

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 20<sup>th</sup> November 2018

The House met at 2.30 p.m.

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

### PRAYERS

### COMMUNICATION FROM THE CHAIR

#### VISITING DELEGATION FROM PARLIAMENT OF SIERRA LEONE

**Hon. Speaker:** Order Members! Those making your way into the Chamber, please, take seats. Hon. Members, I wish to introduce to you a delegation from the Parliament of Sierra Leone. The delegation, seated at the Speaker's Row, comprises the following:

1. Hon. Paran Umar Tarawally - Clerk of Parliament and Leader of Delegation.
2. Hon. Massay N'gahintay Aruna - Member of Parliament.
3. Hon. P. C. Haja F. B. Koroma Meame-Kajue - Female Caucus Representative.
4. Hon. Sheriff Mohamed Kassim Carew - Opposition Member.
5. Mrs. Finda F. Fraser - Director DePAC.
6. Mr. Gilbert N'habay - Research Coordinator.

Hon. Members, the delegation is in the country on a benchmarking visit specifically to learn operations of the Parliamentary Service Commission (PSC) and the Parliamentary Budget Office with regard to their roles, functions, mandates and significant achievements, among other related issues.

On my own behalf and that of the House, I wish to welcome them to the National Assembly and wish them fruitful engagements during their stay in the country. Thank you, Hon. Members.

Hon. Members, the other Communication will be given before we go to Order No.9. Could the Member for Baringo North take his seat? The Member for Suna West, take your seat. The Member for Laikipia, could you quench your thirst much later? Members near the door, make your way through quickly. Member for Bomet, could you walk more briskly? Member for Machakos County, I know you wish to lobby. Leader of the Majority Party, you are in some interesting posture.

**MESSAGE**

*Message from the President No.15 of 2018*

NOMINATION OF PERSONS FOR APPOINTMENT AS VICE-CHAIRPERSON AND  
MEMBERS OF THE PUBLIC SERVICE COMMISSION

Hon. Members, Pursuant to the provisions of Standing Orders No.42, I wish to convey the following Message from His Excellency the President relating to nomination of persons for appointment to the offices of Vice-Chairperson and Members of the Public Service Commission.

In the Message, His Excellency the President conveys that, in exercise of powers conferred by Article 233(2) of the Constitution, Paragraph 3 of the First Schedule to the Public Service Commission Act (No.10 of 2017), as read together with Sections 3 and 5 of the Public Appointments (Parliamentary Approval Act), 2011 he nominates the following persons for appointment to the respective offices in the Public Service Commission:

1. Ms. Charity Seleina Kisotu as the Vice-Chairperson of the PSC;
2. Dr. Joyce K. Nyambuti as member of the PSC;
3. Dr. Mary C. Mwiandi as member of the PSC;
4. Dr. Reuben K. Chirchir as member of the PSC;
5. Amb. Patrick Simiyu Wamoto as member of the PSC;
6. Amb. Salma A. Ahmed as member of the PSC;
7. Mr. Andrew N. Muriuki as member of the PSC; and,
8. Ms. Joan Odhiambo Otieno as member of the PSC.

Hon. Members, His Excellency the President, having exercised his powers, is, therefore, seeking the approval of the National Assembly of the nominees for appointment to the aforementioned positions. Hon. Members, Standing Order No.45 requires that upon receipt of notification of nomination for appointments, such nomination shall stand committed to the relevant Departmental Committee of the House for consideration. Pursuant to the provisions of the said Standing Order, therefore, and Paragraph (3) of Standing Order 42 relating to Messages from the President, I hereby refer the Message to the Departmental Committee on Administration and National Security to undertake the necessary approval hearings.

Hon. Members, Paragraph 4(1) of the First Schedule of the Public Service Commission Act, 2017 requires the National Assembly to consider nominations received and either approve or reject the nominees to the respective positions within 14 days. In this regard, and in accordance with the provisions of Article 259(5)(a) of the Constitution as read together with the said Act, the 14 days shall start running on the day following the day when notice is published in the dailies. Therefore, I wish to guide the Committee and the House as follows:

1. That, the Committee should expeditiously proceed to notify the respective nominees and the general public of the time and place for holding the approval hearings in good time. The notification should, therefore be made on Wednesday, 21<sup>st</sup> November 2018.
2. That, the Committee should thereafter commence the necessary approval hearings and submit its report to the House to enable the House to consider the matter within the statutory timelines; in this case, by Thursday, 6<sup>th</sup> December 2018 in the Morning Sitting.

I thank you, Hon. Members.

Next Order!

## PAPERS LAID

**Hon. Speaker:** Let us have the Deputy Whip of the Majority Party.

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

Report of the Auditor-General and the Financial Statements of the East African Portland Cement PLC for the year ended 30<sup>th</sup> June 2018 and the certificate therein.

Reports of the Auditor-General and the Financial Statements in respect to the following institutions for the year ended 30<sup>th</sup> June 2018 and their certificates therein.

- (a) The Regional Centre on Ground Water Resources Education, Training and Research in East Africa.
- (b) The Kenya Water Institute (KEWI).
- (c) The National Irrigation Board (NIB).
- (d) The National Environment Management Authority (NEMA).
- (e) The Water Resources Management Authority (WARMA).
- (f) The Anti-Counterfeit Agency.

Thank you, Hon. Speaker.

**Hon. Speaker:** A Member of the Powers and Privileges Committee, Hon. Peter Mwathi, Member for Limuru.

**Hon. Peter Mwathi** (Limuru, JP): Thank you, Honourable Speaker. I beg to lay the following Papers on the Table of the House:

Report of the Powers and Privileges Committee on the –

1. Inquiry into alleged unethical conduct of Hon. Paul Ongili, MP, Member for Embakasi East Constituency and Hon. Charles Njagua Kanyi, MP, Member for Starehe Constituency.
2. Inquiry into the allegations of bribery of some Members of the National Assembly during consideration of the Report of the joint sittings of the Departmental Committee on Agriculture and Livestock and the Departmental Committee on Trade, Industry and Cooperatives on the inquiry into the alleged importation of illegal and contaminated sugar into the country.

I thank you.

**Hon. Speaker:** Let us have the Chairperson of the Parliamentary Broadcasting and Library Committee.

**Hon. Joash Nyamoko** (North Mugirango, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

Report of the Committee on Parliamentary Broadcasting and Library on International Federation of Library Associations Conference held in Kuala Lumpur, Malaysia, from 24<sup>th</sup> to 30<sup>th</sup> August 2018.

Thank you, Hon. Speaker.

**Hon. Speaker:** Let us have the Chairperson of the Departmental Committee on Defence and Foreign Relations, Hon. Katoo.

**Hon. Katoo ole Metito** (Kajiado South, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

Consideration of a Petition by Mr. Dan Okwema and Ms. Lyn Kemboi on the arrest and detention of Mr. Don Bosco Gichana Ooga.

The Inquiry into the Kenya-Somalia Border Securitisation Project.

*(Loud consultations)*

**Hon. Speaker:** Hon. Members, there is a lot of excitement in the House. The excitement notwithstanding, we must continue to transact business.

We move to the next Order.

### NOTICES OF MOTION

#### ADOPTION OF REPORT ON ALLEGED UNETHICAL CONDUCT BY MEMBERS

**Hon. Peter Mwathi** (Limuru, JP): Hon. Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Committee of Powers and Privileges on the Inquiry into Alleged Unethical Conduct of Hon. Paul Ongili, Member for Embakasi East Constituency, and Hon. Charles Njagua Kanyi, Member for Starehe Constituency, laid on the Table of the House on Tuesday, 20<sup>th</sup> November 2018.

**Hon. Speaker:** Next.

#### ADOPTION OF REPORT ON MEMBERS' BRIBERY ALLEGATIONS

**Hon. Peter Mwathi** (Limuru, JP): Hon. Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Committee of Powers and Privileges on the inquiry into allegations of bribery of some Members of the National Assembly during consideration of the Report of the joint sittings of the Departmental Committees on Agriculture and Livestock and Trade, Industry and Co-operatives on the inquiry into alleged importation of illegal and contaminated sugar into the country, laid on the Table of the House on Tuesday, 20<sup>th</sup> November 2018.

I thank you.

**Hon. Speaker:** Hon. Osotsi.

#### PROVISION OF WiFi SERVICES THROUGH PPP-DRIVEN INITIATIVE

**Hon. Godfrey Osotsi** (Nominated, ANC): Hon. Speaker, I beg to give notice of the following Motion:

THAT, aware that universal access to Information and Communication Technologies (ICT) is a critical international obligation provided for under the International Telecommunication Union (ITU), the Sustainable Development Goals (SDGs) among other international obligations; noting that technological innovations associated with the transition to the Next-Generation Networks are already transforming the way universal access is being extended to rural and remote areas in both developed

and developing countries and to a large extent, this transformation is being fueled by emerging networking technologies; cognisant that global statistics indicate that 49 percent of the population does not have access to internet connection and that the digital divide requires tangible and consistent collective action to close the gap; further cognisant that internet is one of the most powerful and an invaluable tool in the world today for among other uses communication, information, and access to various services; appreciating that realisation of appropriate Public Private Partnerships are essential in stimulating broadband investments, adoption and infrastructural roll-out to open up rural areas and disadvantaged parts of Kenya; this House resolves that the Government through incentive driven Public Private Partnerships provides free, secure, risk-free and high quality WiFi services in every constituency.

**Hon. Speaker:** Let us have the Chairperson of the Departmental Committee on Defence and Foreign Relations.

ADOPTION OF REPORT ON THE KENYA-SOMALIA BORDER  
SECURITISATION PROJECT

**Hon. Katoo ole Metito** (Kajiado South, JP): Hon. Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Defence and Foreign Relations on the inquiry into the Kenya-Somalia Border Securitisation Project, laid on the Table of the House on Tuesday, 20<sup>th</sup> November 2018.

**Hon. Speaker:** Very well. Hon. Members, I would like to draw your attention to the fact that the sound system is being reworked. Therefore, until the staff complete that exercise, Members should make their addresses from the Dispatch Box.

Let us have the Member for Mandera East, Hon. Omar Mohamed. Member for Mandera East, move to the Dispatch Box.

Before the Member moves, allow me to recognise the presence of the following Members from the East African Legislative Assembly (EALA), who are in the Speaker's Gallery:

1. Hon. Wanjiku Muhia; and,
2. Hon. Fatuma Ibrahim.

These are immediate former Members of this House and, therefore, are more than welcome to observe the proceedings.

Let us have Hon. Omar.

MODERNISATION AND STANDARDISATION OF POLICE CELLS

**Hon. Omar Mohamed** (Mandera East, EFP): Hon. Speaker, I beg to give notice of the following Motion:

THAT, aware that Articles 28 and 51 of the Constitution guarantees the right to inherent dignity and the right to have that dignity respected and protected and provides that a person who is detained in custody or imprisoned under the law, retains all the rights and fundamental freedoms in the bill of rights except to the extent that any particular rights or fundamental freedom is clearly

incompatible with the fact that the person is detained, held in custody or imprisoned, further aware that for the person deprived, the Liberty Act, 2014 provides for the humane treatment of persons detained, held in custody or imprisoned; deeply concerned that most police cells in the country are in deplorable conditions characterised by lack of basic requirements, overcrowding, poor diet, lack of clean water, poor sanitation among other requirements; noting that these conditions are in total contravention of the provisions of the Constitution and relevant legislations as they deny the detainees their fundamental rights to inherent dignity as well as freedom from torture and cruel, inhuman or degrading treatment or punishment which leads to their physical, emotional and psychological torture and harm to an extent of some of them committing suicide; this House urges the national Government, through the Ministry of the Interior and Coordination of National Government to modernise and standardise police cells across the country by providing basic facilities that ensures the dignity of suspects detained is observed and guaranteed.

*(Loud consultations)*

**Hon. Speaker:** Order Members! The consultations are too loud. We must hear the Member for Mandera East.

Very well. Let us move to the next Order.

## QUESTIONS

**Hon. Speaker:** Hon. Members, the first Question is by the Member for Lamu County, Hon Captain Ruweida Obo. Please, move to the Dispatch Box.

*Question No.162/2018*

### ASSAULT OF RESIDENTS OF MPEKETONI AND ISHAKANI BY THE KDF

**Hon. (Ms.) Ruweida Obo** (Lamu CWR, JP): Hon. Speaker, the Question is to the Cabinet Secretary for Defence:

- (a) Is the Cabinet Secretary aware that residents of Mpeketoni and Ishakani areas in Lamu County are being physically assaulted by the Kenya Defence Forces officers operating in the said areas?
- (b) If aware, what action is the Ministry taking to ensure that these assaults are put to a stop, and that the presence of officers in the said areas serves only the purpose of ensuring security?

Thank you, Hon. Speaker.

**Hon. Speaker:** Very well. The Question is referred to the Departmental Committee on Defence and Foreign Relations to prioritise the appearance of the Cabinet Secretary to respond.

Next Question is by the Member for Butere Constituency, Hon. Tindi Mwale. Please, move to the Dispatch Box. Is he in the Chamber?

*Question No.181/2018*

## SUSPENSION OF MR. CHRISTOPHER MALOBA AMBETSA FROM OFFICE

**Hon. Nicholas Mwale** (Butere, ANC): Thank you, Hon. Speaker. I rise to ask the Question to the Cabinet Secretary for Labour and Social Protection.

(a) Could the Cabinet Secretary explain why Mr. Christopher Maloba Ambetsa, a Clerical Officer, P/N 1986123462 formally stationed at Kakamega Central County Commissioner's Office, was suspended from office under unclear circumstances?

(b) When will the said officer be reinstated and paid his salary arrears, allowances and other damages?

**Hon. Speaker:** The Question is referred to the Departmental Committee on Labour and Social Welfare to prioritise the appearance of the Cabinet Secretary to respond.

Next Question is by the Member for Samburu North, Hon. Alois Lentoimaga. Please, move to the Dispatch Box.

*Question No.183/2018*

## PLIGHT OF NATIONAL POLICE RESERVISTS

**Hon. Alois Lentoimaga** (Samburu North, JP): Thank you, Hon. Speaker. I rise to ask Question No.183 to the Cabinet Secretary for Interior and Coordination of National Government.

(a) Could the Cabinet Secretary confirm that all National Police Reservists serving in the country have been receiving their remuneration, allowances, uniforms and training as required by the National Police Service Act?

(b) What remuneration is entitled to a police reservist per month, and why is payment of allowances to the reservists not regular or standard across the country?

(c) What command structure has the Ministry put in place for effective supervision and discipline of police reservists?

Thank you, Hon. Speaker.

**Hon. Speaker:** Very well. The Questions are referred to the Departmental Committee on Administration and National Security to prioritise the appearance of the Cabinet Secretary.

Hon. Members, at the request by the Member for Kajiado Central, because his Question is not properly cast in the manner that he had put it, the Question is deferred. The Member will ask the Question tomorrow in the morning. The Question will be re-cast and put on the Order Paper tomorrow in the morning.

*Question No. 188/2018*

*(Question deferred)*

Next Order.

What is your point of order, Hon. Ibrahim? Please, move to the Dispatch Box. They are still working on rebooting the sound system. Hon. Members, I have been told that the system is back. Proceed.

**Hon. Ibrahim Ahmed** (Wajir North, ODM): Hon. Speaker, I rise to seek your direction on issues that touch on Standing Order No.42A.

*(Hon. Ibrahim Ahmed crossed the Floor without bowing at the Bar)*

**Hon. Speaker:** Hon. Ibrahim, how did you get there?

**Hon. Ibrahim Ahmed** (Wajir North, ODM): Sorry.

**Hon. Speaker:** Member for Wajir North wants to hop around in the Chamber and take advantage of the malfunctioning of the audio system. You can now ask your question either from the Dispatch Box or from there. The system is back.

**Hon. Ibrahim Ahmed** (Wajir North, ODM): Hon. Speaker, I rise to seek your direction on issues that touch on Standing Order No.42A, 42C(1) and No.216(5)(j). The reason for having Standing Orders in the House is to provide orderly conduct in the House for working well. As we are all aware, Standing Order No.42A is clear in the manner in which Members of this House are supposed to ask Questions right from the time they are posing the Questions, delivering a signed copy to the Clerk, where the Speaker approves and determines the Cabinet Secretary responsible for the Question and where the Clerk publishes the Question depending on the urgency. Thereafter, standing Order No.42C(1) is clear that the Cabinet Secretary shall provide physical and electronic copies as a reply to a Question at least a day before appearing before the Committee.

