

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 30th September, 2014

*The House met at the Senate Chamber,
Parliament Buildings, at 2.30 p.m.*

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

PAPER LAID

COMMITTEE REPORT ON THE NATIONAL
HONOURS (AMENDMENT) BILL, 2014

Sen. Madzayo: Mr. Speaker, Sir, I beg to lay the following Paper on the Table:-
The Report of the Standing Committee on Labour and Social Welfare on the
National Honours (Amendment) Bill, 2014

NOTICE OF MOTION

CONSTRUCTION OF WHEELCHAIR ACCESSIBLE
FOOT BRIDGES ON MAJOR COUNTY ROADS

Sen. Gwendu: Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, aware that the county transport is one of the devolved functions under the Fourth Schedule to the Constitution; noting that Article 54(1)(c) of the Constitution entitles persons with disability to reasonable access to all places, public transport and information; further aware that under Articles 27(1) of the Constitution, every person is equal before the law and has the right to equal protection and equal benefits of the law; concerned that people with disability continue to be discriminated against in the construction of foot bridges across the country; noting that if the situation is not urgently remedied, the lives of people with disabilities who cannot cross roads without assistance will continue to be in danger, the Senate urges all the county governments to construct wheelchair accessible foot bridges or foot paths on major county roads for use by people with disability.

COMMUNICATION FROM THE CHAIR**THE THIRD INTER-PARLIAMENTARY REGIONAL HEARINGS
ON EXEMPLARY FOREST POLICIES IN AFRICA**

The Speaker (Hon. Ethuro): Order, Senators! Before we proceed to the next Order, let me make a communication.

The World Future Council (WFC) with the support of the Parliament of Kenya and particularly the Senate Standing Committee on Land and Natural Resources, the FAO regional office in Africa, the Greenbelt Movement and the Global Legislators Organisation; Global International, in collaboration with the Ministry of Environment, Water and Natural Resources, has organized for the third inter-parliamentary regional hearings on exemplary forest policies in Africa scheduled to take place in Nairobi today.

The WFC is a foundation based in Hamburg, Germany, which identifies and promotes solutions for the challenges of our time. Their mission is to inform policy makers and opinion leaders about the challenges facing future generations, to provide practical policy solutions and to facilitate dialogue on how to implement the same. In 2012, the WFC conducted an inter-parliamentary hearing in Kigali, Rwanda, with the support of the Rwanda Ministry of Natural Resources, the Rwanda Natural Resources Authority, the Rwanda Environment Management Authority, the United Nations Forum on forests, the FAO and Globe International. At the hearing, parliamentarians, policy makers and experts from Burundi, Cameroun, Ghana, Kenya, Malawi, Rwanda, South Africa, Tanzania, Uganda and Zambia made a commitment to take back to their countries these ideas, policies and successful experiences in order to gain support for the implementation as declared in the Kigali Declaration.

At the WFC meeting, 2013, inter-parliamentary hearing on forests for people in Dar es Salaam, 35 legislators, policy makers and experts from Ghana, Kenya, Malawi, Rwanda, South Africa, Tanzania, Uganda, Zambia and Zimbabwe committed to engage themselves for exemplary forest policy. The hearing was opened by Tanzania's Vice-President His Excellency Dr. Mohamed Gharib Bilal and our delegation from Kenya was led by Sen. Isaac Melly, Sen. Liza Chelule and Sen. Naisula Lesuuda.

The 2013 inter-parliamentary hearing focused on regional and national laws that deliver significant improvements to forests and to people who depend on them. The 2014 inter-parliamentary hearing which is scheduled to be held in Nairobi between 30th September, 2014, that is today, and the 3rd of October, 2014, the WFC has invited approximately 50 parliamentarians and government representatives from Central and the East African Region. The objectives of the hearing for the Nairobi meeting include the following:-

(i) to offer parliamentarians first hand information and to allow for a mutual exchange of interesting initiatives which have been proved effective in their countries and could be replicated elsewhere;

(ii) to provide a platform for decision-makers and practitioners from Central and East African countries to exchange experiences and solutions on sustainable forest management, wood fuels and forest governance;

(iii) to enable mutual learning and support knowledge transfer on experiences and solutions; spread Rwanda's national forest policy that received the 2011 future policy award to other countries;

(iv) to inspire practitioners and decision-makers to take collaborative action towards implementation of sustainable development solutions in forest and landscape context.

In this regard, I wish to extend an invitation to the Members of the Committee of Lands to the opening ceremony and, thereafter, to the rest of the event. The opening ceremony will be officiated by the Deputy President of the Republic of Kenya, His Excellency Hon. William Ruto at the Kenyatta International Convention Centre (KICC).

Thank you.

STATEMENTS

FAILURE BY COUNTY GOVERNMENTS TO ADHERE TO REGULATIONS ON GOVERNMENT VEHICLES

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I rise to seek a Statement from the Chairperson of the Sessional Committee on Devolved Government concerning the need or failure by officials of various county governments to observe laid down government regulations regarding use of government vehicles. The Chairperson should explain:-

(i) Why regulations requiring that Government vehicles be parked in the nearest police station from 6.00 p.m. to 6.00 a.m. are not being adhered to.

(ii) Why some county government vehicles are being used for purposes other than what they are authorized to be used for and why many of them are being parked near bars and other inappropriate places.

(iii) What action will be taken to punish officials who flout the said regulations and ensure that the regulations are adhered to.

NEED FOR LONG-TERM MEASURES TO STAMP OUT CATTLE-RUSTLING IN WEST POKOT AND TURKANA

Mr. Speaker, Sir, I rise to seek a Statement from the Chairperson of the Standing Committee on National Security and Foreign Relations concerning the need for long-term measures to stamp out cattle rustling in West Pokot and Turkana County borders, especially along the Turkwel-Kainuk junction and other neighbouring counties as well.

In the Statement, the Chairperson should explain why the national Government has not established a General Service Unit (GSU) camp or an Anti-Stock Theft police unit camp at Parkayo junction along the border of West Pokot and Turkana County, despite a promise to do so more than 10 years ago.

Secondly, considering the constant instances of loss of human life and livestock in this area, could the Chairperson state when the national Government will establish the said camps and when they will eradicate this menace?

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. I did not want to interrupt, but the first Statement sought by Sen. (Prof.) Lonyangapuo has got very serious accounting aspects. With your permission, I would like you to allow me to ride on it and request that when the statement comes, it should also come with a policy of the Government on what are the necessary vehicles that should be purchased by county governments. He should also confirm that not all officers who work in county governments should be given vehicles that are chauffeured with escort cars and so on. He should come with a comprehensive policy so that we can oversight the use or misuse of public funds in purchase of vehicles in county governments.

COUNTY GOVERNMENTS' COMPLIANCE
WITH IFMIS

Sen. Elachi: Mr. Speaker, Sir, I rise to seek a statement from the Chairperson of the Standing Committee on Finance, Commerce and Budget. In the statement, I would wish the Chairperson to explain to the Senate how many counties have complied with the Integrated Financial Management System (IFMS) system of accounting and state what measures the governors have taken to ensure local revenue is collected as per the law and also showcase what projects the resources are funding.

CHANGE OF THE ORIGINAL DESIGN FOR THE
SOUTHERN BY-PASS AT KIKUYU TOWN

Sen. Wamatangi: Mr. Speaker, Sir, I rise under Standing Order No.45(2)(b) to seek a statement from the Chairperson of the Committee on Roads and Transportation regarding the southern-bypass link to Kikuyu Town. In the statement, I would like the Chairperson to address the following issues:-

(i) whether he is aware of the change of the original design of the by-pass at the Kikuyu town stretch by the current contractor thereby blocking the original entry lane into Kikuyu Town centre that was there in the old Kawangware-Dagoretti-Kikuyu Road;

(ii) whether he is aware of the complains raised by the business community, residents and other stakeholders about the negative impact the above will have on businesses and industries within Kikuyu;

(iii) whether he is aware of the aforesaid change of design which was done in March, 2014 without the knowledge, involvement and participation of key stakeholders who came to learn about it the other day when excavators started work at the site;

(iv) what the Ministry of Transport and Infrastructure is doing about this issue considering that the stakeholders had lodged a complaint with the Kenya National Highways Authority (KeNHA) two weeks ago, to which no response has been given despite the fact that construction is still going on unabated;

(v) whether the Committee on Roads and Transportation will consider paying an urgent visit to Kikuyu Town to see for itself what the situation on the ground is like, considering that the construction is in progress and the negative impact on businesses in the town is huge and irreversible. The residents of this town will also lose on the

expected economic benefits of such an important by-pass road if the status quo is maintained.

Hon. Senators: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Order, Senators! Maybe the Chairpersons thought they have got away. We are still remembering you. Let us start with Sen. (Prof.) Lonyangapuo's Statement.

Where are the Chairpersons for various committees? Where is the Chairperson for National Security and Foreign Relations Committee? Then Chair, Sessional Committee on Devolved Government, both from Sen. (Prof.) Lonyangapuo. The one from Sen. Elachi goes to the Chairperson, Standing Committee on Finance, Commerce and Budget; then the one sought by Sen. Wamatangi is for the Chairperson, Committee on Roads and Transportation.

Sen. Ndiema: Mr. Speaker, Sir, I want to also seek something along the line of Sen. Elachi.

The Speaker (Hon. Ethuro): Proceed.

Sen. Ndiema: Mr. Speaker, Sir, with your permission, I am requesting that when the statement comes, it should also include county assemblies because he has asked about the executive. This is so because it appears that in some counties, the executive has been covered and not the county assemblies.

Thank you.

The Speaker (Hon. Ethuro): So ordered. Are there no Chairpersons in the House?

Sen. Sijeny: Mr. Speaker, Sir, if I heard Sen. Wamatangi correctly, he says we need to go to the ground and ascertain or evaluate the situation. I think we can do it within two weeks. He is a member of our committee. I am sure he will facilitate that and we can report back to the Senate after two weeks. We are also meeting the Cabinet Secretary, Ministry of Transport and Infrastructure. We did not succeed last time, but we are going to do so this week. I am sure that we will get all the response within two weeks.

The Speaker (Hon. Ethuro): In two week's time. Let us now hear from the Vice Chairperson, Committee on National Security and Foreign Affairs.

Sen. Wamatangi: On a point of order, Mr. Speaker, Sir.

The speaker (Hon. Ethuro): What is it, Sen. Wamatangi?

Sen. Wamatangi: On a point of order. Mr. Speaker, Sir, in view of the fact that there is a real danger because the construction is going on right now in Kikuyu Town and given that this road will pass there within less than a week and the losses may be irreversible, would I be in order to plead with this House and the Committee to try and expedite this much more urgently?

The Speaker (Hon. Ethuro): Vice Chairperson, Sen. Sijeny.

Sen. Sijeny: Mr. Speaker, Sir, in as much as I have said that within two weeks, it does not necessarily mean that we will wait for two weeks. We can facilitate even earlier than that. We can be practical. We need to---

The Speaker (Hon. Ethuro): Order, Sen. Sijeny! Two weeks and one week are two different things. Given the sense of urgency that the Senator has impressed upon you and the House, you need to be categorical.

Sen. Sijeny: Latest, Tuesday, next week.

Sen. (Dr.) Machage: On a point of order on the same issue, Mr. Speaker, Sir. We have received letters from your office, inviting us to a meeting with the Cabinet Secretary, Ministry of Transport and Infrastructure, tomorrow at 10.00 a.m. Maybe for Sen. Wamatangi, this would have been a good opportunity for him to raise the issue with the Cabinet Secretary for an immediate answer.

The Speaker (Hon. Ethuro): That will be a good opportunity for Sen. Wamatangi. Let us now hear from other Chairpersons.

Sen. Fatuma Dullo.

You may proceed to the Dispatch Box.

Sen. Adan: Mr. Speaker, Sir, I inquired about the statements that were due this morning from the clerk of our committee. He told me that there were about three statements that were ready. He told me that he was going to give them to the Chairperson to issue them this afternoon. I do not know whether that happened. I would request that we are given some time, probably, on Thursday we can---

The Speaker (Hon. Ethuro): Order, Senator! We are yet to reach there. For now, it is additional workload from Sen. (Prof.) Lonyangapuo.

Sen. Adan: Can we do it in one week, Mr. Speaker, Sir, if that is okay with, Sen. (Prof.) Lonyangapuo.

The Speaker (Hon. Ethuro): One week should be okay. We now move on to the Committee on Finance, Commerce and Budget. Is there any member of that Committee present here?

Sen. (Dr.) Machage: Mr. Speaker, Sir, on behalf of the Chairperson, I request that the House gives us two weeks to research and come up with the statement.

The Speaker (Hon. Ethuro): So ordered, in two weeks time. For the statement by Sen. (Prof.) Lonyangapuo, you remember that Sen. (Dr.) Khalwale also added an item and the same applies to the one by Sen. Ndiema. So, they should all be included.

Sen. Elachi, the Chairperson of the Committee of Devolved Government.

Sen. Elachi: Mr. Speaker, Sir, on behalf of the Chairperson, I would like to ask the House that we give our report after two weeks.

The Speaker (Hon. Ethuro): Two weeks time.

COMMUNICATION FROM THE CHAIR

STATUS OF ROAD NETWORK IN KENYA

The Speaker (Hon. Ethuro): Order, Senators! I also have another Communication to make.

There has been great concern in the House regarding the status of the road network in Kenya. This has elicited numerous requests for statements from Senators on the same, which the Standing Committee on Roads and Transportation has attempted to respond to. Following several clarifications requested by Senators in supplementary statements, I directed on 31st July, 2014, that the Standing Committee on Roads and Transportation convenes a meeting of all Senators and the Cabinet Secretary, Ministry of Transport and Infrastructure, to deliberate on this important matter.

In this regard, the Standing Committee has invited the Cabinet Secretary to address Senators on Wednesday, 1st October, 2014. The meeting will be held in this Chamber from 10.00 a.m. I hereby direct that all committee activities or meetings scheduled for the same time be suspended to allow Senators time to attend to this very critical meeting. Among the issues to be addressed include:-

- (a) Those projects that have stalled or are behind schedule.
- (b) Withdrawal of contractors from site before completing projects.
- (c) The distributions of roads in phase one of the road sector. Bitumen upgrading/rehabilitation plan of the 2000 kilometres of roads in the Financial Year 2014/2015.
- (d) The progress towards the degazettement of Nairobi National Park to pave way for the completion of the Southern by-pass.
- (e) The measures taken by the ministry following several road contractors suing the Government for failing to honour the contractual agreements and particular delays in making payments for works completed.
- (f) Public-Private partnerships in the construction of roads.
- (g) Progress on the proposed legislation for classification of roads as well as devolving the transport sector to county governments.
- (h) Progress on land acquisition and compensation to pave way for the construction of the Standard Gauge Railway.

