Twelfth Parliament Fourth Session



REPUBLIC OF KENYA

TWELFTH PARLIAMENT - FOURTH SESSION

THE NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

TUESDAY, MARCH 10, 2020

- 1. The House assembled at thirty minutes past Two O'clock
- 2. The Proceedings were opened with Prayer
- 3. **Presiding -** the Honourable Speaker

4. **COMMUNICATION FROM THE CHAIR**

The Speaker conveyed the following two Communications-

(a) ON THE DEMISE OF THE LATE HON. SULEIMAN DORI RAMADHANI, MP, MEMBER FOR MSAMBWENI CONSTITUENCY

Honourable Members, as you are already aware, the week started off on a very sad note for the National Assembly, the residents of Kwale County and indeed the nation as a whole following the demise of Hon. Suleiman Dori Ramadhani, MP. The Hon. Member passed on in the morning of yesterday, Monday, the 9th day of March, 2020, while undergoing treatment at the Aga Khan Hospital, Mombasa.

Honourable Members, the late Hon. Suleiman Dori Ramadhani was born on 19th October 1977, and attended Tudor Secondary School and later the other institutions, including the Young Men Christian Association (YMCA), Mombasa, where he was trained on Community Development.

Honourable Members, the late Hon. Suleiman Dori's parliamentary career commenced in March, 2013 following his election by the people of Msambweni Constituency, Kwale County, as their representative. Subsequently, following an active and successful first term in the 11th Parliament, the people of Msambweni again voiced their confidence in his leadership, re-electing him to this August House in August, 2017. During his first term in Parliament, the Hon. Suleiman Dori had an illustrious career as a member of the Departmental Committee on Lands as well as the Departmental Committee on Transport, Public Works and Housing where he contributed immensely to the work of the two Committees.

He rejoined the Departmental Committee on Transport, Public Works and Housing in the current Parliament and has been serving as a vocal and dedicated Member of the Committee. He was particularly active during consideration of Bills, Petitions and Parliamentary Questions in the Committee as well as during vetting of nominees to various state and public offices. You will recall that, during the consideration of the Statute Law (Miscellaneous Amendments) Bill, 2019 in July last year, he was very active during the debate on the amendment to the Merchant Shipping Act. **Honourable Members,** the Late Hon. Dori was also an active and influential Member of the Coast Parliamentary Group, where he was the Chairperson as well as former Deputy Organizing Secretary of the Orange Democratic Movement.

Honourable Members, the Late Hon. Suleiman Dori was committed to the economic empowerment of farmers, and strongly supported a Motion seeking the Government's financial support and relief to cushion coconut farmers in the coastal region as well as the proposed inclusion of coconut insurance under the National Agricultural Insurance Programme. He was also vocal in supporting calls for the National Government to consider giving regular honorarium to village elders as a means of appreciating their services and encouraging them to uphold their dedication to the community. As a passionate advocate for use of Kiswahili in the House and in other public institutions, the late Hon. Dori was instrumental in calling the National Council for Law Reporting to progressively translate all laws of Kenya into Kiswahili and indeed the now realized translation of our Standing Orders into Kiswahili.

Honourable Members, the late Member was very pragmatic in his approach to leadership, which was highlighted in many occasions including during debates on security issues in which he once said the following during debate in the House-

"Ni jukumu letu, kama viongozi, kuhakikisha tumelinda Wakenya. Tusije hapa kila wiki ikawa tunazungumzia mambo ambayo hayaleti mwelekeo wowote kwa Wakenya. Wakenya wametuchagua. Wakenya wana imani na viongozi na ni lazima tuwatendee kazi Wakenya wote"

Honourable Members, the Late Hon. Suleiman Dori was a dependable leader who served his constituents with utmost commitment. He was selfless, ambitious, realistic, resourceful and committed to public service. Without doubt, **Honourable Members,** the residents of Msambweni Constituency, Kwale County, this House, the entire Parliament and the nation at large have lost a vibrant, pragmatic and dedicated leader. The Member was laid to rest yesterday in Msambweni in accordance with Islamic tradition. May God rest his soul in peace.

