

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 7th October 2015

The House met at 2.30 p.m.

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

PRAYERS

PAPERS LAID

Hon. A.B. Duale: Hon. Speaker, I beg to lay the following Papers on the Table of the House today Wednesday, 7th October, 2015:-

The Office of the Controller of Budget Annual National Government Budget Implementation Review Report for the Financial Year 2014/2015 pursuant to Article 228(6) of the Constitution.

The Office of the Controller of Budget Annual County Governments Budget Implementation Review Report for the Financial Year 2014/2015, pursuant to Article 228(6) of the Constitution.

Legal Notice No. 165 of August 19th, 2015 on the Income Tax Act (Cap 470).

The Report of the Auditor-General on the Financial Statements of the Constituencies Development Fund (Tetu Constituency) for the year ended 30th June, 2014 and the certificate therein.

The Report of the Auditor-General on the Financial Statements of the Constituencies Development Fund (Kuresoi North Constituency) for the year ended 30th June, 2014 and the certificate therein.

The Report of the Auditor-General on the Financial Statements of the Constituencies Development Fund (Msambweni Constituency) for the year ended 30th June, 2014 and the certificate therein.

The Report of the Auditor-General on the Financial Statements of the Constituencies Development Fund (Nyali Constituency) for the year ended 30th June, 2014 and the certificate therein.

The Report of the Auditor-General on the Financial Statements of the Constituencies Development Fund (Kipkelion West Constituency) for the year ended 30th June, 2014 and the certificate therein.

The Report of the Auditor-General on the Financial Statements of the Constituencies Development Fund (Lari Constituency) for the year ended 30th June, 2014 and the certificate therein.

The Report of the Auditor-General on the Financial Statements of the Constituencies Development Fund (Kirinyaga Central Constituency) for the year ended 30th June, 2014 and the certificate therein.

Thank you, Hon. Speaker.

Hon. Speaker: Very well, Hon. Members. I think it is fair. I have noticed a few Members whose constituencies the Auditor-General has reported on are present in the Chamber. I was observing keenly when every name of a constituency was mentioned and I did not see anybody seeming to appreciate that they are theirs, starting with the Member for Tetu Constituency. It is fair to note that there is a Report by the Auditor General regarding your Constituencies Development Fund (CDF). Hon. Olago Aluoch would agree with me because he knows what it means.

Hon. Members, pay attention to these reports. They could have far reaching repercussions and it is good for Members to begin interacting with these reports especially when they touch on your constituencies. It may be that the Auditor- General may have made reports based on information that was not provided at the time that the audit was done but, which information has subsequently come to light. Long before the Public Accounts Committee (PAC) goes to interact with the matter, Members could look into them so that they can provide any responses that may be required and that the Auditor-General may have risen in those Reports. This is just to alert the Members whose constituencies' reports have been tabled. At the earliest opportunity make, sure you interact with the Report.

Of course the Report by the Controller of Budget on review of Government Budget is referred to the Budgets and Appropriations Committee, while the Legal Notice 165 on the Income Tax is referred to the Committee on Delegated Legislation to look at what it is that is proposed in those regulations.

Next Order.

NOTICES OF MOTION

ESTABLISHMENT OF SELECT COMMITTEE ON 2007 POST- ELECTION VIOLENCE

Hon. Speaker: Hon. Samuel Chepkong'a.

Hon. Chepkong'a: Hon. Speaker, I beg to give notice of the following Motion:-

THAT, aware that following the 2007 post-election violence various State and non-state agencies carried out independent investigations, either on their own or in the exercise of their statutory functions; further aware that some of those agencies, including the Commission appointed by the then President to inquire into the matters pertaining to the post-election violence (*The Waki Commission*) either submitted or publicized their findings and/or reports which are yet to be discussed by the National Assembly; cognizant of the fact that the matter of possible compromise and allegations of skewed investigations has been of concern to the people of Kenya, including allegations that some of the witnesses who testified before the Commission and other agencies may have been procured; recalling that Article 95 of the Constitution provides that the National Assembly deliberates on and resolves issues of concern to the people; further recalling that in 2010, Parliament amended the Commission of Inquiry Act (Cap.102) to accord the National Assembly an opportunity to receive and discuss such findings or reports; this House-

(a) Resolves to establish a Select Committee to inquire into and report on the allegations of the skewed and compromised investigations by the various State and non-state agencies on the matter of the 2007 PEV.

(b) Resolves that the Select Committee elects its Chairperson and Vice-Chairpersons from amongst its members.

(c) Further resolves that the Select Committee submits its report to the House within 90 days to inform debate on the subsequent Motion for noting the contents of the Report of the Commission of Inquiry into the Post-Election Violence (CIPEV) which was tabled in the House on 4th December 2008.

(d) Approves the appointment of the following Members to the Select Committee:-

1. Hon. (Ms.) Florence Kajuju, MP.
2. Hon. Moses Cheboi, MP.
3. Hon. Kimani Ichung'wah, MP.
4. Hon. (Ms.) Alice Ng'ang'a, MP.
5. Hon. David Ochieng, MP.
6. Hon. Tom. J. Kajwang', MP.
7. Hon. Boniface Otsiula, MP.
8. Hon. Samuel Chepkong'a, MP.
9. Hon. Mati Munuve, MP.
10. Hon. David Gikaria, MP.
11. Hon. Jimmy Angwenyi, MP.
12. Hon. Abdulaziz Farah, MP.
13. Hon. (Ms.) Mishi Mboko, MP.
14. Hon. Katoo ole Metito, MP.
15. Hon. Wilber Otichilo, MP.

Thank you, Hon. Speaker.

Hon. Speaker: Just to inform the House, the Motion is party-sponsored. I do not need to explain to you what that means.

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

Hon. Speaker: Hon. Chris Wamalwa, you cannot be claiming to be rising on a point of order. Under what Standing Order?

Hon. Wakhungu: Standing Order No. 1. Hon. Speaker, in line with---

(Laughter)

Hon. Speaker: No! It is not available to you. Standing Order No.1 is not available to you. Hon. Olago Aluoch.

Hon. Aluoch: Hon. Speaker, I rise to seek your direction on this matter with utmost respect. Considering that Kenya has domesticated the Rome Statute and it is, therefore, part of our laws; and considering that the issues canvassed are actively in court at the International Criminal Court (ICC), is it proper that we proceed with this at this stage considering the rule of *sub judice*?

Hon. Speaker: This is just a notice of Motion. When the Motion comes up for debate, that is the appropriate time when the issues that you are raising can be raised so that, if there is

need, a ruling can then be made. But at this point, it is perfectly in order for the Member to give notice of Motion.

I have noticed that there is a trend growing in this House that even non-matters are becoming serious contestations. The stage of giving notice of Motion cannot be contested. Do I see that there is another point of order from Hon. Onyango Oyoo? Is it about the same matter?

Hon. Oyoo: It has since been overtaken by events.

Hon. Speaker: Hon. Chris Wamalwa.

Hon. Wakhungu: Thank you, Hon. Speaker. I want to seek your directions with regard to the notice of Motion. I was looking at the composition and I was wondering whether there is any guideline as far as the representation of the coalition is concerned. I was looking at the ratio and I thought that much as it is party-sponsored from the other side of the coalition, they have more as opposed to our side of CORD. Is there any guideline in terms of the composition?

Hon. Speaker: Were you here at the beginning of the 11th Parliament? I am sure you know the composition of the various committee to which you belong. So, obviously there is --- I do not need to even guide you on that. It is the Standing Orders that will guide. Hon. Members, he has just given a notice of Motion. If you have any issues, including the composition; including wanting to remove names, that is not at this stage. I would want to plead with ourselves to read and understand the rules of the House. At this stage there is nothing.

Hon. John Ndirangu.

IMPROVEMENT OF SECURITY IN ALL STRATEGIC
GOVERNMENT AND PRIVATE INSTALLATIONS

Hon. Kariuki Ndirangu: Hon. Speaker. I beg to give notice of the following Motion:-

THAT, aware that Article 29 of the Constitution provides for the right of every citizen to freedom and security; further aware that this country has faced numerous insecurity incidents in the recent past, occasioned by terrorism attacks; cognizant of the fact that many lives have been lost due to the said attacks and that terrorists continue to issue threats of further attacks; deeply concerned that our security officers lack the requisite capacity and equipment to detect and deter such occurrences; this House urges the Government to speedily implement a mechanism to improve security in all strategic Government and private installations, such as Parliament, Government offices, shopping malls, worship places and other public places in tandem with enforcing already existing security systems; conduct training for all security agencies on modern techniques of dealing with the incessant threat of terrorism and put in place stricter access controls in the said areas and make provisions for regular mandatory audit/checks to confirm that all Government institutions are enforcing and implementing measures already in place to improve security in their facilities.

Thank you, Hon. Speaker.

Hon. Speaker: Next Order.

STATEMENT

MANAGEMENT CRISIS AT THE UNIVERSITY OF NAIROBI

Hon. Wangwe: Thank you, Hon. Speaker. I rise to request for an urgent intervention by the National Assembly on the matter of a management crisis at the University of Nairobi (UoN).

In recent times, UoN has been plunged into myriads of challenges which should be expeditiously addressed to avert an imminent collapse of that pioneer institution. Allow me to mention, in brief, some of the issues for which I seek the intervention of the House through the Departmental Committee on Education, Research and Technology:-

1. Financial Mismanagement.

The university is experiencing a financial crisis of unprecedented proportions. Currently, the institution is operating with a huge deficit to the tune of Kshs2.6 billion and a bank overdraft of Kshs500 million monthly to pay salaries. In addition, the university is unable to honour remittance of its statutory deductions. The state of affairs is against the principles of the Public Finance Management (PFM) Act, 2012. I urge you to require the Departmental Committee on Education, Research and Technology to urgently investigate the following financial issues and report to this House for consideration:-

- (a) The circumstances which led to the university to incur such huge expenses, including capital expenditure, and enter into such large deficits to a point of almost being technically insolvent.
- (b) Whether the borrowing obtained necessary approval.

2. Procurement Issues.

There are reports and allegations of non-adherence to Public Procurement and Disposal Act, 2005 and its regulations and guidelines of 2006 in the procurement of goods and services. Hon. Speaker, I urge you to also require the Committee to urgently investigate the following procurement issues:-

- (a) Cases of irregular split of tenders including the tender for renovation and furnishing of the Vice-Chancellor's residence to circumvent procurement requirements.
- (b) Forceful procurement of vehicles costing Kshs86 million without availability of funds.
- (c) Award of contract to university staff without following procurement procedures.

3. Governance Issues.

There is unresolved conflict between the office of the Vice-Chancellor (VC) and that of the Deputy Vice-Chancellor (DVC) Administration and Finance. The Committee should investigate:-

- (a) Refusal by the VC to hand over to the DVC Administration and Finance.
- (b) Cases of abuse of power. Gagging the DVC Administration and Finance on matters of finance
- (c) The handling of administration matters i.e., recruitment of staff and redundancy by the VC against the university regulations.

4. Tribalism and Nepotism.

Blatant abuse of office by hiring people from one community where we have 13 slots, new appointments and irregular termination of the services of four others from one other community, that is, the Finance Officer, Chief Legal Officer and Chief Internal Auditor. They have also sent one officer in the legal office on compulsory leave. The sacked officers were forcefully ejected from the office without any explanation.

Hon. Speaker, these are matters of concern to the people for which Article 95 of the Constitution empowers this House to resolve. In this regard, my prayer is for this House to require the Cabinet Secretary for Education, Science and Technology (MOEST) through the Departmental Committee on Education, Research and Technology to give a comprehensive report regarding the issues bedeviling that premier university.

Thank you, Hon. Speaker.

Hon. Speaker: That sounds like a mouthful. It requires the Committee. Is the Chairlady for the Departmental Committee on Education, Research and Technology in? Have they stopped attending Parliament or will Hon. Eric Keter speak for them?

Hon. Eric Keter: Thank you, Hon. Speaker. On behalf of the Chairlady who I know is around, I take this responsibility to say that we shall give the Report within three weeks.

Hon. Speaker: In three weeks? Is that okay Hon. Wangwe? I think it is important because you need a lot of interactions with all the parties that are involved.

Hon. Wangwe: With due regard for my colleague who is the Member of Parliament for Belgut Constituency, I just want to say that three weeks is too much looking at the kind of urgency this Report requires. Since it will be brought to the House, I feel 14 days would be very ideal.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Member for Belgut?

Hon. Eric Keter: Because those who are concerned are many and include the Ministry and the others, I beg that he accepts three weeks because as he has enumerated, there are so many issues which we need to go into in details. I think three weeks will be enough if he would accept.

Hon. Speaker: Very well. Since you know what your diary looks like, Hon. Wangwe, let us allow the Committee as much time as possible. In this case, they say three weeks but because the matters raised therein are quite weighty, I think it is fair that you give priority hearings so that you get as many of the stakeholders as possible appearing before your Committee, Hon. Keter.

Next Order.

BILLS

First Readings

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL
THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (NO. 2) BILL
THE FOOD SECURITY BILL, SENATE BILL NO.23

*(Orders for First Readings read - Read the First Time and
ordered to be referred to the relevant Departmental Committees)*

Second Reading

THE MAGISTRATES' COURTS BILL

*(Hon. (Dr.) Shaban on 1.10.2015)**(Resumption of Debate interrupted on 6.10.2015)*

Hon. Speaker: Very well. Hon. Members, the records show that the Hon. Millie Odhiambo had just completed contributing and the Leader of the Majority Party, having made indication that he wants to contribute, takes precedence.

(Hon. Gikaria stood up in his place)

Hon. Gikaria, I am sure you have read the Standing Orders and even the Constitution. So, if the Leader of the Majority Party or the Leader of the Minority Party has indicated desire to contribute, they take precedence over the rest of you. For your information, the Leader of the Majority Party, your Deputy is the one who moved the Bill. So, you will be contributing as the Member for Garissa Township.

Very well.

Hon. A.B. Duale: Thank you, Hon. Speaker. I knew it is my Deputy who moved it. Now, let me contribute to this very important Bill as the Member for Garissa Township.

This Bill is before this House as part of the reform agenda that is taking place within the Judiciary arm of the Government. The Constitution empowers the courts to uphold and enforce the Bill of Rights. Within the reading of Article 23(2), it imposes an obligation on Parliament and, more so, the National Assembly to enact a legislation that gives original jurisdiction to all courts, but in this particular Bill, to subordinate courts and the magistrates courts to discharge their functions in the determination of cases relating to violation or infringement of fundamental freedoms in the Bill of Rights. The principal objective of this Bill is to give effect to Articles 23(2), 169(1) and 2 of the Constitution by providing the magistrates courts with that jurisdiction, powers and, more so, with the procedure of how the magistrates courts will function.