Please, create time to attend this particular meeting. I guess as you have heard this afternoon, the matter of the Senator from Kiambu should also be included. Vice Chairperson, you may wish to convey that to the Cabinet Secretary so that he comes prepared tomorrow.

Thank you.

Sen. Elachi: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Yes, Sen. Elachi.

Sen. Elachi: Mr. Speaker, Sir, I just want to urge the Senate, knowing very well that we are serious in our business and in what we do for the country, I hope that the attendance will be full so that the Cabinet Secretary does not come and find only five of us as we normally are. I urge this House to come up as the Upper House and ensure that we have a quorum.

The Speaker (Hon. Ethuro): Order, Sen. Elachi. I thought you were the Senate Majority Whip? That is your job.

(Laughter)

Proceed Sen. Kivuti.

(Continuation of Statements)

INTENDED ALLOCATION OF LAND AT
KANYANYOONI IN KITUI COUNTY

Sen. Kivuti: Thank you, Mr. Speaker, Sir. I am supposed to give a statement on the proposed allocation of land at Kanyanyooni in Kitui County to the National Intelligence Service (NIS). I do not know whether you want me to proceed given the fact that the Senator for Kitui County is not here. That notwithstanding, we had a Committee meeting on this matter and felt that there is need to give a chance to the Senator and the Governor of Kitui County to present their case to the Committee, although we did some parliamentary research using our officers here to know the exact process that was followed on this matter.

Mr. Speaker Sir, the Committee felt that we should give Sen. Musila and the Governor of Kitui County a chance to come and meet the Committee the day after tomorrow, Thursday, 2nd October, 2014. So, I request that we be given a few more days so as to report back on Tuesday, 7th October, 2014, next week.

The Speaker (Hon. Ethuro): It is so ordered. Report on Tuesday and have a meeting as you have proposed on Thursday.

(Statement deferred)

Next order!

BILLS

Second Reading

THE NATIONAL HONOURS (AMENDMENT) BILL
(SENATE BILL NO. 16 OF 2014)

(Sen. Wako on 23.09.2014)

(Resumption of Debate interrupted on 23.09.2014)

The Speaker (Hon. Ethuro): What is it Sen. Elachi.

Sen. Elachi: On a point of order Mr. Speaker, Sir, I stand to be guided. I know that we had finished debate on this Bill. However, I wish to defer the division to a date that will be appropriate so that even the Mover of the Bill can reorganise himself.

The Speaker (Hon. Ethuro): What is it, Sen. Wako?

Sen. Wako: On a point of Order, Mr. Speaker, Sir. I am a bit surprised that this matter is on the Order Paper for the Second Reading. You will recall that on Thursday, I moved that this particular Bill be discussed because I knew it would last for a very short time. Indeed, my prophecy proved true as we finished the Second Reading.

When it came to the issue of the vote, I stood up to ask that the vote be taken at another time because we did not have a quorum as at that time. By then, the Deputy Speaker, who was on the Chair, ruled that this was not a Bill affecting counties and,

therefore, we should just pass it. He then called those for it to say “aye” and those against to say “nay”. We said “aye” and I assumed that we had already passed the Bill. So, I am bit surprised that it has been listed again. If you check the records, you will find that it was finalised on Thursday.

I call for your direction on the matter on whether this vote is necessary or whether we have already had it.

The Speaker (Hon. Ethuro): Order, Sen. Wako! I have heard you. Yes, Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. I want to agree with Sen. Wako that the session Speaker of the day, last week, misled us. That was in spite of Sen. Wako rising in his place to try and move that we take this vote on a different day. The direction I want to seek from the Chair is: Now that the Speaker having so ably misled us last week---

(Laughter)

Mr. Speaker, Sir, I seek your direction. The Speaker of the session last week, having so ably misled us in spite of protestations that this matter be taken to a vote at a later time, there are two things I want to know.

One, what procedure shall we adopt to rescind the decision that was made last week because that remains a record of this House? Secondly, what action is this House going to take against the Deputy Speaker to express its displeasure for the incompetence that was displayed on that day?

The Speaker (Hon. Ethuro): Hon. Senators, I was not in the House at that time. Therefore, I will need to check the HANSARD on what transpired. Since I have been briefed, what I know for a fact is that we still need to vote on this Bill. That is the way we will proceed. The Bill will come for voting tomorrow afternoon, Wednesday, 1st October, 2014. I do not think it is useful for the House to consider all the other protestations now. So, Sen. (Dr.) Khalwale, be advised.

(Bill deferred)

Sen. Abdirahman: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): What is it, Sen. Abdirahman?

Is it something very different from what we have addressed?

Sen. Abdirahman: On a point of order, Mr. Speaker, Sir. I have no problem with the directions, I appreciate. I only have a problem with the statement used by my brother, Sen. (Dr.) Khalwale, in terms of saying that the Deputy Speaker very ably misled us. We seek guidance from the Speaker, the Deputy Speaker, the Speakers’ Panel Members and any other person who sits on that Chair. We also make interventions and seek guidance on general practice and procedures in this House. I respect all that he said. However, I wish he would be corrected for the interest of everyone.

The Speaker (Hon. Ethuro): I wish to confirm to Sen. (Dr.) Khalwale and other Members that the Chair can never mislead. That is the correct position.

Let us move on to the next Order.

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Machage. I have already determined that matter.

Let us move on to the next Order.

Second Reading

THE COUNTY ASSEMBLIES POWERS AND
PRIVILEGES BILL,
(SENATE BILL NO.11 OF 2014)

(Sen. (Prof.) Kindiki on 25.9.2014)

(Resumption of debate interrupted on 25.9.2014)

The Speaker (Hon. Ethuro): Sen. (Dr.) Khalwale, you were on the Floor when debate on this Bill was interrupted. You have eight minutes to conclude your contribution.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I was at the tail end of my contribution. I have only three points remaining. The first one is on the issue of privileges. It is timely that this particular Bill will clarify the privileges that Members of County Assemblies (MCAs) are entitled to. There is no better time for this. Kenyans are waiting on what this House will decide. At the moment, there are all manner of demands for privileges by MCAs to the extent that some of them want armed bodyguards and guns. From what we are now witnessing, it is clear that there are too many guns in many undisciplined hands. Members will remember what happened in Makueni County in the precincts of the County Assembly when MCAs personally, their body guards, associates or members of the public engaged in shootings.

We want it to be clear whether the issue of car grants or offices should be a privilege that should be enjoyed by MCAs. This also includes the issue of mortgages. It is important that this is clear in law so that some people, who want to use the issue of car grants, offices and mortgages as carrots to dangle to MCAs, so that the noble cause of amending the Constitution of Kenya can be frustrated, may find that this has not taken place.

Mr. Speaker, Sir, the debating chamber of any county assembly should be looked at as a paramount privilege. My hope is that, as the years go by, as we pass more and more money to our counties, we will make it possible for all the 47 county assemblies to have a standard model county assembly. I am aware that before the last Parliament was prorogued, architectural designs had actually been drawn. They were supposed to be the basis of constructing new county assemblies. It is my hope that this will be standardized across the board so that our counties can look the same in the Republic of Kenya. But as an interim measure, we can also save on cost. We have counties like the County Government of Kakamega which has got one of the best debating chambers in this

country. Unfortunately, the office of the Governor has now moved into the offices of the county assembly and sent MCAs to the debating chamber of the former County Council of Kakamega.

I hope that this matter will be made clear to my government in Kakamega so that the governor moves away from this model debating chamber that we have in Kakamega and occupies the premises that we have at the former provincial headquarters, which by the way, are very nice offices. I see no reason whatsoever why the Governor currently in Kakamega County is occupying the offices of the County Assembly that do not have to attract any other cost to the County Government of Kakamega.

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

[The Deputy Speaker (Sen. Kembu-Gitura) took the Chair]

Mr. Deputy Speaker, Sir, having said all that, I want to second that the County Assemblies Powers and Privileges Bill, (Senate Bill No.11 of 2014) be read a Second Time.

(Question proposed)

Sen. Elachi: Mr. Deputy Speaker, Sir, I rise to also support this Bill knowing very well that it has been one year since we established the county assemblies. This Bill comes in to give powers and privileges to county assemblies to conduct their business without fear. However, we need to ensure that when we give these powers and privileges to county assemblies, they do not misuse them, but that they use them to ensure there is service delivery to the people. I hope the assemblies will note that the Senate appreciates what they are doing within the county governments. However, we need to emphasise on respect and discipline. The county assemblies should not use the privileges to become rogue and hide within the premises of the assembly so that they are not taken to court.

Mr. Deputy Speaker, Sir, looking at what happened in Makueni County, if this Bill was already law, maybe today their Majority Leader would not have been in court or the Governor would not have done as he did, to bring supporters to disrupt a meeting that was within the assembly. We are also trying to protect the institution of the assembly and not just the Members. As we give county assemblies a Bill on Powers and Privileges, we must tell them that they must respect their institutions. These are the institutions that guide us in the processes of doing our work.

Mr. Deputy Speaker, Sir, we also need to understand that the Senate Majority Leader referred to Article 196, if I am not wrong, to ensure that county assemblies also enjoy the privileges that other legislators in the national Government are enjoying; the Senate and the National Assembly. They are all Members. Therefore, they are there to provide oversight and to carry out legislative work. They also have a right to powers and privileges in what they do.

It is important for us, as legislators, to come up with Bills that protect us. We should not go overboard or be accountable to what we are doing. This does not mean that

they will go out there threatening people because they are protected by law. That will be very wrong.

We also want to urge county assembly fora to educate Members to understand the Bill. The Bill does not just give powers, but expects them to obey and respect what others are doing. We hope that this will help governors to come out and start working with their county assemblies and respect one another; the executive and the county assemblies. We hope that they will now sit and discuss issues that affect them. We hope that the country will not judge us harshly in what we are doing.

Recently, you have seen everyone fighting in the county assemblies. People are wondering whether we really need county assemblies owing to the way Members have portrayed themselves. While we follow what the Constitution says; that Parliament shall enact legislation providing for powers and privileges, it is important for MCAs to observe and maintain certain standards of conduct both inside and outside the House. Members of the public should not come in with rats like we have been seeing.

I would like to urge MCAs that if they want to be referred to as honourable, then they need to do their things in a humble and dignified way. While we look at this, there are implications to this. For a county assembly to function in an orderly manner is very important. I will give an example of sometime back when some MCAs in a county in the north eastern region used chairs to fight as a way of solving problems. We need to remember that as we give them privileges, we are not allowing them to go back into fighting in the assemblies, so as to kill one another just because nobody will interfere. That will be a very wrong way of looking at things. Individual MCAs must adhere to the rules of their assemblies so that they do not put their Speakers in situations where they cannot manage.

Mr. Deputy Speaker, Sir, for many years, this county has fought to see the decentralisation of Government resources. Kenyans did not anticipate the passing of the new Constitution to create many governments and MCAs. We want to urge county assemblies to come out clearly and prove to Kenyans that we need assemblies in the counties. They must come out and prove to Kenyans that the laws they propose cannot hinder people from attaining growth and development, but will provide more opportunities to emerge within the county governments.

Mr. Deputy Speaker, Sir, we, as Members of this House, must ask ourselves whether in future we need to do amendments to this Bill. First of all, we need to see how they will apply the Bill and whether it will open opportunities for acts of hooliganism. If it will open doors to hooliganism, then the Senate will have to rethink and see how an individual Member can be made to face the law once he or she commits a crime.

Mr. Deputy Speaker, Sir, in this Senate, we have looked at different issues in different ways. Today, we have the Speakers of county assemblies who can be impeached and threatened any time. As we pass this law, we also need to come up with a law that can protect the Speakers so that they do their work.

Mr. Deputy Speaker, Sir, the Constitution is very clear that Parliament shall enact a law on how Speakers of County Assemblies will do their work. Therefore, as you give county assemblies a Bill - the County Assemblies Powers and Privileges law - we must

also think about the Speakers in those assemblies. I do not think we will want to see county assemblies being threatened because of Speakers being threatened.

Mr. Speaker, Sir, I will give an example of the County Assembly of Isiolo. Currently, we have a very serious case of the Speaker of the County Assembly. The Speaker has taken some people to court. So, if we had a law that could guide the procedures, that county assembly would have managed their own affairs without rushing to court.

Mr. Deputy Speaker, Sir, with regard to the Speaker of Makueni, if there was a law that explained how Speakers must manage county assemblies, probably, what happened would not have taken place. The Speaker would have given a better venue and told people that the County Assembly Chamber is the assembly. Therefore, if they wanted to hold a meeting for all stakeholders, then they needed to do it outside the precincts.

Mr. Deputy Speaker, Sir, we, as a Senate, are saying it is time that we respected the institutions that we are in. County Assemblies are critical institutions in the country. As much as the Governors run around, without the county assemblies, they cannot claim to be in Government. They need the assemblies to guide them and to give them laws that can help them to implement their issues. As we move forward as the Senate, we want to see sobriety in all MCAs. As we give them privileges, we believe that they will also respect the fact that they have to sit and agree on matters regarding resources. They must sit and agree on what they can manage as an assembly and on what they can use. The rest of the money must go to their respective wards for developments. It is wrong, as we move around, for county assemblies to continue to fight with the executive because of resources.

Mr. Deputy Speaker, Sir, if you want to give somebody power to do his work, you must also look at the resources you are giving them to do the work. It is the mandate of this Senate to ensure that we put in ceilings for the assemblies and for the Governors. Did we do this in a way that made it unfair to one side? Did we give justice to the country by giving resources, but at the same time, prevented the assemblies to participate and to do their work as required? This is something we, as a Senate, need to look into. We need to bring in a report to this Senate to show what happens after we have set up ceilings.

Mr. Deputy Speaker, Sir, the County Powers and Privileges Bill we are talking about in this Senate will help county assemblies to enjoy the same privileges enjoyed by both the National Assembly and the Senate. However, that does not mean that we do not respect our institutions because we do enjoy those privileges. Therefore, we hope and believe that they will respect the institutions and take up legislation with seriousness. I hope that they will not take advantage and misuse what we have given them. We do not want to hear some years down the line, a county starts crying to the Senate on why we passed a Bill that has not helped their MCAs to bring order in their assemblies, but hooliganism.

As I support, I urge the Speakers of the county assemblies to adhere to the rule of law. We, as the Senate, will ensure that we have legislation that can give them guidance in how they manage and run their Houses.

I beg to support.

Sen. Wako: Thank you very much, Mr. Deputy Speaker, Sir, for giving me an opportunity to speak on this very important Bill.