Standing Order No.216(5)(j) is clear on how the Departmental Committee examines the Questions. It is unfortunate that there is blatant violation of the Standing Orders. Hon. Member for Eldas, Hon. Adan Keynan, who is also a Commissioner of the Parliamentary Service Commission (PSC), instructed a member of staff of the PSC, Mr. Jeremiah Ndombi, to write a letter directly to the Acting Chief Executive Officer (CEO) of the Independent and Electoral Boundaries Commission (IEBC). The letter, reference No.NADAPCORR/18/066, was dated 16<sup>th</sup> August 2018 and he received a response of the same on 29<sup>th</sup> October 2018 through a letter, Reference No.IEBCCON/1/16. As we are all aware, under Article 127(6)(b) of the Constitution, the Commissioners have a responsibility of appointing and supervising the staff. It is unfortunate that Hon. Adan Keynan has blatantly violated the Standing Orders of this House and the Constitution by giving unlawful instructions to a member of staff to write directly to the IEBC and decided to do things in his own way.

It is clear that Commissioners of the PSC are appointed to provide effective and efficient services to Members of Parliament and staff in undertaking their functions. However, here is a case where the Commissioner has abused his office. He is threatening and intimidating staff and issuing illegal instructions. Above all, the blatant violation of the Standing Orders is clear. Disobeying the Standing Order is an indication that you do not believe in them. It is unfortunate that this is the longest serving Member... I am cognisant of the fact that this last term is in dispute, and before a competent court of law. However, it is unfortunate that due to his prideful power, he has decided to outrightly violate the Standing Orders.

I now seek your guidance and direction. I believe that all animals are equal, but some are more equal than others. If the action by Hon. Keynan is not dealt with, the Commissioners will be behaving like masters to the Members of Parliament. I seek your direction on this issue with regard to the blatant violation of the Standing Orders where a Member can direct a member of staff to write to any Cabinet Secretary or an independent commission and use human and

material resources of the National Assembly for his own personal gain. That is what I can describe it. Secondly, intimidating staff and asking them to write letters is misusing his office.

Hon. Speaker, I seek your direction on this matter. Thank you.

**Hon. Speaker:** Is your question or statement a complaint about the Question that has been asked? You started by quoting Standing Order No.42A and C. You have now gone on to bring issues of Article 127 of the Constitution and the functioning of the Commission. Which one is which, because the two of them are unrelated? Is your complaint on the basis of the manner the Question was asked? You can also go to the Office of the Clerk and seek to ask a Question.

The officer you have named is a Senior Deputy Clerk and in the absence of the Clerk, is authorised, ordinarily in the course of business, to write letters or to ask questions. If a Member chooses to ask a Question which requires written answers, and indicates that he may not want the Question to be brought to the Floor of the House, the Member can still do so. A Member can go to the Clerk's office and seek it as long as he places his Question, indicates that he wants a written answer, and the matter will not be brought to the Floor of the House. The Clerk will just dispatch a letter and indicate to whomever it is directed to that a written answer is required.

Is your complaint about the method the Question was asked and the response given?

**Hon. Ibrahim Ahmed (Wajir North, ODM):** Hon. Speaker, I have raised two issues. The first one is with regard to uniformity in asking Questions by Members of Parliament, which is provided for in the Standing Orders that I have mentioned.

I strongly believe that when a Member is supposed to raise a Question, it should be done as per the Standing Orders of the House which is clearly provided for in Standing Order No.42A, 42C and 2659(J). One, it is the manner in which a Member can raise a Question. I have raised this because of the sensitivity of the issue. The Question raised by Hon. Keynan touches on the border issue and has led to the loss of 127 lives and destruction of property like schools. The manner in which the Question is asked by being given to a staff of Parliament; directly asked and an answer is given and circulated without passing through the relevant Committee of the House.

Secondly, I have mentioned about the Commission. I mentioned that the Commission has a responsibility to supervise staff of the House. Will he not be misusing that position by easily directing staff to do what is contrary to the Standing Orders? Basically, I have raised two issues.

**Hon. Speaker:** Hon. Ibrahim, Member for Wajir North, is your complaint about the nature of the Question and the manner in which it was responded to? Is it a matter that affects your constituency?

**Hon. Ibrahim Ahmed (Wajir North, ODM):** It is about the border between Eldas and my constituency, Wajir North, which has led to the death of 127 people. It is volatile currently.

**Hon. Speaker:** Hon. Member, the other issue you have raised may not be raised in the manner you did because it touches on the conduct of a fellow Member. If you intend to do so, you will be required to move a substantive Motion. I will not respond to that.

If you have that Question, I direct that the matter be referred to the Departmental Committee on Administration and National Security at which, as a Member, you can appear and try to discuss whatever answer has been given by the IEBC.

Hon. Members, this is one of the things that requires, as a matter of courtesy, if you are going to ask a Question that touches on your colleagues' constituency, to notify him or her. It does no harm.

I direct that even Questions requiring written answers be read out here on the Floor of the House in future so that every Member has a chance to know that a particular Question has been

asked and that the Questioner only requires a written answer. Appropriate direction will be given from the Chair that the Question will not be taken to the Committee, but every Member will have knowledge of the Question to avoid a situation whereby there could be conflict between Members.

Hon. Olago Aluoch.

**Hon. Olago Aluoch** (Kisumu West, FORD-K): Thank you, Hon. Speaker. I agree with your direction and guidance as given to the Member. There are two other issues that we should address very seriously.

The Member has alluded to inter-clan relationships between his constituency and the next one and he has said that it is volatile. Hon. Members should be guided that such matters, if raised on the Floor of the House the way it is raised, could end up making the situation even worse on the ground.

Just like the Standing Orders protect colleagues from imputing improper motives on each other unless there is a substantive Motion, even senior or junior staff of the House should be offered some protection as well so that if you refer to Mr. Ndombi, a senior officer of the House, as having acted improperly, the best way should have been to raise that with the Clerk's Office or with the Office of the Speaker, so that we avoid discussing staff on the Floor of the House.

He has raised serious issues and you have given the right guidance.

**Hon. Speaker:** You are right. We may not need to go to the merits because there is no substantive Motion raised. The Member is accordingly informed.

Because of the concerns raised by the Member, the Departmental Committee on Administration and National Security should look into the matter. Let the Question as framed be referred to the Committee and let the Members invite the IEBC and both the Member for Wajir North and the Member for Eldas, and any other Member who may wish to appear on a date to be appointed.

Let us move to the next Order.

## MOTION

### REPORT AND RECOMMITAL

#### REPORT OF COMMITTEE OF THE WHOLE HOUSE ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

**Hon. Speaker:** I had received indication from the Leader of the Majority Party.

**Hon Aden Duale** (Garissa Township, JP): Thank you, Hon. Speaker. Before we go to the Committee of the whole House, because of the nature of business, through your indulgence, I need to withdraw Order No.9(ii), the Warehouse Receipt System Bill, Senate Bill No.10 of 2017 as the Ministry has written to me with certain amendments. We need to look at them and bring them to the House Business Committee before they are processed.

**Hon. Speaker:** It then means that when we get to Order No.9, business appearing as (ii) therein shall stand withdrawn for today. It will not be part of the business to be considered when we come to Order No.9.

**Hon Aden Duale** (Garissa Township, JP): Hon. Speaker, I beg to move:

THAT, the Motion for agreement with the Report of the Committee of the whole House be amended by inserting the following words at the end thereof-

“subject to re-committal of the Bill, with regard to-

- (i) all provisions relating to the Registration of Persons Act (Cap.107);
- (ii) the provisions relating to the Higher Education Loans Board Act (No. 3 of 1995) in respect of Section 4.

*(Loud consultations)*

**Hon. Speaker:** Order, Hon. Members! Those of you lobbying, go slow a bit. The Leader of the Majority Party has even withdrawn some of his business because he appreciates that there is serious business. Member for Kibwezi West, are you also lobbying?

**Hon. (Dr.) Patrick Musimba** (Kibwezi West, Independent): It is important, Hon. Speaker.

**Hon. Speaker:** Hon. Members, I have since been informed that on Thursday last week, when the House considered the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No.12 of 2018), in a commendable show of patriotism, the House sat up to the hour of midnight. The Bill was reported on, but an amendment was put. Therefore, the Question I am going to propose is in the amended form.

I have since been informed by the staff that the Higher Education Loans Board Act (No.3 of 1995) shown as (ii) was not to be recommitted as there was no contest.

*(Question put and agreed to)*

## COMMUNICATION FROM THE CHAIR

### CONSIDERATION OF RECOMMITTED CLAUSES

**Hon. Speaker:** Hon. Members, before you go to the Committee of the whole House, allow me to guide the House. This is the Communication I referred to earlier. It relates to the decision which the House has just taken on the business appearing under Order No.8 in this Order Paper. Consequent to that decision, the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No.12 of 2018) now stands recommitted to the Committee of the whole House, pursuant to Standing Order 136A. In particular, the recommitment is to reconsider the following aspects of the Bill:

- (i) All provisions relating to the Registration of Persons Act, Cap.107.
- (ii) The provisions relating to the Copyright Act (No.12 of 2001) in respect of new section 6(1A).
- (iii) All the provisions relating to the Kenya School of Law Act (No.26 of 2012).
- (iv) The provisions relating to the Universities Act (No.42 of 2012) in respect of Section 15(2).

Hon. Members, when the House dissolves itself into a Committee, the provisions of Paragraph (1) of Standing Order No.138 shall apply. For clarity, let me read out the provisions of that Standing Order.

“When a Bill has been re-committed to a Committee of the whole House, the Committee shall consider only the matters so re-committed and any matter directly consequential thereon.”

On behalf of the House and before the House dissolves into Committee, I wish to remind you that the mandate of the Committee of the whole House shall be limited to reconsidering and taking decisions on the recommitted aspects of the Bill. The Committee is, therefore, precluded from reopening other aspects of the Bill beyond what has been recommitted.

Secondly, the intention of the re-committal is to avail an opportunity to the Committee to simply review decisions that may have been erroneously made when the Bill was first considered in the Committee of the whole House. I, therefore, ask the Chairperson to restrain Members from indulging in extensive debate on the recommitted provisions and instead focus on taking decisions on the recommitted aspects of the Bill. This ought not to be construed as a gag on the House from debating the matters under consideration. As you all know, the House sufficiently debated the recommitted provisions at the Second Reading and in the Committee of the whole House on Wednesday, 14<sup>th</sup> November and Thursday 15<sup>th</sup> November 2018 respectively. Therefore, nothing new arises to necessitate much debate, but Members may seek clarification on any matter that maybe unclear in the recommitted provisions.

The House is accordingly guided and we may now proceed to Committee of the whole House.

I thank you, Hon. Members.

### COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

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

### IN THE COMMITTEE

*[The Chairman (Hon. Moses Cheboi) took the Chair]*

### THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

**Hon. Chairman:** Hon. Members, as guided by the Speaker, we will be fairly brief. The debate was sufficiently made during the Committee of the whole House and also at the Second Reading. So, we will move pretty fast. You are advised to be keen.

### THE REGISTRATION OF PERSONS ACT (CAP. 107)

*The Registration of Persons Act (Cap.107), Section 2*

**Hon. Paul Koinange** (Kiambaa, JP): I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Registration of Persons Act (Cap. 107) by –

- (i) inserting the following new amendments in their proper numerical sequence —
  - s.2 Insert the following new definition in its proper alphabetical sequence

—

“Principal Secretary” means the Principal Secretary in the ministry responsible for matters relating to registration of persons”.

The Committee is proposing to amend the reference to Section 2 to read “Section 3”. This is a correction since the interpretation section in the Act is in Section 3.

*(Question of the amendment proposed)*

**Hon. Chairman:** Okay. Let us be a little clear, Hon. Koinange. It is because the amendment you have is in relation to definition.

**Hon. Paul Koinange** (Kiambaa, JP): What we have is Section 2. The Committee is proposing that we insert a new definition of a principal secretary so that it says that a “Principal Secretary” means the Principal Secretary in the ministry responsible for matters relating to registration of persons”.

**Hon. Chairman:** Order, Hon. Koinange. This is a fairly straightforward one. What you are seeking to rectify is that the one you had was reading “Section 2”. You are now putting it as “Section 3” just to align it as it is in the mother Act. Is that the position?

**Hon. Paul Koinange** (Kiambaa, JP): Yes.

**Hon. Chairman:** That is fine.

*(Question, that the words to be inserted  
be inserted, put and agreed to)*

Hon. Members, we are still at the Committee of the whole House. I sense there is excitement like we are doing something else. Let us proceed.

*(Section 2 as amended agreed to)*

*The Registration of Persons Act (Cap.107), Section 5(1)(d)*

**Hon. Chairman:** Hon. Jude Njomo. He is not around.

*(Proposed amendments by Hon. Jude Njomo dropped)*

Let us proceed. Since there is no amendment, we will put the Question as if there was no amendment in the first place.

*(Section 5(1)(d) agreed to)*

*The Registration of Persons Act (Cap.107), Section 5(1)(g)*

**Hon. Paul Koinange** (Kiambaa, JP): I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Registration of Persons Act (Cap. 107) by –

(ii) deleting the proposed amendment to section 5(1)(g) and substituting therefor the following new amendment—

s.5(1)(g) Delete paragraph (g) and substitute therefor the following new paragraph—

“(g) place of residence and postal address, Global Positioning System coordinates, Land Reference Number, Plot Number or House Number, if any;”

The intention is not to limit but to expand the scope of the items that can be used for registration of persons. I wish to clarify that the Act still used the phrase “if any”.

Thank you, Hon. Chairman.

*(Question of the amendment proposed)*

**Hon. Chairman:** The Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): Because Hon. Koinange is amending my Bill at (g), I want him to explain more what he means by “place of residence, postal address, Global Positioning system coordinates, Land Reference Number, plot number, house number, if any.” Does it mean that this is what you require to register?

*(Loud consultations)*

**Hon. Chairman:** Yes, Hon. Koinange. Let us hear from you then I give chance to two Members to debate and give their input. What the Leader of the Majority Party is seeking to have is to get some clarification from you. What is it, Hon. Koinange?

**Hon. Paul Koinange** (Kiambaa, JP): Thank you, Hon. Chairman. We considered it as a Committee that because people reside in different areas, we can give them that point of doubt in registration wherever they are. There was an argument that if you are living in an area in the remotest part of this country and nobody can reach you, you still need registration. But, every area in this Republic, including where we have water masses, has a name. So, you can be registered wherever you are.

**Hon. Chairman:** I will give two Members. I see there is a lot of interest in this. I might extend. Let us start with Hon. (Dr.) Makali Mulu.

**Hon. Makali Mulu** (Kitui Central, WDM-K): Thank you, Hon. Chairman. I support this amendment. What it is saying in simple terms is that it will be sufficient to be registered if you have any of the listed alternatives, so long as you have the five or six. You cannot fail to be registered because you are lacking one. So long as you have any, you are okay. You can be registered.

**Hon. Chairman:** Hon. Kolosh.

**Hon. Ahmed Kolosh** (Wajir West, ODM) *(inaudible)*

**Hon. Chairman:** Hon. Kolosh, you are a fairly tall Member. So, you must bend sufficiently to be heard when using the microphone. You might be having a problem with your microphone and so go to the next one.

**Hon. Ahmed Kolosh** (Wajir West, ODM): Thank you. I admit that I am a Member of the Departmental Committee on Administration and National Security. Some of these things we are passing in this House can easily be abused by bureaucrats on the ground. I do not know why it is necessary that we should give extra things like the LR No. We should only limit ourselves to the name of a place, say location or sub-location. Why do we create confusion with things that will be misused and create chaos when people are being registered? There are some areas where the issue of LR No. is not known completely.

*(Loud consultations)*

Whether the Chairman of the Budget and Appropriations Committee likes it or not, there are areas that have nothing like this. I need your protection.

**Hon. Chairman:** Order, Hon. Members. When I give Hon. Kolosh the Floor, he should be heard in silence even if you are of the contrary view. You will make your decision.

**Hon. Ahmed Kolosh** (Wajir West, ODM): The truth of the matter is that we do not need too many alternatives. You only need the place of birth and such things. The things we are talking of - the coordinates and LR. No are subject to abuse by bureaucrats and people who are doing this job.

**Hon. Chairman:** You have been heard, Hon. Kolosh. So, I will give the Floor to Hon. Mbarire first and then I will go to the next one.

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): Hon. Chairman, the proposed amendment by the Chairman of the Departmental Committee on Administration and National Security is perfect. It is not limiting but it has expanded the options available. If you do not have the name of your village, there is GPS. If you do not have GPS, there is a postal address. If you do not have postal address, there is an LR No., street number and plot number. All those are options so that everybody will be properly registered and we can tell that a person lives in this and this place and belongs to Kenya. That is all we need.

**Hon. Chairman:** By the way, there are about 15 Members who want to speak to this. Hon. Waititu.

**Hon. Francis Waititu** (Juja, JP): While I support the Chairman, this thing has been happening. The person behind my house is a Luo and the other one is a Luhya. What the Chairman is trying to do is to encourage people to get to know each other. We should get to know who is buying where and what. This is where he is leading us. If you come to Kiambu County, members from all the tribes are allowed to buy land and nobody is asking them a question. If you do not know whose title that is, how then do you win?