If you look at Part II of the Bill, it provides for the constitution of the magistrates court. What is the composition of that court? That is what Part II talks about. That Part also confers the criminal and civil jurisdiction in terms of the function of the magistrate's court - what it can do and what it cannot do in terms of criminal or civil cases.

This Bill also deals with the whole aspect of the administration of the magistrates courts. For the first time, it gives the Registrar of the courts the responsibility to set out the powers, functions and duties of the Registrar. All those duties are assigned in this particular Magistrates' Courts Bill, 2015, and how they relate to the Chief Registrar of the Judiciary.

Because this court is so important within the Judiciary, this Bill sets the secretariat, functions, objectives and boundaries of the court in terms of jurisdiction. It also provides, for the first time, the appointment of a court administrator who will be in charge of the magistrate's court. What are the powers and functions of that court administrator? For the first time, this proposed Act is also establishing a specific registry for the magistrate's court which is not there today. The management and supervision of the staff of the magistrates court is also well

documented in this proposed Bill. The facilitation in terms of enforcement of all the decisions that emanate from the magistrates courts has also been taken care of.

If you look at Part IV of this Bill, it is very fundamental. It deals with the general matters. The most important thing I have seen in Part IV is the sitting of the magistrate's courts. There are procedures in supervision of those courts and how their records are kept. Basically, we have the magistrate's courts, the High Court, the Court of Appeal and highest court, which is the Supreme Court.

Within the reading of the reforms that are to be undertaken in the implementation of the Constitution, each and every segment of the Judiciary must be reformed. Part IV of the Bill deals with the general matters including the sittings of the magistrates court, its own procedures, supervision of that court and the keeping of their digitized records so that Kenyans will never again miss a file at the magistrates court.

Finally, that Part repeals the current Magistrates' Courts Act Cap. 10 which is old, outdated and has borrowed a lot from the Anglo-Saxon legal system. The repeal of Cap.10 of the old Magistrates' Court Act seeks to make again consequential amendments to the Law of Succession Act Cap. 160 and the Penal Code Cap. 63. Basically, this is a small Bill. I am sure and happy that today is the third day that the House is debating this proposed Bill. That shows the interest that the Members have. Those are the courts that affect the lives of the people that we represent.

If we streamline through this Bill the running, the procedure and the record keeping of this lower court--- About 60 per cent of Kenyans go to those courts as compared to the Court of Appeal, Supreme Court or to the High Court. Through this Act, if we streamline the operations and create a reform system within those courts, then I am sure that the benefits of a reformed department within the Judiciary will go back to the people who elected us to this august House. It is a small Bill, about five or six pages, but these six pages are so important to the lives of the people of Kenya in their quest for a reformed and a fair transparent judicial system.

With those many remarks, I beg to support.

Hon. Speaker: Very well. You have made an important point that 60 per cent of the citizenry of this country have their matters dealt within the subordinate courts. It is for that reason that in Article 23, Parliament is required to pass legislation giving original jurisdiction to subordinate courts in appropriate cases in the enforcement of the Bill of Rights. That is a powerful message that the country needs to know that this is happening and, sooner than later, Kenyans who may not have been able to access the High Court to seek redress in the area of enforcement, infringement or threat to infringement of any of their fundamental rights are now going to have an opportunity to test the enforceability of these rights even in subordinate courts. It is a very important point. Hon. Gikaria.

Hon. Gikaria: Thank you Hon. Speaker, for giving me this opportunity to give my contribution towards this very important legislation. Rightly, as you have just said, for example, where I come from, we have a High Court. But most of the cases that are supposed to be handled by it are not because it is so congested.

Article 47 says that we need to have an expeditious process in the court in order to get justice. It is always said that justice delayed is justice denied. The problem that we have, like in Article 2, is that it gives an explanation of a station. I am saying this because it is important for this Bill to specify exactly where the courts are supposed to be located. It says that a "station" means a place at which one or more Magistrates Courts are located. It has also been expounded in Article 13 of the same Bill, where it mentions the gazettelement. It is important to have the

courts in places that are gazetted and where members of the public can access them. In Nakuru, the municipal courts are located within the vicinity of the municipal premises and the authorities there close the gates. To some point, people were unable to access the courts. Some people had their bonds withdrawn because there were some riots which were going on, while the court was in session. Therefore, it is important for us to have the courts located in places as it is indicated in the Bill. The locations of the courts should be gazetted, and should be within the reach of every person who needs to use the facilities.

Yesterday, I had an opportunity to listen to Hon. Chepkong'a and Hon. Waiganjo. They have already alluded to some of the amendments that the Departmental Committee on Justice and Legal Affairs Committee has brought. Given the pecuniary limits of Kshs7 million and below, it means that any person with a pecuniary figure of more than Ksh8 million will not access the Magistrate Court. According to the Chairperson of the Departmental Committee on Justice and Legal Affairs, they will bring some amendments during the Third Reading to push the limits of civil cases up to Ksh20 million for our Chief Magistrates. That is important because, again, yesterday, an hon. Member said that they did not have a High Court in their area, and that they needed to travel to very far distances to have their cases addressed. That is because the jurisdiction of the Magistrate Court was limited to a certain level. Therefore, the decision of the Departmental Committee of Justice and Legal Affairs Committee to increase the limit of pecuniary jurisdiction of Chief Magistrates from Kshs7 million to Ksh20 million is good.

During the Third Reading, we also need to have some caution. One day, I had an opportunity to attend a seminar of the Judges and Magistrate Vetting Board. The participants argued about some magistrates who, at times, made judgments which ended up being recanted by the High Court. It is important for us to be cautious as we give magistrates powers to handle land cases within their areas of jurisdiction. We need to be sure that they can be able to handle cases that are within their mandate, so that they do not go over-board and end up with judgements that attract appeals.

If you look at Article 7(2), which gives the chief magistrate limits of between Kshs7 million and Kshs20 million, you will notice that the Chief Justice may from time to time adjust those limits. Yesterday, Article 3 brought a lot of issues regarding some of the sub-clauses contained in the Bill. The presiding Speaker actually alluded to some of the issues. As he directed yesterday, some of these amendments should be brought during the Third Reading so that we can address this particular matter, as it is stated under Clause 7(3) (c). If it is left the way it is, people might take advantage of it and men, in particular, will suffer.

Yesterday we had a small discussion with Hon. Wahome regarding Article 8(2). Article 25 of the Constitutional gives the Magistrate Court an opportunity to even listen to cases relating to fundamental human rights issues. While dealing with cases of violation of fundamental human rights particularly - particularly cruelty, torture and human behaviours that are indicated under Article 25 – we need to be a little careful. As much as we would want the Magistrate Courts to have those kinds of powers and the jurisdiction to listen to such cases, we need to be careful. If we are not very careful, we can have people making unjustified rulings - like it was alluded to the other day regarding the teachers strike. It was said that a court just sits and, without looking into other parameters that govern their ruling, they make a ruling. It was said that the court gave a ruling without considering certain provisions of the Constitution. We might give Magistrate Courts such powers and end up having some compensatory awards which are beyond the limits of such courts. In this regard, we will, again, be looking at whether we can bring some amendments. As you have indicated, it is important for us to look at the human rights issues that

are violated. An example is the fees that are charged at the High Court, which the common *mwananchi* may not afford.

Article 10 of the Constitution talks about powers to punish somebody for contempt of court. Again, we need to be very careful. Article 10(d) relates to what we were looking at just the other day at the International Criminal Court (ICC) regarding a witness who has refused to testify, one who has recanted his evidence or has said that he does not want to attend the proceedings. The ICC did not have a procedure for dealing with such a situation. Now what we have it here, under Article 10(d), it serves as a threat to a witness who might give false evidence and refuse to heed court summonses to appear before it because he know that he has lied to the court. One would know that he can be punished by being forced to appear before the same court to give evidence. We also need to look at Article 10(d) very carefully. It makes reference to someone having been called upon to give evidence in judicial proceedings, and having failed to attend because of genuine reasons or because of having said wrong things and, therefore, declining to appear before court to testify. I do not know what provisions have been made within this Act for someone who has decided not to go back to court to give evidence. I did not hear the Chairperson talk about it yesterday, but Article 10(3) talks about a term not exceeding five days as punishment for contempt of court. It is too lenient to jail somebody for only five days for contempt of court. During the Third Reading, we might have to bring some amendment to enhance that penalty.

With those few remarks, I support.

Hon. Speaker: Joseph Kahangara, the Floor is yours.

Hon. Kahangara: Thank you, hon. Speaker, for giving me this opportunity to contribute to this Bill. This Bill gives jurisdiction to subordinate courts and also increases the monetary value or the pecuniary value of cases that the Magistrate Courts can hear. This means that we are getting services closer to our people. As it has been said, we do not have High Courts in our areas and most of these matters have been handled by the subordinate courts. However, there has been limitation on monetary value and people who had matters that they wanted to be handled by the courts were unable to reach the High Court either because of the distances or other matters.

I want to support this Bill especially where it says that the Chief Magistrate may, from time to time by notice on the Kenya Gazette, revise the pecuniary limits. This means that it does not have to come back to this House to increase the limits. It can be done within the Judicial Service Commission (JSC) through the Chief Justice. This means that our people will get services closer to where they live.

With that, I support the Bill.

Hon. (Ms.) Nyamunga: Thank you, Hon. Speaker, for giving me this opportunity. I would like to support the Bill for various reasons.

First, the Bill has set the hierarchy of each court in such a manner that it is going to give each court its place. For example, there are matters for the Magistrates' Court and other matters for the High Court in such a manner that there will be no need for people to fight over functions and responsibilities. There is a very clear demarcation by the way the Bill is setting up the courts. Secondly, there is a provision of setting up courts in each county. Right now, many people do not get justice, not because they do not want justice, but they cannot access the services of a court. If courts are established in the counties, it means that there will be a justice system in the whole country as outlined in Clause 12.

I also applaud the Bill in Clause 14 because it gives the administrative staff a say in the administration of the courts. They also feel part and parcel of it. They are not just passengers in

the courts. That is very important. Another important thing is that there is a provision for alternative justice. Right now, we realise that almost 80 per cent of people who are offended or have issues do not go to court because they think that courts, first of all, are very expensive and, if they are not expensive, they will not be properly heard or given the audience that is required. Many people fear going to court, but they need justice. The Bill provides for alternative justice. I know there is already a tempo to that effect where the alternative justice system is supposed to be established in each and every part of the country even in the very remote areas, so that we can include the elders in the communities to help administer justice. Most people also fear going to court because of the procedure. People have different reasons for not wanting to access courts. This Bill sets that alternative that will allow people to interact with the people that they know, namely, the village elders, the chiefs and the church community. That will enhance the court system and justice in our country and many people will access the courts. There is also the issue of costs. When some people hear the word “court”, they already think that they are going to be locked in. That deters many people from taking their cases to court.

I would like to support this Bill, but I would like to make a recommendation that the Bill should provide that the records of all the courts should be kept in a similar manner. This will eliminate the idea of files disappearing, people not getting justice because of corruption and bribery that goes on in courts. This will provide a system where the filing is done. If possible, it should also provide for the computerisation of all cases so that, if somebody needs any proceedings, they do not need to go looking for files. They should be digitalized so that we do away with the issue of corruption and hiding of files.

In general I support the Bill. Amendments may come up at the Third Reading, but I support the Bill for streamlining and involving the management of courts to give the people the services as required.

Hon. Bunyasi: Thank you, Hon. Speaker, for allowing me to get a chance to contribute to this Bill. Firstly, the geographic nature that is implied by the Bill in which the courts would move closer to the people is not only going to make it cheaper and easier for people to access the courts, but it is going to help us to deal with what I think, as a non-lawyer, has been a perennial problem of running parallel systems, some of which we call traditional and others that we call modern law.

Increasingly, the modern law has begun to chip away from the way, for example, disputes were settled. This expansion in access to the courts will bring things under the same umbrella and consideration across different geographic areas. I certainly find that increasingly, the traditional systems that were in place, which in many ways are fraying on the margin, are doing so because people who are upholding the systems are no longer brought up within the same traditional norms. Therefore, access to courts will help to bring the systems of justice, restitution and other avenues that are being sought much closer to the people.

There is this grading of cases of matters civil and monetary terms that go into the law. I had thought that this would have simply been a case in which the Chief Justice sets this, so they can be modified from time to time. If we get, for example, a huge drop in the value of the Shilling, what seems to be a big figure for example like Kshs7 million, would become a piece of change. I would have thought that the powers of modification have been given to the Chief Justice. Even the powers of determining this limit, in the first place, need not be in my view, inside the law. This ought to be handled either administratively or in any other regulation; something on the side, that is not embedded in law, which should require amendments to come to us.

Certainly, the limits are somewhat low particularly the lower end limits where the Resident Magistrate handles cases of only up to Kshs2 million. In principle, I would have been much happier if these specifics were not part of the law, but were left outside with the powers to set them and vary them over time.

There are a number of other areas where they define the jurisdiction, for example, Clause 7(3)(a) through (d), that are extremely important. Land questions and the disputes in land issues are changing in nature. In the olden days, it was the process of inheritance that was predominant. But now increasingly, we have many land transactions. There is not always sufficient clarity on land transactions plus the risks of those who know how to take advantage of those who do not know. The changes that were made in the land law, for example, requiring spouses to give consent, are of tremendous value, so that there is no taking advantage even within households between one spouse and the other. It is a good thing to allow this to go before the Magistrates Courts when there are disputes because it will be a lot closer to the people and they will use modern law to determine this, perhaps, with the flavouring of what the traditions might be in place. That ambivalence over the years has been a problem and I think this will help to chip it away.

Hon. Speaker, the issues of marriage, divorce, spouse maintenance or dowry are also major parts. Even for us leaders who are not in the judicial system in any way, you frequently get those kinds of problems. As I speak, I went through a weekend in which I had to rescue a lady who was in the throes of a major dispute that could lead to either divorce or such complications. As the courts get closer, not that the courts are the best arbiters in the final place, but you can get lasting decisions that are enforceable in a modern court of law as opposed to the murky darkrooms of elders, as it sometimes happens.

I am being intrigued at the inclusion of seduction of unmarried women or girls, but I will let that rest as it may for those who know more about these issues and how they end up here in the law.

The issue of enticement or adultery with a married person is a common issue in communities and I think to the extent they will end up in courts is a great development because people will get access to such justice fairly quickly.