Mr. Deputy Speaker, Sir, with the new Constitution, the role of the county assemblies was clearly set out. At the very beginning, there were two issues that tended to misinterpret what the role of the MCAs is. Some of them felt that they were glorified members of the local authority and they behaved as such. Some thought they were now very big persons called hon. Members of Parliament (MPs) at that level. It got into their heads hence, and as a result, we have witnessed the various conflicts that go on between the county governments and the county assemblies.

Mr. Deputy Speaker, Sir, I am glad that this particular Bill has been brought up to emphasize the fact that county assemblies play a very important role in the management of this country. In particular, they play a very important role as a legislative authority under the county governments. I am glad that as a legislative authority, the MCAs are going to enjoy similar powers and privileges which Members of the National Assembly and Members of the Senate also enjoy. In other words, we, as legislative bodies, are going to enjoy the same powers and privileges. These powers and privileges have not been bestowed to us for nothing. They have been bestowed to us in order that we may discharge our constitutional mandate properly without any fear or favour.

Mr. Deputy Speaker, Sir, when we say that a Member of the County Assembly will now have some immunity in whatever he says in the National Assembly, that is to ensure that, that Member of the National Assembly, referring to Section 11 - Immunity from Legal Proceedings – that is to ensure that an MCA, just like a Member of the Senate or a Member of the National Assembly has complete freedom to speak without any fear or favour on issues which touch on the counties. Of course, those may be very touchy issues. They may be issues in which one would be afraid to speak if the person was to be subjected to legal proceedings by way of defamatory suits and so on. So, when we give these Members, under Section 11, immunity, it is for them to perform that role properly. When we also say that no civil or criminal proceedings may be instituted in any court against an MCA, we are giving that MCA freedom to speak. So, that enjoyment is there.

Mr. Deputy Speaker, Sir, the other role they have been given is a role that is there under Article 185(3) of the Constitution, which is to exercise oversight over the County Executive Committee (CEC). The CEC, includes the Governors and Deputy Governors. I sit on the County Public Accounts and Investments Committee (CPAIC) and we deal with grave issues. Other issues should be dealt with by the county assembly at that level. However, those issues have never been dealt with at that level. Maybe, they have not been dealt with at that level because some MCAs may feel that they cannot touch on any act of the governor or any act by the member of the CEC. In other words, they are fearful and yet the Constitution has given them a very firm role on having oversight authority over the CEC.

Mr. Deputy Speaker, Sir, now that we are passing this Act, which is now going to protect MCAs, my plea is that they do carry out their oversight authority over the CEC because the Senate cannot be inundated with all audit queries that may arise from 47 governments.

Mr. Deputy Speaker, Sir, I had an opportunity to have lunch with the Chairperson of the Public Accounts Committee (PAC) of the National Assembly. He was saying how they have a heavy load of duty that they have not even enjoyed the recess because they have been meeting every day. I told him they are lucky because they are dealing with only one Government; that is the national Government. We, on the other hand, have to oversight over 47 governments and he agreed with me.

When the time comes and it is clear that the governors must appear before us, and so on, and so forth, we are also going to be inundated with a lot of work. That is why it becomes very important that the oversight role of the Senate and the oversight role of the county assemblies be clearly delineated in a manner in which some, in fact, most of the issues can be dealt with at the county level, leaving the Senate to deal with the serious issues of a general nature or of a particular nature in any particular county.

Mr. Deputy Speaker, Sir, therefore, with the passage of this Bill, I hope that the county assemblies are now going to rise to their role as oversight authorities in the counties. In this regard, I would really urge the county governments and the national Government to ensure that MCAs are given the necessary capacity to carry out their oversight role at the county level.

It may very well be that some MCAs do not have that capacity to carry out their oversight role effectively. I think it is the duty of this Senate, as the bigger brother of the county assemblies, to also ensure that we have programmes and that we take such other actions to ensure that our counterparts at the county assemblies are properly trained to carry out their oversight role. Somehow I feel that, that has been lacking in some counties. The consequence has been that they focus on other issues which do not necessarily help the county governments to carry out their work effectively. In fact, they create confusion, disagreements and confrontations, which results in many of the problems that we have in very many counties at the moment.

Mr. Deputy Speaker, Sir, I urge that this Bill be enacted. We should ensure that MCAs do play out their role. They are, in fact, just like us, except that they are younger brothers in this particular game. They should play their role, so that we can focus on bigger issues as the Senate.

Mr. Deputy Speaker, Sir, with those few remarks, I support the Bill.

Sen. Sang: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to support this very important Bill.

Mr. Deputy Speaker, Sir, I will start by thanking the Senate Majority Leader for working on this wonderful Bill that seeks to facilitate the smooth working of our county assemblies. You will realize that within our constitutional design, the role played by county assemblies is very critical. We know that at the national level, the responsibility of oversight over the national Executive rests with the National Assembly and the Senate. However, at the county level, the county assemblies play a very critical role; their responsibilities being legislation at the county level, representation of residents within the wards and the oversight of county executive. For county assemblies to undertake their responsibilities effectively, they should have a good working environment that is free from fear or favour.

Mr. Deputy Speaker, Sir, some of the issues that the county assemblies will continue to handle are very sensitive, especially in their oversight role. That is why it is very important to ensure that we provide the necessary aids for our county assemblies through legislation, prescribing the powers and privileges that they enjoy. For the last one-and-a-half years, our county assemblies have had to execute their mandates in an environment that is sometimes laced with a lot of fear. This is because their privileges and powers are not captured very well and protected by legislation. Therefore, this is a very crucial Bill that seeks to ensure that our county assemblies are able to undertake their responsibilities with a lot of freedom and fairness.

Mr. Deputy Speaker, Sir, we have seen in our counties impressions being created to suggest that county assemblies are entities within the county governments and that they are under the ambit of Governors. It is important to note that county assemblies, being the legislative arm within the counties, are not part and parcel of the county executive. Therefore, there is an impression created sometimes by some of our brothers, the governors, that since they head county governments, they actually do head the county executive together with the county assemblies. This Bill goes a long way in ensuring that both the governors and county assemblies are able to understand their responsibilities, mandates, powers and privileges. In so providing, we are able to give an opportunity to our county assemblies to function.

Mr. Deputy Speaker, Sir, some of the successes that we have seen in this country in terms of the oversight legislation and representation roles of the two Houses – the Senate and the National Assembly - have been achieved because the Members of this House and those of the Lower House have been able to conduct their responsibilities; understanding very well their powers and privileges. It is important to ensure that our county assemblies are treated the same way. This is because, as a matter of fact, they do carry out exactly the same responsibilities, only that they do it within the smaller geographical spaces within our counties.

Mr. Deputy Speaker, Sir, for us to allow MCAs to bring forth Bills that are of great importance in terms of moving our counties forward and debate Motions without fear, we must be able to provide this immunity and privileges. This Bill helps us in addressing some of these issues. I would want to give some of the examples that we have seen in the recent past. I am aware that some of the Committees in this House are working on some of the processes that try to address some of the challenges being faced in our counties. But it is very sad to see that we have had situations in this country where members of the public or county executive have even made attempts to raid our county assemblies in a bid to try and influence the processes and the on-goings there.

The example that was witnessed by this country last week in Makueni raises a lot of questions, in terms of how secure our county assemblies and MCAs are while executing their mandate. In a short while, most of the county assemblies will be discussing very sensitive issues. They will be discussing motions of great importance; touching on some of the powerful figures within their county assemblies. Knowing the history of this country and some of the challenges that even Members of Parliament in the earlier days faced, where even arrests were being done within the Chamber; we need to lay the right foundation in all our 47 county assemblies, to ensure that our MCAs are

secure and have their powers and privileges. They should have space to execute their mandate.

Mr. Deputy Speaker, Sir, as we discuss this Bill – and I know that it will provide for this framework – it is more important to discuss even the funding for our county assemblies. The independence of our county assemblies will not be achieved if they are not autonomous in terms of the way they handle their resources. It worries to read of county assemblies whose finances are purely managed by the county executive committee members in charge of finance in our various counties and that the county assemblies are unable to engage the right staff for them to carry out their responsibility of oversight.

Mr. Deputy Speaker, Sir, I am fond of giving the example of one of our oversight Committees led by Dr. Boni Khalwale. The Committee is able to ask the right questions and interrogate reports from the Auditor-General for the various counties, because we have adequately staffed Committees within the Senate. We do not expect members of the various committees in the county assemblies to carry out their oversight responsibilities if they do not have the adequate and efficient staff to help them carry out that mandate. How can they get these staff if we have budget ceilings that are being set by the same county executive which is oversighted by the same county assemblies? That proposal came to this House. We had a very sober discussion. We agreed that we amend the proposal by the governors that the budget ceilings are set by the Commission on Revenue Allocation (CRA). We gave them an opportunity to recommend to this House, so that the Senate, knowing very well that we have these county assemblies with their responsibilities, we are able to give them adequate budgets for them to carry out their responsibilities.

Mr. Deputy Speaker, Sir, over and above the provisions within this Bill, we need to ensure that our counties and county assemblies have adequate resources, staff and facilities to enable them to carry out the three key mandates of any effective legislature. It is important that we are able to provide an opportunity for our county assemblies to engage and carry out their responsibilities.

Mr. Deputy Speaker, Sir, some of the issues being raised within the national debate, as we discuss about whether or not to go through a referendum - one of the issues that the governors have raised has been an attempt to hoodwink the MCAs by telling them that they will get an opportunity to acquire powers and privileges similar to those of Members of the Senate and the National Assembly. But MCAs are not cheap; they understand that some of these things need to be done through legislation. You cannot be able to have powers and privileges of the MCAs in an unconstitutional amendment. We hope that this Bill will suffice in terms of giving our county assemblies the autonomy, powers and privileges that they need. Our brothers who would want to persuade the MCAs that they should be able to support the referendum just because their issues are being catered for through an amendment to the Constitution, is a lie. This Bill will particularly sort out the issues that the MCAs need in terms of being properly facilitated.

[The Deputy Speaker (Sen. Kembi-Gitura) left the Chair]

[The Temporary Speaker (Sen. (Dr.) Machage) took the Chair]

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir. Did you hear the distinguished Senator from Nandi County mislead this House that we, the proponents of the referendum, are lying to the MCAs that we are amending the Constitution for their welfare?

Hon. Senators: Shame! Shame!

Sen. (Dr.) Khalwale: Is that the reason he attacked the Personal Assistant (PA) of the Governor?

The Temporary Speaker (Sen. (Dr.) Machage): Order! Sen. (Dr.) Khalwale, you are now spoiling--- Sen. Sang, did you actually use the term “lying”?

Sen. Sang: Mr. Temporary Speaker, Sir, I made an assertion that part of the groups proposing the referendum, some of the issues being raised as part of the referendum, is the welfare, powers and privileges of MCAs. That does not need to be addressed within the Constitution because this Bill has already provided for a framework for addressing those issues. I did not say that the proponents of the referendum are lying.

Sen. Murkomen: On a point of order, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. (Dr.) Machage): What is it, Sen. Murkomen?

Sen. Murkomen: Mr. Temporary Speaker, Sir, I did not want to interrupt the eloquent presentation by Sen. Sang, but did you hear what Sen. (Dr.) Khalwale said, that he was asserting that Sen. Sang was involved in an act of hooliganism when the Standing Orders are very clear that if you want to discuss a Member, you must bring a substantive Motion and you must also substantiate what you are saying.

We had a long debate last week about the reputation of this House and the manner in which we casually bring in issues that involve a Senator or this House. Can the Senator substantiate or withdraw those assertions?

Sen. Hassan: On a point of order, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. (Dr.) Machage): Yes, Sen. Omar.

Sen. Hassan: Mr. Temporary Speaker, Sir, when Sen. (Dr.) Khalwale said what he did, Sen. Sang, in his response, had the opportunity to respond to that. It means that if Sen. Sang did not respond---

The Temporary Speaker (Sen. (Dr.) Machage): Order! That is for me to decide.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, is it in order for the distinguished Senator for Elgeyo-Marakwet to raise the point of order he did when, in fact, the distinguished Senator for Kakamega County did not discuss the conduct of the distinguished Senator for Nandi County. He simply pointed out to him a matter that he neither denied nor avoided, that he was, in fact, there. If I was Sen. (Dr.) Khalwale I would have said; “superintended the assault on the personal assistant of the Governor of Nandi County”. We saw this in the media.

The Temporary Speaker (Sen. (Dr.) Machage): Hon. Members of the House, you are all out of order! May I remind you of the essence of coming up with a substantive Motion if you want to discuss the character or person of a Member of this House. You stand warned from the Chair that next time I will be very aggressive in reprimanding you. That is a closed chapter.

Sen. Sang, you may continue.

Sen. Sang: Mr. Temporary Speaker, Sir, I only responded when---

The Temporary Speaker (Sen. (Dr.) Machage): Order! That is a closed chapter. Continue with the Motion.

Sen. Murkomen: On a point of order, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. (Dr.) Machage): I hope you are not revisiting what I have already closed.

Sen. Murkomen: Thank you, Mr. Temporary Speaker, Sir, for closing that very ugly incident that occurred here. But in my opinion, it is not just enough to just close the issue. I am not challenging the Chair, but the Standing Orders give the Chair powers. The Chair in his wisdom should now extend his powers beyond the closing to also the requirement of the Standing Order requiring the withdrawal of the remarks. The HANSARD remains as it was unless the Member withdraws and apologise to Sen. Sang.

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Murkomen, I already ruled over that matter. I recognise your thinking and view on the whole issue. Unfortunately, this had to happen that way. I will not open up that ruling.

Sen. Murkomen: On a point of order, Mr. Temporary Speaker, Sir. Your authority is very important and it is for precedent. A precedent was set last week. You were seated in this House – you and I sit---

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Murkomen! You are now treading on dangerous grounds.

Sen. Murkomen: Mr. Temporary Speaker, Sir, let me just conclude. For the good order and sanctity of this House, we cannot allow unsubstantiated statements. This is based on your ruling. I am not talking about other rulings. You have already ruled that, that was out of order. It is not enough as per the law. In your wisdom, the law is the basis under which you are making your decision and I respect that.

The Standing Orders are very clear. If a Member cannot substantiate something, he or she withdraws and apologise. Otherwise the record will appear---

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Murkomen, if I go that way, there will be three apologies and withdrawals, including yours as the last for challenging this Chair.

Sen. Murkomen: I am willing to do that, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Murkomen! Let us not magnify a very trivial issue. Let us continue with the debate in the House.

Continue, Sen. Sang.

Sen. Sang: Mr. Temporary Speaker, Sir, let me stand on a point of order.

The Temporary Speaker (Sen. (Dr.) Machage): Order! It is not possible. Just continue with your debate.

