to have said that it was a sham, a travesty of justice, I do not think there was anything overly wrong with that. Criticism of the judicial system should be allowed. I think the public and the consumers of justice have a right to criticise the judicial system. They serve as a conscience of that particular court. When they criticise a court, the court gets a wake-up call, knowing that people are out there watching. And we know that justice should not only be done but must be seen to be done. Even to the very ignorant person about matters justice, they must be convinced that, indeed, whatever justice is being meted out is just. Otherwise, we would elevate courts to a different level. I think at times it is necessary when people are emotional, when people are angered, they would be allowed to come out and objectively criticise such proceedings.

What is also very important is that if at any given time matters that you do not agree with in a court have to go to appeal, and we all know how long our system takes to resolve cases in our courts of appeal, then we would see that justice would be delayed in that instance. There was an article in the newspapers yesterday for cases that have run through the courts for over 40 years or nearly half a century, several generations. The beneficiaries of such justice may have exited from the scene. They might have moved on to the next world. Those who needed to go to school, 40 years down the road, if it was a case about property and you had to go to school and that matter was not resolved, you would find that such people would really not benefit if we were to prolong unduly court processes.

Overall, I think the proposed legislation on contempt of court is good. I believe, from what I have heard from the lawyers, it tries to consolidate several pieces of legislation and put them into one piece of legislation that will be easy to reference and apply. In that spirit, we will definitely support this proposed legislation.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to the Member for Budalang'i, Hon. Ababu Namwamba.

Hon. Ababu: Thank you, Hon. Temporary Deputy Speaker. The primary means of ensuring an orderly society, indeed the best way to guarantee that society is different from the jungle is sanctity of proceedings in the courts and absolute respect for decisions of courts. Indeed, right at the heart of the rule of law rests respect for the courts, respect for judicial decisions, and also to ensure that the court process that leads to those decisions is respected and sanctified.

Therefore, insofar as this Bill seeks to edify the court process, to protect the court process from contemptuous actions or expressions that may call court process to question or cause odium to those processes, this Bill is absolutely timely, even though I want to agree that maybe we are over-legislating a bit. This is a Bill whose provisions could, perhaps, have fitted in the Judicature Act, constituting a core part of that Act. Therefore, even as we proceed to debate and pass this Bill, Government and the State Law Office need to take a look at the concern that we may be proliferating the legal sphere with too many little Bills when in fact in the recent past, we have been moving towards an arrangement of consolidating legislation and not scattering little pieces of legislation all over the place.

Having said that, I want also to put it on record that even as we pass this Bill, let us be careful not to use this Bill to limit any of the fundamental rights and freedoms that are enacted in our Bill of Rights. Specifically, I want to draw attention to Article 33 of the Constitution on the freedom of expression, Article 34 that guarantees freedom of media, and Article 35 which guarantees the freedom of access to information. Of course, when you look at Article 24 of the Constitution which provides premises to attempt to limit any of these fundamental rights and freedoms, that Article, for avoidance of doubt, reads in Clause (1) that:

“A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including—

- (a) the nature of the right or fundamental freedom;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and
- (e) the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.”

I raise this important point of being cautious to ensure that none of the provisions of this Bill amount to unconstitutional limitation of any of the provisions of the Constitution, especially in light of Clause 19 of the Bill which prohibits use of recording devices. That clause specifically says that it is contemptuous of court to use in court any recording device or instrument for recording proceedings, tape recorder or other instrument for recording sound except with the leave of the court.

In this time and age when information technology is growing in leaps and bounds, and information is shared so freely, one would want to wonder loudly or openly as to why we would limit anybody in court recording proceedings for purposes of sharing that information. I am just imagining in view of Article 35 of the Constitution that gives a carte blanche to access to information, I do not see anything that would compromise the sanctity of the court process or court proceedings by anybody choosing, sitting in an open court, to share information through a recording device. Therefore, I would invite the drafters of this Bill to take a fresh look at that Clause 19 and read it carefully against Articles 24, 33, 34 and 35 of the Constitution. I have a strong feeling that Clause 19 may be offensive to the provisions of the Constitution that I have just mentioned.