In Clause 8, it is also great development to have issues relating to compensation for loss or damage suffered in consequence of a violation, infringement, denial of a right or fundamental freedoms in the Bill of Rights. This is revolutionary. It is so important that the issue of these rights – and there are many rights – that are violated routinely and those who are affected have no recourse or knowledge of how to get the recourse, or even if they did, getting to where the courts have been is very prohibitive because of transportation and travel expenses. Counties are very wide in size. If I talk about Busia, for example, the distances are large between the ends of the county from the southern end where you have to go by road transport, as well as use a boat all the way to the northern end in Teso North. Hopefully, one magistrate court per county is only going to be a start so that, progressively, this can go down to the sub-counties. The responsibility of courts should not be so much geographic. They should be population-based. Subsequently, moving to sub-counties, even though it increases both initially the capital costs and later operating costs, should be the nature of justice. One county which is small is likely to have long queues and cases are likely to linger on in the courts for a long time. I would hope that, progressively, this will move down to the sub-counties so that it can become relevant. The differentiation should be demographic rather than geographical. You can use the administrative

geographic one as we have done here only for starters, as we try to file out the system away from centralised places where it was.

Since the onset of Constitution 2010, the funding of the Judiciary has substantially increased. It increased from Kshs3 billion a year for the entire judicial system to five times that - to nearly Kshs16 billion. It is now growing more modestly. The initial one was a big jump to accommodate the new Constitution 2010. Therefore, devolving the court system closer to the people is a tremendous and commendable development. It is one in which I see these amendments only as the first instalment of a long process that is going to be followed. I would like to see a court not just in Busia but also in Nambale, Butula, Amagoro and other places to get closer to the people.

The other issue that is important is that it is not enough to bring the court close to the people but the performance of these courts needs to be looked at a bit more carefully so that outputs and timelines are clearly defined. Those who seek justice in courts should not get cheated by the length of time it will take to resolve disputes.

With those few remarks, Hon. Speaker, I stand to support the amendments of that Bill. Thank you.

Hon. Speaker: Very well. The next speaker is a Member of the Committee. I was not present when the Bill was moved but, looking at the last paragraph on the memorandum of objects on reasons, I do not seem to understand this statement: "That the enactment of this Bill shall occasion not additional expenditure of public funds to be provided for through the annual Estimates." That appears to be a contradiction.

Hon. Peter Kaluma.

Hon. Kaluma: Thank you, Hon. Speaker, for giving me the opportunity to address this very important matter. The thing that has bothered the country most about the organisation for our judicial system is access to justice. This Bill is a very good attempt in the direction of bettering access to justice by all Kenyans. If Members were to look at the proposals that we have made in regard to Clause 7 of the Bill, we are proposing an enhancement of the jurisdictions of the various levels of the Magistrates Courts. We are saying that a Chief Magistrate will have jurisdiction to deal with matters going up to Kshs20 million. A Senior Principal Magistrate will have jurisdiction to deal with matters going up to Kshs15 million and a Principal Magistrate will have Kshs10 million. A Senior Resident Magistrate will have a jurisdiction to deal with matters going up to Kshs7.5 million. The Committee is proposing that we enhance the pecuniary jurisdiction of Resident Magistrates to Kshs5 million.

Members have been explained to but I know some of us who were not there when the Chair was moving the Bill are still asking why are we are taking this jurisdiction so up. This is the easiest way to do away with the backlogs that we have in the court system across the country. We have seen Chief Magistrates being appointed judges. They do a very good job. The question we are asking is: "How does it help to have, for instance, a High Court in Homa Bay which is not able to do all that needs to be done yet we have subordinate courts which have the same capacity and training in law doing very little down there?" So, wherever the courts are and even where we do not have High Courts across the country, we are going to have a situation where access to justice is going to be made easy and more available to all Kenyans.

There is a proposal the Committee is looking at which the House needs to think about much more deeply. We are proposing to confer Magistrates Courts with jurisdiction to hear employment, land and environment matters to the limit of their jurisdictions. I do not know how

deeply the Constitution will speak to it but assuming that the Committee is right in law, I would urge that this is the way to go.

For my own personal experience, we have a single resident judge of the High Court in Homa Bay. We know that we were to create courts dealing with employment, environment and land matters. So you have a single judge waiting for very few murder cases. We are lucky because we have very few people who engage in those very heinous crimes which have to be tried originally at the High Court. So, you have a great judge who is not seriously engaged but, when it is an employment matter, all the people of Homa Bay County have to move from Homa Bay Town, Suba or wherever across to Kisumu. What happens is that a person will borrow Kshs600 to move from my constituency to Kisumu and back. The Kenyan reaches Kisumu and the matter is adjourned. The next time the matter is fixed for hearing, he cannot proceed because he has no money and nobody trusts him to borrow. Essentially, we have a situation in which we have a High Court in Homa Bay trailing due to structures of the Constitution. That High Court is exercising jurisdiction and leaving aside matters of employment and environment and people are limited in terms of accessing justice in those areas. Matters of employment, land and environment are the common disputes between our people. The situation we have in Homa Bay, on land and environmental matters, is that people have to move to Kisii Law Courts on land matters. The cost of travelling to Kisii and back, together with other expenses, amount to Kshs500. We have people who, because of lack of money to fight for justice around land disputes, cannot pursue those parcels of land. Then you have a total stranger taking up land of people somewhere simply because they cannot fight for their rights before the courts across there.

As a Committee, we are proposing that if it permissible within the law; let us enhance the jurisdiction of the magistrates across the country. They are lawyers trained like the judges and the lawyers in this Parliament. In fact, Hon. Speaker, I wanted to confirm to the nation that I know your history in the Judiciary. You stand out when you speak in Parliament as one of the best legal brains we have around. That is the case of those magistrates whose mandates we lower yet the people of Kenya are crying for justice across the country. Let us enhance jurisdiction on matters of employment and environment so that we do not have this limitation where there are a few judges that we cannot move around.

There is a radical proposal that I took to the Committee, particularly on the area of disputes around the child. I know that this is a very controversial matter, especially when I, as Kaluma, speak about it. One of the proposals I made to the Committee is that if possible, we should ensure that the magistrates dealing with matters of children should be at the level of a principal magistrate and above. I am happy that I am explaining this thing beyond those extraneous issues Hon. Naikara is thinking about.

There is no bigger matter that can be the subject matter of a court process than the life and well-being of a human being. In fact, in children's court matters, the subject matter, unlike these other commercial courts where people fight over money, we deal with human beings. The decision the judicial officer makes has far reaching ramifications on that human being. If it as an erroneous decision, a life can be destroyed completely! If it a good decision, well enough. Because we have opened the court system, particularly at the level of subordinate courts, to any person who is qualified in law, they apply and start at the level of a resident magistrate. The idea that, for instance, you left law school and practised for one year or less and you are suddenly a resident magistrate presiding over children's matters is very dangerous.

I wanted to tell my brothers that there are cases in which I still appear in court, not as a party, as some of you think, but as an advocate for people. I have seen cases where orders are made for instance, evicting one spouse from the matrimonial home *ex parte*. In executing the eviction, the police go there with guns in the presence of the children, and things are taken to a leaky storage or to auctioneer's places. You question whether it is evicting the man, woman, spouse or evicting the goods or the children's property. We may take them for granted but the moment the child sees guns against the head of their father, if it is the father who was being evicted; the moment the children see police officers who are more powerful than their father or mother, you have destroyed the sense of security of that child. Such mistakes and errors happen because some of the magistrates have not had real life experiences on matters being taken to the Judiciary. I will be urging my colleagues in Parliament that in the best case scenario, matters concerning the children of this country and disputes around them ought to be heard by the High Court. But we recognise that we do not have High Courts across the country yet we needed to discuss these issues whenever disputes arise. Let us agree in principle that we enhance jurisdiction over this important subject matter, the children of Kenya, to a principal magistrate upwards and not a resident magistrate or a senior resident magistrate.

There is the proposal under Clause 8 before I deal with the matter you are raising. I know our good Speaker, being the best lawyer we have around, has looked at it. Clause 8 seeks to bring into application the provisions of Article 23 (2) of the Constitution. The intention, if I were to read it to Members, is to enable magistrates dealing with matters where there is an evident breach or violation of fundamental freedoms to intervene straightaway. An accused person is before court, for instance, saying he was kept in custody beyond one week. Why are we still proposing that the magistrate cannot deal with it in this Bill? Because you think the magistrate cannot deal with it instantly since it is something that can be confirmed, you take the matter to the High Court. You take the matter to the High Court, proceedings are not going on, and you are waiting for the High Court with your heavy burden to discharge a simple thing which a magistrate with proper jurisdiction would look at. We will be proposing amendments under Clause 8 to see how we will bring into action Clause 23 (2) now that the light is signalling red.

Hon. Speaker: I will add you an extra two minutes.

Hon. Kaluma: Thank you, Hon. Speaker. Clause 8(2) says that a magistrate can only intervene on matters under Article 25 on issues of torture. Sub-clause 3 talks of matters to deal with fair administrative action, access to justice and fair hearing. We are being told that a magistrate cannot deal with all these. When you take this jurisdiction, then you are doing nothing giving this provision because it does not actualise in a very deep way the provisions of Article 23. I wanted to ask Members of the Committee, together with people of good sense of justice before our court system, that we see how we recraft Clause 8 to bring real meaning to sub-clause 3.

Hon. Speaker, to conclude, because you have been gracious to me, you have asked the question whether there will be money ramifications. Obviously, there will be money ramifications. We are proposing the employment of more people. We are enhancing the jurisdiction of those state officers to serve as magistrates. We want them to be all over the country with diverse jurisdictions. Obviously, there is a way in which if you looked at it keenly, there will be something in the nature of a money bill requirement within the provisions.

Hon. Speaker: Very well spoken except, of course, we will still need to harmonise the provisions of Article 162 (2) on those special courts dealing with labour, employment and environment matters and conferring them jurisdictions similar to that of the High Court.

Hon. Peter Mwangi.

Hon. Mwangi: Thank you, Hon. Speaker, for giving me the chance to support this Bill. This Bill has come at the right time because we have seen so many families suffer, especially at this time when the value of properties is rising up. Within our area, a person is forced to travel all the way from Makuyu to Nyeri if his property is beyond Kshs3 million. That has seen so many families being disinherited. By passing this Bill, we shall be doing a very good deal to the poor of this country.

Just last week, I was surprised when I went to support one of my relatives who had been arrested in a neighbouring county. When I asked whether I could use my land in Murang'a County to pay for his bond, I was told I had to go through the police officers. I asked why I should take my property to the Criminal Investigation Department (CID) to verify and they are not land officers. I only needed to go to the land office, get a search, get a valuation and then I take it to court. I was told that I could not do so. That person to date is in prison because that cannot happen within Kirinyaga County. That is something which sounded to me to be very ridiculous.

In this Bill, I have seen that we are giving magistrates protection. We have seen before people ferrying so many of their supporters when they want to intimidate magistrates, accusing and insulting them and, at the end of the day, the judge feels intimidated and says that he cannot adjudicate upon the case.

Hon. Speaker, I feel this law will support the judges and help them do their work. At the same time, while contributing to this Bill, I would like to note that there are some areas in Central Province, especially Murang'a--- I happen to represent people from an area where we do not have a court. The people of Maragua are forced to travel long distances to get justice. We seek justice from Thika, Kigumo or Murang'a. Since the Government had allowed the Judiciary to open a court in Maragua, it is high time we got a court in my constituency to ease the cost of transport incurred by my people.

With those few words, I beg to support the Bill.

Hon. Speaker: Hon. Cyprian Iringo.

Hon. Kubai Iringo: Thank you, Hon. Speaker, for giving me the opportunity to contribute to this Bill. I stand to support this Bill, which I believe will bring some sanity and ease problems encountered in our courts of law. It will be a good indicator to the litigants who go to seek justice in various levels of our courts. It should be accepted that any process in court is an expensive exercise. There are a lot of limitations where litigants go to seek justice from very far away where their matters are heard. With the magistrates getting a leeway or a window to hear cases which have been in the domain of the High Court, and other courts, it will be easy for the people who are seeking justice. It will be convenient to them because they will access justice easily.

Hon. Speaker, there is the issue of the magistrates getting bigger windows to hear cases that have different limits such as succession limits. Initially, you would find that some courts could not hear succession cases of certain amounts or value, thus forcing one to go and seek justice in a court that is far away. For example, succession cases in Meru County are done in Meru and yet, Meru is very big. There are many such cases originating from my place in Maua. One is forced to go to Meru to file a case. The cases pile so much that there are those that have taken 20 years to be heard because of their cumbersome nature. I personally find this as a relief to our people, especially those who are seeking the letters of administration.

Hon. Speaker, Clause 9 deals with people who try to interfere with justice around, within, and outside the law courts, and especially with the witnesses. It is good that this Bill cautions those people who think they can use their influence, be it power or money, to interfere with justice by intimidating their subjects and telling them not to give evidence. The enactment of Clause 9 will give litigants, witnesses and the courts protection from people who may interfere with the due process of the court.

On administration, it is common knowledge that in our law courts, files disappear and they are never found again. It becomes very difficult to trace them. With the enactment of this law, we shall have an administrator who will be accountable for all the courts records. This includes the filing in the registry and their availability. It will be easy to trace a file so that once a case comes up for hearing, the file will be ready and placed before the magistrate. If at all the file is not there, there is a person who will be accountable and, therefore, chargeable for not availing the same. Presently, in some of our Magistrates Courts, a file can completely disappear until a skeleton or a duplicate file is ordered to be prepared by the magistrate. This is because somebody somewhere within or outside the premises tried to defeat justice. With the administration in place, I find that very applicable. It is good that the files in the registry are under somebody who will be answerable. I would even wish that we have a registry that is computerised. These days, you find files with cobwebs in the registry and you take a lot of time to find them. Now that we have gone digital, we can also computerise those registries and have files put in soft copies. After a case, those files should be updated and turned into soft copy. This is because once they are in a soft copy and saved in the database, even if the physical file is misplaced or somebody works to defeat justice by throwing it away, that information can always be retrieved. Therefore, the administrator will be accountable to whatever happens in that registry.

Finally, I would also like to allude to the fact that given that we are going to get staff employed as administrators, have more courts in our counties and more magistrates employed to do the tasks which will come from the judges, the financial aspect cannot be ignored. We need to budget for these new dimensions. At the end of the day, we will need funds. As the Bill progresses to enactment, I think amendments will be brought forth in order to improve the Bill further.

I stand to support.

Hon. Speaker: Hon. John Nakara.

Hon. Nakara: Thank you, Hon. Speaker, for giving me the opportunity to contribute to this Bill. There is nothing as good as taking justice closer to the people, especially to the pastoralists who need to be ministered. One of the things I like about this Bill is that civil cases, which are mostly done in rural areas, are being taken care of by the Magistrates' Courts.

The issue of land affects the locals in the rural areas and it takes time for them to be settled. That is because we do not have courts nearby. Setting up the Magistrates' Courts in our counties will make it easy for land problems affecting our local people to be solved.