**Hon. Chairman:** What is your point of order, the Leader of the Majority Party?

**Hon. Aden Duale** (Garissa Township, JP): Hon. Chairman, I think the Chair has clarified. Last time, that clarification was not there. If you do not have LR. No, even if you are sitting somewhere in a bush, you will have a GPS. Let us move on. We have a very important Bill.

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Question, that the words to be inserted in place  
thereof be inserted, put and agreed to)*

*The Registration of Persons Act (Cap.107), Section 5(1)(h)*

**Hon. Chairman:** The next amendment by Hon. Jude Njomo is dropped because he is absent.

*(Proposed amendment by Hon. Jude Njomo dropped)*

*(Section 5(1)(h) agreed to)*

*The Registration of Persons Act (Cap.107), Section 9(1)*

**Hon. Paul Koinange** (Kiambaa, JP): Hon. Chairman, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Registration of Persons Act (Cap.107) by –

(iii) Deleting the proposed amendment to Section 9(1);

Section 9(1) of the Act provides that, upon registration of a person under the Act, the registration officer shall within a period of 30 days from the date of registration, issue an identity card in the prescribed form to a person after application.

The Committee's amendment seeks to delete the proposed amendment through the Statute Law (Miscellaneous Amendments) Bill 2018, since the amendment will eliminate the requirement for the Registrar of Persons to issue an identity card within 30 days of an application. Also, the amendment appears to arbitrarily deny a person the right to be registered as a citizen by birth, contrary to Articles 12, 14 and 15 of the Constitution. The Committee proposes to delete the amendment.

*(Question of the amendment proposed)*

**Hon. Chairman:** I want to clarify to the Members that we are dealing with a proposed deletion by the Chair. There is another proposal by Hon. Millie Odhiambo, which if the first one is taken, then obviously the one by Hon. Odhiambo falls.

What is it the Leader of the Majority Party?

**Hon. Aden Duale** (Garissa Township, JP): What the Chair is deleting is Section 9(1), Hon. Millie Odhiambo is deleting Section 9A.

**Hon. Chairman:** That is not the truth. The true position is that we have 9(1) (a) and (b).

**Hon. Aden Duale** (Garissa Township, JP): Which means if we carry this, then the amendment by Hon. Millie Odhiambo will fall.

**Hon. Chairman:** The amendment by Hon. Millie is on Section 9(1). Look at your Order Paper. Let us transact this first one. If that is taken, the other one falls. In fact, the person I should be hearing from is Hon. Millie Odhiambo herself.

**Hon. (Ms.) Odhiambo- Mabona** (Suba North, ODM): Hon. Chairman, I support the proposal by the Chairman of the Committee. I am okay that if his proposal passes, mine falls.

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Section Section 9(1) as amended agreed to)*

*(Provisions relating to the Registration of Persons Act, (Cap.107)  
as amended agreed to)*

**Hon. Chairman:** That means the amendment by Hon. Millie falls.

*(Proposed amendment by Hon. (Ms.) Odhiambo-Mabona withdrawn)*

*The Registration of Persons Act (Cap.107), Section 9A*

**Hon. Chairman:** We have the Chair of the Departmental Committee on Administration and National Security who has a proposal.

**Hon. Paul Koinange** (Kiambaa, JP): Hon. Chairman, I beg to move;  
THAT, the Schedule to the Bill be amended in the proposed amendments to the Registration of Persons Act (Cap. 107) by –

- (iv) inserting the following new subsection immediately after subsection (2) in the proposed section 9A—

New subsection. “(3) The Principal Secretary shall be responsible for the administration, coordination and management of the system.”

The intention of the new subsection is to actually enable the creation of a National Integrated Identity Management System (NIIMS) of registration. The intention is well enumerated under the sub-section of the new Section 9A being management and creation of a national population register assignment of unique and distinct identification numbers, preservation and protection of security among many others.

Thank you, Hon. Chairman.

**Hon. Chairman:** Just for clarification, there are two proposed amendments in this particular one and they are not related. There is one by Hon. Mohamed Garane. So, let us first transact the one by the Chair of the Committee. Then we will go to the next one.

*(Question of the amendment proposed)*

**Hon. Chairman:** Is there any Member who wants to speak to this one?

*(Question, that the words to be inserted be inserted,  
put and agreed to)*

*(Section 9A as amended agreed to)*

**Hon. Chairman:** Let us go to the next one by Hon. Mohamed Hire Garane. Is he absent? I want to confirm that he is absent. Therefore, his amendment is dropped.

*(Proposed amendment by Hon. Hon. Mohamed Garane Hire dropped)*

*The Registration of Persons Act (Cap.107), New Section 16*

**Hon. Chairman:** Can the Mover move Second Reading to this new section? He is absent. Therefore, it is dropped. This is the one by Hon. Garane. So, let us proceed. Hon. Members, now that the amendment has been dropped, we are through with the provisions relating to the Registration of Persons Act (Cap. 107).

*(Proposed amendment by Hon. Mohamed Hire dropped)*

*(Provisions relating to the Registration of Persons Act  
(Cap. 107) as amended agreed to)*

THE COPYRIGHT ACT, NO.12 OF 2001

*The Copyright Act, No.12 of 2001, Section 6(1)*

**Hon. Aden Duale** (Garissa Township, JP): Hon. Chairman, I beg to move:

THAT, the Bill be amended in the proposed amendments to the Copyright Act, 2001 (No.12 of 2001) by inserting the following new subsection immediately after the proposed new section 6(1) —

(1A) Any person who, immediately before the commencement of this section was a member of the Board shall be deemed to be a member of the reconstituted Board for the unexpired period of his or her term of service.

This is a transitional clause to safeguard the current board. We did the same for all the other institutions, but it was late in the night. So, we forgot this one.

*(Question of the amendment proposed)*

**Hon. Chairman:** It is fairly straightforward. So, I will put the Question.

*(Question, that the words to be inserted be inserted,  
put and agreed to)*

*(Section 6(1) as amended agreed to)*

**Hon. Chairman:** That was the only provision relating to the Copyright Act. Therefore, I will put the Question.

*(Provisions relating the Copyright Act, No.12 of 2001,  
as amended agreed to)*

Let us go to the next one.

THE KENYA SCHOOL OF LAW ACT, NO.26 OF 2012

*The Kenya School of Law Act, No.26 of 2012*

**Hon. Chairman:** The Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Chairman, I beg to move:

THAT, the Schedule to the Bill be amended by deleting all the proposed amendments to the Kenya School of Law Act, 2012.

When we were dealing with the Council of Legal Education, based on the advice from the Attorney-General, we deleted this section. So, it cannot stay anymore because they were interrelated

**Hon. Chairman:** The Leader of the Majority Party, can you be a little clearer.

*(Loud consultations)*

Order Members! Leader of the Majority party, I expect you to go step by step because there are a few other sections which we need to deal with. I would rather we deal with Section 4(2) for now and then we will have the other two.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Chairman, you need to guide us. Once this is carried then there will be no other amendments to deal with.

**Hon. Chairman:** Okay, that is clearer.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): On a point of order, Hon. Chairman.

**Hon. Chairman:** What is your point of order, Hon. Millie Odhiambo?

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): On a point of order, Hon. Chairman. I have similar amendments to Hon. Duale's. So, I agree with him that if his amendments pass, then it is the same thing I was proposing.

**Hon. Chairman:** Deletion has been proposed on this particular one. Once it is done and carried the matter is sufficiently dealt with. By the way, the proposed amendments were not only by Hon. Millie Odhiambo but also the Chair of Departmental Committee on Justice and Legal Affairs.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Proposed amendments by Hon. (Ms.) Odhiambo-Mabona dropped)*

*(Proposed amendments by Hon. William Cheptumo dropped)*

*(Provisions relating to the Kenya School of Law Act,  
No.26 of 2012, agreed to)*

**Hon. Chairman:** The proposal by the Chair, Departmental Committee on Justice and Legal Affairs and that of Hon. Millie Odhiambo are dropped because that has been carried already and the section has been deleted.

#### THE UNIVERSITIES ACT, NO.42 OF 2012

*The Universities Act, No.42 of 2012, New Section 15(2)*

**Hon. Chairman:** This is a new section. So, let me call the Mover to move Second Reading. Hon. Ichung'wah move Second Reading.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Chairman, I beg to move:

THAT, the Schedule to the Bill be amended in the proposed amendments to the Universities Act, 2012 by -

*s.15(2)* Inserting a new paragraph immediately after paragraph (e) as

follows-

(ee) exercise any of the functions specified in section 20(1)(e).

*(Question of the new section proposed)*

*(New section read the First Time)*

*(Question, that the new section be read a Second Time, proposed)*

**Hon. Chairman:** Now, you can make some clarification. What is it that you intend to achieve, Hon. Ichung'wah?

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Chairman, as indicated last week – the Leader of the Majority Party was here and it is good for the benefit of those who were not here. The new section being inserted is basically to cure a lacuna that existed in the law, following recommendations by a taskforce that was established by a joint working group on quality assurance. It recommended that the Cabinet Secretary should recommend amendments to the Universities Act to explicitly address the lacuna on the award of degree certificates by universities operating under letters of administration. This is because they are already doing that but Section 15 of the Act did not provide for those functions as stipulated in Section 20(e). That is the lacuna we are curing.

**Hon. Chairman:** Can I give two Members a chance? I do not see a lot of interest in it. Maybe then I put the Question.

*(Question, that the new section be read a Second Time, put and agreed to)*

*(The new section was read a Second Time)*

*(Question, that the new section be added to the Bill, put and agreed to)*

*(Provisions relating to the Universities Act, No.42 of 2012, as amended agreed to)*

**Hon. Chairman:** Now, let us have the Mover to move reporting.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Chairman, I beg to move that the Committee do report to the House its consideration of the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 12 of 2018) and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

## REPORT AND THIRD READING

### STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

**Hon. Speaker:** Let us have the Chair.

**Hon. Moses Cheboi** (Kuresoi North, JP): Hon. Speaker, I beg to report that a Committee of the whole House has considered the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 12 of 2018) and approved the same with amendments.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I beg to move that the House do agree with the Committee in the said Report. I request Hon. Cecily Mbarire to second the Motion for agreement with the Report of the Committee of the whole House.

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): Hon. Speaker, I second.

*(Hon. Olago Aluoch walked in the gangways while the Chair was on his feet)*

**Hon. Speaker:** Member for Kisumu West, we are not done.

*(Question proposed)*

**Hon. Members:** Put the Question.

**Hon. Speaker:** It is the mood of the House that I put the Question.

*(Question put and agreed to)*

**Hon. Speaker:** Mover.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I beg to move that the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 12 of 2018) be now read the Third Time.

Hon. Speaker, I really thank Members. This was the longest Statute Law (Miscellaneous Amendments) Bill that has come to this House during my life as a Member of Parliament, in the 10<sup>th</sup> and 11<sup>th</sup> Parliaments. It was dealing with over 65 statutes. I thank Members who stayed on Tuesday last week, Wednesday afternoon and Thursday morning and afternoon until midnight. Because we had two or three issues which we did not sort out, including the amendment by my very good friend, the Member for Kikuyu... We know the reason why we brought that amendment and he knows it.

I really thank various Committees that submitted, more specifically the Departmental Committee on Administration and National Security. At one stage, they deleted a whole section of my Bill. Now that we have finished the Committee of the whole House, I am giving instructions to my two whips that are in the House, to go into the lobby and bring back members so that we discuss this very important Bill this afternoon on the amendment to the Constitution.

Hon. Cecily, help us. Before that, I really want Hon. Chris Wamalwa to second this Motion. Even though he did not stay until midnight, he participated in all the other days' deliberations.

**Hon. (Dr.) Chris Wamalwa** (Kimini, FORD-K): Thank you, Hon. Speaker. I stand to second. Indeed, this was a very long Bill. In future, for the sake of Members, please bring a shorter one. I second.

**Hon. Members:** Put the Question.

**Hon. Speaker:** Members who are doing their second term do not even know when to request. I have not proposed the Question. Member for Kikuyu, I can see your hand up. Is it the hand or the finger? That reminds some Members here of their party.

*(Question proposed)*

Member for Kikuyu, what is it? Do you want to contribute?

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Speaker, I just wanted to thank the Leader of the Majority Party and indeed state categorically that my amendment was designed to help those universities that are holding Letters of Interim Authority, including the Presbyterian University that is resident in Kikuyu and it holds a critical part in the economy of Thogoto and Kikuyu towns. Therefore, I thank the Leader of the Majority Party and all Members who supported the amendment. Thank you, Hon. Speaker.

**Hon. Speaker:** I can see Member for Kilifi North also wants to say something. Be brief also.

**Hon. Owen Baya** (Kilifi North, ODM): Thank you, Hon. Speaker. I wanted to say that the miscellaneous amendments Bills are okay, but I think we need to look at laws in a different way and bring more substantive amendments to the Acts themselves. We had a case of the labour laws here which were very controversial. The Chair refused all the amendments and said they are bringing a substantive amendment to the Bill. That is the way to go instead of these miscellaneous amendment Bills.

**Hon. Speaker:** It is a procedure obtained within our jurisdiction. Even Member for Gatundu South wants to say something.

**Hon. Moses Kuria** (Gatundu South, JP): Hon. Speaker, I thank you and the House for guidance on this matter. I echo what my colleague has said about the use of this route of changing laws. We can only hide our heads in the sand, but what we saw in the last few days is worrying. Even members of the Executive are saying that amendments are finding their way to miscellaneous amendment Bills without their knowledge. Committees are expressing the same fear. We need to have retrospection as a House and ask ourselves whether this is the best way to pass amendments with far reaching implications. Thank you, Hon. Speaker.

*(Hon. (Ms.) Odhiambo-Mabona raised her hand)*

**Hon. Speaker:** This is a Member doing her third term. Rather than wait for the intervention key, she also wants to raise her finger.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Speaker for giving me an opportunity. I congratulate the Leader of the Majority Party and the respective Committees. I have spoken to this before. I agree with Hon. Moses Kuria - which is very rare - that we are moving in the wrong direction. It is not good for us to pass a miscellaneous amendments Bill of over 60 pieces of legislation because every law passed is susceptible to challenge in a court of law. We talk about public participation yet Members cannot effectively

participate. If I am given 10 minutes to speak to 60 pieces of legislation, for how many minutes can we contribute?

A more alarming trend is that we know how the legislative process moves and how Private Members' Bills are tabled. There are Bills that come from the Executive and yet some are being disowned.

In the case of the Children Act, there was a substantive amendment yet there is a whole Bill that is still in the Office of the Attorney-General that relates to the Children Act. I am not imputing improper motives to anyone. I do not know whether it comes from the Committee. Matters are improperly finding their way to the Floor of the House. We shall revisit the children's issue that came through this House.

**Hon. Speaker:** Let us have the Member for Tharaka.

**Hon. George Gitonga** (Tharaka, DP): Thank you, Hon. Speaker. I also thank the House. We have done a lot of work as far as this amendment Bill is concerned. We need to tread with caution. As law students, we always want to be careful with miscellaneous amendments because they are prone to abuse. This is where everyone - whether the Executive, the House or anybody else - would sneak in things that are likely to be mischievous or that would be opposed in a substantive amendment Bill. Therefore, we need to develop a precedent whereby it is only routine small and mundane matters that come to the House through miscellaneous amendment Bills while serious amendments to the law come through amendment Bills.

**Hon. Speaker:** Finally, let us have the Member for Mathare.

**Hon. Anthony Oluoch** (Mathare, ODM): Thank you very much, Hon. Speaker. Allow me to add my voice to those congratulating the Leader of the Majority Party and Members. I was among the Members who strenuously stuck in the House trying to follow the amendments. Allow me to suggest that miscellaneous amendments are susceptible to misuse and a lot of interest. There were a lot of times when the Leader of the Majority Party stood and asked Member so-and-so to clarify what interest they had in a matter. It is very possible that not only the Executive but even individual Members could be used by private interests through the avenue of miscellaneous amendments. That is something that we need to check.

Going forward, we need to revisit the Standing Orders so that legislations become simple, friendly and approachable. I see a lot of my first-time colleagues labouring to sit through what you always said, is the actual law-making. Why do they not sit in the House? Because of procedures such as the miscellaneous amendments Bills, I suggest that going forward, we amend those provisions.

**Hon. Speaker:** Hon. Members, I am alive to the provisions of Standing Order No.106. The issues you have raised could be out of mischief or are just a repetition. If you become repetitive – either by repeating yourself or repeating what others have said - you could find yourself also going out. There is no need. Having ascertained that we have the requisite quorum to put the Question, I proceed to do so.