In tribute and honour to our departed colleague the Late Hon. Suleiman Dori Ramadhani, MP, I request that we all stand to observe a minute of silence. I thank you.

(b) COMMITTAL OF A BILL TO A COMMITTEE OTHER THAN A DEPARTMENTAL COMMITTEE

Honourable Members, the Kenya National Commission on Human Rights (Amendment) Bill (National Assembly Bill No. 1 of 2020) was read a First Time on 27thFebruary, 2020.

Standing Order 127 (1) provides that a Bill having been read a First Time shall stand committed to the relevant Departmental Committee without question put. Despite the said provisions, Standing Order 127(6)(a) provides that the Speaker may direct that a particular Bill be committed to such other Committee as the Speaker may determine.

Honourable Members, I have since received a request to determine the suitable Committee to consider the Kenya National Commission on Human Rights (Amendment) Bill, (National Assembly Bill No. 1 of 2020). The Bill seeks to amend the Kenya National Commission on Human Rights Act (No. 14 of 2011) in order to merge the Kenya National Commission on Human Rights (KNCHR) and the National Gender and Equality Commission (NGEC). Part 5 of Chapter 5 of the Constitution, particularly Article 59(4) provides, and I quote-

"Parliament shall enact legislation to give full effect to this Part, and any such legislation may restructure the Commission into two or more separate commissions".

Honourable Members, this particular Bill is published following lessons learnt and challenges experienced during the implementation of the Constitution. You will recall that the Kenya National Human Rights and Equality Commission, established under Part 5 of the Constitution pursuant to the provisions of Article 59(4), was split to create three independent offices, that is, the Kenya National Commission on Human Rights (KNCHR), the National Gender and Equality Commission (NGEC) and the Commission on Administrative Justice (CAJ). As you are ware the Constitutional Implementation Oversight Committee established under the Sixth Schedule to the Constitution is responsible for overseeing the implementation of Constitution. Given this background, the Constitutional Implementation Oversight Committee will be valuable in reviewing the lessons so far learnt in the journey to implement the Constitution.

Honourable Members, I therefore direct that the Bill stands committed to the Constitutional Implementation Oversight Committee to discharge the functions specified under Standing Order 127(3) and (3A) relating to public participation.

It is so directed. I Thank You!

5. **PETITIONS**

The following Petition was presented to the House -

- Petition by the Member for Matuga (Hon. Kassim Tandaza) on behalf of the residents of the then Golini Location in Matuga Constituency regarding regularization of the Golini settlement scheme allotments.

(Petition referred to the Departmental Committee on Lands pursuant to Standing Order 227)

6. **PAPERS LAID**

The following Papers were laid on the Table of the House -

A. The Leader of the Majority Party: -

1) Reports and Resolutions adopted at the 2ndMeeting of the 3rd Session of the 4th East African Legislative Assembly from 16th November - 7th December, 2019, Arusha, Tanzania as follows-

a) Reports-

- (i) Report of the Committee on General Purpose on the oversight activity to assess the Level of preparedness of Partner States in the Management of Ebola and Dengue Fever Epidemics;
- (ii) Report of the Committee on Legal, Rules and Privileges on the oversight activity on compliance of the EAC Protocols and Laws by the EAC Institutions;
- (iii) Report of the 2nd General Assembly for the Eastern African Parliamentary Alliance for Food Security and Nutrition (EAPA FSN); and
- (iv) Report of the Delegation of the East African Assembly to the 141st IPU Assembly held from 10th -17th October, 2019 in Belgrade, Serbia.

b) Resolutions-

- (i) Resolution of the Assembly urging the Council of Ministers to urgently establish an emergency response fund to assist victims of floods and other environmental disasters;
- (ii) Resolution of the Assembly requesting the Council of Ministers to produce a comprehensive report on the status of implementation of the Customs Union and Common Market Protocols; and
- (iii) Resolution of the Assembly paying tribute and congratulating the Clerk, Mr. Kenneth Namboga Madete and Deputy Clerk, Mr. Alex Obatre Lumumba upon completion of their service to the Assembly.
- 2) Reports and Bills adopted at the 3rd Meeting of the 3rd Session of the 4th East African Legislative Assembly from 9th February 1st March, 2020, Arusha, Tanzania as follows-
 - (i) Report of the Committee on Accounts on the East African Community Audited Accounts for the Financial Year 2017/2018;
 - (ii) Report on the Committee on General Purpose on the EAC Supplementary Appropriation Bill, 2019; and
 - (iii) The East African Community Supplementary Appropriation Bill, 2020.
- 3) 9th and 10th Bi Annual Reports on the Status of Alcohol and Drug Abuse Control in Kenya.