Sen. Sang: Mr. Temporary Speaker, Sir, I seek your directions because if an unsubstantiated allegation is made against myself, you asked me to respond to a particular statement by Sen. (Dr.) Khalwale on the issue of whether I said they were misleading. You did not give me an opportunity to respond to the issue that was raised against my person. If you make a ruling, what is the fate of the allegation that has been said about me?

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Sang, you were on the Floor. You had and still have the opportunity to intelligently make your statement against or for the comments or points of order that were raised. In any case, as a Member, you are supposed to reply to a point of order that has been raised against you. Could you, therefore, reply to that point of order?

Sen. Billow: Mr. Temporary Speaker, Sir, with a lot of respect to the Chair, probably I have not read your statement clearly. If one Member used unparliamentary language and referred to another Member as a fool, the Standing Orders provide that the Member must withdraw and apologise. It is not adequate for a Member to just respond when he or she has been referred to as a fool. There should be no debate. A Member should not start explaining that he or she is not a fool. What is provided for is for the person to withdraw that statement.

The Temporary Speaker (Sen. (Dr.) Machage): Order, hon. Members! The same Standing Orders give powers to this Chair to make a final ruling. I consider this matter closed.

Please, proceed.

Sen. Sang: Mr. Temporary Speaker, Sir, I have a very heavy heart as you expect me to proceed with my presentation after such serious allegations have been made against my person. I am a law abiding citizen. I am a leader. It is really unfair – I cannot challenge your ruling - for a senior Member of this House like Sen. (Dr.) Khalwale to make such an allegation against my person? It is unfair that the matter can be put to a close in such a manner. However, be that as it may---

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. Khalwale! For the benefit and cohesion of this House and for the sake of making your fellow Senator a little happier because of what you may have said - which may have escaped my ear, you are being accused very strongly – you should apologise and withdraw.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, indeed, if anybody from the beginning up to now had asked me to substantiate or apologise, I would have made a decision either to substantiate or to apologise. Surely, I chose my words very well. If anybody had challenged me at that time, probably, I would have chosen to substantiate. Nobody challenged me.

The Temporary Speaker (Sen. (Dr.) Machage): You have now been challenged. That is why I did not rule on this matter earlier. However, now you have been challenged.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, in this same Parliament, there was such a ruling. Rulings of the Chair live with the times. A Member cannot be expected to substantiate on the obvious. It is a matter of public notoriety that the Personal Assistant of the Governor of Nandi received grievous bodily harm, necessitating him to be transferred to the Intensive Care Unit (ICU) of a Nairobi hospital.

When we, leaders, are in public fora, we do many things, including inspiring our youth. At that occasion, the senior-most leader there, in my view, was the Senator. Since we, as leaders, inspire our youth, if by virtue of his presence the Senator for Nandi inspired the youth through the speeches that were made, then it follows, without contradiction that this might have contributed to what provoked the youth. Since I did not

call him a goon, criminal or crook, then I have nothing to apologise for. These things happen.

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. (Dr.) Khalwale. Is that what you said?

Sen. (Dr.) Khalwale: Yes, that is what I said.

The Temporary Speaker (Sen. (Dr.) Machage): Members of this House, I call upon your wisdom on matters as trivial as this, especially when we have a very important Motion on the Floor of the House.

Sen. Sang is not happy with the remarks attributed to him which may have escaped my ear. Sen. (Dr.) Khalwale has been given an opportunity to explain what he said which he has eloquently done.

These are matters that we, as adults and respectable legislators, can handle. I see no reason this should make me suspend a Member from the proceedings of this House. I beseech each one of you to search your conscience on whether you are being fair to your neighbour or fellow Senator. That is what I want you to do.

Search your conscience on whether your statements and behaviour are supportive of the duties that have been bestowed upon us by the people of Kenya. They have bestowed upon us duties to carry out in this House. Are you being frivolous, offensive and defensive for no reason at all? Once the Chair has made a ruling; be it to your favour or against, the ruling has been made. Respect the Chair. However, my request is that you should respect yourselves.

Let us continue Sen. Sang.

(Sen. Murkomen stood up at his place)

The Temporary Speaker (Sen. (Dr.) Machage): Order! Sen. Murkomen, I am on my feet.

Yes, Sen. Haji?

Sen. Haji: On a point of order, Temporary Speaker, Sir. It is not fair for a leader to twist his stand. We all heard what hon. (Dr.) Khalwale said. In his explanation, he was insinuating that the beating took place because Sen. Sang encouraged people to attack the Governor's Personal Assistant (PA).

Sen. (Dr.) Khalwale will do very well, since he is a very senior man and gentleman, if he stands, apologises and withdraws. That will be the end. We cannot go round on the same issue.

The Temporary Speaker (Sen. (Dr.) Machage): Since this matter escaped my ear, I order that the HANSARD be produced and I will make a ruling on the matter tomorrow afternoon.

Continue, Sen. Sang.

Sen. Sang: Thank you, Mr. Speaker, Sir for the position you have taken. As hon. Members of this House, it is important that we are measured using the statements that we make against each other. We are colleagues and need to engage peacefully as Members of one House.

Now that the matter is closed, it will be important for me to mention a bit about the incident because this is something that has come to light. As a responsible leader and as a Member of a political party, we are protected by the Constitution to hold our party meetings. We did that in Nandi County and discussed the issues that were before us on the agenda. The meeting was peaceful and it ended well. I only learnt later, through the media, that there was an ugly incident that took place, not in the meeting, but fairly far away from the meeting.

I talked to---

Sen. Kajwang: On a point of order, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. (Dr.) Machage): Yes, Sen. Kajwang; what is it?

Sen. Kajwang: Mr. Temporary Speaker, Sir. My point of order is for your direction because Sen. Sang is speaking about a matter which I do not think is in the Order Paper. He is talking about some scuffle, some party meeting and all those things which are not here. I was wondering whether he was making a personal statement without applying to the Speaker to make it. Could he, at least, be relevant to the matter before us so that we continue with debate?

The Temporary Speaker (Sen. (Dr.) Machage): Very well, Sen. Kajwang. I already ruled over the matter, Sen. Sang. I have kept quiet because I thought you were injured personally in the mind. But, please, desist from being irrelevant because I will rule you out of order. Use your time well.

Sen. Sang: Thank you, Mr. Temporary Speaker, Sir. I just wanted to shed light on that particular issue---

The Temporary Speaker (Sen. (Dr.) Machage): I already ruled over that, so---

Sen. Sang: That was raised here, Mr. Temporary Speaker, Sir. Therefore, in concluding my contribution in support of this Bill, I made it clear that this is a step in the right direction. I believe that if we have to secure the powers and privileges of the MCAs, this may not necessarily be done in a Constitution; but this can adequately be catered for through an Act of Parliament like in the Bill that we are discussing.

Mr. Temporary Speaker, Sir, I want to tell the MCAs that as the Senate, whose responsibility is to protect the interest of our counties, we will continue to protect the interests of the County Executive, but also more importantly, we will continue---

The Temporary Speaker (Sen. (Dr.) Machage): Your time is up, Sen. Sang!

Sen. Sang: Thank you, Mr. Temporary Speaker, Sir.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM MUTHALE GIRLS
HIGH SCHOOL, KITUI COUNTY

The Temporary Speaker (Sen. (Dr.) Machage): Hon. Members of the House, in the Public Gallery are students from Muthale Girls High School from Kitui County. In the usual tradition, we recognize your presence and welcome you to this Session.

(Applause)

(Continuation of Debate on the Bill)

The Temporary Speaker (Sen. (Dr.) Machage): Proceed, Sen. Wetangula.

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Temporary Speaker, Sir, for allowing me an opportunity to contribute to this Bill. It is a Bill that replicates the immunities and privileges accorded to Members of Parliament (MPs) from both the National Assembly and the Senate. If we, indeed, recognize the county assemblies as legislatures in the counties, then, obviously, the MCAs of those assemblies are equally entitled to powers and privileges to enable them do their work.

Mr. Temporary Speaker, Sir, if you want to put these matters into perspective, you may recall some very ugly incidents that happened in the old Parliaments of this country. The distinguished Senator for Laikipia will, probably, remember all of them because he has been here for a long time. You may remember when an MP from Coast talked about *karafuu* that was being perpetrated by people he named on the floor – the late hon. Mahihu, the late hon. Ngei and somebody else; and Mr. Mathenge, then a Provincial Commissioner – they waited for the MP outside Parliament here and physically beat him up.

In another case, you will remember the late hon. George Anyona; when he talked about mega corruption going on at the port and linked the late PC, Mr. Mahihu, the late PC Mahihu was sitting in the gallery and every time hon. Anyona looked at him, he showed him a gun. Sen. G.G. Kariuki will remember this. This kind of things happened and it was carried in the media.

Mr. Temporary Speaker, Sir, you will remember when the late Jean Marie Seroney made a ruling from the Chair and as he escorted the Mace out, he was arrested and taken to detention right from the Chair. He was accompanied by the late hon. Shikuku who was also detained. What had they said? Hon. Shikuku said “you people are trying to kill Parliament the way you have killed KANU.” He was challenged to substantiate and the Speaker then, hon. Seroney, said that “under the rules of debate, you cannot substantiate the obvious.”

(Applause)

When he escorted the Mace, that was the end of his freedom. He was detained and his political career truncated forever. Hon. Martin Shikuku came out of detention looking a sorry sight. Thank God he recovered and came back to this House. He was one of the most mercurial debaters this House has ever produced.

Mr. Temporary Speaker, Sir, there are very many examples. We had those days when Parliament was an extension of the Office of the President (OP). When a Member would finish debating here and as he stepped out there, there would be guys in dark glasses escorting him to the OP or to Nyayo House to go and answer questions. If we went that route, there will be no legislation, whether in the Senate, the Lower House or the county assemblies; Parliament will become rubber stamps. This reminds us of George Orwell’s novel; 1984, where characters that control others sit on the telescreen

and watch whatever you are doing; and you could be visited by all manner of calamities if you say something they did not like.

Mr. Temporary Speaker, Sir, this is why the Powers and Privileges Act remains a beacon of security for MPs. We must give it to the MCAs. Of course, sometimes they are abused, but this remains the Floor where a Member could easily come with information that is incorrect or information that is not properly synthesized; or information that is even malicious. It can be malicious, but correct. If you have information, you have taken an oath to act and speak without fear or favour. You speak without fear or favour when you know that upon finishing your speech or your presentation here; or upon you making – as the Speaker or as the Chair – a ruling that some big brother out there does not like, you will still get out of this Chamber and go home in peace. That is how we can legislate, represent and debate well. The county assemblies, especially in counties with high stakes, like Nairobi, Mombasa and the big towns where real estate can cost you your life if you speak against the forces of impunity and those who fix and grab properties. They need protection and they need immunity.

Mr. Temporary Speaker, Sir, you can imagine a case where you make a statement on the Floor of this House and the next day, you are visited by a gentleman in dark glasses describing himself as a Criminal Investigator for what you spoke on the Floor. Next day, you are served with summons for what you spoke on the Floor. Or next day, something happens to you for what you spoke on the Floor. That is why when I stand here and speak about any issue, I have no fear of reprisals and, indeed, no other legislator should have that fear. The MCAs are legislators like we are; they carry out oversight like we do. You can imagine if you stand on this Floor and expose the transgressions and the lack of accountability of a Minister in charge of police; all he needs is to press a button and the police will be up and running. If you expose something against the police themselves, we can easily degenerate into a “wild west” situation. This is not how a civilized country should go. I have gone through the Bill carefully and it replicates the powers and privileges already available. So, indeed, what it is doing is cascading downwards what we enjoy as legislators at the national level to the legislators at the county level.

Mr. Temporary Speaker, Sir, it is also important to caution ourselves that powers and privileges should not be misinterpreted to mean a licence for misbehaviour. We have seen in some county assemblies, things happening that are not right. We have seen fistfights and chairs flying. At least, for the many years that I have been in this Parliament, the only time that I witnessed a fistfight was not because Members were disagreeing, but because forces were clashing over whether or not, a budget should be read. This was in the Seventh Parliament. I saw Members exchange quite actively with their hands, and that was not very good for the history of this country.

You have seen what happens in Parliaments in Korea, Japan and Italy. God forbid that it does reach here. In Korea, it is even worse because, like my good elder brother, Sen. G.G. Kariuki, they are experts in Taekwondo. You will see a Member of Parliament airborne with stretched legs going to strike another, simply because they have disagreed on the Floor. I hope that we will not have a situation where we will have to jump onto

this Dispatch Table and fly across the Floor with our stretched legs, to land on another Senator. I am sure you have seen what happens in those Parliaments.

Mr. Temporary Speaker, Sir, you will remember what the Parliament of Somalia did at the Grand Regency Hotel when we were housing them here. The destruction and injuries that they caused to each other made everybody think twice as to whether these were honourable Members or honourable thugs. It happens all over. It happened again the other day in Somalia and we saw it on *Al Jazeera*. So, even for our distinguished honourable county assemblers, these privileges that we are bestowing upon them – that they are entitled to – should not be seen as a shield and cushion to misconduct themselves in the chamber. This is because when you are called “honourable,” you must conduct yourself as such. If you do not, then you do not deserve that title. That is why even as Members of Parliament, with those privileges and immunities, we must conduct ourselves with decorum.

Mr. Temporary Speaker, Sir, I look around the House and see four lawyers. I want to remind them that in Criminal Law, criminal responsibility does not stop with he who pulled the trigger or drew the punch. There is what we call accessories to a crime. You can be an accessory before, during and after. Our teacher in Criminal Law used to tell us of a robber who raids a bank and as he comes out somebody stands in his way. He shoots him and as he cascades away with a stolen car with the loot, he rams into another car. As he runs away the police have notified somebody else and he finds a barricade. He gets out and kills somebody. Where does the chain of events to the robbery stop?

If I went to the public, spoke and electrified it and as the youths are going away, excitedly talking about what I said, and on the way they run into the distinguished Senator for Nakuru, punch and give him a black eye, I remain vicariously responsible. That is called accessories to the crime. I started it with my talk, excited the second person who met resistance from excitement and meted out illegal justice to that person. We are all culpable in law; vicarious responsibility and the chain of crime from one causation to another. So, sometimes these things happen and even when we are lawyers we forget where the spark was. The cure to this is for all of us to be very careful in whatever we do. Sometimes you can carry somebody else’s skunk and it can smell on you forever and he who gave you the skunk is sitting there pretty and laughing. He ends up saying: “Why did you not refuse if you thought that it was wrong?”