*(Question put and agreed to)*

*(The Bill was accordingly read the Third Time and passed)*

## BILL

### *Second Reading*

## THE CONSTITUTION OF KENYA (AMENDMENT) BILL

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I beg to move that the Constitution of Kenya (Amendment) Bill (National Assembly Bill No.4 of 2018) be now read a Second Time.

I would like to give a brief background of the Bill. The Constitution of Kenya (Amendment) Bill was introduced in the 11<sup>th</sup> Parliament. The Bill, however, lapsed at the Second Reading. The Bill sought to amend the Constitution to implement the two-thirds gender rule. As everybody in our country is aware, Article 27 (8) of the Constitution provides that the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender. Article 81 (d) of the Constitution provides that electoral systems in our country shall comply with the general principles of the electoral systems including that of making sure that the principle of not more than two-thirds of the members of elective public bodies shall be of the same gender. That is the genesis of this Bill.

Today is a historic day. The 12<sup>th</sup> Parliament will be counted with regard to whether they fulfill that legislative obligation. I am sure all of us sitting here...

**Hon. Speaker:** There is a point of order by Hon. Kigano.

**Hon. Clement Kigano** (Kangema, JP): Thank you, Hon. Speaker. I want to raise a point of order under Article 255 of the Constitution. I am sure you are aware. You have observed that this amendment intrudes on the sovereignty of the people spelt out under Article 1. The sovereignty of the people is exercisable by Parliament through their representatives. This is a trust. Mutating the composition of Parliament has to be through a referendum as provided for under Article 255. It is one of the matters that are stipulated as requiring a referendum under Article 255 (1) of the Constitution.

I have looked through the amendment Bill and the memorandum and seen that there is no inference or reference to a referendum. My understanding is that any time you change the composition of Parliament; you affect the exercise of sovereignty and the social contract of the people and Parliament. A referendum is a prerequisite. It predicates any matters affecting sovereignty. Nobody should feel that because if we do not pass this amendment Bill, Parliament will stand dissolved. Far from it, that would have been the easiest thing that the framers of the Constitution would have done. It is silent. It does not say what happens if you do not implement the one-third gender rule.

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

**Hon. Clement Kigano** (Kangema, JP): My point of order is that the Bill is unconstitutional. This Bill as it is, without a reference made to a referendum is unconstitutional. It cannot move as it is.

Thank you. That does not mean that there will be a lacuna because any aggrieved party can go to the Attorney-General and seek an advisory opinion on what happens when you do not implement the one-third gender rule.

**Hon. Speaker:** Hon. John Mbadi.

**Hon. John Mbadi** (Suba South, ODM): Hon. Speaker, with all due respect, Hon. Muturi Kigano is a renowned lawyer. I remember during the years of the fight for multipartism, he was one of the brave lawyers who would represent people who were anti-system. When he rose to speak, I was very keen to listen to how the Bill before us is unconstitutional.

I heard him mention Article 255 of the Constitution; that, we are trying to change the composition of Parliament, hence the unconstitutionality of what we are trying to do arises from the fact that it requires a referendum. I want to look at the provisions of Article 255 of the Constitution. I want to read it for the good lawyer to advise me later over a cup of tea.

Article 255 of the Constitution says that a referendum is required if the amendment relates to any of the following matters: Supremacy of this Constitution, the territory of Kenya, sovereignty of the people, the national values and principles of governance referred to in Article 10 (2) (a) to (d), the Bill of Rights, the term of office of the President, the independence of the Judiciary and the commission and independent offices to which Chapter 15 applies, and the functions of Parliament. I have not seen the composition of Parliament. I do not see anywhere the Bill before us is interfering with the functions of Parliament.

Further, the objects, principles and structure of devolved government. The structure that is spoken to here is of devolved government. Again, I do not see where that is affected by Hon. Duale's Bill.

Finally, even if we were to have a referendum, then that will still be decided on. There are two ways of amending the Constitution: either through Parliament or popular initiative. The parliamentary initiative is the route we are taking. If by the time of assenting to the Bill the President will be advised that there is need to subject it to referendum, then we will cross the bridge when we reach it. Hon. Muturi Kigano has jumped the gun, if at all he is convinced that this Bill requires a referendum. Being a lawyer, I want to give him the benefit of the doubt. I am not a lawyer, but that cannot stop us from initiating an amendment to the Constitution through a parliamentary initiative. I would advise that, because we need to talk to the Bill, you rule him out of order and then we proceed and debate the amendment to the Constitution.

Thank you.

**Hon. Speaker:** Sometimes it is good to hear a few Members here and there. The rule is when a Member claims to rise on a point of order and raises it, the Speaker is supposed to rule on it without hearing the rest of you. So, I am just being magnanimous by allowing a few Members to comment but you want to make it look like it is a right. It is not. The rule is that I should rule but because of the nature of this Bill, I want to give opportunity to a few of you to contribute because I can see a number of interventions. Every Member should contribute for one minute. Do not raise your hand because you have already placed your cards for intervention.

Leader of the Majority Party, do you want to say something?

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, Hon. Muturi Kigano raised a matter based on Article 255 of the Constitution and said that this is a matter of referendum. The Bill before the House seeks to amend Article 90 of the Constitution on nomination of persons to the House. I am also amending Article 97 of the Constitution on the composition of Members to the National Assembly. I am also amending Article 98 of the Constitution on the composition of Members to the Senate.

The powers of this Bill are drawn from Article 81(b) of the Constitution. I want Hon. Muturi Kigano to cite in this Bill where we are amending Article 1 on the sovereignty of the people. We are not.

I am sure you have given us the indulgency. We are already on a forward-gear, the fuel tank of the vehicle is full, the driver has complied with the National Transport and Safety Authority (NTSA) rules and we have our seat belts on. He has now technically stopped the vehicle from moving. The only person on the highway to allow this vehicle to move, having

complied with everything, including installation of speed governor, is you, Hon. Speaker. I am sure, you will make a decision.

**Hon. Speaker:** Let me hear Hon. John Olago Aluoch.

**Hon. Olago Aluoch** (Kisumu West, FORD-K): Thank you, Hon. Speaker. I appreciate your magnanimity. I have tremendous respect for Hon. Kigano as my colleague in the profession. However, this time round he has got it wrong. The Constitution of Kenya 2010 is a self-propelling instrument; one closely to the other. Even if there was a contradiction in the Constitution, it is not for this House or for you to interpret it but the Supreme Court. As I understand it, Hon. Kigano is asking you to interpret what he considers to be a contradiction. We do not have the jurisdiction to interpret the law. We shall deal with this matter the way it has been brought. We expect you to rule Hon. Kigano out of order so that we proceed with the debate on this Bill.

**Hon. Speaker:** Hon. Members, I can see many of you want to speak to this matter. You can see that it is not a big issue. Hon. John Mbadi clearly read out the provisions of Article 255(1) of the Constitution and made reference to paragraph (c). He also went on to state all the matters which the Constitution has provided may not be amended, otherwise, other than through a referendum, and more particularly he made reference to that which affects Parliament. It is if anybody were to move here purporting to affect the functions of Parliament. It does not go beyond that. Indeed, Article 27 talks about legislative measures. In this case, the State is inclusive of the institution of Parliament. Under Article 94, no person or body may make provision to enforce the law except Parliament.

Articles 97 and 98 of the Constitution do not touch on the functions of the two Houses. They are about composition. There is really nothing that affects Article 1 of the Constitution; sovereignty of the people. There is nothing that affects the sovereignty of the people. That sovereignty, in any event, is exercised through Parliament when dealing with legislation, through the national Executive and the county executives in the devolved systems and in the county assemblies. So, the sovereignty has given those institutions authority. Indeed, even judicial authority is derived from the people, from the same sovereign but only to exercise it in accordance with the same Constitution.

Therefore, this particular Bill is, in my view, properly before the House. I so rule. Proceed.

**Hon Aden Duale** (Garissa Township, JP): Thank you, Hon. Speaker. Now the vehicle is back on the highway to deliver what the Constitution of Kenya has given to the women of Kenya. They are not asking anything outside the Constitution.

The Constitution of Kenya (Amendment) Bill, 2018 therefore seeks to implement the provisions of Article 81(b) of the Constitution. To bring the Members here to level, we are further aware that in 2012 the Supreme Court issued Advisory Opinion No.2 of 2012 where it observed that the rights under Articles 27(6) and 27(8) of the Constitution could only be fully realised using legislative as well as other measures. So, the first point of call is legislation that we must actualise Articles 27(6) and 27(8) of the Constitution.

This Bill, therefore, is indeed the legislative mechanism upon which the two-thirds gender rule is to be achieved and realised. The National Assembly in the 11<sup>th</sup> Parliament initiated several legislations to sort the implementation of the two-thirds gender rule. However, and unfortunately, all the legislative attempts to implement the two-thirds gender rule were either elapsed or lost.

So, the Constitution of Kenya (Amendment) Bill, 2018 is now before the House. If you permit me, Hon. Speaker, I need to make some highlights of some of its key provisions. We all gear up to passing it in order to implement the two-thirds gender rule and ensure the membership of the National Assembly and that of the Senate conform to the dictates of the Constitution as enshrined in Article 81(b) of the Constitution.

This Bill is straightforward and simple but with very serious constitutional ramifications. The Bill has four clauses. Clause 1 of the Bill deals with the short title. Clause 2 of the Bill seeks to amend Article 90 of the Constitution which deals with allocation of party lists in order to provide that the 12 Members that parliamentary political parties nominate to the National Assembly, one being a woman and another from the male gender and others representing the youth, people with disabilities, conform to the criterion that will be used in the two-thirds gender principle.

Clause 3 of the Bill seeks to amend Article 97 of the Constitution which provides for the membership of the National Assembly by providing that the National Assembly shall consist of a number of special seat members necessary to ensure that no more than two-thirds of the membership of the National Assembly represents single or one side of the gender. The special seats to the National Assembly, if we use the numbers that we have today... I was in the 10<sup>th</sup> Parliament and progressively Kenyans are electing women even from some of the most conservative communities. Today, we have Hon. Sophia Abdi from Ijara, Hon. Sara Korere from Laikipia North, Hon. Lesuuda from Samburu West, Hon. Fatuma Dullo, the Isiolo Senator, Senator Kamar from Uasin Gishu and many other women elected. Those of us who were in the 10<sup>th</sup> Parliament see the journey women in our country have walked and the progressive nature of the Kenyan voters. If there are loyal voters, and each Member will agree with me, in our constituencies and our counties, they are women. Each male Member of Parliament will agree with me that the most loyal voters are women. As the Member of Garissa Township, the backbone of my support base is women voters.

Each one of us came to this world, of course, through procreation and the only people who carried us for nine months and brought us up as we grew in life are our mothers. I am sure each man sitting here, each Member of Parliament sitting here has a special place for his mother, daughter, wife and sister. And I am sure when reality dawns on us; we will pass this Bill with the required numbers.

The Bill also amends Article 98 of the Constitution touching on the membership of the Senate. Today, with the numbers we have in the Senate, we only require two senators to be nominated for it to comply with Article 81(b) of the Constitution. I am sure in 2022 the people will give us not less than five more women senators. So, we will not have a problem with the Senate. I am sure in 2022 the people of Kenya will give us another extra 10 women single constituency Members of Parliament. So, we will end up giving the special seats to comply with the Constitution, maybe, 15 women nominated slots or even 10. So, this Bill comes into effect upon declaration of results after the 2022 General Elections.

I am sure of the many Bills that came to this House; this is one of the most simple Bills. It is a Bill that will absolutely not have a serious implication on the wage bill. To implement the Constitution, there must be some cost implications. We are talking about Kshs282 million. How many billions of shillings has the Public Accounts Committee in the 2015/2016 Report reported lost through corruption? Those who want to expound the argument that we are increasing the wage bill, should know that democracy and governance are always very expensive.

Hon. Speaker, the number of women leaders in the 11<sup>th</sup> Parliament were 84 whereas in the 12<sup>th</sup> Parliament, there are 97 women leaders in both Houses signifying a growth in women representation. This House has 23 women representing various constituencies compared to 21 women in the 11<sup>th</sup> Parliament. The role of women in governance cannot be overstated. I am glad that we have come this far in women empowerment. This Bill will add more thrust towards the growth of women empowerment following great countries such as Rwanda. Recently, our neighbour across, Ethiopia, decided to have a woman President, a lady who served here at the UN Headquarters in Nairobi. Kenya cannot be left behind.

I am not a Democrat. I do not support the Democrats in the USA; I support the Republicans because of specific reasons. Republicans believe in family values. You might have issues with Trump, but he is my candidate. They believe in upholding family values. They do not believe in lesbianism, gayism and all that. They believe in the word of God. Let me quote what Hillary Clinton, the former presidential candidate said. She said women are the largest untapped reservoir in the world. People talk about minerals and other issues but today, the President has nominated women to key ministries of Foreign Affairs, Defence, Health, Lands and Education. The President has shown that he trusts women in his Government.

I am sure the matter before us is not about women. A time will come, 20 years, 40 or 50 years from now where maybe there will be more women Members of Parliament in this House than men and we will need to apply the gender rule to nominate more men to the House. We make laws for posterity. Let us not be short-sighted that this law will only benefit women. This law, in 20 years' time, for those who will be in this House, the men will remember me and they will remember colleagues in this House and see that the law that we passed has saved us.

In conclusion, let us all support the Bill and in doing so, we shall be supporting our mothers, sisters and daughters to be part of shaping the direction through which the great nation of Kenya needs to move.

Indeed, this is the moment. I am sure in the great words of Margaret Thatcher, the seventh longest serving Prime Minister in the United Kingdom, if you want something said, ask a man; if you want something done, ask a woman, we want something done in Kenya. We have asked too much. We want something done. We want to join the President in fixing the historical problems that faced our nation. For us to do that, we need to empower the women of this country. How do we empower? We must give them the seat of leadership. Women must be present at the decision-making table - in the Executive, legislature, Judiciary, and in the private sector. I also say the same: if you want something done, let us pass this Bill and give our women the voice through which they can express representation and support the growth of our economy.

A lot of questions have been asked. The name "Duale" does not belong to me, neither does it belong to my father, it belongs to my great grandfather. You people can play around with my name "Aden" but on behalf of my great grandfather, the Bill is Constitution of Kenya (Amendment) Bill but out there, everywhere people say "the Duale Bill". This name is very special. The women of this House, I am sure Hon. Mbadi will agree with me, from our political parties, stood with us when we needed them.

When I joined politics, in the Chamber where the Senate is, we were 222 but when the Member for Gichugu stood to speak, despite ideological differences, I used to listen because she was a great leader. Just like when the late Mutula Kilonzo or James Orengo would rise to speak. Those are the people who taught us how to be very good Members of Parliament.

I ask colleagues that let us go into the annals of history that the 12 Parliament is the House that actualised the implementation of Article 81(b) and Article 27(6) and (8) of the Constitution.

I am a product of an old lady in Garissa who happens to be my mother. I have said it many times. I am doing all these because of my mum. I am what I am today with the cross of the Almighty God, but also because of the role my mother played in bringing me up. I am sure there are many people here who their mothers played a big role in their lives. There are many people here who love their daughters, wives and sisters. Please, help us pass this Bill.

I beg to move and ask my colleague, Hon. John Mbadi, to second.

**Hon. Speaker:** Hon. John Mbadi.

**Hon. John Mbadi** (Suba South, ODM): Thank you, Hon. Speaker. I rise to second the Constitution of Kenya (Amendment) Bill, 2018 that has been ably moved by my colleague, the Leader of the Majority Party, Hon. Duale.

Today is a historic day. This journey has been long and winding. I remember we passed this Constitution in 2010. This issue of gender mainstreaming into the political discourse has taken us all this while to realise. In fact, at one point I asked myself how I wish when we were writing this Constitution, we included this aspect of the two-thirds gender principle under the Fifth Schedule to our Constitution. If we did that, I am convinced that today we would not be debating this Bill because it would have been actualised way before.

Having said that, I want to remind Members that many of us are Christians and I am sure even if you read the Quran, you will get a similar provision, that we were all created in the image of God. All human beings are created in the image of God. Therefore, we are all like God. That means that we are all the same whether you are a man or a woman. Unfortunately, over the years, one gender has been discriminated not just in our society, but across the globe. All societies are working so hard to try to correct this discrimination and the disadvantage that one gender has been subjected to.

Hon. Speaker, statistics have it that women or the female constitute over 50 per cent of our population. As a matter of fact, it is about 51 per cent in Kenya. A society that does not mainstream over 51 per cent of its population in political, economic and social activities risks stagnating in matters of development. I want to be very categorical that discrimination or disadvantaging any group of Kenyans in whichever way, whether they are youths, men or women must be corrected the earliest time possible.