B. Chairperson, Departmental Committee on Education & Research: -

Reports of the Departmental Committee on Education and Research on-

- (i) The Petition Regarding Release of Examination Results for Mr. Nicky Odongo Lubanga by the Kenya Medical Laboratory Technologists and Technicians Board;
- (ii) The Colleges and Institutes Canada (CICAN) Conference held in Niagara, Canada Between 5th -7th May, 2019.

7. QUESTIONS

(a) The following Question were asked –

- (i) Question No.42/2020 by the Nominated Member (Hon. Wilson Sossion) regarding why Safaricom PLC has been discouraging and inhibiting its employees from joining workers' unions of their choice contrary to the provisions of Article 41 of the Constitution.
 - (To be replied by the Cabinet Secretary for Labour and Social Protection before the Departmental Committee on Labour and Social Welfare)
- (ii) Question No.43/2020 by the Membre for Nambale (Hon. Sakwa Bunyasi) regarding how the National Government intends to operationalise and implement *Gazette* Notice No. 5853 issued on 21st June 2017 which established Administrative Coordination units, particularly in Nambale Constituency.
 - (To be replied by the Cabinet Secretary for Interior and Coordination of National Government before the Departmental Committee on Administration and National Security)
- (iii) Question No.44/2020 by the Member for North Horr (Hon. Chachu Ganya) regarding provision of a report on the implementation and operationalisation status of the *Uwezo* Fund program in all the Constituencies of Marsabit County since inception of *Uwezo Fund* in 2013.
 - (To be replied by the Cabinet Secretary for Public Service, Youth and Gender Affairs before the Departmental Committee on Administration and National Security)
- (iv) Question No.45/2020 by the Member for Gilgil (Hon. Martha Wangari) regarding the measures in place to ensure the implementation of the harmonized salaries programme for the 1,774 graduate police officers in the country in line with the *Declarations and Orders* given under *Petition No. 122 of 2018* of 17th May, 2019 by the Employment and Labour Relations Court, sitting in Nairobi.

(To be replied by the Cabinet Secretary for Interior and Coordination of National Government before the Departmental Committee on Administration and National Security)

8. PROCEDURAL MOTION- REDUCTION OF PUBLICATION PERIOD FOR A SPECIFIED BILL

Motion made and Question proposed -

THAT, notwithstanding the provisions of Standing Order 120, and cognizant of the timelines contemplated under Article 218 of the Constitution and section 42 of the Public Finance Management Act regarding the period for passage of a Division of Revenue Bill, this House **resolves** to reduce the publication period of the Division of Revenue Bill (National Assembly Bill No. 3 of 2020) from **7 days to 1 day**.

(The Hon. Benjamin Washiali (Majority Party Whip))

There being no debate arising;

Question put and agreed to.

9. THE BUSINESS LAWS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 80 OF 2019)

Order for Second Reading read;

Motion made and Question proposed -

THAT, the Business Laws (Amendment) Bill (National Assembly Bill No. 80 of 2018) be now read a Second Time.

(The Leader of the Majority Party)

Debate on the Bill having been concluded on Thursday, March 5, 2020;

Question put and agreed to.

10. THE DIVISION OF REVENUE BILL (NATIONAL ASSEMBLY BILL NO. 3 OF 2020)

Order for First Reading read;

Bill read a First Time and ordered to be read a Second Time tomorrow.

11. COMMITTEE OF THE WHOLE HOUSE

Order for Committee read;

IN THE COMMITTEE

The Deputy Speaker in the Chair

(i) President's Reservations to the Law of Contract (Amendment) Bill (National Assembly Bill No. 1 of 2019)

Clause 2 – amendment proposed -

THAT, clause 2 of the Bill be deleted as recommended by H.E. the President.