Mr. Temporary Speaker, Sir, with these powers and privileges, MCAs should also now know that they can legislate without fear or favour. However, there is a difficulty in the county assemblies. I have talked to the Speaker and discussed with Sen. (Prof.) Kindiki about this. The devolution came and brought the assemblies, but we have not given sufficient manpower to the assemblies. Probably, you have talked to your own assemblies and they have told you that they are in dire need of legislative drafters. They have good ideas, but they do not have people who can translate them into Bills, to be debated into law. I think that this Senate must do something to help. I notice that we have an engagement with the United Nations Development Programme (UNDP) that has been funding programmes.

Mr. Temporary Speaker, Sir, it is not enough to be given privileges and immunities which you cannot use for productive development in your county or country.

We need to engage the State University of New York (SUNY) and UNDP. Indeed, I am very disappointed with the Transition Authority (TA), because it should also have even secured expatriate support for mass training. We have lawyers in the market who are looking for jobs, but they are not trained drafters. There are special courses for legislative drafting which are offered under the auspices of the Commonwealth. During my time we used to have a small class at the School of Law. We can train lawyers who are interested in being legislative drafters and give them a crash programme. We can then ask them even to give *pro bono* services. The Law Society of Kenya (LSK), in the enabling statute, is enjoined to be part of the support service to the process of legislation in the country.

The LSK can volunteer lawyers to go through these crash programmes. Today is not like those days of your time, when you had to come all the way from Kuria to Nairobi to find a lawyer, to go and defend you in a theft case in Kuria. Today, there are lawyers virtually everywhere. If we ask them to volunteer, we will have more than enough volunteers in every county. They can spend a little of their time to give back to society, by helping the county assemblies to draft good laws, instead of hearing that some counties are engaged in some very unacceptable taxation measures against citizens.

We have heard of the ridiculous case of taxing chicken and all manner of things. In Kiambu County, if you remember, they wanted to tax graves. I heard in one county they were taxing a truck carrying sodas and then there was a separate tax on each crate and bottle of soda. This is ridiculous. They are not passing bylaws, they are passing laws. They are doing this not because they are malicious but because they are lacking professional advice on what kind of laws they should pass. They should protect the counties with the law, and they must do it right.

I want to urge that, we, as a Senate, apart from giving these privileges and immunities to the county assemblies, we must also participate in building their capacity. There are many ways of raising revenue without hurting the ordinary man. The moment you tax a truck carrying soda, a crate and each bottle of soda, the rich, like these gentlemen sitting in front of me, their wealth has already taken them away from soda, salt, sugar and edible oils. These guys eat very bad food because of the worries brought upon them by wealth.

(Laughter)

It is the ordinary people who eat anything and everything. When you start taxing food that is meant for the ordinary man, you are hitting the people that you are supposed to protect. This is not right.

I support this Bill whose time has come rather too late because the assemblies have been sitting on the edge for the last two years. With the passage of this Bill, I have no doubt that acting responsibly, they will be able to legislate, oversight, act without fear or favour but with decorum, respect for the rule of law and for themselves and those who have come before them to assist.

With those remarks, I beg to support.

Sen. (Dr.) Zani: Thank you, Mr. Temporary Speaker, Sir, for this opportunity to contribute to this Bill. I stand to support this Bill which is long overdue. We can tell this

from the incidents and events that we have seen in the various counties as a result of disorder and lack of law. I hope that with the enactment of this Bill there will be more order within the county assemblies.

Indeed, the county assemblies have a very important role to play. Apart from the representative and oversight roles, there is also the legislative role. For that legislative role to be played adequately, it needs a conducive environment, atmosphere and everything else put into place including the personnel and the necessary training. We are also looking at this for the benefit of the counties and the communities in those counties so that good laws are legislated. This will enable counties to move to a higher level in terms of development.

The various sections of the Bill are very relevant. The one on the precincts of the county assembly is very important given the fact that in certain county assemblies, not everything is held under one particular space. There should be the understanding that other rooms and spaces that are used for committees are also considered to be county assembly precincts. It is very important for people to understand this because all the other rules that come with it in terms of adherence and people being protected or certain actions not being able to take place can be projected not to take place in the specific places. For example, somebody cannot say: "I did not assault this person within this particular environment, I assaulted him or in another physical environment; that to me was not part of that county assembly space." That definition is very critical and important because it then enables us to understand the scope and puts everything into perspective.

Another important aspect is that this Bill provides a provision for members of the public to participate in the proceedings of the county assembly. From the various county assemblies that we have been going to as we travel in the different counties, some of these issues have not been instituted. Therefore, you find that even if members of the public wanted to attend proceedings of those county assemblies, there is no adequate space in the galleries where they can actually follow the proceedings, so that they can then follow up with the MCAs in terms of having an input into what is happening in the county. This is critical and has been provided for specifically in Article 196 that provides that the proceedings in the county assemblies need to allow people to participate effectively.

The privileges and immunities of Members is key. Certain specific areas are very important, for example, the freedom of speech and debate. It is now in Kenya that we are beginning to enjoy the freedom of speech and debate. There was an era of restriction. You can imagine the implication of that restriction for legislators. This Bill gives privileges and immunities to Members so that they can have freedom of speech and debate. They can be able to say things that are annoying to certain people but still have the protection. That gives them the zeal, energy and courage to say certain bold things which they may not be able to say if they do not have such protection.

The county assemblies' proceedings cannot be questioned in court. That also gives them a sense of belief and courage in everything that they say within the county assemblies. Therefore, it makes it possible for them to feel more targeted in whatever they are discussing. It also gives immunity from civil and criminal proceedings for words spoken within the precincts of a county assembly. That is very important. The idea that

you actually have immunity from civil and criminal proceedings which may come as a result of your contribution within the county assembly is very critical.

It also gives freedom from arrest for civil debt during that particular session thus empowering the MCAs in the contributions that they make. These immunities are key. As we said, MCAs mingle, talk and interact with even powerful people within the counties. Without these immunities, somebody might be cowed to present a particular view which might be critical.

One of the key strengths in this Bill is in the formation of a committee of powers and privileges that can inquire into the breach of any of the privileges by the Members. Of course it is comprised of the Speaker and Members of a county assembly. But this Committee allows those Members of the Committee to inquire into the conduct of Members. This is critical because it gives a follow-up mechanism for behaviour so that people do not behave the way they want to without having recourse to being called and asked why they have done what they have done. Moreover, this Bill also gives penalties for various contraventions in terms of breaches. For example, if it is assault or misbehavior, the committee is able to sit, project, call the person, discuss with that person, give an idea of what is expected and has gone wrong and give a penalty where it is necessary so that, that behavioral change can take place.

The whole idea, at the end of the day, is to have an assembly where there is decorum. Had this been put into place already, we would not have had the sort of scenes that we are seeing in the various counties where MCAs have fought or assaulted each other. Indeed, we would have had more decorum. The moment we have rules of procedure and penalties for the same, Members will exercise the kind of decorum that is required.

As Sen. Wetangula said, this is cascading the Bill in terms of powers and privileges from the national level to the county level. At the national level, these rules have worked effectively. That is why we are able to debate, disagree and have different forms of opinion. At the end of the day, we still sit together and make decisions and come up with legislation that is meant to help Kenyans. In terms of timing, the Bill provides that privileges that have been abused should be spoken about and stipulated within 14 days. That is important. I think the time span is important because justice delayed is justice denied.

Therefore, the provisions of the 14 days is critical because if there is any contravention of the law though unbecoming conduct, then the matter should be corrected immediately. In that case, if somebody feels as if there is a discourse that has not been handled well, they should look for mechanisms to ensure that that happens. If, for example, somebody contravenes the Speaker's Orders, then there should be a mechanism to ensure that the issue is not repeated. That will create order over and over again.

Another very important aspect that is given by this Bill is that of summoning witnesses. Apart from summoning witnesses, there is also the power to call upon any records, books or papers that can give support and credence to an issue that a county assembly is dealing with. This is very important especially in the function of oversight knowing very well that this is an area that is very factual.

For example, where there is a complaint or investigation to be done, it is important that a county assembly has the powers to call upon whoever it refers to as a witness because it has the powers of a High Court. A witness should appear to give not only verbal evidence but also written documents like papers and books so that investigations go on in a comprehensive way. That way, a county assembly or its committee can come up with a conclusion that is valid and one that it can easily support. Where this set up exists, witnesses can appear. When people know how to proceed and what exactly they are meant to say, that means that a county assembly, over and over again, will move to a higher level, reproduce and carry out its mandate as it is expected.

Mr. Temporary Speaker, Sir, the powers that have been given to the county assemblies are very critical for them to operate. The County Assemblies Powers and Privileges Bill will also help MCAs not to be liable to prosecution for matters related to the performance of their work within the county assemblies or its committees. This is very important.

There should be no personal liability as a result of belonging to a committee. The reports should be handled as publications of the committee or those of a county assembly without any individual necessarily being liable as a result of the publication. Therefore, somebody cannot be held responsible for the information in the publication.

The broadcasting that goes on within a county assembly is also well expounded. The Bill talks of how broadcasting should be done according to the Standing Orders. This is discussed and stipulated and it is important to follow through. That creates more order.

As it has been mentioned before, it is impossible to implement this without the personnel and training required. This is an area where Non-Governmental Organisations (NGOs) and the civil societies will come in to give their input and capacity that is very critical in the county assemblies. There is capacity but this can be improved further in the area of legislation, human resource, research and documentation. More needs to be done in that field to ensure that the capacity is taken to a higher level so that county assemblies can function.

As I said earlier, this Bill is being cascaded to county assemblies and offers privileges and benefits that are already being utilised in the national Government. This is the time to create a direct link between the national Government and the county governments in terms of concurrence so that none of the governments is seen to be inferior. Indeed, they are independent and each of the various governments should feel as if they have what is owed to them by virtue of being county governments and, indeed, county assemblies. It is only by doing this that we will create order, decorum, environment and space for county assemblies to carry out the three important roles; representation, legislation and oversight.

Mr. Temporary Speaker, Sir, we project and think of a time when county assemblies will function adequately. It will be a sad day when any of the county assemblies will be disbanded. One day, all the county assemblies will perform to the maximum and optimal limits. The impact of devolution will then be felt. They will give oversight, legislate and come up with legal instruments that are critical for particular counties, considering that each county has areas that are very specific in terms of detail and what they need to legislate on.

Members of County Assemblies (MCAs) should be empowered to move into that direction and to come up with legislation that can catapult our county assemblies to a higher level. We should ensure that devolution is realised optimally so as to move us to a level where we will be looking at the country making comparisons across various county assemblies on their performances. As Senators, we need to look at the gaps. This is one of the gaps. There is a gap that has been identified and dealt with in this legislation. We need to deal with all the gaps so that counties are successful as they have been projected to be in the Constitution.

I beg to support.

Sen. Kajwang: Thank you, Mr. Temporary Speaker, Sir. This is a good Bill that will protect our county assemblies in their role of representation, legislation and oversight.

As representatives of the people, there are certain things they must speak about on behalf of those that they represent and sometimes on behalf of the nation. Some of the things you must speak about on the Floor of the House need not be pleasant. At times, they may be very unpleasant but at times they may be malicious. However, this law protects the person who makes such a speech as long as it is factual without any fear of being taken to court, being asked to pay damages for it, being punished or jailed for it.

I do not know how our assemblies have been operating without this instrument because most of them would have now been in court since there was no law protecting them from making factual speeches and sometimes non-factual. As long as you make such statements on the Floor of the House, then you must be protected to that extent. In fact, the Speaker should deal with you on matters of fact and may even punish you. However, he does not punish you outside in a court of law or any other forum.

The making of legislation and law is not very pleasant to very many people. A law is made because some people want it. However, some people may not want it. We agree that there is a forum that law can be made. So, we must protect the people who make legislation. In this Senate, we also make some laws and do not always vote unanimously. We disagree on the text, purpose or import of a law. You must protect the people who make legislation so that they are not hurt outside the House because they made a law that injured somebody's business or powers.

Oversight is a more compelling area. You may be exercising oversight over an executive member who is very close to you. You are given power to inquire into what happens to the executive. You are given power to call witnesses and to compel production of evidence. Without this power to inquire, call evidence and to force attendance, you may not do your job very well. We are giving the Members of County Assemblies (MCAs) an instrument that they will use to do their job well, because that is what the country expects of them. The Bill has been done well. In fact, it is very close to our own Powers and Privileges Act. First of all, it defines the precincts of the House of the Assembly.

Mr. Temporary Speaker, Sir, for your information, right now the Homa Bay County Assembly is meeting outside the gazetted assembly because it is being renovated; they are meeting in a tent. That tent is now the precincts and so, it must be protected that way. Otherwise, people can walk in rudely and disrupt proceedings because that was not

the precincts. So, we have to protect the precincts, whether they are meeting under a tree or under some tent, as I have already said. The law must protect that as the precincts so that business can continue.

Mr. Temporary Speaker, Sir, there is nothing as important in this job that we do – which is also being done at the assemblies – as freedom of speech and debate that is enshrined in Section 8 in this Bill. Without that freedom to say what you must say and to debate what you must debate with freedom fearlessly, the law must protect you. Otherwise, you may always be looking behind your shoulders to find out whether what you speak is not pleasant to somebody who may then cause harm to you. I think anybody who makes a speech fearing that they may end up in court or they may end up being punished will not be said to be having the freedom that is enshrined both in the Constitution and now in this Bill.

Mr. Temporary Speaker, Sir, on the issue of immunity from legal proceedings, we have used the Floor of the House sometimes badly to damage the reputation of other people; sometimes to even fight on the Floor of the House. Hon. Wetangula talked about *karate*. In one county assembly, I once saw the mace being picked by somebody and yet without the mace, the Speaker does not have the authority and so, there was a scuffle. I remember Members taking to blows and kicks in the House because the intention was to disrupt the proceedings.

Even when you do those bad things, Parliament has its own way of dealing with you, but you must have immunity from legal proceedings outside the House because unless we do that, then an MP may say something which he believes is true but which may not be quite true and he may end up in court paying damages to the extent that he might be declared bankrupt. So, there will be limited debate because of that fear and we may not serve the purpose for which we were elected to this House or even in the assembly.

Mr. Temporary Speaker, Sir, this is important, especially when there is a debate going on of national nature. For example, we want to change the Constitution and we have a number that is prescribed by the Constitution as the necessary majority of two thirds, the absence of one Member can make a difference. You could very easily be arrested as you are walking into the Chamber because you have a civil debt. Of course, most MPs all over the world have debts. So if somebody were to use a lawful instrument, like the execution of a civil debt to disrupt you from proceeding into the House to vote on a matter that is important to the nation, they would be denying you the right to serve the nation at that time.