Hon. Speaker, marriage, divorce and maintenance of dowry are issues that the Magistrates' Courts will handle at the level that we expect. This is because they affect Africa, our culture and our settings. Having these courts nearby will have the issues of marriage and divorce solved very quickly. The adoption and legitimacy of a child is another issue that affects people. There are couples who may need to adopt a child, or it could be a case of a child who has lost both parents and one of the relatives wants to adopt the child. It becomes very difficult for the guardian to take over this child because he or she has to travel all the way to Nairobi to seek the services of the High Court and even a lawyer. Having the Magistrates' Courts at the county

levels will help solve the issue of adoption. Somebody could be served with a court order and he refuses to go to court. This is contempt of court. This kind of jurisdiction will help protect the magistrates, the witnesses and even those people who are seeking justice.

Hon. Speaker, it is very shameful to find a group of people going to court and a number of them intimidating the magistrate to rule in their favour through noise making or through verbal threats. With this kind of punishment, our courts will run in the right way.

The court administrator is a very important person in a court. We need him to have some background in human resource management and in administrative matters because this is the person who keeps the registry of the court. We have had cases where records disappear from courts. It becomes the end of justice when records disappear from a court. The person who complains will not get justice. Sometimes we hear of cases where court officers are bribed to take away the file from where it is supposed to be. The complainant misses the file and the case goes like that. We need the court administrator to have some training in registry and record keeping. He must also have some qualification beyond the normal ones.

In addition to that, this person should also help in interpretation. There are some locals who do not understand Kiswahili or English. We need somebody who can interpret the judgement to the person who does not understand English or Kiswahili so that he can understand and reply according to the question that has been asked.

In Turkana and other pastoral areas, there are people who neither understand Kiswahili nor English. We need somebody to be there to interpret so that the person can understand why he is being accused so that when he replies, he answers according to what he has understood. So, the court administrator, to some extent needs to know the local language or needs to get an extra person who can act on his behalf to help those who do not know English or Kiswahili.

One of the reasons why I support this Bill is because of the location of the courts especially in pastoralist areas whereby you only find a magistrate's court in Lodwar. There are other places like Lokitaung, Kakuma, Lokichar and bigger centres where crimes are committed on a daily basis. Such places need these services. I am happy to see that we have that kind of arrangement where a judge can go to those stations and deliver justice rather than somebody coming all the way from Kibish to Lodwar which is a journey of 800 kilometres to seek justice. It is good for us to have these stations in areas we know accessibility and transportation are a challenge and where crimes are higher.

Though we have these stations in Turkana, we do not have transport means for the magistrates. Some magistrates depend on public means of transport. It is good when we have such stations that we avail transport for the magistrates. In Turkana, when a magistrate wants to go to these stations, he has to borrow a vehicle from the County Commissioner or from another department. It is good for us to avail resources to the magistrate court to facilitate them take justice closer to the people.

As I conclude, these magistrate courts must be aware that as much as we want to stabilise them, they should not forget the culture within the area. In some communities, there are some issues the communities can tackle themselves. It is good for a magistrate to have such kind of knowledge so that when he makes a judgement, he has some knowledge about that community. For instance, in the Turkana community, if you steal a vehicle it is not something that is very important but if you steal a donkey, it is a very important thing. So, sometimes you cannot compare the two because of the surrounding or the environment. So, the magistrate sometimes must have some knowledge concerning the communities he is administering justice to.

With those few remarks, I support it.

Hon. Speaker: Yes, Hon. Njoroge Baiya.

Hon. Baiya: Thank you, Hon. Speaker for also giving me an opportunity to contribute to this Bill. As has been pointed by the Chair of the Departmental Committee on Justice and Legal Affairs, this Bill is meant to ensure that the magistrate's law complies with the new Constitution. It is basically an attempt to improve on what already exists. I submit that bearing in mind the state of the law enforcement in this country. The magistrate courts generally play a very critical role because this is where the bulk of the cases and decisions are made. If the country is going to upscale or improve on the standard of administration of justice, this is a key level where attention should be focused.

On the issue of pecuniary jurisdiction, I agree with those who have spoken that it needs to be reviewed and if possible improved, because we know that the levels of inflation have changed over the years. At the same time, these figures were put up at a time when most magistrates were laypersons but today, the country has reached a level where most of the magistrates are professionals. They are trained and competent and, therefore, can be held responsible to make decisions that cover all matters of crimes. That does not mean we open the Pandora's Box. There should be substantial enhancement of the pecuniary jurisdiction of the magistrates.

The magistrate court is subordinate to the High Court implying that the High Court will always have a supervisory jurisdiction. Opportunities for review and appeal of the decision of the magistrates will be available, first and foremost, before the High Court. That is why it is not going to occasion serious injustice by ensuring that the magistrate courts have substantial powers to deliberate most of the disputes or cases arising within the country.

The other thing that I need to point out is with regard to administration. Other than the jurisdiction, one of the biggest challenges we have had in this country is the failure to keep and maintain proper records of judicial proceedings. This is very critical. This Bill proposes, under Part III Section XII, to give the Registrar to cause records of proceedings to be kept. This is one area, as a country, we should look at and seek to improve. Perhaps what we should insist on is, first of all, electronic capturing of records of proceedings.

The usual handwritten recording of judicial proceedings makes it very unreliable and liable to interference. If this record-keeping was to be electronic as happens in other jurisdictions, it would become a basis of insisting that the Registrar also keep those records and ensure that court decisions are, to a large extent, made public.

Currently, we are maintaining the electronic records of the judicial proceedings. This is one of the ways of ensuring that the proceedings of the subordinate courts, wherever they may be, will be in a position to withstand scrutiny. Once the magistrates know that their rulings can be scrutinised not just by their superiors but also by Kenyans in general, they will become responsible.

We have also had other experiences like the Judges and Magistrates Vetting Board (JMVB) pointing out serious issues with regard to sitting magistrates' competence and their mastery of languages. These are issues for which the responsible institution is the Judicial Service Commission (JSC). The JSC is the body that has a key role in recruitment and maintenance of standards and discipline within the Judiciary. It is very important, therefore, that this Bill sets standards and makes it incumbent upon the court administrator to keep records and be in a position to provide those records to the public in line with the requirement of transparency under the Constitution.

It is true this Bill on its own cannot be sufficient to guarantee that the country will get the best performance from the Judiciary, but it is one of the key pillars. We will still be looking at the other pillars to ensure that they supplement and support this legislation to guarantee the country effective delivery of justice all over the country and to ensure there is uniformity in application of the law across all the regions of this country. The essence of the rule of law is that there should be uniformity and equal treatment of similar situations and cases.

Hon. Speaker, with those remarks, I beg to support.

Hon. Speaker: Hon. Annah Nyokabi.

Hon. (Ms.) Gathecha: Thank you, Hon. Speaker. I rise to support this Bill. The purpose of this Bill is to ensure that Kenyans are able to access justice from wherever they are in this country without having to travel to one central area. This means that the courts will be decongested and justice will not be delayed. Many people face very serious problems when it comes to the issues of land and settlement. The ability of women to access justice in this country is a challenge. With the passage of this Bill, women will be able to access justice wherever they are.

This Bill gives jurisdiction to the magistrates' courts and sets the pecuniary limits of cases they can handle, ranging from Kshs7 million to Kshs2 million depending on the level of the magistrate's court. This Bill allows the local *mwananchi* to access justice. We know that justice delayed is justice denied. Clause 7(3) of this Bill provides:-

- “A magistrate's court shall have jurisdiction in proceedings of a civil nature concerning any of the following matters under African customary law—
- (a) land held under customary tenure;
 - (b) marriage, divorce, maintenance or dowry;
 - (c) seduction or pregnancy of an unmarried woman or girl;
 - (d) enticement of, or adultery with a married person
 - (e) matters affecting status, and in particular the status of—
 - (i) widows and children, including guardianship, custody;
 - (ii) adoption and legitimacy; and
 - (f) intestate succession and administration of intestate estates, so far as they are not governed by any written law.”

Yesterday, there was a case where one of the board directors of a school in one of the constituencies in my county defiled some Form Four girls and had gotten away with it. Even after they had been asked to report, there was no enforcement. So, if the courts are closer to the people, not only will enforcement take place immediately, but it will also ensure that victims get justice.

It has taken some families very many years to settle cases of intestate succession and administration of intestate estates. Such families go through a lot of suffering as they wait for justice. This has created significant problems. So, this Bill will ensure that such families will access justice at any point so that their suffering is alleviated.

Cases where one spouse dies without a will normally ends up with the surviving spouse being thrown out of the property, facing a lot of injustice, having to go through their chief or having to be taken in rounds. Because many of such people are illiterate, they are not able to get justice.

Clause 10 of this Bill talks about a person who assaults, threatens, intimidates or insults a magistrate or a judicial officer or a witness involved in a case as committing an offence. Most victims face a lot of intimidation, assault and threats when they try to access justice. Because

these oppressors have money, they intimidate victims to ensure they are cowed and do not get justice. I sincerely hope that those who will be employed in these courts will ensure that justice is served to Wanjiku wherever she is in this country.

The Marriage Act we passed a few months ago requires that every marriage in this country is registered. This Bill will also create an avenue for those engaged in traditional marriages to get justice. I hope this Bill will address cases of disinheritance and the injustice suffered by such people in customary marriages.

Finally, given the fact that Kenya is a developing country, this Bill will ensure that all its citizens access a judicial court.

With those few remarks, Hon. Speaker, I support.

Hon. Speaker: Hon. Nyikal, you have 10 minutes.

Hon. (Prof.) Nyikal: Thank you, Hon. Speaker for giving me this opportunity to make a contribution. The most important thing about this Bill is bringing justice close to the people. For once, I see in this Bill that most issues that confront people in rural areas will be undertaken close to them. This Bill clearly gives the pecuniary limits of what can be undertaken at different levels. As I heard Hon. Kaluma saying, there will be need to increase this. That way, more people will be covered. More important to me are the areas that are covered like land issues that are definitely cultural in nature. This is a big problem for people in rural areas and because of the distance and complexity of these cases particularly in higher courts, many people do not pursue these matters. When we come to issues of marriage, divorce and dowry, people suffer a lot because they cannot get easy access to justice.

If you look at the issue of widows, children and guardianship, you will find that it is amazing how many children and widows are left destitute after bread winners, fathers or husbands, die. Therefore, making provisions in these things is extremely important, particularly with regard to children. Hon. Kaluma is not here but he seemed to have a predilection to issues about children; maybe how they come to the world. I think their wellbeing is probably the most important part we need to look at.

Clause 8 gives protection---

Hon. Mirenga: On a point of Order, Hon. Speaker.

Hon. (Prof.) Nyikal: If Hon. Obura thinks of this, Hon. Kaluma himself made that statement here. Clause 8 protects the rights of people, particularly civil rights. One area that I think is---

Hon. Speaker: Mhe. Ken Obura, una hoja gani ya nidhamu?

Hon. Mirenga: Thank you, Hon. Speaker. My worry is that the sentiments of my colleague, Hon. Nyikal, will definitely go into the HANSARD. He has made very serious allegations in as far as the integrity of a fellow Member here is concerned. You know the allegations he has made about Hon. Kaluma. It is important that as he moves on to advance his argument, he can put them into real perspective so that it is clear and we will feel that the HANSARD captures what he is saying about Hon. Kaluma. It is important.

Hon. Speaker: Since I never heard what he said about Hon. Kaluma, he may have said it in jest. We will leave it at that.

Hon. (Prof.) Nyikal: Hon. Speaker, Hon. Kaluma himself while he was here made the same jest. I will take note of Hon. Obura's concern but it is in the context in which Hon. Kaluma himself made the statement.

In civil rights, the number of Kenyans who get detained well beyond the constitutional provisions and leave custody of the police and nothing happens is amazing. It looks like it is

okay while the Constitution is quite clear on that. Bringing this in is extremely important. If you look at the number of people who are employed under very unclear labour terms and are shed off easily, you will find that it is very high. They just complain and they cannot be heard because the courts that deal with labour disputes are not near. Therefore, making this available in the Magistrates' Courts is extremely important in this Bill.

I once heard a very prominent lawyer say that some cases are actually won in the streets and not in the courts, referring to threats to magistrates and judges by people who may choose to demonstrate and bring large groups of people. Protecting the court processes in this way and ensuring that when evidence required is given and nobody misbehaves is extremely important. I know one case where people were demonstrating and singing. When one of them was asked what they were singing about he said: "I actually do not know but I was paid to come here and make noise around the court." Those are things that we cannot accept. Therefore, such things being brought out at the lower level of court is extremely important in ensuring that justice is done and seen to be done in a civil and acceptable manner.

Hon. Speaker, it is important that there is proper administration of the courts, particularly with regard to keeping records. Sometimes, I think that development in some parts of the world really cannot go on because of the sheer lack of record keeping. A number of cases are lost just because records are not kept and cannot be retrieved in time. Nobody seems to have responsibility over them. Therefore, it is an extremely important issue to have an administrator who has authority and ensures those records are kept and particularly this time when they can be done in a digital manner.

Finally, I like the flexibilities that are brought by Part V which says that the magistrate can hold sittings at any site and take evidence in any circumstances as long as it is within the law. Many times, people lose cases because we want to restrict where the court can sit. I will give you an anecdote of my uncle who used to be, in the old days, the African presidents of courts. He decided to take a dispute of who owned a chicken to a village in the evening and release the chicken to see which house it would go to. That way, it was decided that that is where the ownership of that chicken belonged. As much as it sounds interesting, it demonstrates the flexibility that we need under such circumstances if people have to get their rights.

Thank you very much, Hon. Speaker for giving me this opportunity.

Hon. Speaker: Indeed, it is in the spirit of the new Constitution that justice shall be administered without undue reference and undue regard to technicalities or procedure. That is a very good example of not following strict procedures.

Hon. Wanga.

Hon. (Ms.) Nyasuna: Thank you, Hon. Speaker. I rise under Standing Order No.95. Given that this particular Bill has been canvassed quite a bit since yesterday and even today Members have spoken very extensively to it, and that ahead of us we still have the High Court Organization and Administration Bill, the Court of Appeal (Organization and Administration) Bill and the Small Claims Court Bill coming up, will I be in order to submit that the Mover be now called upon to reply?

Thank you.

*(Question, that the Mover be now called upon to reply,
put and agreed to)*

Hon. Speaker: Mover!

Hon. (Dr.) Shaban: Thank you very much, Hon. Speaker. I take this opportunity to thank all the Members for the contributions they have made towards the Magistrates' Courts Bill of 2015. It is true that justice delayed is justice denied. Kenyans have been crying for the improvement of our Magistrates' Courts. Although the reforms in the Judiciary have been ongoing for a while now from the time we got our new Constitution, it is now that Kenyans are really going to feel the Judiciary everywhere in this country more so because we are strengthening the Magistrates' Courts.

With those few remarks, I beg to reply.