(The Leader of the Majority Party)

Question of the amendment proposed;

Debate arising;

Question put and agreed to.

Division claimed pursuant to Standing Order 72;

And the Chairperson having ascertained that the twenty-eight (28) Members rising in their places to claim the Division did not meet the threshold set out in Standing Order 72(1)(b);

Thereupon, claim for Division declined;

President's Reservations to be reported without amendments.

The Second Chairperson in the Chair

(ii) The Representation of Special Interest Groups Laws (Amendment) Bill (National Assembly Bill No.52 of 2019)

Clause 3 - amendment proposed-

THAT, clause 3 of the Bill be amended by inserting the following new sub-paragraphs immediately after the proposed new sub-paragraph (ix)—

"(x) collaborate with the Independent Electoral and Boundaries Commission to build capacity of persons with disabilities to take part in electoral processes both as voters and candidates:"

"(xi) provide a platform to advocate for accessibility of electoral infrastructure including technology, voter registration and polling stations;"

(Chairperson, Constitutional Implementation Oversight Committee)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 3 - as amended agreed to

<u>Clause 4</u> - <u>agreed to</u>

Clause 5 - amendment proposed-

THAT, clause 5 of the Bill be amended—

- (a) in paragraph (d) by deleting the words "persons with disabilities" and substituting therefor the words "special interest groups";
- (b) by inserting the following new paragraph immediately after paragraph (d)—
 - "(e) by inserting the following new paragraph immediately after paragraph (m)—
 (ma) the establishment of criteria for the identification of marginalized communities, ethnic and other minorities for all electoral purposes to provide a basis for segregation of data;"

(Chairperson, Constitutional Implementation Oversight Committee)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

<u>Clause 5</u> - as amended <u>agreed to</u>

Clause 6 amendment proposed-

THAT, clause 6 of the Bill be amended by deleting the words "persons with disabilities" appearing in the proposed new subsection (1A) and substituting therefor the words "special interest groups".

(Chairperson, Constitutional Implementation Oversight Committee)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

as amended agreed to Clause 6

Clause 7 agreed to

Clause 8 amendment proposed-

THAT, clause 8 of the Bill be amended in paragraph (a) by inserting the words "where applicable" immediately after the words "and on its website".

(Chairperson, Constitutional Implementation Oversight Committee)

Question of the amendment proposed;

Debate arising;

Proposed amendment Withdrawn

Clause 8 agreed to

Clause 9 amendment proposed-

THAT, the Bill be amended by deleting clause 9 and inserting the following new clause-

section 25 of No. 11 of 2011.

9. The Political Parties Act, 2011 is amended by deleting section 25 and inserting the following new section-

of Fund.

- Distribution 25. (1) The Fund shall be distributed as follows
 - per cent of (a) seventy three the proportionately shared among all the political parties, subject to subsection (2);
 - (b) twenty per cent of the Fund proportionately to political parties based on the number of candidates of the party from special interest groups elected in the preceding general election;
 - (c) five per cent for the administration expenses of the Fund; and
 - (d) two per cent for the administration expenses of

the Political Parties Liaison Committee.

- (2) A political party shall be entitled to receive funding from the Fund under subsection (1) if-
 - (a) no more than two-thirds of its registered office bearers are of the same gender;
 - (b) the party has in its governing body, representation of special interest groups;
 - (c) the party has in its party nomination list, names of persons who have not benefited from the party nomination in any preceding general election; and
 - (d) the party has at least– five elected members of Parliament; one elected Governor; or twelve elected members of County Assemblies:

Provided that the provisions of paragraph (c) of this subsection shall not apply to distribution of the Fund under subsection (1)(b).

- (3) For purposes of this section, "office bearers" means national and county officials elected or nominated by a political party in accordance with the party constitution.
- (4) For purposes of subsection (1)(a), the proportional share of all the political parties shall be computed by adding the total number of votes obtained in the preceding general election by a political party in the election for President, Members of Parliament, county governors and members of county assemblies.
- (5) A political party that receives funds under this section shall ensure that at least twenty five per cent of the funds received are disbursed to its branch offices.