This might be done deliberately or maliciously and they may arrest you that morning so that the debate in the House or the vote in the House may fail or may succeed, whichever way they want it to go. So, this protection has been given so that Members are free to come in, go out and make their contributions. You can then arrest them wherever you find them, but definitely not as they come in, go out or participate in the debate.

Mr. Temporary Speaker, Sir, there is also the fear that you might be arrested for a criminal offense. I know the fear is that you can be picked up and taken to court. I remember one time, hon. Mungai, the then Member for Molo Constituency was coming

to the afternoon session – I think it was on a Tuesday – and as he was walking through this other gate where we now walk in, some two gentlemen accosted him at the entrance and told him that he was under arrest, but because he knew his rights, that he could not be arrested for anything, whether civil or criminal, as he proceeded to debate, he fought his way out and I could see his very nice suit torn because he had to fight physically.

He came to the House to tell the Speaker that some people were interfering with the privileges of the House, purporting to arrest him outside the door because he was coming to participate in a debate which was likely to expose some people. Later on, those people never quite arrested him. So, you can see that it was intended to undermine his right to speak on the Floor of the House or to produce evidence of that nature. These tactics have been used several times. They were used in the worst times during those days when KANU was *baba na mama*. They were used many times to deny very eloquent and able MPs to do the job for which they were elected to do.

Mr. Temporary Speaker, Sir, there is something else I would like to say about the summoning of witnesses which I have already referred to. I have seen that there is a tendency for this House or any other House to summon a witness to come and give evidence and the witness says that they are superior to this House and, therefore, not answerable to this House. It is provided in the Constitution that this Senate, the National Assembly or even the county assembly has the power to summon, inquire or call anybody to substantiate or to give evidence of any nature. I am glad that it is reprinted here at Clause 18; that the county assembly or its committees may invite or summon any person to appear before it for the purpose of giving evidence or providing any information.

I do not know whether we need to pass new legislation to require that the Auditor-General must also place his reports in the several county assemblies that we have; 47 of them, especially if the evidence he is publishing relates to that government so that not every little complaint comes to us. This will ensure that the assembly can do its work. I do not even think we need legislation, but we could advise the Auditor-General that if the inquiry is about Homa Bay County and there is something about the expenditure that he is unsatisfied with, he should publish that information and place it before the County Assembly of Homa Bay so that the assembly can deal with it.

In the event that there is something which requires our attention, then it can be brought here. I respect my brother, Sen. (Dr.) Khalwale, for the energy and passion that he has for the job that we have given him. He is definitely going to be overwhelmed by the matters that will be coming from all the counties. There will be an inquiry on all the issues of expenditure, procurement and misconduct of any nature. So, I suppose that we might find a way in which we ask the Auditor-General to deal with the county assemblies on these matters of inquiry before they come to the Senate. This will ensure that we do not deal with everything that comes from there. Otherwise, we are denying them the job for which they have been elected. We are passing this legislation so that they have the power to do exactly that.

It is very difficult to be a witness, especially if a witness fears that after giving evidence you may be called upon again to substantiate somewhere else. That is why in the other dispensation, we also have witness protection. A witness must feel protected sufficiently to come and give truthful evidence before a committee of the assembly.

Unless you feel protected by the law, witnesses will not give evidence. In fact, they may be ready to give evidence, but eventually when they are known, they are threatened and may withdraw. This is because nobody wants to suffer the consequences of being dragged in court even when there will be no penalty at the end. Being dragged in court for years and going through the expenses of lawyers and so on, because you gave evidence---

Mr. Temporary Speaker, Sir, I love what has been put in Clause 20 with regard to the privileges of witnesses; that every person who is summoned to give evidence or produce a---

The Temporary Speaker (Sen. (Dr.) Machage): Order! Your time is up.

Sen. Kajwang: Mr. Temporary Speaker, Sir, I beg to support.

Sen. Hargura: Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to contribute to this very important Bill. In this new dispensation, we have to provide the necessary powers and privileges to the Members of the County Assemblies (MCAs) so that they can perform their responsibilities which, as we have realized, are weighty. This is because we have cases where when the Governors are called upon to appear before the Senate, they say that they are accountable to the county assemblies which up to now may not be having the privilege and power to summon those people.

Mr. Temporary Speaker, Sir, the Bill is very clear because it sets the necessary conditions or grounds for the MCAs to deliver, in the sense that it actually sets out where the precincts of the county assemblies are, so that the Members will be comfortable when they are within those precincts whenever they are carrying out their business. They will know that within that area, they will have the privilege to perform without looking behind their backs. In most cases, they will be fighting for the rights of their people and it may not be an easy job dealing with forces which curtail those rights in terms of resources and even the community access to various facilities within the counties.

Mr. Temporary Speaker, Sir, the Bill sets out a very clear guideline and gives what the privileges are. This will give the MCAs the confidence to deliver. They will not be arrested within the precincts of the assemblies and held accountable when they make statements which need to be made, but may not be palatable to many people. The Bill also sets out very clearly the self-regulatory requirements; whenever somebody is given privileges, there must be some way to regulate them. The self-regulation through the Powers and Privileges Committee sets out very clearly how a Member will be held accountable in case he or she abuses these powers and privileges, which are given by virtue of being an MCA.

It sets out very clearly the breaches in Clauses 26, 27, 28 and 29. So, one is aware that if he or she does this, then they will have to be answerable. Also, it gives the county assemblies powers to actually self-regulate their own Members so that they do not misuse these powers and privileges against Kenyans who may sometimes not be in a position to defend themselves.

Mr. Temporary Speaker, Sir, in performing their duties, it also gives them powers to summon witnesses so that whoever is in possession of any information has to provide that information in the interest of the bigger population. It gives the county assembly and its committees the powers of the High Court to summon any witness who they find

necessary for the purpose of performing their work. It also shows very clearly how these powers and privileges will be enforced.

Mr. Temporary Speaker, Sir, I fully support this Bill. I hope that it will be passed and transmitted to the county assemblies so that they can enjoy these powers and privileges and perform their duties better, taking into account the psychology of Kenyans that the county assemblies are still the old county councils. There must be something to cause that change of mind and I think that this is one of the tools.

Thank you.

Sen. G.G. Kariuki: Mr. Temporary Speaker, Sir, I also wish to contribute to this very important Bill, although the House is almost empty. The reason could be because there is no opposition to what we are talking about.

The Temporary Speaker (Sen. (Dr.) Machage): Order, Sen. G.G Kariuki. I hope that you are not trying to raise the issue of quorum.

Sen. G.G Kariuki: Mr. Temporary Speaker, Sir, I am not saying that. I am quite clear in my mind of what I am talking about. I was just saying that the House is almost empty.

Mr. Temporary Speaker, Sir, as I said earlier, the Bill has been supported by almost every Member of this House and so, I find no reason for being here. I think it is important for all of us to be here. It is the job of the Whips to make sure that Members are here to listen and contribute. You cannot force anyone to contribute, but it is always important to be in the House.

This Bill ought to have been here immediately the Senate came into being. This is because by that time this Constitution was in place. It has taken us almost two years to consider giving the MCAs powers and privileges. I think the Senate Majority Leader and the Senate Minority Leader should take responsibility for that. They ought to have brought this matter earlier. Since they have done it and we are now discussing it, we have no reason not to thank and ask them to move with speed and find out what needs to be done in law to give life to the county governments.

Mr. Temporary Speaker, Sir, you will find that this week we are condemning the county governments, particularly the way they conduct themselves in terms of spending public funds and the next week we are talking about giving them more money. As a result, you find the public at a loss. What are we trying to say? Why do we say something this month and talk about something different the next month?

We have had some impeachment proceedings before this House. With your permission, I suggest that if a Motion on impeachment is brought before this House and the Motion is carried or lost, the final destination should be to investigate the concerned person by competent authorities to make sure that the accusations are not just mere allegations.

Since this Senate is the big brother to the county governments, it is our responsibility to make sure that county governments run properly, are protected and that they are given all the facilities that they require from the national Government. We are at the middle ground between the county governments and the national Government. We are the only authority that is given powers by our Constitution to deal with matters affecting counties in this country. Giving them powers is not that the Senate is doing

them any favour. This is enshrined in law and is constitutional. We ought to have done this long time ago.

We have lost the last two years by mixing party politics and the business of the Senate as an institution. My style of looking at things is that when we assemble here as the Senate, we must find some time to think as Members of the Senate and not as Members of various political parties because that has dragged the development of this Senate behind. Sometimes we think about the Senate and the other times we are driven by party issues. We must draw the line. In the last two years we have been known and heard by the people. It is time to use wisdom because there are people in this House who are not decisive in terms of being forward looking. People enjoy criticism and some few of us believe in decision making and suggestions.

However, here, you may listen to Members and if you keep a tape recorder, you will be amused when you go home. A Member, for example, who talked against county governments and how they behave in terms of spending money is the same person who the following week will say: "We have denied the county governments money." You wonder whether we are in this world or another planet. We are all new in this dispensation and, therefore, we should not criticize ourselves because we do not start climbing a tree from the top; we start from the ground to reach where the fruits are. Therefore, I find it difficult to contribute on a Bill which everybody supports. This should have come a year ago.

Mr. Temporary Speaker, Sir, there are other laws which need to be brought here by the Senate Majority Leader in collaboration with the Senate Minority Leader so that we can give our county assemblies what is due to them. Let us not pretend that we have power over them. The only power we have is the oversight power and that of impeachment. There is no other power unless we want to introduce something else which must be supported by the Constitution. I have said here several times that there should be no time that one should think that as a Senate, the protector of county governments, we have absolute power. We have relative power that we must agree on with the county governments when we are doing anything.

We have gone beyond expectations in terms of the way we have been talking about county governments. First of all, we never ask ourselves how long they have been there as institutions. How long have we been here as the Senate? We have to analyze what we do not know so that we can know and understand. The moment we understand, we shall be on the right path. Some of us remember when there was a problem of interpretation of the Constitution although there was unity among the different political parties. Sometimes those who do not know just jump on the band wagon without their knowledge. You are with people whose ideas are completely different from yours. You are on their wagon and when you are taken a few miles then you start saying: "I did not want to go this direction". As Senators, we have never thought of bringing a Bill to amend the Constitution. In fact, we know what we are doing at that particular time. That is why I am saying that we have to be given an allowance of being new and appreciating that we are all learning.

Mr. Temporary Speaker, Sir, the other important thing is that, if you call a witness to appear before the Senate committee and he or she is a Member of the county

government, whether he is a Governor or a Member, he or she must present himself or herself if we respect what we know and what we understand in the Constitution of this country. Constitutionalism will never be achieved when people defy the Constitution openly and without shame. Sometimes I wonder when it comes to Members of the county governments and especially the Governors; that none of them was given a ticket to contest a seat unless he or she was a graduate. You wonder what schools they attended after they became MCAs or Governors.

Power really corrupts and makes people so drunk to the point that even when somebody enters his house, his children and their mother have to stand up because the boss has come home. This is a terrible attitude. He behaves as if he is living among chimpanzees in the Congo Forest. That is the only place you can expect all the gorillas to stand up when you come in; as you join another group of gorillas. Today, you will find a Governor telling someone else; "if you cannot ask President Uhuru Kenyatta to attend to your committee, then I will not come." Are we being driven by sanity or what is happening?

The Temporary Speaker (Sen. (Dr.) Machage): Order, hon. Senator. I do not think it is proper for us to go that way. Just continue with your Motion. Avoid calling names of the leadership of this country.

Sen. G.G. Kariuki: Sorry, I did not follow what you said. Should I go on?

The Temporary Speaker (Sen. (Dr.) Machage): Yes, go on.

Sen. G.G. Kariuki: Mr. Temporary Speaker, Sir, I was just trying to explain that county governments must be considerate to their constituencies and the Republic of Kenya and understand the difference. Governors should know that they control between 15 to 25 per cent of the total income of this country. The President of this country controls 85 per cent. There is no way you can measure yourself with him unless something has gone wrong somewhere.

Mr. Temporary Speaker, Sir, I did not want to continue speaking to this Motion because we are all supporting it. If the two gentlemen were still in the Chamber, we would have something to say about it more than what we have said. If the Senate Majority Leader, Sen. (Prof.) Kindiki and Sen. Wetangula were here, we would have had something different. We need to take them to task. Let them lead this Senate without fear or favour so that we are seen by the public as people who know what they are doing. We should not leave this matter to few hon. Members who appear to be driving the wheels of this House. At times I ask myself where they are leading us to.

The Temporary Speaker (Sen. (Dr.) Machage): Sen. Sijeny.

Sen. Elachi: On a point of order, Mr. Temporary Speaker, Sir. In the unlikely event that there is no further debate---

The Temporary Speaker (Sen. (Dr.) Machage): Order, we have not reached there. I see no other Senator willing to contribute. Therefore, I call upon the Mover to respond.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I want to take this opportunity to thank colleague Senators who have contributed to the Second Reading of this Bill. This Bill will give effect to a constitutional imperative in Article 196(3) that requires that there must be legislation that will empower Members of

the County Assembly (MCAs) as well as their committees with the necessary privileges and immunities to discharge their functions.

Parliamentary privileges and immunities are as important as those who have contributed to the Bill. I have followed the debate with a lot of interest. These privileges and immunities are not just granted for the sake of it. They are granted to ensure that Members of Parliament and the county assemblies can discharge their functions, and this will help them to be effective. In other words, these privileges and immunities are functional. They do not exclude the beneficiaries from being treated like any other persons. Their purpose is to ensure that Members are protected so as to perform their functions.

What has come out from the debate is that the Bill is giving freedom of speech and debate to Members. It also grants freedom from arrest in civil matters. This means that criminal responsibility is not excluded altogether. This needs to be emphasized. The Powers and Privileges Bill is also securing the sanctity of the precincts of county assemblies to preempt or prevent a situation where people just walk in and out of county assemblies and intrude the precincts. This gives the precincts the necessary exclusion for purposes of ensuring that Members discharge their functions without interruption or intrusion. This Bill also allows the House to ensure that Members of County Assemblies (MCAs) conduct their activities and business with decorum. For that reason, it provides that it is an offence to insult other people, to interrupt debate, to use un-parliamentary language, to threaten or induce Members to vote or contribute in a certain way, among other things.

Let me say, once more, that this Bill does not exclude MCAs from being accountable for their actions. It only shields them as they conduct their businesses in accordance with the Constitution and other legislations such as the County Governments Act. This makes them be respected collectively as a House but also as individual Members of the House in line with the doctrine of separation of powers and the privileges of parliamentary institutions. There are limitations on these privileges and immunities. Limitations include but are not limited to making utterances that are defamatory to those not in a position to reply in the House. It is also limited by the traditional rule against *sub judice*.