That aside, let me also say that one of the greatest challenges in enforcing court orders in this country has been contempt by State institutions. We have had countless examples in the past

where State organs openly and without any justifiable cause disrespect court orders or rulings of the court. And courts have, in virtually all instances, been helpless. A ministry, department of Government, or organ of State just chooses to disregard a court order. And courts have been virtually powerless to act in such instances. I would want to see stringent provisions in this Bill, which are not there at all, this Bill does not make even any mention of that, that would punish severely and act as a deterrent to this habit that has been witnessed time and again of State organs and departments of Government openly, blatantly disrespecting court orders, and even conducting themselves in a manner--- Court proceedings are on or a matter is alive in court and a department of Government proceeds to behave in a very cavalier manner by continuously referring to those court proceedings and even taking actions or measures that ultimately compromise the sanctity of those proceedings. That is an area where this Bill could do with some strong additional provision to arrest that mischief that has been perpetrated continuously by the Government.

There are some very good provisions in this Bill. I want to applaud Clauses 15 and 16 of this Bill, which protect fair criticism, complaint against a presiding officer of a subordinate court from provisions of contempt. And the language used here is very clear, without leaving any place of ambiguity. The clauses read:

“15. A person is not guilty of contempt of court for publishing any fair comment on the merits of any case which has been heard and determined.

16. A person is not guilty of contempt of court in respect of any complaint made by that person in good faith concerning the presiding officer of any subordinate court to a competent authority, a judge or a judicial officer.”

Those are very progressive provisions because then they give licence or provide space for affected persons to fairly comment on ongoing proceedings and also to sound alarm in instances where a judicial officer in a subordinate court may be conducting himself or herself in a manner that may amount to breach or placing the course of justice at risk.

It is also important to note that Section 4 of the Bill has clearly defined what amounts to contempt in regard to civil and criminal proceedings. Overall, it is a progressive Bill but let us take a fresh look at any provision that may offend the Constitution. Significantly, let us provide clear provisions that will forestall or act as a deterrent against continuous and persistent breach of the sanctity of court orders and court proceedings by Government and State organs.

I support.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Thank you, hon. Member. I now give the Floor to the Member for Seme, Dr. James Nyikal.

Hon. (Dr.) Nyikal: Thank you, Hon. Temporary Deputy Speaker, for giving me an opportunity to contribute to this Bill. I stand to support it because in the first place, if you look at the parts of the law that it seeks to repeal then you see a clearer definition of the issues of contempt. This Bill seeks to protect people from arbitrary actions that lack clarity in the law. Indeed, this is a much more improved piece of legislation. The objectives that are stated in Clause 3 are so important in the judicial process. There is need for all of us to respect the court and to abide by it. Look at the objectives in the proposed law from 3(a) to (e). Clause 3(a) states, “uphold the dignity and authority of the court.” Nothing can be more important in a society than having the authority of the court upheld. This helps in maintaining public confidence in the administration of justice, which is done by the courts. Without such measures, people are very likely to take the law into their own hands. We have known that, particularly during elections,

people lack faith in the courts that would deliver justice. So, people take the law into their own hands. This law is, therefore, extremely important.

In Clause 10, there is the issue of strict liability. It talks of publications that are adverse to justice. Given that it is broad, there are provisions that will protect those involved in the publication. One, they may not have been aware at the time that they were making the publication that there were proceedings in that nature. Two, they may not have been aware that during distribution of the publication there was already a case going on. That makes it a fair piece of legislation. If you look at Clauses 13, 14, 15, 16 and 17, as all my colleagues have said, you find that they are protective of the people and actually are in line with the Bill of Rights in our Constitution. For example, if you look at Clause 15, a person is not guilty of contempt of court for publishing any fair comment on the merits of any case which has been heard and determined. That is as it should be. If it has been determined then anybody should be able to make a comment on that. A person is not guilty of contempt of court in respect of any complaint made by the person in good faith concerning the presiding officer of any subordinate court to a competent authority, judge or a judicial officer. If that was not included then you would not have any recourse if you feel that your rights have been affected by a presiding officer because any attempt to report it would amount to contempt of court. That provision means that if you feel that your rights have been subjugated you can justifiably complain.