(Chairperson, Constitutional Implementation Oversight Committee)

Question of the amendment proposed;

Question put and Negatived;

Further amendment proposed -

THAT, clause 9 of the Bill be amended in paragraph (a) by deleting the proposed new subsection (1) and substituting therefor the following new subsection-

- "(1) The Fund shall be distributed as follows-
 - (a) seventy three per cent of the Fund proportionately shared among all political parties or coalition of parties in the National Assembly;
 - (b) twenty per cent of the Fund proportionately to political parties based on the number of candidates of the party from special interest groups elected in the preceding general elections;
 - (c) five per cent for the administration expenses of the Fund; and
 - (d) two per cent for the administration expenses of the Political Parties Liaison Committee."

(Hon. Robert Mbui)

Proposed amendment withdrawn

Further amendment proposed -

THAT, clause 9 of the Bill be amended-

- (a) in paragraph (a) by deleting the proposed new paragraph (a) and substituting therefor the following new paragraph-
 - "(a) fifty-three per cent of the Fund proportionately shared between the largest party or coalition of parties and the second largest party or coalition of parties"
- (b) by inserting the following new paragraph immediately after paragraph (b)-
 - "(c) by deleting subsection (3) and substituting therefor the following new subsection-
 - "(3) For purposes of subsection (1)(a), the largest party or coalition of parties and the second largest party or coalition of parties shall be computed by adding the total number of votes obtained in the preceding general election by a political party or a coalition of parties in the election for the President, Members of Parliament, county governors and members of county assemblies."

(Hon. Godfrey Osotsi)

Proposed amendment withdrawn

Question of clause be part of the bill put and Negatived

Clause 9 - deleted

Clause 10 - amendment proposed-

THAT, the Bill be amended by deleting clause 10 and inserting the following new clause-

Amendment of section 26 of No. 11 of 2011.

- 10. Section 26(1) of the Political Parties Act, 2011 is amended by-
 - (a) deleting paragraph (a) and substituting therefor the following new paragraph-
 - "(a) promoting the representation in Parliament and in the county assemblies of special interest groups through-
 - (i) civic education;
 - (ii) capacity building;
 - (iii) facilitating party candidates in campaigns;
 - (iv) publicity; and
 - (v) such other measures as may be approved by the Registrar.

- (b) deleting the proviso and substituting therefor the following new proviso-
 - "Provided that for purposes of paragraph (a)-
 - (i) not less than thirty per cent of the monies allocated to a political party under section 25 shall be used for the purposes referred to in subsection(1)(a); and
 - (ii) a person shall benefit from the provisions of this paragraph where the person is seeking to be elected for his or her first term in Parliament or a county assembly."

(Hon. Godfrey Osotsi)

Question of the amendment proposed;

Debate arising;

Question put and Negatived;

Clause 10 - agreed to

Clause 11 - agreed to

Clause 12 - amendment proposed-

THAT, clause 12 of the Bill be amended by deleting the word "sections" and substituting therefor the word "section"

(Chairperson, Constitutional Implementation Oversight Committee)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

<u>Clause 12</u> - as amended <u>agreed to</u>

Clause 13 - amendment proposed-

THAT, the Bill be amended by deleting clause 13.

(Chairperson, Constitutional Implementation Oversight Committee)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

<u>Clause 13</u> - <u>deleted</u>

<u>Clauses 14, 15 & 16</u> - <u>agreed to</u>

<u>Clause 17</u> - <u>amendment proposed-</u>

THAT, clause 17 of the Bill be amended in paragraph (a) by deleting the words "persons with disabilities" appearing in the proposed new subsection (1A)(b) and substituting therefor the words "special interest groups"

(Chairperson, Constitutional Implementation Oversight Committee)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

<u>Clause 17</u> - as amended <u>agreed to</u>

Clause 18 - amendment proposed-

THAT, clause 18 of the Bill be amended by deleting paragraph (b) and substituting therefor the following new paragraph—

- "(b) inserting the following new subsections immediately after subsection (1)—
 - (2) A political party shall submit the party list under subsection (1) together with a statutory declaration signed by the person authorized to certify that the candidates were nominated by the party and the minutes of the approval of the list by the election board of the political party.
 - (3) The Commission shall publish the party lists submitted under subsection (1) in formats that are accessible to the special interest groups in line with the established timelines."