Hon. Speaker: Hon. Members, for the reasons that all of you can attest to, we will not proceed to the next stage which should have been to put the Question on this Bill. Therefore, that stage is put forward to tomorrow afternoon. The point made by Hon. Wanga is largely correct and granted that the next three Bills are in some sense related with regard to the administration of justice. So, for purposes of economy, I will plead with Hon. Members, to look at the specific areas particularly what it is that is meant with the Bill seeking to do with administration of the High Court, the Small Claims Court and the administration of the Court of Appeal. It is just matters of administration and streamlining and trying to give effect to the provisions of the Constitution with regard to what should be done in some of those areas just like we have done with this Magistrates' Courts Bill. So, I will call upon the Mover, who is the Leader of the Majority Party, to move.

THE HIGH COURT ORGANIZATION
AND ADMINISTRATION BILL

Hon. (Dr.) Shaban: Hon. Speaker, I beg to move that the High Court Organization and Administration Bill (National Assembly Bill No.47 of 2015) be now read a Second Time.

I want to point out that we have just gone through the Magistrates' Courts Bill. It is important for us to make sure that the following Bill is also brought to fruition so that we can have this law of organising our High Courts and administering justice through them. As you are aware, the High Court Organisation and Administration Bill (National Assembly Bill No.47 of 2015) is one of the legislation to be enacted by Parliament as required under Article 26(1) of the Constitution.

You will recall that this Bill was supposed to have been passed by 27th August, 2015 and went through the First Reading in the National Assembly on 19th August, 2015 but the National Assembly extended the time for enactment by one year. The importance of this Bill with regard to the organisation and administration of the High Court to ensure its smooth operation and administration to facilitate the efficiency in the conduct and management of judicial functions of the Court cannot be underestimated particularly because the High Court can be described from its mandate under Article 165(3) as the cornerstone of the Judiciary.

The Bill, as presented before this House seeks to give effect to Article 165(1) of the Constitution which provides that the High Court shall consist of the number of judges prescribed by an Act of Parliament and shall be organised and administered in the manner prescribed by an Act of Parliament. The Bill seeks to provide for the composition, structure, sittings, decentralisation of the High Court, administration, performance, management and alternative dispute resolution.

The following is a summary of the salient features of the proposed Bill.

Clause 4 of the Bill provides for the constitution of the High Court by the Principal Judge and not more than 200 judges. It also confers upon the JSC the power to conduct a judicial needs

assessment and recommend a weighed case load formulae to determine the number of judges required.

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

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

Hon. Temporary Deputy Speaker, Clause 5 of the Bill provides for the jurisdiction of the Court as conferred by Article 165(3) and (6) of the Constitution and as conferred by an Act of Parliament.

Clause 6 of the Bill provides for the Office of the Presiding Judge of the High Court the responsibilities of the Presiding Judge which relate to the administration and management of the Court and the orderly and prompt conduct of the business of the Court and election of the Principal Judge pursuant to Article 165(2) of the Constitution.

All those clauses are actually meant to improve the delivery of justice in our country.

Clauses 7 to 9 provide for presiding judges of Station and Division of the Court and their responsibilities and the order of precedence of the judges of the High Court and the quorum of the Court.

Clause 10 of the Bill provides for when the Court should sit and when it should have recess. As provided, the Court is proposed to have three sittings in every year and recess in between the sittings. It also provides for the holding of sittings in buildings designated by the Chief Justice and the authorisation of sittings of courts by the Chief Justice on any day and at any time.

Hon. Temporary Deputy Speaker, it is important to note that, as much as we want to improve on the delivery of justice, not the whole country is dotted with these High Courts. So, it is important that the Chief Justice is given a specific mandate to designate these areas.

Clauses 11 to 13 provide for the establishment of divisions to promote effectiveness and efficiency in the administration of justice and judicial performance and the establishment of, at least, one station of the Court in every county to facilitate reasonable and equitable access to services of the Court and the transfer and deployment of the judges of the Court from one station or division to another.

For all the people who come from all those rural, far and remote counties, it is important to note that this law will pave the way to have a High Court in each of the counties. That means we shall have a High Court in each of the 47 counties. Once we have that, people can have their issues dealt with as quickly as possible. That way we shall deal with the issue of having a backlog and people will not have to travel all the way to Nairobi, Mombasa, Eldoret or the big towns to have justice dispensed.

Clause 14 provides for the establishment of leadership and management teams in every station to act as an advisory body to the Presiding Judge on matters relating to policy, practise and management for effective administration of justice in the station.

Clauses 16 to 24 provide for the administration of the Court including the role of the Chief Justice, the Chief Registrar and the Deputy Registrars of the Court, their qualifications, functions and powers, and the review of the decisions of the Registrar relating to judicial functions of the Court by a judge and staff of the Court.

Clauses 25 and 26 provide for the practice and procedures of the Court. Pursuant to Article 159(2)(c) of the Constitution, the application of alternative dispute resolution mechanisms in proceedings before the Court.

Clauses 27 and 28 provide for the initiation and promotion of measures that will maintain the integrity of the registry and work of its station or division under uniform record keeping system in the Court.

There is also oversight of the implementation of a performance management system comprising of performance contracting which will now be put in place.

Clause 33 of the Bill provides for the protection of judges and other judicial officers from personal liability for acts done or ordered by the judge or officer in the discharge of judicial duty done in good faith.

Clause 34 also provides for the use of English and Kiswahili. Most of our people will not understand the English language because it is not our language. They will enjoy having Kiswahili. On top of that, there are sign language, Braille and other communication formats and technologies acceptable to persons with disabilities and the conduct of court proceedings through electronic means where appropriate and expedient to do so.

If all these languages are going to be used in our court system, everybody will have the right to justice. Their issues will be solved on time and in a language which is acceptable to everyone.

Hon. Temporary Deputy Speaker, Clause 36 of the Bill confers upon the court the power to punish for contempt of court, defines the offence of contempt of court, the procedures of the trial for contempt of court and the penalty for contempt of court.

Clauses 38 and 39 of the Bill provide for the right to appear in person or to be represented by an advocate in all proceedings before the court and the right of all persons admitted as advocates to practise in the court subject to the Constitution and the Advocates Act.

Clause 41 of the Bill provides for consequential amendments to Cap 8 of the Judicature Act, the Criminal Procedure Code, Cap 75 and the Judicial Service Act of 2011 in order to harmonise them with the proposed organisation and administrative structure.

I, therefore, wish to request Hon. Members to support this very important piece of legislation so that we can realise the goal we set out to do more so in the new constitutional dispensation where there have been judicial reforms and Kenya can only do better in a better judicial transformation.

As I beg to move, I will ask the Chairman of the Departmental Committee on Justice and Legal Affairs to second this very important Bill.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Yes, the Chairman of the Departmental Committee on Justice and Legal Affairs.

Hon. Chepkong'a: Thank you, Hon. Temporary Deputy Speaker. It looks like I have just walked in at the opportune moment just to second the Bill. I, therefore, beg to second the Bill.

This Bill was first introduced in the House on 5th August, 2015. As you know, it is sponsored by the Leader of the Majority Party as has been mentioned by the Deputy Leader of the Majority Party. Once the Bill went through the First Reading, it was committed to the Departmental Committee on Justice and Legal Affairs. The Committee conducted public hearings as required by Article 118 of the Constitution which says that it is no longer the exclusive preserve of Parliament to enact legislation. The public must participate and be involved

in legislative making. As a result of that, the Clerk, through an advertisement that was placed in two newspapers, invited views from the public.

We thereafter, recessed and considered the Bill as a Committee in which we scrutinised clause by clause and came up with various amendments. This is a very important Bill that seeks to ensure that the organisation of the High Court is in a manner that is acceptable and in a working way that will ensure that the objectives of the new Constitution are fulfilled. Therefore, as mentioned by the Deputy Leader of the Majority Party, the Bill seeks to give effect to Article 165(1) of the Constitution and to ensure that there is seamless operation in the High Court.

When we considered this Bill, we found that it had been subjected to participation by the Judiciary in which they considered it and were comfortable with the contents of the Bill as printed. However, the public also have a say. We looked at the Bill and made various amendments to it. So we will be introducing a number of amendments during the Third Reading.

With regard to the importance of this Bill, we are seeking to ensure that the High Court disposes of all matters in a most expeditious way so as not to inconvenience litigants. In courts at the moment, we have cases that were filed as far back as 1970s. That is a very unacceptable situation. In most of these cases, people are demanding money from the other party. You can imagine somebody was loaned money in 1980s and that matter has not been concluded to date. You have deprived that person the use of the monies that he would have received. So, you have confined that person to poverty because the courts are unable to hear and determine matters expeditiously. Therefore, the Committee while considering this Bill, has proposed a number of amendments to ensure that cases are disposed of in a very expeditious way as required by the Constitution.

One of the amendments that we will be moving is to ensure that once a matter has been fixed for hearing, it must be concluded within 12 months. Once it is fixed for hearing and it comes up for hearing in the courts list that matter must be concluded within 12 months. What we are requiring the court to do, is to ensure that, that matter is heard on a day-to-day basis without it being adjourned without sufficient reasons. If the matter must be heard beyond the period of one year, it can only be done with the express authorization of the Chief Justice so that the Chief Justice can authorize an extension of a matter to be heard beyond one year. We are not saying that the judge will not have leeway. He will be asked to give the reasons for not concluding that matter on a day-to-day basis.

Secondly, we also want to ensure that these matters are disposed of in a manner that is acceptable to all the parties. One of the proposals that we will be making is to strengthen the requirement that parties file their witness statements. Once the witness statements have been filed, it will ensure that the process of conducting hearing is reduced substantially so that once a witness appears in the witness box, he swears and confirms that this is his or her statement. The next person to speak to the witness is for purposes of cross examination by the defense counsel and, thereafter, re-examination without the need of the lengthy trial of examination in chief which has been wasting a lot of time. If there is nothing for you to cross examine, then you go to submission and you reduce the time within which those cases can be concluded. This Bill is very important in ensuring that most of the cases that have been pending in court for too long are, therefore, disposed of in the most expeditious manner.

The Bill also seeks to ensure that the transfers of judges are done in a manner that is not injurious to the litigants. What has been happening in the High Court is that judges are transferred from one station to the other without due regard of the fact that those judges were

conducting hearings or had matters that was pending before them. So, it has been a very serious destabilizing factor in terms of conducting hearings and ensuring that cases are concluded.

We are seeking to ensure that if the Chief Justice must transfer a judge, he must give that judge, at least, three months' notice to conclude all the hearings that are pending before that judge, so that when he or she is transferred, he or she does not go with cases that are still pending in that court. If I have been hearing a case, and you transfer me from Nairobi to Mombasa, for another judge to come and take over, it will take time for that judge to understand where I was, but if you leave me to conclude that matter, it will take me a short time. So, we require the Chief Justice to ensure that when carrying out transfers, which are normal and acceptable within the judicial system, it is done in a manner that is not disruptive to the litigants or to the parties in any matter. So, this Bill is very useful in the sense that it brings order in the management of the Judiciary and it allows judges to conclude those matters.

Hon. Temporary Deputy Speaker, another very important issue that is introduced in this Bill is the introduction or establishment of leadership and management teams in court stations that do not necessarily have officers stationed in Nairobi so that judges in the High Court – be they in the 47 counties or in whatever courts that may be established in the various counties before they are established in all the counties – can have time to meet and discuss issues of leadership and management of matters pending in various courts. What has been happening is that everybody conducts matters in the manner he or she deems fit. Therefore, that has caused problems in courts because there has not been any leadership. There could be a presiding Judge but there has not been a requirement that they should meet to discuss matters that are outstanding with a view to resolving them in a manner that is acceptable to Kenyans. As the representatives of our people, we are the ones who deal with their problems. Therefore, we are seeking to resolve those problems through the passage of this Bill.

We are also seeking to ensure that persons who are appointed as Registrars of the High Court are persons who are qualified and with relevant experience. One of the amendments we will be introducing on Clause 19 will require that for someone to be appointed Registrar of the High Court, he or she must have a minimum experience of five years in legal practice to ensure that we have competent people to manage the registries. What we have also done is to ensure that there is a linkage between the various Registrars of the High Court stationed across the country with the Chief Registrar of the Judiciary. The Chief Registrar is their Chief Executive Officer and, therefore, they should be working in tandem with that office to ensure that there is seamless co-ordination in terms of disposal of matters that are pending in the High Court.

The other thing that we are also proposing as a Committee is for the court to employ the rules of practice and procedure as may be prescribed by Parliament. Those rules must be filed with the Committee on Delegated Legislation so that it can be considered. Rules should not only be issued and filed in the High Court, but they must also be brought to this House for consideration.

With regard to case management, we are requiring that the Principal Judge implements a case management system that will be developed by the Chief Justice and the JSC. We require the Chief Justice to develop a methodology on how Judges or Principal Judges should be conducting their matters in terms of case management. That will be the responsibility of the Chief Justice, together with the JSC.

We are also requiring, within the Bill, that the courts deliver judgements in a manner to be described by this law. One of the things that we are saying is that once a matter has been concluded, Judges should observe the strict timelines that are provided in the law. After

conclusion of the hearing or closure of submissions by the parties represented in the case; the court must issue its judgement within 42 days. We know of cases where Judges held onto judgements for a whole year.

The Leader of the Minority Party is making a lot of expressions suggesting that the delay in making judgement is always intended for other purposes, and not that of law. Such delays may end up encouraging corruption. If a judge delays delivering judgement, the litigant may look for a person who knows the judge or the magistrate with a view to influencing the outcome of the case, and that becomes a problem. We know of many cases where we have been told that written judgements have sometimes been given to one litigant in advance. So, as the parties to a case attend court to listen to the ruling of their case, one party is already aware of the ruling. So, there are no emotions on the part of such party. In fact, when he is declared the winner, he does not appear to express any motions. It looks to that party like they are expecting the ruling in the manner it has been read out in court because there are certain things which have gone wrong. Once we fix a timeline for judgements to be ready, there will be no room for manoeuvre; the Judge must ensure that he delivers the judgement within the prescribed timelines.

Hon. Temporary Deputy Speaker, we have also sought to ensure that people who behave contemptuously in court are fined. The penalty that is provided in the Bill is too lenient, and with no prison term. We would like people to conduct themselves in court in an orderly and acceptable manner. If you shout in court and abuse the Presiding Judge, you are being contemptuous to that court. When you are fined by that court, on the face of the record, you are found to be contemptuous. You can be fined a maximum of Kshs2 million or be imprisoned for two years because contempt of court is a very serious offence.

Parliament has the Standing Orders. If you are in breach of the Standing Orders you can be thrown out of the House. Equally, courts must be respected because they are our institutions of last resort when it comes to arbitration of disputes between individuals. In Parliament, we can have a quarrel but we can still end up in court. We must continue to have faith in our courts.