Hon. Speaker, this Constitution that we passed in 2010 is good. By the way, this Constitution we have today was the most debated before it was passed. It went through serious public participation. I do not think the Lancaster Constitution went through even a quarter of what we went through to discuss, debate and agree on this Constitution. I remember we campaigned vigorously to have this Constitution enacted. One of the provisions that we were citing as progressive in this Constitution was that of mainstreaming women in our political affairs. We went round preaching to our womenfolk how progressive this Constitution is when those who were opposing this Constitution were also mobilising to defeat it. We said that not again will our women be discriminated. Hence we put under Article 81 the provision that not more than two-thirds of the members of the elective public bodies shall be of the same gender.

Article 27 which is in the Bill of Rights says that the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.

I have heard my colleagues ask why we cannot come up with an Act of Parliament to implement that requirement. That cannot pass. Why? When you try to legislate to bring more women to Parliament, you will be changing the size and composition of Parliament. The Constitution has already defined, under Article 97 and 98, who should be in Parliament. Therefore, for us to bring more women to Parliament through legislation, the only route available is the constitutional amendment.

I want to quickly go to the content of the Bill before us. I know my colleague, Leader of the Majority Party, has talked about it. We are trying to amend three Articles of the Constitution. And under Article 97, we are amending it to bring a new section or clause that will state that we will have the number of special seat members necessary to ensure that no more than two-thirds of the members elected under Clause 1(a) are of the same gender. Under Clause 1(a), it is 290 constituencies. Quick calculation would be that a third of that, which is the threshold, is about 97. Given the fact that we already have 47 women Members elected from the 47 counties, that leaves you with a deficit of about 50 Members.

Hon. Speaker, you can remove the six Members who are coming in through nomination. It is already in law and under the same Article 97 that we have 12 Members nominated, six of whom will definitely be women and six men. Now, that reduces even the number that is required further. During the last election, we were privileged as a country to have 23 women elected from single member constituencies. Therefore, if you were to do that nomination now, even though we have to wait up to 2022, we would probably only need 21 or 22 more women to be nominated.

At the Senate, you need not more than two. If you calculate the cost of these 24 Members of Parliament, it is not high. I have heard some of my colleagues mention the issue of cost and burden to the taxpayer. The net cost of 24 Members of Parliament; the salaries and other variable costs of maintaining a Member of Parliament in a financial year will not go beyond Kshs350 million. Is such a very heavy burden for this country to shoulder in order to realise an important principle? It is the principle of gender mainstreaming; the principle of including over 51 per cent of the population of this country into the political discourse of a country. That is a population that should have not, in the first place, been discriminated. To me, my answer is a plain no. This country can afford the Kshs350 million. As a matter of fact, I was joking with my colleagues but I meant it. I was telling my colleague who is seated next to me that the truth of the matter is that more is used even in a single county in this country. In one county like Homa Bay we will lose more than Kshs350million in a year. That is to people who do not deserve to get our money.

Allow me to quickly address some important and fundamental issues regarding the process of this gender top up. By the way, looking at the drafting of this Constitution, we might not even have a problem at the Senate.

In fact, in future we will have 16 women and another two guaranteed through youth and disability groups, that is 18 Members guaranteed. We may in future need to nominate men to the Senate. Actually, the danger is on men, given this Constitution. It is not women. So, this constitutional amendment is not just targeting women. For the moment it may look like we are trying to bring women to participate in the political affairs, which is true. Women have been discriminated over the years. But, in future you may find that we need this affirmative action to have more men nominated or brought to the National Assembly and the Senate.

Allow me to address the last aspect that I wanted to talk about. It is the process of bringing women or having more women so to speak in the National Assembly and the Senate. In the event that we will not realise the one-third minimum required of either gender, political

parties will have to compensate through what we call the “party list”. That is what we are doing at the moment, at the county assemblies to nominate the 12 members. We will submit the list for consideration after election.

What is the value of affirmative action? Some say that those who have benefited from affirmative action do not see the value. I want to disagree; Hon. Cecily Mbarire is sitting across. I will confirm that Hon. Cecily Mbarire, if she allows me to use her as an example, came in through affirmative action in the 9<sup>th</sup> Parliament. She was nominated. Because of that the people of Runyenjes saw it fit to give her an opportunity to serve them as an elected member of a constituency in the 10<sup>th</sup> and 11<sup>th</sup> Parliament. It is because of the political exposure that she got and the political capacity she was given.

We have Hon. Millie Odhiambo serving Suba North for the second term. She came in the first term as a Nominated Member of Parliament. I want to confirm that if there is any other Member in this House apart from Hon. Duale who has brought as many Bills as Hon. Millie Odhiambo, I am yet to see that Hon. Member. It is, probably, Hon. Amos Kimunya when he was a Cabinet Minister. The rest of us are trying to catch up with Hon. Millie Odhiambo in terms of introducing Bills to this House.

I will give the example of Hon. Martha Wangari who was nominated to the Senate in the last Parliament. She is now representing a single constituency. We have Hon. Sarah Korere and Hon. Lesuuda who have been elected from Samburu, a community we consider to be conservative. Samburus have elected two women Members to Parliament this time to single constituencies. That is because of affirmative action. I am sure if Hon. Korere and Hon. Lesuuda did not show their leadership qualities when they came in as a nominated Members, they would not be with us here as Members of their constituencies. I will give another example of Hon. Aisha Jumwa and Mishi Mboko who came in through affirmative action seats in the 47 women representatives. Now they are representing single constituencies. That is what gives me confidence that if we allow more women to access leadership through affirmative action, I have no doubt in my mind that what we have been praying and pushing for over the years of wanting more women to be mainstreamed in Parliament will be realised automatically. We may not even need to wait for 20 years to realise this very important principle. In the event that 20 years shall lapse, Parliament will decide whether they can extend it for a further 10 years or terminate it with attendant consequences at that time.

I want to plead and beseech my colleagues; this is not an issue of women. In fact I want to disagree and say this is an issue for the country called Kenya. This is an issue that must be addressed. We look very bad. Even the Supreme Court has pronounced itself. It gave us up to August 2015 to pass this important legislation, we failed. I would hate to see a situation where we are fighting Okiya Omtatah in court because this House is unconstitutional and we have been defeated as a country. I do not want to go on record as having sat in a Parliament that was found wanting in terms of passing legislation that would have mainstreamed the two-thirds gender rule in the Constitution. This is something we were aware and campaigned for.

By the way as I conclude, if you look at Article 81, it is really shocking that all the provisions of Article 81 have been implemented except the two-thirds gender rule. It talks about freedom of citizens to exercise their political rights. We have been doing that. It also talks about fair representation of persons with disabilities. We have been doing that although we need to do more. It talks about universal suffrage, secret ballot, freedom from violence, conduct of elections by independent body, transparent process that we have been shouting about, but this one

provision under Article 81 has not been implemented. On that one this House and the country have failed to actualise.

With those many remarks, I want to second the Bill and ask my colleagues to find favour with “Duale Bill”, although he does not want us to call it that.

**Hon. Speaker:** Well spoken. Before I propose the Question, I can see there are 53 requests.

*(Hon. Babu Owino waved at the Chair)*

Do not raise your tiny hands, Hon. Ongili. Just relax. The machine only shows the first 10 requests. You must be in the group which is way below. Just relax. I will give as many of you as possible a chance to contribute.

Before I propose the Question allow me to recognise the presence of the Hon. Sen. (Dr.) Agnes Zani, eight lady Members from the County Assembly of Nairobi and one lady Member from Nyamira County Assembly in the Speaker’s Gallery. I think they came because of this.

Member for Embakasi East, this is the National Assembly. We do not do the things you are trying to do here. You would have to go to some other place. Here we do not wave. The youth have arrived to be represented. This thing should include the likes of you. We must show you the way it is done. It is never done that way. You may have invited members to come and hear contributions.

*(Laughter)*

*(Question proposed)*

Hon. Members, I would want to dispose of any preliminary matters, so that we can proceed with the Bill knowing where we are headed. I am told that the Member for Kimilili has a matter which could be disposed of at this early stage. Hon. Didmus Barasa.

**Hon. Didmus Barasa** (Kimilili, FORD-K): Thank you, Hon. Speaker for giving me this opportunity. I just want to seek your guidance and direction as to whether we can allow amendments at this very stage. There are many Kenyans I included, who are not opposed to the women being given these positions. However, Kenyans are worried of how these women will be nominated. I know for a fact, women suffer in the hands of party leaders, chairmen and secretary generals of parties. I know for a fact and I have evidence that there is a secretary general of a party who nominated himself, his mother in-law and his second wife. Unless we come clear on how these women are going to be nominated... Article 97(2) talks of 12 nominated Members of Parliament. If we can say that these nominees should be gender top up, this is going to be clear. The other way will be to adopt the formula that we used to nominate members to the East African Legislative Assembly, but some framework must be there. Otherwise, we will oppose this Bill.

*(Loud consultations)*

**Hon. Speaker:** Order Members, the Member for Kimilili did not address you. Hon. Osotsi is now...

(Laughter)

This is why I said, we need to deal with all preliminary issues in good time so that we have debate. This is why I have this book which is the *Speaker's Considered Rulings and Guidelines - 2013 to 2017*. The issue being raised by Hon. Didmus Barasa is one that I had to address this House on 20<sup>th</sup> August, 2015. The ruling was on whether a Bill to amend the Constitution may be amended by the House. I do need to read the entire ruling. Those of you who would recall, there was a Bill moved by the then Member for Ugenya. In that ruling *inter alia*, I said the following for avoidance of doubt:

“Hon. Members, you will note that the preamble to our Constitution highlights that the people of Kenya adopted, enacted and gave themselves and future generations of the Republic this Constitution.”

The sanctity of the Constitution is a social contract between the people of Kenya and not a document belonging to the Houses of Parliament, nor any other organ for that matter. It is therefore to be jealously safeguarded at every time. Any process of its amendment is delicate and can only be undertaken with reference to a definite procedure that deviates from the ordinary procedures.

Hon. Members, while Parliament has been given the power to amend the Constitution, we should be mindful that the Constitution belongs to the people of the Republic. Treating the process of the amendment as akin to an ordinary legislation will not subvert the collective will of the people. In this regard, it is expected that any person intending to amend the Constitution must be very clear and precise on what he or she is intending to alter but not to change mind while in the process.”

I indicated therefore, that where the procedure to amend the Constitution is similar to the procedure provided for in dealing with any other legislation, there would be conflict. A clear area of conflict would be, suppose one House was to pass the Bill in a particular form and the other House does not agree, there would be a deadlock leading to a *cul-de-sac* because the Bill would then be lost through processes.

Therefore, the process of amending the Constitution cannot be similar to that provided for in dealing with ordinary legislation. I would want to commend this ruling to Hon. Barasa, while noting that I will therefore not allow any purported amendment to this Constitution of Kenya (Amendment) Bill. Hon. Members, those others who may have been desirous of proposing amendments to this Bill should be accordingly guided.

So, we will continue with this Bill as it is and that is why a Bill to amend the Constitution has to be published for a minimum of 90 days. It is so that everybody can know what is being proposed. It cannot be therefore that we will come here with same amendments which we have not subjected to a similar period of publication. Ordinary legislation does not go through such a similar process.

In keeping with the practise obtained in many other jurisdictions it would put us as a House of Parliament in a very unique and unusual position within the Continent of Africa and several other parts of the world. Therefore, Hon. Barasa if you want to address the issue of that process of nominating those people you are calling top-ups, I think you should be prepared to address it either on a stand alone law, which will be implementing what will have been passed, through the Political Parties Act, the Elections Act or any other Act to address your fears about the second or third wives, as you addressed them.

For now, let us deal with this Bill. Please let us treat it with the seriousness it deserves. Therefore, I want to allow the Chair of the Departmental Committee on Justice and Legal Affairs to make his contribution, having gone round the country listening to views of the public. Hon. Cheptumo.

**Hon. William Cheptumo** (Baringo North, JP): Thank you, Hon. Speaker. I wish to support this Bill. After its First Reading, it was committed to the Departmental Committee on Justice and Legal Affairs. Pursuant to the provisions of Article 119 of the Constitution, we were able to invite the public to give written memoranda on this very important Bill.

I would like to very briefly inform the House that my submissions are very important because it is important for this House to know what the Kenyan people's views about this Constitution (Amendment) Bill are. We went across the country and public hearings took place in Nairobi, Machakos, Mombasa, Kisumu, Kakamega, Eldoret, Nakuru, Nyeri, Isiolo, Wajir and Turkana.

You will realise the areas I have mentioned confirm that we went across the country. During these public hearings members of the public either individually or representing institutions and organisations made oral and written submissions which the Committee took into account while reviewing this Bill. During the public hearings 1,845 persons and 59 institutions and groups turned up. If you read the Report that we tabled in the House, we were able to demonstrate that this Bill received overwhelming support from the Kenyan people.

Just to show the House, out of 59 institutions 55 supported the Bill. For Individuals in aggregate there was 87.5 per cent support in all the public presentations. So, I wish to inform the House and Kenyans listening to me and all Members making their views on this particular Bill that Kenyans through the process of public hearings were able to confirm that time has come for this country and this House to pass this Bill. So that, we have the 52 per cent of our population participate in leadership and that is women.

The Committee also observed that some of those who made presentations did not agree. However, allow me to inform the House in a summary, the visions Kenyans advanced in support of this Bill. Kenyans said that the two-thirds gender principle was a constitutional right and outstanding deliverable of Parliament. The Kenyan people in the new Constitution gave the constitutional responsibility and duty to this House to pass the gender rule. There was consistent jurisprudence on the matter and the import, therefore, was that Parliament is compelled by law to enact the necessary legislation. Comments from the Attorney-General are that there could be a serious constitutional crisis if this Bill is not passed. It is important for us to know that we may take this particular principle lightly but the Constitution itself has even contemplated a situation where this House can be dissolved when we fail to pass this law. Therefore, it is critical and important for us to pass it.

The fourth point raised by most Kenyans is that over 50 per cent of Kenya's population comprises the female gender and as such representation that is democratic must represent the majority population of the proportions provided for by the Constitution. So, again, as I said earlier, we have 52 per cent of the Kenyan population comprising of women. They need to play a role in leadership. I want Members to listen to this point; that Kenya was ranked the last. In the East Africa region, we are always ahead in most of the issues, be it matters pertaining to development or other things. Unfortunately, Kenya was ranked last in the East Africa Community in terms of women representation in Parliament. This country must take her position in the region. Women representation in Kenya in the 12<sup>th</sup> Parliament stood at 22 per cent, which way below other states in the region. So, it is important for us, as a country and Parliament, to

pass this Bill so that we have our rating in the region raised to take the position that we are always known for.

Kenya's image globally, in terms of women representation in Parliament, was not good. The Eighth Periodic Report by the Committee on Elimination of Discrimination against Women in November 2017 observes:

“The Committee is concerned seven years after the adoption of the new Constitution, the rule that no more than two-thirds of the elective public bodies are not to be of the same gender is still not implemented.”

Another critical point that this House should note is that Kenya is a signatory to various international treaties *inter alia* the Universal Declaration of Human Rights, the Beijing Declaration and Platform for Action and the Africa Union Protocol to the African Charter on Human Rights and People's Rights. Despite Kenya being a signatory to all these instruments, we are still ranked lowly in terms of mainstreaming the role of women in leadership in this country. Non-implementation of the two-thirds gender principle cannot be justified legally or constitutionally based on a report of the National Women Steering Committee in partnership with the Institute of Economic Affairs 2015.

What I have quoted here is the summary of the institutions and the expressions of Kenyans who have given views in support of this Bill. We represent the people – the sovereign will of the Kenyan people. Having gone round the country and received 85 per cent support of this Bill, I think it is important that the Members of this House, who have been elected to represent the Kenyan people and express the sovereign will of the people, support this Bill. Failure by the National Assembly to pass this Constitution of Kenya (Amendment Bill) Bill means that the likelihood of the dissolution of the 12<sup>th</sup> Parliament, as provided under Article 261 (6) and (7), is real. The judgement of the Supreme Court in 2012 and that of the High Court in 2012, 2015 and 2017 as well as the advisory by the National Gender and Equality Commission, all issued against the House, point to the gravity of this matter.

I conclude by saying that the 12<sup>th</sup> Parliament should be counted. This House has been able to stand firm on issues. The other day, when the Bill sponsored by Hon. Wamalwa came to the House, changing the election date from August to December, we almost passed it. We were short of just a few Members to raise the quorum. Kenyans are watching us. This House should be counted. I appeal to my colleagues to support this Bill. The Members of the Justice and Legal Affairs Committee will confirm that when they went round the country, they were surprised by the overwhelming support that Kenyans and institutions gave this Bill.