(Chairperson, Constitutional Implementation Oversight Committee)

Question of the amendment proposed;

Debate arising;

Question put and Negatived;

Further amendment proposed -

THAT, clause 18 of the Bill be amended in paragraph (b) by deleting the words "and minutes of the approval of the list by the party's election board" appearing in the proposed new subsection (2) and substituting therefor the words "in accordance with the prescribed regulations and the relevant Constitution of the party".

(Hon. Godfrey Osotsi)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 18 as amended agreed to

Clause 19 agreed to

Clause 20 amendment proposed-

THAT, the Bill be amended by deleting clause 20.

(Chairperson, Constitutional Implementation Oversight Committee)

Question of the amendment proposed;

Debate arising;

Question put and agreed to:

Clause 20 deleted

Clause 21 amendment proposed-

THAT, clause 21 of the Bill be amended by deleting the word "free" appearing in the proposed new paragraph 16(d).

(Chairperson, Constitutional Implementation Oversight Committee)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 21 as amended agreed to

Clauses 22, 23 & 24 agreed to

New Clause 16A proposed -

THAT, the Bill be amended by inserting the following new clause immediately after clause 16—

section 2 of No. 24 of 2011.

Amendment of **16A.** Section 2 of the Elections Act, 2011 is amended by inserting the following new definition in its proper alphabetical sequence—

"special interest groups" means the following groups specified under Article 100 of the Constitution—

- (a) women;
- (b) persons with disabilities;
- (c) youth;

- (d) ethnic and other minorities; and
- (e) marginalised communities.

(Chairperson, Constitutional Implementation Oversight Committee)

Question of Second Reading Proposed

Debate arising;

Question of Second Reading put and agreed to

Motion made and Question proposed -

THAT, the New Clause 16A be part of the Bill;

Question put and agreed to.

Proposed new Clause 16A - agreed to

Clause 2 - amendment proposed-

THAT, clause 2 of the Bill be amended in sub-clause (2) by deleting paragraph (c) and substituting therefor the following new paragraph—

"(c) mandate the National Gender and Equality Commission with the function of promoting the sensitization of the public on the right of special interest groups to participate in the electoral process;"

(Chairperson, Constitutional Implementation Oversight Committee)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

<u>Clause 2</u> - as amended <u>agreed to</u>

Title - agreed to

<u>Clause 1</u> - <u>agreed to</u>

Bill to be reported with amendments

HOUSE RESUMED - Third Chairperson in the Chair

(i)The President's Recommendations To The Law Of Contract (Amendment) Bill (National Assembly Bill No. 1 Of 2019)

Bill reported without amendments

Motion made and Question proposed -

THAT, the House do agree with the Committee in the said report

(The Leader of Majority Party)

Question deferred to another day

(ii) The Representation of Special Interest Groups Laws (Amendment) Bill (National Assembly Bill No.52 of 2019)

Bill reported with amendments

Motion made and Question proposed -

THAT, the House do agree with the Committee in the said report

(The Majority Party Whip)

Question deferred to another day

12. MOTION - ANNUAL REPORTS ON THE STATE OF THE JUDICIARY

Motion made and Question proposed -

THAT, this House **notes** the Annual Reports on the **State of the Judiciary** for the financial years 2016/2017 and 2017/2018, submitted to the House pursuant to the provisions of Article 254(1) of the Constitution, and **adopts** the recommendations of the Departmental Committee on Justice and Legal Affairs as contained in the Reports of the Committee *laid on the Table of the House on Thursday, May 9, 2019.*

(Chairperson, Departmental Committee on Justice & Legal Affairs)

Debate arising;

And the time being Seven o'clock, the Third Chairperson interrupted the proceedings and adjourned the House without Question put pursuant to the Standing Orders.

13. **HOUSE ROSE** - at Seven o'clock.

MEMORANDUM

The Speaker will take the Chair on Wednesday, March 11, 2019 at 9.30 a.m.

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