[The Temporary Speaker (Sen. (Dr.) Machage) left the Chair]

[The Temporary Speaker (Sen. Ongoro) took the Chair]

Allow me to say that in terms of contemporary debate, in the last few weeks, regarding separation of powers, what has emerged is that those in the legislative arm of Government, whether at the national or county level, are willing to be subservient and to defer to the Judiciary on matters that are actively in court. These matters cannot be discussed in this House or in county assemblies in accordance with this Bill. I see no difficulty as the sponsor of this Bill. I am unable to see why our Judiciary has not extended a reciprocal arrangement that can allow them to refer to Houses of Parliament,

matters that deal with the core mandate of Parliament, namely; legislation, oversight as well as representing the people.

This Bill, therefore, among other things underpins the traditional requirement that matters that are alive before court cannot be discussed in county assemblies. This goes a long way in honouring the parliamentary tradition of referring to the Judiciary the issue of determining cases.

I do not want to speak too much on this Bill because I think most of the speakers have touched literally on every other provision and I also made very extensive remarks when I was moving this Bill. Through this Bill, several things are going to happen. First, we expect that if this Bill is enacted, county assemblies will acquire the legal protection from those who think that county assemblies are inferior parliaments.

County assemblies, for the avoidance of doubt, are legislative arms of one level of government called county governments. They are no lesser than any other legislative arm even at the national level. Of course, there are one or two constitutional imperatives, for example, that require that the law that county assemblies make are subordinate to the laws that the legislative arm of the national Government makes. In other words, the laws made by the National Assembly and the Senate at the national level would take precedence over the laws that county assemblies make at that level. Other than those small differences, these are Houses of Parliament and they should be respected.

Madam Temporary Speaker, without much ado, I once again would like to thank all my colleagues for the wonderful contributions and the total support that this Bill has received from both the majority and minority sides. I hope that this Bill will find its way into the Third Reading and, hopefully, be concluded as soon as possible so that it can take effect. It is also my joy to see that we are doing well in terms of processing new legislation in this House because in the past one year, it was not possible to process so many Bills. So, I am happy to see that this is going to add to many of the Bills that are emanating from this House. I say this with a lot of pride. Other than that, I wish to thank everybody.

With those few remarks, I beg to move that the County Assemblies Powers and Privileges Bill, (Senate Bill No. 11 of 2014) be read a Second Time.

Thank you.

The Temporary Speaker (Sen. Ongoro): Would you want us to put the question today?

The Senate Majority Leader (Sen. (Prof.) Kindiki): On a point of order, Madam Temporary Speaker. Looking at the numbers in the Chamber and also looking at the time of the day, I rise under Standing Order No.54 (3) to request the Chair to defer putting the Question on this Bill to tomorrow at a time which the Chair may determine. That will allow us to whip enough Members so that we can proceed to Division.

The Temporary Speaker (Sen. Ongoro): As per Standing Order No.54 (3), you are in order. We will put the Question tomorrow at 3.30 p.m.

(Voting on the Bill deferred)

Let us move on to the Next Order.

*Second Reading*THE GOVERNMENT PROCEEDINGS (AMENDMENT) BILL
(SENATE BILL NO. 10 OF 2014)

Is Sen. Mutula Kilonzo Jr. not in the House? I will, therefore, defer that Bill.

(Bill deferred)

Let us move to the Next Order by Sen. Judith Sijeny.

*Second Reading*THE REPRODUCTIVE HEALTH CARE BILL
(SENATE BILL NO. 17 OF 2014)

Sen. Sijeny: Thank you, Madam Temporary Speaker, I beg to move that the Reproductive Health Care Bill be read a Second Time.

First and foremost, I wish to start by saying that this is a very good Bill that has come at the appropriate time when the country and the world at large is aware of the problems that the human kind has suffered, especially in terms of reproductive issues. This is a Bill, you will agree with me, which has received what I would call maximum public participation. It has been discussed from all corners of the country. Many stakeholders have been involved and I thank all the people who have given feedback. Whether it appeared positive or negative, to me it was feedback and it has helped me come up now with a better Bill. This is a Bill concerning health, which has been devolved and is definitely before the right House.

Madam Temporary Speaker, this Bill again abides and does not contravene any law whatsoever. It definitely supports or is according to the provisions of Article 43(1) (a) of the Constitution. The Article, if I may read states:-

“Every person has the right—

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

Having read that, it is our duty as legislators to come up with legislation that will protect the lives of Kenyans. Kenya is a State which has ratified several international instruments; it has ratified and domesticated SIDO, the Children Rights Convention. It has ratified so many others where this Bill derives its life from.

Madam Temporary Speaker, the main objective of this Bill is to ensure that Kenyans attain the highest standards of reproductive health care. It stands to solve the problem that has made many Kenyans lose their lives. I know that no one is immortal, but it basically affects women because it is the women who are biologically given the privilege of giving birth. It is a good and wonderful thing that brings life into this world. If that process is not handled properly, we see women die.

(Loud consultations)

The Temporary Speaker (Sen. Ongoro): Order, Sen. Sang and the Senate Majority Leader. We are listening to a very important Bill. Kindly consult in low tones.

Sen. Sijeny: Thank you, Madam Temporary Speaker, for protecting me. As I was saying, we have seen many women die. We have been told that about 441,000 women suffer from complications of child birth or pregnancy related issues every year. The statistics keep fluctuating. We know that unless we do something, they will die. In many cases, we have seen instances where women go to deliver in hospitals but instead we see big coffins and small coffins from the hospital. Why? At times when you inquire, it is because of lack of adequate health care facilities that would have enabled these two human beings who have been brought into this world to survive.

That is why this Bill takes care of the entire society and not only women. It also takes care of issues affecting men. They also have reproductive healthcare issues to be sorted out. It also takes care of the newborns or infants and adolescents. This is a special group which, unless we focus on, we may lose a generation. Since it is our duty to uphold the values of this community, we have to start with the young people. It is not good to wait until it is late; when many things have gone wrong and then we start saying that we must do this and that. As we know, once a tree has grown crooked for 30 years, you cannot straighten it overnight. This is the time to ensure that it grows well.

Madam Temporary Speaker, talking about the statutes, we know that Kenya subscribes to the Millennium Development Goals (MDGs). The fifth goal is on maternal healthcare to ensure that women do not die because of maternity related issues. The fourth goal is on reduction of child mortality. We have seen all those statistics and as I go through my Bill, I will be able to demonstrate that this is a position which we cannot and shall not entertain.

I wish to table a reproductive rights book, which says that reproductive rights are human rights. It states all the laws – international, regional and local – where reproductive healthcare is discussed.

(Sen. Sijeny laid the book on the Table)

Madam Temporary Speaker, before I go into the details of this Bill, for purposes of understanding, this Bill has 13 chapters. There is no chapter that says that children should be provided with condoms in schools. It is important that I highlight this to the public for understanding. It has no aim of destroying or making situations worse. It has the advantage of preventing. If implemented to the letter, all these high statistics of unsafe abortions, child mortality and maternal mortality will be a thing of the past. Many people have done something about it. I would like to take this opportunity to thank the Jubilee Government for providing free maternity care in public hospitals, but that is just a policy. This Bill shall, if passed, make it law, so that whichever Government that comes into place, it cannot decide to flush down the gains that women have fought for, for a very long time.

Madam Temporary Speaker, the first part of the Bill just talks about the definitions. It has defined so many things, including the meaning of family planning and reproductive health. Some people had taken advantage of some of the omissions and said that reproductive healthcare service means other things. I have defined it very clearly, after receiving feedback from the church, parents associations, professional doctors and *wananchi* at large. All those loopholes where anyone could have used to manipulate, confuse and mislead Kenyans have been well taken care of. When we reach the Third Reading, God willing, I believe that everybody will read with us paragraph to paragraph, chapter to chapter and clause to clause.

Madam Temporary Speaker, the second part talks about access to contraceptives and family planning services. We have seen many people die mostly because of poverty. They get children who they cannot support. When they are unwell they cannot get proper medical attention and care. As a result, some resort to unsafe abortions and others just lose their babies because of lack of nutrition and proper medical healthcare. Therefore, both the national Government and county governments should ensure that they give information and education on how Kenyans can plan their families and make important choices, so that couples can live comfortable lives.

Madam Temporary Speaker, I came up with this Bill so that once you are able to space your children and have a number that you can cater for comfortably, then it means that you have enough time in your hands to contribute to other development activities that will help you improve your economic and social status. This also will improve the political status of women. When you have a few children that you can take care of well, then you have enough time even to participate in leadership. Most women do not have this time because they have to run up and down. So, it is very important that Kenyans are provided with information on family planning and other things that they may need to make informed choices.

Madam Temporary Speaker, when we talk about family planning, it is important to note that we are referring not only to contraceptives, because there is also family planning. This includes methods of avoiding pregnancies by observing natural signs and symptoms of the fertile and infertile phase of the menstrual cycle. This is also highly encouraged. Depending on your religious faith, values and upbringing, you make that informed choice and say: "This is the way I want to go." It is healthy when nobody forces you to do anything. We make very good families and people live happily ever after without any coercion or force.

Madam Temporary Speaker, I have criss-crossed this country dealing with women issues. I have seen poverty with my naked eyes; children dying in women's arms because of hunger and lack of medical facilities. That is why we want such people to be able to plan their families as they wish. With devolution, these medical facilities shall be brought to their doorstep so that they can access them. This is the problem in this country and I have brought this Bill because the legal aspect has been lacking. I have seen some people but maybe the Standing Orders may not allow us to mention names. Within this Government there are people who have been running for a cause. I saw my colleagues like Sen. Wamatangi participate in the London Marathon so that they could contribute to the acquisition of mobile clinics. They did this with the First Lady who has been

spearheading this initiative. She has contributed heavily to this cause to save maternal lives and new born children. The question is: What can you as a Kenyan, teacher, adult or community leader do to save these lives? This is the reason we are here.

Madam Temporary Speaker, the Government of Kenya and other stakeholders have conducted several research programmes. Policy briefs have been prepared by the Ministry of Health in conjunction with the World Health Organization (WHO). This has resulted in advantages, disadvantages and plans that have been put in place. When I say there is need for legislation to support the implementation or increase of family planning, this has been based on these reports, policy briefs by the Ministry of Health and the National Council for Population and Development (NCPD).

Madam Temporary Speaker, I beg to table these reports.

(Sen. Sijeny laid the documents on the Table)

Part III of the Reproductive Health Care Bill talks about Gestational Surrogacy. This part addresses issues of infertility within families. We have seen families break up because of childlessness. As a family lawyer, I have seen many women weep. I have participated in some cases where women are not able to have children. Whichever way, it is always the women who suffer even if the problem is with the man. We have seen situations where a couple is very happy, they have it all and they have wealth---

Many a times, I have called spouses aside and asked them what the problem is. Do you not love your wife? Is she not beautiful? Has she stopped being beautiful? They have told me: "There is nothing wrong with your client. I only have one problem - childlessness." This couple goes through divorce or what I would call *Hiroshima Nagasaki* within the marriage. This is total war! Chaos!

I have been given several interventions on this issue of gestational surrogacy from the professionals. I have been given feedback which I shall amend at an appropriate time. The whole chapter has been turned into one that deals with assisted reproductive technologies. Gestational surrogacy is just one of the methods of assisted reproductive technologies. In this assisted reproductive technologies, you will find that, probably, it is the man who has a problem, for example, low sperm count or the woman who cannot go through full ovulation or she cannot get a mature egg or an egg that can be fertilized. There are many other factors. Through assisted reproductive technologies, couples are able to be given the right medical intervention which sees them through and gives them a chance to get their baby. An egg can be harvested from the woman, the sperm from the man and then it is fertilized through the IVF which is defined in the Bill that I shall amend accordingly. Then these people are able to get their children.

Madam Temporary Speaker, Sir, the reason I felt that it was important to bring this legislation to touch on surrogacy and all the assisted reproductive technologies is because I have seen couples suffer. I have seen the pain in the eyes of family members, those who cannot afford the services of medical officers to get the IVF. The cost of these facilities is exorbitantly high. The Government taxes clinics so that it costs not less than Kshs500,000. It is not guaranteed that if you try you will get a child in the first instance. You find that the elite women leave this country to India, South Africa, Germany or

London to go and get the reproductive technology healthcare services. We have doctors who are fully qualified and are ready to provide these services. They just need facilitation and legislation that controls and protects all.

We have seen couples who, after they have tried all this, stay for so long without succeeding. There is one case which I handled as a lawyer. This was on gestational surrogacy. This was for American citizens who came to the country, engaged medical services and they were lucky because they knew the medical doctors in Kenya are the best. They succeeded the very first time they did this. I am saying this because I have sought for their permission to talk about it. They were expecting one child but they got three. It was hell getting citizenship for these Americans born in Kenya. It involved a lot of pain and suffering. This also involved the intervention of a Senator from their country. Special kits for DNA from America were brought to Kenya and tests were done locally.

This further involved the FBI coming to my office to inquire whether this was a case of child trafficking. They asked me: “Did you really go through these services?” They said: “There is no law in Kenya, we have to be careful”. They went to the clinic and this even involved breaking the confidentiality of the clients. I tried to reason with everybody. The law does not say it is prohibited, which means it is not illegal or criminal. But they said that silence does not expressly say that it is permitted. They said: “For us to be comfortable, give us the law.” I have walked around in these clinics and I have seen similar situations where couples suffer. By the time these children were leaving Kenya, they were one year old. In one year, they were put through a lot of expenses and unnecessary inconveniences.

As you can see, recently even in the decided constitutional case, Petition No.782014, Justice Majanja ruled that it is high time that Kenya had laws on surrogacy, amongst others. You find that there is a major difficulty in proving who the mother of children born from gestational surrogacy or assisted reproductive technology healthcare services is. There are contracts. Believe me; before you carry a baby in your hands, after going through these particular steps, you have been through hell. The medical procedures are very thorough. This is where we say that medicine is ahead of law; as a lawyer I do not like that. That is why I am standing before you and all Kenyans to ask you to give us the law, control it, evaluate it, and monitor it. Implement it and then deal with the strengths and weaknesses.

Couples must go through thorough medical check-up to ensure that they are medically fit. They should not be suffering from diseases that can harm a child. At the end of the day, the best interests of a child should be at the heart of the law. Nobody wants to give birth to a child or bring into this world a child who is unwell or suffering from a lot of medical conditions. If they can help, they should make sure that they follow the right procedures.

Madam Temporary Speaker, after going through the health medical check-ups, an agreement should be done and everything sorted out. We will bring the assisted reproductive health technology services into the chapter that will handle everything. For instance, how the specimens - if I may call them that way - are collected. For instance, you have to go through egg harvesting if you want an egg. You have to obtain a sperm and go through fertilization because they are not fertilized in the womb so as to ensure

that all proper medical channels are followed. After you have followed all the procedures, you must ensure that---

The Temporary Speaker (Sen. Ongoro): What is it Sen.Sang?