We are seeking to harmonise the penalty contained in this particular Bill with the penalties contained in other legislations and in particular with regard to those relating to the Court of Appeal, which we will be speaking to in due course. This is because the penalties meted out by the Court of Appeal are different from those meted out by the High Court. Therefore, we are seeking to rationalise them.

Hon. Temporary Deputy Speaker, I do not want to speak too much to this Bill because it is fairly straightforward. Its passage will ensure that we have better management of the High Court.

With those remarks, I beg to second.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): I have the pleasure of giving the first chance to the Leader of the Minority Party, the Member for Kitui West, Hon. Nyenze.

Hon. Nyenze: Thank you, Hon. Temporary Deputy Speaker, for giving me this chance. This is a good Bill from the Departmental Committee on Justice and Legal Affairs. It will help dispense justice to most people easily. It is an improvement and I would support it. However, I will move some amendments as we go on regarding a few clauses where I feel there should be changes. This Bill provides for the organization and administration of the High Court. It will aid

in efficient delivery of justice and make discharge of functions easy. However, there are a few issues that should be addressed as we support this Bill.

The issue of corruption has come up severally among the judicial staff; it has always been in the public domain. We should have zero-corruption in our court system. Therefore, this is an issue which should be addressed as it is one of the impediments to justice in this country.

The good thing with this Bill is that it will establish courts in all the 47 counties, so that justice is brought nearer to the people. I would have wished that there are established courts in every constituency because people who seek justice travel long distances. It is good if you take a court nearer to the people because most Kenyans do not have money to travel long distances.

There have been delays in clearing cases. The fact that there are 650 cases pending is unacceptable. These delays to deliver justice cause a lot of suffering. We know of the case of the family of the late Mbiu Koinange that took 35 years to settle. There are many similar cases where Kenyans have waited for justice for far too long. This has caused them a lot of agony, loss and it distabilises the family when those cases are hanging over them for a long time especially land cases where the rich have always appeared to have their way while the poor citizens are always on the receiving end.

This Bill seeks to do away with outdated laws that govern the administration of justice. If we do away with those laws, Kenyans will receive justice. There is a lot of wastage of resources by the Judiciary. You remember that in the last Budget, we had to cut their Budget because there was too much and the absorption rate was low. If the Judiciary is allocated a lot of money, we should see reforms, speedy delivery of justice, efficiency in management and more law courts built. This Bill should address those issues. Those are some of the issues that I am saying that we will move some amendments on.

Several judges have withdrawn from cases after being threatened by criminals and sometimes by people in power. We have seen them pulling out of some cases. This Bill shields the judges from those threats. The judges cannot deliver justice when they are under threat either from criminals or from people in authority. They should be left alone to give justice to all Kenyans. Under some laws, some people end up imprisoned after being prosecuted wrongly. In this Bill, I have not seen a provision in terms of what we should do to the people who have been accused wrongly using false information and have been put in prison or fined. Those are the kind of things that I wanted this Bill to address, so that people get proper sentences or judgements based on facts and not misleading information.

I have also learnt that there is lack of usage of Information Technology (IT) by the judicial staff. This is one of the bottlenecks that this Bill has not addressed adequately. People and organisations have embraced IT. Apart from the Judiciary and the Ministry of Lands, most of the other Government Departments have embraced IT. The first place to have embraced IT should have been the Judiciary, so that they can deliver justice.

Lastly, disregard for court rulings by State agencies breeds lawlessness. The recent example is the ruling by the High Court about the teachers' pay which was disregarded and brought a lot of suffering to the teachers. These are the kind of amendments that I will move at the Committee stage. Court rulings have to be respected by all and sundry. Nobody is above the law. This will ensure that there is no lawlessness. We should tell people to obey court rulings when everybody knows that court rulings have to be obeyed.

With those few remarks, I support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Very well spoken. On my list is the Member for Ol Jorok, Hon. John Waiganjo.

Hon. Waiganjo: Thank you very much, Hon. Temporary Deputy Speaker. I am happy to debate the High Court Organisation and Administration Bill. Apparently, this Bill is coming at a very good time when our courts are in a campaign mood considering that the Hon. Chief Justice retires next year in June. Two judges of the Supreme Court; Hon. B.C.J. Kalpana Rawal and Justice Tunoi, are also set for retirement. We also know that the Judicial Service Commission (JSC) has one Commissioner who is also proceeding for retirement. Therefore, this Bill comes when part of the Judiciary is under transformation. I have not heard the voices of women, so that they can now properly lobby for one of them to become the first Chief Justice of the Republic of Kenya. They like settling for the Deputy and they have a candidate right there at the Supreme Court.

This Bill is hinged on Article 165(1)(a) of our Constitution which establishes the High Court and also directs Parliament to state the number of judges under this legislation as well as confers jurisdiction or defines the jurisdiction of this court and gives a hierarchy of the officers serving in these courts. In so doing, Article 166(1) gives us the *modus operandi* under which our judges are appointed by the President with the recommendation of the JSC and with the approval of this House.

Article 165(3) is the one that confers the jurisdiction of the High Court. It gives the High Court unlimited and original jurisdiction which is also inherent in civil and criminal matters and on any other statute law. This Article also gives the High Court the jurisdiction to determine matters related to the Bill of Rights where the Bill of Rights are denied, violated, infringed or even threatened to be breached. It also confers this court with the jurisdiction to hear appeals from the lower courts and also from the tribunals except that in Article 144 on the removal of the President; that is not an appeal that can lie on the High Court.

It also gives this particular court jurisdiction to determine issues of the Constitution and more so, conflict of laws where county assemblies may make laws that contradict or are not in consonance with the national legislation. This piece of legislation gives provision of a Principal Judge who is responsible to the Chief Justice on matters of the particular court that this judge presides. They can also constitute benches of five or three in their respective courts in consultation with the Chief Justice. Those benches are constituted when matters of the Bill of Rights or the Constitution are to be decided. This Bill also gives provision for a presiding judge who is also responsible to the Principal Judge in their stations. The Presiding Judge has the Registrar who is responsible to him. The Registrar has Deputy Registrars who are responsible to him in that manner. Therefore, this is a Bill that comes to establish proper organisation of the court. Presiding judges are also chairmen of court users committee. Members of Parliament would be interested to know that they have representation in the court users committee. So, within your constituency where there is a court, you should have a representative in the court users committee so that you can also give your opinion or complaints on the proceedings that happen in that court.

In Clause 10 of this Bill, we have tried to limit the number of days that our judges go on vacation, for instance, during Easter. We have reduced the days. We have also said that all matters that are filed before court must be completed within a year. So, this is very good because matters have been pending in court for many years. When we say within a year, it also means that adjournments must be justified. So, it is a Bill that that will reduce the backlog and make our judges to work even more.

The Bill gives the Chief Justice authority to constitute courts anywhere and on any day as long as there is a judge because he forms the quorum of the court. So, the Chief Justice can

constitute a court out here and at any time. He can even constitute a court at night. The Chief Justice may also gazette circuit courts so that those courts can sit in far flung areas anytime and anywhere. Litigants do not have to appear before those courts in person. That is why Clause 34(3) of this Bill provides for teleconferencing, video conferencing and digital communication. So, when you have a matter, you do not necessarily have to appear in court in person.

This Bill allows the High Court to form divisions so that it has various divisions, for instance, the family and children division. If these courts are to deal with children or family matters, it is that division exclusively to deal with that matter. If it is a commercial division, it will deal with commercial matters; the criminal division will deal with criminal matters; the civil division will deal with civil matters *et cetera*. There will also be Constitution and human rights divisions. These divisions are good because they will expeditiously handle matters. Judges who sit in those particular courts have the expertise to deal with those specific matters. What this Bill did not bring forth is the division that was anticipated to be created to try crime against humanity. For example, the case we now have at the International Criminal Court (ICC) could have been tried in that division of the High Court. The other thing that I would like to say is that the mention---

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): You have two minutes.

Hon. Waiganjo: Thank you, Hon. Temporary Deputy Speaker. The mentions in our courts are a waste of time. Within this Bill, we need to limit those mentions so that matters can move expeditiously. In the interest of time, I want to say that this is a good Bill because it also forms the Advisory Committee of the High Court. It also brings forth the issues of contempt of court and performance contracting for our judicial officers. It also talks about the budget of the court. I know that for a long time we have been thinking about the Judicial Fund Bill so that the Judiciary can have its own fund and financial or pecuniary independence in running their matters.

The other thing that it has done is to define the languages of the court as English, Kiswahili, sign languages and Braille. So, it is an elaborate Bill and I would like to urge Members to support it. The penalty for contempt of court has been set at six months or a fine of Kshs500,000 or both. So, it is a Bill that is coming to organise our courts properly. It should be supported by everybody.

Hon. Temporary Deputy Speaker, I support. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): The next one on my list is the Member for Wajir North, Hon. Ibrahim Saney.

Hon. Saney: Thank you, Hon. Temporary Deputy Speaker. I am not a lawyer but I would like to add my voice to the High Court Organisation and Administration Bill, 2015. In August, 2015, we faced a serious constitutional crisis as a country. More so the crisis was borne by the 11th Parliament whose life was being threatened for its inability to legislate Bills that had time limits. I believe that this is one of the Bills that will respond to that crisis and sort it out. It will respond to a requirement in Article 165(1)(a) and (b) of our Constitution which requires that we legislate on organisation and administration of the High Court.

The objectives and purposes of this Bill are explicit and good. It envisages organisation and administration of the High Court, effective and efficient discharge of its mandate, the development of a constitutional jurisprudence of the High Court and the improvement of access to justice.

The High court is one of the most important units of the Judiciary which has unlimited jurisdiction supervisory powers over Magistrates' Courts. It is the one that is required to generate

the work of the Court of Appeal. The Magistrates' Courts Bill which was the last Bill to be debated in this House envisaged the establishment of more courts up to the division level. It is welcome that High Court is established in every county of this country so as to supervise that huge network of that ambitious dream of establishing Magistrates' Courts in all the divisions in this country.

The Judicial Service Act requires the establishment of 47 counties in line with one of the objectives of this Bill which will enable easier access of justice for all Kenyans. I believe that it also responds to the Judiciary Service Act. So, it has two benefits. It completes the Constitution. It is a constitutional requirement that there should be a Bill on administration and organisation of the High Court. At the same time, it further complements that requirement by the Judicial Service Act.

One serious challenge in the rural communities especially pastoralists and marginalised communities is lack of access to justice. I come from a constituency which does not have any court; the lowest court up to the High Court. We are always forced to travel long distances in pursuit of justice. Our people pay colossal amounts of money to travel long distances so that they can be heard in courts. I believe once this Bill is implemented, we will have access to courts. We will not be travelling far distances in pursuit of justice.

I know that it is expensive establishing courts in every division of this country. Establishing a High Court in every country calls for huge sums of money, and we already encounter serious Budget deficits every year. The reality is that laws are made for posterity. It is expensive but let it be so, rather than have our people suffering and travelling long distances in pursuit of justice.

Another important aspect of this Bill that I cannot fail to mention is the fact that it provides procedures for alternative dispute resolution – a key principle anchored in the Constitution of Kenya, 2010. Most of the cases can only be adjudicated through such mechanism. That itself brings a lot of relief to our Judiciary. The Judiciary will be able to sort out the kind of backlog we always cry about. Most of the cases will be heard outside the courts, and we will be able to expedite provision of justice to all Kenyans.

With those few remarks, I support the Bill.

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

Hon. M'uthari: Thank you, Hon. Temporary Deputy Speaker. I rise to support this very important Bill.

The Bill provides for organisation and administration of the High Court. This Bill is good in the sense that it provides for co-ordination of our judicial system, especially the High Court in terms of the way it is organized as well as its leadership and management structure. The fact is that it brings out the issue of how each of the stations should be administered; it provides for management teams as well as timelines within which those teams should meet and advise one another. Also the provision for timelines for determination of cases is good, knowing that justice delayed is justice denied. This particular Bill also seeks to give effect to Article 165 of our Constitution.

We know that our judicial system is facing challenges in terms of cases backlog; judges and other judicial officers take over the responsibility of this House, and the responsibility of other arms of government. This aspect should be considered very seriously. Some people even go to the High Court and pre-empt what is supposed to be brought to this August House. In such instances, even the courts act in violation of the very Constitution that provides for separation of powers among the various arms of the Government. This House plays a role. If the courts purport

to stop us from conducting our business, that is very bad. It is in bad taste for someone to go to court to seek orders to stop us, as a House, from discussing one Bill or another. The courts have developed jurisprudence that respects the Constitution and responds to the Kenyan social, economic and political needs.

We have a crisis within our education system; there are some determinations coming out of our High Court which appear--- What is provided for in Clause 3(2) is the need for our courts to develop jurisprudence that respects the Constitution and responds to Kenya's social, economic, and political needs. Judicial officers who do not look at all the factors surrounding a particular matter while determining cases before them may be viewed as unreasonable. To be reasonable means considering all the factors surrounding a particular matter so as to work within the reality. We should ask our officers to look into this aspect because when they do not, they plunge our country into crises. Such situation is not for anybody's good; it is not good for the Judiciary or anybody else.

Some determinations can plunge the whole country into chaos. A court may determine some matters that may be difficult to implement and in the process bring about disharmony. Such determinations make other arms of Government appear as if they are not willing to comply with court orders, or they are not obeying the orders. Even the orders that are given must be orders that are justifiable and reasonable and within the reality in the country.

This Bill is important because it provides opportunity for setting up various divisions within our High Court. We will have family and children's division, commercial division, civil division and criminal division as well as divisions to deal with constitutional interpretation and human rights issues. The Bill also sets up the judicial review division, which will be responsible for review of issues related to the judicial system. It also provides opportunity for creation of other divisions on a need basis.

This particular Bill gives the mandate to the Chief Justice and the presiding judges to have a court constituted at any time. It also gives clarity in terms of when recess starts and ends. It is important to consider the time taken because at times people go to court to delay public projects or programmes that are of common good. With a very liberal judicial system, people can file cases in court and derail projects meant to benefit the public. Once a matter has been taken to court, it can drag on forever. In the process justice is denied to the parties involved. That is not good. It is what brings corruption.

The question of corruption in this Republic is terrible. As it has been alleged several times, we have the problem of corruption within the judicial system. It is like the system is rotten from inside. A situation where people are not sure of getting justice, or fair trial, brings about anarchy. That is what makes people take the law into their own hands. The have-nots in society may end up deciding to kill or do other bad things, because they know that if they compete with people who are endowed with resources they will not be assured of justice. This happens especially because of the delay and the inducement that at times comes with it.

Looking at Part III of Bill, which deals with administration---

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Member, you have one minute.

Hon. M'uthari: Part III of the Bill, which deals with the administration of our judicial system, is important because it brings out the element of co-ordination and how things should work. I am also very happy with the aspect of alternative dispute resolution system because that way, council of elders' organisations like *Njuri Ncheke* can have space and determine matters through the alternative mechanism, as it happens today; their decisions can be abiding.