I request my colleagues to pass this Bill. You have daughters who want to lead this country in future. You have sisters. This is the only opportunity for us to ensure that we put this in the Constitution so that the women of Kenya can play a role in the leadership of this country.

With those remarks, I support.

**Hon. Speaker:** Member for Kiminini.

**Hon. (Dr.) Chris Wamalwa** (Kiminini, FORD-K): Thank you, Hon. Speaker. I rise to support this Bill. I want to quote the words of Abraham Lincoln, the 16<sup>th</sup> President of the United States of America. He ruled in the years 1861 to 1865. He said:

“All that I am and hope to be, I owe it to my angel mother.”

This 12<sup>th</sup> Parliament must be counted. This matter came up in the last Parliament. Unfortunately, we did not make it. Whatever we are doing today is not for the women but it is as per the Constitution. We want to demystify the narrative that what is happening here is because

of women. Article 94 of the Constitution is very clear. It says that the legislative authority is vested in this House. So, it is our obligation to legislate. I thank Hon. Duale because in the last Parliament, it was him who brought a similar Bill. Initially, I thought he had given up but I can see that he is more energised. I thank Kenyans because when you do a trend analysis, in the last Parliament, the number of women who were elected in single constituencies was actually 16 but in this current Parliament, it went up to 24. This shows that there is progress. Unfortunately, the number 24 died. May her soul rest in eternal peace. That was Hon. Grace from Baringo, but the great people of Baringo decided to bring a man. Of course, you cannot dictate to them who to bring to Parliament. Mine is to request Hon. Members that we must work together to pass this Bill. If we do not pass it, anybody can go to court and Parliament can be dissolved.

Martin Luther Junior said that we better learn to live together as brothers and sisters or we perish together as fools. This is a notice to those people who are opposed to this particular legislation. I can see the men and women in the 12<sup>th</sup> Parliament. When I look at their faces, I can see the mood of the House is that we are going somewhere. The challenge is to our fellow colleagues, particularly the 47 women. We want them to stand here to be counted. We want our fellow colleagues, particularly the 47 women, to stand up and be counted. When it came to voting in the last Parliament, some of the 47 women had travelled. From today till we vote, my colleagues - Women Representatives – please, avoid travelling. I congratulate Hon. Lesuuda who held a wedding. May she enjoy her honeymoon. When it comes to voting, she should cut short her honeymoon and come back and vote for this particular legislation. This is what we mean.

I was listening to Hon. Kigano from Murang'a when he rose and said that this Bill is unconstitutional. President Moi used to say that old is gold. As you clearly ruled, Hon. Speaker, sovereignty refers to Article 1 of the Constitution. There is nothing unconstitutional in this legislative proposal. Courts interpret the law. Our work is to enact the laws. In line with Article 115, the President will have his say. Our leaders have spoken. We have seen His Excellency the President, the Deputy President, Raila Amolo, Kalonzo, Hon. Mudavadi and my party leader, Wetangula, saying that we should support this.

In terms of political discipline, when a matter has been discussed at the political party level, you must toe the party line. Those Members who belong to political parties have no choice but to support what the political parties have decided so that we pass this amendment once and for all. We did not make it in the last Parliament but we must in this one.

Those of you who read William Shakespeare know he was a very good poet. He said that all of us are on stage and are trying to perform. We will eventually exit but we must leave a positive legacy. The 12<sup>th</sup> Parliament is on the stage today. You will exit but you should leave a positive legacy of managing to put in place the two-thirds gender rule. We were here.

I have a young daughter who is about two-and-a-half years old called Victoria. I am debating because I want Victoria to be counted in future so that she is given an equal opportunity to be a leader. I humbly request Hon. Members to move speedily and pass this amendment.

I support the Bill.

**Hon. Speaker:** Hon. Members, that is okay. You start off very well by saying that this Bill is not about women. Later, you zero in on your daughters, mothers and sisters. It is a gender Bill.

Let us have Member No.001.

**Hon. David ole Sankok** (Nominated, JP): Thank you very much, Hon. Speaker. The Duale Bill is one of the best Bills since I joined this august House. I have some few reservations. This may be another way of reserving slots for certain categories of people who are not persons

with disabilities. If this gender top-up slots will be for our daughters, sisters, wives and mothers, I support it 100 per cent. But if they are for the slay queens to slay their way into the National Assembly, to massage their way into the Senate and slay their way into the county assemblies, I have some reservations.

*(Loud consultations)*

I expected a mosaic representation of women. There should be representation of persons with disabilities, youth...

**Hon. Speaker:** The Member will be heard in silence.

**Hon. David ole Sankok** (Nominated, JP): Hon. Speaker, protect me.

**Hon. Speaker:** Proceed.

**Hon. David ole Sankok** (Nominated, JP): Hon. Speaker, if there was a 30 per cent slot reserved for women with disabilities, a 30 per cent slot reserved for young women and a 30 per cent slot reserved for women from rural areas so that we can leave the remaining 10 per cent for those that I had mentioned earlier, I would have supported this Bill. We also need to empower our women because at the end of the day, there are more women than men in this country. We should also empower our women to recognise the power of a woman so that they elect more women to the National Assembly, the Senate and the county assemblies. We have a way of empowering them.

*(Loud consultations)*

Protect me, Hon. Speaker.

**Hon. Speaker:** You will notice that I have ignored all of you. This is not the way to deal. Let the Member say what he has to say. You will all have your chance to say what you want.

Proceed.

**Hon. David ole Sankok** (Nominated, JP): Hon. Speaker, I may have irritated a few Members. I do not know where they belong. We should come up with legislation so that we know who will be nominated to those slots so that we have a correct representation.

The largest democracy in the world – the United States of America - has also not attained the two-thirds gender rule. We are crawling. I am sure we will very soon achieve this two-thirds gender rule.

We should also recognise that men are endangered. We are no longer discussing about the boy-child. When we talk of the gender top-up, at the moment we are thinking about women. In future, it may be for men. That is the reason I support the Bill but with reservations that those slots should be given to a mosaic representation of women instead of a few categories of women. If I support women with disabilities, women from rural areas and young women, why are you irritated?

This is a very nice Bill. I support it with reservations.

**Hon. Speaker:** Let us have the Member for Matungulu.

**Hon. Stephen Mule** (Matungulu, WDM – K): Thank you, Hon. Speaker for giving me this chance.

From the outset, as men, we do not have any reservations when supporting our sisters, brothers and everybody.

*(Applause)*

I cannot put it any better than President Obama did. He said that it is unwise to have half of your team not playing. We must have a full team in this country to play this game to make sure that Kenya develops for all of us and not just for a particular gender.

Equality is not about our sisters alone. I can be a prophet of doom. If the male Members of Parliament in this House do not support this Bill, in the next 15 or 20 years, we will be subjected to such a Bill. We need to leave a legacy. It is high time we handled this without emotions and having Kenyans view us as selfish. I was elected to this House to legislate. The process we have begun is not only for this Parliament but for the future of this country and the kids being born today. We are showing the nation where we are headed.

The African Union (AU) alone has come up with so many legislations and treaties which Kenya is signatory to. They are very clear on the issues of equality and gender. When we talk about equality and gender, we need to put it very clearly that it does not belong to our sisters. It also belongs to men. It is high time, Hon. Speaker, we dealt with this issue once and for all. We need to make sure that we have total equality and representation of all gender within the country, from the wards, constituencies, counties and national level. I wish the next President of this country appoints a woman as a Deputy President, so that we can give our ladies a chance to ascend to the throne of State House. If we are trying to imagine that if we bring more sisters to this House, we are going to...

**Hon. Speaker:** Hon. Mule, you should wish that the next President be a woman. Why do you only wish that a woman should be a running mate? Proceed anyway.

*(Laughter)*

**Hon. Stephen Mule** (Matungulu, WDM – K): Hon. Speaker, you know you are my teacher. I stand guided. I wish all the men, including my party leader Hon. Kalonzo Musyoka, can step down for a woman. We need to be very clear. Our party leaders and the church have spoken. It is for Members of Parliament to make the legacy. We cannot be in this House for fame. We must give very clear direction of the kind of a nation we want to walk with.

Allow me to quote Pope Francis. He said that women are important voices in today's society. Sometimes, we are too chauvinistic. We do not make room for women. Women are able to see things differently from men. They ask questions that men do not get. Without much ado, I know quite a number of Members of this House want to support this Bill. Let us move forward and make sure that we enact this legislation as quickly as possible. If possible, we make amendments to make sure those who are nominated join us before we close the chapter of this Parliament, so that we can leave a legacy which moves this country forward. For the sake of the nation, please, Members, let us use parliamentary language. We cannot be in a system where we want to use names because we have reservations. Please, those are your reservations. Be parliamentary.

God bless Kenya and women of this country.

*(Applause)*

**Hon. Speaker:** If the word “reservation” is the only one that you have difficulties with, it is parliamentary. Hon. Members, let us not interrupt Members when they are contributing. I was

merely telling the Member for Matungulu that his wish should not just be for women to be the running mates, he should also wish the next President to be a woman. He has agreed with me.

Member for Murang'a County.

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): Thank you, Hon. Speaker. At the outset, I want to really thank the Mover of this Bill, the Secunder and the men of this House who have spoken about this Bill. As you have already mentioned, this Bill is not just about women but gender. By the look of things, when these Members of Parliament go to primary schools, high schools, universities and the corporate world, you will note that women are rising slowly. I would like to urge Members of this House to support this Bill because you never know. We are talking about shortage of women this time but in the next few years, we might actually have shortage of men in this House. I know they would like to be treated the same.

If you look at Article 81 of the Constitution on the things that we have not attained in this Constitution, gender equality is something that we tried in the 11<sup>th</sup> Parliament. We did not manage to get the numbers. This time, I beg my brothers and sisters who are in this House to stand to be counted as Members who have actually passed this Bill. It has already been mentioned about the Hon. ladies. I want to address the worries that have been raised in this House and outside, and especially in the media about the calibre of the women who are nominated in this House. Some Hon. Members have said that some of the ladies who come here are from towns.

I want to mention Hon. Leshoomo who was nominated in this House. She has been elected in Samburu County two times. I would like to know whether she is a slay queen. Look at Hon. Martha Wangari. She was nominated to the Senate and now she is back as Member for Gilgil. Look at Hon. Naisula. There are also gracious ladies like Hon. Mbarire and Hon. Millie Mabona. They are women who have contributed immensely to discussions of this House and they are doing amazing work out there. We also had Hon. Njoki Ndung'u who also came up with very great amendments in this House. Hon. Janet Teyiaa who is a gracious lady from Kajiado was nominated in the 11<sup>th</sup> Parliament. She fought her way. She is now the woman representative for Kajiado County. I have heard Members talking about slay queens. I would like to ask nominee No. 001 who is a nominated Member to tell this House whether he is a slay king and which favours he gave to his political party to nominate him.

*(Applause)*

I have Hon. Shamalla. If you go to the dictionary on who a slay king is, I do not see any characteristic in her. Hon. Shamalla is not a slay king. She is a woman who is doing great work in her Committee on Delegated Legislation. We have seen great progress in that Committee on the work they are doing. We have women who are honourable in this nation. We have Article 27 of the Constitution that gives the powers to this House to legislate. I want to tell the men in this House to kindly relax. We are going to follow up with an Act of Parliament where the issue of who is going to be nominated not only for the position of women but also the persons with disability, people who are given nomination by other political parties, youths and the Members of the County Assembly (MCAs) will be dealt with. We need to know. I would like strongly to recommend that we look at the women who go out there and try to look for votes. We should look at the ones who get the highest percentage of the numbers, even if they do not make it to the county assembly, Senate or the National Assembly. Then we can use that criterion to nominate women. So, the worries of the girlfriends, second wives, slay queens or slay kings coming to this

House, the county assemblies or the Senate is a matter that we can rest because we can legislate in this House.

I am very happy to see we are in numbers. There are also the ones who are out there who are afraid to express themselves but they depend on women. Fifty two per cent of the voters who are most committed are women. I said that is not just about women. We will legislate on how to get the persons with disabilities, the youth and either gender depending on how it is going to happen. This Bill will be effective in 2022. It has a tenure of 20 years. We had 16 women in the last Parliament. We have 24 in this Parliament. We lost one. I am sure in 2022, we can even get to 50 women and the issue of nomination might not even happen. I beg the Members of this House to stand up to be counted as a House that passed the amendment on this gender law in this nation.

I beg to support the Bill, Hon. Speaker.

*(Applause)*

**Hon. Speaker:** Member for Nambale.

**Hon. Sakwa Bunyasi** (Nambale, ANC): Thank you, Hon. Speaker. Usually I am guided when I stand up to speak on Bills, but on this one, I am convinced in my mind that this is a...

*(Hon. David ole Sankok consulted loudly)*

**Hon. Speaker:** Nominee 001. Hon. Sakwa Bunyasi, do not worry. Your time will not be lost.

**Hon. Sakwa Bunyasi** (Nambale, ANC): Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Members, there has been some suggestions. You can donate some of your 10 minutes, so that as many Members as possible can contribute. I have 64 requests right now. If everyone of you were to speak for 10 minutes, that would be 640 minutes. You can see the difficulty I am in. I am not in any way trying to say that the Member for Nambale's time is not the usual 10 minutes. Hon. Sakwa Bunyasi, proceed.

**Hon. Sakwa Bunyasi** (Nambale, ANC): Thank you, Hon. Speaker.

**Hon. Speaker:** Some Members complained at some point. The language was on slay queens but it has changed to slay kings. At some point, some people complained about the use of the words "slay king" and "slay queen" and now she has talked about sly queen. I did not hear anybody make any noise. So, it means it has evened out.

Let us now listen to the distinguished Member for Nambale, Hon. Sakwa Bunyasi.

**Hon. Sakwa Bunyasi** (Nambale, ANC): Thank you, Hon. Speaker. I hope Member No.001 will keep quiet for a change. Normally, I am guided when I rise to speak in the House on Bills with such weighty matters as implied in this Bill. On this one, I am completely clear in my mind that I support it unreservedly.

Let me say why I think somebody of my age and exposure should stand up and support the Bill strongly. Hopefully, those that are behind me in age and exposure will pick up from it and must support it because it in the interest of their generation as they go forward. First of all, it is unfortunate that we are trying to achieve this through a parliamentary reform or judicial or legal reform when, in fact, in my case, the voters who elect me to this House, probably, 60 per cent or more are women. They have the capacity to elect one of their own if they so choose. I think in the long run it is not going to be the changes we make in law, but the change of mindset

of the voters. If the mindset of the voters, who are predominantly women, were to change, we would achieve this and we would be crying foul because women would have had a lock on the electoral seats around the country.

Part of the public participation ought to have been, although there is no time to do that, re-education. As we go forward, women must be told that they need to have the confidence to elect whoever they feel is competent including one of their own gender. If we did that, this would be completely unnecessary. I hope that will happen. Quite apart from the fact that issues of capacity and competence are not restricted by gender, we know that even in militaries around the world women are playing commando and combat roles. I use that as a symbol to mean that even in areas that were traditionally spared for men on the basis of the fact that they are stronger with technology, the tact is coming from the mind. Women are playing all these roles. I hope the churches such as mine that do not allow women to be ordained will allow them to be so that in all spheres of life we have them.

Women play a big role outside Parliament, even in electoral and leadership roles. We want them to see the entire spectrum that in fact, they can play a role, as they do in our families. In my family and community, I can say without any sense of contradiction that women are the glue and provide the energy that drives our communities. Unfortunately, in respect of parliamentary and electoral positions, you do not get their numbers as many. That is why I feel there is an attitude or problem that probably as we go forward, we will take care of.

This change will provide a structural change in our society. It will be a structural change in the sense that the composition of institutions will change. The functioning of institutions is not a structural change for now. It is social transformation. The functioning of institutions will change. People will see possibilities that did not seem to exist before. I am sure if we change the gender composition of this House or overturn it, the way House acts, the way the House thinks and the way the House debates will change. That is something we may be losing now. There is some real gain. As we seek to achieve big words and changes like the social transformation of this Republic, we must think about structural transformation. This is one of the main pillars of structural transformation.

I do not think we will have the reverse happening in 20 years. Personally, I think 20 years is too long for this period. It should not read 20 and 10. It should read, not until we shall have achieved the two-thirds gender rule will the rule now be relaxed and removed. In fact, it should remain permanently because once we achieve it, it will not apply. But once we reach a point where it is overachieved, for purposes of this discussion, and the male group becomes endangered, it will kick back again. We will need it. We will not need to pass a new rule. In fact, I would think we leave it open. Let it stay until we achieve it and if it overdoes, it will protect the likes of me. I will definitely not be in this House, I am sure for this argument, and I may not be in this world. It is something that is critically important.