Clause 17 says that a person is not guilty of contempt of court for publishing a fair and accurate report of judicial proceedings before any court sitting in chambers or in camera. Surely, if the report is correct while the proceedings are going on, that is something that people should have the right to report on. It thus gives limitations where it is thought that this would be injurious to public interest. Once again, you see a very thoughtful process that has gone into this.

Many of my colleagues have commented on Clause 19 regarding recording proceedings. That has been taken care of. We have heard that it seems to be retrogressive and not in line with the Constitution we have now.

Under Clause 20, a person is not guilty of contempt of court for refusing to disclose the source of information contained in a publication. This is extremely important. People would not give information if they felt that giving information would jeopardise their wellbeing. To that extent, that is extremely acceptable, at least, in my view.

This Bill gives a very clear process of proceedings. If you look at Part IV, there are very clear processes of how the proceedings should go on. Once again, you see a very clear attempt to make things as fair as possible to those who are affected. Offences in terms of contempt in Part V are very clear and numerous. There would be no question as to what constitutes an offence. I find this piece of legislation progressive. It is much better than the law we had before, which we now seek to repeal. To that extent, I support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you Hon. Nyikal. I now give the Floor to Member for Gilgil, Hon. Ndiritu.

Hon. Ndiritu: Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to put my voice on this Bill. Contempt of court has been an animal that has scared almost everybody because it seems like the judges and the magistrates have arbitrarily instituted it or used it to silence and intimidate people. This Bill is very timely. For us who are not in the law profession, we did not know where the boundaries were. You would not even feel free in the corridors of courts. Whatever you did, you got scared. This Bill now defines criminal and civil contempt. This proposed law is basically to uphold the dignity and the authority of the court. It ensures compliance with the directions of the court and observance and respect of due process of

law. It seeks to preserve an effective and impartial system of justice. Finally, it maintains public confidence in the administration of justice by court. Basically, it is strengthening the courts and making it very clear that the purpose here is not to curtail the jurisdiction and the independence of court.

I listened to a Member who talked about the ineffectiveness of State organs with regard to being contemptuous of court or wilfully, without lawful excuse, disobeying orders or directions of the court. The biggest culprits here are the law enforcers, the police. It has also mentioned, specifically, the wrongful possession of land from any person who has obtained possession by an order of the court.

I am specifically referring to this because it seems the area I represent has been a victim of this. Courts have given orders and orders but the police or law enforcers just say they cannot implement. We have seen people suffering and being dispossessed of their land and property. It should come out very clearly. I would even wish that there is a clause that can make observance and enforcement possible to make State organs, especially law enforcers, able to implement this section.

Hon. Temporary Deputy Speaker, because of the ineffectiveness or helplessness with which law enforcers disobey court orders, it is good the offences have now been properly defined. I still feel it is good if we could have a clause that sort of puts some weight in the enforcement of orders that the court has given. It is now very clear that for any citizen, you will not be cowed. There is a reference point if you feel that the court, the magistrate or State organs have mistreated you.

Like I said in the beginning, those who do not understand will not even know whether coughing in court is a crime or is contempt of court but this properly defines it. When we look at the objects of the Bill, they provide for contempt of court proceeding. It provides for the High Court to punish for contempt of subordinate courts and sets out procedure for contempt in a superior court. It gives the separation and the lower courts now clearly know their jurisdiction. It will not be possible for a magistrate in a junior court to go beyond the bounds the law allows.

It is a very progressive Bill. I believe there is still an opportunity to fine tune and put some proper measures that will even make it have teeth without being dictatorial because the feeling is that previously there was a lot of injustice. The courts had a field day and litigants almost did not know where to hang onto. They would find themselves jailed or fined. It was a sort of a harassment tool on the side of the Judiciary to the subjects.

With those few remarks, I support the Bill. Where we feel there is a deficiency, it can be corrected.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Thank you, Hon. Member. I now give the Floor to Member for Makueni Constituency, Hon. Daniel Maanzo.

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

I wish to contribute on this very important law on contempt of court.