The *Njuri Ncheke* council of elders can determine what other people are not able to determine.

With those remarks, I support this particular Bill; those areas which need to be adjusted should be adjusted.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Member for Mbita, Hon. (Ms.) Millie Odhiambo.

Hon. (Ms.) Odhiambo-Mabona: Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. I wish to support this Bill, and in supporting it I would wish to indicate that a lot of what the Bill does is codify what is already in practice in the courts of law. It is a good thing because we can be speaking from a point of authority. This Bill seeks to ensure there is order, efficiency, effectiveness and timeliness in delivery of justice.

Hon. Temporary Deputy Speaker, a lot of the things that the Bill speaks to are about ranking - who comes first and who follows, and about order in the courts. It is about when the court says what times and how long the matters need to be dealt with. Perhaps, one of the things that we can borrow from Parliament is to get that sought of order. With due respect, it would not be in order for Hon. Dalmas Otieno, to be sitting as a ranking Member when all of us who are juniors are speaking ahead of him. I am not criticising you Hon Temporary Deputy Speaker, but I am just saying that in terms of---

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Millie Odhiambo, I can even confirm that he knows at what point he wants the Temporary Deputy Speaker to catch his eye. Today he is not expressing his interest, but he still craves for your guidance.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Speaker, I just thought he wanted to speak; if he wants to speak, he should be given priority. We do not take the issue of ranking seriously. As lawyers, we take issues of ranking seriously. In parliamentary practice in other countries, ranking is taken seriously but we do not take it seriously here. We should take it seriously because this is what the courts are trying to---

One of the things that this Bill seeks to do is give effect to Article 165 of the Constitution, which is a good thing. Before I joined Parliament, I worked with the International Commission of Jurists (ICJ) as a co-ordinator of a program on gender and access to justice. This Bill speaks a lot to the work I used to do then. One of the things I am very disheartened about is that the Bill is not strong on the issue of gender mainstreaming. It talks about this in very general terms. Those of us who have worked with the Judiciary - I have worked with the judiciary on such a program - know that women find it more difficult to access justice. Therefore, some of the things that should have been included should have been how women can deal with complaints on issues of sexual harassment, women who are complainants and users of the court system, and women who work in the court system whether as judges, or otherwise.

I would like to say that one of the Members who spoke ahead of me spoke to the issue of a law that already provides for the setting up of courts in every county. I remember I was the one who moved such an amendment. I was just wondering in terms of legislative elegance why we need to have similar provisions in two different laws. My suggestion would be that when the Chair of the Departmental Committee on Justice and Legal Affairs will be moving his amendments, he either deletes that earlier provision, or deletes this current provision, so that we do not have duplication in our laws. It is a misuse of words. We love talking as politicians and we can preserve those words for use in political rallies.

I would like to say that the other thing I love about this Bill is the issue of intermediaries, or the use of intermediaries. That gives chances to young people, especially children and persons who are victims of sexual and gender based violence. It mirrors a lot the Victims Protection Act,

and the Sexual Offences Act. It, therefore, means that if you have victims who are not able to address the courts directly, they will be able to use an intermediary to help them in the process.

The other issue I would like to speak to is mediation. I am glad that the Member who has spoken ahead of me made a reference to the *Njuri Ncheke* council of elders. One time we visited the *Njuri Ncheke* council of elders, and part of the work I used to do in ICJ was to work on an access to justice program in Meru area. When we tried to meet the *Njuri Ncheke* council of elders, we were told we could not meet them because we were women. I cannot criticise the Ameru culture because it is their culture and it is unique to them. But when we get into the realm of human rights and protection of human rights, then mediation must be alive to such factors; a lot of cultures are very discriminatory of women. When we refer to customary cultures, they must also be in reference to the Bill of Rights so that we do not exclude our women.

I am very happy that we have institutionalised the court users committee. I know that CRADLE, where I used to work before sat in the court users committee. I can see the Mover and the Chair of the Departmental Committee on Justice and Legal Affairs are not here, but I hope they will give us reasons why the advisory committee is only composed of judges and not anybody from outside. It is very difficult when you are advising yourself. Even in Parliament, if we were to set up an advisory committee, I would advise that we also get a fresh eye from outside. This is because when you look at the mirror, you might think you look good but may be your dress is torn at the back and you may not know. It is only the person looking at you from the back who can tell you. We need to understand why for instance, they cannot add the Law Society of Kenya (LSK), or the Federation of Women Lawyers (FIDA) to such a committee.

The other issue which is very impressive is the issue of performance contracting, which I do not know whether it is already operational. Whether or not it is, there is a good thing as it enhances performance of our judges.

Hon. Temporary Deputy Speaker, I am glad that the Bill has put a few more months on the punishment for contempt of court. I thought I read two years but my colleague had indicated that it is six months. If you compare it with the Magistrates' Bill, one of the amendments I wanted to propose was that we extend the punishment for contempt of court. For judges to effectively carry out their work they should know that they have authority. Just as you have said, you remember 18th December 2014, when the whole House went haywire and the Speaker was not able to do anything. That was why when the matter was challenged in court, it became very easy to target the proceedings of Parliament.

I want to state that I am happy, and even though it is constitutional, it is good to restate that sign language will be used. That promotes the rights of persons with disabilities in the court system.

I want to caution on the limitation of one year. It is a good thing when you have matters that must be completed within a year because it is said that justice delayed, is justice denied. Sometimes we might wish to rush matters especially for vulnerable groups and in the process of rushing we may end up doing opposite of what we are trying to do. I am trying to say that we need to put a proviso that in cases where there may be need to extend time, then the judges could extend, and with very clear reasons.

I would like to urge that define circuit courts, which we probably know but we need to provide for. On the issue of teleconferencing, we need to make a reference especially for children in cases of abuse.

Finally, I am very happy that we have the family division and the human right division. Even though they exist we are institutionalizing them by way of law.

I support.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): The Member for Kwanza, Hon. Ferdinand Wanyonyi.

Hon. F.K. Wanyonyi: Hon. Temporary Deputy Speaker, I also want to take this opportunity to support this Bill. There are quite a number of things that I have noticed in the Bill. In so doing, I have noted that the transfer of judges has been an issue as far as the public is concerned. You find a case going on and from nowhere you are told that the judge has been transferred. It becomes difficult and the case starts dragging on and on. This Bill addresses that issue. It is something that is long overdue because it tells you that you must take certain time, three months before somebody--- From what the Mover was saying that when you are given three months to clear the backlog, that again helps because, as I said, some of the cases drag on for quite some time.

The other one is a bit disruptive because when a judge is transferred and a case is right in the middle or towards the end, it means that the new judge that comes in has to start it afresh. Therefore, this is a good thing to do. There is a bit of order now in the courts from what I am seeing. We have had cases where judges actually do their own businesses. I have gone in just to see what they are doing. I do not want to say where. You find some of the judges are negligent. He is handling cases that you feel--- This brings in some order. I like that.

The other thing is that as we do this, the ongoing case of the teachers--- When people do not respect the courts, especially when it is one arm the Government or whatever organ, tells you volumes. We have had to go through a lot of pain recently when the Government deliberately said they were not going to follow the courts. The courts had made a ruling and they refused to follow the courts. I want to take this opportunity to thank the teachers and the unions because after the courts said they go back to work, they complied and yet the Government which is supposed to be a supervisor of the Judiciary refused to comply. It is not very good but as it is, it means that we do not have faith in our courts.

I hope with the passage of this Bill there will be a bit of reasoning, so that people can appear to have faith in the courts and obey whatever the courts say. That is the only recourse that we have. I am not a lawyer but I have had cases where judges disqualify themselves. When you ask the reason why or you deduce from the proceedings, you find that somebody has disqualified himself or herself because of pressure. In most cases, almost 90 per cent of that pressure comes from the Government. So, the Government should respect laws and the judges, so that judgments are helpful. You do not put undue pressure on the judges so that---- I had a case recently and we were told that the Government was actually interfering in a case that was going on between Kenya National Union of Teachers (KNUT) and the Teachers Service Commission (TSC).

The other thing I have noticed - I think it is good - is the performance contracting. I am privileged to have worked in Government when my good brother and neighbour Hon. Dalmas was a Minister of State and he introduced the performance contracting. I have been sharing with him notes here. It is something that is good because we are then able to assess or appraise some of the judges. This is something that is very good and we are able to assess some of the judges. I think this is good and Article 29 says that there will be appraisal of judges. I think advocates of the High Court and the general public can appraise, in their own way, how a judge is performing or carrying out his duties.

I also see that they have introduced sign language. I passed by a court to see what was happening and there was a deaf guy before the judge. His relative was helping in interpreting whatever was being said and that helped his independence. If you somehow do not have faith in

whoever is interpreting, but the courts can have sign language experts, you will understand and follow proceedings. This way, justice will prevail for whoever is involved.

Hon. Temporary Deputy Speaker, as I sit, I want to mention one last thing. It is high time organisation of courts went digital. I know some of the judges are analogue but most of us are now digital. When you go to the court and you are told that your file is missing, it means there are games played in courts. When they say the file is missing, it is not missing. Somebody is hiding it and sometimes the files are altered. The contents of the files are altered and the one that goes before a judge is completely different from the original one. Therefore, I hope and pray that the courts will go digital for these organisations so that the question of missing files is done away with.

We have a system called microfilming. We can have it where the files are microfilmed. This is current. We are in the 21st Century and that is what we should do. I support this because I know this is the digital age, and we hope and pray that the question of going to court and being told that a file is missing, will be something of the past. Therefore, I fully support this Bill and I hope it will come into effect soon, so that people can enjoy the fruits of *Uhuru*.

I support.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon Member for Ugenya, Hon. David Ochieng.

Hon. Ochieng: Thank you so much, Hon. Temporary Deputy Speaker. I sit in the Departmental Committee on Justice and Legal Affairs and I have had the privilege of going through this Bill from the initial stages. I am happy that finally we are discussing this set of Bills including what was discussed in the morning. The most important thing to note is that the country is now realising that the function of the Judiciary is not merely that of a judge sitting, listening and delivering judgment. It is a process; a process that must be managed. We also realise that judges are also human beings who, like all of us, get tired and are prone to error. So, we said that it is important that we now provide a framework of organising, managing and administering the way the High Court, the Court of Appeal and the small Magistrates Courts work, and so that it is not about paper pushing. It should be about how to ensure that justice is delivered effectively, is done in a manner that promotes not only the interests of those who seek the services of the courts but also the welfare of those who ensure that those services are delivered and delivered on time.

As I speak, it is interesting that this morning in Ghana, seven judges were sent home because of corruption. It will interest you to know how they were discovered to be corrupt. Someone went round the courts filming how the judges conduct themselves. So, the idea that judges may be a law unto themselves is going to be cured through this Bill. We are setting up a system of ensuring that the High Court is transparent, and that a judge presiding over any matter is not the last person who has a say on what happens in the Judiciary. Establishing the position of a principal judge of the High Court and having a presiding judge at every station will ensure some level and chain of command from the lowest-ranked judge to the presiding judge at every High Court station. This will ensure that matters that can be handled administratively at the level of a station are handled at that level before they are taken to the Judicial Service Commission (JSC) or any other level for that matter.

Devolution is a very important thing in this country, especially the fact that we set it out in the Constitution that we will also decentralise the Judiciary. I am happy that the Judiciary is being decentralised. In Siaya County, we had been travelling all the way to Kisumu to reach a High Court station. You can imagine someone from near Hon. Wekesa's constituency having to

travel to either Busia or Kisumu. We used to spend so much money. Now we have a High Court station with a judge in Siaya. That brings justice closer to the people. As we bring courts closer to the people, we should also ensure that the management systems are in such a way that justice works for everybody.

Discipline is very important, not just among the judges, but also among all the cadres in the Judiciary, from the clerks to the registrars tasked with management at every station. This Bill creates a system where the Registrar of the High Court, who reports to the Chief Registrar of the Judiciary, also has some powers and administrative role that he or she can play in ensuring that her station is able to run itself in a transparent, effective and expedient manner in as far as management is concerned. The word “management” is very important for me. How files are kept, digitisation and how complaints are resolved before a matter gets to a judge is very important. It is important to have qualified employees doing the work.

Enforcement of judgments of the High Court is very important. The debate going on now in this country is whether there are laws for weak people and laws for strong people. Is there a choice in obeying court orders? This Bill gives the High Court radical powers on what to do to ensure that their decisions are enforced, and what to do if one does not comply with court orders. I like what the former speaker said. You cannot choose which laws and court orders to obey and which ones to ignore.

It was so laughable to see the Government telling teachers to obey a court order, yet when the court gave an order that they should pay teachers, they ignored it saying there was no money. You did not see them negotiating with teachers and saying: The court has given an order; how do we go about implementing it? In 2013 when the Supreme Court ruled that Uhuru Kenyatta had won the presidential election, our Coalition said: We do not agree with the ruling but we shall respect it. When the court made an order that teachers be paid, we expected the President to say: We do not agree with the court ruling, but we will find a way of implementing it. Let us ensure that court orders are enforced and that where there is difficulty, it is explained. We should not wish court orders away. I am happy that in future, the court, sitting on its own motion, will be able to punish anybody for contempt.

I have also seen provisions on case management, court records and court performance. There was a time in this country when court files would disappear. Someone would hide court files. This system will ensure that court records are kept well. There will be no hiding of court records. Above all, clerks who manage court records will be transferred regularly. Sometimes court clerks form a cartel, and do not want to be transferred. A judge is posted to, say Kisumu or Eldoret, and then a clerk tells him: This is the way we do things here. This system will ensure that court clerks can be transferred every now and then to ensure that there will be transparency and nobody will grow bigger than the judges who preside over cases.

Hon. Temporary Deputy Speaker, with those many remarks, I support this Bill. I urge my fellow Members to support it, so that we can ensure that our Judiciary is transparent and able to deliver justice to Kenyans.

Thank you so much.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): The senior Member for Kapenguria Constituency, Hon. Samuel Moroto.

Hon. Chumel: Thank you, Hon. Temporary Deputy Speaker, for that honour. I want to congratulate the Members who recognise senior Members in this House.

First and foremost, I want to thank the Member who brought this Bill, and those who have contributed to it. I appeal to every Member to support this Bill. Some of us come from

marginalised areas, where there is no Government presence. The senior most person you can get is a chief then an assistant chief and a *mkasa*, that is a village elder. To get justice when you are aggrieved, you travel a long distance, like from Kapenguria all the way to Kitale in Trans Nzoia County. That is where you get a High Court station. The Member for Kwanza, who is a good friend of mine, is listening because he knows. When one is taken to those places, communication is also a challenge because of language barrier. Some people in Turkana, Trans Nzoia and even some members of the Luhya and Kisii communities understand little or no Kiswahili. The language used in court is also complicated, although this Bill does not mention anything about communication or language.