In my community and many communities across the Republic enrolment in school between girls and boys is slightly more for girls than boys. Now in secondary schools, it is more than 50 per cent women. Overall, we are over 45 per cent now in total. We are creating a cadre of people that have a lot, know a lot and have a lot to offer. Let us not have any glass ceilings in respect of this. Why is that so important? It is because young women take leadership in *chamas*, *SACCOs* - I think Hon. Sossion is probably in the House - in the teaching profession, if it had not been for women who have stabilised presence in schools, we would be struggling a lot. We can achieve as much as they have done there. What happens then? When young people see that they can be anything they want be, intellectually, they are becoming neurosurgeons and the rest

as we like to refer to very bright people, they will know that in terms of representation, nothing will stop them. Therefore, in terms of being elected to the presidency and to those kinds of positions it will be a reality. We have seen that happen in other countries in Africa where women have become presidents, though not many, via electoral process. We will get there. Kenya is a leader and it can lead in this respect. I know that there are countries that are ahead of us, but they are ahead of us because they have a different strategy for getting women elected. If we had party list system, we would have achieved this before. We are doing it the hard way trying to rise vertically but we can achieve it.

With those few remarks, Hon. Speaker, I donate my remaining time. But not before I say that I would hate, in say 20 years when men are now a tiny minority, to refer to those who are being nominated as gigolos. This is the opposite of the kind of sly queen thing we were talking about. Let us avoid that and let us get out of it and be serious. This is a House of serious debate. I support. Thank you.

**Hon. Speaker:** Member for North Horr.

**Hon. Chachu Ganya** (North Horr, FAP): Thank you Hon. Speaker for giving me this opportunity to support this very important Bill. It is a landmark Bill that will ensure gender equality in our nation is realised. The framers of our Constitution, I happen to be one of them, surely had a reason to ensure that we have the constitutional provision to enhance gender equality in our country: the two-thirds gender rule.

This constitutional provision is not a favour we are doing to our women. It is actually a constitutional mandate or obligation on our shoulders as parliamentarians. It has taken us a while to pass this Bill which is actually a shame. This is the right time and moment when we should stand up and ensure we play our constitutional obligation of enacting this legislation as the august House of the 12<sup>th</sup> Parliament.

This constitutional provision is there for specific purpose and for a specific period with a clear sunset clause of 20 years but with a provision that it can be extended if necessary by Parliament. This Bill ensures that with time our women will compete with men in subsequent elections. I have been in this House since the 10<sup>th</sup> Parliament and I have seen more women being elected to Parliament. This trend will continue and maybe 20 years from now, it may not be necessary for us to have women nominated to Parliament. But for this particular time in our history, it is very important we pass this Bill and ensure we attain the two-thirds gender rule.

This provision is even more important and critical for some of our societies, which still have conservative cultures where leadership is seen as a preserve for men. It is not very easy for women to be elected in some of our societies due to some inhibiting cultural reasons. Our cultures are yet to appreciate that women could be better leaders than men. If I may give an example of my own constituency of North Horr, since it was established in 1988, only one lady was elected by default. I say she was elected by default because at that time councillors had to go with the people who were nominating him or her to the constituency headquarters for nomination. The only competitor was not able to make it to the station in good time and she became the sole nominee and was declared elected unopposed.

That was in 2007. Since then, no woman has ever been elected even as Member of County Assembly. This affirmative action is very important because some of our societies and our cultures may not enable women to aspire for leadership positions, especially elective positions. Of course, time is changing. More and more women are getting quality education, occupying special seats and special positions in our Government, in professional bodies and in State corporations. I am very sure that it is just a matter of time before they are elected to

positions in the Senate, the National Assembly and the county assemblies as well as the presidency.

The timeframe of 20 years is a good place to start as framers of our Constitution clearly stated but if necessary, we can still enhance it at the right time if that requirement in our Constitution is not fully attained by the time that period lapses.

With those few remarks, I support this constitutional amendment Bill to enhance the two-thirds gender rule in our country.

**Hon. Speaker:** Member for Makueni.

**Hon. Daniel Maanzo** (Makueni, WDM-K): Thank you, Hon. Speaker for giving me an opportunity to support this very important constitutional amendment. The parts being amended are supported by other articles of Constitution. One of it is Article 100 as read with Article 226. Article 100 of the Constitution requires that Parliament enacts legislation to promote representation in Parliament of women, persons with disabilities, youth and marginalised communities.

Again, the two-thirds gender rule is mandatory in this Constitution. Article 100 makes it mandatory. Article 226 says that if Parliament fails to enact legislation to satisfy this requirement, a process can be started by any citizen to make sure that Parliament is dissolved. The process of dissolving Parliament has to begin at a court of law. It will then go to the Chief Justice and to the President, under Article 226. I believe that is not where the country is headed.

In these particular amendments, under Clause 2 (b) (1A), a person elected to Parliament or county assembly under Clause 1 shall be eligible for re-election for one final term under this clause. For a person who will be nominated through this method, to make sure that we comply with the Constitution on the two-thirds gender rule, that particular nominee cannot serve more than two terms in this House. This shows how fair this amendment is. Such person will not be nominated forever. The amendment will ensure that those seats rotate so that many people can get opportunity to serve Kenyans.

We also need assistance of political parties. This particular amendment, as soon as we pass it, will become law. Therefore, it can be implemented immediately. We may also have to pass another enabling legislation. I am sure it will be fast. Within no time, they will legitimise this House by complying with the Constitution. If we do so, it can happen within the 12<sup>th</sup> Parliament. Therefore, we will be looking forward to having 22 more members. I believe this will be shared amongst political parties using the formula that we have been using.

This particular compliance will make sure that political parties participate and are able to give very active Kenyans who can serve the nation like the case of Hon. Leshoomo, who was first nominated after her talent was spotted during presidential campaigns in her county. The people of her county, Samburu, are proud to have Hon. Leshoomo in this House. She is very particular in matters relating to pastoralism, animal husbandry and women. In the committees I have served with her and in this House, I have seen her talent. We have many other Kenyans like Hon. Leshoomo out there, who can serve this nation and help many Kenyans. Each one of us is familiar with what happens during political party nominations and during elections. You could leave out a certain leader who can be very useful to the nation.

There are very many Kenyans who want to contribute, and I do not want to repeat what other great speakers have said on this matter. The cases of Rwanda and Uganda are amazing at how practical it is to have gender equity in parliament as required by their respective constitutions. I believe Kenya will lead in this respect. It has already been progressive. It has already happened. If you look at the history of the country since we got the new Constitution,

women have been elected increasingly. Therefore, as time goes by, it could be the other way round.

With those remarks, I support and I urge Members to support.

**Hon. Speaker:** Member for Gilgil.

**Hon. (Ms.) Martha Wangari (Gilgil, JP):** Thank you, Hon. Speaker. I, of course, rise to support this Bill.

At the outset, I would like to clarify one thing. I know we have had talks of referendum. I have heard it from the MP for Kangema but we cannot talk of a referendum if we have not implemented the Constitution. There are things in this Constitution that were not very popular. I would tell you because I have heard Members speak about having Cabinet Secretaries come from this House but we do not do that. We go with what it is in the Constitution until we are able to change it. Article 27(3) of the Constitution clearly states that women and men have the right to equal treatment and equal opportunities in political, economic and social spheres. This is easier said than done. I would tell you that as a beneficiary of affirmative action.

I know many of my colleagues today, the last one being Hon. Mbiuki, who said: “We want someone like you who can fight.” I reminded him very quickly that I was nominated as a Senator before I got elected. It gave me the platform to express and showcase my leadership skills. It gave me the platform. I would get a microphone in every function I would attend, I would be recognised. More importantly, it also gives you access to the growth that you require as a political leader to be seen.

Hon. Speaker, we talk of so many women in this House. I want to clarify that out of 290, we are only 23 elected from the single member constituencies. What does that mean? It means that we are a mere seven per cent. We are still very far to go. We have debated this rule even in the last Parliament. We were very close. In fact, I think we were short of 18 votes only in the 11<sup>th</sup> Parliament. We are here again. We owe it not just to ourselves or women but to this country and the fidelity of the Constitution that we proclaim. This is one regret that I have for this Constitution. We have not implemented it. It is not a women issue; it is constitutional. As it is, this House is far from being properly constituted in terms of adhering to Article 81(2) of the Constitution. What does that say?

When I was listening to Hon. Kigano, what was going through my mind is that, if you look at the sovereignty of the people and the supremacy of the Constitution, Article 81(b) does not even talk in inference. It is explicit. It says Parliament in representation must ensure that not more than two-thirds are of the same gender. It is a shame that we are only fighting for a mere 30 per cent. We are more than 50 per cent. Even the ones who have been elected will tell you, if they give you a story of their lives, how they have fought to be elected as women, you cannot say we have an equal playing ground, whether in the political parties or the electorate. It is tough. It is grueling and crazy madness to women. What does that mean? It means people will shy away when they realise that women are not being elected. They will shy away from contesting. I am telling you that as having gone through it. You will, as a woman, be fought from anything – from your family, children. I have even heard Members of this House unashamedly talk about the paternity of your children. I will say it because I have heard it in some forum; it is a shame. They will take anything to fight you with.

What equity means is that, if Hon. Maanzo is six feet tall and I am five feet tall and we are going to watch a match in Kasarani and there is only one crate that is available, the person to get that one available crate is the shorter one. Not the taller one. It means exactly that – you are given ago or space to reach where others have reached. We are talking seven per cent, 23

Members out of 290. Right now, this formula has been amended. We have agreed clearly that we will not do affirmative action on affirmative action seats. If you sit on the 47, we minus them from what we require. If you sit on the 23 that we occupy, we minus them. The burden is not as much. It is 21 Members to comply. On that 21, it is very critical to put it here that it is not static. If more women are elected and we elect 50 next time, the numbers to top up will go down. I know the cost of this has also been alluded to. This Constitution as implemented one of the most expensive governance systems. That is the devolution. We have spent billions of money to comply with the Constitution to the 47 the county governments, whether we like them or not. It is because it is constitutional and the right thing to do to this country.

Therefore, on the issue of cost, the Institute of Economic Affairs of this country has done a study on that. The cost as alluded to by Hon. Mbadi can maybe be Kshs2 billion at most. I do not say it is small money but, we lose even in Government Kshs400 billion per year to corruption. Our problem cannot be women when it comes to costs but we close our eyes when it comes to other issues. I think it is good to be clear and set the right step for this country. We owe it to this country to pass this law, not just because it is about me, the slay queens or slay kings. Everyone who comes to this House has fought their own fights even in the political parties. I know because I have been there. It is not easy for you to be in that nomination list. You are sometimes nominated then you are removed and someone else is put. Those fights are there but, we cannot throw away the baby with the bath water. We may have small defects in the political parties but, let us amend them through an Act of Parliament. The general principle is that we owe it to the future of this country, ourselves and to the Constitution that we uphold. Let us do what we were not able to in the 11<sup>th</sup> Parliament in this 12<sup>th</sup> Parliament.

With those many remarks, I support and ask that Members see the bigger picture and not limit it to some of us or the people who have been there before us.

**Hon. Speaker:** Member for Suba North.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you Hon. Speaker for giving me this opportunity. At the outset, I support.

I want to add my voice to that of the Hon. Members, especially to that of my dear sister Hon. Martha who has supported and alluded to the fact which I have been confronted with. There are male Hon. Members who refer to those of us who have been elected. They say: "Hon. Millie, if you have been elected two times as a Member of Parliament, there is no reason why other women should not come through the same process." I know many of us forget that several of us who have come this way were first nominated. Yes, I have been elected twice but, that is having being nominated as an MP first. If I was never nominated, perhaps, I may never have thought of coming to this House. There are very many challenges that those of us who have been elected as women leaders go through. After my first election, I was shocked what women MPs who go for elective seats against men go through. I ended up writing the book titled *Political Leadership and Package Lessons for Aspiring Women*. It is because I could not believe what we go through. I have since written another one called *Swimming with Sharks*. It is a difficult thing when you want to take power from men. When you go through a process where you either get a direct nomination or fight against another woman, it gives you an opportunity to learn politics in a gentler forum. Having learned politics in a gentler forum, you can go to a platform where you can fight for politics either against other women or against men. But, this nomination gives you an opportunity to fight it out and learn.

I also wish to indicate that I heard inferences that this Bill as brought to the House is unconstitutional. If you look at the Constitution, it provides for the constitutional principle of

affirmative action under Article 27. What this Bill seeks to do is give life to the principle of affirmative action. I want to speak as one of the framers of the Constitution. Even if you look at the legislative history, the framers of the Constitution intended that, after the 47 women that were in the last Parliament, we were supposed to have topped them up. Unfortunately, the last Parliament did not do so. Therefore, what we are doing is living to the dream of the constitutional framers. It is not only that. What we have is a situation where the Constitution seems to provide a different standard. If you look at the Article that talks about women MCAs, we provided a principle and formula. That is why most of the counties have come very close to complete 30 per cent. However, we failed to provide the formula in the National Assembly. So, we are not amending the principle referred to in Article 10; we are giving the formula. That does not require a referendum.

Having said that, I want to say that Kenya has distinguished itself as a nation of firsts. It has distinguished itself as a giant in the region yet we are trailing all our neighbours on the issue of affirmative action. Even the countries that have gone through challenges of civil war are ahead. We are trailing South Sudan, Somalia, Ethiopia, Uganda, Rwanda; we are trailing all the countries in East and Southern Africa.

This is not a unique thing that Kenya is doing. We have just come back from Kyiv with Parliamentarians for Global Action and several countries there were indicating that they are passing laws that give effect to this Bill. I am sure some of the people who are opposed may be giving us an example of the USA, where they have not yet attained one-third gender rule. The USA is a known giant democracy. However, as a matter of fact, it has failed in certain areas and one of them is affirmative action. When you copy certain countries, you do not emulate them even with the baggage; emulate them with the good things. We will emulate the USA with their democracy, but we will be the pioneers for them. Let the USA also emulate Kenya on issues of affirmative action and inclusion of persons with disability. I am very disappointed and I am often disappointed when I see other minorities challenging women on these issues. It is unfortunate when you are a person with disability, who has come to Parliament as a consequence of affirmative action, challenging women who are trying to get the same platform. The best way is for you to come forward and ask: Now that you are pushing the women agenda, how can we push the disability, so that the number can increase?

I know that once we get the opportunity as women leaders, there is even a bigger role expected of us as women. With that role that is expected of us as women, I want to say that once I am on a platform where I am campaigning or competing with men, I will not support a woman merely because you are woman, I will support you because of credence and capabilities. Before you get to that platform, the platform needs to be made easy for you, once it has been made easy for you, come out, fight with the men, go through the stresses we go through, let your house be burnt like mine was, let your bodyguard be killed like mine was, but you will still come to Parliament having gone through affirmative action.

Therefore, for all the men telling me that I am a lioness, yes I am. First, I was nominated, I was not always a lioness. I was born a very shy woman who up to university could not even walk into a dining hall with male students. After that nomination, a man deals with me, *mundu khu mundu*.

With those many remarks, I beg to support.

*(Laughter)*

**Hon. Speaker:** Hon. Millie Odhiambo, you will always have something to make the House laugh a bit. For your information, after the mid-term elections, the democrats have a total of 89 women Members in a House of 435 and the republicans have 13 making a total of 102 translating to 21.448 per cent. I do not know whether any of you had worked on those figures. It may be of interest to check. You made a right observation, Hon. Millie Odhiambo.

Hon. Kimunya.

**Hon. Amos Kimunya** (Kipipiri, JP): Thank you, Hon. Speaker. I rise to support this Bill not because it is talking about women or it is being promoted by women, but because it is one of the issues that we were supposed to have done as early as 2012. Much as it may appear as if it came first in the 11<sup>th</sup> Parliament, I can confirm that this Bill was first published in 2012. We had two issues, the date of election and the gender principle. We withdrew it because we were advised that change of the election date was going to interfere with the life of the President. Being so close to an election year, it did not make sense to get into more controversy. We withdrew and hoped that it was going to come in the 11<sup>th</sup> Parliament which it did but it did not get support. I know Hon. Millie Odhiambo was with me in Bomas when we were looking at all these things. It was a highly emotive issue. The questions that were being asked were why we need so many women in Parliament. It is still a question that is being asked out there - why do we need so many, what have the ones who are in Parliament done? Even as we look at these things, because we must pass this Bill, I am raising this as a challenge to the elected and the Members of Parliament of the female gender who are in this Parliament, you have work to do than the men. Like somebody observed, it is not legal issues that are stopping women from being elected, it is attitude issues. Women comprise 52 per cent of the voters. Why are they not voting for their own? It is cultural and social issues. Much as we have gained, I see the danger. If you look at the elections of Members of County Assemblies, we have all been there. Whenever the female Members stand as candidates in the electoral wards, the argument is, you have a top up to do, leave this for men. We have gained a lot through the fights of some of the lady Members of Parliament who have been elected at the electoral level. I want to ask you to do more so that as we pass this Bill, come 2022, we do not end up with men being elected because there is a top up reserved that would trigger the next referendum. The two-third gender rule may well be the question of the referendum because the cost will go up.