Sen. Sang: On a point of Order, Madam Temporary Speaker. Would I be in order to request the Senator to break this down to a language that we can understand? She has gone very scientific. I am unable to pick the gist of her presentation, especially the one on harvesting something and fertilization.

(Laughter)

It is a bit complicated for some of us.

The Temporary Speaker (Sen. Ongoro): Order, hon. Senators. I have listened to the contributions of the Mover, Sen. Sijeny, and found nothing complicated. She is communicating in English. Which particular word did you not understand that you want a clarification so that she addresses that?

Sen. Sang: Madam Temporary Speaker, the harvesting element and the fertilising process is a bit complex. Some of us are just lawyers. She may be better placed because she has done a lot of science. However, the element of harvesting eggs and where it is done is something she needs to explain and give us the exact provisions she is proposing.

The Temporary Speaker (Sen. Ongoro): Do you want her to do a demonstration or which word did you not understand as lawyer?

Sen. Sang: That will help.

(Laughter)

The Temporary Speaker (Sen. Ongoro): What would help?

Sen. Sang: Yes, a demonstration of how it is harvested.

The Temporary Speaker (Sen. Ongoro): How do you expect Sen.Sijeny to demonstrate how sperms are harvested?

(Laughter)

You are out of order Sen.Sang.

Proceed, Sen. Sijeny

Sen. Sijeny: Madam Temporary Speaker, actually---

The Temporary Speaker (Sen. Ongoro): Sen. (Prof.) Lonyangapuo, you have another Point of Order?

Sen. (Prof.) Lonyangapuo: On a point of order, Madam Temporary Speaker. I think what Sen. Sang meant is that the speaker is giving us details that we are not sure whether they will be included in the law or whether she is just explaining procedures of how the process will be conducted. I expected the details she is presenting here to be tabled on the Floor of the House. The booklets she is showing us are scientific details that should only be accessed by doctors. We are expecting details about the law.

The Temporary Speaker (Sen. Ongoro): Sen. (Prof.) Lonyangapuo, in all honesty, I do not find anything out of order. We are all aware that this Bill has attracted a lot of public participation and opinion. What the Mover is trying to do is to explain aspects of the Bill that generated a lot of interest so that when you will be contributing, you know exactly where she is coming from and the benefits of the Bill.

Sen. Sijeny, you will simplify your language so that the Senators can understand what you mean.

Sen. (Dr.) Zani: On a point of information,

The Temporary Speaker (Sen. Ongoro): Yes, Sen. (Dr.) Zani.

Sen. (Dr.) Zani: Thank you, Madam Temporary Speaker. I think most of the aspects that we are going to legislate on are critical and complicated aspects. As a result of that complication, if, for example, we are talking about gestational surrogacy or harvesting, that is where the complications begin. That is the issue we need to discuss so that when we are hinging the law, we are hinging it within the context of what is already happening either biologically, socially or culturally because all these issues now come together to create the complication. Those complications are what we are trying to ensure or those are the complications that Sen. Sijeny, through this legal provision, is trying to ensure that they are sorted out well in advance to avoid other specific contentions that she is talking about and which she has already experienced.

Thank you.

The Temporary Speaker (Sen. Ongoro): Precisely, that is why I find nothing out of order. Maybe you should just use simpler language so that the Senators will understand what you mean.

Sen. Sijeny: Madam Temporary Speaker, if the truth be told, I have actually used a layman's language. If I was to read the types of assisted reproductive technology services that exist – things like intra-cytoplasmic sperm injection, egg sperm and embryo donation; embryo, egg and sperm cryo-preservation, cytoplasmic transfers---

(Laughter)

I have actually tried to simplify it. In fact, I---

The Temporary Speaker (Sen. Ongoro): Sen. Sang, what Sen. Sijeny is saying is that; she is giving you is the simplest form possible that she could use to communicate. Please, bear with her to conclude her presentation.

Sen. Sijeny: Thank you, Madam Temporary Speaker. As I was saying, the reason why – maybe I will discuss it with my colleagues here – this is something which many Kenyans are not aware of because it is something which has been going on, I could say amongst the elite. There are very few hospitals with such facilities. I think Kenyatta National Hospital (KNH) and Moi Teaching and Referral Hospital (MTRH) may have the facilities. But with devolution, the reason I am explaining into detail is so that Kenyans can know that there are actually such medical facilities that can be brought down to the county level where they can access them easily. The reason I am bringing it up is to ensure that they are made affordable to everybody and for them to understand what it is all about because there are several types.

I must say this because the media has not been very kind to me. Most of these things I have been trying to explain to Kenyans have never quite come out well in the media. By the time they are giving the news, it is only two words that come out – condoms and contraceptives – which Kenyans now think is what my entire Bill is about.

Madam Temporary Speaker, it is very important that I explain to Kenyans what this Bill is all about and how they stand to benefit. Since we believe in the family unit, once all these things have been provided for, it will be very important that all the stakeholders who are supposed to provide the necessary equipment or facilities do so.

Madam Temporary Speaker, I had talked about the case that Justice Majanja ruled in favour of the commissioning of parents to have their names in the birth certificates of the child born out of this surrogacy. This will help many parents who have first and foremost suffered the setback of not being able to have their children naturally or without assistance. It will enable them to be happy and able to fulfill their mandate as human beings. They will become responsible mothers and parents. I beg to table this authority of Justice Majanja in Constitutional Reference No.78 of 2014.

(Sen. Sijeny laid the document on the Table)

Madam Temporary Speaker, as I was stating, on the issue of surrogacy, it is important to note that all the parties involved must be adults. They must be of sound mind and that is why they have to go through all those serious medical check-ups and attention. Consent has to be obtained from the couples. The Bill will take care of all the needs of parents; the surrogate mother and the child. Once the child is born, of course, they first and foremost enjoy all the rights as provided in the Children Act. There is no discrimination and by then, it shall have stated who the parents in charge are, even if the baby dies. It is an observation which has to be carried out very strictly to ensure first and foremost that the welfare of the child or children is protected.

In the authority that I have just tabled, it took about three years for the mother or parents to be given their children. It is your egg and husband's sperm, even if you could not carry the baby in your womb. That is still your baby. If a DNA is done, it will confirm that the children are yours. Even if it is not, it is you who has taken care of the responsibilities, including the medical care and attention of the surrogate mother. In some cases fertilization could be the problem and not your womb. So, once fertilization is done, the egg is put in your womb and you carry the pregnancy to full term. You give birth to your baby and everyone will be happy.

The Bill defines a partner in Part III (6) as:-

“In this part, the term “partner” means a stable person of the opposite sex in a relationship.”

This is the husband and wife. It has no room for what we would call, “monkey business” or anything that would be unnatural or would disregard the provisions of our Constitution. When I started, I said that this Bill abides by the Constitution to the letter. Even in the Constitution, we know that children have their reproductive rights, which must be respected. On the assisted---

The Temporary Speaker (Sen. Ongoro): There is an intervention from Sen. Beatrice Elachi. What is the intervention?

Sen. Elachi: Madam Temporary Speaker, I am on a point of information, so that Kenyans can understand more about this Bill. Indeed, as the Mover is moving the Bill, it is important to understand that in the country today, we have families that have been at logger heads because sometimes the husband is unable to sire children. Therefore, they will use the brother of the husband to get children. Sometimes these women will not be able to disclose that. I think what the Mover is trying to tell the country is that, we can use the same system to ensure that if a man has a problem, this is how he can cure it, rather than his wife using his brother to get children.

The Temporary Speaker (Sen. Ongoro): Sen. Sijeny, is that information in line with the contents of the Bill?

Sen. Sijeny: Yes, Madam Temporary Speaker. That upholds and protects the family unit. As I had said, everybody, both men and women, have certain challenges. However, it is the women who mostly bear most of the challenges. This is because even if the man has a problem, there is no way to prove but if it is the woman, it will be proved because there is no baby growing in her belly and she will not be breastfeeding any child. These problems do occur and this is where it can be appreciated.

During public forums, I got interventions where some people were asking, for example, about the egg donor. If you want to have a baby within the family unit, the cousins and so on, can you do so if there is a child of 16 years? Can the child donate an egg? This law says, “No.” You can only donate anything if you are an adult of sound mind.

Madam Temporary Speaker, the law also further looks into if the donor dies after donating, who becomes the owner and how are they supposed to be disbursed? Some of course may say: “If I die before it is fertilized, destroy.” Some say, “It is my wish, please proceed and make sure my wife gets the baby”. It is a way of continuing with the family unit.

Madam Temporary Speaker, this Bill is a one-stop shop for all reproductive healthcare services. This is to avoid segmented legislation, for example, one to deal with egg, sperm and embryo donation, the other one, gestational surrogacy alone and the other ovulation induction. We have decided after getting feedback from the medical professionals, to put everything together so that in future if anyone is looking for any information concerning healthcare, then you know which law to look at.

Madam Temporary Speaker, it is something new and I am not an expert. However, we have gone through a lot of public participation and I know we are still getting feedback. I know once the Bill is passed, it will still go to the National Assembly as the law requires. They will debate it and then bring it back with or without amendments. What is important is to protect the reproductive healthcare and welfare of Kenyans and other people living in Kenya.

For people living in Kenya, this Bill also caters for access to reproductive healthcare services for persons living with disability. During the public participation, we have had interventions from various people and we have learnt that persons living with disability go through several challenges that need specific legislation. At times they are

forgotten. We must make sure that as we take care of other people without disabilities, then we also take care of the persons living with disabilities. They must have user-friendly infrastructure and relevant communication in the manner, language, form that they can understand and read. This is very important.

They also need education in the right way. They need protection from those abusive coercive practices such as forced sterilization, Female Genital Mutilation (FGM) and all those harmful cultures that have been prohibited by law, but maybe practiced on them because someone feels that they cannot speak for themselves or understand what is going on. I wish to inform my colleagues, Sen. Sang and Sen. Lonyangapuo, that in the first part or the preliminaries, there are several definitions which will help the public at large and also my colleagues to understand most of these terms. Even if there are more details on the ways to protect the newborn child and provide all the medical care, there is a word that is referred to medically as intra-pattern services. This just means that the correct diagnosis followed by periodic examinations, screening and management of complications in the period from onset of labour to the completed delivery of the newborn and the completed delivery of the placenta. So, do not be worried if I talk about some terms which you may not understand; they are defined clearly in the interpretation section and every Kenyan will be able to understand.

Madam Temporary Speaker, Part Four of this Bill talks about safe motherhood. This is the chapter that really provoked me and the main reason I am standing before you today and before Kenyans. When I was a small girl, my mother had a friend who we went to visit. We met her at the gate and she was in labour pain and in tears. I asked my mother what was happening and she told me that her friend was pregnant and was going to have a baby. I said: "Wow!" The next time my mum took me there, I found a big coffin and another small one on the floor. I asked my mum: "Where is your friend?" My mum told me: "There they are; they died during childbirth." Of course, I could hear people saying that it could have been solved, but she had bled too much. I felt this was really bad.

When I grew up I studied law and became a family lawyer and a human and women rights activist; following up on the rights of women and children. We followed the discourse on the issue of childbirth. Sometime in the year 2006/ 2007, I was involved in research, again, by the Centre for Reproductive Rights and other lawyers of human rights organizations like the Federation of Women Lawyers (FIDA). When the book "Failure to Deliver" came up, I remembered those days we used to go to Pumwani Hospital. There were reports that women were giving birth at the gate and children were dying of complications. We did research in the villages and that is the time it was clear that if you are pregnant you are put in a wheelbarrow and pushed; if you reach your destination you are lucky; if you fall down, too bad. When you reach the hospital the facilities are not there. You are told again to take another mile. It will reach a point that a pregnant woman actually fails to deliver.

When you go through this report, of course, things have changed, but in my mind I know we can still go back there, and that is why as I thank the Government for giving women free maternity services it is still a policy, there is no legislation to confirm that. That is why I say this Bill should, and must be implemented to make sure that this gain is not wasted in future. Whenever there are financial issues or otherwise, it is the gains of

the women which suffer. There could be an emergency and they stop paying for their maternity and then they will start going to traditional birth attendants, and backstreet people to procure abortions. I beg to again table a book *Failure to Deliver* which will clearly state where this discourse has come from.

When again we talk of the chapter on safe motherhood, it is every woman's joy to carry that bundle of joy in their arms after giving birth. Any woman who goes away without having that baby is a very sad mother. I used to have a friend, whose father owned a hospital in Nairobi, and we would visit, stay and play, at times help work but at times I used to feel so sad when I thought of women having gone to give birth and their babies dying for one reason or the other. Then you have to pay the medical bill and you wonder what the problem was. At times they come when it is too late because they could not afford to seek medical care but they arrive when it is too late and they cannot be supported. To make sure that there is safe motherhood, the Bill ensures that there is quality maternal care which is offered by trained health care professionals. These are medical practitioners, clinical officers, nurses and midwives. These are not quacks who are going to complicate the lives of Kenyans and particularly women. This will ensure that leaders are not blamed by their voters. As the Senate, we have passed several Motions that talk about health facilities.

Before I talk about health facilities, let me talk about safe motherhood that goes alongside termination of pregnancy. As a country we are headed to the direction of prioritizing maternal healthcare. We have noticed that this is an area that we have to focus on. For this, I also thank the First Lady who has this passion and we urge everybody to join her so that we make Kenya a safe place to give birth. Once we ensure that there is safe motherhood, all shall be well. When we talk about this, we are talking about making sure that the required medical facilities are provided, devolved, affordable and in fact, subsidized. Within public hospitals they should be free.

The Temporary Speaker (Sen. Ogoro): There is another intervention by Sen. Sang and yet we only have 30 seconds to go. Can you make it quick?

Sen. Sang: Madam Temporary Speaker, my only concern with that particular chapter was that if you look at the constitutional provisions on termination of pregnancy and what the Senator has brought, she has brought in some new elements of consultation with the mother. What is the rationale of bringing in a new concept of consultation with the mother?

The Temporary Speaker (Sen. Ogoro): How I wish we could go on and on listening to this very interesting Bill. The Mover had one hour to make her contribution, she has utilized fifty five minutes, so she will still have five minutes to conclude.

ADJOURNMENT

The Temporary Speaker (Sen. Ogoro): Hon Senators it is now 6.30 p.m. and it is time to adjourn the Senate. The Senate stands adjourned until tomorrow Wednesday, 1st October, 2014 at 2.30 p.m.

The Senate rose at 6.30 p.m.