There is need for court facilities to be closer to the people, so that you can get somebody who can assist you from within. I remember one time in 2005 I was in a Nakuru court and my advocate was Naikuni. Before my case came up, there was a Samburu old man brought all the way from Maralal. In fact, we cannot say Maralal because that is a town near Nakuru. Maybe he was brought from the interior of Samburu. The man could only speak and understand Samburu. If a High Court station was in that area, somebody else would have helped him with translation. This man was in the possession of a gun, maybe wrongly, because sometimes the police can put a gun on you and say you were arrested with it. This man could not understand English or Kiswahili that was being communicated there. He was asked: "Were you caught with this?" He said: "Yes." It was not like that because the person who was communicating was not really a Samburu. Somebody just used another language to force him to accept. It forced Naikuni to come and say no. I honour our judges and lawyers because they respect each other. The judge also noted that there was something wrong because you immediately accept that you have a gun and you know it is a matter of life and death. That guy was rescued. Later when he was approached by the lawyer because the lawyer understood the language, the guy said: "No, I was just on a journey and I was caught by the policeman on the road as I was walking." So, taking these facilities to the farthest part like the village--- With the way we are now moving, we can go even to those areas compared to developed areas.

Hon. Temporary Deputy Speaker, I also want to talk about the time that the cases are taking. You will find that most cases are brought to Milimani High Court. Some are from North Eastern and Rift Valley. They come all the way to Nairobi. It is a problem even for the witnesses to come and give evidence. Sometimes we blame them that they fail to come up. It is because the Government is not supporting them. I remember in the 1970s when you were called to be a witness, or if you were accused, you were given transport, so as to attend court and present yourself. I am not young and I know what used to happen then. At the moment you have to struggle on your own. Even food is not provided. So much time is spent. If the Bill will go through and be implemented by the Government or those in charge of that section, it will solve a lot of problems that Kenyans are facing.

I have talked of interpretation. When facilities are near people, they will help themselves to get the right interpretation. I can give a case which is ongoing. Last week, in Trans Nzoia, an accused person was taken from Turkwel. When that person was taken to Kitale Police Station, because of hatred--- There is a problem and I want my colleagues to bring a debate on this problem; tribalism is increasing. It is even going to those people who are supposed to be neutral in their duties, the police. You will find a county commandant of police in Trans Nzoia belonging to the Pokot community saying that if the accused person belongs to another community then he should be put in. When I heard about the case, it was just that animals had trespassed into the Agricultural Development Corporation (ADC) farm and maybe destroyed

some crops. That was just a civil case that could be dealt with by elders around there and the chief, but it went to the police and to the High Court.

It changed from a civil case to a criminal case. The accused person was branded a murderer. How can you kill maize?

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

Hon. Chumel: I want to give my colleagues time. I just want to congratulate whoever brought this Bill. I appeal to my colleagues here to pass it. If there are places where we can do some corrections, bring them. This Bill will solve problems of Kenyans.

Thank you. I support it.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you, senior Member. What a coincidence. The two senior Members express their interest to catch the Speaker's eye. They usually come late. Next on my request list is senior Member for Rongo, Hon. Dalmas Otieno.

Hon. Anyango: Thank you, Hon. Temporary Deputy Speaker. I know what Hon. Millie Odhiambo and Hon. Ferdinand Wanyonyi wanted me to speak about.

The Bill is good but there is no provision that will address transformation, attitude change and performance in the High Court. As it is now, it provides for business as usual in the High Court and the only recourse you have is to appeal. You have to go to the Court of Appeal and then the Supreme Court.

Hon. Temporary Deputy Speaker, as you know, those are very expensive processes. For your appeal to make sense, you even need a good lawyer. As a student of law, you are aware from your class that we have good, average and poor students. Some of those whom you knew were actually not very good students still passed the law course and are now judges.

What am I trying to say? We actually need an independent performance review committee as one of the organs for managing the High Court. This is the very thing we have done with the Independent Policing Oversight Authority (IPOA). This Committee should be within the High Court because they have to look after themselves but it has to be independent and have representation from the Law Society of Kenya (LSK) and be backed by a secretariat, which will be composed of legally qualified officers in intelligence; that will tell whether the performance of a particular judicial officer is reasonable and has not been subjected to excess influence and corruption, that is the power of money.

We say that all of us would be corrupt if we were sure we cannot be caught. So, there must be a mechanism, a performance review committee backed by legally qualified intelligence officers that would report to the Chief Justice that in a case like this we have every reason to believe, and we have been able to lay our hands on intelligence that shows us that, that judge was not fair. That judge was lazy or is not up to the standard we require. We have enough evidence now following the vetting mechanism. I know a number of very good lawyers who cannot even dare apply to be judges for fear of that vetting. You know very well that even here in the House we have passed some laws that were voided by the High Court yet we are very many. We are an Assembly of some of the most able Kenyans that you can put together, and all with the mandate of the electorate to boot.

If that can happen here and the Judiciary is really the home of the rule of law that is central to the performance of our Constitution for the benefit of all Kenyans, what is this organisation and administration of the High Court providing to make sure that judges will be performing up to the standard? We are not going to wait for another 10 years and then we say

that we should constitute another vetting of magistrates or judges board to weed out the rotten eggs from the system. This has to be a continuous process. There is no provision here under which the Chief Justice will do it. It had better be done by law. Unfortunately, the Chairman of the Departmental Committee on Justice and Legal Affairs is not here. He should pick this up and draft the right amendment under Clause 29 which provides for the review. If anything, it should not be that he oversees.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): I am sure the Clerks are noting for them. I also support that they should have been here to take such concerns, but the HANSARD will be there.

Hon. Anyango: Clause 29 should not just provide that the Principal Judge shall oversee the implementation of performance management. No. There has to be a performance review committee within the High Court that would report to the Principal Judge and the Chief Justice their continuous evaluation and monitoring, including the continuous personal development of the judges. We have some average judges who are comfortable to be judges up to age 70 years and they are making no more effort to do a better job at the Bench. There has to be an administrative unit that will enforce change of attitude, enhance performance, personal development and elimination of corruption. That requires a unit complete with a secretariat and intelligence officers who are legally qualified to monitor the performance of judges and review them annually, not after five or ten years. That is so that we can save our Judiciary from the adverse negative influence of our current political practice, where so many of us politicians would even wish to get away with murder and wish there were no laws yet they are the people who are making those laws.

So, there has to be a provision aiming at implementing the Constitution in the application of this legislation.

Article 165 has a structure within it that would change the attitude of judicial officers, the judges and officers working in the Judiciary, to be able to enforce the personal development of those judges with recommendations, some mentorship, some counselling and some discussions within forums that are respectable in accordance with the kind of Judiciary we should have. As of now, if we leave it like this and you go out there and do a survey whether public confidence or trust in the Judiciary is going up, you will find it has not improved, yet we have a new Constitution.

As we are now, there are people who believe that the law is for the small people. It is a fault of our society. We will have to do something to change the governance of this country in that regard. But, what does it mean? If a small person is in the High Court or the Magistrate's Court with a socially, politically or financially more powerful person, there should be an organ within the judicial system monitoring the fair treatment of the weakling before the law, so that you can have true rule of the law in our country. That unit is missing and I think that is what Millie Odhiambo and Ferdinand Wanyonyi were requesting me to mention as much as I had told them of it themselves. The business provisions are, usual, insufficient. There has to be new clauses that will address the necessary change of attitude, change of productivity and the necessary enhancement of standards in the Judiciary so that Kenyans will have maximum of our judicial system. It may help our other organs of governance as we see them today, and which we may have to address under other forums.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): They must have trusted your experience and of course the seniority which comes with it. Well spoken.

The Hon. Member for Turkana County, Hon. Joyce Akai.

Hon. (Ms.) Emanikor: Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill. I wanted to speak to the issue of performance and efficiency, which has already been spoken to by my colleagues. I do not wish to repeat that, but the need for an inclusive advisory board and the review body that is independent is quite evident. I will support the amendments that will be brought.

This law is pro-poor. It is meant for the common person. It contains issues that would otherwise be considered negligible. It is taking care of people living with disabilities and affirmative action groups like women, although my sister Millie said it was a bit inadequate on women, which I agree with; I hope there will be a few other amendments that will speak to that.

This Bill will handle disputes of civil nature. These are disputes that are currently handled by chiefs and elders. These are issues to do with pregnancies, marriages, divorce and dowry. These are issues that are usually mismanaged by communities through community structures that sometimes are biased or skewed against women. There is one in Turkana called *Ekichul*, which is dowry given for impregnating a girl, which is more expensive than impregnating a woman who has children. I am happy that this law is institutionalising issues that have been handled so casually before. It is taking care of widows, children, issues of custody and guardianship, adoption, succession and administration of intestate estates, which is very crucial. These are things that occur in everyday life.

Hon. Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, let me just remind you for the sake of repetition, consistency, and, of course, talking to the right Bill. We are now on the High Court Organization and Administration Bill, 2015. Previously, we did the Magistrates' Courts Bill. That can guide us.

Hon. (Ms.) Emanikor: Thank you. I support this because of the flexibility of this court in terms of mobility and venue. It may be held at any place within the limits of its jurisdiction. This will enhance access to justice by people who are otherwise unable to access justice due to long distances.

This Bill further protects the magistrates and the courts from indisciplined witnesses, contempt, intimidation, disobedience---

Hon. Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Joyce Akai, I thought my direction helped. It is the High Court Organization and Administration Bill; we are not on the Magistrates' Courts Bill. Just carry on based on the High Court Organization and Administration Bill, 2015.

Hon. (Ms.) Emanikor: I stand guided. It is still the same thing and quite related.

I was speaking more to the Magistrates' Courts Bill.

Hon. Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Just carry on but be relevant to the High Court Organization and Administration Bill, 2015. We did away with the Magistrates' Courts Bill.

Hon. (Ms.) Emanikor: Because of that confusion, I want to end there but support the Bill.

Thank you.

Hon. Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Of course they are related in the functions as the previous speaker stated, but there are a few differences to state on the High Court Organization and Administration Bill.

Next is the Member for Butula, Hon. Michael Onyura.

Hon. Onyura: Thank you very much, Hon. Temporary Deputy Speaker. I rise to support this Bill because it is a Bill that is supposed to give effect to Article 165 of the Constitution that provides for the High Court and directs that Parliament will pass the necessary laws for the efficient operationalisation of that Article.

Hon. Temporary Deputy Speaker, this Bill will enable the High Court to work effectively and efficiently. As that happens, it will strengthen the judicial system. In terms of realising good governance and stability, an efficient and effective judicial system that enjoys the confidence of the citizenry is very important. We should support any effort towards strengthening that part of the Government. That is what this Bill is doing.

We always talk about the importance of observing the rule of law and emphasise the fact that we are all equal before the law. We talk about the principles of one being deemed innocent until proved guilty, natural justice, fair trial and so on. Therefore, these rules will strengthen the rule of law, which is very important. One of the things that tempt people to resort to mob justice is loss of confidence in our justice system generally. If people are sure that justice will take its course, instances of mob justice will decrease.

A good judicial system and a good rule of law system will strengthen democracy. People who resort to shortcuts like use of violence to demand justice will know that they can go to court and have their matters resolved fairly at the various levels of the judicial system. A good judicial system also strengthens the economy of the country due to availability of credible mechanisms for resolving commercial disputes and other matters that may arise. One of the things that we must stress here is speedy delivery of justice, because justice delayed is justice denied. A mechanism should be put in place to ensure speedy delivery of justice right from the level that we discussed earlier on.

Magistrates' Courts should be set up across the country in places where they can be accessed easily. The court system should organize their activities to provide for timelines for completion of cases. They should embrace performance contracting and performance evaluation. There should be timelines for completion of cases, so that cases do not take forever. The land case involving the Koinange Family is a case study for what should not happen. I have a lot of respect for what the senior Member for Rongo, Hon. Dalmas Otieno, said on development of human resources. We may have very good laws and structures in place, but if we do not consider the human resources factor, we may not get maximum benefits from such good laws and structures. Then maybe we will get the maximum even from very good laws and structures. The system should be such that we provide good terms and conditions of service for the Judiciary, particularly for the judges. This will ensure that we attract the best from the legal fraternity into our High Courts. That way, we can balance the Bench and the Bar. We will have strong people on the bench and equally strong people at the Bar. The issue of good terms and conditions of service is also key, so that we can attract the best brains as well.

Talking about the human resource management, issues of training, continuous managerial and leadership training skill are very important. We have seen cases in the media where advocates have boycotted some courts, or have had issues with particular judges or magistrates, either because of their style of doing things, their way of leadership or their mannerisms. Sometimes, they accuse them of arrogance, harshness and indiscipline. So, it is very important that we provide adequately for the continuous professional development of our judges. It is in the interests of everybody. It is in our interest, the litigants and everybody in the country.

Talking about professionalism, there has been cases where clear indiscipline is noticed in some courts. Courts are supposed to start at, say 8.30 am or 9.00 O'clock, but you go to attend

court and the magistrates or the judges do not show up until about 11.00 o'clock, and they are there briefly and then adjourn the proceedings. This is the sort of thing that we are talking about in their professional conduct and discipline.

Finally, I am happy that the Bill encourages the modernisation of our courts in terms of communication systems and record keeping. They are moving away from the rather conservative approach of our courts of sticking to archaic and outdated ways and mannerism of the courts. We should be getting away from that and seeing the best way to modernise our courts.

With those comments, I support the Bill. I appeal to my Hon colleagues to support this Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you. We will have Hon. Savula, the Member for Lugari Constituency. You will have two minutes and you will have the balance of your time in the next sitting.

Hon. Angatia: Thank you, Hon. Temporary Deputy Speaker for this opportunity. I will speak in a minute.

The cornerstone of a strong economy, democracy and stability of a country lies in an efficient judicial system.

I rise to support the High Court Organisation and Administration Bill, but with some amendment. If you look at Part II, Clause 3 on the Establishment of Divisions, there is a Criminal Division, Civil Division and the Judicial Review Division, but there is a critical division that is not mentioned here. I will move an amendment to have a Land Division created in this Bill, so that we can sort out issues related to land matters.

Already the Directorate of Criminal Investigation has established a division that deals with land matters. We have cases about the 1992 tribal clashes that are still pending in court and cases of the 2007 post- election violence.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Order, Hon. Member! Hon. Savula, you will have the balance of eight minutes in the next sitting.

Hon. Angatia: I stand guided.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): This is a House of rules and procedures. Get ready in the next sitting and you will get priority.

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

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, the time being 6.30 p.m., this House stands adjourned until Thursday, 8th October 2015 at 2.30 p.m. It is so ordered.

The House rose at 6.30 p.m.