I am just doing this because I have been listening to the people. Kenyans are concerned because the issue of cost on the Constitution is becoming relevant. But as the lady Members of Parliament, if we can see you more active, if we can see more Millie Odhiambos... I am using Millie Odhiambo as an example because she gave me a hard time when I used to bring the legislation here and I had to ensure that she is either on a trip if it is a controversial Bill or I sit down with her to agree on why the amendments I was bringing were necessary. She was resourceful in terms of amendment.

The discussions we had in Bomas are still relevant today. We know women are marginalised and they do not have access to not just electoral seats, but they did not have access to funding. We have therefore created several funds for them which include Women Enterprise Development Fund and the Youth Enterprise Development Fund. Men between the ages of 35 to 50 years, complain that they are still being marginalised. For the sake of my daughter, my granddaughter, my wife and my mother... I am surrounded by women in my household. I am not even talking of a son because I only have a son in law. So, I will do anything for women, but I am also asking you, please, let us not go the route the MCAs have gone in terms of saying that we have top up seats; we will not go for the electoral ones. This is because if we do this, we will

have gone counter to what we are doing today. I was surprised by the amendment we are bringing about the Senate because to me it seems to have been overtaken by events. When we were in Bomas we sorted out the Senate because of the small numbers. The 16 Senators who are nominated is actually one-third of the 47 Senators. We had already provided for that.

The change in the Senate is superfluous but because we cannot amend, let it just pass. It will not change anything. We did the same for the county assemblies but when it came to the National Assembly for some reason, it was forgotten and ignored. It was assumed that by some magic there will be enough women in Parliament.

Hon. Speaker, you may remember this because you were in Bomas then. The confusion seems to have come when we were debating between going the party list system or mixed member system, with so many people coming through the party list and others through the electoral system. It was assumed that the parties would balance by bringing the women to create the one-third. When that issue went to Naivasha, the party list system was removed but nobody then, remembered to include it within the Articles to create how we would top-up the National Assembly in terms of women.

I can remember Dr. Nyikal was also there dealing on some of those issues. I support this Bill and ask that we should not support it on the microphone. On the day of voting I would like to ask that at least 235 of us be here to make sure we can vote. We could do it for the show, but on the actual day we end up with no quorum to vote. Like it happened when we had Hon. Chris Wamalwa's Bill which we all supported but on the d-day the requisite quorum was not achieved.

I do not want to go beyond this. I believe my challenge to the lady Members of this House has been heard. They should take it as a positive challenge to help populate this Parliament with a 50-50 balance with more Members coming into this House of both genders. This is because there is value in that inclusivity and getting the diverse views from both ends. In the corporate world everyone is moving in that direction in terms of voting and getting parity because it has been seen that people have different ways of thinking. There is something from the right or left side of the brain depending on ones gender.

The synergy that is created by that thinking can only be better for mankind, this Parliament and Kenya. I support this Bill and ask that we should not just support it but come and vote for it when the time comes. Then, we can close the chapter of the illegitimacy of this Parliament which is not in conformity with the Constitution because it does not have more than one-third being of one gender. If we can do this for purposes of posterity, I will support and wish that everyone else does the same.

Thank you, Hon. Speaker.

**Hon. Speaker:** Well, of course, I just noticed because you placed me here. My observation is that many Members contribute and after about five minutes they take off. I only hope they were around to here Hon. Kimunya's contribution. So that it is not just speaking and then taking off. Maybe the timing of this Bill is right and perhaps, if we had some wise men of yonder, they would have said that there may be some divine direction in the just released Kenya Certificate of Primary Education (KCPE) results. Member for Suna East. Of course, there were the 453 points.

**Hon. Junet Nuh** (Suna East, ODM): It was gender balance. It was 50-50.

**Hon. Speaker:** Yes. There was gender balance. That is divine intervention. Perhaps, it was meant for the House during this debate to consider.

**Hon. Junet Nuh** (Suna East, ODM): It was an indication of what the people want. I stand to support this Bill. This is a very important matter for our country. I was one of the doubting

“Thomases” but on the way I got convinced that this is a very important issue. Indeed, we must come together as a House and as leaders to make sure that our country achieves this gender parity that it has been longing to achieve.

When the new Constitution was passed in 2010, many people viewed some part of that Constitution to be more of an activist Constitution that put in place some issues that may not be achievable. One of the examples that was being given is this particular one of two-third gender rule. At one time in the 11<sup>th</sup> Parliament, I remember asking where this kind of law is in the world. Which country has this kind of provision in their constitution? Even the United States of America, which dictates terms for people in the world as the best democracy, the best governed country and the police of the world, does not have provisions of this nature in their constitution. Actually, as you said, it is the Democratic Party that is encouraging women to vie in big numbers and come to the House. So, when people will talk about best practices very soon in the world, this will be one of the best practices that will be copied from our country that we can export to other countries that you must apply the law to bring equity in your people.

This issue is important because women have proved to be good leaders over a period of time. Many women leaders have proved to provide good results. Once they are given an opportunity, say, in form of affirmative action and they prove that they can do what men can do, then they stand higher chances to be elected in subsequent elections. It has been said here that there are people who create party lists. I want my chairman to hear this because he is the one who does that. He is saying that if we expand this list by nominating more women... They have said here that political parties normally bring here their girlfriends and concubines. When I looked at the anatomy of the issue, probably, it is only women who qualify to be concubines and girlfriends unless you are gay.

So, if somebody has brought his concubine here, so be it. She was qualified because she is a woman and she is a girlfriend. So, she has both qualifications and now we cannot do anything about it. My leader can expound on that more if anything of that nature happens because he is the chairman of the party. This matter should not be trivialised that if we bring women here, we are bringing slay queens and girlfriends. That is beside the point. There are women leaders here who, when they speak, all men listen to them. Having been a Whip, now for a period of one year, I can testify here on the Floor of this House that women Members of Parliament are more reliable than my colleagues, male Members of Parliament. When an issue is discussed and agreed upon either at the party level or at any caucus, women leaders stick to what has been agreed. However, men start loitering and talking a lot as though they think they own the world.

This matter is timely. It is important to our country. It is the only thing that will be remembered with this Parliament. The major achievement that the 12<sup>th</sup> Parliament can achieve and the legacy that you are going to leave behind as the Speaker of the 12<sup>th</sup> Parliament is to make sure that this Bill is passed so that in 2022, we have proper representation of both genders in this House.

People talk about issues of cost. You read in the newspapers about what Members of Parliament earn. It is only the salaries and remuneration of Members of Parliament that are discussed in public. You will never hear the salaries and remuneration of other State officers like Cabinet Secretaries and Principal Secretaries discussed in public. We do not know how much a Cabinet Secretary earns, how many cars he has, how many girlfriends he has or how much Principal Secretaries earn. It is only the salaries of MPs that are discussed all the time. That is an attack on the integrity of this House.

If the number of women who will come to this House through this Bill are only 22 Members, what cost is that compared to the contributions that they will make in terms of development and legislation in this country? Some of the women who have come to this House are lawyers like Hon. Millie Odhiambo and Hon. Alice Wahome. Some of them are accountants and doctors. People think women are just like “this”. The only problem is that women have the numbers at the constituency level...

**Hon. Speaker:** You say that they are like “this”. Like how?

**Hon. Junet Nuh** (Suna East, ODM): Hon. Speaker, that is an African way of describing someone. “You think I am like this?” That is my mother tongue. I am sorry. They are not like “this”, they are like “that”.

*(Laughter)*

Some of these women are professionals. They will help this House to make better legislation.

Out of 47 counties, there are only three female governors. Those three female governors will perform better than the other 44 governors. In 2013 when we first elected governors in this country, we got 47 male governors. They have all failed us. They “eat” money and have nothing to show for devolution. With these three, we have high hopes. We want to increase that number to 10 in the next election. We must get 10 female governors in 2022, some of them from this House. I am saying this to encourage women to get into leadership positions. We are longing for the day we will have a female President in our country. Those are leaders like us. We must respect them. We have sisters, daughters, mothers and wives who are women. They are not men.

Initially, I opposed this Bill. When you are converted, especially by women, it can get very dangerous. I do not want to mention the ones who converted me. They are inside here. I do not want to mention their names because people may construe other things. They may think that we talked about other things yesterday. We only talked about the Bill.

With those few remarks, I support the Bill.

**Hon. Speaker:** Hon. Junet, you said that I have to ensure that Members are present to vote. Obviously, I have no lobbying capacity. It is you as the Whip of the Minority Party who has the capacity to whip Members to be here in droves, possibly tomorrow. It looks like we may be preaching to the converted.

Let us have the Member for Tharaka.

**Hon. George Gitonga** (Tharaka, DP): Thank you, Hon. Speaker. Finally, I have caught your eye.

From the outset, I support the Bill. We are dealing with affirmative action. I have slowly gotten used to the use of the words “affirmative action”. I come from a rural constituency that is highly marginalised. I always have to plead with the authorities that we require affirmative action. We are not dealing with a Bill on women. We are dealing with a Bill that transcends across both men and women in the Republic of Kenya. In as much as women make up 52 per cent of the voters in the Republic, they are less privileged when it comes to elective positions. However, we should not be oblivious of the fact that having such numbers tomorrow can also translate into less men being elected and more women being elected. If that scenario happens, then it means the affirmative action will be in favour of men. This is the reason I urge all colleagues, male and female, to support this Bill.

We are not enacting any law that is favouring ladies. We already have the affirmative action clause in the Constitution. What we are required to do today, because previous attempts have failed, is to actualise that clause. This is the reason we have the Bill and why we have to debate and vote on it. It is important we remind Kenyans that they are the ones who passed the Constitution. We went round the country. I, personally, went round Tharaka Constituency. I was not a Member of Parliament that time. As a lawyer, I had to interpret the Constitution in my mother tongue to the voters. I told them that it was a good Constitution and pleaded with them to support it, so that we can all benefit in future. One of the clauses I had to interpret was the affirmative action. I told them that it was a good clause. They agreed with me and we all voted for this Constitution. Therefore, it cannot turn around today that the clause is neither good nor be said that it favours one gender.

Let us support this Bill for the sake of posterity. It is ladies who are disadvantaged today. It may be men tomorrow. If that is going to be the scenario, then we will be saying that we went into history in passing a good law. I urge Hon. Members not to play games with this Bill and to see it objectively. We do not have to walk out or walk in. When we are called upon to vote, let us be here in large numbers, so that we can attain the two-thirds majority that is required of the House.

There was an argument that has been going round that we are being benevolent to the ladies such that we are creating for them more positions, so that they come into the House and compete with men. There has also been arguments that our economy cannot support more representation because *punda amechoka*. However, we are not creating any seats for the women. We are purely actualising what is in the Constitution. We are also not gearing towards incurring a further expense for the Republic. The correct position is that there would be an extra expense. We have said this is going to be for a period of 20 years after which it will be reviewed.

Therefore, whichever way we see it, as a society that is growing, we must accommodate expenses that come along with our development. One such development is to achieve the two-thirds gender rule where the gender that is disadvantaged is taken care of through our legal processes. For now, I repeat that it is women who are affected. It goes without saying because we have seen it in this House and out there that women are very good and trusted leaders. For that, we cannot gamble and say with any hesitation that even if we were to do any nominations in favour of the women, it would be advantageous. Out of the 52 per cent voters, women are not particularly well represented. It is that talent out there which possibly is found in women that we are seeking to bring into this House.

Therefore, Hon. Members and Hon. Speaker, I urge the House to support this Bill. Let us vote for it and actualise the law. Let us put it into use and possibly in future, this House is going to be remembered as one that made history in passing a good law.

I support.

**Hon. Speaker:** Member for Funyula.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Thank you, Hon. Speaker. I stand here in respect to the amendment to the Constitution, a Constitution that we spent endless years to get to where we are. In principle the Constitution is clear, we have to comply or face the prospects of breaching the Constitution. Article 27(3) of the Constitution is explicitly clear that women and men have a right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.

Many of us at the outset believed that amendment to the Constitution was noble and a good idea, but we now have reservations in the way the particular Act is prepared. Many of us

seated here having come through the political system know the challenges political parties face. I speak from personal experience and as a Member for Parliament for Funyula Constituency, one of the first constituencies in this country, known then as Busia Central, to elect the first woman who went to become an assistant minister then, Prof. Julia Ojiambo. Our people of Funyula Constituency do not discriminate against women or on the basis of gender. They simply elect people on their ability to deliver, serve people and on their demonstrated leadership abilities. They find it very hilarious and funny that at any given time, there could be any special seats reserved for any gender because that would kill the spirit of competition. As we speak now, the County Assembly of Busia has a fairly good representation of women. I join my colleagues who have stated here before that the challenges facing women of this country are not the laws or legislation but it is the attitude of the women themselves.

As I stand here, in my constituency, enrolment in primary and secondary schools, girls and boys are almost at the same level. They are almost equal in terms of performance. Definitely, the grace for affirmative action, while it has achieved its ultimate goal, there is fear. Many reports and studies conducted have shown that continued dolling out positions on the basis of affirmative action will stunt the growth and achievement of the benefits women have achieved.

I stand here as a former lecturer to state that in the classrooms, there has never been demonstrated differences in the performance between boys and girls. Honestly speaking, all that we need to do, as Hon. Kimunya said, the ladies in this House need to demonstrate to the public that there is value in the money invested. The general feeling out there is that this country is overrepresented. The general feeling probably well articulated and sold by the civil society is that the huge wage bill in this country is as a result of parliamentarians and politicians. Any attempt to increase the number of representatives unnecessarily will surely have a very negative connotation to the people of Kenya. We sincerely need to relook at this particular Bill and generally the Executive, women activists and rights activists must invest heavily in capacity building for women instead of looking for short term gains and escapades that will simply make affirmative action generally minimise women representation and competition.

Hon. Speaker, your ruling that a constitutional Bill cannot be amended makes it difficult for many of us to wholesomely support the amendment. Many of us are aware that quite a number of nominations are done not on merit but on other extraneous considerations and that makes it extremely difficult to trust the process of nomination.

Many of us –and Hon. Wanjala and Hon. Odanga are witnesses –from Busia County felt extremely aggrieved with the process of nomination at the county level. Obviously, we need a redress. We were brushed aside. Many of us have fear that party lists stand a chance of literally disenfranchising hardworking party members who work endlessly day and night looking for votes.

With those many remarks, I have reservations about the Bill. I am sure I am not standing alone, quite a number of us might be talking just to please the public audience but when it comes on the day of voting, you will be surprised.

Thank you.

**Hon. Speaker:** Hon. Members, everybody is at liberty to express themselves. I call the Member for Taveta who as you all know is doing her fourth term. Hon. Junet, I was a bit worried whether certain Member is a Member of the House but I have been informed that the hon. Member is Hon. Chebaibai, the Member for Elgeyo Marakwet. Let us now hear the Member for Nandi County, Hon. (Dr.) Tum Chebet.

**Hon. (Dr.) Tecla Tum** (Nandi CWR, JP): I stand to support “Duale Bill”. When we talk about gender, we are not talking about women. Gender is a socially constructed definition of men and women. So, we have to demystify the thought that gender is about women. When we talk about gender, we are talking about empowerment. When we talk about empowerment, we are talking about women. When we talk about empowerment, we know Kenya is a signatory to the declaration on human rights. When you talk about human rights, you are talking about social inclusion; you are not talking about social exclusion. When you talk about human rights, you are talking about fairness and justice.

The Bible, in Amos Chapter 5, Verse 24 tells us that let justice flow like a river and righteousness like a never-failing stream. We are to act justly in this nation. When we act justly, we are talking about women. When we talk about women, we are talking about our girls, our wives, our mothers and our aunties. For us in this nation to break the glass ceiling, we are to empower women. When we bring more women to this Parliament, we will act as role models to our children, to our aunties and our mothers. The cost implication of this Bill is minimal. It is talking about 22 Members of the National Assembly and two Senators. The amount of Kshs282,240,000 to be incurred is minimal.

**Hon. Speaker:** Order, Members.

*(Hon. (Ms.) Joyce Kamene walked in the aisle)*

This Member for Machakos, do you have a problem sitting?

#### ADJOURNMENT

**Hon. Speaker:** Hon. Members, the time being 7.00 p.m., the Member for Nandi, Dr. Tum Chebet, will have a balance of eight minutes when debate on this Motion resumes tomorrow. The House stands adjourned until Wednesday, 21<sup>st</sup> November 2018, at 9.30 a.m.

The House rose at 7.00 p.m.