Historically, contempt of court did not have a law and as such, it was directed by the court. As you have seen, there is criminal contempt and there is civil contempt where somebody outrightly disobeys the court and then the court punishes them promptly. On the face of it, it is just immediately. This offence where there are criminal proceedings and there has been disobedience, ordinarily, it used to be that if one was remorseful and they asked the court to forgive them, the court would forgive them instantly and the matter would end there. Where somebody would stand their ground and if it was a reporter or newspapers did not make a fair comment, the court would punish them. The question was how long one could be punished like

how many years. Even for small things as a phone ringing in court, it could amount to contempt. Somebody who was just coming to watch proceedings and just forgot and did not apologise, ended up in cells the same day. Also, disobedience of court orders, if a Government officer was ordered to make a payment by a certain day and they did not make that payment and they had no proper explanation, the court could also commit them into contempt.

So, it is good now that we have formalised it and put it in a law so that judges and magistrates now know what to do. The people know what to expect. By this debate, many Kenyans have known that this offence exists. There was a time one Mr. Gachoka got into serious trouble with the Supreme Court then. Up to nine judges sat to listen to the contempt of court case proceedings where it was emanating from comments arising out of an election petition. You could see that, there was no definite way of handling it. I am happy to report that in this proposal, the Chief Justice (CJ) can now make rules and regulations so that judges can know what tenets they are operating under.

Otherwise, because there have been many good comments by lawyers in this House and other Members, I support this law. It is a good law. We could make a few changes on the Third Reading. It is a law which we should all pass and it could serve the nation.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Thank you, Hon. Member. I see the Leader of the Majority Party wants to speak on this?

(Hon. A.B. Duale consulted with Hon. Temporary Deputy Speaker)

You are replying, Leader of the Majority Party.

Hon. A.B. Duale: Thank you, Hon. Temporary Deputy Speaker.

I want to thank the many Members who, this afternoon, contributed to this very important piece of proposed legislation known as the Contempt of Court Bill. The primary objective of this Bill is to define what contempt of court is.

Secondly, it is to limit the powers of the court in terms of meting punishment for contempt of court and, further, to provide penalties for the offence of contempt of court.

As Hon. Maanzo said, by nature your phone can ring in court and it can land you in problems. You can decide to look at a very beautiful lady judge. Depending on how she woke up that morning, she can say that is contempt of court. There are Kenyans, like in the media, and particular journalists whose function is to report from the corridor of justice. They do analysis to inform the public and citizens. Sometimes, heavy penalties are imposed on them.

This Bill is trying to set the rules of the game in as far as contempt of court is concerned. It is the first time. We had a colonial one. Now, I think we are saying that, yes, there is contempt of court but, through a piece of legislation the rights of citizens, journalists, litigants and witnesses are also protected in terms of exercising their rights and freedoms as enshrined in the bill of rights of the Constitution.

With those many remarks, I am sure we will do more. We will enrich this Bill when it comes to the Committee of the whole House and make it more perfect. But, I want to thank Members, this afternoon from 3.30 p.m. to six O'clock, who have made various insightful and comprehensive contributions on the Contempt of Court Bill, 2016.

I beg to reply.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, we will not be putting the Question at this time. We will put it at the appropriate time.

(Putting of the Question deferred)

Next Order.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker we are hardly five Members and it is not fair for us to go to the next agenda. It is better we wait for the next Sitting because it is an important Bill and I am sure it is late in the day. It is good also that we respect the provisions of the Standing Orders in as far as quorums are concerned. However, because it is now 6.00 p.m., I wish to seek the indulgence of my good friend, Hon. Wamunyinyi. I know he has serious issues to raise concerning this Bill. We can start with it on Tuesday at 2.30p.m. I will ask the clerks who do the House Business to give it priority. I will consult with Hon. Wamunyinyi.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Wamunyinyi, we could give you the first take on the electoral laws that you were interested in contributing. We can put it on record that you will be the first one to contribute on Tuesday. Is that okay? So, Hon. Members, we will go with the suggestion by the Hon. Leader of the Majority Party. I agree with him.

ADJOURMENT

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, the time being 6.00 p.m., this House stands adjourned until Tuesday, 22nd November, 2016 at 2.30 p.m.

The House rose at 6.30p.m.